

ORDINANCE NO. 2018-26

AN ORDINANCE AMENDING ORDINANCE NO. 2017-149 TO READ THAT THE CITY IS GRANTING THE STORM SEWER EASEMENT, AMENDING SUCH EASEMENT, AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE THE AMENDED STORM SEWER EASEMENT AGREEMENT, AND DECLARING AN EMERGENCY.

WHEREAS, 315 RFK, LLC desires to obtain a permanent easement of 0.013 acres of real property from the City of Kent; and

WHEREAS, the City of Kent is willing to grant a perpetual easement in said property in exchange for the vacation of several existing easements; and

WHEREAS, 315 RFK, LLC needs the property for storm water management purposes to repair, maintain, install, construct and reconstruct storm sewers; and

WHEREAS, time is of the essence because the sooner 315 RFK, LLC acquires the necessary easement for this project, the sooner construction may begin; and

WHEREAS, this Ordinance corrects Ordinance No. 2017-149 and the Storm Sewer Easement Agreement referred to therein as Exhibit A (recorded on December 27, 2017 at File #201722101, Portage County Recorder).

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Kent, Portage County, Ohio, at least three-fourths (3/4) of all members elected thereto:

SECTION 1. That Ordinance No. 2017-149 and the Storm Sewer Easement Agreement referred to therein (Exhibit A), be, and hereby are, amended to read as set forth in this Ordinance and in the Amended Storm Sewer Easement Agreement attached to this Ordinance.

SECTION 2. That Council authorizes the City Manager or his designee to execute the attached Amended Storm Sewer Easement Agreement between the City of Kent and 315 RFK, LLC granting 315 RFK, LLC a perpetual easement of 0.013 acres of real property for storm water management purposes to repair, maintain, install, construct and reconstruct the storm sewers in exchange for the vacation of several existing easements.

SECTION 3. That all provisions in Ordinance No. 2017-149 and the Storm Sewer Easement Agreement referred to therein (Exhibit A) inconsistent or conflicting with the provisions in this Ordinance and the attached Amended Storm Sewer Easement Agreement be, and hereby are, repealed.

SECTION 4. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council, and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements of Section 121.22 of the Ohio Revised Code.

SECTION 5. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare of the residents of

this City, for which reason and other reasons manifest to this Council this Ordinance is hereby declared to be an emergency measure and shall take effect and be in force immediately after passage.

PASSED: February 7, 2018
Date

Fiala
Jerry T. Fiala
Mayor and President of Council

EFFECTIVE: February 7, 2018
Date

ATTEST: Tara Grimm
Tara Grimm, CMC
Clerk of Council

I, TARA GRIMM, CLERK OF COUNCIL FOR THE CITY OF KENT, COUNTY OF PORTAGE, AND STATE OF OHIO, AND IN WHOSE CUSTODY THE ORIGINAL FILES AND RECORDS OF SAID COUNCIL ARE REQUIRED TO BE KEPT BY THE LAWS OF THE STATE OF OHIO, HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF *ORDINANCE No.* _____, ADOPTED BY THE COUNCIL OF THE CITY OF KENT ON _____, 20____.

(SEAL)

TARA GRIMM, CMC
CLERK OF COUNCIL

EXHIBIT "A"

AMENDED
STORM SEWER EASEMENT AGREEMENT
(0.013 acres)

This instrument is incorporated into and shall be deemed to amend and supplement the Storm Sewer Easement Agreement recorded on December 27, 2017 at File #201722101, Portage County Recorder.

THIS EASEMENT AGREEMENT ("Agreement") made between the CITY OF KENT, OHIO, a Municipal Corporation organized under the laws of Ohio, having its principal office at 319 South Water Street, Kent, Ohio 44240, hereinafter called ("Grantor"), and the 315 RFK, LLC, an Ohio Limited Liability Company of 315 Gougler Avenue, Kent, Ohio 44240 ("Grantee").

