

First Reading: July 11, 2019
Second Reading: dispensed

RESOLUTION NO. 2019 - 78

**A RESOLUTION AUTHORIZING THE PURCHASE AND CLOSING OF THE REAL
PROPERTY LOCATED AT 7783-7789 MONTGOMERY ROAD IN SYCAMORE
TOWNSHIP, DISPENSING WITH A SECOND READING, AND DECLARING AN
EMERGENCY**

WHEREAS, the Board of Township Trustees is desirous of acquiring a fee simple interest in the real property located at 7783-7789 Montgomery Road, Sycamore Township, Ohio 45236, (the "Real Property");

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

SECTION 1. Pursuant to ORC Section 511.11, the Board hereby authorizes the purchase of the Real Property located at 7783-7789 Montgomery Road, Sycamore Township, Ohio on substantially the same terms as the attached Agreement of Purchase and Sale. The purchase price for the real property shall be \$3,400,000.00. The Chairman of the Board of Trustees, the Township Fiscal Officer, or the Township Administrator are hereby authorized individually to execute any documents necessary to obtain the conveyance of the property.

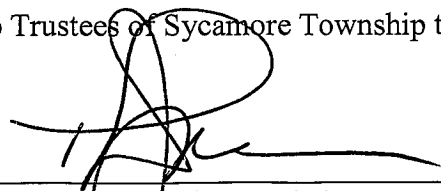
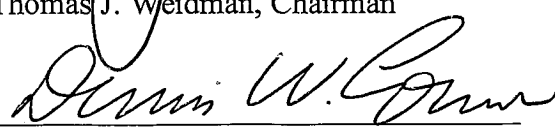
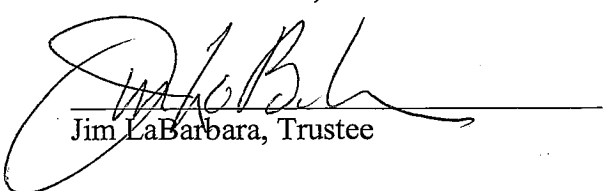
SECTION 2. The Trustees of Sycamore Township upon at least a majority vote do hereby dispense with any requirement that this resolution be read on two separate days, and hereby authorize the adoption of this resolution upon its first reading.

SECTION 3. Upon the unanimous vote of the Board of Township Trustees, this Resolution is hereby declared to be an emergency measure necessary for immediate preservation of the public peace, health, safety or welfare of Sycamore Township and shall take effect immediately. The reason for the emergency is to provide for the timely presentation of the offer to purchase to the seller.

VOTE RECORD:

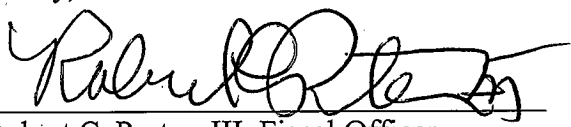
Mr. Connor Y Mr. LaBarbara Y Mr. Weidman Y

Passed at a meeting of the Board of Township Trustees of Sycamore Township this 11th day of July, 2019.

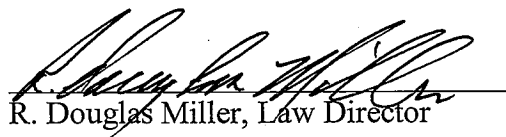

Thomas J. Weidman, Chairman
Dennis W. Connor, Vice Chairman
Jim LaBarbara, Trustee

AUTHENTICATION

This is to certify that this resolution was duly passed and filed with the Township Fiscal Officer of Sycamore Township this 11th day of July, 2019.


Robert C. Porter, III, Fiscal Officer

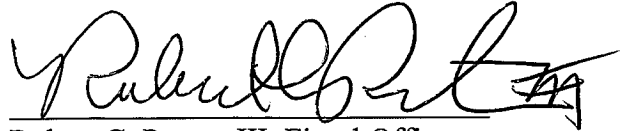
APPROVED AS TO FORM:


R. Douglas Miller, Law Director

PROOF OF PUBLICATION

I hereby certify that a summary of this Resolution was published in the Cincinnati Enquirer on

07/17/2019, 2019 and 07/24/2019, 2019.

A handwritten signature in black ink, appearing to read "Robert C. Porter, III", with a stylized flourish at the end.

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

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE ("Agreement") is made as of the Effective Date (defined below) by and between Montgomery Road 7783 LLC, an Ohio limited liability company ("Seller"), and THE BOARD OF TOWNSHIP TRUSTEES OF SYCAMORE TOWNSHIP, HAMILTON COUNTY, OHIO, an Ohio Township ("Purchaser").

