

RESOLUTION NO. 2010 - 45

A RESOLUTION AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE A REAL PROPERTY EXCHANGE AGREEMENT BETWEEN THE CITY OF KENT, OHIO AND KENT STATE UNIVERSITY FOR THE PURPOSE OF DEVELOPMENT OF THE BLOCK OF LAND BOUNDED BY SOUTH WATER STREET, ERIE STREET, DEPEYSTER STREET AND HAYMAKER PARKWAY, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Kent and Kent State University wish to exchange real estate parcels to continue the efforts to redevelop downtown Kent; and

WHEREAS, the parcels have nearly the same values; and

WHEREAS, Kent State University will transfer to the City of Kent permanent parcel numbers 17-024-10-00-023-000, 17-024-10-00-024-000, 17-024-10-00-025-000 and 17-024-10-00-022-000; and

WHEREAS, the City of Kent will transfer to Kent State University permanent parcel number 17-024-10-00-033-000; and

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

WHEREAS, time is of the essence in order to begin construction by the fall of 2010.

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 Kent State University for the purpose of continuing their joint efforts for the redevelopment of the block of land located between South Water Street, Erie Street, Depeyster Street and Haymaker Parkway, said Exchange Agreement as described in 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 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.

I hereby certify that Ordinance No. 2010- 45 was duly enacted on this 19 day of May, 2010 by the Council of the City of Kent, Ohio.

Clerk of Council

PUBLISHED BY TITLE ONLY IN THE RECORD COURIER ON THE _____ DAY OF MAY, 2010, BY LINDA COPLEY, CLERK OF COUNCIL.

Clerk of Council

EXHIBIT "A"

EXCHANGE AGREEMENT

THIS AGREEMENT made this ____ day of _____, 2010 (the "Effective Date"), by and between KENT STATE UNIVERSITY BOARD OF TRUSTEES (from its Endowment), an Ohio public university, pursuant to O.R.C. Section 3345.16 ("BOT"), and CITY OF KENT, OHIO, an Ohio municipal corporation ("Kent").

RECITALS:

A. BOT is the owner of certain parcels of land located in the City of Kent, County of Portage, and State of Ohio, known as Parcel Numbers 17-024-10-00-023-000, 17-024-10-00-024-000, 17-024-10-00-025-000, and 17-024-10-00-022-000 being identified on Exhibit A and more particularly described on Exhibit B attached hereto and incorporated herein, together with all rights and appurtenances thereto, including all right, title and interest in and to all roads, streets, strips, alleys, gores and rights of way, whether public or private, bounding, adjoining or adjacent to the same, and all buildings, improvements, structures, fixtures and personal property situated thereon, if any, and permits, variances, surveys, building feasibility, traffic, environmental, soils, geotechnical, and other professional or engineering reports or studies, easements, rights-of-way, licenses, contracts, warranties, and service or maintenance agreements with respect thereto (all of the foregoing comprising the "BOT Property"); and

B. Kent is the owner of certain parcels of land located in the City of Kent, County of Portage, and State of Ohio, that are being split and consolidated for purposes of this Agreement, consisting of 0.4944 acres, being identified on Exhibit C and more particularly described on Exhibit D attached hereto and incorporated herein, together with all rights and appurtenances thereto, including all right, title and interest in and to all roads, streets, strips, alleys, gores and rights of way, whether public or private, bounding, adjoining or adjacent to the same, and all buildings, improvements, structures, fixtures and personal property situated thereon, if any, and permits, variances, surveys, building feasibility, traffic, environmental, soils, geotechnical, and other professional or engineering reports or studies, easements, rights-of-way, licenses, contracts, warranties, and service or maintenance agreements with respect thereto (all of the foregoing comprising the "Kent Property").

C. The parties desire to sell and exchange the BOT Property and the Kent Property (each a "Property" and collectively the "Properties") upon the terms and conditions provided below.

NOW, THEREFORE, in consideration of their mutual promises and covenants set forth herein, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

1. EFFECTIVE DATE

The "Effective Date" of this Agreement shall be the date first written above.

2. PURCHASE

The parties hereby agree to sell and exchange the Properties, upon and subject to the terms and conditions contained in this Agreement, but specifically free and clear of all liens, encumbrances, or exceptions to title except the Permitted Exceptions, as hereinafter defined.

