

ORDINANCE NO. 2007- 55

**AN ORDINANCE AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO ENTER INTO A LEASE AGREEMENT WITH KELLY J. WORTMAN FOR PROPERTY LOCATED AT 803 FAIRCHILD AVENUE, KENT, OHIO, AND DECLARING AN EMERGENCY.**

**WHEREAS**, the Kent City Council wishes to enter into a lease agreement with Kelly J. Wortman for property owned by the City and located at 803 Fairchild Avenue, Kent, Ohio.

**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 Kent City Council does hereby authorize the City Manager, or his designee, to enter into a Lease Agreement, with Kelly J. Wortman for property located at 803 Fairchild Avenue, Kent, Ohio, in substantial compliance with a copy of which is marked 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 immediate after passage.

PASSED: 06/20/07  
DATE

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

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

I hereby certify that Ordinance No. 2007- 55 was duly enacted on this 20 day of \_\_\_\_\_ June \_\_\_\_\_, 2007 by the Council of the City of Kent, Ohio.

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

**EXHIBIT "A"**

**LEASE**

THIS LEASE, made at Kent, Ohio this \_\_\_\_ day of \_\_\_\_\_, 2007, by and between the CITY OF KENT, Ohio, with its principal place of business at 325 South Depeyster Street, Ohio, hereinafter referred to as "Lessor", and KELLY J. WORTMAN, with his principal place of business at 803 Fairchild Avenue, Kent, Ohio, hereinafter referred to as "Lessee".

**ARTICLE I**

**Demised Premises**

- 1.1 Lessor, for and in consideration of the payment of rent and performance by Lessee of the agreements and covenants hereinafter contained, does hereby demise and lease to Lessee the premises known as 803 Fairchild Avenue, Kent, Ohio 44240, hereinafter referred to as the "Demised Premises".
- 1.2 PETS. No dogs or cats allowed.

**ARTICLE II**

**Term**

- 2.1 The term of this Lease shall be twelve (12) months, commencing May 24, 2007 and ending May 31, 2008, both dates inclusive, unless earlier terminated, as hereinafter provided.

**ARTICLE III**

**Rent**

- 3.1 Lessee shall pay to Lessor in advance on the first day of each calendar month, without notice, the sum of \$550.00 as monthly rent for the demised premises, beginning on the 1st day of April, 2007. Rent shall increase three percent (3%) compounded annually, commencing April 1, 2008 and on each succeeding yearly anniversary during any renewal term. Lessee will be assessed a \$25.00 late charge on rent payments received after the tenth (10th) day following the date upon which rent is due for each month. First month is to be prorated = \$88.70.
- 3.2 Rent shall be payable at the Kent Parks and Recreation Main Office located at 497 Middlebury Road, Kent, Ohio.

**ARTICLE IV**

**Use of Premises**

- 4.1 The premises shall be used as a residence by Lessee, who shall have no more than two (2) unrelated people living in said premises.

**ARTICLE V**  
Taxes and Assessments

5.1 Lessor shall pay all taxes and assessments, general and special, and other impositions, ordinary and extraordinary, which may be levied, assessed or imposed upon the Demised Premises or any part thereof, or upon any building or improvements situated thereon or levied or assessed upon the interest of the Lessor in or under this Lease. All of said taxes, assessments and other impositions shall be paid by the Lessor as they become due.

**ARTICLE VI**  
Fire Insurance

6.1 Lessor, during the term of this Lease, or any renewal or extension thereof, and at its expense, shall procure, maintain and keep in force, fire, extended coverage, vandalism and malicious mischief insurance on Lessor's Improvements, as listed and set forth in Article V, in an amount of not less than One Hundred Percent (100%) replacement cost of said Improvements, excluding paving, footers and underground construction. In the event of any loss covered by such insurance, the proceeds therefrom shall be payable to Lessor; however, the policy or policies of insurance shall contain a loss payable clause in favor of Lessor's mortgagee, if any. Certificates of such insurance, or an original copy of the policy or policies thereof, will be delivered to Lessor and such mortgagee, if any, showing each party's interest as it may appear. Lessee shall provide contents insurance for its leasehold improvements, chattels, and personal belongings.

**ARTICLE VII**  
Fire and Casualty

7.1 If Improvements on the Demised Premises shall be damaged or destroyed by fire or other casualty, Lessor may make necessary alterations and repairs for the purpose of restoring same to its former condition, to the extent possible. All such necessary alterations and repairs may be completed by Lessor within sixty (60) days from the date of such damage or destruction. There shall be abatement of rent during such period of untenability. If the City decides not to restore and/or repair the premises because of delay caused by strikes, acts of God, insurrection, civil commotion, riots or unavoidable casualty and prohibit, limit or delay such construction, or any other reason, then Lessee or Lessor may terminate this Lease without further liability.

