ORDINANCE NO. 2017-26

AN ORDINANCE AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO ENTER INTO AN AGREEMENT FOR THE SALE OF REAL PROPERTY ON GOUGLER AVENUE, KENT, OHIO, BETWEEN THE CITY OF KENT AND 315 RFK, LLC FOR $200,000.00, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Kent wishes to enter into an agreement with 315 RFK, LLC to sell real property on Gougler Avenue, Kent, Ohio and known as parcels numbers 17-025-30-00-002-000, 17-025-10-00-059-000, 17-025-10-00-059-002, 17-025-10-00-061-000, 17-025-10-00-079-000, 17-025-10-00-080-000; and

WHEREAS, the property was originally purchased by the City to help redevelopment of the area; and

WHEREAS, 315 RFK, LLC has agreed to said purchase in the amount of $200,000.00, to aid in the redevelopment of the LN Gross building; and

WHEREAS, a portion of the property being sold on the west side of Gougler Avenue will be developed into a parking lot which shall have public access between 5:00 p.m. and 3:00 a.m. on weekdays, and on weekends and federal holidays.

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 authorize the City Manager, or his designee, to enter into an Agreement for the sale of real property on Gougler Avenue, Kent, Ohio to RFK, LLC in the amount of $200,000.00 in substantial conformity with Exhibit "A" attached hereto and incorporated herein.

SECTION 2. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council, and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements of Section 121.22 of the Ohio Revised Code.

SECTION 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the residents of this City, for which reason and other reasons manifest to this Council, this Ordinance is hereby declared to be an emergency measure and shall take effect and be in force immediately after passage.

PASSED: April 19, 2017

Date

Jerry T. Fiala
Mayor and President of Council

EFFECTIVE: April 19, 2017

Date

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___.

TARA GRIMM, CMC
CLERK OF COUNCIL
(SEAL)
EXHIBIT A

AGREEMENT FOR THE PURCHASE
AND SALE OF REAL ESTATE

This Agreement is made and entered into by and between the CITY OF KENT, OHIO, a municipal corporation, whose address is 319 South Water Street, Kent, Ohio 44240, hereinafter referred to as (“SELLER”), and the 315 RFK, LLC, whose address is ____________________________, hereinafter referred to as (“BUYER”). In consideration of the mutual promises of SELLER and BUYER herein contained, and subject to the terms and conditions hereinafter set forth, SELLER and BUYER agree as follows:

1. **THE PREMISES:** SELLER agrees to sell and convey to BUYER, and BUYER agrees to purchase from SELLER the six (6) parcels of real property on Goughler Avenue, Kent, Ohio being parcel numbers 17-025-30-00-002-000, 17-025-10-00-059-000, 17-025-10-00-059-002, 17-025-10-00-061-000, 17-025-10-00-079-000, 17-025-10-00-080-000, and as further described on Exhibit “A” hereto, together with all improvements thereon, all appurtenant rights, privileges, easements and fixtures with respect thereto all as is and in their present condition, all of the foregoing being hereinafter referred to as the Premises.

2. **PURCHASE PRICE:** BUYER agrees to pay for the six (6) parcels the amount of Two Hundred Thousand ($200,000.00) as follows: BUYER will borrow the purchase price monies from the SELLER. SELLER will hold a promissory note and mortgage on said six (6) parcels for the $200,000.00 sale price. 315 RFK, LLC, joint and severally, its successors, assigns, heirs and/or representatives (hereinafter referred to as “Borrowers”), will execute the documents necessary to secure its promise to pay to the CITY OF KENT (the “City”), the principal amount of Two Hundred Thousand Dollars ($200,000.00), in lawful money of the United States of America, with interest on the unpaid principal balance of this Term Loan Note from time to time outstanding, payable in like money, at a rate per annum from the date of delivery hereof equal to seventy five percent (75%) of the Prime Rate as established by the City’s loan servicing representative, with the interest rate changing annually and automatically with each such change in the Prime Rate as of May 1st of each year, with a maximum interest rate of six percent (6%) per annum. After maturity or upon the occurrence of an Event of Default until paid, interest shall accrue at the rate per annum equal to three percent (3%) in excess of the Prime Rate. “Prime Rate” means the interest rate publicly announced by the Wall Street Journal as its Prime Rate or equivalent designation on May 1st of each year. Commencing on May 1, 2017, principal and interest hereon shall be due and payable initially in fourteen (14) installments due on the first days of May and November and shall continue thereafter until payment in full of this Term Loan Note with a final balloon payment due November 1, 2023 for the remaining balance due. The first payment, due May 1, 2017, will be in the amount of $9,876.44. The current rate of seventy five percent (75%)
of prime is 2.8125%. The first thirteen (13) payments hereon shall automatically be adjusted to
an amount equal to amortize the loan over twelve (12) years with each change in the Prime Rate.

