

First Reading: September 18, 2013
Second Reading: dispensed

RESOLUTION NO. 2013 - 152

A RESOLUTION AUTHORIZING THE PURCHASE AND CLOSING OF THE REAL PROPERTY BEING PART OF THE PROPERTY LOCATED AT 8080 MONTGOMERY ROAD IN SYCAMORE TOWNSHIP

WHEREAS, the Board of Township Trustees is desirous of acquiring a fee simple interest in a .410 acre parcel of real property located at 8080 Montgomery Road, Sycamore Township, Ohio 45236, being part of Auditor's parcel number 600-0080-0007-00 (the "Real Property");

NOW THEREFORE, BE IT RESOLVED, by the Board of Township Trustees of Sycamore Township, State of Ohio:

SECTION 1. The Board hereby authorizes the purchase of the Real Property Kenwood City Place, LLC, by contract in substantially the same form as that attached hereto as Exhibit A. The President of the Board, or the Township Administrator, or the Assistant Township Administrator are all hereby authorized individually to execute any documents necessary to obtain the conveyance of the property.

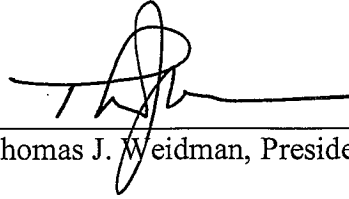
SECTION 2. The Trustees of Sycamore Township upon at least a majority vote do hereby dispense with any requirement that this resolution be read on two separate days, and hereby authorize the adoption of this resolution upon its first reading.

SECTION 3. Upon the unanimous vote of the Sycamore Township Trustees, this Resolution is hereby declared to be an emergency measure necessary for immediate preservation of the public peace, health, safety and welfare of Sycamore Township. The reason for the emergency is to provide for a timely acquisition of the real property in order to begin road construction.

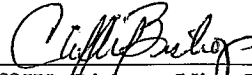
VOTE RECORD:

Mr. Bishop AYE Mr. Connor AYE Mr. Weidman AYE

Passed at a meeting of the Board of Township Trustees of Sycamore Township this 18th day of September, 2013.



Thomas J. Weidman, President



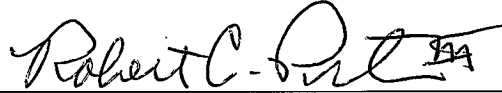
Cliff W. Bishop, Vice President



Dennis W. Connor, Trustee

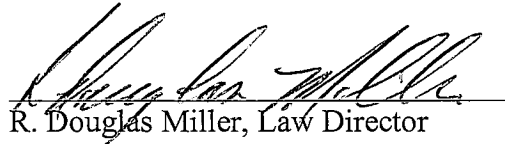
AUTHENTICATION

This is to certify that this resolution was duly passed and filed with the Township Fiscal Officer of Sycamore Township this 18th day of September, 2013.



Robert C. Porter III, Fiscal Officer
Sycamore Township, Ohio

APPROVED AS TO FORM:



R. Douglas Miller, Law Director

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE ("Agreement") is made as of the Effective Date (defined below) by and between KENWOOD CITY PLACE PARTNERS, LLC, an Ohio Limited Liability Company ("Seller"), and THE BOARD OF TOWNSHIP TRUSTEES OF SYCAMORE TOWNSHIP, OHIO, an Ohio Township ("Purchaser").

For and in consideration of the mutual covenants and premises herein contained, the parties hereto hereby agree as follows:

1. **Basic Provisions.** The following are certain provisions which are part of, and, in certain instances, referred to in subsequent provisions of this Agreement:
 - (a) **Effective Date:** The date of execution set forth under the signature block of Seller or Purchaser, whichever of such parties has executed this Agreement last.
 - (b) **Seller's Address:** 3805 Edwards Rd., Ste. 700
Cincinnati, Ohio 45209
 - (c) **Purchaser's Address:** 8540 Kenwood Road
Sycamore Township, Ohio 45236-2010
 - (d) **Property:** a fee simple interest in Seller's real property consisting of .410 acres more or less, of vacant land proposed for permanent right of way as depicted on the attached Exhibit A, being part of Auditor's Parcel Number 600-0080-0007-00.
 - (e) **Purchase Price:** Six Hundred Eighty Thousand and 00/100 Dollars (\$680,000.00).
 - (f) **Earnest Money Deposit:** One Thousand and 00/100 Dollars (\$1,000).
 - (g) **Contingency Period:** The time period commencing upon the Effective Date and expiring thirty (30) day after the Effective Date.
 - (h) **Closing:** The meeting at which the documentation evidencing the consummation of the transaction contemplated by this Agreement shall be executed and delivered by Purchaser and Seller and at which the Purchase Price, as adjusted by the adjustments set forth below, shall be delivered by Purchaser to Seller.
 - (i) **Closing Date:** On or before October 31, 2013.
 - (j) **Conditions Precedent:** Those conditions to be satisfied by Purchaser or waived by Purchaser during the Contingency Period.

