

ORDINANCE NO. 2024 – 036

AN ORDINANCE ACCEPTING AND AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE AN AGREEMENT BETWEEN VALVOLINE LLC AND THE CITY OF KENT, OHIO, WITH THE CITY OBTAINING A PERMANENT AND TEMPORARY EASEMENT FOR RIGHT-OF-WAY PURPOSE FOR THE PROJECT KNOWN AS EAST MAIN STREET IMPROVEMENT PROJECT, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Kent Council desires to obtain a small permanent parcel (0.017 acres) and a small temporary parcel (0.054 acres) from Valvoline for right-of-way purposes; and

WHEREAS, Valvoline LLC is willing to grant the right-of-ways for an amount above the fair market value of \$28,230. Valvoline is requested an additional amount of \$3,270 which would bring the settlement amount to \$31,500. The City's portion of the additional requested amount would be \$163.50 (5%); and

WHEREAS, the City needs the property for right-of-way purposes to install, construct and reconstruct the roadway and sidewalks for the project known as East Main Street Improvement Project; and

WHEREAS, time is of the essence because the sooner the City acquires the necessary right-of-way for this project, the sooner construction may begin.

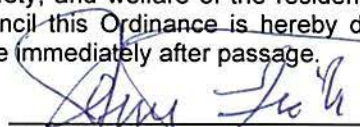
NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Kent, Portage County, Ohio:

**SECTION 1.** That Council does hereby accept and authorizes the City Manager or his designee to execute the agreement with Valvoline LLC for the City of Kent to obtain a permanent and temporary easement for right-of-way purposes to install, construct and reconstruct the roadway and sidewalks for the project known as East Main Street Improvement Project in substantial conformity with the terms of the Agreement marked as Exhibit "A", attached hereto and made a part hereof.

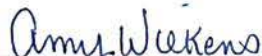
**SECTION 2.** That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council, and of any of its committees that resulted in such formal action, 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: \_\_\_\_\_  
Date

  
\_\_\_\_\_  
Jerry T. Fiala  
Mayor and President of Council

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

ATTEST:   
\_\_\_\_\_  
Amy Wilkens, CMC  
Clerk of Council

I, AMY WILKENS, CLERK OF COUNCIL FOR THE CITY OF KENT, COUNTY OF PORTAGE, AND STATE OF OHIO, AND IN WHOSE CUSTODY THE ORIGINAL FILES AND RECORDS OF SAID COUNCIL ARE REQUIRED TO BE KEPT BY THE LAWS OF THE STATE OF OHIO, HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF ORDINANCE No. 2024-036, ADOPTED BY THE COUNCIL OF THE CITY OF KENT ON April 17, 2024.

(SEAL)

  
\_\_\_\_\_  
AMY WILKENS, CMC  
CLERK OF COUNCIL

**CONTRACT FOR SALE AND PURCHASE OF REAL PROPERTY  
WITHOUT BUILDING(S)**

PARCEL(S): 5-WD, T  
POR-59-2.14

This Agreement is by and between the City of Kent, Portage County, Ohio ["Purchaser"] and Valvoline LLC, a Delaware limited liability company ["Seller"; "Seller" includes all of the foregoing named persons or entities]. Purchaser and Seller are referred to collectively in this Agreement as "Parties."

In consideration of the mutual promises, agreements and covenants herein contained the Parties contract as follows:

**1. Price and Consideration**

Purchaser shall pay to Seller the sum of \$31,500.00, which sum shall constitute the entire amount of compensation due Seller for: (a) the real property to be conveyed, including all fixtures; (b) any and all damages to any residual lands of Seller; (c) Seller's covenants set forth herein; (d) any and all supplemental instruments reasonably necessary to transfer the title of the subject property; and (e) na.

