

ORDINANCE NO. 2007- 103

AN ORDINANCE ACCEPTING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A PURCHASE AGREEMENT WITH THE CITY OF KENT, OHIO, BUYING A TOTAL OF 11.88 ACRES OF UNIMPROVED REAL PROPERTY FROM CROOKED RIVER LAND COMPANY FOR \$125,000.00 AND DECLARING AN EMERGENCY.

WHEREAS, the City of Kent Council desires to purchase a total of 11.88 acres of unimproved real property located in Kent/Franklin Township, Portage County, Ohio; and

WHEREAS, Crooked River Land Company is willing to sell said property for \$125,000.00; 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 to execute the purchase agreement for the City of Kent to buy a total of 11.88 acres of unimproved real property from the Crooked River Land Company for \$125,000.00 in substantial conformity with the terms of the Purchase Agreement marked as Exhibit "1", 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: 10/24/2007 _____
DATE PRESIDENT PRO TEM

ATTEST: _____
ACTING CLERK OF COUNCIL

I hereby certify that Ordinance No. 2007- 113 was duly enacted this 24 day of OCTOBER, 2007 by the Council of the City of Kent, Ohio.

Linda M. Copley, Clerk of Council

EXHIBIT "1"

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (the "Agreement") is made and is effective as of the date of the execution hereof by the last party to sign by and between CROOKED RIVER LAND CO., LTD, an Ohio limited liability company, 127 East Main Street, Ravenna, Ohio 44266 (hereinafter referred to as "Seller") and CITY OF KENT, Ohio, with a mailing address of 215 East Summit Street, Kent, Ohio 44240 (hereinafter referred to as "Purchaser").

WITNESSETH:

WHEREAS, the Seller owns certain real property located in Portage County, Ohio, which is more fully described in Exhibits "A", "B", "C" and "D", 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 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 REAL ESTATE AND DONATE CABIN**

Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller a total of 11.88 acres of unimproved real property situated in Franklin Township, County of Portage, which is described in attached Exhibits "A", "B", "C" and "D", which are incorporated hereby by reference (hereinafter referred to as "the Property").

In addition to the real property, Seller is donating ownership of a log cabin currently situated upon Seller's property to Purchaser. Seller shall use its best efforts to move said log cabin to either the lift station area, Davey Arboretum or a location to be agreed upon by the parties, "as is" as of completion of move within sixty (60) days of the date hereof. The City shall obtain all necessary permits and pay the cost of moving any overhead utility lines needed to facilitate the move.

2. **PURCHASE PRICE.** The Purchaser agrees to pay to the Seller the sum of One Hundred Twenty Five Thousand Dollars (\$125,000.00) for the Property which sum shall be payable in full at the closing date with the funds to be delivered to the Escrow Agent, Kent Title Agency, 11 South River Street, Kent, Ohio 44240, (hereinafter referred to as the "Escrow Agent").

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 a hike and bike trail. Seller reserves oil and gas rights until June 12, 2012. At that

time, said rights shall be transferred to the City.

4. TITLE COMMITMENT. Within fifteen (15) days after the date hereof, Seller shall obtain from the Escrow Agent and deliver to Purchaser a commitment to issue Purchaser an owner's 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 neither 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 by 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 forty-five (45) 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 forty-five (45) 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:

- (1) That it is the fee simple owner of the Property and is fully authorized and empowered to convey the Property as provided here;
- (1) 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.

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 the Closing Date.

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. The parties hereto acknowledge that Seller's counsel is an owner of the Kent Title Agency and consent thereto.

12. CLOSING. Unless the parties or their respective counsel on their behalf, otherwise agree in writing, this transaction shall close in escrow:

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 shall:

- (A) File the Grantee Statement, pay the Ohio State property transfer tax on the conveyance fee and charge the cost thereof, if any, to Purchaser;
- (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 Purchaser;
- (D) Charge the cost of the survey, if any, to Purchaser;
- (E) Charge its escrow fee to Purchaser;
- (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.

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 SELLER:	City Manager City of Kent 215 E. Summit Street Kent, Ohio 44240	Finance Director City of Kent 325 S. Depeyster Street Kent, Ohio 44240
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WITH COPY TO:	James R. Silver Law Director City of Kent 215 E. Summit Street Kent, Ohio 44240
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PURCHASER:	Crooked River Land Co., Ltd. 127 East Main Street Ravenna, Ohio 44266
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WITH COPY TO:	Howard T. Welser, Jr. 11 South River Street Kent, Ohio 44240
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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 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.

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.

