

Case

COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2014-19

By Nick Haschka Sponsored By Mayor Cyril M. Kilem

AN ORDINANCE

APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF BEREA AND KOCH PROPERTIES, LTD. TO ALLOW THE USE OF THE CITY OF BEREA SANITARY SEWER SYSTEM BY A PROPERTY LOCATED IN A CONTIGUOUS CITY.

WHEREAS, the City of Berea has, in the past, allowed properties contiguous with the City of Berea to tie into the City of Berea Water System and the City of Berea Sanitary Sewer System; and

WHEREAS, the City of Berea has received a request from a property owner along the north side of Sheldon Road and contiguous to the City of Berea, to tie into and use the City of Berea Sanitary Sewer System; and

WHEREAS, the City of Berea Sanitary Sewer System has available capacity in the sewer line located in the Right of Way of Sheldon Road and accessible by the subject property; and

WHEREAS, the property owner has agreed, in an Agreement for Use of Sanitary Sewer System, to the non exclusive use of the City of Berea Sanitary Sewer System and to pay for that use.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Berea, State of Ohio:

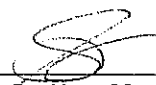
SECTION 1. That, subject to the conditions and agreements set forth in the AGREEMENT FOR USE OF SANITARY SEWER SYSTEM between the City of Berea and Koch Properties, Ltd, which Agreement is attached hereto as Exhibit "A" and incorporated herein, the Mayor, or his designee, is authorized to enter into the Agreement allowing the use of the City of Berea Sanitary Sewer System by Koch Properties, Ltd. for the one piece of property which is the subject of the Agreement.

SECTION 2. That the Agreement approved herein is limited to only one tenant of the Koch Properties, Ltd lot and shall expire if and when that tenant vacates the property.

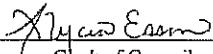
SECTION 3. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

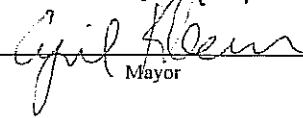
SECTION 4. That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

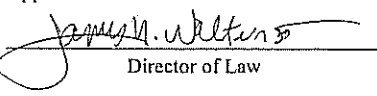
PASSED: March 3, 2014



President of Council

ATTEST: 
Clerk of Council

APPROVED: March 5, 2014

Mayor

Approved as to Form:

Director of Law

AGREEMENT FOR USE OF SANITARY SEWER SYSTEM

This Agreement is made by and between the City of Berea, an Ohio Municipal Corporation and Koch Properties, a Delaware Partnership doing business in Ohio.

Whereas Koch Properties owns a parcel of real estate located in the city of Brook Park, Ohio which parcel is not served by a sanitary sewer system and as owner, Koch Properties desires to obtain sanitary sewer service for that parcel from the City of Berea; and

Whereas, the City of Berea operates a sanitary sewer collection system which is capable of providing service to the parcel owned by Koch Properties; and

Whereas, the parties wish to enter into this Agreement and be bound by its terms and conditions in order for the City of Berea to provide sanitary sewer service to this parcel of land for this owner and its present tenant,

Now Therefore, in consideration of the foregoing premises and of the terms and conditions, obligations and agreements hereinafter set forth, the Parties agree as follows:

1. Beginning on the First day of March 2014, the City of Berea, Ohio grants to Koch Properties, owner of the parcel of land described in the legal description attached to this Agreement as Exhibit "A" and incorporated herein by reference, permission to connect to and use the City of Berea sanitary sewer line located in Sheldon Road, immediately to the south of the subject property.
2. The process of connection shall be in compliance with the laws, regulations and requirements of the City of Berea except as may be provided herein.
3. This agreement will NOT run with the land and is limited to the use of the property by a tenant identified as CLERAC, LLC and operating a facility that includes no more than two restrooms, a small, non-commercial kitchen and some incidental washing of vehicles held in the course of its business for rent or sale. This agreement shall end when the lease with or occupancy by this tenant ends and the City of Berea, may, at that time, physically disconnect the service to this property.
4. The City of Berea will charge and the Owner agrees to pay a one-time sewer connection (Tap-In) Fee of Four Thousand Five Hundred Dollars (\$4,500.00)
5. The rate of charge for use of the City of Berea Sanitary Sewer will be set by the City of Berea and may change from time to time relative to the physical and administrative costs incurred by the City of Berea for providing sanitary sewer service to the property. The parties acknowledge and agree that since water service is provided to this property by the City of Cleveland and since the City of Berea has no agreement in place with the City of Cleveland Water Department for the reading of their meters or the provision of meter reading to the City of Berea, it may be difficult or impossible to base the charge on gallons of water used at the facility. With this in mind, it is agreed that the initial fee for the provision and use of sanitary sewer service will be charged at the rate of \$250.00 per quarter. The parties further acknowledge and agree that the quarterly charge may be adjusted by the City of Berea at any time without advance notice. In the event that the City of Berea becomes easily able to read the City of Cleveland Water Meter and thereby reasonably calculate the sewer usage, the

city may, at its option, charge a per thousand gallon fee based on its schedule of charges to sanitary sewer users located outside the city.

6. The parties further agree that to carry out the restrictions of this agreement to the current tenant (CLERAC, LLC), a recordable deed restriction will be prepared and recorded in the office of the Cuyahoga County Fiscal Officer (Recorder) which will clearly notify any future owner of this property that the provisions of this agreement DO NOT run with the land or transfer to a future owner or tenant of the subject property.

Exhibit "A"; Legal Description of the property that is subject of this agreement:
Situating in the City of Brook Park, Cuyahoga County and, Being part of Original Middleburgh Township Lot No. 3, Section No. 19, bounded and described as follows:

Beginning at the intersection of the center line of Sheldon Road and Riverside Drive; thence from said place of beginning North 24° 45' 23" East, along said center line of Riverside Drive, 1006.23 feet; thence South 78° 19' 00" East about 373.65 feet but to the Southeasterly line of a highway established by the Director of Highways, State of Ohio, designed as State Highway No. 713, Sections Berea, (Part), Brook Park, and Cleveland, (Part), and more particularly described in the Right of Way Section of the Journal of said Director of Highways made on March 11, 1943, ix, Volume 28, page 10, said point in the Southeasterly line of said Highway is the principal place of beginning of the following described parcel of land.

Thence from said principal place of beginning South 78° 19' 00" East about 644 feet but to the Northeasterly line of the right of way of the New York Central Railroad, as described in Deed Volume 1050, page 28;

Thence North 30° 24' 00" East, along said Northwesterly right of way line, about 311 feet but to an angle in said line;

Thence North 59° 36' 00" West, following said right of way line, 33 feet to an angle in said right of way line;

Thence North 30° 24' 00" East, continuing along said Northwesterly right of way line about 576 feet but to the corner of lands included in said State Highway, as described in said Journal;

Thence South 88° 58' 45" West, along said Southerly line of lands included in said State Highway, as described in said Journal, about 435 feet to an angle;

Thence South 43° 46' 00" West, along the Southeasterly line of lands included in said State Highway, about 891 feet but to the principal place of beginning.

The above described parcel of land contains about 9.35 Acres of land. Also a right of way 20 feet of even width along the Northwesterly line of said right of way, of said Railroad, from

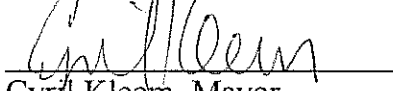
Sheldon Road to the above-described premises, which right of way shall be used by the Grantor and Grantee, their heirs, executors, administrators, successors and assigns.

Permanent Parcel No. 341-26-005

It is so agreed.

In witness whereof, the parties have hereunto set their hand as follows:

City of Berea, by:


Cyril Kleem, Mayor

3-6-14
date

Koch Properties, Ltd. by:


Gerald W. Koch, Member

3-21-2004
date

Reference: City of Berea Ordinance 2014-19