

First Reading: September 18, 2013  
Second Reading: dispensed

**RESOLUTION NO. 2013 - 151**

**A RESOLUTION AUTHORIZING THE PURCHASE AND CLOSING OF THE REAL PROPERTY BEING PART OF THE PROPERTY LOCATED AT 7265 KENWOOD ROAD IN SYCAMORE TOWNSHIP, DISPENSING WITH THE SECOND READING AND DECLARING AN EMERGENCY**

**WHEREAS**, the Board of Township Trustees is desirous of acquiring a fee simple interest in a 6,862 square foot parcel of real property and a temporary construction easement consisting of a 870 square feet of real property located at 7265 Kenwood Road, Sycamore Township, Ohio 45236, being part of Auditor's parcel number 600-0211-0072-00 (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 located at from BRG KEC, 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.

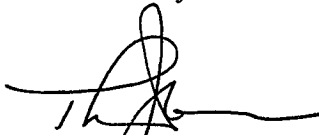
**SECTION 2.** The Trustees of Sycamore Township upon at least a majority vote do hereby dispense with any requirement that this resolution be read on two separate days, and hereby authorize the adoption of this resolution upon its first reading.

**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 18<sup>th</sup> day of September, 2013.



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Thomas J. Weidman, President



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Cliff W. Bishop, Vice President

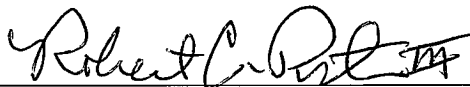


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Dennis W. Connor, Trustee

**AUTHENTICATION**

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



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

**APPROVED AS TO FORM:**



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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 BRG KEC, 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:** 7265 Kenwood Road, Suite 111  
Cincinnati, Ohio 45242
  - (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 6,862 square feet more or less, of vacant land proposed for permanent right of way as depicted on the attached **Exhibit A**, along with a temporary construction easement on 870 square feet adjacent to the fee simple purchase property, all being part of Auditor's Parcel Number 600-0211-0072-00
  - (e) **Purchase Price:** Two Hundred One Thousand Three Hundred Dollars (\$201,300) unless the: (a) the Signage Easement (as defined below) is granted, executed and delivered at Closing, (b) the location, size, content and use of the Monument Sign (as defined below) is agreed upon by Seller and Purchaser during the Contingency Period and such agreement is memorialized in an agreed final draft of the Signage Easement, and (c) the Monument Sign is approved and permitted at Closing, in which case, if all of the above conditions are satisfied, the Purchase Price shall be reduced from Two Hundred One Thousand Three Hundred Dollars (\$201,300) to One Hundred Seventy Five Thousand Dollars (\$175,000).
  - (f) **Earnest Money Deposit:** Twenty-Five Thousand and 00/100 Dollars (\$25,000).
  - (g) **Contingency Period:** The time period commencing upon the Effective Date and expiring on the forty-fifth (45<sup>th</sup>) 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:** A date to be selected by Purchaser with at least seven (7) days advance notice to Seller, but not later than December 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.

Unless Purchaser terminates this Agreement on or before the expiration of the Contingency Period by providing written notice to Seller, the Conditions Precedent shall be deemed waived and satisfied.

- (k) **Monument Sign:** a monument sign near the intersection of the current access drive to the Property and Kenwood Road, the location, size, content, and use of which shall be subject to agreement of Seller and Purchaser during the Contingency Period; provided, however, if no agreement is reached, Purchaser's sole option shall be to terminate this Agreement during the Contingency Period or proceed to Closing and pay the full (\$201,300) Purchase Price.
- (l) **Permitted Title Exceptions:** Real estate taxes and assessments which, at Closing, are a lien but are not then due and payable, building and zoning ordinances, the right of way of publicly dedicated roads, and those items set forth on **Exhibit B** attached hereto and made a part hereof.
- (m) **Seller Deliveries:** Seller shall deliver to Purchaser within five (5) days after the Effective Date: (i) a copy of Seller's most recent survey of Seller's entire property (the "Kenwood Executive Center Property"), (ii) the Phase 1 Environmental Site Assessment obtained by Seller when it obtained the Kenwood Executive Center Property", and (iii) a copy of Seller's Owner's Policy of Title Insurance (proforma) obtained by Seller in connection with its acquisition of the Kenwood Executive Center Property. Such Seller Deliveries are being provided by Seller to

Purchaser for informational purposes only and without representation or warranty by Seller.