W I T N E S S E T H:

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:** 4253 Bay Beach Lane #1A
Fort Myers Beach, FL 33931
 - (c) **Purchaser's Address:** 8540 Kenwood Road
Sycamore Township, Ohio 45236-2010
 - (d) **Property:** The real estate, together with all improvements, appurtenant rights, privileges, easements and fixtures located at 7783-7789 Montgomery Road, Sycamore Township, Ohio, consisting of approximately 1.8 acres, the legal description of which is attached hereto as Exhibit A, but not including the building or other improvements situated thereon which is owned by The Pep Boys – Manny, Moe & Jack, a Pennsylvania corporation ("Tenant"), which Tenant owns and in which Tenant maintains business operations pursuant to that certain ground lease dated December 22, 1993 as extended by its terms ("Ground Lease").
 - (e) **Purchase Price:** Three Million Four Hundred Thousand and 00/100 Dollars (\$3,400,000).
 - (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 90 days thereafter. This Contingency Period may be extended an additional 90 days, provided that on or before expiration of the initial Contingency Period, Purchaser tenders to Seller a township check in the amount of \$25,000 (the "Extension Payment"). In the event Purchaser extends the

Contingency Period by tender of the Extension Payment and then fails to close on the Property, Seller shall retain the Earnest Money and the Extension Payment free and clear of any interest of Purchaser, provided Seller is not in default under this Agreement. In the event Purchaser extends the Contingency Period by tender of the Extension Payment and then proceeds to close on the Property, the Extension Payment, along with the Earnest Money, shall be credited toward the Purchase Price at closing.

- (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:** The date on which Closing shall occur which shall be a date agreed to by Purchaser and Seller but not later than thirty (30) days after the satisfaction of all contingencies unless an extension of time to close is agreed to by the parties.
- (j) **Conditions Precedent:** These conditions to be satisfied by Purchaser or waived by Purchaser before expiration of 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 sole and uncontrolled 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.
 - (iii) **Tenant Condition:** Purchaser negotiating an agreement with Tenant, to Purchaser's satisfaction in its sole and uncontrolled discretion, for either (1) Tenant to vacate the Property and abandon the Ground Lease; or (2) Purchaser and Tenant negotiating a new written ground lease on terms satisfactory to Purchaser in its sole and uncontrolled discretion. Failure by Purchaser to obtain an agreement with Tenant on the above terms shall be grounds for Purchaser to terminate this Agreement, in which case the Earnest Money and any Extension Payment shall be promptly returned to Purchaser and the parties to this Agreement shall have no further obligation to each other.
 - (iv) **Tenant's Preemptive Right.** This Agreement is further contingent on Tenant failing to exercise its preemptive right to purchase the property that it holds under the Ground Lease. If Tenant exercises its right of first

refusal under the Ground Lease, this Agreement shall be null and void and the Earnest Money and any Extension Payment shall be promptly returned to Purchaser.

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 five (5) business days after the Effective Date, Purchaser will deliver to the Seller the Earnest Money Deposit. The Earnest Money Deposit shall be delivered to Seller's attorney, and, except as otherwise provided in Section 1(g), applied to the Purchase Price or refunded to Purchaser, as provided in this Agreement. The Earnest Money Deposit shall be held by the Seller's attorney pending disposition in accordance with this Agreement.
- (b) The Earnest Money Deposit shall be refunded to Purchaser if Purchaser terminates this Agreement prior to the expiration of the initial 90-day Contingency Period by reason of Purchaser not being satisfied with any of the Conditions Precedent. If Purchaser elects not to terminate this Agreement prior to the expiration of the 90-day Contingency Period, the Earnest Money Deposit (as well as any Extension Payment) shall be retained by Seller as liquidated damages and shall be non-refundable to Purchaser.

4. **Title.**

- (a) Purchaser shall satisfy itself as to title to the Property prior to the Closing Date ("Title Review Period"). Purchaser shall examine the title to the Property to its satisfaction during the Contingency Period and shall report any objections to Seller before its expiration, but Purchaser may object to any liens, restrictions, conditions, covenants, or any other cloud on the title arising after its initial examination and occurring prior to closing.
- (b) On or before the expiration of the Title Review Period, Purchaser shall deliver to Seller written notice of any encumbrances or exceptions to which Purchaser objects. Seller shall have until the Closing 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 (as well as any Extension Payments) shall be promptly returned to Purchaser, and this Agreement shall thereafter be of no further force or effect.

- (d) Encumbrances or exceptions to title to which Purchaser does not object within the Title Review Period, or to which Purchaser waives and accepts shall be deemed permitted exceptions ("Permitted Exceptions") to Seller's title to the Property, and the Purchaser agrees to take title subject to the Permitted Exceptions.
- (e) If Purchaser fails to terminate the Agreement by written notice to Seller prior to expiration of the Title Review Period as aforesaid, Purchaser shall be deemed to have accepted the Property subject to such matters and accepted the state of Seller's title to the Property.