- (i) **Title Condition:** Purchaser's satisfaction with the state of title to the Property in accordance with the terms of Paragraph 4 below.
 - (ii) **Physical Condition:** Purchaser's satisfaction, in its reasonable discretion, with the physical aspects of the Property, including, but not limited to, matters that would be disclosed by a survey of the Property, the environmental condition of the Property, the soil bearing capacity of the Property, the location and capacity of utilities infrastructure servicing the Property and the engineering feasibility of Purchaser's proposed use of the Property.
2. **Sale and Conveyance.** On and subject to the terms and conditions of this Agreement, Seller agrees to sell the Property to Purchaser and Purchaser agrees to purchase the Property from Seller.
3. **Earnest Money Deposit.**
 - (a) Within ten (10) business days after the Effective Date, Purchaser will deliver the Earnest Money Deposit. The Earnest Money Deposit shall be delivered to Seller, and applied to the Purchase Price or refunded to Purchaser, as provided in this Agreement. The Earnest Money Deposit shall be held by the Seller pending Closing.
 - (b) The Earnest Money Deposit, plus all interest earned, shall be refunded to Purchaser if Purchaser terminates this Agreement prior to the expiration of the Contingency Period by reason of Purchaser not being satisfied with any Condition Precedent. If Purchaser elects not to terminate this Agreement prior to the expiration of the Contingency Period, but defaults on this contract, the Earnest Money Deposit plus all interest earned thereon shall be paid to Seller as liquidated damages. If Purchaser proceeds with the Closing, the Earnest Money shall be applied to the Purchase Price.
4. **Title.** Purchaser shall satisfy itself as to title to the Property prior to the end of the Contingency Period. On or before the end of the Contingency Period, Purchaser shall deliver to Seller written notice of any title encumbrances or exceptions to which Purchaser objects ("**Title Objections**"). In the event Seller fails to cure any Title Objections or commit in writing to cure such Title Objections within ten (10) business days following Seller's receipt of Purchaser's notice of the Title Objections ("**Seller's Title Response Deadline**"), Purchaser shall have the right to terminate this agreement in its entirety within five (5) business days after Seller's Response Deadline ("**Purchaser's Title Response Deadline**"). If Purchaser so terminates this agreement, the Earnest Money Deposit shall be promptly returned to Purchaser and this Agreement shall be null and void. If Purchaser fails to provide a termination notice to Seller on or before Purchaser's Title Response Deadline, the parties shall proceed to Closing and Seller shall have no further obligation to remedy any such condition(s), except for any Title Objections that arise after the delivery of any Title Objections and the Closing.

5. **Condition of Premises**

- (a) Purchaser and its representatives shall have a temporary license continuing during the Contingency Period to enter upon the Property (and any other real property of Seller necessary to access the Property) to undertake such activities thereon reasonably required to enable Purchaser to investigate the condition of the Property and otherwise to satisfy itself with respect to the Property. Purchaser, personally and through its authorized agents and representatives, shall be entitled upon at least 48 hours advance notice to Seller to enter upon the Property during hours calculated not to interfere with the use of Seller's Property to obtain appraisals, engineering studies, environmental studies and underwriting analyses, as Purchaser deems necessary or advisable, subject to the following limitations: (a) such access shall not violate any law or agreement to which Seller is a party, or otherwise expose Seller to a material risk of loss or liability; (b) Purchaser shall give Seller at least 48 hours prior notice before conducting any inspections of the Property, and a representative of Seller shall have the right to be present when Purchaser or its representatives conducts its or their investigations on the Property; (c) neither Purchaser nor its agents shall cause any material damage to the Property or any portion thereof, and shall promptly repair any damage caused by Purchaser or its agents; (e) Purchaser shall use reasonable efforts to perform all due diligence reviews on an expeditious and efficient basis.
- (b) Purchaser, at Purchaser's expense, shall have a geotechnical and Phase One environmental inspection and any other environmental tests (Phase Two, etc) made of the Property during the Contingency Period. If Purchaser, in its sole discretion, determines there are environmental or geotechnical risks or costs associated with the Property which Purchaser is unwilling to assume, then Purchaser shall so notify Seller in writing and specifying in detail the nature of the risk and/or cost prior to the expiration of the Contingency Period. In the event Seller fails to bring the property into a geotechnical and/or environmental condition satisfactory to Purchaser within ten (10) business days following Seller's receipt of Purchaser's notice of such condition(s) ("**Seller's Environmental Response Deadline**"), Purchaser shall have the right to terminate this agreement in its entirety within five (5) business days after Seller's Response Deadline ("**Purchaser's Environmental Response Deadline**"). If Purchaser so terminates this agreement, the Earnest Money Deposit, plus all interest earned thereon, shall be promptly returned to Purchaser and this Agreement shall be null and void. If Purchaser fails to provide a termination notice to Seller on or before Purchaser's Environmental Response Deadline, the parties shall proceed to Closing and Seller shall have no further obligation to remedy any such condition(s).