Know all men by these presents that the City of Kent, Ohio, a municipal corporation, who claims title by instrument recorded, Document No. 200337511 of the Portage County Records, hereinafter referred to as the "Grantors", for and in consideration of the sum of One Dollar (\$1.00) and other valuable consideration received to their satisfaction from 315 RFK, LLC., an Ohio Limited Liability Company, hereinafter referred to as the "Grantee", do hereby give, grant, bargain and convey unto said Grantee, its successors and assigns forever a perpetual easement to construct, use, maintain, repair and replace a storm sewer drain pipe together with other necessary appurtenances thereto, in, upon and over the lands described in Exhibit "A" attached hereto and incorporated herein.

RECITALS

Grantor is the fee owner of the real property off Gougler Avenue in the City of Kent, Portage County, Ohio (the "Property"), having taken title to said property in Document No. 200337511, filed for record on September 30, 2003 with the Portage County, Ohio Recorder's Office.

Grantee has installed a storm sewer pipe (the "Pipe") within a portion of the Property. The approximate location of the Pipe is depicted on the attached Exhibit. The Easement covers ten (10) feet on each side of the centerline of the Pipe as installed.

EXHIBIT "A"

Grantee has installed some of the Pipe required and Grantor desires to grant to Grantee an easement, according to the terms and conditions contained in this Agreement.

SECTION ONE
SCOPE OF EASEMENT

The perpetual storm water drainage easement granted in this Agreement includes the right of Grantee, its contractors, agents, and employees to enter the premises at all reasonable times for the purpose of locating, constructing, reconstructing, operating, maintaining, inspecting, and repairing storm sewer, and ground surface drainage ways in the described easement area.

The Pipe shall be maintained by the Grantee at its sole cost and expense. Grantee shall repair any damage to property of Grantor or pay any damages which may be caused to property of Grantor solely by Grantee's activity on, or use of, the land subject to this easement. At its sole cost and expense and promptly after completion of any work within the easement area, Grantee will restore the surface and subsurface condition of the easement area to an equal or better condition as existed prior to Grantee's work.

SECTION TWO
MAINTENANCE

The Grantee shall not erect any permanent structures upon the easement except for the Pipe described in the Recitals above, without the written consent of the Director of Public Service of the Grantor. The parties acknowledge that trees and structures now exist within the easement and shall be protected and, if necessary, replaced or restored by the Grantee.

Grantee may pave or lay asphalt over the easement for the Pipe or erect temporary or semi-permanent structures, with prior approval of the Director of Public Services of the Grantor.

SECTION THREE
TITLE OF GRANTOR

Grantor warrants it is the owner of the Property and has the right, title and capacity to convey to Grantee the easement in this Agreement. Title was taken through instrument number 200337511 of the Portage County Recorder's Office on or about September 30, 2003.

SECTION FOUR
EASEMENT TO RUN WITH THE LAND

The grant of easement shall be valid only if accepted by City ordinance and shall run with the land and shall be binding on and shall inure to the benefits of the parties hereto, their heirs, executors, administrators, successors, and assigns.

IN WITNESS WHEREOF, the parties have hereunto set their hands at

EXHIBIT "A"

_____, Ohio, this _____ day of _____, 2018.

**315 RFK, LLC
GRANTEE/OWNERS:**

Managing Member

By: _____

STATE OF OHIO)
)ss:
COUNTY OF PORTAGE)

Before me, a Notary Public in and for said County and State, personally appeared the above name _____, who acknowledges that he signed the foregoing instrument and that the same is his free act and deed.

IN WITNESS WHEREOF, I have set my hand and official seal at _____, this _____ day of _____, 2018.

Notary Public

ACCEPTANCE OF EASEMENT

THIS EASEMENT accepted by the City of Kent, Ohio, this _____ day of _____, 2018, pursuant to Ordinance No. _____.

CITY OF KENT, OHIO

City Manager

By: _____