5. **Condition of Premises**

- (a) Seller shall allow Purchaser and its representatives 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 arrange with Seller upon reasonable advance notice to Seller to enter upon the Property during hours calculated not to interfere with Tenant or its business nor 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.
- (b) If Purchaser in its sole discretion, determines during the Contingency Period there are environmental or geotechnical risks or costs associated with the Property which Purchaser is unwilling to assume, then Purchaser shall so notify Seller prior to the expiration of the Contingency Period, specifying in detail the nature of the risk and/or cost. Upon receipt of such notice that the environmental condition is unacceptable on or before the expiration of the Contingency Period, the Earnest Money Deposit (as well as any Extension Payment), shall be returned to Purchaser and this Agreement shall be null and void.
- (c) Purchaser shall hold all information concerning the Property and Seller (the "Information") in confidence and shall not at any time disclose or permit the disclosure of the Information to any person or entity without Seller's prior written consent. Purchaser further agrees to use the Information only for purposes of evaluating the Property in connection with its purchase thereof in accordance with

the terms of this Agreement. Notwithstanding the foregoing, (i) Purchaser may disclose the Information to its legal counsel, accountants, lenders, consultant, and similar third parties that need to review the Information in connection with Purchaser's purchase of the Property in accordance with the terms of this Agreement; (ii) the provisions of this Paragraph shall not apply to any portions of the Information that are available from public sources other than through the actions of Purchaser or its agents; (iii) Purchaser may disclose the Information to the extent that such disclosure is required by law or court order. Seller acknowledges that this transaction and discussion thereof will occur pursuant to the requirements of the open meeting and public records laws of the State of Ohio (ORC Sections 121.22 and 149.43), and (iv) as required to negotiate an agreement with Tenant as described in Subsection 1(j)(iii) or to comply with the Tenant's Preemptive Right as described in Subsection 1(j)(iv) hereof. The covenant of non-disclosure shall expire if Purchaser acquires title to the Property; otherwise, it shall survive termination of this Agreement.

6. **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) Marketable title to the Property by general warranty deed in fee simple absolute, free, clear and unencumbered, except restrictions and easements of record ("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 draft, the Purchase Price, subject to the adjustments and prorations 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. Seller shall be responsible for the cost of conveyance fees, recording fees, transfer taxes, deed preparation, and all matters of title clearance. All real estate taxes and installment of special assessments due for the then current tax period against the Property as of the Closing Date shall be paid by Seller, and current real estate taxes due and not then payable shall be prorated between the parties as of the Closing Date.
- (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) The risk of loss or damage to the Property conveyed pursuant to this Agreement by fire, windstorm or other casualty shall be assumed by Seller until the conclusion of the Closing.
- (g) Purchaser shall take possession of the Property upon the conclusion of the Closing. Until that time, Seller is responsible for all charges for utilities associated with the Property including, but not limited to, electricity, water, gas, heat, cable television, garbage, and phone. Seller shall turn over the Property in the same condition as it was on the Effective Date, reasonable wear and tear excepted.

7. **Miscellaneous.** This Agreement cannot be modified except by written instrument signed by all 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 set forth herein, this Agreement shall be binding upon and shall inure to the benefit of Purchaser, Seller and their respective heirs, representatives, successors, and permitted 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 facsimile or electronic mail, as if the same contained original signatures thereto. Wherever in this Agreement provision is made for the doing of any act by any party, it is understood and agreed that such act shall be done by such party 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.

8. **Waiver.** Purchaser reserves the right, in its sole option, at any time, to waive any of the Conditions Precedent except the condition precedent regarding Tenant's preemptive right as Purchaser has no rights regarding that matter.
9. **Notices.** All notices pursuant to this Agreement shall be in writing and sent by certified mail, return receipt requested, made by personal delivery or nationally recognized overnight courier service to the addresses below or by facsimile or electronic (email) transmission. Such notice shall be effective upon: (i) receipt or refusal to accept delivery with respect to personal delivery or overnight courier service, or (ii) three (3) days following deposit with the United States Postal Service, if sent via certified mail, return receipt requested, or upon receipt if sent by facsimile or electronic transmission. Any mailing shall be sent to the address set forth for the party in Paragraph 1 or to such other address as such party may indicate.
10. **Brokers.** Each party shall be solely responsible for the payment of any commission or fee due any broker or finder in connection with the transaction contemplated herein as a result of such party's actions. The provisions of this Paragraph 11 shall survive termination of this Agreement or delivery of the Deed.
11. **Remedies.** Seller and Purchaser agree that damages resulting from a breach of this Agreement by either party shall not include incidental, 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 (as well as any Extension Payment).
12. **Representations, Warranties & Covenants.**
 - (a)
 - (i) Purchaser is duly organized, validly existing and in good standing under the laws of the State of its origin;
 - (ii) Purchaser has full right, authority and capacity to execute and perform the Agreement and to consummate all 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.
 - (iv) Purchaser agrees to cause the Conditions Precedent to be satisfied as promptly after the Effective Date as possible.