3. PURCHASE PRICE

(a) According to an independent appraisal performed by John Emig, MAI of Spalding-Emig Company for BOT, dated March 12, 2010 (the "Appraisal"), the value of the BOT Property, assuming the demolition of all improvements thereto, is Two Hundred Seventy Thousand Dollars (\$270,000) (the "BOT Appraised Value").

(b) According to an independent appraisal performed by John Emig, MAI of Spalding-Emig Company for Kent, dated March 12, 2010, the value of the Kent Property, assuming the demolition of all improvements thereto, is Two Hundred Eighty Thousand Dollars (\$280,000) (the "Kent Appraised Value").

(c) The parties agree that since the BOT Appraised Value and the Kent Appraised Value are not significantly different, the Properties shall be exchanged between the parties with no further consideration from either party.

4. TITLE AND SURVEY; DUE DILIGENCE MATERIALS

(a) This Agreement is conditioned upon each party delivering to the other, at the disposing party's expense, within fifteen (15) days following the Effective Date, an ALTA commitment for title insurance (the "Title Commitment") issued by First American Title Insurance Company (the "Title Company"), in the amount of the respective Appraised Value, committing to issue the owner's policy of title insurance to the acquiring party as set forth in Section 6 (the "Owner's Title Policy"). The Title Commitment shall provide that the Owner's Title Policy will delete any standard exception contained in said Title Commitment upon providing to said Title Company the Survey required hereunder and/or other documents required by the Title Company. Any claim, lien, encumbrance, restriction, lease, license, right to occupy, easement, assessment, or any other condition affecting title of record is subject to the acquiring party's written approval, and the delivery of the Title Commitment shall include full and legible copies of all matters set forth therein for the acquiring party's review and approval. In the event that the acquiring party determines that any condition of title, as set forth in the Title Commitment, is unacceptable, the acquiring party shall notify, in writing, the disposing party of its objections to the condition of title (the "Title Objection Notice"). The disposing party shall have fifteen (15) days from receipt of the Title Objection Notice to cure the condition of title. Should the disposing party fail to adequately cure the condition of title within said time period, the acquiring party shall be entitled to either (i) terminate this Agreement at any time thereafter and have no further liability hereunder or (ii) proceed to Closing subject to the conditions of title in the Title Objection Notice which shall be deemed Permitted Exceptions (as such term is defined below). Any condition(s) acceptable to the acquiring party shall be reflected in the Owner's Title Policy, such condition(s) being herein referred to as "Permitted Exception(s)." Provided, however, that in no event shall any lien that may be satisfied by the payment of money, other than real estate taxes not yet due, be a "Permitted Exception" and the disposing party shall be obligated to cause such liens to be satisfied and released at or prior to Closing.

(b) This Agreement is further conditioned upon each party delivering to the other, at the disposing party's expense, within thirty (30) days after the Effective Date, an ALTA boundary survey (the "Survey") from a licensed surveyor acceptable to the acquiring party and the Title Company which is sufficient to delete the survey and unrecorded easement exceptions to the Title Commitment and which contains at least the following:

- (1) A complete and accurate legal description of the Property by metes and bounds;
- (2) All dimensions of the Property and the location of all boundary corners of the Property, which corners shall be permanently monumented;
- (3) The location of any and all encroachments, easements and rights-of-way apparent from a physical examination of the Property, and all easements, rights-of-way, restrictions, reservations, and any and all other conditions

of title shown on the Title Commitment (with reference to recording information);

- (4) The exact number of square feet in the Property (to the nearest square foot);
- (5) The location of any and all improvements located on or encroaching onto the Property, including but not limited to, any and all buildings, sidewalks, driveways, paved parking areas, roads, poles, overhead and underground utility lines and fences, and all set-back lines;
- (6) The location of any and all means of access to and from the Property from a publicly dedicated street or road;
- (7) Any area within the Property that has been designated as a Flood Hazard Area; and
- (8) Such other matters as the acquiring party may subsequently direct.

The Survey shall be certified at Closing by the surveyor to the acquiring party, the Title Company and such others as the acquiring party shall direct, and shall conform with the legal description contained in the Title Commitment. The Survey shall also clearly reflect the surveyor's registered number and seal, and the date of the Survey, as revised from time to time.