Seller shall be exclusively responsible for all delinquent taxes and assessments, including penalties and interest, and for all other real estate taxes and assessments that are a lien as of the date on which this Agreement closes. The taxes and assessments for the current calendar year shall be prorated on an estimated basis to the date of acquisition of title or date of possession, whichever is earlier in time. Seller shall be responsible for any and all future installments of any special assessments levied and assessed against the real property, whether or not any such special assessment has been certified to the county auditor for collection, provided that such installments of special assessments shall be a lien on the subject real property as of the date of transfer of title. Purchaser may withhold in escrow a sufficient amount of the purchase money to satisfy the foregoing items to be paid by Seller; any balance remaining after such taxes, assessments, etc., are discharged shall be paid to Seller and any deficiency shall be the responsibility of Seller.

**2. Estate Sold and Deed to Transfer**

Seller, upon fulfillment of all the obligations and terms of this Agreement, shall sell and convey to Purchaser, its successors and assigns, the property which is more particularly described in Exhibit A attached hereto and by this reference incorporated herein, together with all improvements now located thereon and all fixtures of every nature now attached to or used

with said land and improvements including, but not limited to, driveways, signs, utility fixtures, shrubbery and trees.

If the rights, titles and estates described in Exhibit A constitute the fee simple in, to and of the real property, then such sale and conveyance by Seller shall be by a good and sufficient general warranty deed with, if applicable, full release of dower. In the event the rights, titles, and estates described in Exhibit A constitute something less than the fee simple of the real property, then such sale and conveyance by Seller shall be by a good and sufficient deed or other instrument regularly and ordinarily used to transfer such lesser rights, titles and estates with, if applicable, full release of dower.

**3. Limited Access Parcels - Waiver of Abutters' Rights**

If the property described in Exhibit A is designated by Purchaser as a limited access parcel, then Seller further agrees to release to Purchaser, its successors and assigns, any and all abutters' rights, including access rights, appurtenant to any remaining lands of Seller (from which the property described in Exhibit A is being severed) in, over, on, from and to the property described in Exhibit A.

**4. Supplemental Instruments**

Seller agrees to execute any and all supplemental instruments or documents necessary to vest Purchaser with the rights, titles and interests described in Exhibit A.

**5. Warranty of Title**

Seller shall, and hereby does, warrant that the property described in Exhibit A is free and clear from all liens and encumbrances whatsoever, except: (a) easements, restrictions, conditions and covenants of record; (b) all legal highways; (c) zoning and building laws, ordinances, rules and regulations; and (d) any and all taxes and assessments not yet due and payable.

**6. Elimination of Others' Interests**

Seller shall assist, in whatever manner reasonably possible under the circumstances, to procure and deliver to Purchaser releases and cancellations of any and all other rights, titles and interests in the property described in Exhibit A, such as, but not limited to, those belonging to tenants, lessees, mortgagees or others now in possession or otherwise occupying the subject premises, and all assessment claims against said property.

Seller and Purchaser agree that if a mortgage of Seller or of a predecessor in title fails to cooperate with the efforts to obtain a release of that mortgagee's mortgage lien secured by the property described in Exhibit A, then and in that event this Agreement shall become null and

void and the parties to this Agreement shall be discharged and released from any and all obligations created by this Agreement; for the purposes of this provision, the term “fails to cooperate” shall include a demand or request by any such mortgagee for a fee to process such a release of that mortgagee’s mortgage lien that Purchaser, in its sole discretion, deems to be excessive.

**7. No Change in Character of Property**

Seller shall not change the existing character of the land or alter, remove, destroy or change any improvement located on the property described in Exhibit A. If, prior to the date on which possession of the subject property is surrendered to Purchaser, the subject property suffers any damage, change, alteration or destruction then, and without regard to the cause thereof, Seller shall restore the subject property to the condition it was in at the time Seller executed this Agreement; in the alternative, Seller may agree to accept the abovementioned purchase price less the costs associated with such restoration. If the Seller refuses to either restore the premises or accept the decreased consideration as aforementioned, then Purchaser, at its option after discovery or notification of such damage, change, alteration or destruction, may terminate and cancel this Agreement upon written notice to Seller.