**ARTICLE VIII**  
Additions, Alterations or Remodeling

8.1 Lessee shall have the right, at its own expense, to remodel and alter Demised Premises without the payment of additional rent and to erect, install, maintain and operate on the Demised Premises fixtures and other personal property as Lessee may deem advisable; provided, however, that no alterations of a structural nature may be made without the prior consent of Lessor, which consent shall not be withheld without reasonable cause. Lessee shall comply with all applicable laws with respect thereto, and Lessee shall indemnify and save and hold Lessor harmless from any and all mechanic's liens or other claims of any nature that may be filed against the Demised Premises or Lessor by reason thereof.

**ARTICLE IX**  
Repair of Premises

- 9.1 Except as hereinbefore and after provided, Lessor at all times, and at its cost, shall keep and maintain Demised Premises in a good state of repair, all to the reasonable satisfaction of Lessee, except for loss by fire or other casualty, ordinary wear and tear, depreciation, obsolescence and misuse or abuse on the part of Lessee and his invitees.

**ARTICLE X**  
Indemnity of Lessor

- 10.1 Lessee shall indemnify and save Lessor harmless from liability to any person on account of any damage to person or property arising out of failure of Lessee to perform and comply, with the requirements and provisions of this Lease or arising from Lessee's use and occupancy of the Demised Premises.

**ARTICLE XI**  
Compliance with Laws and Ordinances

- 11.1 Lessee shall comply with all federal, state, county and city laws and ordinances, and rules and regulations of any duly constituted authority, affecting or respecting the Demised Premises, or the use or occupancy of same.

**ARTICLE XII**  
Assignment and Sub-Letting

- 12.1 Lessee shall not, except with the prior written consent of Lessor, which consent will be withheld for reasonable cause, during the terms of this Lease, or any renewal or extension hereof, assign this Lease, or its rights hereunder, or sublet all or part of the Demised Premises. In any event, Lessee shall remain liable for the payment of all rent required to be paid hereunder and for the performance of all of the terms, covenants and conditions undertaken by Lessee.

**ARTICLE XIII**  
Condemnation

- 13.1 In the event the Demised Premises or part thereof shall be taken or condemned, either permanently or temporarily, for public or quasi-public use or purpose by competent authority in appropriation proceedings or by right of eminent domain, the entire compensation award therefor, both leasehold and reversion, shall belong to Lessor without deduction therefrom for any present or future estate of Lessee, and Lessee hereby assigns to Lessor all its right, title and interest to such award. Lessee may claim, prove and receive the condemnation proceedings relocation expenses, if such award or awards shall be in addition to the awards for the value of the land and building.
- 13.2 If the entire Demised Premises, or portion of the building on the Demised Premises, shall be taken as aforesaid, then, at Lessor's or Lessee's option, this Lease shall terminate and shall become null and void from the time possession thereof is required for public use, and from that date on the parties hereto shall be released from further obligation hereunder. In the event such portion of the Demised Premises shall be so taken or condemned as to affect

adversely and materially Lessee's ability to carry on its profession in the manner and to the extent that it was being carried on prior to such taking, or in the event Lessee or Lessor shall not elect to terminate this Lease pursuant to their rights set forth above, then Lessor, at its own expense, shall repair and restore, to the extent reasonably possible, the portion not affected by the taking, and thereafter the rent to be paid by Lessee shall be equitably and proportionately reduced.

- 13.3 Appropriation or condemnation proceedings shall not operate as, or be deemed an eviction of Lessee or a breach of Lessor's covenant for quiet enjoyment.

#### **ARTICLE XIV**

##### **Covenant of Title and Quiet Enjoyment**

- 14.1 Lessor assures Lessee that Lessor has full right and lawful authority to enter into this Lease for the term of this Lease, or any renewal or extension hereof, and that if Lessee is not in default hereunder, Lessee's quiet and peaceable enjoyment of the Demised Premises during the term of this Lease, or any renewal or extension hereof, shall not be unreasonably disturbed nor interfered with.

#### **ARTICLE XV**

##### **Lessor's Right of Re-Entry**

- 15.1 Lessee covenants and agrees with Lessor that any one or more of the following events shall be considered events of default as said term is used herein:
- (a) Lessee shall make assignment for the benefit of creditors or shall apply for or consent to the appointment of a receiver for Lessee; or
  - (b) A decree or order appointing a receiver of the property of Lessee shall be made and such decree or order shall not have been vacated, stayed or set aside within sixty (60) days from the date of the entry or granting thereof; or
  - (c) Lessee shall vacate the Demised Premises or abandon the same during the term hereof; or
  - (d) Lessee shall default in payment of rent by not delivering same for ten (10) days after due and not correcting such default within five (5) days after receipt of notice of such default in writing; or
  - (e) Lessee shall default in any of the other covenants or agreements herein contained to be kept, observed and performed by Lessee, and such default shall continue twenty (20) days after notice thereof in writing to Lessee.
  - (f) Such other events as are recognized under the Ohio Revised Code and current Ohio case law.