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:

CROOKED RIVER LAND CO., LTD.

By: _____

Date: _____

PURCHASER:
CITY OF KENT, OHIO

By: _____

Dave Ruller, City Manager

Date: _____

APPROVED AS TO FORM:

James R. Silver, Law Director
City of Kent

CERTIFICATE OF DIRECTOR OF BUDGET AND FINANCE

It is hereby certified that the amount of (\$_____) required to meet the contract, agreement, obligation, payment or expenditure, for the above, has been lawfully appropriated or authorized or directed for such purposes and is in the City Treasury or in the process of collection to the credit of _____ Fund free from any obligation or certificates now outstanding.

Date

Barbara A. Rissland
Budget and Finance Director

STATE OF OHIO)
) SS
PORTAGE COUNTY)

BEFORE ME, a Notary public in and for said County, personally appeared the above-named City of Kent through DAVID RULLER, its City Manager, 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 _____, 2007.

Notary Public

STATE OF OHIO)
) SS
PORTAGE COUNTY)

BEFORE ME, a Notary public in and for said County, personally appeared the above-named _____, who acknowledges that he did sign the foregoing Purchase Agreement and that the same is his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at Kent, Ohio, which ____ day of _____, 2007.

Notary Public

EXHIBIT "A"

**LEGAL DESCRIPTION FOR
RIVER BEND EAST PROPERTY
PARCEL NO. 3
1.184 Acres**

Situated in the Township of Franklin, County of Portage, and State of Ohio, and being part of Original Franklin Township Lot No. 40 and more fully described as follows:

Commencing at the southeasterly corner of Sublot No. 24 and the southwesterly corner of Bock "A", as shown in the Subdivision Plat for River Bend East Subdivision Phase 1 and recorded in Plat 97-94 of Portage County Plat Records, where a 5/8-inch iron pin was set with Cap No. "BLR S-7774"; Thence North $71^{\circ} 17' 36''$ East along the City of Kent Corporation line passing through the westerly line of Original Township Lot No. 40 at a calculated distance of 137.14 feet (137.11 feet plat), a total calculated distance of 296.71 feet to a 5/8-inch iron pin set with Cap No. "BLR S-7774" in the City of Kent Corporation line and westerly line of land conveyed to River Bend East, Inc., as recorded in Volume 0074, Pages 81, 82 of the Portage County Records; Thence South $19^{\circ} 02' 20''$ East along an easterly line of said River Bend East, Inc. a calculated distance of 50.50 feet (50.40 feet deed) to a 5/8-inch iron pin set with Cap No. "BLR S-7774"; Thence South $18^{\circ} 20' 19''$ West along an easterly line of said River Bend East, Inc. a calculated distance of 16.92 feet to a 5/8-inch iron pin set with Cap No. "BLR S-7774", and being the *PRINCIPAL PLACE OF BEGINNING* of a parcel of land (Parcel No. 3) herein intended to be described;

Thence North $71^{\circ} 17' 36''$ East a calculated distance of 444.25 feet (444.28 feet deed) to a 5/8-inch iron pin set with Cap No. "BLR S-7774";

Thence South $18^{\circ} 42' 24''$ East a deed distance of 103.00 feet to a 5/8-inch iron pin set with Cap No. "BLR S-7774";

Thence South $71^{\circ} 17' 36''$ West a calculated distance of 559.49 feet (559.52 feet deed) to a 5/8-inch iron pin set with Cap No. "BLR S-7774";

Thence North $05^{\circ} 37' 41''$ East a calculated distance of 12.95 feet (13.05 feet deed) to a 5/8-inch iron pin set with Cap No. "BLR S-7774";

Thence North $35^{\circ} 28' 56''$ East a deed distance of 111.20 feet to a 5/8-inch iron pin set with Cap No. "BLR S-7774";

Thence North $18^{\circ} 20' 19''$ East a calculated distance of 32.75 feet (32.63 feet deed) to the *Principal Place of Beginning* and containing 1.1837 acres of land in O.L. 40, be the same more or less, but subject to all legal highways, as determined by a survey performed by Bruce L. Robinson, P.E., P.S. 7774, of B.L. Robinson Engineering & Surveying Co. in October of 2003.