**8. Offer to Sell**

If Seller executes this Agreement prior to Purchaser, then this Agreement shall constitute and be an Offer to Sell by Seller that shall remain open for acceptance by Purchaser for a period of 20 days immediately subsequent to the date on which Seller delivers such executed Agreement to Purchaser. Upon Purchaser’s acceptance and execution of this Agreement within said period of 20 days, this Agreement shall constitute and be a valid Contract for Sale and Purchase of Real Property that is binding upon the Parties.

**9. Designation of Escrow Agent**

Seller agrees that Purchaser may designate an escrow agent to act on behalf of the Parties in connection with the consummation and closing of this Agreement.

**10. Closing Date**

The consummation and closing of this Agreement shall occur at such time and place as the Parties may agree, but no later than 10 days after Purchaser notifies Seller in writing that Purchaser is ready to consummate and close this Agreement. Provided, however, in no event shall such consummation and closing occur more than 120 days after the last date on which one of the Parties executes this Agreement.

**11. Physical Possession of Structures Occupied by Seller**

Seller shall surrender physical possession of the land and improvements to Purchaser not later than the date on which Purchaser tenders the purchase price to Seller.

**12. Control of Property Occupied by Seller's Tenant(s)**

Control of property occupied by Seller's tenant(s) shall be assumed by Purchaser on the date Purchaser tenders the purchase price to Seller. From that date forward, Purchaser shall be entitled to collect and retain as its own funds any and all rental payments thereafter made by such tenant(s). If any rents due under the lease(s) with Seller have been prepaid by Seller's tenant(s), then said prepaid rents shall be prorated to the date on which the purchase price is tendered by Purchaser, and said prepaid rents shall be paid to Seller and Purchaser in accordance with such proration.

**13. Binding Agreement**

Any and all of the terms, conditions and provisions of this Agreement shall be binding upon and shall inure to the benefit of Seller and Purchaser and their respective heirs, executors, administrators, successors and assigns.

**14. Multiple Originals**

This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute but one and the same instrument.

**15. Entire Agreement**

This instrument contains the entire agreement between the Parties, and it is expressly understood and agreed that no promises, provisions, terms, warranties, conditions or obligations whatsoever, either express or implied, other than herein set forth, shall be binding upon Seller or Purchaser.

**16. Amendments and Modifications**

No amendment or modification of this Agreement shall be valid or binding upon the Parties unless it is made in writing, cites this Agreement and is signed by Seller and Purchaser.

IN WITNESS WHEREOF, the parties hereto, namely the City of Kent, Portage County, Ohio and Valvoline LLC, a Delaware limited liability company, have executed this Agreement on the date(s) indicated immediately below their respective signatures.

VALVOLINE LLC, A DELAWARE LIMITED LIABILITY COMPANY

*ECP*

04/04/24

Leon Weissman  
Leon Weissman (Apr 4, 2024 16:40 EDT)

By: Leon Weissman

Date: Apr 4, 2024

THE CITY OF KENT, PORTAGE COUNTY, OHIO

James Bowling, P.E.  
Superintendent of Engineering / Deputy Service Director

Date:

**EXHIBIT A**

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Ver. Date 02/15/23

PID 112026

**PARCEL 5-WD  
POR-59-2.14 (E. MAIN STREET AREA IMPROVEMENTS)  
ALL RIGHT, TITLE AND INTEREST IN FEE SIMPLE  
IN THE FOLLOWING DESCRIBED PROPERTY  
WITHOUT LIMITATION OF EXISTING ACCESS RIGHTS  
IN THE NAME AND FOR THE USE OF THE  
CITY OF KENT, PORTAGE COUNTY, OHIO**

Grantor/Owner, for himself and his heirs, executors, administrators, successors and assigns, reserves all existing rights of ingress and egress to and from any residual area (as used herein, the expression "Grantor/Owner" includes the plural, and words in the masculine include the feminine or neuter).

