

**CITY OF STRONGSVILLE, OHIO**

**ORDINANCE NO. 2016 – 005**

**By: Mr. Daymut**

**AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A PURCHASE AGREEMENT FOR A FEE SIMPLE INTEREST AND TEMPORARY WORK EASEMENTS FOR REAL PROPERTY LOCATED AT 10890 PROSPECT ROAD IN CONNECTION WITH THE ALBION AND PROSPECT ROADS INTERSECTION IMPROVEMENTS PROJECT, AND DECLARING AN EMERGENCY. [Kemper House]**

WHEREAS, the City deems it to be in the best interest to purchase a portion of a parcel of property and temporary work easements all located at 10890 Prospect Road, being part of Permanent Parcel No. 391-16-004, in order to improve the Albion and Prospect Roads intersection; and

WHEREAS, the City has had the subject property interests appraised, and the proposed purchase price does not exceed the appraised value;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF STRONGSVILLE, COUNTY OF CUYAHOGA, AND STATE OF OHIO:

**Section 1.** That this Council hereby authorizes the Mayor to enter into a Contract for Sale and Purchase of Real Property for the acquisition in fee simple of a portion of property located at 10890 Prospect Road and further identified as part of Permanent Parcel No. 391-16-004, including temporary work easements, all as more fully set forth and described in Exhibit 1, attached hereto and incorporated herein by reference, in connection with the Albion and Prospect Road Intersection Improvements Project.

**Section 2.** That, upon receipt of a duly executed Warranty Deed from Kemper House-Strongsville, an Ohio general partnership, conveying said property to the City and evidence of title satisfactory to the Law Director, and executed Temporary Easements, the Clerk of Council is hereby directed to cause the said Warranty Deed and other necessary documents to be recorded in the office of the Cuyahoga County Fiscal Office.

**Section 3.** That the Director of Finance be and is hereby authorized and directed to pay to Kemper House-Strongsville, an Ohio general partnership, the amount of \$6,835.00, in accordance with the terms and conditions set forth in Exhibit 1. Said funds have been appropriated and shall be paid from the General Capital Improvement Fund, and any other Federal, State or local funds made available for the Project.

**Section 4.** 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 any of its committees, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

**Section 5.** That this Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare of the City, and for the further reason that it is necessary to obtain the aforesaid property interests in order to make improvements to the intersection at Albion and Prospect Roads, to ensure safety in movement of vehicles and traffic within the City, and to conserve public funds. Therefore, provided this Ordinance receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise from and after the earliest period allowed by law.

[Signature]  
President of Council

Approved [Signature]  
Mayor

Date Passed: January 19, 2016

Date Approved: January 20, 2016

	<u>Yea</u>	<u>Nay</u>
Carbone	<u>✓</u>	_____
Daymut	<u>✓</u>	_____
DeMio	<u>✓</u>	_____
Dooner	<u>✓</u>	_____
Schonhut	<u>✓</u>	_____
Short	<u>✓</u>	_____
Southworth	<u>✓</u>	_____

Attest: [Signature]  
Clerk of Council

ORD. No. 2016-005 Amended: \_\_\_\_\_  
 1st Rdg. 1-19-16 Ref: \_\_\_\_\_  
 2nd Rdg. Suspended Ref: \_\_\_\_\_  
 3rd Rdg. Suspended Ref: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Pub Hrg. \_\_\_\_\_ Ref: \_\_\_\_\_  
 Adopted: 1-19-16 Defeated: \_\_\_\_\_

**CONTRACT FOR SALE AND PURCHASE OF REAL PROPERTY**  
WITHOUT BUILDING(S)  
10890 Prospect Road, Strongsville, Ohio 44136

Permanent Parcel Nos.  
391-16-004

PARCEL: 5 WD, T-1, T-2, T-3  
Albion Road/Prospect Road Intersection

This Agreement is by and between the City of Strongsville [hereinafter "Purchaser"] and Kemper House- Strongsville, an Ohio general partnership [hereinafter "Seller"; "Seller" includes all of the foregoing named persons or entities].

In consideration of the mutual promises, agreements, and covenants herein contained, the parties hereto do hereby contract as follows:

**1. Price and Consideration**

Purchaser shall pay to Seller the sum of \$6,835.00, which sum shall constitute the entire amount of compensation due Seller for: (a) the real property to be conveyed (see attached Exhibit "A") and/or if the take constitutes something less than fee simple for the property required (see attached Exhibit "B") including all fixtures and improvements; (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.