- Monuments described, as "iron pin set" are 5/8" diameter by 30" rebar with an orange plastic cap stamped "BLR S-7774".
- Bearings correlate to the value of North $00^{\circ} 11' 53''$ West as assigned to the centerline of Beechwood Drive (60 feet wide) as shown in Subdivision Plat for River Bend East Subdivision Phase 1 and recorded in Plat 97-94 of Portage County Plat Records.
12-040-00-00-060

EXHIBIT "B"

**LEGAL DESCRIPTION FOR
RIVER BEND EAST PROPERTY
PARCEL NO.4
1.639 Acres**

Situated in the City of Kent and Township of Franklin, County of Portage, and State of Ohio, and being part of Original Franklin Township Lot No. 40 & 41 and more fully described as follows:

Commencing at the southeasterly corner of Sublot No. 24 and the southwesterly corner of Bock "A", as shown in the Subdivision Plat for River Bend East Subdivision Phase 1 and recorded in Plat 97-94 of Portage County Plat Records, where a 5/8-inch iron pin was set with Cap No. "BLR S-7774"; Thence North $71^{\circ} 17' 36''$ East along the City of Kent Corporation line passing through the westerly line of Original Township Lot No. 40 at a calculated distance of 137.14 feet (137.11 feet plat), a total calculated distance of 274.68 feet to a 5/8-inch iron pin set with Cap No. "BLR S-7774" in the City of Kent Corporation line and westerly line of land conveyed to River Bend East, Inc., as recorded in Volume 0074, Pages 81, 82 of the Portage County Records; Thence South $19^{\circ} 02' 20''$ East along a westerly line of said River Bend East, Inc. land a calculated distance of 32.03 feet (31.94 feet deed) to a 5/8-inch iron pin set with Cap No. "BLR S-7774"; Thence South $18^{\circ} 20' 19''$ West along a westerly line of said River Bend East, Inc. land a calculated distance of 40.05 feet to a 5/8-inch iron pin set with Cap No. "BLR S-7774", and being the *PRINCIPAL PLACE OF BEGINNING* of a parcel of land (Parcel No. 4) herein intended to be described;

Thence continuing South $18^{\circ} 20' 19''$ West along a westerly line of said River Bend East, Inc. land a calculated distance of 2.63 feet (2.51 feet deed) to a 5/8-inch iron pin set with Cap No. "BLR S-7774";

Thence South $35^{\circ} 28' 56''$ West along a westerly line of said River Bend East, Inc. land a deed distance of 118.72 feet to a 5/8-inch iron pin set with Cap No. "BLR S-7774";

Thence South $05^{\circ} 37' 41''$ West along a westerly line of said River Bend East, Inc. land a calculated distance of 116.85 feet to a 5/8-inch iron pin set with Cap No. "BLR S-7774";

Thence South $26^{\circ} 21' 29''$ East along a westerly line of said River Bend East, Inc. land a calculated distance of 109.55 feet (109.67 feet deed) to a 5/8-inch iron pin set with Cap No. "BLR S-7774";

Thence North $61^{\circ} 30' 16''$ West, passing through the City of Kent Corporation line and the westerly line of Original Township Lot No. 40 at a calculated distance of 107.62 feet (107.65 feet deed), a total calculated distance of 283.97 feet to a 5/8-inch iron pin set with Cap No. "BLR S-7774";

Thence South $81^{\circ} 09' 39''$ West, passing through the northwesterly corner of land now or formerly conveyed to R.M. & S.L. Thompson at a calculated distance of 409.98 feet (411.05 feet deed), referenced by an iron pin found 0.18 feet North and 0.21 feet West, a total calculated distance of 423.05 feet to a 5/8-inch iron pin set with Cap No. "BLR S-7774";

Thence South $68^{\circ} 28' 22''$ West a deed distance of 155.07 feet to a 5/8-inch iron pin found 0.08 feet North and 0.16 feet West;

Thence South $58^{\circ} 25' 05''$ West a deed distance of 178.00 feet to an iron pin found 0.11 feet South and 0.02 feet West;

Thence North $27^{\circ} 55' 17''$ West a calculated distance of 59.70 feet (59.72 feet deed) to a point referenced by an iron pin found 0.07 feet South and 0.08 feet West;

Thence North 71° 01' 47" East a calculated distance of 671.99 feet to a 5/8-inch iron pin set with Cap No. "BLR S-7774";

Thence South 67° 43' 00" East a calculated distance of 13.69 feet (13.92 feet deed) to a 5/8-inch iron pin set with Cap No. "BLR S-7774";

Thence North 71° 17' 36" East, passing through the City of Kent Corporation line and the westerly line of Original Township Lot No. 40 at a calculated distance of 261.78 feet, a total calculated distance of 396.81 feet (396.77 feet deed) to the *Principal Place of Beginning* and containing 1.6385 total acres of land, 1.2478 acres in the City of Kent (O.L. 41) and 0.3907 acres in the Township of Franklin (O.L. 40), be the same more or less, but subject to all legal highways, as determined by a survey performed by Bruce L. Robinson, P.E., P.S. 7774, of B.L. Robinson Engineering & Surveying Co. in October of 2003.