6. **Remainder Plat.** Within thirty days after Closing, Purchaser shall provide Seller a plat and legal description of the remainder of Seller's real property after conveyance of

the Property to Purchaser, in a form satisfactory to the Hamilton County Engineer for recording.

7. **Closing.**

- (a) Unless Purchaser shall have notified Seller in accordance with Section 4 or 5 of this Agreement that Purchaser elects to terminate this Agreement, Closing shall be held at the Purchaser's offices on the Closing Date.
- (b) At Closing, Seller shall cause to be executed and delivered to Purchaser the following:
 - (i) An affidavit stating whether or not Seller is a foreign person or nonresident alien for purposes of Section 1445 of the Internal Revenue Code ("Code") and, if Seller is a foreign person or nonresident alien for such purposes, Seller shall (and does hereby authorize Purchaser to) comply with the provisions of the Code as shall be applicable to Seller in such case.
 - (ii) A limited warranty deed conveying the Property to Purchaser ("Deed").
 - (iii) An Affidavit reasonably satisfactory to Purchaser's title insurer pertaining to matters concerning mechanic's liens, notices of assessments, riparian rights, rights of persons in possession and any other matter reasonably requested by Purchaser's title insurer.
- (c) At Closing, Purchaser shall deliver or cause to be delivered to Seller, by township check, the balance of the Purchase Price, as adjusted by the adjustments set forth below.
- (d) At Closing, Seller and Purchaser shall mutually execute and deliver to one another a closing statement setting forth all adjustments and prorations required by or among Purchaser and Seller under this Agreement. All real estate taxes and installment of special assessments due for the then current tax period against the Property as of the date of Closing shall be paid by Seller. Seller shall continue to pay the real estate taxes and assessments until such time as the Property is assessed as a separate parcel.
- (e) To enable Seller to make conveyance as herein provided, Seller may, at the Closing, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments evidencing the clearing thereof are delivered at the Closing except that in the case of a mortgage held by an institutional lender Seller may deliver a "pay-off" letter satisfactory to Title Company who shall promptly thereafter obtain and record the discharge.

- (f) At the conclusion of Closing and upon satisfaction or waiver by Purchaser of all of Purchaser's obligations and duties required hereunder, Seller shall deliver the Deed to Purchaser.
8. **Miscellaneous.** This Agreement cannot be modified except by written instrument signed by all of the parties hereto. Paragraph headings set forth herein are for convenience of reference and shall not be construed to interpret, limit or otherwise define the terms and conditions of this Agreement. This Agreement sets forth, fully and completely, the agreement of the parties with respect to the subject matter described herein, and this Agreement shall be deemed to supersede any and all prior written or oral agreements relating to the subject matter described herein. Except as otherwise expressly set forth herein, the covenants, warranties and representations set forth in this Agreement shall survive Closing. Except as otherwise set forth herein, this Agreement shall be binding upon and shall inure to the benefit of Purchaser, Seller and their respective permitted heirs, successors, successors-in-interest and assigns. This Agreement may not be relied upon by parties other than Seller and Purchaser and the execution hereof shall not be deemed to create any third party beneficiaries to this Agreement. This Agreement has been the subject of negotiation between Seller and Purchaser, and each party participated fully and equally in the drafting hereof. Therefore, this Agreement shall not be more strictly construed against one party than the other as the result of one party having prepared the same. Prior drafts of this Agreement shall not be used in construing the terms hereof. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. Delivery of executed counterparts of this Agreement may be made by telecopy as if the same contained original signatures thereto. Wherever in this Agreement provision is made for the doing of any act by any person, it is understood and agreed that such act shall be done by such person at its own cost and expense unless a contrary intent is expressed. If an event specified to occur herein falls on a Saturday, Sunday or on a day on which banking institutions in the state where the Property is located are authorized by law to close, then such event shall occur on the next day which is not a Saturday, Sunday or day on which banking institutions in such state are authorized by law to close.
9. **Waiver.** Purchaser reserves the right, at its sole option, at any time, to waive any of the Conditions Precedent.
10. **Assignment.** This Agreement may be assigned by Purchaser without the consent of Seller.
11. **Notices.** All notices and deliveries to be given or made in connection herewith shall be deemed completed and sufficient if mailed, or delivered by personal delivery or nationally recognized overnight courier service, or electronically, effective upon: (i) receipt or refusal to accept delivery with respect to personal delivery or overnight courier service, or (ii) three (3) days following posting with the United States mail if forwarded via certified mail, return receipt requested, provided that such notices and deliveries shall be made to the respective parties for whom the same is intended if forwarded to the