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 contract 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. The 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 and appurtenances 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.

The sale and conveyance by Seller of the rights, titles, and estates described in Exhibit "A" constituting a fee simple in, to and of the real property shall be by a good and sufficient general warranty deed with, if applicable, full release of dower or curtesy. If the conveyance by

Seller of the rights, titles, and estates described in Exhibit "B" constitute something less than a fee simple interest in the real property, such conveyance shall be by a good and sufficient easement (temporary or permanent) or other instrument regularly and ordinarily used to transfer such lesser rights, titles, and estates with, if applicable, full release of dower or curtesy.

**3. Supplemental Instruments**

Seller agrees to execute any and all supplemental instruments necessary to vest Purchaser with the rights, titles and interests described in Exhibit "A" and Exhibit "B", and/or necessary for the construction and maintenance of the subject highway project over, across, or upon the property described in Exhibit "A" and Exhibit "B".

**4. 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.

**5. 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" and Exhibit "B" in the event that the property interest is of a permanent nature, 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.

**6. 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" and Exhibit "B". 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 after discovery or notification of such damage, change, alteration, or destruction, Purchaser at its option, may terminate, cancel, and void this Agreement upon written notice to Seller.

**7. Closing Date**

Prior to acceptance by the Purchaser, the execution of this Contract by the Seller shall constitute an offer to sell which shall continue for a period of sixty (60) days from the date of such execution and delivery to Purchaser. Upon acceptance of this Contract by the Purchaser within said period, it shall constitute a valid and binding Contract of Sale and Purchase. However, this Contract is specifically contingent upon all of the following: (A) approval of the transaction and all of the terms and conditions contained in this Contract by the Council of the City of Strongsville by Ordinance approving and authorizing this Contract; and (B) approval of the Ordinance by the Mayor's signature thereon. Should Council fail to pass or the Mayor fail to approve this Contract within sixty (60) days from the date of its execution by the Seller(s), this Contract shall be null and void and neither Seller(s) nor Purchaser shall have any further obligation to the other hereunder. Seller(s) acknowledge that they are bound by this Contract

upon their signature hereon and <sup>a</sup>my not revoke their obligations hereunder during the sixty (60) day acceptance period by Purchaser.

Seller agrees that the Purchaser may designate an escrow agent who shall act on behalf of both parties in connection with the consummation and closing of this Contract, which shall be made at a time and place agreed upon between the parties, but no later than ten days after notification of the Seller by the Purchaser that Purchaser is ready to close. Seller shall deposit a general warranty deed into escrow no later than three (3) days prior to the closing date.

**8. Physical Possession of Land and Improvements**

Physical possession of the land and improvements shall be surrendered by Seller not later than the date on which payment of the purchase price is tendered by Purchaser.

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

Control of property occupied by Seller's tenant(s), if any, shall be assumed by Purchaser on the date on which payment of the purchase price is tendered by Purchaser; and 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 tenants. 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 was tendered by Purchaser and said prepaid rents shall be paid to Seller and Purchaser in accordance with such proration.

**10. Right to Repurchase**

The property conveyed herein is being acquired by Purchaser for a public purpose, namely the establishment, construction, reconstruction, widening, repair or maintenance of a public road. Only in the event that the Purchaser decides not to use the property conveyed herein for the above-stated purpose, then the Seller shall have a right under Section 163.211 of the Ohio Revised Code to repurchase the property interest for its fair market value as determined by an independent appraisal made by an appraiser chosen by agreement of the parties or, if the parties cannot agree, an appraiser chosen by an appropriate court. However, this right to repurchase will be extinguished if any of the following occur: (A) Seller declines to repurchase the property; (B) Seller fails to repurchase the property within sixty (60) days after Purchaser offers the property for repurchase; (C) Purchaser grants or transfers the property to any other person or agency; or (D) Five (5) years have passed since the property was appropriated or acquired by Purchaser.

**11. 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.

**12. 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.

**13. 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, express or implied, other than herein set forth, shall be binding upon either party.

**14. 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, is signed by Seller and Purchaser, and is approved by the Purchaser's City Council in accordance with law.

IN WITNESS WHEREOF, the parties hereto, City of Strongsville and Kemper House-Strongsville, an Ohio general partnership have executed this Agreement on the date(s) indicated immediately below their respective signatures.