Upon the occurrence of one or more of such events of default, it shall be lawful for Lessor, at its election, to declare the said term ended and the said Demised Premises and the buildings and improvements then situated thereon, or part thereof, either with or without process of law, to re-enter, and eject Lessee and all persons occupying the same under it and, remove

and put out, and regain possession of said premises and the buildings and improvements then situated thereon and again to repossess and enjoy, without such re-entry and repossession working a forfeiture of the rents to be paid and the covenants to be performed by Lessee during the full term of this agreement. If default shall be made in any covenant, agreement, condition or undertaking herein contained to be kept, observed and performed by Lessee, other than the payment of rent as herein provided, which cannot with due diligence be cured within a period of twenty (20) days, and if notice thereof in writing shall have been given to Lessee, and if Lessee, prior to the expiration of twenty (20) days from and after the giving of such notice, commences to eliminate the cause of such default and proceeds diligently and with reasonable dispatch to take all steps and do all work required to cure such default and does so cure such default, then Lessor shall not have the right to declare said term ended by reason of such default; provided, however, that the curing of default in such manner shall not be construed to limit or restrict the right of Lessor to declare said term ended and enforce all of its rights and remedies hereunder for any other default not so cured.

- 15.2 The foregoing provisions for the termination of this Lease for default in any of its covenants shall not operate to exclude or suspend other remedy of Lessor, including the right to declare the balance of the rent immediately due and payable, for breach of said covenants or for the recovery of said rent or advance of Lessor made thereon, and in the event of termination of this Lease as aforesaid, Lessee covenants and agrees to indemnify and save harmless Lessor from loss arising from such termination and re-entry in pursuance thereof.

**ARTICLE XVI**  
Holding Over

- 16.1 In the event Lessee shall continue to occupy the Demised Premises after the last day of the term hereby created, or after the last day of any renewal or extension of said term, and Lessor shall elect to accept rent thereafter, only a month-to-month tenancy shall be created.

**ARTICLE XVII**  
Lessee's Right to Perform

- 17.1 If Lessor fails to make repairs or do any work required by Lessor by the provisions of this Lease, or in other respect fails to perform covenants or agreements in this Lease contained on the part of Lessor to be performed, then and in such event after the continuance of such failure or default for thirty (30) days after notice in writing thereof is given by Lessee to Lessor, Lessee may cure such defaults, all on behalf of, and at the expense of, Lessor; provided, however, that Lessee shall have the right to remedy such default without notice in the event of an emergency. Lessee may further do all necessary work and make all necessary payments in connection therewith, including, but not limited to, the payment of attorneys fees, costs and charges of or in connection with legal action which may reasonably have been brought. Lessor shall pay to Lessee forthwith an amount so paid by Lessee.

**ARTICLE XVIII**  
Utilities and Services

- 18.1 Lessor shall provide and pay for East Ohio Gas for natural gas consumption on the premises. Lessor shall pay all statements rendered by the City of Kent for water and sewer and Ohio Edison Company or designated electric supplier for electricity consumed on Demised

Premises.

## **ARTICLE XIX**

### **Maintenance By Lessor and Lessee**

- 19.1 Lessor shall, except as hereinafter qualified, keep and maintain the Premises and parts thereof including but not limited to the roof, exterior walls, foundations and other structural elements, floors and mechanical systems located within or serving the Premises in a good state and condition of repair, in good operating condition, with the exception of lighting elements, glass, doors, locks, and plumbing stoppage or repair that may result from the abuse or misuse by the Lessee, its employees, or invitees. Lessor shall have no liability to Lessee, or to any of its agents, servants, employees or invitees, for personal injury or property damage, for Lessor's failure to perform its undertakings herein, unless Lessee has provided written notice to Lessor specifically describing repair or maintenance work which is required and unless Lessor, after receipt of such notice, fails to perform such work within a reasonable time thereafter.
- 19.2 Lessee shall be required to repair damages to the interior and exterior of the building and the interior and exterior common areas and grounds caused by the act, fault or neglect of Lessee, and his invitees, unless such damage is caused by a risk (for example, fire) which Lessor is required to insure against, as herein described, in which event such damage shall be repaired by Lessor. Lessee shall also maintain a minimum interior building temperature of sixty (60) degrees Fahrenheit and keep Demised Premises free and clear of infestation, noxious odors, and noise of an objectionable nature.
- 19.3 Lessor shall maintain care, maintenance and upkeep of the lawns, and landscaped areas, including the mowing of grass as required to maintain a reasonably acceptable appearance.

