

**ORDINANCE NO. 11, 2018**

**AUTHORIZING THE EXECUTION AND GRANTING OF A PERPETUAL EASEMENT TO CONSTRUCT AND MAINTAIN A STORM & SANITARY SEWER FROM THE VILLAGE OF ST. BERNARD TO THE RENEE DUNCAN, LLC AND DECLARING AN EMERGENCY.**

**WHEREAS,** The Renee Duncan, LLC owns property on Tower Avenue across from Village owned property; and

**WHEREAS,** The Renee Duncan, LLC has requested that it be permitted to construct and maintain the storm and sanitary sewer that crosses property on Tower Avenue owned by the Village of St. Bernard, described in Exhibit A, for the purpose of discharging storm and sanitary water into the public system; now therefore

**BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF ST. BERNARD, STATE OF OHIO:**

**Section 1.** The attached instrument of easement to construct and maintain the storm and sanitary sewer that crosses Village owned property is hereby declared granted to The Renee Duncan LLC, and the Service Director is hereby directed and authorized to execute said instrument on behalf of the Village.

**Section 2.** This Ordinance is hereby declared an emergency measure necessary to the immediate preservation of the public peace, health and safety. The reason for the emergency is the immediate necessity for putting into effect the provision of Section 1 hereof. Therefore, this Ordinance shall take effect immediately by and upon its passage, and the approval of two-thirds of the members of said Council. However, this Ordinance shall take effect on the earliest date provided by law if approved by no more than the majority of the members of Council and in that event, the emergency provisions herein are set at naught.

Passed this 1st day of March, 2018.

St. Asbach  
President of Council

ATTEST:

M. Sue Kathman  
Clerk of Council

Approved this 1st day of March, 2018.

John R. Estep  
Mayor

I, M. SUE KATHMAN, CLERK OF COUNCIL, VILLAGE OF ST. BERNARD, STATE OF OHIO, DO HEREBY testify that the publication of Ordinance No. 11, 2018, was made by posting true copies of the same in the most public places designated by Council: St. Bernard Square Bus Stop; Vine Street and Washington Avenue; Bertus Street Park; Greenlee Avenue and Johnson Alley; Park on Heger Drive; each for a period of fifteen (15) days or more commencing 3-1, 2018.

ATTEST: M. Sue Kathman DATE 3-1-18  
Clerk of Council

Approved as to form [Signature] Date 3-1-18  
Director of Law

 ORIGINAL

## **STORM & SANITARY SEWER EASEMENT**

This STORM & SANITARY SEWER EASEMENT ("**Easement**") is made as of December 29, 2017, between **THE VILLAGE OF ST. BERNARD**, an Ohio municipal corporation ("**Grantor**") and **THE RENEE DUNCAN LLC**, an Ohio corporation ("**Grantee**"), on the following terms and conditions.

### **Preamble**

A. Grantor owns STREET FRONTAGE located on TOWER AVENUE, in the Village of St. Bernard, Hamilton County, Ohio, as more specifically described on the attached Exhibit A ("**Grantor's Property**").

B. Grantee owns Tower Avenue property across from to Grantor's Property, as more specifically described on the attached Exhibit A ("**Grantee's Property**").

C. The STORM & SANITARY SEWER crosses the Grantor's Property and the parties have entered into this Easement in order to permit Grantee and future owners of Grantee's Property to construct and maintain a private sewer for the purpose of discharging storm and sanitary water into the public system, subject to receipt of all necessary approvals from the Metropolitan Sewer District ("**MSD**").

D. The parties have entered into this Easement for the purpose of documenting their agreements.

### **Agreement**

1. Grant of Easement. Grantor grants and conveys to Grantee, and its successors and assigns, a utility easement, in the area described on Exhibit A, for the purpose of constructing and operating a storm and sanitary sewers and manholes, and discharging storm and sanitary water into the public sewers. This grant creates a perpetual easement appurtenant to the Grantee's Property.

2. Grantee's Use of Easement Area. Grantee and its successors and assigns, and their contractors and agents shall have unrestricted access over, across and under the Easement Area at any and all times to perform all activities necessary or appropriate to construct, install, expand, operate, maintain, repair, restore and replace the Sewer Improvements and any utility facilities or other apparatus associated with the operation of the Sewer Improvements. These rights include, but are not limited to, the rights to remove earth and shrubbery, deposit earth and fill, and grade within the Easement Area.

3. Responsibility of Grantee. Grantee shall be solely responsible for all construction, maintenance, repair, replacement and operation of the Sewer Improvements, including, but not limited to, the obligation to: (a) provide any necessary utilities and other apparatus to support the operation of the Sewer Improvements; and (b) comply with all federal, state and local laws, case and administrative law, common law, rules, regulations and orders applicable to the Sewer Improvements, including requirements of the MSD (collectively "**Applicable Laws**"); subject to the provisions of Section 6 of this Easement.