In the event that the acquiring party determines that any condition reflected on the Survey is unacceptable, the acquiring party shall be entitled to terminate this Agreement at any time thereafter and have no further liability hereunder. Any condition(s) reflected on the Survey acceptable to the acquiring party shall also be considered "Permitted Exceptions."

(c) Each acquiring party agrees to notify the disposing party of such title and survey matters or conditions as the acquiring party approves and such title and survey matters or conditions to which the acquiring party objects prior to the end of the Due Diligence Period, as hereinafter defined, and in the event the acquiring party does not terminate the Agreement due to said objected to conditions, the disposing party shall remove any such title and survey matters or conditions to which the acquiring party objects at the disposing party's sole cost and expense within thirty (30) days following the disposing party's receipt of the acquiring party's notice. If the acquiring party fails to notify the disposing party of its approval or disapproval of such title and survey matters or conditions, the acquiring party shall be deemed to have objected to all title and survey matters or conditions set forth in the Title Commitment or Survey, except current real estate taxes not yet due and payable. In the event the disposing party is unable to timely remove any title and survey matters or conditions to which the acquiring party objects, the acquiring party shall have the option, in its sole and absolute determination, either to terminate this Agreement at any time thereafter, in which case neither party

shall have any further liability hereunder, or to remove, cure, abate, or otherwise correct such title or survey matters or conditions and offset such cost from the respective Appraised Value at Closing. This paragraph shall in no way nullify, limit or abridge any right the acquiring party may have to terminate this Agreement for any condition or matter affecting title or survey which is unacceptable to the acquiring party, in its sole and absolute determination. In addition, the acquiring party may, but shall not be obligated to, waive any such matters or conditions and proceed to Closing.

(d) Within five (5) days after the Effective Date, the disposing party, at its expense, shall deliver to the acquiring party copies of any of the following concerning or affecting the Property in the possession of the disposing party or any of its representatives: deed(s) conveying title to the acquiring party, permits, variances, title policies, surveys, building feasibility, environmental, soils, geotechnical, groundwater, wetlands, underground storage tank, traffic, and other professional or engineering reports or studies, waste disposal records, contracts, warranties, service or maintenance agreements, demographic or marketing materials, written notices, licenses, and any and all other information, data, materials and documentation the acquiring party may reasonably request to enable it to adequately perform its due diligence review permitted under Section 5 hereof.

(e) The Title Company shall serve as “Escrow Agent” unless the parties agree otherwise, subject to its standard conditions of acceptance. The escrow fee, if any, shall be split equally. This Agreement shall be deemed to be escrow instructions to Escrow Agent, but Kent and BOT may execute additional escrow instructions, either by mutual agreement or at the request of Escrow Agent. In the event any provision of such additional escrow instructions conflicts with any provision of this Agreement, this Agreement shall control.

(f) The parties further agree to cooperate and execute any documents that are reasonably necessary to allow Kent to retain a twenty (20) foot wide easement for use, maintenance, and repair of the existing storm and sanitary sewer in, under and through the Kent Property located within the area identified as the old Vacated Alley No. 5 (the “Storm and Sanitary Sewer Easement”).

5. DUE DILIGENCE PERIOD

Each party shall have until 5:00 p.m., Eastern Standard Time, on the day which is forty-five (45) days following the Effective Date (the "Due Diligence Period"), to physically inspect the Property and review and approve all aspects of and conditions related to the Property, including, but not limited to, soil conditions, utilities, zoning, environmental matters, financial viability, materials delivered pursuant to Section 4 hereof, and suitability for the acquiring party's intended purposes. Each acquiring party may terminate this Agreement for any reason or no reason during the Due Diligence Period, in the acquiring party's sole and absolute discretion. In the event that an acquiring party terminates this Agreement during the Due Diligence Period, the parties shall have no further liability hereunder.

In the event a party terminates this Agreement during the Due Diligence Period and the other party is not in default hereunder, the acquiring party agrees to promptly return all materials provided by the disposing party pursuant to Section 4(d) of this Agreement, and agrees to further deliver to the disposing party (without representation or warranty) copies of any and all reports, tests, and other materials generated by third parties at the acquiring party's request during such Due Diligence Period for the purpose of enabling the acquiring party to evaluate the Property for the purposes herein set forth.

6. CLOSING

(a) Closing ("Closing") will be held at a mutually acceptable place on or before June 1, 2010 or as otherwise agreed in writing by the parties.