**"Purchaser"**  
City of Strongsville

By: Thomas P. Perciak  
Thomas P. Perciak, Mayor

**"Seller"**  
Kemper House- Strongsville, an  
Ohio general partnership, By:  
Kemper-Martin Enterprises, Inc., Its  
Managing Partner

By: Betty J. Kemper  
Betty J. Kemper, President of  
Kemper-Martin Enterprises, Inc.

Date: Jan. 20, 2016

Date: 11/11/2015

**"Seller": Kemper House-Strongsville, an Ohio general partnership**

State Of OHIO, County Of CUYAHOGA ss:

Be It Remembered, that on the 11<sup>th</sup> day of November, 2015,  
before me the subscriber, a Notary Public in and for said state and county, personally came the  
above named Betty J. Kemper, President of Kemper-Martin Enterprises, Inc., who  
acknowledged being the general or managing partner(s) and duly authorized agent(s) of  
Kemper House-Strongsville, an Ohio general partnership, and who acknowledged the  
foregoing instrument to be the voluntary act and deed of said entity.

In Testimony Whereof, I have hereunto subscribed my name and affixed my official seal  
on the day and year last aforesaid.

MARY A. CAVANAUGH  
ATTORNEY AT LAW  
MY COMMISSION HAS NO EXPIRATION DATE,  
O.R.C. 147.03

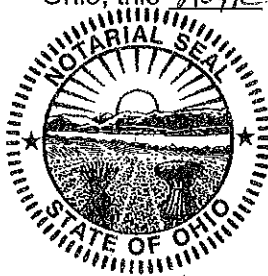
Mary A. Cavanaugh  
Notary Public  
My Commission NA  
Expires:

"Purchaser": City of Strongsville, Ohio

STATE OF OHIO                     )  
  ) ss.  
COUNTY OF CUYAHOGA        )

BEFORE ME, a Notary Public in and for said County and State, personally appeared CITY OF STRONGSVILLE, by Thomas P. Perciak, its Mayor, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed as an officer thereof and the free act and deed of said municipal corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Strongsville, Ohio, this 20th day of January, 2016.



NANCY M SIKORSKI  
NOTARY PUBLIC - OHIO  
MY COMMISSION EXPIRES  
03-14-2019

Nancy M. Sikorski  
Notary Public

My Commission Expires:

#### CERTIFICATION OF FUNDS

I, Joseph Dubovec, Director of Finance of the City of Strongsville, Ohio hereby certify that the money to meet this Contract has been lawfully appropriated for the purpose of the Contract and is in the treasury of the City, or is in the process of collection to the credit of the appropriate fund free from prior encumbrance.

January 20, 2016  
Date

Joseph Dubovec  
Director of Finance

#### CERTIFICATE OF LAW DIRECTOR

I hereby certify that I have reviewed and approved the form of the foregoing Contract this 20th day of January, 2016.

Kenneth A. Kraus  
Kenneth A. Kraus, Law Director

**PROSPECT ROAD (S.R. 237) / ALBION ROAD**  
**Intersection Improvement**  
**Auditor's Parcel No. 391-16-004**  
**PARCEL No. 5-T1**

Description of land over which temporary easement is required for grading and construction of walk.

Situated in the City of Strongsville, County of Cuyahoga and State of Ohio and known as being part of original Strongsville Township Lot No. 88 and bounded and described as follows:

Beginning at the intersection of the centerline of S.R. 237, Prospect Road (80.00 feet wide) and the centerline of Albion Road (60.00 feet wide) at an iron pin set in a monument assembly. Said centerline intersection being located at Station 68+11.20 (Prospect Road) and Station 100+00.00 (Albion Road);

Thence N 00°12'06" E, along said centerline of Prospect Road, a distance of 58.76 feet to a point;

Thence N 89°47'54" W to the westerly Right-of-Way line of said Prospect Road and the easterly line of land conveyed to Kemper House-Strongsville, an Ohio general partnership by deed recorded in Volume 927, Page 13 recorded in Cuyahoga County Deed Records, a distance of 30.00 feet to a point, said point being located 30.00 feet LEFT of Prospect Road Station 68+69.96 where set a capped iron pin (A.E. Marks S-8616) and the **Principal Point of Beginning** of the parcel herein described;

Thence S 49°55'24" W, a distance of 44.21 feet where set a capped iron pin (A.E. Marks S-8616);

