



CITY OF KENT, OHIO

DEPARTMENT OF FINANCE

TO: Dave Ruller, City Manager
FROM: David A. Coffee, Director of Budget and Finance
DATE: June 26, 2017
SUBJECT: 2018 Tax Budget and Public Hearing

A handwritten signature in blue ink that reads "David Coffee".

The 2018 Tax Budget has been prepared and is submitted as attached for public hearing, along with the request for City Council approval and adoption. The Tax Budget is required to be submitted and adopted annually for each political subdivision in accordance with Ohio Revised Code, Section 5705, by July 15th and subsequently must be filed with the County Auditor by July 19th this year. Failure to do so shall result in the loss of the local government fund allocation, estimated to be in excess of \$0.71 million for fiscal year 2018. The requested Council approval does not appropriate any City of Kent funds for expenditure in the 2018 Fiscal Year.

Tax Budgets are reviewed by County Budget Commissions to certify the amount of monies to be collected from property taxes and levies based upon demonstrated needs. The political subdivisions in Portage County have voted to adopt an alternative formula for the distribution of Local Government Funds (LGF) which is likewise certified by the Budget Commission.

While preparation of the annual Tax Budget for the City of Kent is largely a procedural formality, it also serves as the first official step in our Capital and Operating Budget processes. Although the required format and presentation of Tax Budget numbers differs considerably from our Annual Budget, they both start with the same basic data and assumptions. The numbers in the Tax Budget reflect department requests that are consistent with our objective to hold Operating and Maintenance expenses to a 2% or less increase compared to the 2017 budget, unless there is a substantiated and compelling reason for variance. Overall, the underlying O&M expense lines contributing to this year's Tax Budget remain comparable to the current budget level, however the Tax Budget format combines our annual budget's O&M, Capital, Debt Service, and Contingency categories into a single "Other" column.

Other format and presentation differences make direct comparisons between budget documents difficult and subject to misrepresentation. Overall we continue to apply conservative budget preparation principals. Our revenue projections reflect mixed current trends based upon source categories, but with a combined gradual increase overall. Income tax collections are projected to continue at a modest overall rate in 2018. Expenses in Personnel Services have been budgeted to reflect actual expenses plus a projected increase for most positions with some adjustments for special payouts related to retirements and sell backs of earned time. Additionally, it should be noted that Tax Budget numbers reflect initial departmental requests for the most part. Further budget review and refinement will occur as departmental budget hearings take place and the annual budget process continues preceding presentation in the fall to City Council for approval and final adoption.

REVISED /88
 Prepare in Triplicate
 On or before July 19th, two copies of this Budget
 must be submitted to the County Auditor

CITY OF KENT, PORTAGE COUNTY, OHIO

June 26, 2017

This Budget must be adopted by the Council or other legislative body on or before July 15th, and two copies must be submitted to the County Auditor on or before July 19th. FAILURE TO COMPLY WITH SEC. 5705.28 R.C. SHALL RESULT IN LOSS OF LOCAL GOVERNMENT FUND ALLOCATION.

To the Auditor of said County:
 The following Budget for the budget year beginning January 1, 2018, has been adopted by Council and is herewith submitted for consideration of the County Budget Commission.

Signed: _____
 David A. Coffee
 Title: Director of Budget and Finance

SCHEDULE A

SUMMARY OF AMOUNTS REQUIRED FROM GENERAL PROPERTY TAX APPROVED BY BUDGET COMMISSION,
 AND COUNTY AUDITOR'S ESTIMATED RATES

For Municipal Use FUND (Include only those funds which are requesting general property tax revenue)	BUDGET YEAR AMOUNT REQUESTED OF BUDGET COMMISSION INSIDE/OUTSIDE Column 1	For Budget Commission Use		For County Auditor Use	
		BUDGET YEAR AMOUNT APPROVED BY BUDGET COMMISSION INSIDE 10 MILL LIMITATION Column 2	BUDGET YEAR AMOUNT TO BE DERIVED FROM LEVIES OUTSIDE 10 MILL LIMITATION Column 3	COUNTY AUDITOR'S ESTIMATE OF TAX RATE TO BE LEVIED	
				INSIDE 10 M. LIMIT BUDGET YEAR 4	OUTSIDE 10 M. LIMIT BUDGET YEAR 5
GOVERNMENTAL FUNDS	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
GENERAL FUND, 001	\$1,623,363				
WESTSIDE FIRE, 101	\$249,548				
RECREATION, 106	\$1,148,256				
POLICE PENSION, 132	\$112,323				
FIRE PENSION, 133	\$112,323				
PROPRIETARY FUNDS	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
FIDUCIARY FUNDS	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXX
TOTAL ALL FUNDS	\$3,245,813				

FUND NAME: GENERAL FUND
 FUND TYPE/CLASSIFICATION: GOVERNMENTAL-GENERAL
 This Exhibit is to be used for the General Fund Only

EXHIBIT I

DESCRIPTION	FOR 2015	FOR 2016	CURRENT YEAR	BUDGET YEAR
(1)	ACTUAL	ACTUAL	ESTIMATED FOR 2017	ESTIMATED FOR 2018
(1)	(2)	(3)	(4)	(5)
REVENUES				
Local Taxes				
General Property Tax - Real Estate	1,398,295.00	1,593,491.00	1,444,778.00	1,458,363.00
Tangible Personal Property Tax	3,027.00	3,886.00	5,000.00	5,000.00
Other Local Taxes	406,843.00	401,653.00	400,000.00	400,000.00
Total Local Taxes	1,808,165.00	1,999,030.00	1,849,778.00	1,863,363.00
State Shared Taxes and Permits				
Local Government	720,121.00	703,542.00	710,000.00	710,000.00
Estate Tax	104,600.00	0.00	72,962.00	0.00
Cigarette Tax	1,099.00	1,009.00	1,000.00	1,000.00
TPP (CAT) Tax Reimb	0.00	0.00	0.00	0.00
Liquor and Beer Permits	38,575.00	53,425.00	38,000.00	38,000.00
Property Tax Allocation	155,796.00	154,600.00	160,000.00	160,000.00
Brimfield JEDD	59,104.00	72,332.00	65,000.00	65,000.00
Franklin JEDD	453,272.00	476,968.00	475,000.00	475,000.00
Other State Shared Taxes and Permits	64,801.00	30,442.00	25,000.00	25,000.00
Total State Shared Taxes and Permits	1,597,368.00	1,492,318.00	1,546,962.00	1,474,000.00
Intergovernmental Revenues				
Federal Grants or Aid	45,684.00	1,448.00	38,000.00	0.00
State Grants or Aid	58,897.00	167,143.00	170,000.00	55,000.00
Other Grants or Aid	0.00	29,750.00	3,000.00	0.00
Total Intergovernmental Revenues	104,581.00	198,341.00	211,000.00	55,000.00
Special Assessments	0.00	0.00	0.00	0.00
Charges for Services	1,479,829.00	1,598,530.00	1,350,000.00	1,350,000.00
Interest Income	288,263.00	348,039.00	375,000.00	375,000.00
Fines & Forfeits	261,055.00	279,696.00	260,000.00	260,000.00
Fees, Licenses, and Permits	267,194.00	146,020.00	145,000.00	145,000.00
Miscellaneous	2,563,378.00	224,510.00	200,000.00	200,000.00
Other Financing Sources:				
Transfers	2,600,000.00	2,700,000.00	3,600,000.00	3,800,000.00
Advances	1,055,573.00	106,000.00	106,000.00	106,000.00
Total Other Financing Sources	3,655,573.00	2,806,000.00	3,706,000.00	3,906,000.00
TOTAL REVENUE	12,025,406.00	9,092,484.00	9,643,740.00	9,628,363.00

FUND NAME: GENERAL FUND
 FUND TYPE/CLASSIFICATION: GOVERNMENTAL-GENERAL
 This Exhibit is to be used for the General Fund Only

EXHIBIT I

DESCRIPTION	FOR 2015	FOR 2016	CURRENT YEAR	BUDGET YEAR
(1)	ACTUAL	ACTUAL	ESTIMATED FOR 2017	ESTIMATED FOR 2018
	(2)	(3)	(4)	(5)
EXPENDITURES				
Security of Persons and Property				
Personal Services	0.00	0.00	0.00	0.00
Travel Transportation	0.00	0.00	0.00	0.00
Contractual Services	0.00	0.00	0.00	0.00
Supplies and Materials	0.00	0.00	0.00	0.00
Capital Outlay	0.00	0.00	0.00	0.00
Total Security of Persons and Property	0.00	0.00	0.00	0.00
Public Health Services				
Personal Services	284,379.00	329,124.00	342,687.00	354,681.05
Travel Transportation	4,936.00	4,197.00	4,000.00	4,080.00
Contractual Services	95,133.00	132,371.00	146,258.00	149,183.16
Supplies and Materials	14,792.00	4,458.00	16,200.00	16,524.00
Capital Outlay	0.00	0.00	0.00	0.00
Total Public Health Services	399,240.00	470,150.00	509,145.00	524,468.21
Total Leisure Time Activities	0.00	0.00	0.00	0.00
Community Environment				
Personal Services	771,218.00	774,406.00	801,510.21	829,563.07
Travel Transportation	5,745.00	5,570.00	5,681.40	5,795.03
Contractual Services	569,117.00	849,477.00	866,466.54	883,795.87
Supplies and Materials	4,865.00	3,362.00	3,429.24	3,497.82
Capital Outlay	0.00	0.00	0.00	0.00
Total Community Environment	1,350,945.00	1,632,815.00	1,677,087.39	1,722,651.79
Total Basic Utility Services	0.00	0.00	0.00	0.00
Transportation				
General Government				
Personal Services	1,266,769.00	1,304,742.00	1,350,407.97	1,397,672.25
Travel Transportation	8,547.00	13,927.00	14,205.54	14,489.65
Contractual Services/Misc.	1,583,035.00	1,337,368.00	1,364,115.36	1,391,397.67
Supplies and Materials	36,550.00	34,877.00	35,574.54	36,286.03
Capital Outlay	9,651.00	9,651.00	15,000.00	15,000.00
Total General Government	2,904,552.00	2,700,565.00	2,779,303.41	2,854,845.60
Other Uses of Funds				
Transfers	5,560,078.00	4,921,594.00	5,200,000.00	5,200,000.00
Advances	200,000.00	0.00	0.00	0.00
Other Uses of Funds	0.00	0.00	0.00	0.00
Total Other Uses of Funds	5,760,078.00	4,921,594.00	5,200,000.00	5,200,000.00
TOTAL EXPENDITURES	10,414,815.00	9,725,124.00	10,165,535.80	10,301,965.59
Revenues over/(under) Expenditures	1,610,591.00	(632,640.00)	(521,795.80)	(673,602.59)
Prepaid Expenses	0.00	0.00	0.00	0.00
Beginning Unencumbered Balance*	4,259,403.00	5,869,994.00	4,918,199.00	3,890,046.20
Ending Cash Fund Balance	5,869,994.00	5,237,354.00	4,396,403.20	3,216,443.61
Estimated Encumbrances (outstanding at year end)	409,583.00	319,155.00	506,357.00	0.00
Estimated Ending Unencumbered Fund Balance	5,460,411.00	4,918,199.00	3,890,046.20	3,216,443.61

* USE CASH BALANCE

FUND TYPE/CLASSIFICATION: GOVERNMENTAL - SPECIAL REVENUE

Reproduce as needed

To be used for any fund receiving property tax revenue except the General Fund.

DESCRIPTION	FOR 2015 ACTUAL	FOR 2016 ACTUAL	CURRENT YEAR ESTIMATED FOR 2017	BUDGET YEAR ESTIMATED FOR 2018
(1)	(2)	(3)	(4)	(5)
REVENUE	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
Local Taxes				
General Property Tax - Real Estate	224,710.00	244,216.00	223,240.00	223,044.00
Tangible Personal Property Tax	521.00	627.00	700.00	700.00
Total Local Taxes	225,231.00	244,843.00	223,940.00	223,744.00
State Shared Taxes and Permits				
Property Tax Allocation	25,138.00	24,862.00	25,804.00	25,804.00
CAT Tax	0.00	0.00	0.00	0.00
Total Shared Taxes and Permits	25,138.00	24,862.00	25,804.00	25,804.00
Miscellaneous	15.00	1,399.00	0.00	0.00
TOTAL REVENUE	250,384.00	271,104.00	249,744.00	249,548.00
EXPENDITURES	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
(Identify each program and object code at the same level shown on Exhibit I)	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
(PROGRAM) (OBJECT)	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
Security of Persons and Property				
Personal Services	230,544.00	240,231.00	248,945.00	257,658.08
Contractual Services	20,532.00	23,551.00	22,157.00	22,600.14
Supplies and Materials	225.00	564.94	350.44	357.45
Capital Outlay	0.00	0.00	0.00	0.00
Total Security of Persons and Property	251,301.00	264,346.94	271,452.44	280,615.66
TOTAL EXPENDITURES	251,301.00	264,346.94	271,452.44	280,615.66
Revenues Over (Under) Expenditures	(917.00)	6,757.06	(21,708.44)	(31,067.66)
Beginning Unencumbered Fund Balance (Use actual cash balance in Col. 2 and 3)	95,591.81	94,674.81	98,763.44	77,055.00
Ending Cash Fund Balance	94,674.81	101,431.87	77,055.00	45,987.34
Estimated Encumbrances (outstanding at end of year)	2,547.33	2,668.43	0.00	0.00
Estimated Ending Unencumbered Fund Balance	92,127.48	98,763.44	77,055.00	45,987.34

FUND TYPE/CLASSIFICATION: GOVERNMENTAL - SPECIAL REVENUE

Reproduce as needed

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DESCRIPTION	FOR 2015 ACTUAL	FOR 2016 ACTUAL	CURRENT YEAR ESTIMATED FOR 2017	BUDGET YEAR ESTIMATED FOR 2018
(1)	(2)	(3)	(4)	(5)
REVENUE	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
Local Taxes				
General Property Tax - Real Estate	1,035,571.00	1,127,227.00	1,030,289.00	1,029,256.00
Tangible Personal Property Tax	2,252.00	2,850.00	3,000.00	3,000.00
Total Local Taxes	1,037,823.00	1,130,077.00	1,033,289.00	1,032,256.00
State Shared Taxes and Permits				
Property Tax Allocation	113,668.00	112,950.00	116,000.00	116,000.00
CAT Tax	0.00	0.00	0.00	0.00
Total Shared Taxes and Permits	113,668.00	112,950.00	116,000.00	116,000.00
Intergovernmental Grants & Contracts	35,059.00	7,100.00	700,000.00	0.00
Fees, Licenses & Permits	114,408.00	5,663.00	1,200.00	1,000.00
Charges for Services	651,019.00	664,288.00	704,000.00	739,000.00
Miscellaneous/Transfer and Advance In	608,643.00	187,039.00	150,000.00	150,000.00
TOTAL REVENUE	2,560,620.00	2,107,117.00	2,704,489.00	2,038,256.00
EXPENDITURES	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
(Identify each program and object code at the same level shown on Exhibit I)	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
(PROGRAM) (OBJECT)	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX
Leisure Time Activities				
Personal Services	1,158,396.00	1,167,673.00	1,299,755.00	1,341,997.04
Travel and Transportation	15,510.00	13,630.00	13,902.60	14,180.65
Contractual Services	352,310.00	379,774.00	482,469.72	492,119.11
Supplies and Materials	162,469.00	152,834.00	155,890.68	159,008.49
Refunds	0.00	0.00	0.00	0.00
Capital Outlay	667,970.00	506,405.00	1,122,000.00	135,000.00
Total Leisure Time Activities	2,356,655.00	2,220,316.00	3,074,018.00	2,142,305.30
Repayment of Advance	235,000.00	50,000.00	50,000.00	50,000.00
TOTAL EXPENDITURES	2,591,655.00	2,270,316.00	3,124,018.00	2,192,305.30
Revenues Over (Under) Expenditures	(31,035.00)	(163,199.00)	(419,529.00)	(154,049.30)
Beginning Unencumbered Fund Balance (Use actual cash balance in Col. 2 and 3)	917,956.00	886,921.00	620,974.00	201,445.00
Ending Cash Fund Balance	886,921.00	723,722.00	201,445.00	47,395.70
Estimated Encumbrances (outstanding at end of year)	260,691.00	102,748.00	0.00	0.00
Estimated Ending Unencumbered Fund Balance	626,230.00	620,974.00	201,445.00	47,395.70

FUND TYPE/CLASSIFICATION: GOVERNMENTAL - SPECIAL REVENUE

To be used for any fund receiving property tax revenue except the General Fund.