4. Grantor's Use of Easement Area. Grantor shall not: (a) obstruct or otherwise interfere with the proper operation and maintenance of the Sewer Improvements; or (b) construct any improvements within or upon the Easement Area, including but not limited to plantings or other landscaping, without Grantee's prior written consent, which Grantee will not unconditionally withhold, so long as the proposed improvement or planting is not likely to obstruct or otherwise interfere with the proper operation and maintenance of the Sewer Improvements. After the initial construction and installation of the Sewer Improvements, Grantee will consent to any reasonable proposal to use the Easement Area for the following purposes, so long as all work is performed at Grantor's sole cost and expense and in compliance with the requirements of the MSD and this Easement: (i) to install asphalt or other paving within the Easement Area; and (ii) to tie into the Sewer Improvements above the point of connection to Ross Run.

5. Grantee's Indemnity. Grantee shall exercise the rights granted under this Easement at Grantee's sole risk and expense. Grantee indemnifies and holds Grantor harmless from any and all demands, claims, actions, fines, penalties, losses, costs and expenses (including attorneys' fees and other professional fees), judgments, settlement payments and other liabilities of any kind or nature (collectively, "**Losses**") arising out of or in any way connected with: (a) Grantee's construction and operation of the Sewer Improvements; (b) Grantee's violation of Applicable Laws within the Easement Area; or (c) the negligence or willful misconduct of Grantee, its contractors and agents, or any of their employees or licensees.

6. Grantor's Indemnity. Grantor indemnifies and holds Grantee harmless from any and all Losses arising out of or in any way connected with: (a) Grantor's violation of the covenants in Section 4 of this Easement, or (b) the installation and operation of any future improvements within the Easement Area, including uses approved by Grantee pursuant to Section 4 of this Easement; (c) the negligence or willful misconduct of Grantor, or its contractors and agents, or any of their employees or licensees within the Easement Area.

7. Covenants Running With Land. The rights, restrictions, indemnities and other agreements created and conveyed in this Easement shall be deemed to be covenants running with the land and shall be binding upon and benefit the owner or owners of Grantor's Property and Grantee's Property, and any persons or entities who may from time to time own any of them. Consequently, all references to Grantor and Grantee shall be construed to refer to the then owner of Grantor's Property and Grantee's Property, respectively.

8. Notices. All notices required under this Easement shall be in writing and they will be deemed to have been duly given if they are either delivered personally or mailed by certified mail (with return receipt) or any overnight or same-day express mail delivery service providing tracking service, to the tax mailing addresses of the owner or owners of Grantor's Property and Grantee's Property, shown in the property tax records of Hamilton County, Ohio.

9. Governing Law. This Easement shall be governed by, construed and enforced in accordance with the laws of the State of Ohio.

10. No Dedication. This Easement creates a private right and it will not create, or be construed as a gift or dedication of all or any portion of the Easement Area to the general public or for any public purpose whatsoever.

11. Entire Agreement. This Easement is the entire agreement of the parties with respect to the Easement and it may not be amended, terminated, rescinded or otherwise modified except by a written instrument executed by the Grantor and Grantee.

12. Recording. Grantee will file this Easement in the office of the Recorder of Hamilton County, at Grantee's expense, and forward a copy of the recorded instrument to Grantor.

*[See next pages for signatures]*

**SIGNATURE PAGE FOR GRANTOR**

**GRANTOR:**

**THE VILLAGE OF ST. BERNARD,**  
an Ohio municipal corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF OHIO            )  
  ) SS:  
COUNTY OF HAMILTON    )

On this \_\_\_\_\_ day of March, 2012, before me, the undersigned officer, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of THE VILLAGE OF ST. BERNARD, an Ohio municipal corporation, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that (s)he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

**SIGNATURE PAGE FOR GRANTEE**

**GRANTEE:**

**THE RENEE DUNCAN LLC,**  
an Ohio corporation

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF OHIO            )  
                                  ) SS:  
COUNTY OF HAMILTON    )

On this \_\_\_\_\_ day of March, 2012, before me, the undersigned officer, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of THE RENEE DUNCAN LLC, an Ohio corporation, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

