ORDINANCE NO. 2017-62

AN ORDINANCE AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO ENTER INTO A LEASE OF LAND FOR PRIVATE REDEVELOPMENT FOR REAL PROPERTY ON GOUGLER AVENUE, KENT, OHIO, BETWEEN THE CITY OF KENT AND 315 RFK, LLC, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Kent wishes to enter into a Lease of Land for Private Redevelopment with 315 RFK, LLC to sell real property on Gougler Avenue, Kent, Ohio and known as parcels numbers 17-025-30-002-000 and __________________________; and

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

WHEREAS, 315 RFK, LLC has agreed to aid in the redevelopment of the LN Gross building and the lots they will be leasing from the City; and

WHEREAS, a large 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.

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 parties hereto have determined it to be in their mutual best interest that the City lease the entire Site to the Lessee on a long term – seventy five (75) year term - and the Lessee construct and maintain the parking lot Project.

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 a Lease of Land for Private Redevelopment for real property on Gougler Avenue, Kent, Ohio to 315 RFK, LLC 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: July 19, 2017

EFFECTIVE: July 19, 2017

ATTEST:

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 WHOMSEVER 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”

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 315 RFK, 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 Gouger 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
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 the 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. **Property Taxes.** 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
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. Lessor shall be responsible for monitoring the
well sites currently on the property.

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 (other than property taxes and/or assessments), whether general or special, and governmental charges, water, sewer and other utility fees, rents, rates and similar charges, and all license 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. The Lessor specifically waives all permit fees for the design and construction on these parcels, as Lessor still owns the parcels.

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 Mortgage 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 "Cureable 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 Cureable 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 Cureable 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, by the Lessee or their agents or employees.

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 a 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 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
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
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: ____________________________  Jerry T. Fiala
                                                Date
Mayor and President of Council

EFFECTIVE: ____________________________
                                                Date

ATTEST: ________________________________
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)