Reproduce as needed

DESCRIPTION	FOR 2015 ACTUAL	FOR 2016 ACTUAL	CURRENT YEAR ESTIMATED FOR 2017	BUDGET YEAR ESTIMATED FOR 2018
(1)	(2)	(3)	(4)	(5)
REVENUE	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
Local Taxes				
General Property Tax - Real Estate	95,592.00	110,100.00	98,614.00	101,298.00
Tangible Personal Property Tax	1,505.00	262.00	500.00	500.00
Total Local Taxes	97,097.00	110,362.00	99,114.00	101,798.00
State Shared Taxes and Permits				
Property Tax Allocation	9,887.00	10,384.00	10,525.00	10,525.00
CAT Tax	0.00	0.00	0.00	0.00
Total Shared Taxes and Permits	9,887.00	10,384.00	10,525.00	10,525.00
TOTAL REVENUE	106,984.00	120,746.00	109,639.00	112,323.00
EXPENDITURES	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
(Identify each program and object code at the same level shown on Exhibit I)	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
(PROGRAM) (OBJECT)	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXX
Security of Persons and Property				
Personal Services	102,000.00	110,000.00	110,000.00	110,000.00
Contractual Services	0.00	0.00	0.00	0.00
Supplies and Materials	0.00	0.00	0.00	0.00
Capital Outlay	0.00	0.00	0.00	0.00
Total Security of Persons and Property	102,000.00	110,000.00	110,000.00	110,000.00
TOTAL EXPENDITURES	102,000.00	110,000.00	110,000.00	110,000.00
Revenues Over (Under) Expenditures	4,984.00	10,746.00	(361.00)	2,323.00
Beginning Unencumbered Fund Balance (Use actual cash balance in Col. 2 and 3)	12,177.00	17,161.00	27,907.00	27,546.00
Ending Cash Fund Balance	17,161.00	27,907.00	27,546.00	29,869.00
Estimated Encumbrances (outstanding at end of year)	0.00	0.00	0.00	0.00
Estimated Ending Unencumbered Fund Balance	17,161.00	27,907.00	27,546.00	29,869.00

FUND TYPE/CLASSIFICATION: GOVERNMENTAL - SPECIAL REVENUE

Reproduce as needed

To be used for any fund receiving property tax revenue except the General Fund.

DESCRIPTION	FOR 2015 ACTUAL	FOR 2016 ACTUAL	CURRENT YEAR ESTIMATED FOR 2017	BUDGET YEAR ESTIMATED FOR 2018
(1)	(2)	(3)	(4)	(5)
REVENUE	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXX
Local Taxes				
General Property Tax - Real Estate	95,592.00	110,100.00	98,614.00	99,998.00
Tangible Personal Property Tax	1,505.00	262.00	1,800.00	1,800.00
Total Local Taxes	97,097.00	110,362.00	100,414.00	101,798.00
State Shared Taxes and Permits				
Property Tax Allocation	9,887.00	10,384.00	10,525.00	10,525.00
CAT Tax	0.00	0.00	0.00	0.00
Total Shared Taxes and Permits	9,887.00	10,384.00	10,525.00	10,525.00
TOTAL REVENUE	106,984.00	120,746.00	110,939.00	112,323.00
EXPENDITURES	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXX
(Identify each program and object code at the same level shown on Exhibit I)	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXX
(PROGRAM) (OBJECT)	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXX	XXXXXXXXXXXXXXXXXXXXXX
Security of Persons and Property				
Personal Services	102,000.00	110,000.00	110,000.00	110,000.00
Contractual Services	0.00	0.00	0.00	0.00
Supplies and Materials	0.00	0.00	0.00	0.00
Capital Outlay	0.00	0.00	0.00	0.00
Total Security of Persons and Property	102,000.00	110,000.00	110,000.00	110,000.00
TOTAL EXPENDITURES	102,000.00	110,000.00	110,000.00	110,000.00
Revenues Over (Under) Expenditures	4,984.00	10,746.00	939.00	2,323.00
Beginning Unencumbered Fund Balance (Use actual cash balance in Col. 2 and 3)	12,181.00	17,165.00	27,911.00	28,850.00
Ending Cash Fund Balance	17,165.00	27,911.00	28,850.00	31,173.00
Estimated Encumbrances (outstanding at end of year)	0.00	0.00	0.00	0.00
Estimated Ending Unencumbered Fund Balance	17,165.00	27,911.00	28,850.00	31,173.00

EXHIBIT III

FUND	ESTIMATED UNENCUMBERED FUND BALANCE 1/1/2018	BUDGET YEAR ESTIMATED RECEIPTS	TOTAL AVAILABLE FOR EXPENDITURES	BUDGET YEAR EXPENDITURES AND ENCUMBRANCES			ESTIMATED UNENCUMBERED FUND BALANCE 12/31/2018
				PERSONAL SERVICES	OTHER	TOTAL	
List all funds individually unless reported on Exhibit I or II							
PROPRIETARY:							
ENTERPRISE FUNDS							
Water, 201	412,225.00	4,163,962.00	4,576,187.00	2,160,000.00	1,928,881.00	4,088,881.00	487,306.00
Sewer, 202	1,995,081.00	6,517,917.00	8,412,998.00	2,400,000.00	4,301,726.00	6,701,726.00	1,711,272.00
Utility Billing, 204	41,122.00	86,000.00	127,122.00	0.00	93,000.00	93,000.00	34,122.00
Solid Waste, 205	582,386.00	558,000.00	1,140,386.00	83,000.00	520,000.00	603,000.00	537,386.00
Storm Water Drainage Utility, 208	328,726.00	1,039,780.00	1,368,506.00	510,000.00	366,928.00	876,928.00	491,578.00
Guarantee Deposit, 230	39,114.00	0.00	39,114.00	0.00	1,000.00	1,000.00	38,114.00
TOTAL ENTERPRISE FUNDS	3,298,654.00	12,365,659.00	15,664,313.00	5,153,000.00	7,211,535.00	12,364,535.00	3,299,778.00
INTERNAL SERVICE FUNDS							
Insurance Claims, 807	16,646.00	3,250,000.00	3,266,646.00	0.00	3,200,000.00	3,200,000.00	66,646.00
TOTAL INTERNAL SERVICE FUNDS	16,646.00	3,250,000.00	3,266,646.00	0.00	3,200,000.00	3,200,000.00	66,646.00
FIDUCIARY:							
TRUST AND AGENCY FUNDS							
Trust & Agency Escrow, 804	N/A	N/A	N/A	N/A	N/A	N/A	N/A
TOTAL TRUST AND AGENCY FUNDS	0.00	0.00	0.00	0.00	0.00	0.00	0.00
TOTAL FOR MEMORANDUM ONLY	15,144,628.00	58,786,185.00	73,930,813.00	18,545,000.00	42,165,489.00	60,730,489.00	13,200,324.00

STATEMENT OF PERMANENT IMPROVEMENTS
 (Do not include expense to be paid from bond issues)
 (Section 5705.29. Revised Code)

EXHIBIT IV

Description	Estimated Cost of Permanent Improvement	Amount to be Budgeted During Current Year	Name of Paying Fund
<u>Parks & Recreation Fund</u>			
Building Renovations	20,000.00	20,000.00	Recreation Fund, 106
Park and Trail Paving and Sealing	25,000.00	25,000.00	Recreation Fund, 106
Hike and Bike Trail Design (AMATs grant)	40,000.00	40,000.00	Recreation Fund, 106
Playground Equipment	20,000.00	20,000.00	Recreation Fund, 106
Pickup Truck Replacement	30,000.00	30,000.00	Recreation Fund, 106
Fund 106 Total	135,000.00	135,000.00	
<u>Fire & EMS Fund</u>			
Station II Generator	75,000.00	75,000.00	Fire/EMS Fund, 128
Confined Space Vehicle Replacement	150,000.00	150,000.00	Fire/EMS Fund, 128
Fire Truck Replacement Fund	350,000.00	350,000.00	Fire/EMS Fund, 128
Heavy Rescue 1816 Replacement	690,000.00	690,000.00	Fire/EMS Fund, 128
Fire Miscellaneous Equipment	35,000.00	35,000.00	Fire/EMS Fund, 128
Fund 128 Total	1,300,000.00	1,300,000.00	
<u>Water Fund</u>			
Central Maintenance - Misc. Equipment	10,000.00	10,000.00	Water Fund, 201
Rubber Tired Front End Loader	20,000.00	20,000.00	Water Fund, 201
Hoe/Excavator	50,000.00	50,000.00	Water Fund, 201
Water Leak Correlator	50,000.00	50,000.00	Water Fund, 201
SAC Roof Replacement	5,000.00	5,000.00	Water Fund, 201
Fueling Station Relocation	33,500.00	33,500.00	Water Fund, 201
Well Field Development	50,000.00	50,000.00	Water Fund, 201
Rehab 2 Rapid Sand Filters	125,000.00	125,000.00	Water Fund, 201
Paint KSU 400,000 Gallon Tank	400,000.00	400,000.00	Water Fund, 201
Misc. Plant Equipment	50,000.00	50,000.00	Water Fund, 201
Clean Wells No. 10	35,000.00	35,000.00	Water Fund, 201
Safety and Service Phone and Network	17,000.00	17,000.00	Water Fund, 201
Fund 201 Total	845,500.00	845,500.00	
<u>Sewer Fund</u>			
Southwest Sanitary Pump Station	2,000,000.00	2,000,000.00	Sewer Fund, 202
Sanitary Collection System Study	50,000.00	50,000.00	Sewer Fund, 202
Central Maintenance - Misc. Equipment	10,000.00	10,000.00	Sewer Fund, 202
Sewer Camera	140,000.00	140,000.00	Sewer Fund, 202
Rubber Tired Front End Loader	20,000.00	20,000.00	Sewer Fund, 202
Hoe/Excavator	50,000.00	50,000.00	Sewer Fund, 202
Water Leak Correlator	50,000.00	50,000.00	Sewer Fund, 202
SAC Roof Replacement	5,000.00	5,000.00	Sewer Fund, 202
Safety and Service Phone and Network	17,000.00	17,000.00	Sewer Fund, 202
Fueling Station Relocation	33,500.00	33,500.00	Sewer Fund, 202
Final Clarifiers Weir Covers	25,000.00	25,000.00	Sewer Fund, 202
Waterfall/Dam Annual Upkeep	10,000.00	10,000.00	Sewer Fund, 202
Aeration Tank Ammonia Probe System	20,000.00	20,000.00	Sewer Fund, 202
Motor Control Center Replacement	150,000.00	150,000.00	Sewer Fund, 202
Misc. Plant Equipment	50,000.00	50,000.00	Sewer Fund, 202
Post-Aeration Piping	60,000.00	60,000.00	Sewer Fund, 202
Fund 202 Total	2,690,500.00	2,690,500.00	

(Section 5705.29. Revised Code)	(continued)		EXHIBIT IV
Description	Estimated Cost of Permanent Improvement	Amount to be Budgeted During Current Year	Name of Paying Fund
Storm Water Fund			
Hudson Road Water Main Replacement	59,000.00	59,000.00	Storm Water Utility Fund, 208
Annual Sidewalk/Street Program - Construction	20,000.00	20,000.00	Storm Water Utility Fund, 208
Sewer Camera	80,000.00	80,000.00	Storm Water Utility Fund, 208
Rubber Tired Front End Loader	20,000.00	20,000.00	Storm Water Utility Fund, 208
Hoe/Excavator	50,000.00	50,000.00	Storm Water Utility Fund, 208
SAC Roof Replacement	5,000.00	5,000.00	Storm Water Utility Fund, 208
Safety and Service Phone and Network	17,000.00	17,000.00	Storm Water Utility Fund, 208
Fund 208 Total	251,000.00	251,000.00	
Capital Projects Fund			
Route 43 Signalization	2,500,000.00	2,500,000.00	Capital Projects Fund, 301
Misc. Active Transportation Projects	10,000.00	10,000.00	Capital Projects Fund, 301
Hudson Road	157,500.00	157,500.00	Capital Projects Fund, 301
SR 59 and SR 43 Paving	280,000.00	280,000.00	Capital Projects Fund, 301
Annual Sidewalk/Street Program - Construction	1,100,000.00	1,100,000.00	Capital Projects Fund, 301
Sidewalk Street Tree Damage Repairs	5,000.00	5,000.00	Capital Projects Fund, 301
Central Maintenance - Misc. Equipment	30,000.00	30,000.00	Capital Projects Fund, 301
Rubber Tired Front End Loader	70,000.00	70,000.00	Capital Projects Fund, 301
Skid Steerer	85,000.00	85,000.00	Capital Projects Fund, 301
Hoe/Excavator	100,000.00	100,000.00	Capital Projects Fund, 301
Tasers	7,400.00	7,400.00	Capital Projects Fund, 301
Police Miscellaneous Equipment	37,500.00	37,500.00	Capital Projects Fund, 301
Police Unmarked Vehicle Replacement	35,000.00	35,000.00	Capital Projects Fund, 301
Portable Radios Replacement	14,500.00	14,500.00	Capital Projects Fund, 301
Range Upgrade Gravel and Electrical	35,000.00	35,000.00	Capital Projects Fund, 301
SAC Roof Replacement	10,000.00	10,000.00	Capital Projects Fund, 301
Misc Roadway Lighting Equipment	10,000.00	10,000.00	Capital Projects Fund, 301
Safety and Service Phone and Network	34,000.00	34,000.00	Capital Projects Fund, 301
Fueling Station Relocation	133,000.00	133,000.00	Capital Projects Fund, 301
Fund 301 Total	4,653,900.00	4,653,900.00	
TOTAL	9,875,900.00	9,875,900.00	

For the year being budgeted, list each contemplated disbursement for permanent improvements, exclusive of any expense to be paid from bond issues, by the fund from which the expenditures are to be made. Examples for describing the permanent improvements are: window replacement, vehicle purchase, furnishing offices, appliances for fire department kitchen.

EXHIBIT VI

PURPOSE OF BONDS AND NOTES	BUDGET YEAR									
	Authority for Levy Outside 10 Mill Limit*	Date of Issue	Date Due	Ordinance or Resolution	Serial or Term	Rate of Interest	Amounts of Bonds and Notes Outstanding at beginning of budgeted year Jan 1, 2018	Amount Required for Principal and Interest 1/1/2018 to 12/31/2018	Amount Receivable from Other Sources to Meet Debt Payments 1/1/2018 to 12/31/2018	
Payable from Bond Retirement Fund:										
INSIDE 10 MILL LIMIT:										
Redeemed 1998 Bonds - (Various Purpose Refunding Notes, Series 2015)	XXXXXXXXXX	XXXXX	XXXXX	XXXXXXX	XXXXXXX	XXXXXX	\$210,000		XXXXXXXXXXXXXXXXXXXXXX	
Fire Station Bond Anticipation Note (Various Purpose Notes, Series 2017)		Aug. 17	Aug. 18			Unknown	\$760,000	\$775,200	XXXXXXXXXXXXXXXXXXXXXX	Debt Service
Streets (Alley 5, Erie&Depeyster) BAN (Various Purpose Notes, Series 2017)		Aug. 17	Aug. 18			Unknown	\$1,150,000	\$1,173,000	XXXXXXXXXXXXXXXXXXXXXX	budgeted in Fund 301
Police/Safety Center BAN		Aug. 17	Aug. 18			Unknown	\$3,500,000	\$3,570,000	XXXXXXXXXXXXXXXXXXXXXX	budgeted in Fund 302
Parking Facility - LTGO Bond, Series 2013		Oct. 13	Dec. 18			2.00%	\$3,995,000	\$244,425	XXXXXXXXXXXXXXXXXXXXXX	budgeted in Fund 302
Streets (Alley 4, Erie&Depeyster) - LTGO Bond, Series 2014		Oct. 13	Dec. 18			2.00%	\$1,130,000	\$93,550	XXXXXXXXXXXXXXXXXXXXXX	budgeted in Fund 302
Safety Center Construction - LTGO Bonds, Series 2014		Dec. 14	Dec. 18			2.00%	\$4,160,000	\$298,525	XXXXXXXXXXXXXXXXXXXXXX	budgeted in Fund 303
Safety Center Construction - LTGO Bonds, Series 2015		Dec. 15	Dec. 18			4.00%	\$4,215,000	\$301,775	XXXXXXXXXXXXXXXXXXXXXX	budgeted in Fund 303
Note: All other City of Kent debt is supported by Special Assessments or Enterprise Revenues.										
TOTAL	XXXXXXXXXX	XXXXX	XXXXX	XXXXXXXXXX	XXXXXXXXXX	XXXXXX	\$19,120,000	\$6,670,675	XXXXXXXXXXXXXXXXXXXXXX	
OUTSIDE 10 MILL LIMIT:										
TOTAL										

* If the levy is outside the 10 mill limit by vote enter the words "by vote" and the date of election. If outside the 10 mill limit without a vote, enter the reference to the statute under which the levy is exempt from the 10 mill limit.



CITY OF KENT, OHIO

DEPARTMENT OF COMMUNITY DEVELOPMENT

DATE: June 27, 2017
TO: Dave Ruller, City Manager
FROM: Bridget Susel, Community Development Director *BS*
RE: Summary Report: Discrimination Enforcement, Penalties, Public Accommodations

In April, the City of Kent added sexual orientation and gender identity as locally protected classes as part of the City's fair housing regulations, employment practices and posting requirements.