Thence S 83°59'26" W, a distance of 42.81 feet to the northerly Right-of-Way line of said Albion Road where set a capped iron pin (A.E. Marks S-8616);

Thence S 87°47'26" W, along the northerly Right-of-Way line of said Albion Road, a distance of 49.83 feet to a point;

Thence N 24°12'46" W, a distance of 5.39 feet to a point;

Thence N 87°47'26" E, a distance of 51.69 feet to a point;

Thence N 83°59'26" E, a distance of 41.12 feet to a point;

Thence N 49°55'24" E, a distance of 40.36 feet to a point;

Thence N 00°12'06" E, a distance of 77.72 feet to a point;

Thence S 89°47'54" E, a distance of 5.00 feet to the westerly Right-of-Way line of said Prospect Road;



Thence S 00°12'06" W, along the westerly Right-of-Way line of said Prospect Road, a distance of 80.04 feet to the **Principal Point of Beginning** enclosing 1120.11 square feet, (0.026 acres) of land, more or less, but subject to all legal highways and easements of record.

The basis of bearings is the centerline of Prospect Road as N 00°12'06" E. This description is based on a survey by Alex Marks, Professional Surveyor #8616, in February, 2014.

Capped iron pins set are 5/8" in diameter rebar with a yellow R.E. Warner PS 8616 plastic cap.

Prior Deed Record: Original Record Volume 2207, Page 56 recorded in Cuyahoga County Deed Records.



**PROSPECT ROAD (S.R. 237) / ALBION ROAD**  
**Intersection Improvement**  
**Auditor's Parcel No. 391-16-004**  
**PARCEL No. 5-T2**

Description of land over which temporary easement is required for grading and construction of a driveway and walk.

Situated in the City of Strongsville, County of Cuyahoga and State of Ohio and known as being part of original Strongsville Township Lot No. 88 and bounded and described as follows:

Beginning at the intersection of the centerline of S.R. 237, Prospect Road (80.00 feet wide) and the centerline of Albion Road (60.00 feet wide) at an iron pin set in a monument assembly. Said centerline intersection being located at Station 68+11.20 (Prospect Road) and Station 100+00.00 (Albion Road);

Thence N 00°12'06" E, along said centerline of Prospect Road, a distance of 288.80 feet to a point;

Thence N 89°47'54" W to the westerly Right-of-Way line of said Prospect Road and in the easterly line of land conveyed to Kemper House-Strongsville, an Ohio general partnership by deed recorded in Volume 927, Page 13 recorded in Cuyahoga County Deed Records, a distance of 30.00 feet to a point, said point being located 30.00 feet LEFT of Prospect Road Station 71+00.00 and being the **Principal Point of Beginning** of the parcel herein described;

Thence N 89°47'54" W, a distance of 5.00 feet to a point;

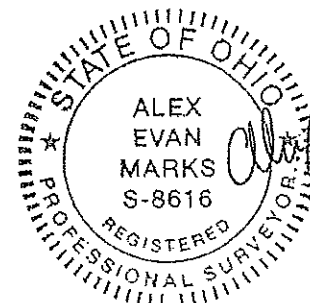
Thence N 00°12'06" E, a distance of 64.18 feet to a point;

Thence S 89°47'54" E, a distance of 5.00 feet to the easterly Right-of-Way line of said Prospect Road;

Thence S 00°12'06" W, along the easterly Right-of-Way line of said Prospect Road, a distance of 64.18 feet to the **Principal Point of Beginning** enclosing 320.91 square feet, (0.007 acres) of land, more or less, but subject to all legal highways and easements of record.

The basis of bearings is the centerline of Prospect Road as N 00°12'06" E. This description is based on a survey by Alex Marks, Professional Surveyor #8616, in February, 2014.

Prior Deed Record: Original Record Volume 2207, Page 56 recorded in Cuyahoga County Deed Records.



**PROSPECT ROAD (S.R. 237) / ALBION ROAD**  
**Intersection Improvement**  
**Auditor's Parcel No. 391-16-004**  
**PARCEL No. 5-T3**

Description of land over which temporary easement is required for grading and construction of storm sewers, a headwall, reconstruction of a portion of the channel wall, channel protection and walk.