- Monuments described, as "iron pin set" are 5/8" diameter by 30" rebar with an orange plastic cap stamped "BLR S-7774".
- Bearings correlate to the value of North 00° 11' 53" West as assigned to the centerline of Beechwood Drive (60 feet wide) as shown in Subdivision Plat for River Bend East Subdivision Phase 1 and recorded in Plat 97-94 of Portage County Plat Records.

EXHIBIT "C"

LEGAL DESCRIPTION FOR RIVER BEND EAST PROPERTY PARCEL NO. 5 8.821 Acres

Situated in the City of Kent, County of Portage, and State of Ohio, and being part of Original Franklin Township Lot No. 41 and more fully described as follows:

Commencing at the southeasterly corner of Sublot No. 24 and the southwesterly corner of Block "A", as shown in the Subdivision Plat for River Bend East Subdivision Phase 1 and recorded in Plat 97-94 of Portage County Plat Records, where a 5/8-inch iron pin was set with Cap No. "BLR S-7774"; Thence South 71° 17' 36" West along the southerly line of said Sublot No. 24 and southerly line of Block "B" of said River Bend East Subdivision Phase 1, passing through the southwesterly corner of said Sublot No. 24 at a plat distance of 105.35 feet, a total plat distance of 219.72 feet to the southerly corner of said Block "B", referenced by an iron pin found 0.91 feet North and 0.52 feet East, and being the *PRINCIPAL PLACE OF BEGINNING* of a parcel of land (Parcel No. 5) herein intended to be described;

Thence South 67° 43' 00" East a calculated distance of 38.38 feet to a point, referenced by an iron pin found 1.01 feet North and .039 feet East;

Thence South 71° 01' 47" West a calculated distance of 642.50 feet to a point referenced by an iron pin found 0.15 feet South and 0.12 feet West;

Thence North 27° 55' 17" West a calculated distance of 92.23 feet (92.21 feet deed) to a point referenced by an iron pin found to be 0.97 feet South and 0.39 feet East;

Thence North 88° 51' 40" West a deed distance of 1,457.23 feet to a 5/8-inch iron pin set with Cap No. "BLR S-7774";

Thence southwesterly a deed distance of 204.79 feet along the arc of a curve deflecting to the left and having a radius of 925.00 feet and a chord which bears South 84° 47' 46" West a distance of 204.38 feet to a point of tangency where a 5/8-inch iron pin was set with Cap No. "BLR S-7774";

Thence northeasterly a deed distance of 2,111.36 feet along the arc of a curve deflecting to the right and having a radius of 2,820.09 feet and a chord which bears North 87° 24' 28" East a distance of 2,062.39 feet to a 5/8-inch iron pin set with Cap No. "BLR S-7774";

Thence North 71° 17' 35" East a calculated distance of 184.94 feet (185.94 feet deed), to the southerly line of said River Bend East Subdivision Phase 1 and southwesterly line of said Block "B", to a 5/8-inch iron pin set with Cap No. "BLR S-7774";

Thence South 62° 22' 24" East along the southerly line of said River Bend East Subdivision Phase 1 and southerly line of said Block "B" a calculated distance of 45.49 feet (45.63 feet deed) to the *Principal Place of Beginning* and containing 8.8208 acres of land in O.L. 41, be the same more or less, but subject to all legal highways, as determined by a survey performed by Bruce L. Robinson, P.E., P.S. 7774, of B.L. Robinson Engineering & Surveying, Co. in October of 2003.

- Monuments described, as "iron pin set" are 5/8" diameter by 30" rebar with an orange plastic cap stamped "BLR S-7774".
- Bearings correlate to the value of North 00° 11' 53" West as assigned to the centerline of Beechwood Drive (60 feet wide) as shown in Subdivision Plat for River Bend East Subdivision Phase 1 and recorded in Plat 97-94 of Portage County Plat Records.

EXHIBIT "D"

**LEGAL DESCRIPTON FOR
RIVER BEND EAST PROPERTY
PHASE 1 – BLOCK "B"
0.2500 Acres**

Situated in the City of Kent, County of Portage, State of Ohio and known as being part of Franklin Township Lot Number 41, and being all of **Block "B"**, a part of **River Bend East Subdivision Phase 1**, as recorded in Plat Book 97, Page 94 of the Portage County Recorders Map Records.