Kent City Council requested that staff conduct additional research and provide a summary report of the various approaches utilized by other communities in Ohio that have similar protected classes with regards to the methodology utilized for enforcement and the assignment of penalties. Council also requested information on communities that provide protections against unlawful discrimination in places that provide public accommodations.

Attached is a spreadsheet that summarizes the requested information. I am respectfully requesting time at the July 5, 2017 Committee session to discuss the information included on the attached report with members of Council and to answer any questions they may have regarding this topic.

Please let me know if you need any additional information in order to add this item to the agenda.

Thank you.

Cc: Jim Silver, Law Director
Tara Grimm, Clerk of Council
Dan Morganti, Grants & Neighborhood Programs Coordinator

**Ohio Communities
that Designate Unlawful Discriminatory Practices in Public Accommodations**

Community	Public Accommodations	Enforcement	Penalty
Akron	sexual orientation, gender identity or gender expression	Law Dept. manages the processing of complaints and supports the Akron Civil Rights Commission (approved legislation not available yet)	Unknown if different for public accommodation discrimination violations. Under fair housing, it is a misdemeanor, 1st degree
Athens	gender identity or gender expression	Community Relations Commission Receives complaints; facilitates informal discussion; makes referrals for mediation/investigation	Not specifically stated
Bexley	sexual orientation, gender identity or gender expression	Complaint filed with City Clerk of Courts; Referral to City's Prosecuting Attorney	Cease and desist order and/or civil penalty of up to \$1,000; any appropriate civil enforcement proceedings
Bowling Green	gender expression or gender identity	Complaint Officer (city employee) reviews, investigates, mediates, holds hearings, etc.	Cease and desist order and/or civil penalty of up to \$1,000; any appropriate civil enforcement proceedings
Cincinnati	sexual orientation or transgender status	Complaint Officer (city employee) reviews, investigates, mediates, holds hearings, etc.	Cease and desist order and/or civil penalty of up to \$1,000; any appropriate civil enforcement proceedings
Cleveland	sexual orientation, gender identity or gender expression	Manager of Fair Housing and Consumer Affairs (city employee) receives/investigates complaint then makes recommendation on how to proceed to Fair Housing Board	misdemeanor, 1st degree
Cleveland Heights	sexual orientation, gender identity or gender expression	Complaint Officer/Law Dept. representative (city employee) receives/investigates complaint then makes recommendation on how to proceed to Fair Practices Board	civil fine schedule: ranges \$500-\$50,000
Columbus	sexual orientation or gender identity	Community Relations Commission	Commission can initiate prosecution, if found guilty, minor misdemeanor
Coshocton	sexual orientation	Human Relations Commission hears cases and makes recommendations to the Law Director	Equitable proceedings in a court of competent jurisdiction
Dayton	sexual orientation or gender identity	Executive Director/Hearing Examiner (employee of Human Relations Council) implement program and makes recommendation to Human Relations Council on how to proceed	misdemeanor, 4th degree
Lakewood	sexual orientation, gender identity or gender expression	Community Dev. Director/designee assigned to seat on Human Rights Commission. Investigates and makes recommendation on how to proceed to the Commission	misdemeanor, 3rd degree
Newark	sexual orientation, gender identity or gender expression	Conciliator appointed by Human Relations Commission will investigate and attempt to conciliate the matter	Law Director directed to "bring equitable proceedings in a court of competent jurisdiction"
Olmsted Falls	sexual orientation, gender identity or gender expression	No specific investigation/hearing procedures stated for alleged violations. Aggrieved can "apply to any proper court of record, commission or board for relief for a violation"	First offense is minor misdemeanor; 2nd offense misdemeanor, 1st degree
Oxford	sexual orientation or gender identity	Community Relations Director (city employee) receives/investigates and seeks conciliation if violation is determined to have occurred. If no conciliation in matter, hearing is scheduled with the Community Relations Commission	Civil fine of \$100 for first offense; \$500 for each subsequent offense
Toledo	sexual orientation	Public accommodations limited to "any service, program or facility wholly or partially funded or otherwise supported by the City." No investigation/hearing procedures stated for alleged violations.	misdemeanor, 1st degree
Yellow Springs	sexual preference	Compliance Officer (village employee) receives/investigates complaints then advises Village Manager and/or Council	Aggrieved to seek relief through the courts with damages not to exceed \$1,000
Youngstown	sexual orientation & gender identity	Executive Director administers activities of the Human Relations Commission. In cases of alleged discrimination, Director refers matter to hearing examiner (attorney) who submits report to Human Relations Commission on findings of fact. Law and recommendations.	misdemeanor, 4th degree

NOTE: 1.) East Cleveland lists it has public accommodations protectors, but copy of enacting legislation not available.

NOTE: 2.) The following communities have sexual orientation and/or gender identity as local protected classes, but no public accommodation regulations: Brookpark, Cuyahoga Hts Village, Euclid, Linndale, Maple Hts, Newburgh Hts, North Olmsted, S. Euclid, Shaker Hts, University Hts, Warrensville Hts

MEMORANDUM
DEPARTMENT OF COMMUNITY DEVELOPMENT
City of Kent

Date: May 26, 2017

To: Dave Ruller, City Manager

From: Jennifer Barone, Development Engineer *JAB*

Re: Lappin Farm – Newcomer Road

Copy: Bridget Susel, Director of Community Development
Tara Grimm, Clerk of Council
Jim Silver, Law Director
Melanie Baker, Service Director
Jim Bowling, City Engineer
Project file

I hereby respectfully request City Council agenda time to consider acceptance of the street right-of-way (R/W) dedication at Lappin Farm on Newcomer Road.

The property at 4309 Newcomer Road is being split into five parcels. Currently the property lines extend to the center of Newcomer Road. As part of this lot split, the portion of the property in the road right-of-way is being dedicated to the City of Kent.

If you have any questions, please call me.

LEGAL DESCRIPTION
Right-of-Way Dedication
0.3612 Acres

Situated in the City of Kent, County of Portage, and State of Ohio, and being part of Original Franklin Township Lot Number 46, and furthermore being part of land conveyed to Newcomer Development Group, LLC as P.P.N. 13-046-00-00-019.000 recorded in Document Number 2007-06211 of the Portage County Recorders Records, and being further bounded and described as follows:

Commencing at a 5/8" Iron Pin found (N. 0.38', E 1.04') located at the centerline intersection of Johnson Road (T.H. 141-A, 60 feet wide) and Newcomer Road (C.H. 85, Right-of-Way Varies), referenced by a "Three Mile" Stone found North 00°28'45" West at a distance of 1,142.11 feet at an angle break of said Newcomer Road (also being Portage/Summit County Line); Thence South 00°28'45" East along the centerline of said Newcomer Road (also being Portage/Summit County Line), a distance of 810.39 feet to a point in the centerline of said Newcomer Road, and being the PRINCIPAL PLACE OF BEGINNING of a 0.3612 acre parcel of land herein intended to be described;

Thence North 89°31'15" East, to the easterly Right-of-Way dedicated to the City of Kent, a distance of 22.50' to a 5/8" Iron Pin found with Cap BLR S-7774

Thence South 00°28'45" East, along the easterly Right-of-Way of Newcomer Road to a point on the northerly line of property conveyed to Newcomer Development Group, LLC, as P.P.N. 17-045-00-00-011 recorded in Document Number 2007-06211 of the Portage County Recorders Records a distance of 699.16 feet to a 5/8" Iron Pin Set with Cap "BLROBINSON S-7774";

Thence South 89°09'47" West, to said centerline of said Newcomer Road (also being Portage/Summit County Line), a distance of 22.50 feet to a point;

Thence North 00°28'45" West, along the centerline of said Newcomer Road, a distance of 699.30 feet to the PRINCIPAL PLACE OF BEGINNING and containing 0.3612 acres, 15,734 Sq.Ft. of land, be the same more or less, but subject to all legal highways, and easements of record as determined by a survey performed by Bruce L. Robinson, P.E., P.S. 7774, of B.L. Robinson Engineering & Surveying, Co. in April of 2017.



Bruce L. Robinson, P.E., P.S. S-7774

4/4/17

Date



NEWCOMER DEVELOPMENT GROUP SUBDIVISION DEDICATING PART OF NEWCOMER ROAD AND CREATING SUB-LOTS 1-5

SITUATED IN THE CITY OF KENT, AND THE TOWNSHIP OF FRANKLIN, COUNTY OF PORTAGE, AND STATE OF OHIO AND KNOWN AS BEING PART OF ORIGINAL FRANKLIN TOWNSHIP LOT NUMBER 46, AND FURTHERMORE BEING PART OF LAND CONVEYED TO NEWCOMER DEVELOPMENT GROUP, LLC AS RECORDED IN DOCUMENT NUMBER 2007-06211 OF THE PORTAGE COUNTY RECORDERS RECORDS

2017060000
RECORDED FOR RECORD
11:00 AM 06/17/2017
BY: [Signature]
817.20

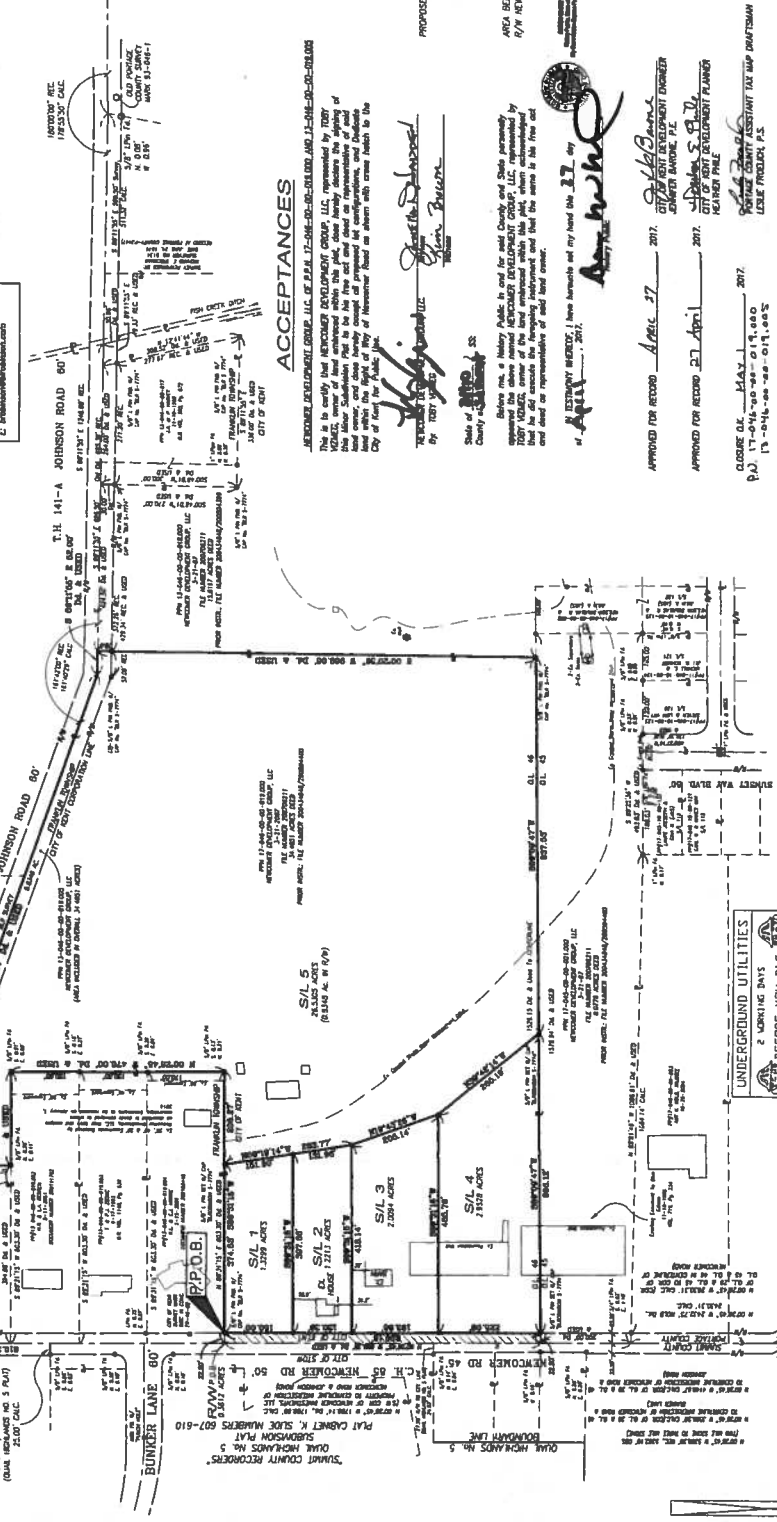
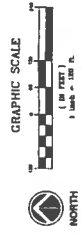


- PORTAGE COUNTY DOCUMENTS USED:**
- Forest Lakes Subdivision Phase 2 (Plat 87-20)
 - U.S. #1746 (April 28, 1906)
 - Survey P-1296
 - Survey P-3447
 - Survey P-8256
 - Survey P-8825
 - City of Kent Ordinance No. 1937-3 (Description of Corp. Line)
 - Plat Cabinet K, Slide Number 507-811 (Newcomer Road-County Line Reproduced from Plat Cabinet K, Slide Number 507-811)
- STATE PLANE COORDINATES:**
- | LINE | DESCRIPTION | LENGTH |
|-------|-----------------------------|---------------|
| 1 | 1.2399 ACRES (CITY OF KENT) | 1.2399 |
| 2 | 2.2713 ACRES (CITY OF KENT) | 2.2713 |
| 3 | 2.0094 ACRES (CITY OF KENT) | 2.0094 |
| 4 | 2.5929 ACRES (CITY OF KENT) | 2.5929 |
| 5 | 0.8184 ACRES (CITY OF KENT) | 0.8184 |
| TOTAL | 0.8117 ACRES (CITY OF KENT) | 34.4051 ACRES |

CONTACTS:

DEVELOPER:
NEWCOMER DEVELOPMENT GROUP LLC
11500 W. STATE ST., SUITE 200
CANTON, OHIO 44705
PH: 330-351-7433
FAX: 330-351-7433
WWW.NEWCOMERDEVELOPMENT.COM

ENGINEER-SURVEYOR:
S.L. NEWCOMER ENGINEERING
11500 W. STATE ST., SUITE 200
CANTON, OHIO 44705
PH: 330-351-7433
FAX: 330-351-7433
C. NEWCOMER@NEWCOMERDEVELOPMENT.COM



ACCEPTANCES

NEWCOMER DEVELOPMENT GROUP, LLC, BY: [Signature] **STATE ENGINEER**

STATE OF OHIO, COUNTY OF PORTAGE, BY: [Signature] **CLERK**

APPROVED FOR RECORD: April 27, 2017. [Signature] **CITY ENGINEER**

APPROVED FOR RECORD: April 27, 2017. [Signature] **RECORDING CLERK**

DATE: [Signature] 2017. FEE: \$250.00

RECORDED FOR RECORD: [Signature] 2017.

DOC: 2017060000. PLAT: 2017-28

UNDERGROUND UTILITIES

BEFORE YOU DIG

1-800-362-2764

1-800-925-0988

SEAL CONTRACTOR

THE SEAL CONTRACTOR is a field survey, analysis of recorded plat, and seal contractor. The seal contractor is responsible for the accuracy of the plat and the seal contractor is responsible for the accuracy of the seal. The seal contractor is responsible for the accuracy of the seal and the seal contractor is responsible for the accuracy of the seal.

SEAL CONTRACTOR: [Signature] **SEAL CONTRACTOR**

STATE OF OHIO, COUNTY OF PORTAGE, BY: [Signature] **CLERK**

APPROVED FOR RECORD: April 27, 2017. [Signature] **CITY ENGINEER**

APPROVED FOR RECORD: April 27, 2017. [Signature] **RECORDING CLERK**

DATE: [Signature] 2017. FEE: \$250.00

RECORDED FOR RECORD: [Signature] 2017.

DOC: 2017060000. PLAT: 2017-28



CITY OF KENT, OHIO

DEPARTMENT OF COMMUNITY DEVELOPMENT

DATE: June 27, 2017
TO: Dave Ruller, City Manager
FROM: Bridget Susel, Community Development Director *god.*
RE: Lease Agreement - City Parcels, Gougler Avenue

In April, Kent City Council authorized the sale of six (6) parcels, located on the east and west sides of Gougler, to Bob and Ryan Cene to provide parking support for the commercial operations that are planned to be located in the refurbished L.N. Gross building.

As part of finalizing the sale of the properties, an environmental assessment was completed that identified some legacy environmental conditions on some of the parcels located on the west side of Gougler and on the northern portion of the eastern parcel. The identified environmental issues do not create any imminent risk, but the presence of the conditions has resulted in the City needing to transition from a sales transaction to a long term lease agreement in order to facilitate the planned redevelopment of the parcels.

I am respectfully requesting time at the July 5, 2017 Committee session to discuss the matter with Council and request authorization, with emergency, for the City Manager to execute the lease agreement.

If you need any additional information in order to add this item to the agenda, please let me know.

Thank you.