(b) At Closing, each party shall deliver to the other and/or the Title Company, as appropriate, the following:

- (1) A general warranty deed in form and content acceptable to the acquiring party, free from any dower interest, conveying good and marketable indefeasible title to the Property in fee simple, free and clear of all liens, encumbrances, or other exceptions to title other than the Permitted Exceptions. The deed from Kent to BOT shall convey title to "Kent State University Board of Trustees for its Endowment";
- (2) An ALTA Owners Policy of Title Insurance in the amount of the Appraised Value of the respective Properties, dated as of Closing, in accordance with the approved condition of title as directed by the acquiring party, and including such endorsements or coverages as the acquiring party may direct;
- (3) Necessary affidavits or documents required to issue the Owner's Title Policy in the condition required hereunder;

- (4) Final Survey completed and certified in accordance with the provisions of Section 4 (b) hereof;
- (5) Bill of Sale for any personal property contemplated hereunder;
- (6) Standard form FIRPTA affidavit;
- (7) Evidence satisfactory to the acquiring party and the Title Company that all formalities have been complied with by the disposing party as to its valid existence and authority to consummate the transaction contemplated herein, including authority to execute and deliver all documents;
- (8) Documents necessary to effectuate the Storm and Sanitary Sewer Easement;
- (9) Final closing or settlement statement; and
- (10) Any other documents reasonably required by the acquiring party or the Title Company, or customarily executed in the state and locale in which the Properties are located to effect the conveyance of property similar to the Properties, with the effect that, after the Closing, the acquiring party shall have succeeded to all of the right, title and interest of the disposing party in and to the Property and the disposing party shall no longer have any such rights.

(c) At Closing, the disposing party, with respect to each Property, shall pay the following:

- (1) The premium for the issuance of the Owner's Title Policy and any associated costs;
- (2) Transfer taxes or documentary stamps upon the deed, and the cost of recording the deed and any curative title documents;
- (3) One-half of any escrow fees and miscellaneous closing costs; and
- (4) All special assessments then existing and delinquent real estate taxes and assessments, if any.

(d) At Closing, the acquiring party, with respect to each Property, shall pay the following:

- (1) The premium for any extended or special title coverage, including any mortgagee's policy;

(2) Any mortgage taxes or stamps applicable to any financing related to the acquisition of the Property, as well as the cost of recording any mortgage documents required by its lender; and

(3) One-half of any escrow fees and miscellaneous closing costs.

(e) All other closing costs not expressly provided for herein shall be apportioned between the parties according to local custom. Each party shall bear the cost of its own attorneys, agents and advisors.

(f) Current real estate taxes and assessments on the Properties, water and sewer fees, and other utility charges, if any, shall be apportioned and prorated as of the date of Closing. If Closing shall occur before the actual taxes for the then current year are known, the apportionment of taxes shall be upon the basis of taxes for the Property for the immediately preceding year, and the parties shall readjust when actual taxes are determined. In the event the Property is not separately assessed as a separate tax parcel as of Closing because the Property is part of a larger parcel of real property which is a separate tax parcel, taxes shall be prorated on the basis of the last officially certified and available tax duplicate for such larger tax parcel in proportion to the number of acres comprising the Property in relation to the acres comprising the larger tax parcel.

(g) The parties shall deliver exclusive possession of the Properties to the other party at Closing.

7. REPRESENTATIONS AND WARRANTIES

Each party represents and warrants to the other, with respect to their respectively owned Property only, that the following are true and accurate as of the date of execution of this Agreement, and that the same shall continue to be true and accurate as of the date of Closing, which warranties and representations shall survive Closing:

(a) The execution, delivery and performance of this Agreement, and the sale contemplated herein, and the consummation of the sale will not conflict with, result in any breach of any provision of, or constitute default under any agreement or instrument to which it is a party.

(b) Each party has full power and authority to execute, deliver, and perform this Agreement and each of the instruments and other documents, to be executed and delivered hereunder.

(c) All requisite action to approve, execute, deliver, and perform this Agreement and each of the instruments and other documents, to be executed and delivered hereunder has been taken.

(d) Each party has good and marketable fee simple title to the Properties.

(e) There is no order, judicial writ, injunction, decree, notice, charge, claim, demand, lien filing, litigation, proceeding or investigation, pending or, to the best of their knowledge and belief, threatened, against the party (with respect to a Property or which may affect a Property) or a Property, and the party shall promptly notify the other of any of same received from and after the Effective Date.