[Surveyor's description of the premises follows]

Situated in the State of Ohio, County of Portage, City of Kent, being part of Original Lot 24 in Franklin Township, Township 3 North, Range 9 West, being part of lands described in the deed to VALVOLINE LLC (Grantor) as recorded in Instrument 201613516 and on file in the Portage County Recorder's Office and laying on the left side of the centerline of right-of-way of East Main Street (State Route 59) as shown on the East Main Street Area Improvements right-of-way plans prepared by Arcadis U.S., Inc for and on file with the City of Kent, Ohio, and more fully described as follows:

**Commencing** at a 1 inch diameter steel rod, to be set during East Main Street Area Improvements construction, in a monument box at the intersection of the centerline of right-of-way of said East Main Street (State Route 59) and Haymaker Parkway (State Route 59) as shown on said right-of-way plans being Station 112+99.20; said rod being South 89° 31' 04" West a distance of 2166.28 feet from a 1 inch diameter steel rod found in a monument box at the intersection with the centerline of Luther Avenue as shown on said right-of-way plans;

Thence North 89° 31' 04" East, along said centerline, a distance of 41.27 feet being Station 113+40.47;

Thence North 00° 28' 56" West, leaving said centerline, a distance of 44.00 feet to the northerly right-of-way line of said East Main Street and to the Grantor's southerly line being the **Point of Beginning** being 44.00 feet left of Station 113+40.47;

1. Thence North 63° 25' 51" West, along said northerly right of way line, a distance of 24.19 feet to the easterly right-of-way line of North Willow Street as shown on said right-

## EXHIBIT A

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of-way plans and to the Grantor's westerly line being 30.00 feet right of North Willow Street Station 10+55.13;

2. Thence North  $00^{\circ} 13' 47''$  West, along said easterly right-of-way line and along the Grantor's westerly line, a distance of 71.64 feet being 30.00 feet right of North Willow Street Station 11+26.78 where a capped rebar set;
3. Thence along the arc of a curve to the left, leaving the said easterly right-of-way line and leaving the Grantor's westerly line and through the Grantor, a distance of 74.23 feet to the capped rebar set 55.06 feet left of Station 113+38.51; said curve having a radius of 413.50 feet, a central angle of  $10^{\circ} 17' 10''$ , and a chord length of 74.13 feet which bears South  $15^{\circ} 32' 45''$  East;
4. Thence along the arc of a curve to the right, continuing through the Grantor, a distance of 14.25 feet to the said northerly right-of-way line being 44.00 feet left of Station 113+47.13; said curve having a radius of 23.00 feet, a central angle of  $35^{\circ} 29' 32''$ , and a chord length of 14.02 feet which bears South  $38^{\circ} 26' 06''$  East where a capped rebar set;
5. Thence South  $89^{\circ} 31' 04''$  West, along the said northerly right-of-way line, a distance of 6.66 feet to the **Point of Beginning**;

The above described parcel contains 0.017 acres (754 square feet, including 0.000 acres within the present road occupied), leaving a net residue of 0.375 acres all within Parcel Number 17-024-33-00-121-000 and subject to all legal highways and easements of record;

This description was prepared by Arcadis, U.S., Inc. under the supervision of Robert G. Hoy, Ohio Professional Surveyor No. 8142, and is based on a field survey performed by Arcadis U.S., Inc. in August 2022.

Bearings in this description are on the Ohio State Plane Coordinate System, NAD83(2011), North Zone, Grid North, U.S. Survey Feet.

The stations are from the existing centerline of right-of-way of East Main Street (SR 59) as shown on said East Main Street Area Improvements right-of-way plans unless noted otherwise.

Capped rebar set is 5/8 inch diameter rebar 30 inches long with plastic cap stamped: ARCADIS US INC

Arcadis U.S., Inc.

Robert G. Hoy, Ohio Professional Surveyor No. 8142



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Ver. Date 02/15/23

PID 112026

**PARCEL 5-T  
POR-59-2.14 (E. MAIN STREET AREA IMPROVEMENTS)  
TEMPORARY EASEMENT FOR THE PURPOSE OF  
PERFORMING THE WORK NECESSARY TO  
REGRADE, RECONSTRUCT DRIVE  
FOR 36 MONTHS FROM DATE OF ENTRY BY THE  
CITY OF KENT, PORTAGE COUNTY, OHIO**

[Surveyor's description of the premises follows]