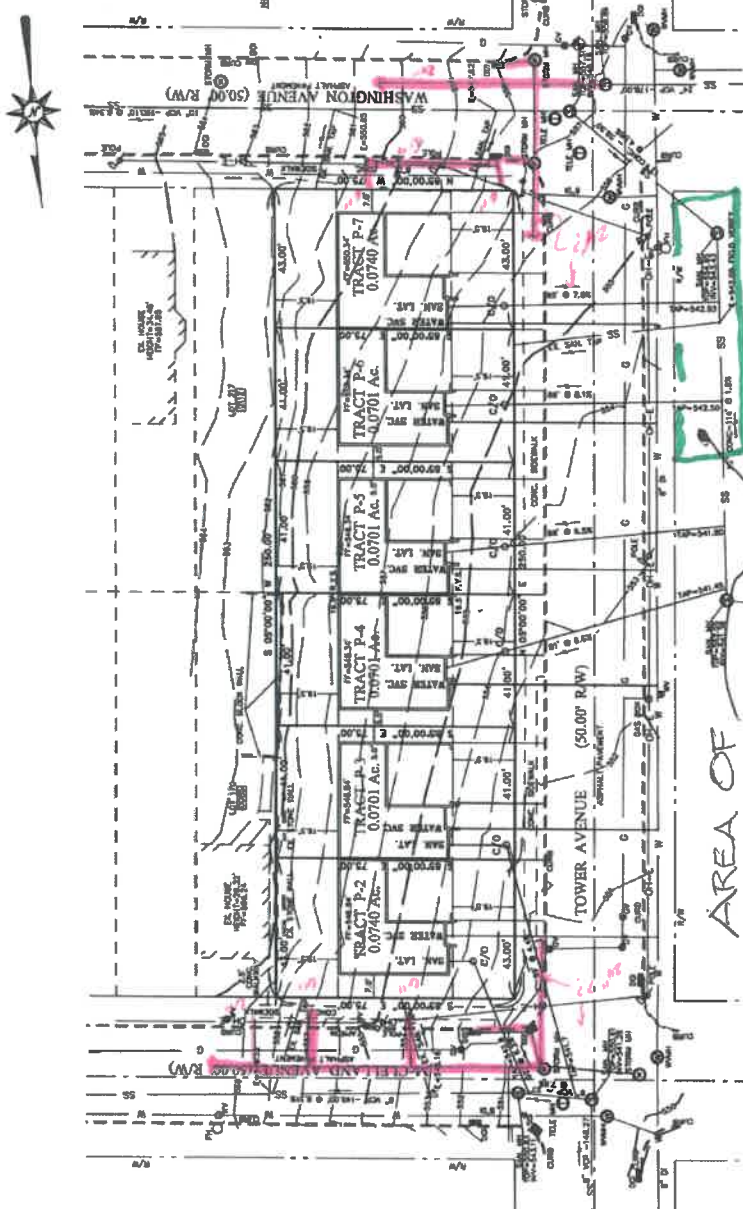
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

AUDITOR'S BOOK 582, PG. 0008  
 PARCELS 0087, 0088, 0089, 0108, 0109, 0110 & 0111

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- NOTES**
- 1) ALL PROPOSED SANITARY RIVER LATERALS
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**AREA OF  
 EASEMENT  
 SITE PLAN**

SITUATED IN  
 SECTION 10, TOWN 3, FRACTIONAL RANGE 2  
 MIAMI PURCHASE  
 MILLCREEK TOWNSHIP  
 HAMILTON COUNTY, OHIO  
 ALSO BEING ALL OF LOTS 167, 168, 169, 214, 215 & 216  
 STEPHEN KEMPER'S FARM OF ST. BERNARD  
 AS RECORDED IN PLAT BOOK 'B', VOL. 2, PAGES 33 & 34  
 HAMILTON COUNTY RECORDER'S OFFICE