(f) Except for that certain lease with Our Father's House Family Church for the BOT Property (which shall be a considered a Permitted Exception), there are no leases, tenancies, licenses, or occupancies, written or oral, express or implied, with respect to a Property or any part thereof, and each party shall not enter into any such leases, tenancies, licenses or occupancies from and after the Effective Date.

(g) There are no private agreements or restrictions which limit or impair the ability to develop and utilize the Properties for any lawful use.

(h) There are no service contracts, maintenance contracts, union contracts, concession agreements, licenses, or agency agreements affecting the Properties or the operation thereof except those which may be terminated on thirty (30) days written notice.

(i) The Properties are not in violation of any law, rule, regulation or municipal ordinance or of any order or requirement of any governmental agency or bureau having jurisdiction over the Properties.

(j) Each party has no knowledge of any casualty loss, damage to the Property, proposed assessments, special or otherwise, or pending or threatened condemnation proceeding or taking by eminent domain and shall promptly notify the other party of any such occurrence or proceeding of which it becomes aware after the Effective Date.

(k) Each party represents to the other that it has dealt with no brokers with regard to this transaction, and that no fees or commissions of any type are payable as a result hereof.

Each party agrees to promptly notify the other party of any violation in the foregoing representations and warranties. The parties further agree not to take any action or fail to take action which would cause any of the foregoing not to be true between the Effective Date and the date of Closing.

8. ACCESS TO PROPERTY, PLANS AND APPROVALS, FURTHER ASSURANCES

(a) Following full execution hereof, each disposing party shall give the acquiring party and its agents continuing access to the Property to permit the acquiring party, its agents, authorized representatives, contractors, surveyors, engineers, and other professionals, (i) to survey and examine the same and to conduct tests, including

soil tests, and (ii) to make plans for and alterations to and improvements on the Property, provided that no material physical changes to the Property shall be commenced prior to Closing without the prior written consent of the disposing party, which consent will not be unreasonably withheld. In the event that an acquiring party shall make improvements to the Property prior to Closing, it does so at its own risk, and in the event the sale contemplated hereunder is not consummated, said improvements shall become a part of the Property and shall inure to the benefit of and become the property of the disposing party upon termination of this Agreement without the requirement of additional compensation from the acquiring party.

(b) Kent shall secure all necessary or appropriate minor subdivision and lot split approvals and permits for creation of the Kent Property as a separate and distinct parcel. The Kent Property shall be bounded on all sides as agreed upon by the parties. Kent, at its expense, will promptly execute the documents, petitions, applications, and authorizations as are appropriate or required to create the Kent Property for the purposes of obtaining final minor subdivision and lot split approval. Kent, at its expense, will make and prepare all applications and attend all hearings, meetings, etc. necessary to secure such approvals and/or permits.

(c) The parties will cooperate concerning easements, subdivision, zoning, and restrictions of the Property to provide for the more orderly development of the Property. It may be necessary, desirable, or required that water, sewer, drainage, gas, power lines, and other easements and similar rights be granted on, over or within portions of the Property for the benefit of the parties. The acquiring party will cooperate with the disposing party and join with the disposing party in executing and delivering the documents, as may be appropriate, necessary, or required for the purpose of granting the easements and similar rights.

(d) After the Closing and once all occupants are vacated, each party shall cause the demolition and removal of all improvements to its disposed of Property in accordance with applicable laws and regulations within three (3) months from the date of Closing. Kent shall, in coordination with BOT, procure the necessary demolition and removal services to demolish and removal all of the improvements from the Properties. Each party shall bear its own costs to demolish and remove the improvements with respect to its disposed of Property and shall reimburse the other party for actual expenses incurred in performing the same. This provision shall survive Closing.

9. CONDITIONS TO CLOSING

Each acquiring party's obligations hereunder are conditioned upon the following:

(a) Acceptability of the condition of title and survey, as required hereinabove, and the Title Company's commitment that it is prepared to issue the Owners Title Policy in form and content acceptable to the acquiring party;

(b) The truth and accuracy of all warranties and representations, both at the time made and at Closing and each party's faithful performance and observance of all covenants, conditions and provisions herein contained;

(c) Satisfactory review and approval of all matters it deems appropriate during the Due Diligence Period;

(d) Satisfactory obtainment of all necessary street and alley vacations, lot split and consolidation approvals, and other private or governmental approvals necessary for the transfer of the Kent Property as described and shown in Exhibits C and D hereto; and

(e) No event of casualty or condemnation having occurred with respect to the Properties.