Attachment

Cc: Jim Silver, Law Director
Tom Wilke, Economic Development Director
Tara Grimm, Clerk of Council

930 Overholt Rd., Kent, Ohio 44240 • (330) 678-8108 fax (330) 678-8030 •
www.KentOhio.org

EXHIBIT "A"

PEARSON SURVEYING, LLC

(330) 296-9200 OFFICE (330) 298-9184 FAX

COMBINED PARCEL
PROPERTY DESCRIPTION
1.1338 ACRE TRACT

Situated in the City of Kent, County of Portage, and the State of Ohio, and being part of Original Lot 25 in the Township of Franklin and being all of the tracts of land transferred to The City of Kent, as recorded in files: 200511173 – parcels 1 & 2, 201706946 – parcels 1 & 3, and file 201308052, and further described as follows to wit:

Beginning at a drill hole found at the southwest corner of Brady Leap Condominiums (Plat 2005-83) on the east right of way line of North Mantua Street (60' r/w), to a drill hole found, which is the True Place of Beginning for the property herein described;

1. Thence **South 68°00'40" East**, along the south line of the aforesaid Brady Leap Condominiums tract, a distance of **107.03** feet to a capped rebar set;
2. Thence **North 21°58'55" East**, along the east line of the aforesaid Brady Leap Condominiums tract, a distance of **357.15** feet to a drill hole found on the west right of way line of Gougler Avenue (60' r/w);
3. Thence **South 05°23'13" East**, along the west right of way line of Gougler Avenue, a distance of **99.44** feet to a capped rebar set;
4. Thence **South 03°42'26" West**, along the west right of way line of Gougler Avenue, a distance of **390.39** feet to a 5/8" iron bar found;
5. Thence **North 74°21'06" West**, along the north line of a tract of land now or formerly owned by T.W. Long & D.M. Delaney (File #200507687), a distance of **77.64** feet to a 1/2" iron pipe found;
6. Thence **North 67°48'53" West**, along the north line of the aforesaid T.W. Long & D.M. Delaney tract, and a tract of land now or formerly owned by R.E. Sr. & C.L. Reitz (D.V. 1021. Page 970), a distance of **198.26** feet to a 1/2" iron pipe found;
7. Thence **North 22°07'19" East**, along the east right of way line of North Mantua Street, a distance of **60.00** feet to a 1/2" iron pipe found on the east right of line of North Mantua Street;

1.1338 acre parcel – page 2

8. Thence **South 67°37'58" East**, along the south line of a tract of land now or formerly owned by K.R. & M.L. Maclean (D.V. 1015, Page 492), a distance of **127.90** feet to 5/8" iron bar found;
9. Thence **North 22°29'09" East**, along the east line of the aforesaid K.R. & M.L. Maclean tract, a distance of **40.59** feet to a 5/8" iron bar found;
10. Thence **North 68°00'40" West**, along the north line of the aforesaid K.R. & M.L. Maclean tract, a distance of **128.16** feet to a drill hole found on the east right of line of North Mantua Street;
11. Thence **North 22°07'19" East**, along the east right of way line of North Mantua Street, a distance of **10.00** feet to the True Place of Beginning of the herein described parcel.

Containing **1.1338** acres of land, based on a field survey by Beth A. Pearson, P.S. #8430 in June of 2017.

The basis of bearing is Grid North, Ohio State Plane Coordinate System, North Zone, NAD83.

Subject to all legal highways and any easements or restrictions of record.

Capped rebars set are 5/8" x 30" with "Pearson PS-8430".

Beth A. Pearson 06/09/2017

Beth A. Pearson, PS
Registered Surveyor #8430

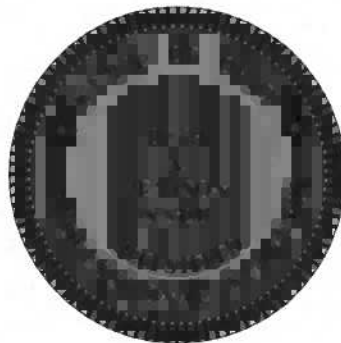


EXHIBIT "A1"

PARCEL 2

17-025-30-00-002-000

SITUATED IN THE CITY OF KENT, COUNTY OF PORTAGE AND STATE OF OHIO AND KNOWN AS BEING PART OF ORIGINAL FRANKLIN TOWNSHIP LOT 25 AND IS FURTHER DESCRIBED AS FOLLOWS;

BEGINNING AT A POINT ON THE EASTERLY LINE OF GOUGLER AVENUE, 60' WIDE, AT ITS INTERSECTION WITH THE NORTHERLY LINE OF SAID ORIGINAL FRANKLIN TOWNSHIP LOT 25;

THENCE ALONG THE EASTERLY LINE OF GOUGLER AVENUE SOUTH 05 DEGREES 29 MINUTES 07 SECONDS EAST A DISTANCE OF 60.16 FEET BUT TO AN IRON ROD FOUND AT THE NORTHWEST CORNER OF LANDS NOW OR FORMERLY OWNED BY KENT DOWNTOWN COMMUNITY URBAN REDEVELOPMENT CORP. (OR56/995) AND THE TRUE PLACE OF BEGINNING;

THENCE ALONG THE NORTHERLY LINE OF THE SAID LANDS NOW OR FORMERLY OWNED BY KENT DOWNTOWN COMMUNITY URBAN REDEVELOPMENT CORP. NORTH 84 DEGREES 30 MINUTES 53 SECONDS EAST A DISTANCE OF 85.52 FEET TO A POINT;

THENCE SOUTH 34 DEGREES 33 MINUTES 08 SECONDS EAST A DISTANCE OF 45.02 FEET TO AN IRON ROD SET AND PASSING OVER AN IRON ROD SET AT A DISTANCE OF 6.00 FEET;

THENCE SOUTH 07 DEGREES 11 MINUTES 49 SECONDS EAST A DISTANCE OF 161.42 FEET TO AN IRON ROD SET IN THE SOUTHERLY LINE OF SAID LANDS NOW OR FORMERLY OWNED BY KENT DOWNTOWN COMMUNITY URBAN REDEVELOPMENT CORP.;

THENCE ALONG THE SOUTHERLY LINE OF THE SAID LANDS NOW OR FORMERLY OWNED BY KENT DOWNTOWN COMMUNITY URBAN REDEVELOPMENT CORP. NORTH 86 DEGREES 43 MINUTES 27 SECONDS WEST A DISTANCE OF 123.30 FEET BUT TO AN IRON ROD FOUND IN THE EASTERLY LINE OF GOUGLER AVE. AT THE SOUTHWEST CORNER OF SAID LANDS NOW OR FORMERLY OWNED BY KENT DOWNTOWN COMMUNITY URBAN REDEVELOPMENT CORP.;

THENCE ALONG THE EASTERLY LINE OF GOUGLER AVENUE NORTH 03 DEGREES 49 MINUTES 48 SECONDS EAST A DISTANCE OF 59.62 FEET TO AN ANGLE IN SAID EASTERLY LINE;

THENCE CONTINUING ALONG THE EASTERLY LINE OF GOUGLER AVENUE NORTH 05 DEGREES 29 MINUTES 07 SECONDS WEST A DISTANCE OF 123.08 FEET BUT TO THE TRUE PLACE OF BEGINNING AND CONTAINING A TOTAL OF 0.4783 ACRES OF LAND BE THE SAME MORE OR LESS AS SURVEYED AND DESCRIBED IN MARCH 2003 BY DON TROCCHIO REGISTERED SURVEYOR NO.6445;

NOTE: BEARINGS USED ARE GRID NORTH, NAD83 OHIO STATE PLANE RECTANGULAR COORDINATES, NORTH ZONE

EXHIBIT "D"

FORM OF MEMORANDUM OF LEASE

**PREPARED BY AND WHEN
RECORDED RETURN TO:**

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is by and between the CITY OF KENT, Ohio ("**Landlord**") and RFK 315, LLC, an Ohio limited liability company ("**Tenant**"), pursuant to which Landlord has demised, and by these presents does demise, to Tenant, and Tenant has accepted, and by these presents does accept, such demise from Landlord, the Leased Premises (defined below) upon the following terms:

Date of Lease: _____, 2017

Description of Leased Premises: See attached Exhibit "A".

Lease Commencement Date: _____, 2017

Expiration Date: _____, 2092 subject to the renewal options set forth below.

Term: Seventy-Five (75) years from the Lease Commencement Date.

Renewal Options: Tenant shall have the option to extend the Term of the Lease for one additional term of up to twenty-four (24) years.

Parking: Landlord shall manage the Surface Parking Lot so that the entire lot is available for parking of employees working at the Lessee's property (LN Gross building) Premises Monday through Friday from 7:00 a.m. through 6:00 p.m., without charge to the employees, and, thereafter, is available for parking for other public users. The Landlord may make ten (10) parking free places available to individual employees on a periodic basis, which will be automatically renewable as long as the employee continues to work at the Leased Premises on evenings and weekends and holidays as needed.

This Memorandum of Lease contains only selected provisions of the Lease, and reference is made to the full text of the Lease for the full terms and conditions. This Memorandum of Lease shall not in any way amend or supersede the terms and conditions of the Lease. The purpose of this Memorandum of Lease is to give record notice of the Lease and of the rights created thereby, all of which are hereby confirmed.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the dates set forth in their respective acknowledgments.

LANDLORD:

CITY OF KENT, OHIO

By: _____
Its: David Ruller, City Manager

Date: _____, 2017

STATE OF OHIO)
)SS:
COUNTY OF PORTAGE)

BEFORE ME, a Notary Public in and for said County and State, personally appeared DAVID RULLER, the City Manager of the City of Kent, Ohio, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed, personally on behalf of the City.

IN WITNESS WHEREOF, I have hereunto set my official hand and seal at City of Kent, this _____ day of _____, 2017.

Notary Public

TENANT:

RFK 315, LLC
an Ohio Limited Liability Company

By: _____
Its: Authorized Member

Date: _____, 2017

STATE OF OHIO)
)SS:
COUNTY OF PORTAGE)

BEFORE ME, a Notary Public in and for said County and State, personally appeared _____, its Authorized Member of RFK 315, LLC, an Ohio limited liability company, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed, personally on behalf of the City.

IN WITNESS WHEREOF, I have hereunto set my official hand and seal at City of Kent, this _____ day of _____, 2017.

Notary Public



City of Kent

Community Development Department
930 Overholt Rd., Kent, OH 44240-7551
Phone: 330-678-8107 Fax: 330-678-8030
www.kentohio.org



EXHIBIT "E" CERTIFICATE OF COMPLETION

PERMIT NUMBER: _____

DATE ISSUED: _____

PERMIT TYPE: PARKING LOT CONSTRUCTION

CERTIFICATE OF COMPLETION ISSUED: _____

PROJECT DESCRIPTION: PARKING, ACCESS AND LOADING AREAS

PROPERTY ADDRESS: _____

PARCEL OWNER: 315 RFK, LLC

PARCEL #: _____ & 17-025-30-00-002-000

SPECIAL CONDITIONS AND REQUIREMENTS:

- 1) NONE

This Certificate represents an approval that is valid only when the parking, access and loading facilities are used as stated.

Approved:

_____ Date

LEASE OF LAND FOR PRIVATE REDEVELOPMENT

This LEASE FOR LAND FOR PRIVATE REDEVELOPMENT (including all Exhibits appended hereto, the "Lease") made and entered into as of this _____ day of _____, 2017 by and between the CITY OF KENT, OHIO, a municipal corporation duly existing under and by virtue of the constitution and laws of the State of Ohio (hereinafter referred to as the "City"), and 315RFK, LLC, an Ohio limited liability company, organized and existing under the laws of the State of Ohio, with a mailing address of _____ (hereinafter referred to as the "Lessee").

WITNESSETH:

WHEREAS, the City has undertaken a program for the clearance and redevelopment of blighted areas in the City to help re-develop areas of the City; and

WHEREAS, for the purpose of carrying out the redevelopment plan, the City has acquired certain real property, including the property that is described on **Exhibit A** and **A1** hereto (the "Site") (two (2) parcels); and

WHEREAS, the City believes that the redevelopment of the Site with the Project pursuant to this Agreement and the fulfillment generally of this Agreement are in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and are necessary to eliminate blighted conditions and prevent the recurrence thereof to provide for the productive development and reuse of property, to provide for the creation of jobs and employment opportunities, and to improve the economic and general welfare of the people of the City; and

WHEREAS, the Lessee is an Ohio limited liability company; and

WHEREAS, the parties hereto have determined it to be in their mutual best interest that the City lease the entire Site to the Lessee and the Lessee construct the Project and that title to the Project shall be in the Lessee.

NOW THEREFORE, in consideration of the promises and covenants contained in this Lease, the parties agree as follows:

Section 1. Ground Lease of the Site; Title; Term.

A. i) Ground Lease of the Site. The conditions of this Lease are such that, if the Lessee constructs and maintains parking lots and access drives on the parcels located on both sides of Gougler Avenue as discussed in the Construction Agreement and approved site plans for these sites, within two (2) years of the date this document is executed, having been satisfied, the City does hereby lease to the Lessee, and the Lessee does hereby lease from the City, the Sites, upon and subject to the terms, conditions and covenants contained in this Lease. The Construction Agreement will be prepared by the City's Community Development Department. EXCEPT AS OTHERWISE SET FORTH IN SECTION 3.D, THE LESSEE ACKNOWLEDGES AND AGREES THAT THE LESSEE WILL BE LEASING THE SITE "AS IS", "WHERE IS," BASED SOLELY AND EXCLUSIVELY IN RELIANCE ON THE LESSEE'S OWN INVESTIGATIONS, TESTING AND DUE DILIGENCE, ALL OF WHICH THE LESSEE AGREES AS OF THE DATE OF THIS LEASE, THE LESSEE HAS CONCLUDED TO ITS COMPLETE

SATISFACTION. THE LESSEE FURTHER ACKNOWLEDGES AND AGREES THAT THE RENT AND OTHER PROVISIONS OF THIS LEASE REFLECT THE FACT THAT EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS LEASE OR IN THE CONSTRUCTION AGREEMENT, THE CITY IS NOT MAKING ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SITE OR THE CONDITION OF THE SITE, INCLUDING COMPLIANCE OR NON- COMPLIANCE WITH ZONING OR OTHER LAWS OR THE ENVIRONMENTAL CONDITION OF THE SITE, EXCEPT AS EXPRESSLY SET FORTH IN SECTION 3.D.7. HEREOF. SUBJECT TO SECTION 3.D HEREOF, THE LESSEE, ON ITS OWN BEHALF, AND ON BEHALF OF ANY SUBSEQUENT TENANTS, SUBTENANTS, OWNERS OR OCCUPANTS OF THE SITE, THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, HEREBY RELEASES AND DISCHARGES THE CITY FROM ANY AND ALL LIABILITIES OR OBLIGATIONS WITH RESPECT TO THE SITE OR CONDITION OF THE SITE, INCLUDING, WITHOUT LIMITATION, ANY ENVIRONMENTAL MATTERS PERTAINING TO OR AFFECTING THE SITE, AND THE LESSEE FURTHER COVENANTS AND AGREES, ON ITS BEHALF AND ON BEHALF OF ANY SUBSEQUENT PURCHASERS OF THE SITE, ITS SUCCESSORS AND ASSIGNS, NOT TO SUE THE CITY RELATING TO ANY CONDITION OF THE SITE, INCLUDING BUT NOT LIMITED TO ANYTHING RELATED TO THE ENVIRONMENTAL CONDITION OF THE SITE.

ii. As a further condition of this Lease, Lessee shall make the parking lot on the parcel on the west side of Gougler Avenue, open to free public parking from 5:00 p.m. until 3:00 a.m. on workday weekdays and all day on weekends and holidays. Signage for this parking lot and enforcement protocol will be addressed in a separate Memorandum of Understanding between the parties.

B. Rent. The consideration for this Lease shall be the payment of annual rent to the City Director of Budget and Finance at the Lease Term Commencement Date (as hereinafter defined) in the amount of \$1 per year, plus the amount in the following paragraph, and in addition thereto the covenants of the Lessee contained in this Lease. The Lessee may pre-pay the rent due for the initial term of the Lease. As used herein, "rent" means the annual fixed rent stated above and in the following paragraph, together with any and all other charges and amounts which Lessee is obligated to pay to the City under this Lease from time to time. The City and the Lessee acknowledge and agree that both parties intend that this Lease shall be and constitute what is generally referred to in the real estate industry as a "triple net" or "absolute net" lease, such that the Lessee shall be obligated hereunder to pay all costs and expenses incurred with respect to, and associated with, the Site and all buildings, improvements, and personal property situated thereon from time to time during the term hereof, including, without limitation, all taxes, payments in lieu of taxes (including Service Payments) and special and general assessments, utility charges, insurance costs, maintenance costs and repair, replacement and restoration expenses (in accordance with and subject to the terms and conditions more particularly herein provided), together with any and all other assessments, charges, costs and expenses of any kind or nature whatsoever related to, or associated with, the Property and the use, development, redevelopment, occupation or operation thereof (hereinafter sometimes, together with rent, collectively referred to as "Monetary Obligations"). Except to the extent otherwise expressly provided in this Lease, it is agreed and intended that rent payable hereunder by the Lessee shall be paid without notice, demand, counterclaim, set off, deduction or defense and without abatement, suspension, deferment, diminution or reduction. Except as specifically set forth in this Lease, under no circumstances or

conditions shall the City be expected or required to make any payment of any kind hereunder or have any obligations with respect to the use, possession, control, maintenance, alteration, rebuilding, replacing, repair, restoration or operation of all or any part of the Site or any buildings or improvements or personal property situated thereon, from time to time, so long as the Site or any part thereof is subject to this Lease and the Construction Agreement, and, except as specifically set forth in this Lease, the Lessee expressly waives the right to perform any such action at the expense of the City.