- (m) **Signage Easement:** A perpetual easement burdening the property on which the Monument Sign is located and benefitting the remainder of the Seller's property, St. Vincent Ferrer's property, Wendy's International's property, Burger King's property, and Greater's property that establishes the right to erect, maintain, repair, and replace the Monument Sign.

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) days after the Effective Date, Purchaser will deliver the Earnest Money Deposit. The Earnest Money Deposit shall be delivered to Seller, and administered as provided in this Agreement. The Earnest Money Deposit shall be held by the Seller pending closing.
- (b) The Earnest Money Deposit, plus any interest earned thereon, shall be: (i) refunded to Purchaser if Purchaser, in Purchaser's sole discretion, terminates this Agreement prior to the expiration of the Contingency Period by providing written notice to Seller. 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 any interest earned thereon shall be paid to Seller as liquidated damages. If Purchaser proceeds with the Closing, the Earnest Money plus any interest earned thereon shall be applied to the Purchase Price.

4. **Title.**

- (a) Purchaser shall satisfy itself as to title to the Property prior to the expiration of the Contingency Period.
- (b) On or before the expiration of the Contingency Period, Purchaser shall deliver to Seller written notice of any encumbrances or exceptions to which Purchaser objects (provided, however, that Purchaser may only object to matters which render title to the Property unmarketable or render the Property unusable for Seller's intended purpose). Seller shall have until the closing to use commercially reasonable efforts to cure those objections.
- (c) With respect to any encumbrances or exceptions to which Purchaser may object prior to the expiration of the Title Review Period as aforesaid, and which Seller cannot cure prior to Closing, Purchaser may elect either: (i) to waive its objections to and accept title subject to such encumbrances or exceptions; or (ii) to terminate this Agreement, whereupon the Earnest Money Deposit plus all interest earned

thereon, shall be promptly returned to Purchaser, and this Agreement shall thereafter be of no further force or effect.

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 reasonable 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 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.

6. **Intentionally Deleted.**

7. **Intentionally Deleted.**

8. **Restoration.** After construction of the public road on the right of way, Purchaser shall restore the real property of Seller that might be disturbed during construction including, but not limited to, landscaping beds and signage, to a condition as nearly as possible as it existed prior to construction.

9. **Traffic Monitoring.** If Purchaser is granted control of the traffic signal timing on Kenwood Road by Hamilton County, Purchaser agrees to monitor and adjust, as may be reasonably necessary, the timing of the traffic signal at Kenwood Road and the proposed Township public road, so as to prevent unreasonable backups from occurring on the Township public road.

10. **Traffic Flow During Construction.** Purchaser agrees, at Purchaser's expense, to engage off duty police officers who shall direct traffic at the intersection of Kenwood Road and Seller's property during construction of Purchaser's project at least during the hours from 11:00 am to 2:00 pm and 4:00 pm to 6:00 pm on business days.

11. **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.
  
12. **Closing.**
  - (a) Unless Purchaser shall have notified Seller prior to the expiration of the Contingency Period that Purchaser elects to terminate this Agreement pursuant to 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 general warranty deed conveying the Property to Purchaser ("Deed").
  
    - (iii) An Affidavit 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, (or as otherwise specified by Seller) 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. Seller shall also deliver to Purchase a temporary construction easement on the 870 square foot portion of Seller's property adjacent to the Property being purchased.
13. **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.
14. **Waiver**. Purchaser reserves the right, at its sole option, at any time, to waive any of the Conditions Precedent.
15. **Assignment**. This Agreement may be assigned by Purchaser without the consent of Seller.
16. **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 10.