In the event any of the contingencies or conditions to Closing are not resolved to the satisfaction of the acquiring party within the time specified, the acquiring party, at its sole option, without limiting any other right or remedy to which it is entitled under this Agreement or applicable law unless expressly waived hereunder, may either terminate this Agreement without further liability, or waive any of such contingencies or conditions to Closing in writing and proceed to Closing.

10. RISK OF LOSS

Risk of loss by damage or destruction to a Property prior to Closing shall be borne by the present owner of each Property. If any damage to or destruction of a Property occurs prior to the date of Closing hereunder, the acquiring party shall have the option, in its sole and absolute discretion, to either terminate this Agreement or accept the Property in its then current physical condition, receive the proceeds or an assignment of the proceeds of any insurance settlement, or the right to adjust such loss with the then current insurance carrier, and proceed to Closing.

11. DEFAULT

In the event of default by any party under and pursuant to the terms and conditions of this Agreement, which remains uncured after ten (10) days following receipt of notice detailing such default, the non-defaulting party shall be entitled to terminate this Agreement and pursue any and all other rights or remedies the non-defaulting party may have under this Agreement or applicable law, including the right of specific performance.

12. GENERAL PROVISIONS

(a) Neither party may assign this Agreement without the written consent of the other party. This Agreement shall be binding on and/or to the benefit of the parties hereto, their successors and assigns.

(b) This Agreement contains the entire agreement between the parties and supersedes all prior agreements between the parties, if any, written or oral, with respect to the matter hereof.

(c) This Agreement shall not be varied, modified, or amended, except by an instrument in writing duly signed by the parties.

(d) The titles appearing at the beginning of the paragraphs of this Agreement have been inserted for reference only and shall not in any way affect the interpretation or meaning of the text.

(e) This Agreement shall be interpreted under the laws of the State of Ohio.

(f) All notices provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested; by delivering the same in person to such party; by delivery by a nationally recognized overnight courier; by prepaid telegram or telex; or by facsimile copy transmission. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee of if sent via facsimile upon a valid confirmation of transmission. For purposes of notice, the addresses of the parties shall be as follows:

If to BOT, to:

If to Kent, to:

(g) If any clause or provision of this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction as against any person or under certain circumstances, the remainder of this Agreement and the applicability of such provision to other persons or circumstances shall not be affected thereby. All other clauses and provisions of this Agreement not held invalid or unenforceable shall be and remain valid and enforceable to the fullest extent permitted by the law.

(h) This Agreement may be executed in multiple counterparts, all of which when taken together shall constitute one agreement.

(SIGNATURES APPEAR ON THE FOLLOWING PAGE)

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto have duly executed this Agreement on the date first above written.

BOT:

KENT STATE UNIVERSITY BOARD OF TRUSTEES (from its Endowment), an Ohio public university

By: _____

Its: _____

Dated: _____

STATE OF OHIO)
) SS:
COUNTY OF PORTAGE)

BEFORE ME, a Notary Public, in and for said County and State, personally appeared the KENT STATE UNIVERSITY BOARD OF TRUSTEES, pursuant to O.R.C. §3345.16, by _____, its _____, who acknowledged that he/she did sign the foregoing instrument on behalf of the KENT STATE UNIVERSITY BOARD OF TRUSTEES.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this _____ day of _____, 2010.

Notary Public
Print Name: _____
Expiration Date: _____

Kent:

CITY OF KENT, OHIO,
an Ohio municipal corporation

By: _____

Its: _____

Dated: _____

STATE OF OHIO)
) SS:
COUNTY OF PORTAGE)

BEFORE ME, a Notary Public in and for said County and State, personally appeared _____ the _____ of CITY OF KENT, OHIO, an Ohio municipal corporation, who acknowledged that he/she did execute the foregoing instrument on behalf of said municipal corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal as of this ____ day of _____, 2010.

Notary Public
Print Name: _____
Expiration 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 ONE HUNDRED SIXTY FIVE THOUSAND Dollars (\$165,000) required to meet the contract, agreement, obligation, payment or expenditure, for the above, has been lawfully appropriated or authorized or directed for such purpose and is in the City Treasury or in the process of collection to the credit of the General Fund free from any obligation or certificates now outstanding.