C. Title. The City leases the Site to the Lessee free and clear of all liens and encumbrances, except for the following:

- 1) Such easements as are needed for City public improvements or necessary public utility service, all of which easements shall either be set forth in **Exhibit C** attached hereto, or shall otherwise be such easements as are mutually acceptable to and agreed to in writing by the parties after the date of this Lease; and any such easements for the benefit of the City shall be free and clear of all liens and encumbrances, except for such title exceptions as are approved by the Director of Law of the City, and the City shall be entitled to receive prior to the Lease Term Commencement Date hereunder such title insurance or other title evidence evidencing such priority of said easements as is satisfactory to the City;
- 2) The covenants contained herein which are by the terms of this Lease required to be covenants running with the land;
- 3) Unpaid taxes, payments in lieu of taxes and assessments not delinquent;
- 4) Matters created, suffered or permitted by or through the Lessee;
- 5) Roads, highways and other public rights of way and public improvements, whether now existing or hereafter created;
- 6) Zoning, land use and other governmental laws, rules and regulations;
- 7) Any matters that would be shown by an accurate survey and inspection of the Site;
- 8) Easements, covenants, conditions and restrictions of record and environmental remediation easement rights, if any;
- 9) Such of the Title Company's standard printed exceptions that have not been deleted pursuant to agreement with the Lessee;
- 10) Easements, covenants, conditions and restrictions of record;
- 11) Any other Permitted Encumbrances listed in **Exhibit C** attached hereto.

Concurrently with the execution and delivery of this Lease, Lessee has obtained a leasehold owner's policy of title insurance issued by First American Title Insurance Company, or such other title insurance company selected by Lessee and acceptable to the City (the "Title Company"), in its

usual and customary form, insuring in the Lessee in the amount specified by the Lessee good leasehold title in the Site, subject to the foregoing exceptions, free and clear of all liens, encumbrances, restrictions, reservations, easements, agreements, limitations and conditions of record except those created or permitted by this Lease.

D. Recordation of Memorandum of Lease. The Lessee shall promptly file a mutually satisfactory Memorandum of Lease, substantially in the form attached hereto as **Exhibit D**, in the real estate records of the Office of the County Recorder of Portage County, Ohio. The Lessee shall pay all costs for so recording the Memorandum of Lease.

E. Lease Term Commencement Date; Term. The initial term of this Lease shall commence on the date this Lease has been fully signed by both parties hereto (hereinafter referred to as the "Lease Term Commencement Date" or "Commencement Date"). The Lessee shall have the right to possession and occupancy of the Site on the Lease Term Commencement Date. Unless earlier terminated in accordance with the applicable provisions of this Lease, the initial term of this Lease shall expire on midnight of that date occurring seventy-five (75) years from and after the Lease Term Commencement Date. Provided that no event of default, or condition, state of facts or circumstance which, with the giving of notice, passage of time or both would constitute an event of default, has occurred and is then continuing under this Lease, the Lessee may at its option extend the term of the Lease for one additional term of up to twenty- four (24) years upon all the same terms and conditions contained herein, or as hereafter amended, by giving the City written notice one hundred eighty (180) days prior to the expiration of the then current term.

F. Apportionment of Taxes. Current Year. The portion of the real estate taxes, payments in lieu of taxes and assessments, if any, for the tax year in which the term of this Lease commences shall be apportioned between the City and the Lessee on a calendar year basis as of the date hereof. If the amount of such taxes and payments is not ascertainable on such date, the apportionment between the City and the Lessee shall be on the basis of the total year's tax allocable to the Site determined by multiplying the valuation of the Site as it appears on the last available County Treasurer's tax duplicate by the most recent tax rate; provided, however, that such apportionment shall be subject to final adjustment within thirty (30) days after the date the actual amount of such taxes and payments is ascertained.

Prior Years. Outstanding real estate taxes, payments in lieu of taxes and assessments for the prior years, if any, shall be paid by the City.

Section 2. Project Plans; Construction of Project.

A. Project Plans. Consistent with the Construction Agreement, the Lessee shall submit to the City improvement plans for the parking lots to be constructed, said plans attached hereto as **Exhibit B** and made a part hereof, and the plans shall have to be City approved.

Prior to commencement of construction of the parking lots that are part of the Project (referred to herein as "each phase of the project"), the Lessee shall obtain such building permits or other construction permits as are required for construction of each phase of the Project.

If the Lessee desires to make any material change in the content of any of the Project Plans after they are approved by the City, the Lessee shall submit the proposed change to the City for its review and approval pursuant to the Construction Agreement. Any disapproval of such change by

the City shall be made in writing (setting forth details) to the Lessee. No material changes shall be made in the City-approved Project Plans without obtaining City review and approval.

B. Commencement and Completion of the Project. The Lessee shall construct the Project as described in **Exhibit B** hereto at its sole cost and expense. The Lessee agrees to construct and complete the Project in accordance with (i) the Lessee's Project Plans, previously or hereafter approved by the City, (ii) the requirements of the Construction Agreement and this Lease, and (iii) the requirements of all applicable federal, state and local laws and regulations. The Lessee shall commence construction of the parking lots within ninety (90) days following the signing by all parties of this Lease. After commencement of each phase of the Project, Lessee shall diligently proceed to complete and carry out the construction of each phase of the Project and Lessee shall have completed the construction of the Project, as described in paragraph **D** below for each phase of the Project by twenty four (24) months from the date of commencement of construction of each phase of the Project; provided that, so long as the Lessee is diligently proceeding to complete each phase of the Project, said time for completion may be extended up to five (5) additional months. Completion of construction for this Section shall occur upon the parking lots being ready for use.

C. Construction Inspector; Progress Reports. The Lessee shall, at its own expense, retain a construction inspector satisfactory to the City or its Project financing mortgagee(s) to serve as an independent construction inspector ("Construction Inspector") to inspect the construction of the parking lots, until the parking lots have been completed.

Commencing one (1) month after execution of this Lease by both parties, and monthly thereafter until construction of the Project has been completed, the Lessee or the Construction Inspector shall make reports to the City, in such detail as may reasonably be requested by the City and in such form as is commonly used in the construction industry, as to the actual progress of the Lessee with respect to construction of the parking lots.

D. Certificate of Completion.

- 1) Promptly after completion of the Project, in accordance with this Lease, upon request of the Lessee, the City will furnish the Lessee with an appropriate instrument (substantially in the form of **Exhibit E** attached hereto) so certifying. The certification by the City shall be a conclusive determination of satisfaction and termination of those covenants in this Lease with respect to the obligations of the Lessee and its successors and assigns to construct the parking lots, and the dates for the beginning and completion thereof.
- 2) If the City shall refuse or fail to provide the certification in accordance with the provisions of this Section, the City shall, within fifteen (15) days after written request by the Lessee, provide the Lessee with a written statement, indicating in adequate detail in what respects the Lessee has failed to complete the Project in accordance with the provisions of this Lease, or is otherwise in default, and what measures or acts it will be necessary, in the opinion of the City, for the Lessee to take or perform in order to obtain such certification.

- 3) The certificate of completion provided for in this Section may be given on behalf of the City by the City Manager of the City, or his/her designee.

Section 3. Use of the Property; Operation, Maintenance, Replacement and Repair of Improvements.

A. Urban Renewal Plan Restrictions. The Lessee hereby agrees for itself, and its successors and assigns, and every successor in interest to the Property, or any part thereof, that the Lessee and such successors and assigns, shall:

- 1) Use, develop and redevelop the Property in accordance with this Lease and the Construction Agreement;
- 2) Not discriminate upon the basis of race, color, religion, sex, age, handicap, national origin, gender identity, sexual orientation, familial status or military status in the lease or rental, or the use or occupancy, of the Property, or any part thereof.

It is intended and agreed that the covenants provided in this Section 3(A) shall be deemed to be covenants running with the land, and shall be included in any future deed by the Lessee should the Lessee hereafter acquire fee title to the Site and/or seek to convey title to the Property or a portion thereof, and that they shall in any event, and except only as otherwise specifically provided in this Lease and without regard to technical classification or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the City, its successors and assigns, against the Lessee, its successors and assigns to the Property, or any part of thereof, or any party in possession or occupancy of the Property, or any part of thereof, including without limitation any grantee in a conveyance of the Property, or any part of thereof or interest therein through judicial process, and whether or not this Lease remains in effect or whether or not such provision is included in any succeeding agreement with the Lessee or its successors or assigns.

B. Compliance with Laws. The Lessee agrees that it will not use or occupy the Property or any part thereof, or cause or authorize the Property, or any part thereof to be used or occupied, for any purposes other than lawful purposes, or in any manner which would violate any applicable Governmental Requirements. The Lessee's construction, use and operation of the Property shall be in compliance with Governmental Requirements throughout the Term. As used herein, "Governmental Requirements" means all generally applicable laws, rules, regulations, orders and ordinances of any and all entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies or authorities of any nature whatsoever of any governmental unit (federal, State, county, municipal, or otherwise) whether now or hereafter in existence, having jurisdiction over the Site; subject to Lessee's right to contest the same or the applicability thereof to the Project.

C. Lessee Responsible for Maintenance, Repair and Replacement. Except as otherwise provided herein, from and after the Lease Term Commencement Date, the Lessee shall at its own expense, keep and maintain, or cause to be kept and maintained, the Site and all buildings and improvements constructed thereon in good order and condition, ordinary wear and tear excepted, and in compliance with Governmental Requirements, and make all necessary repairs and

replacements thereto, foreseen or unforeseen, ordinary or extraordinary. The Lessee shall not commit any act of waste upon or in respect of the Site and shall take reasonable steps to prevent others from doing so. In the event the Lessee fails to so maintain the Site and the buildings and improvements thereon in accordance with this section, and such failure shall be determined by the City to result in an Emergency Condition (as defined below), the City may (but shall not be required to), with or without prior notice to the Lessee, perform any maintenance, repairs and replacements deemed reasonably necessary or appropriate by the City to abate such Emergency Condition, and the Lessee agrees to reimburse the City, as additional rent, for the reasonable cost thereof promptly upon demand. The Lessee shall be responsible for all construction, operation, maintenance, repair and management of the Project. The Lessee shall keep the Site or cause the Site to be kept clean, neat and orderly at all times and shall provide at its own expense complete and proper arrangements for the sanitary handling of all trash, garbage and other refuse resulting from operations on the Site. As used herein, "Emergency Condition" means a condition dangerous to human health or safety or presenting a risk of material damage to property.

The Lessee shall promptly repair, rebuild, restore and replace all damage to the Property and, unless otherwise agreed in writing by the City, the Lessee shall promptly use all proceeds, of property insurance received relating to claims with respect to the Property to repair, rebuild restore or replace all damage to the Property or to personal property located at the Site.

The Lessee shall be responsible for maintaining the security of the Site. The Lessee shall make no material changes in or additions to the completed Project without obtaining the City's advance approval of the revised Project Plans evidencing any such material change or addition.

D. Environmental Covenants. The Lessee covenants and agrees that it shall use and operate the Property in compliance with all applicable Environmental Laws (as defined in Section 9B hereof) and permits issued pursuant thereto and that it:

- 1) Shall not intentionally release or permit the release of Hazardous Materials (as defined in Section 9(B) hereof) in, on, under or from the Property in violation of Environmental Laws;
- 2) Shall not intentionally introduce Hazardous Materials in, on, or under the Property, except those that are both (a) in compliance with all applicable Environmental Laws and with permits issued pursuant thereto, if and to the extent required and (b) (1) in amounts not in excess of that reasonably necessary to operate on the Property and (2) fully disclosed to and approved by the City in writing; provided, however, that Lessee shall not be required to disclose to the City for approval in accordance with this clause (b) ordinary office and janitorial supplies (such as copier toner, liquid paper, glue, ink, paint, fluorescent light bulbs and common office cleaning and maintenance products), in quantities not in excess of those used in the usual conduct of business in similar premises, provided, however, that at all times such materials shall be stored, handled, used and disposed of in compliance with all applicable Environmental Laws;
- 3) Shall not permit any other occupants of the Property to violate any applicable Environmental Law;

- 4) Shall immediately notify the City in writing after it has become aware of (a) any presence or release or threatened release of Hazardous Materials in, on, under, from or migrating towards the Property; (b) any non-compliance with any Environmental Laws related in any way to the Property; (c) any required or proposed remediation of environmental conditions relating to the Property; and (d) any written or oral notice or other communication of which the Lessee becomes aware from any source whatsoever (including but not limited to a governmental authority) relating in any way to Hazardous Materials;
- 5) Shall promptly take or cause to be taken all corrective action required to remove any Hazardous Materials introduced to the Property during the term of this Lease by it or any of its agents, employees, contractors, vendors, licensees, or permittees of the Lessee, in compliance with Environmental Laws, such action to include enforcement by the Lessee of any and all of its rights or obligations and those of its agents, employees, contractors, vendors, licensees or permittees, under applicable law or contract;
- 6) Shall not be responsible for correcting any violations of Environmental Laws resulting from any acts of any party that is not its agent, employee, contractor, vendor, licensee, or permittee; provided, however that it shall enforce against any such other party any and all of its rights or obligations and those of its agents, employees, contractors, vendors, licensees or permittees, under applicable law or contract with respect to any such violations of Environmental Laws; and
- 7) Shall not be responsible for correcting any violations of Environmental Laws resulting from any acts of the other party or any other party or those existing on the Site prior to the commencement of its possession or control of the Site, except to the extent that Lessee or any agent, employee, contractor, vendor, licensee, or permittee of Lessee shall exacerbate or contribute to such conditions.

Section 4. Taxes; Payments in Lieu of Taxes; Other Charges.

A. Taxes and Other Charges. The Lessee shall be obligated to pay or cause payment of any and all taxes, payments in lieu of taxes (including Service Payments), assessments, whether general or special, and governmental charges, water, sewer and other utility fees, rents, rates and similar charges, and all license or permit fees, and any other costs which become due and payable with respect to the Property on and after the Lease Term Commencement Date. The Lessee shall make or shall cause the making of such payments directly to the billing authority, or, shall reimburse the City within thirty (30) days after billing from the City, in the event such direct payments are infeasible, or in the event City has advanced the payment of any such taxes, payments in lieu of taxes, special assessments, utility fees or other charges. All amounts billed to Lessee shall bear interest from the date due until paid at a rate equal to eight percent (8%) per annum.

B. Access to the Property; Maintaining Records and Rights to Inspect. The Lessee agrees that any duly authorized representative of the City shall, at all reasonable times, subject to reasonable safety and security regulations and so as to not unreasonably interfere with operation and use of the Property, have the right to enter and inspect the Site. Such right to enter and inspect under this Section does not include access to the interior of the buildings, other than as permitted by law. Reasonable notice of any such entry shall be given to the Lessee. The Lessee and other user of the Property shall have the right to have a representative in attendance at any such inspection.

Section 5. Quiet Enjoyment.

The City represents that it is the owner in fee simple of the Site, subject to the encumbrances identified in Section 1(c) of this Lease, and hereby covenants that the Lessee, on paying the rent and performing all and singular the covenants and conditions of this Lease on its part to be performed, shall and may peaceably and quietly have, hold and enjoy the Site for the term of this Lease and for the uses aforesaid, and for the term of any renewal or renewals hereof, subject to the exceptions set forth in this Lease, free from molestation, eviction or destruction by the City, or by any other person or persons lawfully claiming the same by, through or under the City, and that the City has good right to make this Lease for the full term of the Lease hereby granted, including the period for which the Lessee has the right to effect a renewal hereof.

Section 6. Prohibition Against Transfer of Leasehold Interest and Assignment of Lease.

Except only with respect to an assignment of leases and rents as security for the purposes of obtaining financing necessary (i) to enable the Lessee to perform its obligations with respect to leasing and constructing the Project under this Lease, (ii) to construct additional improvements or "build out" for future tenant use, (iii) to obtain permanent financing for such purposes, and (iv) for any other purpose expressly permitted by this Lease, the Lessee represents and agrees for itself and its successors and assigns, the Lessee will not make or create or permit to be made or created any total or partial sale, assignment or sublease (except for lease of space to tenants), or transfer in any other form with respect to the Property, the Project or this Lease, without the prior written approval of the City, which approval shall not be unreasonably withheld, delayed or conditioned, provided that such transaction for which the City approval is sought must be after the earlier of (a) three (3) years following the completion of construction of the Project, as determined in Sections **2B** and **2D** of this Lease, or (b) a date following such completion of construction.