parties at their addresses set forth in Paragraph 1 above or to such address or addresses as the parties may notify each other in accordance with this Paragraph 13.

12. **Brokers.** Each party warrants that they have not employed the services of a real estate broker in this transaction and that there is no commission due as a result of this Agreement. Each party shall pay any commission due on this transaction that occurs as a result of a breach of this warranty.
13. **Remedies.** Seller and Purchaser agree that damages resulting from a breach of this Agreement by either party shall not include consequential or punitive damages. In the event of Purchaser's breach of this Agreement, Seller shall be entitled to retain the Earnest Money as liquidated damages as its sole and exclusive remedy. In the event of Seller's breach of this Agreement, Purchaser's sole and exclusive remedy shall be to elect one of the following: (a) to terminate this Agreement, in which event Purchaser shall be entitled to (i) the return to Purchaser of the Earnest Money, or (b) to bring a suit for specific performance provided that any suit for specific performance must be brought within thirty (30) days of Seller's default, to the extent permitted by law, Purchaser waiving the right to bring suit at any later date.
14. **Condemnation.** In the event that condemnation proceedings against the Property are threatened or commenced prior to the Closing, Seller shall notify Purchaser thereof and Purchaser shall have the right to terminate this Agreement without liability on its part by so notifying Seller within ten (10) days of Seller's notification to Purchaser with regard to such condemnation proceedings. In the event Purchaser elects to terminate this Agreement in accordance with the foregoing, Purchaser shall, notwithstanding anything herein contained to the contrary, receive an immediate refund of the Earnest Money Deposit, including any accrued interest thereon, and neither party shall have any further liability or obligation hereunder. In the event Purchaser does not terminate this Agreement in accordance with the foregoing, then, in the event of Closing, Seller shall, at Closing, assign all of its right, title and interest to any condemnation award to be made in connection with any such proceedings.
15. **Representations, Warranties & Covenants.**
 - (a)
 - (i) Purchaser is duly organized, validly existing and in good standing under the laws of the State of Ohio;
 - (ii) Purchaser has full right, authority and capacity to execute and perform the Agreement and to consummate all of the transactions contemplated herein;
 - (iii) Purchaser is not prohibited from consummating the transactions contemplated in this Agreement by any law, regulation, agreement, instrument, restriction, order or judgment.

- (b)
 - (i) Seller is duly organized, validly existing and in good standing under the laws of the State of its origin and has full authority to transact business in the State of Ohio;
 - (ii) Seller has full right, authority and capacity to execute and perform the Agreement and to consummate all of the transactions contemplated herein;
 - (iii) Seller is not prohibited from consummating the transactions contemplated in this Agreement by any law, regulation, agreement, instrument, restriction, order or judgment.
16. **Time for acceptance:** This Agreement shall remain open for acceptance by Seller until notice of its withdrawal is given to Seller or its agent.

*Remainder of page intentionally left blank
Signature page to follow*

IN WITNESS WHEREOF, the parties have executed this Agreement.

WITNESSES:

SELLER:

KENWOOD CITY PLACE PARTNERS, LLC

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

Dated: _____

WITNESSES:

PURCHASER:

THE BOARD OF TOWNSHIP TRUSTEES
OF SYCAMORE TOWNSHIP

By: _____

Thomas J. Weidman, Trustee

By: _____

Robert C. Porter, III, Clerk

Dated: _____

Sycamore/RealEstate/KenwoodCityPlace/PurchaseAgreement081513