Dave Coffee, Director of Budget and
Finance

Date

EXHIBIT A
BOT Property

EXHIBIT B

BOT Property Legal Description

PARCEL 1

SITUATED IN THE CITY OF KENT, COUNTY OF PORTAGE AND STATE OF OHIO: AND MORE PARTICULARLY DESCRIBED AS LOT NO. 9 AND LOT NO. 10 IN THE ORIGINAL LOT NO. 7 OF THE TOWNSHIP OF FRANKLIN, NOW KENT, AS PLATTED IN PLAT BOOK 25, PAGE 132 OF THE PORTAGE COUNTY RECORDS OF PLATS AND HAVING A FRONTAGE UPON THE EAST SIDE OF SOUTH WATER STREET OF 50 FEET, AND MEANING AND INTENDING TO CONVEY ONLY THAT PORTION OF THE PREMISES USED BY THE GRANTOR ON THE NORTHEAST CORNER OF SOUTH WATER STREET AND COLLEGE AVENUE.

Tax ID No. 17-024-10-00-022-000

PARCEL 2

CITY OF KENT, COUNTY OF PORTAGE, AND STATE OF OHIO: AND KNOWN AS BEING LOT NOS. 11, 12, AND 13 IN BLOCK NO. 7 OF THE ORIGINAL PLAT OF THE CITY OF KENT, FORMERLY LAID OUT AS THE TOWNSHIP OF FRANKLIN, AS SURVEYED BY SAMUEL D. HARRIS, ESQUIRE, FOR THE FRANKLIN LAND COMPANY, AND BEING 90 FEET FRONT ON EAST COLLEGE AVENUE, FORMERLY MILL STREET, AND EXTENDING NORTH 140 FEET OF EQUAL WIDTH TO ALLEY NO. 5, AS RECORDED IN PORTAGE COUNTY RECORDS. PLAT BOOK 25, PAGE 132.

Tax ID No. 17-024-10-00-023-000

Tax ID No. 17-024-10-00-024-000

Tax ID No. 17-024-10-00-025-000

EXHIBIT C

Kent Property

EXHIBIT D

Kent Property Legal Description

Situated in the City of Kent, County of Portage, State of Ohio, and known as being a part of Original Franklin Township Lot 24, Township 3 North, Range 9 West, a part of Lots 17 thru 24 in Block 7 of the original plat of the City of Kent as recorded in Volume 25, Page 132 of said County's records and part of Vacated Alley No. 5 – Ord. No. _____ and a part of Vacated E. College St. - Ord. No. _____, and being further bounded and described as follows:

Commencing at a Drill Hole set at the northeast corner of said Lot 21, and the intersection of the west right of way line of S. Depeyster St. (66 feet wide) and the south right of way line of said Erie St. (80 feet wide), thence along the east line of said Lot 21 and the west right of way line of said S. Depeyster St., S 0° 19' 16" E for a distance of 71.44 feet to a Drill Hole set, said Drill Hole set being the **TRUE PLACE OF BEGINNING** of the parcel of land hereinafter described, thence clockwise along the following four (4) courses and distances:

- 1) Thence continuing along the east line of said Lot 21, the east line of said Lot 20 and the west right of way line of said S. Depeyster St., S 0° 19' 16" E for a distance of 190.00 feet to a 5/8 inch rebar with cap "GPD" set on the north limited access right of way line of Haymaker Parkway (S.R. 59, variable width) as recorded in Plat Book 19, Page 45;
- 2) Thence along said north limited access right of way line, S 62° 47' 46" W for a distance of 112.11 feet to a Mag Nail set;
- 3) Thence N 0° 19' 16" W for a distance of 240.69 feet to a point;
- 4) Thence N 89° 40' 44" E for a distance of 100.00 feet to the True Place of Beginning and containing 0.4944 acres (21,535 sq.ft.) of land, more or less, and subject to all easements, restrictions and covenants of record as surveyed under the supervision of James E. Karing, P.S. Number 7539, for GPD Associates, in February of 2010.

Basis of Bearing is State Plane Grid North, NAD 83(1983), Ohio North Zone.
Tied to City of Kent survey control points "FR-24-01", "FR-32-02", "FR-30-01" & "FR-25-01".