The Lessee agrees not to enter into any leases of the Property or portions thereof for the uses of a driveway, parking and/or loading area, hereto, unless otherwise agreed upon in advance by the City Manager.

In the absence of a written agreement by the City to the contrary, no such transfer or approval by the City of any transfer shall be deemed to relieve the Lessee, or any other party bound in any way by this Lease or otherwise with respect to the construction of the Project, or the making of Service Payments hereunder, from any of its obligations with respect thereto. If Lessee sells, assigns or otherwise transfers its leasehold interest in the Property, the City agrees that Lessee shall thereafter have no liability to it under this Lease or any modification or amendment thereof or renewal thereof, except for such liability as may have

accrued prior to the date of such assignment, sale and/or transfer, so long as such assignment is approved by the City by a written agreement and so long as that transferee has assumed the obligations of the Lessee under this Lease in writing.

Section 7. Prohibition Against Transfer of Interests in the Lessee.

The Lessee acknowledges that the identity of the principals who have membership interests in and control the Lessee are important considerations to the City in entering into this Lease with the Lessee. RFK 315, LLC, has a one hundred percent (100%) membership interest in this Lease.

The Lessee represents and agrees for itself, its members, and any successor in interest to itself and its members, respectively, that (i) for the period commencing on the date of this Lease and ending the earlier of (a) three (3) years following the completion of construction of the Project, as determined in Sections 2B and 2D of this Lease, or (b) a date following such completion of construction, (ii) without the prior written approval of the City, (iii) except for proper estate planning purposes, there shall be no voluntary transfer by any member having a twenty percent (20%) or more membership interest in the Lessee, nor shall any such member suffer or permit such transfer to be made, or be suffered to be made by the Lessee or by any member having a twenty percent (20%) membership interest therein, any other similarly significant change in the membership interests or the relative distribution thereof, or with respect to the identity of the members in control of the Lessee or the degree thereof, by any other method or means.

Section 8. Permitted Mortgages.

A. No Mortgage on Fee Interest. Neither the Lessee nor any successor shall engage in any financing or any other transaction creating any mortgage or other lien or encumbrance upon the City's fee interest in the Site or any part thereof.

B. Permitted Leasehold Mortgagee Protection.

- 1) The City understands and acknowledges that the Lessee may enter into one or more leasehold mortgage (collectively, "Mortgage") with an institutional lender to finance or refinance the construction costs of the Project on the Site, and that such Mortgage will be recorded against Lessee's leasehold interest in the Site (but not against City's fee simple title therein) in the real property records of Portage County, Ohio. Prior to recordation of such Mortgage, Lessee shall provide City with a true and accurate copies of such Mortgage and all of the loan documents which it secures. No terms of such Mortgage may modify or conflict with the terms of this Lease. Such Mortgage, and any refinancing thereof, shall be referred to herein as the "Permitted Leasehold Mortgage" and each holder thereof shall be referred to herein as the "Permitted Leasehold Mortgagee". The outstanding principal balance of the Permitted Leasehold Mortgage or of any refinancing thereof may exceed the total construction costs of the Project.

- 2) The City and Lessee agree that so long as the Permitted Leasehold Mortgage, or any refinancing thereof, is a lien on Lessee's estate in the Property, the Permitted Leasehold Mortgagee shall have all of the rights set forth below:
- (i) If the City shall give any notice, demand, election, or other communication (hereafter referred to as "Messages") to Lessee hereunder, the City shall use its best efforts to deliver a copy of each such Message to the Permitted Leasehold Mortgagee at the address theretofore designated by the Permitted Leasehold Mortgagee. Such copies of Messages shall be sent by registered or certified mail, return receipt requested, and shall be deemed given three (3) days after a copy is deposited in a United States Post Office with postage charges prepaid, enclosed in a securely sealed envelope addressed to the Permitted Leasehold Mortgagee. No Message given by the City to Lessee shall be binding upon or affect said Permitted Leasehold Mortgagee unless a copy of said Message shall be given to the Permitted Leasehold Mortgagee pursuant to this subparagraph (i). In the case of an assignment of said mortgage or change in address of the Permitted Leasehold Mortgagee, such assignee or Permitted Leasehold Mortgagee, by written notice to the City, may change the address to which such copies of Messages are to be sent. The City shall not be bound to recognize any assignment of said mortgage unless and until the City shall be given written notice of such assignment and the name and address of the assignee, and thereafter such assignee shall be deemed to be the Permitted Leasehold Mortgagee under this Section. If said Permitted Leasehold Mortgagee is held by more than one person, corporation, or other entity, the Permitted Leasehold Mortgagee shall designate in writing one (1) of their number to receive all such Messages and copies of Messages and shall have given to the City an original executed counterpart of such designation in form proper for recording.
 - (ii) Upon any default by Lessee under the provisions of this Lease, the Permitted Leasehold Mortgagee will have the same concurrent grace periods as are given Lessee for remedying such default or causing it to be remedied, plus, in each case, an additional period of thirty (30) days of grace after the City has served a notice or a copy of a notice of such default upon the Permitted Leasehold Mortgagee. The City shall not take any action or institute any process to evict Lessee or to terminate this Lease for such default until expiration of the additional period of thirty (30) days of grace accorded to the Permitted Leasehold Mortgagee under this subparagraph (ii).

- (iii) Upon any default by Lessee under any of the provisions of this Lease, the Permitted Leasehold Mortgagee, without prejudice to its rights against Lessee, shall have the right to make good such default within the applicable grace periods provided for in the preceding subparagraph of this Section whether the same consists of the failure to pay rent or Monetary Obligations or the failure to perform any other matter or thing which Lessee is hereby required to do or perform, and the City shall accept such performance on the part of the Permitted Leasehold Mortgagee as though the same had been done or performed by Lessee. For such purpose, the City and Lessee hereby authorize the Permitted Leasehold Mortgagee to enter upon the Site and to exercise any of the Lessee's rights and powers under this Lease, and subject to the provisions of this Lease, under the Permitted Leasehold Mortgage.
- (iv) Lessee may delegate irrevocably to said Permitted Leasehold Mortgagee the authority to exercise any or all of Lessee's rights hereunder, but no such delegation shall be binding upon the City unless and until either Lessee or said Permitted Leasehold Mortgagee shall give to the City a true copy of a written instrument effecting such delegation. Such delegation of authority may be effected by the terms of the Permitted Leasehold Mortgage itself, in which case the service upon the City of an executed counterpart or certified copy of the Permitted Leasehold Mortgage, in accordance with this Section, together with a written notice specifying the provisions therein which delegate such authority to said Permitted Leasehold Mortgagee, shall be sufficient to give the City notice of such delegation.
- (v) The term "Incurable Default" as used herein means any non-monetary Event of Default which cannot be reasonably cured by the Permitted Leasehold Mortgagee. The term "Curable Default" means any default under this Lease which can be cured by the payment of money or can otherwise be reasonably cured by the Permitted Leasehold Mortgagee. In the event of any monetary Curable Default under this Lease, if prior to the expiration of the applicable grace period specified in this Article, the Permitted Leasehold Mortgagee shall pay the delinquent amount within the applicable grace period, then the City will not terminate or take any action to effect a termination of this Lease or re-enter, take possession of, or re-let the Site or similarly enforce performance of this Lease on the basis of such default by Lessee. In the event of any non-monetary Curable Default under this Lease, if prior to the expiration of the applicable grace period specified in this Section, the Permitted Leasehold Mortgagee gives the City written notice that it intends to undertake the curing of such non-monetary default, or to cause the same to be cured, then the City will not terminate or take any action to effect a termination of this Lease or re-enter, take possession of, or re-let the Site or similarly enforce performance of this Lease, so long as the

Permitted Leasehold Mortgagee is, with all due diligence and in good faith, engaged in the curing of such non-monetary default, or effecting such foreclosure; provided, however, that the Permitted Leasehold Mortgagee shall not be required to continue such possession or continue such foreclosure proceedings if such default shall be cured.

- (vi) In the event that this Lease is terminated by the City on account of any Incurable Default, or in the event Lessee's interest under this Lease shall be sold, assigned, or transferred pursuant to the exercise of any remedy of the Permitted Leasehold Mortgagee, or pursuant to any realization on the Permitted Leasehold Mortgage under non-judicial or judicial proceedings, or in the event that this Lease is terminated by the rejection thereof in a bankruptcy of Lessee, then the City, within thirty (30) days after receiving from the Permitted Leasehold Mortgagee a written request therefor, which notice shall be given within thirty (30) days after such termination or transfer, and upon payment to the City of all of its expenses relating to the transfer or termination, including attorney's fees incident thereto, and upon payment of all unpaid Monetary Obligations, including Service Payments, that would have been payable by Lessee under the Lease but for its termination or transfer, will execute and deliver a new lease of the Site to the Permitted Leasehold Mortgagee or its nominee or to the purchaser, assignee, or transferee, as the case may be, for the remainder of the original term of this Lease, containing the same covenants, agreements, terms, provisions, and limitations as are contained herein, provided, however, that any nominee or purchaser, assignee, or transferee of the Permitted Leasehold Mortgagee shall provide to the City reasonable evidence of their financial responsibility. Upon the execution and delivery of such new lease, the lessee, in its own name or in the name of the City, may take all appropriate steps as shall be necessary to remove Lessee from the Site. The provisions of this subparagraph (vi) shall survive the termination of this Lease.
- (vii) In the event a default under the Permitted Leasehold Mortgage shall have occurred, the Permitted Leasehold Mortgagee may exercise, with respect to Lessee's leasehold estate under the Site, any right, power, or remedy under the Permitted Leasehold Mortgage, which is not inconsistent with this Lease.
- (viii) This Lease may be assigned, with the consent of the City, which will not be unreasonably withheld, to or by the Permitted Leasehold Mortgagee or its nominee, purchaser, assignee, or transferee, as the case may be, pursuant to foreclosure or similar proceedings, or the sale, assignment, or other transfer of Lessee's leasehold estate under this Lease in lieu of foreclosure. The Permitted Leasehold Mortgagee shall be liable to perform the obligations herein imposed

on Lessee only during the period it is in possession or ownership of the Leasehold Estate created hereby, but any nominee, purchaser, assignee, or transferee shall have rights under this Lease following such foreclosure or similar proceedings only upon executing and delivering to the City an assumption of Lessee's obligations hereunder and providing the City with reasonable evidence of their financial responsibility.

- (ix) No surrender (except a surrender upon the expiration of the term of this Lease or upon termination by the City pursuant and subject to the provisions of this Lease) by Lessee to the City of this Lease, or of the Site, or any part thereof, or of any interest therein, and no termination of this Lease by Lessee, shall be valid or effective, and no material terms hereof may be amended, modified, changed, or canceled without prior written consent of the Permitted Leasehold Mortgagee.
- (x) If any Permitted Leasehold Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Lessee, the times specified in this Section for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition, provided that the Permitted Leasehold Mortgagee shall have fully cured any event of default in the payment of any Monetary Obligations of Lessee under this Lease and shall continue to pay currently those Monetary Obligations as and when the same fall due.
- (xi) The City agrees that the name of the Permitted Leasehold Mortgagee shall be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by Lessee under this Lease. The proceeds from any insurance policies or from any award arising from a condemnation shall be paid to and held by the Permitted Leasehold Mortgagee and distributed pursuant to the provisions of this Lease, except that, as to any portion of such proceeds which is allocable to buildings rather than land, such Permitted Leasehold Mortgagee may reserve the right to apply such portion to the debt secured by its Permitted Leasehold Mortgage. Nothing in this subparagraph (xi) shall relieve the Lessee of any obligation under the further provisions of this Lease to rebuild or restore buildings located on the Site following a condemnation or casualty.
- (xii) Nothing herein contained shall require any Permitted Leasehold Mortgagee to enter into a new lease pursuant to this Section or to cure any default by Lessee referred to above.

- (xiii) The provisions of this Section 8B are for the benefit of, and are to be enforceable, by, the Permitted Leasehold Mortgagee and its successors or assigns.
- (xiv) No Mortgage now or hereafter a lien upon Lessee's leasehold estate under this Lease shall extend to or affect the reversionary interest and fee simple estate of the City in and to the Site or in any manner attach to or affect the Site from and after any expiration or termination of this Lease. The City shall have no personal liability or obligation for the repayment of any loan secured by any Mortgage arising by, through or under Lessee, or for the performance of any obligations under such Mortgage, or any of the other documents or instruments which evidence, govern or secure such loan. In no event shall the City have any obligation to execute any Mortgage arising by, through or under Lessee. In addition, the City shall have no obligation to guarantee any of Lessee's indebtedness or other obligations under such loan.

C. Liens. Except for the Permitted Leasehold Mortgage or any refinancing thereof and except as approved by the City in writing in advance, Lessee shall not grant, place or suffer, or permit to be granted, placed or suffered, against all or any part of Lessee's leasehold estate created hereby, any Mortgage, lien, security interest, pledge, conditional sale contract, claim, charge or encumbrance (whether statutory, contractual or otherwise) and if any of the aforesaid does arise or is asserted, Lessee shall promptly notify the City and shall promptly upon demand by the City and at Lessee's expense, cause same to be bonded over or otherwise released.

D. Bankruptcy. If Lessee's leasehold estate under this Lease is assigned to any person or entity pursuant to the provisions of the "Revised Bankruptcy Act" (Title 11 of the United States Codes 11 U.S.C. §101 et seq.), any and all monies or other consideration payable or otherwise to be delivered in connection with such assignment shall be paid or delivered to the City, shall be and remain the exclusive property of the City, and shall not constitute property of Lessee or of the bankruptcy estate of Lessee within the meaning of the Bankruptcy Code as now or hereafter amended. Any and all monies or other considerations constituting the City's property under this Section not paid or delivered to the City shall be held in trust for the benefit of the City and shall be promptly paid or delivered to the City. Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code, as now or hereafter amended, shall be deemed without further act or deed to have assumed all of the obligations of Lessee arising under this Lease on and after the date of such assignment. This Section does not constitute the consent of the City to any such assignment.

Section 9. Insurance and Indemnification.

A. Insurance. Lessee shall maintain from Lease Term Commencement Date until the date of termination of this Lease the following minimum insurance coverages. Such insurance shall protect Lessee from claims which may arise out of or result from Lessee's activities under this Lease and for which Lessee may be legally liable, whether such operations be by Lessee or by a contractor or by anyone employed directly or indirectly by any of them, or by anyone for whose acts any of them may be liable.

Lessee shall also be responsible for assuring that each of its contractors or subcontractors and anyone employed directly or indirectly by any contractor or subcontractor provide adequate insurance for the work performed or products supplied by it.

- 1) Insurance against loss or damage to the Project and the personal property of Lessee, if any (the "Lessee's Personal Property"), caused by fire and any of the risks covered by insurance of the type now known as "coverage against all risks of physical loss," in an amount equal to one hundred percent (100%) of the replacement cost of the Property and the Lessee's Personal Property, if any, and sufficient to prevent Lessee and the City from becoming co- insurers.
- 2) Comprehensive General Liability Insurance initially in the amount of \$2 million per occurrence and in the aggregate \$10 million, such minimum amount to change over the terms of the Lease to be equal to an amount customary for facilities of that nature in that location at that time, such amounts to be subject to review as requested by the City. Said policy shall also include:
 - (i) Premises/Operations coverage;
 - (ii) Personal Injury coverage;
 - (iii) Liability for independent contractors;
 - (iv) Products/Completed Operations liability insurance: This insurance must be maintained for a period of not less than two years from the completion of the work;
 - (v) Contractual liability coverage insuring the "hold harmless" provisions set forth in this Lease; and
 - (vi) Liability for explosion, collapse and underground property damage.

Said policy shall be written on an "occurrence" basis. The City will accept any combination of primary Comprehensive General Liability Insurance and Excess or Umbrella policies to meet the minimum coverage requirements above.

- 3) Statutory Workers' Compensation coverage in compliance with all applicable state workers' compensation laws to cover all employees furnishing labor under the terms of this Agreement and under the control of Lessee. Employers' Liability coverage initially in the amount of \$5 million will also be included, either under the Workers' Compensation policy or under the Comprehensive General Liability policy (Stop Gap) referenced under Subsection 1 above, such minimum amount to change over the term of the Lease to be equal to an amount that would be customary in that location at the time, such amounts to be subject to review as requested by the City. The Lessee shall provide a copy of a certificate of premium payment from the Industrial Commission and Bureau of Workers' Compensation (as

applicable) for such payment of premiums to the state insurance fund for such statutory worker's compensation coverage.