3. **DEED:** At closing SELLER shall deliver or cause to be delivered to BUYER or
BUYER’S nominee a good and sufficient Limited Warranty Deed conveying marketable title to
the Premises, with dower rights, if any, released, free and clear of all liens and encumbrances
whatsoever except:

   (i) All legal highways; and
   (ii) Zoning and building rules, regulations, and ordinances of any governmental
       authority; and
   (iii) Undetermined taxes and assessments for the current calendar year; and
   (iv) Restrictions, conditions, and easements of record, shown in the commitment
       and accepted or waived by BUYER in accordance with paragraph 10 hereof.

4. **REAL ESTATE TAXES AND ASSESSMENTS:** All delinquent real estate
taxes, assessment installments, and all interest and penalties thereon, shall be paid by SELLER.
Taxes shall be prorated between SELLER and BUYER on a calendar year basis as of the date of
the recording of the Deed and shall be based upon the last available tax rate and valuation. Special
assessments, if any, certified to the County Auditor shall likewise be prorated on a calendar year
basis as of the date of the recording of the Deed. BUYER shall assume and pay all special
assessments certified to the County Auditor from and after the date of the recording of the Deed.

5. **UTILITIES:** Utilities shall be the responsibility of the SELLER up to and until
the date of closing. BUYER shall be responsible for utilities after the date of closing.

6. **SURVEY:** In the event that a survey is required to transfer title to the Premises to
BUYER, SELLER shall, at its cost, provide such survey prior to the closing so that title may be
transferred to BUYER at closing. Surveys requested by BUYER shall be at BUYER’S expense.

7. **POSSESSION:** BUYER shall be entitled to possession of the Premises
immediately upon the closing of this transaction.

8. **TITLE AND TITLE INSURANCE:** Within seven (7) days after this Agreement
is approved by the SELLER, the Escrow Agent shall do a title search of the Premises and issue a
commitment to BUYER for an Owner’s Policy of Title Insurance ("Commitment"). The
Commitment shall have no exceptions to coverage for labor, mechanics, or materialman’s liens or
for encroachments or other encumbrances that would be revealed by allocation survey. The
Escrow Agent shall cause a copy of the Commitment together with all documents referred to in
the Commitment to be delivered to both BUYER and SELLER. If such Commitment shows
exceptions, conditions, restrictions, easements, liens, or encumbrances which BUYER deems
objectionable, BUYER may, within five (5) days after receipt of the Commitment notify SELLER
of BUYER’S objections. SELLER shall have a reasonable time, not to exceed thirty (30) days, to
cure the objections. If SELLER cannot, or will not, correct such objections within such period of time, SELLER shall notify BUYER within said thirty (30) day period that it cannot or will not correct such objection. If SELLER cannot or will not correct such objection BUYER may waive its objections and accept the Premises subject to the conditions disclosed by the Inspections without reduction in the Purchase Price. BUYER shall make its election to waive its objections within five (5) days after SELLER notifies BUYER that it cannot, or will not, correct such conditions. If BUYER fails to waive its objections within said period of time, this Agreement shall automatically terminate. At closing the Escrow Agent shall issue a final Owner's Title Insurance Policy to BUYER in the amount of the purchase price subject only to those items shown in the Commitment and agreed to or waived by the BUYER as provided above. If the Escrow Agent is unable to issue the Policy, BUYER may terminate this Agreement.