P.A. MIDDLEBURY, HAMILTON, OHIO  
 P.L. 11728, P.L. 11729, P.L. 11730, P.L. 11731, P.L. 11732, P.L. 11733, P.L. 11734, P.L. 11735, P.L. 11736, P.L. 11737, P.L. 11738, P.L. 11739, P.L. 11740, P.L. 11741, P.L. 11742, P.L. 11743, P.L. 11744, P.L. 11745, P.L. 11746, P.L. 11747, P.L. 11748, P.L. 11749, P.L. 11750, P.L. 11751, P.L. 11752, P.L. 11753, P.L. 11754, P.L. 11755, P.L. 11756, P.L. 11757, P.L. 11758, P.L. 11759, P.L. 11760, P.L. 11761, P.L. 11762, P.L. 11763, P.L. 11764, P.L. 11765, P.L. 11766, P.L. 11767, P.L. 11768, P.L. 11769, P.L. 11770, P.L. 11771, P.L. 11772, P.L. 11773, P.L. 11774, P.L. 11775, P.L. 11776, P.L. 11777, P.L. 11778, P.L. 11779, P.L. 11780, P.L. 11781, P.L. 11782, P.L. 11783, P.L. 11784, P.L. 11785, P.L. 11786, P.L. 11787, P.L. 11788, P.L. 11789, P.L. 11790, P.L. 11791, P.L. 11792, P.L. 11793, P.L. 11794, P.L. 11795, P.L. 11796, P.L. 11797, P.L. 11798, P.L. 11799, P.L. 11800, P.L. 11801, P.L. 11802, P.L. 11803, P.L. 11804, P.L. 11805, P.L. 11806, P.L. 11807, P.L. 11808, P.L. 11809, P.L. 11810, P.L. 11811, P.L. 11812, P.L. 11813, P.L. 11814, P.L. 11815, P.L. 11816, P.L. 11817, P.L. 11818, P.L. 11819, P.L. 11820, P.L. 11821, P.L. 11822, P.L. 11823, P.L. 11824, P.L. 11825, P.L. 11826, P.L. 11827, P.L. 11828, P.L. 11829, P.L. 11830, P.L. 11831, P.L. 11832, P.L. 11833, P.L. 11834, P.L. 11835, P.L. 11836, P.L. 11837, P.L. 11838, P.L. 11839, P.L. 11840, P.L. 11841, P.L. 11842, P.L. 11843, P.L. 11844, P.L. 11845, P.L. 11846, P.L. 11847, P.L. 11848, P.L. 11849, P.L. 11850, P.L. 11851, P.L. 11852, P.L. 11853, P.L. 11854, P.L. 11855, P.L. 11856, P.L. 11857, P.L. 11858, P.L. 11859, P.L. 11860, P.L. 11861, P.L. 11862, P.L. 11863, P.L. 11864, P.L. 11865, P.L. 11866, P.L. 11867, P.L. 11868, P.L. 11869, P.L. 11870, P.L. 11871, P.L. 11872, P.L. 11873, P.L. 11874, P.L. 11875, P.L. 11876, P.L. 11877, P.L. 11878, P.L. 11879, P.L. 11880, P.L. 11881, P.L. 11882, P.L. 11883, P.L. 11884, P.L. 11885, P.L. 11886, P.L. 11887, P.L. 11888, P.L. 11889, P.L. 11890, P.L. 11891, P.L. 11892, P.L. 11893, P.L. 11894, P.L. 11895, P.L. 11896, P.L. 11897, P.L. 11898, P.L. 11899, P.L. 11900, P.L. 11901, P.L. 11902, P.L. 11903, P.L. 11904, P.L. 11905, P.L. 11906, P.L. 11907, P.L. 11908, P.L. 11909, P.L. 11910, P.L. 11911, P.L. 11912, P.L. 11913, P.L. 11914, P.L. 11915, P.L. 11916, P.L. 11917, P.L. 11918, P.L. 11919, P.L. 11920, P.L. 11921, P.L. 11922, P.L. 11923, P.L. 11924, P.L. 11925, P.L. 11926, P.L. 11927, P.L. 11928, P.L. 11929, P.L. 11930, P.L. 11931, P.L. 11932, P.L. 11933, P.L. 11934, P.L. 11935, P.L. 11936, P.L. 11937, P.L. 11938, P.L. 11939, P.L. 11940, P.L. 11941, P.L. 11942, P.L. 11943, P.L. 11944, P.L. 11945, P.L. 11946, P.L. 11947, P.L. 11948, P.L. 11949, P.L. 11950, P.L. 11951, P.L. 11952, P.L. 11953, P.L. 11954, P.L. 11955, P.L. 11956, P.L. 11957, P.L. 11958, P.L. 11959, P.L. 11960, P.L. 11961, P.L. 11962, P.L. 11963, P.L. 11964, P.L. 11965, P.L. 11966, P.L. 11967, P.L. 11968, P.L. 11969, P.L. 11970, P.L. 11971, P.L. 11972, P.L. 11973, P.L. 11974, P.L. 11975, P.L. 11976, P.L. 11977, P.L. 11978, P.L. 11979, P.L. 11980, P.L. 11981, P.L. 11982, P.L. 11983, P.L. 11984, P.L. 11985, P.L. 11986, P.L. 11987, P.L. 11988, P.L. 11989, P.L. 11990, P.L. 11991, P.L. 11992, P.L. 11993, P.L. 11994, P.L. 11995, P.L. 11996, P.L. 11997, P.L. 11998, P.L. 11999, P.L. 12000

REV. 5/27/2017

**J. T. KING & CO., INC.**  
 CIVIL ENGINEERS • LAND SURVEYORS  
 1000 HAMILTON AVENUE, SUITE 201  
 HAMILTON, OHIO 45013-1000  
 PHONE: (513) 763-1000 FAX: (513) 763-1001  
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RENEE DUNCAN, LLC  
 TOWER AVENUE  
 HAMILTON COUNTY, OHIO

APPROVED BY	DATE
J. T. KING	10/27/17
SCALE	PROJECT NO.
AS SHOWN	16888-S
	TOWNSHIP
	TOWNSHIP

SEAL OF HAMILTON COUNTY, OHIO

SCALE: 1" = 20'

EXHIBIT "A"