- 4) During the course of any development or construction of the Project or any other buildings or improvements constructed by or on behalf of Lessee, from time to time, builder's risk insurance against "all risks of physical loss," including collapse and transit coverage, in the amounts set forth in Subsection 1 above. Such insurance may be provided by the policy required in Subsection 1 above.
- 5) If the Project or any other buildings or improvements constructed by or on behalf of Lessee are constructed and are located in a federally designated flood hazard area, flood hazard coverage, in the maximum amount available.
- 6) General Requirements: Lessee shall furnish evidence of such insurance in the form of a certificate (Acord or similar form). Lessee shall provide such proof and obtain approval from the City prior to the commencement date of this Lease. Except as otherwise permitted by the City, the certificate shall provide the following:
 - (i) In the event the insurance should be materially changed or canceled, Lessee will endeavor to provide (30) days' notice of cancellation or material change, but in any case Lessee will provide not less than ten (10) days' notice of cancellation or material change, to the City.
 - (ii) Name the City as an additional insured for coverage required under subsection 1 above, and under subsections 2 and 3 above for claims arising out of activities or operations in conjunction with this Lease and directly attributable to the negligent actions or negligent omissions of Lessee or its managers, members, officers or employees while acting within the scope of employment.
 - (iii) Contain a waiver of subrogation in favor of the City for claims directly attributable to the negligent actions or negligent omissions of Lessee or its managers, members, officers or employees while acting within the scope of employment.
 - (iv) Specific reference to this Lease.
 - (v) Specific reference to any deductibles.
 - (vi) Shall be primary and non-contributing to any insurance possessed or procured by the City and any self-insurance program maintained by the City for claims directly attributable to the negligent actions or negligent omissions of Lessee or its members, managers, officers or employees while acting within the scope of employment.

For insured coverages, an insurance company having less than an A-X rating by The A.M. Best Company will not be considered acceptable. All

certificates are subject to acceptance by the City. Such acceptance shall not unreasonably be withheld, delayed or conditioned.

- 7) Approval by the City: Approval of the insurance by the City shall not relieve or decrease the liability of Lessee hereunder. It is to be understood that the City does not in any way represent that the insurance or the limits of insurance specified herein are sufficient or adequate to protect Lessee's interests or liabilities.

In the event Lessee neglects, refuses or fails to provide the insurance required under this Lease, or if such insurance is canceled for any reason, then, upon notice to Lessee and agreement from Lessee, the City shall have the right but not the duty to procure the same, and cost thereof may, at the option of the City, be deducted from moneys then due or thereafter to become due to Lessee.

Notwithstanding any provision of this Agreement to the contrary, neither the City nor the Lessee shall be liable to the other party or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to property, or any resulting loss of income, even though such loss or damage may have been occasioned by the negligence of any such party, its agents or employees, if and to the extent any such loss or damage is covered or is required to be covered by insurance or self-insurance benefitting the party suffering such loss or damage, and each party shall pay or cause to be paid any deductible amount or self-insured retention with respect to any insurance or self-insurance it is required to carry.

B. Indemnification. On and after the Lease Term Commencement Date, the Lessee shall not do or permit to be done any act or thing upon the Property which may subject the City to any liability by reason of any illegal business or conduct on the Property. The Lessee shall, notwithstanding any insurance obtained by the Lessee for protection of the City, indemnify and save the City harmless, and defend the City at Lessee's expense, from and against any and all liability, fines, suits, claims, demands, actions, costs and expenses of any kind or nature or by anyone whomsoever (including, without limitation, reasonable attorneys' and consultants' fees), attributable to any and all of the following:

- 1) Any personal injury or death or property damage caused by or resulting from, or which happened in or on the Property during, Lessee's use and occupancy of the Property under this Lease, or during any use or occupancy which the Lessee may permit or suffer to be made of the Property, including without limitation the construction, operation, maintenance, repair and replacement of any of the Project;
- 2) Any claims by contractors or their agents in connection with construction of the Project or any further improvements thereon; and

"Environmental Laws" means the Comprehensive Environmental Response, Liability and Compensation Act (42 U.S.C. Sections 8601 et seq.) any so called "superfund" or

"superlien" law, or any other federal, state or local statute, law, regulation, code, ordinance or rule regulating, relating to or imposing liability for any Hazardous Material.

"Hazardous Material" means any hazardous, toxic or dangerous substance, waste or material (including, without limitation, storage or disposal in an underground tank) defined as such in, or for the purpose of, any Environmental Law.

The Lessee agrees to indemnify the City and hold the City harmless from and against any and all claims, demands, losses, cost, expenses, liabilities, suits or damages of whatsoever kind or nature, including interest, assessments and reasonable attorneys' fees, which arise, result from, or in any way relate to a release or a disposal of Hazardous Material at or on the Property in violation of any Environmental Law after the date hereof.

The Lessee further agrees to indemnify the City and hold the City harmless from and against any and all claims, demands, losses, cost, expenses, liabilities, suits or damages of whatsoever kind or nature, including interest, assessments and reasonable attorneys' fees, which arise, result from, or in any way relate to a breach or violation of any such Environmental Law by the Lessee or its employees, agents or any party acting at their direction in relation to the Property, or any failure of the Lessee or its employees, agents or any party acting at their direction, subsequent to the date hereof, to comply fully with any such Environmental Law in relation to the Property.

The Lessee further agrees to indemnify the City and hold the City harmless from and against any and all claims, demands, losses, costs, expenses, liabilities, suits or damages of whatsoever kind or nature, including without limitation interest, assessments of reasonable attorney's fees, construction work stoppages and any cost increases related thereto, which arise out of or result from any violation of any applicable federal, state or local law or regulation relating to the protection and regulation of Wetlands, and including without limitation arising out of or resulting from any fill activities by any person or entity after the date of this Lease. The Lessee's obligation under this indemnification shall include, but not be limited to, indemnification of the City against all actions taken by federal, state or local courts, administrative agencies, and/or other governmental bodies, including any fines levied, and any and all costs associated with an order or directive from any federal, state or local courts, administrative agencies and/or other governmental bodies, requiring restoration, mitigation, or enhancement of any Wetlands or creation of new Wetlands. The foregoing indemnity to the City, and any other indemnity to the City contained in this Lease, shall include indemnification of the City, its officials, employees and contractors.

The Lessee's foregoing covenant to indemnify, save harmless and defend in this Section shall survive the termination of this Lease.

Section 10. Mechanics' and Other Liens.

The Lessee shall not suffer or permit any mechanics' or other liens to be filed or exist against the Property by reason of work, labor, services or materials supplied or claimed to have been supplied to, for, or in connection with the Property or to the Lessee or anyone using the Property or any part thereof through or under the Lessee; provided, however, that if any such liens shall at any time be filed, the Lessee shall, within ninety (90) days after notice of the filing thereof, but subject to the right to contest hereinafter set forth, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. The Lessee shall

have the right, but at no cost and expense to the City, to contest, or permit a sublessee or other user of the Property to contest, the validity or the amount of any such lien by appropriate proceedings timely instituted, unless the City shall notify the Lessee that, in the reasonable opinion of counsel, because of nonpayment of any such items any part of the Property will be subject to imminent loss or forfeiture, in which event the Lessee shall promptly cause such lien to be discharged or bonded off as aforesaid. The City will cooperate fully with the Lessee, but at no expense to the City, in any such contest (except as any such lien is asserted by the City in which event the Lessee shall have the right to contest such lien as if it were the owner of the Property). If the Lessee shall fail to cause such lien to be discharged, or to contest the validity or amount thereof, within the period aforesaid, then, in addition to any other right or remedy of the City, the City may, but shall not be obligated to, discharge the same by deposit or by bonding; Lessee shall within thirty (30) days of the City's written request therefor make payment to the City of such amount as is necessary to reimburse the City for its costs of discharging or bonding off said lien.

On at least a quarterly basis during construction of the Project and upon completion of construction, the Lessee shall provide the City with affidavits from each contractor prior to each payment under a contract certifying that all subcontractors have been paid for work performed to date.

Section 11. Sale of Site.

If no default or condition, state of facts or circumstance which, with the giving of notice, passage of time or both would constitute a default, has occurred and is then continuing under this Lease, the City shall notify the Lessee in writing if the City has determined to sell the Site to other than another governmental entity or a nonprofit corporation at least thirty (30) days prior to engaging in discussions with potential purchasers of the Site. The City agrees to meet with the Lessee, if requested by the Lessee, during that thirty (30) day period to discuss the possible purchase of the Site by the Lessee. Nothing in this Section shall obligate the City to sell the Site to the Lessee nor shall obligate the Lessee to purchase the Site.

Section 12. Remedies.

A. Generally. Except as otherwise provided in this Lease, in the event of any default in or breach of this Lease, or any of its terms or conditions, by either party hereto, such party shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach, and, in any event, within thirty (30) days after delivery of such notice. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations and, in the case of the City, the right in addition to any other remedies to apply the Deposit to and in payment of the damages suffered by it (in the form of loss of tax or payment in lieu of tax revenue from the Property or anticipated improvement thereon or otherwise) as a result of the default or breach.

B. Default by the Lessee; Termination by the City. In the event that:

- 1) The Lessee shall materially default in or violate its obligations with respect to the construction of the Project or the dates for the beginning and

completion thereof, or shall abandon or substantially suspend construction work, and any such default, violation, abandonment, or suspension shall not be cured, ended or remedied within ninety (90) days after written demand by the City so to do; or

- 2) The Lessee shall place on the Property or any part thereof any encumbrance or lien not permitted by this Lease, or shall cause or permit any levy or attachment to be made, or any materialmen's or mechanics' lien, or any other unauthorized encumbrance or lien to attach (but excluding any encumbrance or lien authorized or caused by the City), and such encumbrance or lien shall not have been removed or discharged or provision satisfactory to the City made for such payment, removal, or discharge, within ninety (90) days after written demand by the City so to do; or
- 3) There is, in violation of this Lease, any transfer of the Property or any part thereof, or any assignment or transfer of this Lease, and such violation shall not be cured within ninety (90) days after written demand by the City; or
- 4) There is, in violation of this Lease, any violation of Lessee's environmental covenants herein and such violation shall not be cured (i) within ninety (90) days after written demand by the City or (ii) within one hundred eighty (180) days after written demand by the City only if such violation cannot be reasonably cured within ninety (90) days, as long as the cure is being diligently pursued; or
- 5) The Lessee seeks or becomes subject to the appointment of an administrator, liquidator, conservator, receiver, trustee, or custodian for all or substantially all its assets; or
- 6) The Property or the Lessee's rights or interests therein shall be levied upon or attached under process against the Lessee, and the same shall not be satisfied or dissolved within ninety (90) days after notice from the City to the Lessee to obtain satisfaction or dissolution thereof; or
- 7) The Lessee shall fail to timely pay any Monetary Obligation; or
- 8) There shall be any other substantial failure of Lessee to observe or perform any other terms, conditions or obligations under this Lease;

then the City shall have the right to terminate this Lease and/or to seek any and all remedies at law or in equity upon thirty (30) days' written notice to the Lessee. The City may cure any default of the Lessee, but shall be under no obligation to do so.

C. Other Rights and Remedies of the City; No Waiver by Delay.

The City shall have the right to institute such other actions or proceedings as it may deem desirable for effectuating the purposes of this Section, including without limitation the right to execute and record or file among the public real estate records a written declaration of the termination of the Lease. Any delay by the City in asserting its rights under this Lease shall not

operate as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that the City shall not be constrained, so as to avoid the risk of being deprived or limited in the exercise of the remedy provided in this Lease because of concepts of waiver, laches, or otherwise, to exercise such remedy at a time when it may still hope otherwise to resolve the problems created by the default involved); nor shall any waiver in fact made by the City with respect to any specific default by the Lessee under this Section shall be considered or treated as a waiver of the rights of the City with respect to any other defaults by the Lessee under this Section, or with respect to the particular default except to the extent specifically waived in writing.

D. Force Majeure. Except as otherwise provided herein, neither the City nor the Lessee shall be considered in default in its obligations to be performed hereunder for other than Monetary Obligations, if delay in the performance of such obligations is due to causes beyond its control and without its fault or negligence, including but not limited to, acts of god or of the public enemy, acts of the Federal or state government, acts or delays of the other party, fires, floods, unusually severe weather, epidemics, freight embargoes, unavailability of materials, strikes or delays of contractors, subcontractors or materialmen due to any of such causes; it being the purpose and intent of this paragraph that in the event of the occurrence of any such enforced delay, the time or times for performance of such obligations shall be extended for the period of the delay; provided, however, that the parties seeking the benefit of the provisions of this paragraph shall within thirty (30) days after the beginning of such enforced delay, notify the other party in writing thereof and of the cause thereof and of the duration thereof, or, if a continuing delay and cause, the estimated duration thereof, and if the delay is continuing on the date of notification, within thirty (30) days after the end of the delay, notify the other party in writing of the duration of the delay.

Section 13. Holding Over; Surrender.

A. There shall be no renewal whatsoever of the term of this Lease by operation of law (other than as permitted in Section 1E hereof) as a result of such holding over or continued use by the Lessee after the expiration or termination of this Lease. Any holding over, or continued use or occupancy by the Lessee after the expiration or earlier termination of this Lease, without the written consent and agreement of the City, shall not constitute Lessee a tenant-at-will, but the Lessee shall become a tenant-at-sufferance and liable for rent at the then current market rate together with all other expenses, obligations and payments.

B. Upon the expiration or the termination of the term of this Lease, as the same may be extended pursuant to Section 1E hereof, the Lessee shall quietly and peaceably surrender unto the City all of the Lessee's leasehold interest in and to the Property. Concurrently with such surrender, title to the Project or any other improvements not theretofore vested in the City shall automatically pass to and vest in the City, free of any right or claim of the Lessee. The Lessee shall, at the City's request, execute and deliver any and all deeds, releases, and other instruments which the City reasonably may require in order to establish or confirm such surrender or to ratify and confirm the Lessee's automatic release of all of its right, title, interest and estate in and to the Property. On or prior to such expiration or earlier termination, the Lessee may remove all personal property situated upon the Property. Personal property not removed by the Lessee within ninety (90) days following such expiration or earlier termination shall, at the City's option, become the property of the City.

Section 14. Condemnation.

A. Total or Substantial Condemnation.

In the event of a total condemnation of the Property, this Lease shall automatically terminate as of the date possession of the Property is taken. In the event of a partial or temporary condemnation which so substantially interferes with the use of the Property as to render the continued operation thereof economically unfeasible, as reasonably determined by the Lessee within sixty (60) days following such condemnation, the Lessee may terminate this Lease by giving written notice of termination to the City, and termination shall be effective upon the giving of such notice. If this Lease terminates pursuant to this paragraph, all damages and other compensation for such condemnation shall be apportioned between the City and the Lessee in relationship to the value of the leased land and the value of the buildings thereon to the condemnation proceeds, with the City receiving the value of the leased land and the Lessee receiving the value of any buildings.

B. Partial or Temporary Condemnation.

In the event of a partial or temporary condemnation of all or part of the Property which does not result in the termination of this Lease under paragraph (A) above, the City shall be entitled to all damages and compensation for such condemnation. In such event, this Lease shall continue unaffected and the Lessee shall restore the balance of the Property for use by and operation by the Lessee.

Section 15. Miscellaneous.

A. Notices. A notice, demand, or other communication under this Lease by either party to the other shall be sufficiently given or delivered if it is dispatched by reputable overnight courier registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

- 1) in the case of the Lessee is addressed to or delivered personally to the Lessee at:

with a copy to:

- 2) in the case of the City, is addressed to or delivered personally to the City at:

City of Kent Service Director
930 Overholt Road
Kent, Ohio 44240

with a copy to the Law Director, at:

City of Kent Law Director
319 South Water Street
Kent, Ohio 44240

B. Representatives Not Individually Liable; Successor and Assigns. No member, official, or employee of the City shall be personally liable to the Lessee, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Lessee or successor or on any obligations under the terms of this Lease. The covenants of the parties in this Lease shall be binding upon their respective successors and assigns.

C. Approvals by the City. Any provision of this Lease requiring the approval of the City, the satisfaction or evidence of satisfaction of the City, certificate or certification by the City or the opinion of the City shall be interpreted as requiring action by the City Manager (or such other official as the City Manager may from time to time designate in writing) granting, authorizing or expressing such approval, satisfaction certificate, certification or opinion, as the case may be, unless such provision expressly provides otherwise.

D. Counterparts. This Lease may be executed in several counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument.

E. Estoppel Certificates. The Lessee and the City, as the case may be, shall, at any time and from time to time upon not less than fifteen (15) days prior request by the other party, execute, acknowledge and deliver to such other party a written statement evidencing whether or not (i) this Lease is in full force and effect; (ii) this Lease has been modified or amended and attaching a conformed copy of such modification or amendments and (iii) there are any existing defaults under this Lease to the knowledge of the party executing the certificate and specifying the nature of such defaults.

F. Severability. If any provision of this Lease, or any covenants, stipulation, obligation, agreement, act or action, or part thereof made, assumed, entered into, or taken thereunder or any application thereof, is for any reason held to be illegal or invalid, such illegality or invalidity shall not affect any other provision or any other covenant, stipulation, obligation, agreement, act or action or part thereof, made, assumed, entered into, or taken, each of which shall be construed and enforced as if such illegal or invalid portion were not contained herein, and each other provision, covenant, stipulation, obligation, agreement, act or action, or part shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

G. Captions. The captions and headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Lease.

H. Governing Law. This Lease shall be governed exclusively by and construed in accordance with the laws of the State of Ohio.

