ORDINANCE NO. 2016-49

AN ORDINANCE ACCEPTING FOR DEDICATION PURPOSES FROM GARY PHILLIP BERARDINELLI A STORM SEWER EASEMENT, AND DECLARING AN EMERGENCY.

WHEREAS, Gary Phillip Berardinelli wishes to dedicate a portion of their property to the City for storm sewer easement purposes; and

WHEREAS, Gary Phillip Berardinelli has delivered to the City the necessary easement agreement for the storm sewer easement, a copy of which is marked Exhibit "A", and placed on file with the Clerk of Council; and

WHEREAS, the Development Engineer for the City has given her opinion that the storm sewer easement is necessary and should be accepted for dedication purposes; and

WHEREAS, a committee of Council has reviewed the storm sewer easement offered for dedication and has recommended to Council that the City accept the storm sewer easement as contained on the attached Exhibit "A".

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

SECTION 1. That Council does hereby accept for dedication purposes, from Gary Phillip Berardinelli the storm sewer easement as the same is shown upon the copy of the easement agreement marked Exhibit "A" on file in the Clerk of Council and incorporated herein.

SECTION 2. That Council does hereby direct the President and Clerk of Council to sign the original dedication plat, evidencing the dedication approval as authorized herein.

SECTION 3. 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 4. 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 the reason that it is immediately necessary to allow for the conclusion of the dedication process for these phase of the subject subdivision, 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: 06/15/2016

DATE

MAYOR AND PRESIDENT OF COUNCIL

ATTEST:

CLERK OF COUNCIL

I hereby certify that Ordinance No. 2016-49 was duly enacted this 15th day of June, 2016, by the Council of the City of Kent, Ohio.

CLERK OF COUNCIL
STORM SEWER EASEMENT AGREEMENT

This Easement Agreement ("Agreement") made between Gary Phillip Berardinelli of 998 Nathan Dr., Kent, Ohio 44240, hereinafter called ("Grantor"), and the City of Kent, Ohio, a municipal corporation organized under the laws of Ohio, having its principal office at 217 E Summit St., Kent, Ohio 44240 ("Grantee").

RECITALS

Grantor is the fee owner of the real property in Portage County, Ohio (the "Property"), more particularly described in Exhibit A, attached to and by this reference made a part of this Agreement.

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 B, which starts at the southerly boundary line as depicted by a black bold line of Grantor’s Property and continues in a northerly direction to the point where the Pipe reaches the northern boundary of the Property. The Easement covers fifteen (15) feet on each side of the centerline of the Pipe as installed.

The easement granted in this Agreement includes a strip of land (the “Access Point”) located along the southern edge of the Property, beginning at the centerline of the Pipe at the Property’s southerly boundary and extending thirty (30) feet north along the Pipe, and then extending east along the Property’s southern boundary to the eastern boundary of the Property. The approximate location of the portion of the easement is depicted in Exhibit C, attached to and by this reference made a part of this Agreement.

Grantee has installed the Pipe 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 through the Access Point at all reasonable times for the purpose of locating, constructing, reconstructing, operating, maintaining, inspecting, and repairing storm sewer, sanitary sewer and water facilities 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 Grantor shall not erect any permanent structures upon the easement for the Pipe described in the Recitals above, without the written consent of the Director of Public Service of the Grantee. 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.
Grantor may pave or lay asphalt over the easement for the Pipe or erect temporary or semipermanent structures.

After consultation with the Grantor and upon showing reasonable necessity for any proposed alteration or removal of appurtenances, the Grantee shall have the right to trim, cut, and remove trees, shrubbery, fences, structures, or other obstructions in the easement being conveyed; provided, however, that the Grantee at its own expense shall restore as nearly as possible, to their original condition, all land and appurtenances thereto which are disturbed in any manner by the, operation and maintenance of said Pipe, with the exception of any trees or shrubbery removed. Such restoration shall include the backfilling of trenches, the replacement of fences, brickwork, pavement, the timely repair of the existing irrigation system and/or foundation if damaged by the Grantee and the reseeding or resodding of lawns within the easement.

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.

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. Nonperformance by the City shall constitute a ground of forfeiture.

SECTION FIVE

RESERVATION OF TIE-IN RIGHTS

Grantor reserves the unlimited right to tie-in to any Pipe installed in the easement, at no cost, for the purpose of extending any and all storm water drains located on Parcel No. 170411000057 such as down-spout drains, foundation drains, and crawl space/basement sump pump drains, etc. The Grantee shall complete all initial tie-ins.

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

_________________________ this_______ day of _____________________ , 200__.

GRANTOR/OWNERS:

________________________________
Gary Phillip Berardinelli
STATE OF OHIO

COUNTY OF_________________  )

Before me, a notary public in and for said County and State, personally appeared the above named Gary Phillip Berardinelli who acknowledges that he signed the foregoing instrument and that the same is their free act and deed.

IN WITNESS WHEREOF, I have set my hand and official seal at __________________________, this _________, day of _______________________, 20__.  

_______________________________  
Notary Public  

ACCEPTANCE OF EASEMENT

THIS EASEMENT accepted by the City of Kent, Ohio, this___________ day of __________________________, 20__, pursuant to Ordinance No.______________.

CITY OF KENT, OHIO

_______________________________
Situated in the City of Kent, County of Portage, and the State of Ohio, and being part of Original Lot 41 in the Township of Franklin and being part of the tract of land transferred to The City of Kent, as recorded in D.V. 1093, Page 120, part of the tract of land transferred to The City of Kent, as recorded in File #200723604, and all of the tract of land transferred to Gary P. Berardinelli as recorded in File #200720580, and further described as follows to wit:

Beginning at a 1/2" iron pipe found at the Northeast corner of subplot 72, in the Kent Rubber City Addition No. 1 (Plat Book 3, Page 19), thence North 01°39'26" West, along the east line of the aforesaid City of Kent tract (D.V. 1093, Page 120), a distance of 114.23 feet to a 1/2" iron pipe found, the next 3 courses are along the south line of The City of Kent tract (File #200723604): thence South 81°07'34" West, a distance of 13.08 feet to a 1/2" iron pipe found, thence South 68°26'30" West, a distance of 155.27 feet to a 1/2" iron pipe found, thence South 58°18'37" West, a distance of 62.40 feet to a capped rebar set, which is the True Place of Beginning for the property herein described;

1. Thence South 29°17'21" East, through the land of the grantor, a distance of 48.73 feet to a capped rebar set;

2. Thence South 54°19'16" West, through the land of the grantor, a distance of 147.92 feet to a capped rebar set;

3. Thence South 01°12'36" East, along the west line of the aforesaid City of Kent tract (D.V. 1093, Page 120), a distance of 12.13 feet to an iron pipe found;

4. Thence South 54°19'16" West, along the north line of the aforesaid City of Kent tract (D.V. 1093, Page 120), a distance of 465.83 feet to a 5/8" iron bar found;

5. Thence North 25°52'01" West, along the east line of a tract of land now or formerly owned by The City of Kent (File #200720579), a distance of 271.16 feet to a 5/8" iron bar found;
6. Thence North 70°59'55" East, along the south line of the Akron Barberton Cluster Railway Company, a distance of 609.25 feet to a capped rebar set;

7. Thence South 29°17'21" East, through the land of the grantor, a distance of 34.13 feet to the True Place of Beginning of the herein described parcel.

Containing 2.5047 acres of land, based on a field survey by Beth A. Pearson, P.S. #8430 in April of 2016.

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, PS
Registered Surveyor #8430