Situated in the City of Strongsville, County of Cuyahoga and State of Ohio and known as being part of original Strongsville Township Lot No. 88 and bounded and described as follows:

Beginning at the intersection of the centerline of S.R. 237, Prospect Road (80.00 feet wide) and the centerline of Albion Road (60.00 feet wide) at an iron pin set in a monument assembly. Said centerline intersection being located at Station 68+11.20 (Prospect Road) and Station 100+00.00 (Albion Road);

Thence S 87°47'26" W, along said centerline of Albion Road, a distance of 186.64 feet to a point;

Thence N 02°12'04" W to the northerly Right-of-Way line of said Albion Road and the southerly line of land conveyed to Kemper House-Strongsville, an Ohio general partnership by deed recorded in Volume 927, Page 13 recorded in Cuyahoga County Deed Records, a distance of 30.00 feet to a point, said point being located 30.00 feet LEFT of Prospect Road Station 98+13.36 and being the **Principal Point of Beginning** of the parcel herein described;

Thence S 87°47'26" W, along the northerly Right-of-Way line of said Albion Road, a distance of 60.52 feet to a point;

Thence N 02°12'34" W, a distance of 10.00 feet to a point;

Thence N 87°47'26" E, a distance of 37.11 feet to a point;

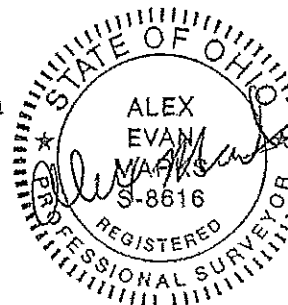
Thence S 32°12'34" E, a distance of 5.77 feet to a point;

Thence N 87°47'26" E, a distance of 19.20 feet to a point;

Thence S 16°57'44" E to the northerly Right-of-Way line of said Albion Road, a distance of 5.17 feet to the **Principal Point of Beginning** enclosing 492.08 square feet, (0.011 acres) of land, more or less, but subject to all legal highways and easements of record.

The basis of bearings is the centerline of Prospect Road as N 00°12'06" E. This description is based on a survey by Alex Marks, Professional Surveyor #8616, in February, 2014.

Prior Deed Record: Original Record Volume 2207, Page 56 recorded in Cuyahoga County Deed Records.



**PROSPECT ROAD (S.R. 237) / ALBION ROAD**  
**Intersection Improvement**  
**Auditor's Parcel No. 391-16-004**  
**PARCEL No. 5-WD**

Description of land over which permanent easement is required for grading and construction of roadway, traffic signals and walk.

Situated in the City of Strongsville, County of Cuyahoga and State of Ohio and known as being part of original Strongsville Township Lot No. 88 and bounded and described as follows:

Beginning at the intersection of the centerline of S.R. 237, Prospect Road (80.00 feet wide) and the centerline of Albion Road (60.00 feet wide) at an iron pin set in a monument assembly. Said centerline intersection being located at Station 68+11.20 (Prospect Road) and Station 100+00.00 (Albion Road);

Thence N 00°12'06" E, along said centerline of Prospect Road, a distance of 58.76 feet to a point;

Thence N 89°47'47" W to the westerly Right-of-Way line of said Prospect Road and the easterly line of land conveyed to Kemper House-Strongsville, an Ohio general partnership by deed recorded in Original Record Volume 927, Page 13 recorded in Cuyahoga County Deed Records, a distance of 30.00 feet to a point, said point being located 30.00 feet LEFT of Prospect Road Station 68+69.96 where set a capped iron pin (A.E. Marks S-8616) and the **Principal Point of Beginning** of the parcel herein described;

Thence S 00°12'06" W, along the westerly Right-of-Way line of said Prospect Road to the northerly Right-of-Way line of said Albion Road, a distance of 30.00 feet a point;

Thence S 87°47'26" W, along the northerly Right-of-Way line of said Albion Road, a distance of 76.36 feet where set a capped iron pin (A.E. Marks S-8616);

Thence N 83°59'26" E, a distance of 42.81 feet where set a capped iron pin (A.E. Marks S-8616);

Thence N 49°55'24" E, a distance of 44.21 feet to the **Principal Point of Beginning** enclosing 614.23square feet, (0.014 acres) of land, more or less, but subject to all legal highways and easements of record.

The basis of bearings is the centerline of Prospect Road as N 00°12'06" E. This description is based on a survey by Alex Marks, Professional Surveyor #8616, in February, 2014.

Capped iron pins set are 5/8" in diameter rebar with a yellow R.E. Warner PS 8616 plastic cap.

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