## **ARTICLE XX**

### **Access to Premises**

- 20.1 Lessor, agents, employees, officers and independent contractors of Lessor, shall have access to the Demised Premises at all reasonable times during business hours for the purpose of inspecting and maintaining same. Except in emergencies, Lessor shall give Lessee twenty-four (24) hours notice prior to entering premises to make repairs or alterations.
- 20.2 During the final sixty (60) day period of the Lease or renewal term, Lessor or its agent, with reasonable prior notice, shall have the right to advertise and show said premises to prospective lessees.

## **ARTICLE XXI**

### **Option to Renew**

- 21.1 Providing the Lessee is not in default of any covenants in this Lease, Lessor hereby grants Lessee the right, privilege and option to renew this Lease in successive periods of six (6) months from the date of expiration of the renewal terms set forth in Paragraph 27.1 hereof, upon the same terms and conditions. Provided, however, that should the Lessor require use of the

Demised Premises for its bonafide municipal functions, Lessor may, at Lessor's election, by giving notice to Lessee within thirty (30) days of its receipt of notice of the Lessee's intent to exercise its option to renew, refuse to renew this Lease.

**ARTICLE XXII**  
Governing Law

22.1 This Lease shall be governed by, construed and enforced in accordance with the laws of the State of Ohio.

**ARTICLE XXIII**  
Grammatical Usage

23.1 In construing this Lease, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa, and plural terms shall be substituted for singular and singular for plural in any place in which the context so requires.

**ARTICLE XXIV**  
Successors and Assigns

24.1 All warranties, covenants and agreements herein shall inure to the benefit of, and be binding upon, the heirs, devisees, executors, administrators, successors and assigns of Lessor and Lessee.

**ARTICLE XXV**  
Entire Agreement

25.1 This Lease contains the entire agreement between the parties and shall not be modified in any manner except by an instrument in writing executed by the parties. If any term or provision of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of the Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Lease shall be valid and be enforced to the extent permitted by law.

**ARTICLE XXVI**  
Security Deposit

26.1 Lessee agrees to deposit with Lessor the sum of One Thousand Dollars (\$550.00) as a security for the repayment of rent and performance of the covenants and conditions of this Lease. In the event the Lessee complies fully with such covenants and conditions and surrenders the premises in good condition to the Lessor at the expiration of the term of this Lease, said sum shall be returned to the Lessee. No interest shall accrue to Lessee on any such deposit. Said security deposit shall not be refunded to the Lessee until after the Lessee has vacated the premises and said premises have been determined to be in good condition, normal wear and tear expected, by the Lessor.



26.2 Upon termination of the Lease any property or money held by the Lessor as a security deposit may be applied to the payment of past due rent and to the payment of the amount of damages that the Lessor has suffered by reason of the Lessee's noncompliance with the Lease. Any deduction from the security deposit shall be itemized and identified by the Lessor in a written notice delivered to the Lessee together with the amount due, within thirty (30) days after termination of the Lease and delivery of possession. The Lessee shall provide the Lessor in writing with a forwarding address or new address to which the written notice and amount due from the Lessor may be sent.

**ARTICLE XXVII**  
Service of Notice

27.1 Whenever under this Lease, or under any statute or ordinance, provision is made for notice of any kind, it shall be deemed a sufficient notice and service thereof if the said notice to the Lessee is in writing, addressed to the last known post office address of the Lessee or addressed to the Demised Premises and deposited in the mail. Notice to the Lessor shall be deemed sufficient notice and service thereof if the notice is sent by Certified Mail to the address where the last rental payment was made. Notice need be sent to only one Lessee where the Lessee consists of more than one person.

**ARTICLE XXVIII**  
Harmony and Cooperation

28.1 It is mutually agreed that the parties will cooperate and work to provide a harmonious relationship during the tenancy of Lessee; the beginning rentals, being favorably competitive and advantageous to Lessee, represent the good faith of Lessor toward establishment of an equitable business relationship with Lessee.

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

**LESSOR:**

By: \_\_\_\_\_  
David Ruller, City Manager

**LESSEE:**

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Kelly J. Wortman

**Approved as to Form:**

\_\_\_\_\_  
James R. Silver  
Law Director

STATE OF OHIO            )  
                                          ): SS  
PORTAGE COUNTY         )

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named DAVID RULLER, City Manager, who acknowledged that he did sign the foregoing instrument for and on behalf of the City of Kent 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, this \_\_\_\_\_ day of May, 2007.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF OHIO            )  
                                          ): SS  
PORTAGE COUNTY         )

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named KELLY J. WORTMAN, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at \_\_\_\_\_, Ohio, this \_\_\_\_\_ day of May, 2007.

\_\_\_\_\_  
NOTARY PUBLIC