9. SELLER'S REPRESENTATION AND WARRANTIES: SELLER has no representations to BUYER except:

A. The Premises are not subject to any unrecorded leases, easements, licenses, or rights except those identified herein; and

B. No persons other than SELLER have any right to possess or occupy the Premises; and

C. To the best of SELLER’S knowledge no conditions exist on the Premises which would constitute a health, building or zoning code violation, or a public nuisance; and

D. To the best of SELLER’S knowledge there are not now any underground tanks on the Premises. If any tanks are discovered after closing, SELLER shall be responsible for the costs of removal, provided they are required to be removed under the Ohio Administrative Code 1301:7; and

E. To the best of SELLER’S knowledge, no hazardous or toxic substance or material has been discharged, released, or existed in, on, at, or from the Premises in a quantity or condition which would violate any environmental law, rule, regulation, require any clean up, removal, disposal or remediation; and

F. SELLER is a municipal corporation duly organized and validly existing under the laws of the State of Ohio; and

G. SELLER has the full power and authority to enter into this Agreement and perform its obligations hereunder; and

H. All actions necessary to authorize SELLER to enter into this Agreement and perform its obligations hereunder have been duly taken; and
I. The person(s) signing this Agreement on behalf of SELLER is the person duly authorized to do so, and when so signed this Agreement shall be a valid and binding obligation of SELLER; and

J. SELLER shall immediately inform BUYER upon becoming aware of any information which would make any warranty, representation or covenant of SELLER contained herein false or misleading in any material respect.

The foregoing representations and warranties shall expire thirty-six (36) months after the date of closing.

10. BUYER’S WARRANTIES:

A. BUYER is a Limited Liability Company duly organized and validly existing under the laws of the State of Ohio; and

B. BUYER has the full power and authority to enter into this Agreement and perform its obligations hereunder; and

C. All actions necessary to authorize BUYER to enter into Agreement and perform its obligations hereunder have been duly taken; and

D. The person(s) signing this Agreement on behalf of BUYER is the person duly authorized to do so, and when so signed this Agreement shall be a valid and binding obligation of BUYER; and

E. BUYER shall immediately inform SELLER upon becoming aware of any information which would make any warranty, representation or covenant of BUYER contained herein false or misleading in any material respect.

11. PROPERTY “AS IS”: Other than the warranties listed in Section 9, this property is being purchased “as is”. BUYER has the right to inspect the premises within twenty (20) days of execution of this Agreement. SELLER shall make the property available to whomever BUYER wants to inspect the property. Any inspections shall be done at BUYER’S expense. Should an inspection uncover a condition that is unacceptable to BUYER, BUYER shall report the condition to SELLER. SELLER can choose to correct the condition or can choose not to correct this condition. If no repairs are made by SELLER, BUYER may void this Agreement.

12. CONDITIONS TO BUYER’S OBLIGATION TO CLOSE: BUYER’S obligation to purchase the Premises pursuant to this Agreement is conditioned upon and subject to each of the following:
EXHIBIT A

A. PARCEL A as shown on the attached Exhibit “A” shall be used for the building located at Gougler Avenue, Kent, Ohio as access to a loading deck and for some parking.

B. PARCELS B, C, D, E and F shall be used as a parking lot. Said parking lot shall be improved and constructed by December 31, 2019. Said parking lot shall be open to the public for use after 5:00 p.m. until 3:00 a.m. on weekdays, and from 6:00 a.m. to 3:00 a.m. on weekends and federal holidays. Should the parking lot not be built by December 31, 2019, the City shall have the option of purchasing lot B, C, D, E, and F back from the BUYER for $75,000.00. SELLER shall exercise said option by sending a letter to BUYER expressing the intent of the SELLER herein to take the five (5) parcels in question back from the BUYER for the $75,000.00 purchaser paid. The return of the parcels to the SELLER shall be completed within one hundred twenty days (120) of the date of the letter. BUYER shall do whatever is necessary to return said parcels to SELLER if the construction has not commenced.

C. Title Insurance: SELLER has accepted the Commitment or waived its objection to the Commitment and at closing the Escrow Agent is in a position to issue an Owner’s Policy of Title Insurance to BUYER in accordance with this Agreement.

D. SELLER’S Warranties: SELLER warranties are true as of the date of closing.

E. SELLER’S Performance: SELLER delivers title to and possession of the Premises to BUYER at closing in accordance with the terms of this Agreement.

13. CLOSING: Unless this Agreement has been terminated as provided herein, this transaction shall be fully closed on or before May 1, 2017. All funds and documents relating to this transaction shall be deposited with the Escrow Agent not later than the aforesaid closing date.