17. **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.
18. **Remedies.** Seller and Purchaser agree that damages resulting from a breach of this Agreement by either party shall not include consequential or punitive damages and that in any event Purchaser's total liability for breach of this Agreement shall not exceed the Earnest Money Deposit (the "Limitation"). Notwithstanding the foregoing sentence, the Limitation shall only apply to a breach by Purchaser of its obligations under this Agreement prior to the Closing and, after the Closing, Seller shall be fully liable for any damages caused by its failure to perform its obligations under this Agreement. In the event of Seller's breach of this Agreement, Purchaser shall have the right to seek specific performance.
19. **Condemnation.** In the event that condemnation proceedings against the Property unrelated to the Sycamore Township project that is contemplated by this Agreement 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.
20. **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.
21. **AS-IS SALE**. The Property is being sold in its AS-IS WHERE-IS condition without any representation or warranty, except as otherwise expressly set forth in this Agreement.

**The rest of this page is intentionally left blank – signature page to follow**

IN WITNESS WHEREOF, the parties have executed this Agreement.

**WITNESSES:**

\_\_\_\_\_

**SELLER:**

BRG KEC, LLC, an Ohio limited liability company

By: BRG Realty Group, LLC

Its: Manager

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

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

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

**WITNESSES:**

\_\_\_\_\_

\_\_\_\_\_

**PURCHASER:**

THE BOARD OF TOWNSHIP TRUSTEES  
OF SYCAMORE TOWNSHIP

By: \_\_\_\_\_  
Thomas J. Weidman, Trustee

By: \_\_\_\_\_  
Robert C. Porter, III, Clerk

Dated: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION AND DEPICTION OF THE PROPERTY**

## EXHIBIT B

### ADDITIONAL PERMITTED TITLE EXCEPTIONS

1. Right-of-Way and Easement for general utility purposes in favor of The Cincinnati Gas & Electric Company, dated April 8, 1970 and recorded April 23, 1970 in Deed Book 3727, Page 1052, Hamilton County, Ohio Records.
2. Right-of-Way and Easement for ingress and egress, driveway purposes, pedestrian walkway, parking, the right to discharge water from existing drainage system and sanitary sewer, and maintenance agreement and right of first refusal as set forth in the Deed dated May 27, 1981 and recorded June 22, 1981 in Deed Book 4213, Page 1394, Hamilton County, Ohio Records.
3. Right-of-Way and Easement for sanitary sewer purposes and restrictions pertaining thereto in favor of the Board of County Commissioners, Hamilton County, Ohio, recorded May 27, 1981, in Plat Book 234, Page 54 and re-recorded August 10, 1982 in Plat Book 235, Page 83, Hamilton County, Ohio Records.
4. Restrictions, conditions, covenants, agreements, reservations and limitations, as set forth in Deed Book 2112, Page 567, Hamilton County, Ohio Records.
5. Restrictions, conditions, covenants, agreements, reservations and limitations, as set forth in Deed Book 3471, Page 680, Hamilton County, Ohio Records.
6. Restrictions, conditions, covenants, agreements, reservations and limitations, as set forth in Miscellaneous Book 22, Page 314, Hamilton County, Ohio Records.
7. Restrictions, conditions, covenants, agreements, reservations and limitations, as set forth in Deed Book 3403, Page 592, Hamilton County, Ohio Records.
8. Restrictions, conditions, covenants, agreements, reservations and limitations, as set forth in Deed Book 3455, Page 688 Hamilton County, Ohio Records.
9. Restrictions, conditions, covenants, agreements, reservations and limitations, and maintenance agreement imposing obligations upon the owner of the property and a non-exclusive ingress, egress and parking easement as set forth in Deed Book 4194, Page 2031, Hamilton County, Ohio Records.
10. Limitations on access to Interstate Highway 71, contiguous to the property, as contained in instruments recorded in Deed Book 3403, Page 592, Deed Book 3451, Page 372, Deed Book 3445, Page 456 and Deed Book 3455, Page 688; Hamilton County, Ohio Records.
11. Resolution of the Board of County Commissioners regarding zone change recorded April 15, 1983 in Deed Book 4254, Page 573 and Plat Book 238, Page 38, Hamilton County, Ohio Records.

12. Sanitary sewer as shown in Plat Book 238, Page 38, Hamilton County, Ohio Records.