Situated in the State of Ohio, County of Portage, City of Kent, being part of Original Lot 24 in Franklin Township, Township 3 North, Range 9 West, being part of lands described in the deed to VALVOLINE LLC (Grantor) as recorded in Instrument 201613516 on file in the Portage County Recorder's Office and laying on the left side of the centerline of right-of-way of East Main Street (State Route 59) as shown on the East Main Street Area Improvements right-of-way plans prepared by Arcadis U.S., Inc for and on file with the City of Kent, Ohio, and more fully described as follows:

**Beginning** on the easterly right-of-way line of North Willow Street as shown on said right-of-way plans at 30.00 feet right of Station 11+38.00;

1. Thence South 74° 17' 03" East, leaving the said easterly right-of-way line and through the Grantor, a distance of 7.28 feet being 37.00 feet right of Station 11+36.00;
2. Thence South 14° 05' 58" East, continuing through the Grantor, a distance of 83.43 feet being 54.75 feet left of Station 113+45.92;
3. Thence South 62° 51' 58" East, continuing through the Grantor, a distance of 10.24 feet being 50.00 feet left of Station 113+55.00;
4. Thence North 89° 31' 04" East, continuing through the Grantor, a distance of 43.00 feet being 50.00 feet left of Station 113+98.00;
5. Thence North 26° 04' 58" East, continuing through the Grantor, a distance of 13.42 feet being 62.00 feet left of Station 114+04.00;
6. Thence North 89° 31' 04" East, continuing through the Grantor, a distance of 51.12 feet to the Grantor's easterly line being 62.00 feet left of Station 114+55.12;

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7. Thence South  $00^{\circ} 13' 47''$  East, along the Grantor's easterly line, a distance of 22.00 feet to the Grantor's southeasterly corner and to the northerly right-of-way line of said East Main Street being 40.00 feet left of Station 114+55.02;
8. Thence South  $89^{\circ} 31' 04''$  West, leaving the Grantor's easterly line and along said northerly right-of-way line, a distance 50.63 feet being 40.00 feet left of Station 114+04.39;
9. Thence North  $00^{\circ} 29' 43''$  West, along the said northerly right-of-way line, a distance of 4.00 feet being 44.00 feet left of Station 114+04.39;
10. Thence South  $89^{\circ} 31' 04''$  West, along said northerly right-of-way line, a distance of 57.26 feet being 44.00 feet left of Station 113+47.13;
11. Thence along the curve to the right non-tangent to the previous course, leaving said northerly right-of-way line and through the Grantor, a distance of 14.25 feet being 55.06 feet left of Station 113+38.51; said curve having a radius of 23.00 feet, a central angle of  $35^{\circ} 29' 32''$ , and a chord length of 14.02 feet which bears North  $38^{\circ} 26' 06''$  West;
12. Thence along the curve to the right, continuing through the Grantor, a distance of 74.23 feet to the Grantor's westerly line and to the easterly right-of-way line of said North Willow Street being 30.00 feet right of North Willow Street Station 11+26.78; said curve having a radius of 413.50 feet, a central angle of  $10^{\circ} 17' 10''$ , and a chord length 74.13 feet which bears North  $15^{\circ} 32' 45''$  West;
13. Thence North  $00^{\circ} 13' 59''$  West, along the said easterly right-of-way line, a distance of 11.22 feet to the **Point of Beginning**;

The above-described easement contains 0.054 acres (2331 square feet, including 0.000 acres within the present road occupied) all within Parcel Number 17-024-33-00-121-000 and subject to all legal highways and easements of record;

This description was prepared by Arcadis, U.S., Inc. under the supervision of Robert G. Hoy, Ohio Professional Surveyor No. 8142, and is based on a field survey performed by Arcadis U.S., Inc. in August 2022.

Bearings in this description are on the Ohio State Plane Coordinate System, NAD83(2011), North Zone, Grid North, U.S. Survey Feet.

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The stations are from the existing centerline of right-of-way of East Main Street (SR 59) as shown on said East Main Street Area Improvements right-of-way plans unless noted otherwise.

Arcadis U.S., Inc.

Robert G. Hoy, Ohio Professional Surveyor No. 8142