14. SELLER’S CLOSING COSTS: From the funds due SELLER there shall be deducted and paid:

A. Legal fees incurred for SELLER, if any; and
B. Liens and taxes not assumed by BUYER; and
C. Pro-ration due BUYER; and
D. Recording fees for the cancellation of mortgages and liens not assumed by BUYER; and
E. The cost of any survey necessary to transfer title to the Premises to BUYER; and
F. The cost of the title search and title insurance premium; and
G. One half (1/2) of the escrow fee; and
H. Other costs to be paid by SELLER under this Agreement.

15. BUYER’S CLOSING COSTS: At or before the closing, BUYER shall pay or cause to be paid the following:

A. One half (1/2) the cost of the escrow fee; and
B. The Auditor’s conveyance fee (transfer tax); and
C. Deed preparation fee; and
D. Recording fees to record the deed and any mortgage; and
E. Costs of any survey not necessitated by the Portage County Tax Map Department; and
F. Other costs to be paid by BUYER under this Agreement.

16. ESCROW AGENT: The Escrow Agent shall be the Diamond Title Company located at 4030 State Route 43, #201, Brimfield, Ohio 44240, phone #330-673-4900. Each of the parties agrees to execute the Escrow Agent’s standard letter of escrow, provided said agreement does not alter the terms of this Agreement, and each party agrees to provide to the Escrow Agent all information and documentation requested by the Escrow Agent to close the transaction.

17. TIME OF THE ESSENCE: Time is of the essence concerning all matters to be performed by SELLER and BUYER hereunder and if either fails to perform its obligations under this Agreement within the time required by the terms hereof, the other shall be entitled to damages occasioned by the failure to perform and/or specific performance.

18. APPLICABLE LAW: This Agreement is made and entered into in the State of Ohio and shall be construed and enforced in accordance with the laws of the State of Ohio.

19. NOTICES: All notices required hereunder or by applicable law shall be in writing and shall be deemed delivered when either personally delivered to the party to whom it is directed or when mailed by certified mail receipt requested postage prepaid to the person and address set forth at the beginning of this Agreement or to such other address as a party hereto may designate in writing as provided herein. SELLER and BUYER shall provide the Escrow Agent with copies of all notices or other communications by notifying the Escrow Agent in accordance with the terms hereof.

20. NO BROKERS: SELLER and BUYER each warrant and covenant unto one and other that no real estate broker or agent was involved in this transaction and that each covenants to indemnify and hold the other absolutely harmless from any claim or demand by any person for any real estate fee or commission.

21. REMEDIES: In the event that SELLER or BUYER defaults in the performance of the terms and conditions of this Agreement, the non-defaulting party shall have all rights and
remedies available to it at law or in equity under the laws of the State of Ohio with respect to such default, specifically including but not limited to the right to recover from the defaulting party all costs and expenses, including reasonable attorney’s fees to the extent permitted by law, incurred by the non-defaulting party as a result of such default. All rights and remedies of the parties are cumulative and may be exercised concurrently or consecutively and as often as the occasion therefore arises. This provision shall survive the termination of this Agreement and the consummation of the transactions contemplated herein.

22. WAIVER AND AMENDMENT: The terms and conditions of this Agreement may be amended with, and only with, the express written consent of both SELLER and BUYER. No provision of this Agreement shall be waived, or deemed to be waived, unless such waiver is in writing and signed by the party entitled to waive such provision. The mere failure or delay of any party to enforce any term or provision of this Agreement, or to exercise any right or remedy with respect thereto shall not be deemed to be a waiver of such provision or any such right or remedy.

23. BINDING EFFECT: This Agreement shall be binding upon and shall inure to the benefit of SELLER and BUYER and their respective heirs, executors, administrators, successors, and assigns.

24. DATE OF THIS AGREEMENT. For all purposes the date of this Agreement shall be the date of the last signature to this Agreement by SELLER or BUYER.

BUYER
315 RFK, LLC

By: Robert J. Cene, Jr., Its: Managing Member
Date: __________________________

SELLER
CITY OF KENT, OHIO

By: David Ruller, Its: City Manager
Date: __________________________

APPROVED AS TO FORM:

James R. Silver, Law Director
City of Kent