I. Complete Agreement. All negotiations, considerations, representations and understandings between the parties as to the Property are incorporated herein and in the Construction Agreement, and may be modified or altered only by agreement in writing signed by both parties to this Lease.

J. No Partnership or Agency. Nothing in this Lease is intended, or shall in any way be construed, so as to create any form of partnership or agency relationship between the parties. The parties hereby expressly disclaim any intention of any kind to create any partnership or agency relationship between themselves. Nothing in this Lease shall be construed to make either party liable for any of the indebtedness of the other.

K. Real Estate Commission. The City and the Lessee each warrant and represent to the other that neither has engaged or dealt with any real estate agent or broker in connection with the transaction contemplated by this Lease.

L. Third Party Rights. Nothing contained in the Lease, express or implied, is intended or shall be construed to confer upon or give any person, firm, corporation or other legal entity, other than a party hereto and Permitted Leasehold Mortgages, any rights, remedies or other benefits under or by reason of this Lease; all third party rights being hereby expressly negated.

IN WITNESS WHEREOF, the CITY OF KENT has caused this Lease to be duly executed in its behalf; and RFK 315, LLC has caused the same to be duly executed in its behalf, on or as of the date and year first above written.

CITY OF KENT, OHIO

David Ruller, City Manager

LESSEE:
RFK 315, LLC
an Ohio Limited Liability Company

Its: Authorized Member

Approved as to Form and Correctness:

James R. Silver, Law Director

ACKNOWLEDGMENTS

STATE OF OHIO)
)SS:
COUNTY OF PORTAGE)

On this _____ day of _____, 2017, before me, a Notary Public in and for said County and State, personally appeared DAVID RULLER, City Manager of the City of Kent, Ohio, and acknowledged the execution of the foregoing instrument as the authorized officer of said City on behalf of said City, and that the same is his voluntary act and deed as said officer on behalf of the City and the voluntary and corporate act and deed of the City.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

Notary Public

STATE OF OHIO)
)SS:
COUNTY OF _____)

On this _____ day of _____, 2017, before me, a Notary Public in and for said County and State, personally appeared RFK 315, LLC, an Ohio limited liability company, its Managing Member, and acknowledged the execution of the foregoing instrument as the duly authorized officer thereof, and that the same is his voluntary act and deed as said officer and the voluntary act and deed of the company.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

Notary Public

This instrument was prepared by: James R. Silver, Law Director
319 South Water Street
Kent, Ohio 44240



CITY OF KENT, OHIO

DEPARTMENT OF ECONOMIC DEVELOPMENT

Date: June 16, 2017

To: Kent City Council

From: Tom Wilke

Subject: Panini's Request

As you may recall, on December 14, 2016, Council passed an ordinance authorizing the City to enter into an agreement with Panini's allowing them to expand their patio through an amended License to Occupy per the attached rendering labelled Exhibit #1. Since then, the owners of Panini's have received bids to construct the expansion that have come back much higher than expected making the project economically unfeasible.

They have come back to the City and requested that we consider an alternate expansion as depicted in the attached rendering labelled Exhibit #2. The revision is expected to reduce the cost of the project and to make it financially viable. The size of the expansion does not change, just the materials that are used to create the new partition that will enclose the patio. Essentially, the partition goes from being a wall to becoming a fence.

This version will still contain the same requirements for minimizing any disruption to the existing landscaping especially the memorial trees and in fact, it now contains additional landscaping outside the perimeter of the fence per the request of staff.

I am respectfully requesting that Council consider passing a new ordinance authorizing the City to enter into an agreement with Panini's allowing them to expand their patio through an amended License to Occupy that references their latest version labelled Exhibit #2.

cc: Dave Ruller
Bridget Susel
Melanie Baker
Jim Bowling
Tara Grimm

Exhibit #1



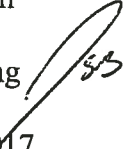


Exhibit #2

CITY OF KENT
DEPARTMENT OF PUBLIC SERVICE
DIVISION OF ENGINEERING

MEMO

TO: Dave Ruller
Tara Grimm

FROM: Jim Bowling 

DATE: June 26, 2017

RE: SR 43 Traffic Improvement Project
1109 South Water Street License Agreement

The Engineering Division is requesting council time to seek approval of a proposed license agreement (attached) for 1109 South Water Street (Kent Floral Company). During the design and right-of-way acquisition phases for the SR 43 Signalization Project, it was noted that several planters and pergolas encroach upon the right-of-way at 1109 South Water Street. A review of the City's files did not provide any information of the installation of these items. Therefore, to complete the project using federal funding, ODOT requires that the disposition of the encroachment is rectified.

To rectify the encroachment, the planters and pergolas either need to be removed with no compensation provided to the owner or a license agreement be executed. Since, the planters and pergolas have no impact on the project or the right-of-way at this time we recommend executing a license agreement with the property owners. Please note, the license agreement does waive any of the City's rights in the right-of-way and the property owner will have to remove the encroachments at no cost to the City at the time the right-of-way is needed for City use.

c: Melanie Baker, Service Director
Jon Giaquinto, Senior Engineer
Harrison Wicks, Executive Assistant
Jim Silver, Law Director
David Coffee, Budget and Finance Director
Sandy Lance, Law Secretary

CITY OF KENT, OHIO
LICENSE AGREEMENT

THIS AGREEMENT is made by and between the CITY OF KENT, OHIO, hereinafter called "City" and Mark Gene Trimble & Karen Ann Mullenix, hereinafter called the "Licensee."

The City is the owner, in fee simple, of land, hereinafter known as the "Property." For and in consideration of the covenants, conditions, agreements and stipulations of the License expressed herein, the City does hereby agree the Property may be used by the Licensee for the purpose as outlined in Part 1 below, in accordance with the laws and Charter of the City of Kent. The Property is more particularly described in the attached exhibits listed below.

Exhibit "A" – POR-43-10.26 R/W Plan, showing area being leased

The parties hereto covenant and agree as follows:

1. NATURE OF INTEREST:

The Licensee understands that by issuing this license, the City has merely granted the Licensee the right to occupy the right-of-way and this license does not grant or convey to the Licensee any interest in the Property.

2. USE:

2.1 The Property shall be used for the purpose of: _____
installing and maintaining planters and pergolas

and for no other purpose.

2.2 No structural alterations may be made to the City's property without the express written permission of the City of Kent, Director of Public Service.

3. TERM:

The City does hereby agree the Property may be used by the Licensee for a term of one (1) year commencing on _____, 2017, and ending on _____, 2018 unless terminated earlier by either party. This license will automatically renew yearly unless one (1) month before expiration either party notifies the other of its intention to terminate per Paragraph 1. _____.

4. NECESSARY LICENSES AND PERMITS:

4.1 Licensee shall be licensed to do business in the State of Ohio and City of Kent, and upon request, Licensee shall demonstrate to the City that any and all such licenses are in good standing. Correspondence shall be addressed as follows:

All correspondence to the City shall be addressed:
Service Director
City of Kent
930 Overholt Road
Kent, Ohio 44240

All correspondence to the Licensee shall be addressed:

Mark Gene Trimble & Karen Ann Mullenix

1109 S. Water Street

Kent, Ohio 44240

4.2 Licensee shall secure all necessary permits required in connection with the use of the Property and shall comply with all federal, state and local statutes, ordinances, rules, or regulations which may affect, in any respect, Licensee's use of the Property. Licensee shall, prior to the commencement of any work, obtain and thereafter maintain, at its sole cost and expense, all licenses, permits, etc., required by law with respect to its business use of the Property.

5. **STORAGE AND VENDING:**

No storage of materials or supplies of any nature will be permitted on the Property except as directly related to the agreed business use of the Property.

6. **TAXES:**

Licensee agrees to be responsible for and to timely pay all taxes and/or assessments that may be legally assessed on Licensee's interest, or on any improvements placed by Licensee on said Property, during the continuance of the license hereby created, including any real estate taxes. The Licensee must provide written notice to the City, at the address referenced in Paragraph 4.1, within thirty (30) days of payment of all taxes and/or assessments.

7. **DIRECTOR OF PUBLIC SERVICE TO ACT FOR CITY:**

The granting of this permit shall not be construed as an abridgment or waiver of any rights which the Director of Public Service has in exercising his jurisdictional powers over the City highway system. The City Director of Public Service shall act for and on behalf of the City of Kent in the issuance of and carrying out the provisions of this permit.

8. CITY USE OF PROPERTY:

If for any reason the Director of Public Service or his duly appointed representative deems it necessary to order the removal, reconstruction, relocation or repair of the Licensee's changes to the City's property, then said removal, reconstruction, relocation or repair shall be promptly undertaken at the sole expense of the Licensee's thereof. Failure on the part of the Licensee to conform to the provisions of this permit will be cause for suspension, revocation or annulment of this permit, as the Director of Public Service deems necessary.

9. MAINTENANCE OF PROPERTY:

Licensee shall, at its sole expense, keep and maintain the Property free of all weeds, debris, and flammable materials of every description, and at all times in an orderly, clean, safe, and sanitary condition consistent with neighborhood standards. A high standard of cleanliness, consistent with the location of the area as an adjunct of the City, will be required. Defoliant, noxious, or hazardous materials or chemicals shall not be used or stored on the Property.

10. MAINTENANCE OF IMPROVEMENTS:

10.1 Licensee, at Licensee's own cost and expense, shall maintain all of his/her improvements to the Property. Licensee shall take all steps necessary to effectively protect the Property from damage incident to the Licensee's use of such Property, all without expense to the City.

10.2 Licensee shall be liable to, and shall reimburse the City for, any damage to City owned property that in any way results from or is attributable to the use of said Property by the Licensee or any person entering upon the same with the consent of the Licensee, expressed or implied.

11. HOLD HARMLESS:

Licensee shall occupy and use Property at its own risk and expense and shall save the City, its officers, agents, and employees, harmless from any and all claims for damage to property, or injury to, or death of, any person, entering upon same with Licensee's consent, expressed or implied, caused by any acts or omissions of the Licensee.

12. INSURANCE:

12.1 At the time of the execution of this Agreement, Licensee shall, at its own expense, take out and keep in force during the terms of this Agreement:

(a) Liability insurance, in a company or companies to be approved by the City to protect against any liability to the public incident to the use of, or resulting from injury to, or death of, any person occurring in or about,

the Property, in the amount of not less than *Five Hundred Thousand Dollars (\$500,000.00)*, to indemnify against the claim of one person, and in the amount of not less than *One Million Dollars (\$1,000,000.00)* against the claims of two (2) or more persons resulting from any one (1) accident.

(b) Property damage or other insurance in a company or companies to be approved by the City to protect Licensee, and the City against any and every liability incident to the use of or resulting from any and every cause occurring in, or about, the Property, including any and all liability of the Licensee, in the amount of not less than *One Hundred Thousand Dollars (\$100,000.00)*. Said policies shall inure to the contingent liabilities, if any, of the Licensee and the City, and shall obligate the insurance carriers to notify Licensee and the City, in writing, not less than thirty (30) days prior to cancellation thereof, or any other change affecting the coverage of the policies. If said policies contain any exclusion concerning property in the care, custody or control of the insured, an endorsement shall be attached thereto stating that such exclusion shall not apply with regard to any liability of the Licensee and the City.

12.2 A copy of the "Certificate of Insurance" will be submitted to the City at the time of execution of license and annually thereafter.

13. **MODIFICATION:**

The terms of this Agreement may be modified upon agreement of the parties.

14. **REVOCATION AND TERMINATION:**

14.1 The City may revoke this license at any time. The Licensee may terminate this Agreement at any time.

14.2 In the event this license is revoked or the Agreement is terminated the Licensee will peaceably and quietly leave, surrender, and yield up to the City the Property. The Property will be restored to its previous condition at the expense of the Licensee and no costs for removal will be reimbursed by the City.

14.3 Upon revocation of the license or upon termination or expiration of Agreement, any personal property, or other appurtenances, including all footings, foundations, and utilities, placed on the City property will be removed by Licensee. If any such appurtenances are not so removed after ninety (90) days written notice from the City to the Licensee, the City may proceed to remove the same and to restore the Property and the Licensee will pay the City, on demand, the reasonable cost and expense of such removal and restoration.

15. RELOCATION:

A Licensee who licenses property from the City shall not be eligible for relocation payments.

IN WITNESS WHEREOF, this Agreement has been executed in duplicate by the parties hereto as of the date herein last written below. Licensee acknowledges receipt of a copy of this Agreement and agrees to comply with the provisions herein contained.

LICENSEE(S):

Signature

Signature

Mailing Address

Telephone

Date

CITY OF KENT, OHIO

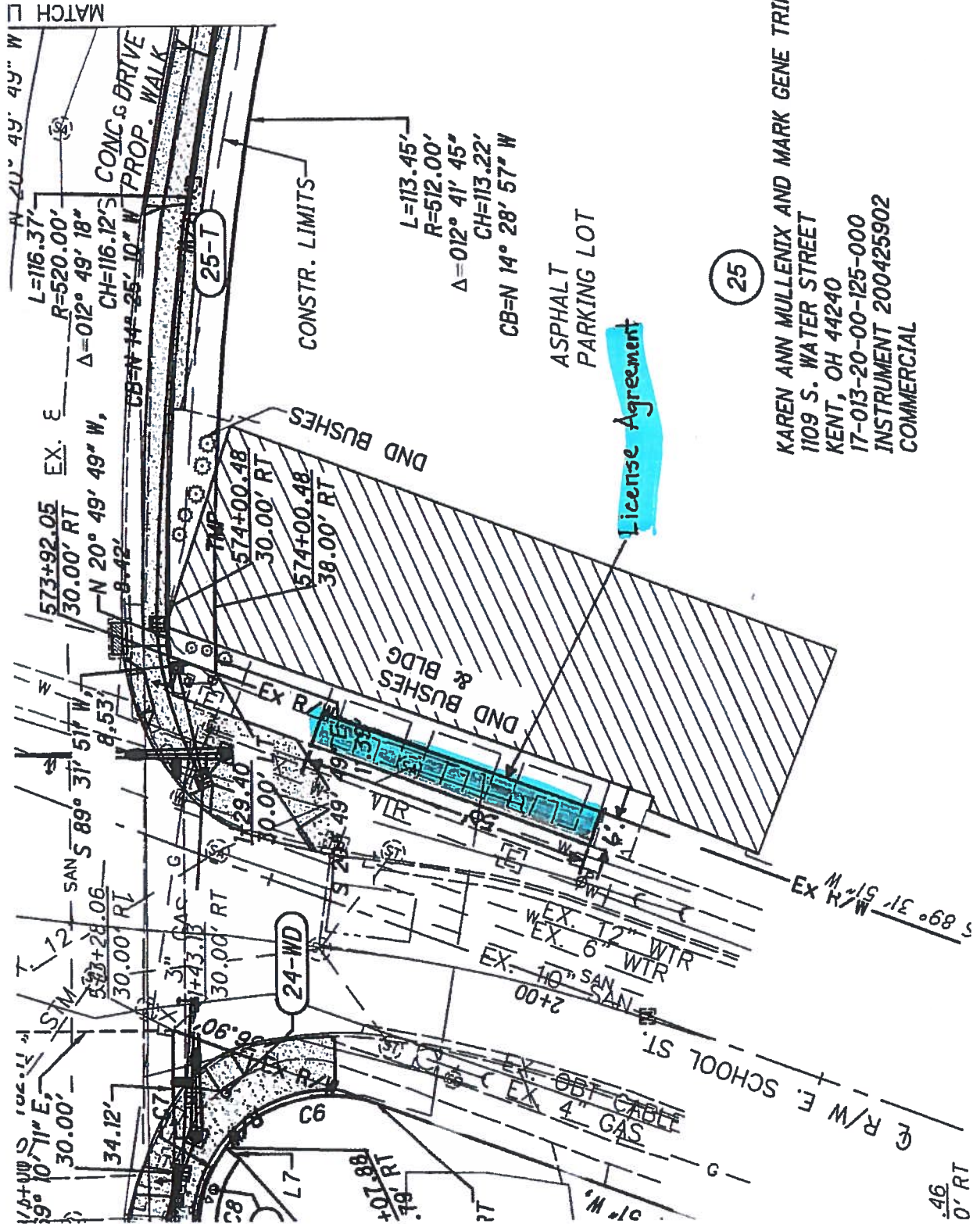
Director of Public Service

Date

APPROVED AS TO FORM:

James R. Silver, Law Director
City of Kent

EXHIBIT "A"
POR-43-10.26 R/W Plan



(25)

KAREN ANN MULLENIX AND MARK GENE TRIMBLE
1109 S. WATER STREET
KENT, OH 44240
17-013-20-00-125-000
INSTRUMENT 200425902
COMMERCIAL