- (b) (i) Seller is duly organized, validly existing and in good standing under the laws of the State of its origin;
- (ii) Seller has full right, authority and capacity to execute and perform this Agreement and to consummate all 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.
- (iv) There are no liens against the Property, including without limitation any mechanic's liens.
- (v) To the best of Seller's knowledge, Seller has complied with and is not in violation of any applicable federal, state, or local statute, law, ordinance or regulation, including without limitation all building and zoning ordinances and regulations, affecting the Property.
- (vi) There are no actions, suits or proceedings pending or threatened against Seller or the Property, or affecting any of Seller's rights in the Property, before any court, agency or authority, and Seller is not in default with respect to any order or decree of any court or any governmental agency or authority.
- (vii) Seller is in full compliance with all reporting requirements for the Property, all taxes relating to the Property, which are due and owing, are paid in full.
- (c) Except as otherwise expressly set forth herein, the covenants, warranties and representations set forth in this Paragraph 14 and elsewhere in this Agreement shall survive Closing and not merge into the Deed.

13. **Governing Law and Venue.** This Agreement is made in the State of Ohio and shall be governed by and construed in accordance with the laws of the State of Ohio. All legal actions concerning this Agreement shall be brought in the courts of Hamilton County, Ohio, and all parties agree to submit to the personal jurisdiction of said courts.

14. **Time for acceptance:** This Agreement shall remain open for acceptance by Seller until notice of its withdrawal is given to Seller or its agent.

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

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth under their respective signatures.

WITNESSES:

SELLER:

Montgomery Road 7783 LLC

by: _____

Name: _____

Title: _____

by: _____

Name: _____

Title: _____

Dated: _____

WITNESSES:

Tracy Williams
Deepal Desai

PURCHASER:

THE BOARD OF TOWNSHIP TRUSTEES
OF SYCAMORE TOWNSHIP, HAMILTON
COUNTY OHIO

By: [Signature]
Tom Weidman, Chairman

By: [Signature]
Robert C. Porter, III, Fiscal Officer

Dated: 7-11-2019

EXHIBIT A

(Attach Legal Description)

658230.2

DESCRIPTION ACCEPTABLE
HAMILTON COUNTY ENGINEER

EXHIBIT A

Tax Map - 1/4/18

LEGAL DESCRIPTION

CAGIS - _____

1.8183 Acre Tract

Situate in Section 13, Town 4, Entire Range 1, Sycamore Township, Hamilton County, Ohio, being part of John Jones Estate and being more particularly described as follows:

Commencing at the intersection of the centerline of Montgomery Road (U.S. Route Number 22) and the easterly line of the aforementioned Section 13; thence South 62° 36' 00" West along said centerline, a distance of 288.93 feet to a nail set; thence North 27° 00' 00" West, a distance of 35.00 feet to a point in the northerly right of way line of said Montgomery Road, said point being referenced by a cross notch found at South 27° 00' 00" East, a distance of 0.79 feet and being the **REAL PLACE OF BEGINNING** for the following described tract; thence with the right of way lines of said Montgomery Road the following courses and distances:

South 62° 36' 00" West, a distance of 118.99 feet to an iron pin set;

North 27° 24' 02" West, a distance of 8.50 feet to an iron pin set and

South 62° 36' 00" West, a distance of 87.58 feet to a cross notch found at a corner of the lands of Sycamore Township Board of Trustees as recorded in O.R. Vol. 11453, Page 1330 of the Hamilton County, Ohio Deed Records; thence North 27° 00' 00" West along the lines of said Sycamore Township Board of Trustees lands, a distance of 440.02 feet to an iron pin found in the southerly line of the lands of Dorinda Gunther as recorded in O.R. Vol. 12725, Page 1251 of said deed records; thence South 86° 30' 00" East along said southerly line, along the southerly line of the lands of Kimberly H. Kembrell as recorded in O.R. Vol. 7520, Page 1187, along the

600-211-645

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southerly line of the lands of Sycamore Township Board of Trustees as recorded in O.R. Vol. 11840, Page 2205, along the southerly line of the lands of Orchard Lane, Ltd. as recorded in O.R. Vol. 9434, Page 157 and along the southerly line of the lands of Kenwood Centre, LLC as recorded in O.R. Vol. 8426, Page 2362 of said deed records, a distance of 239.81 feet to an iron pin set at a corner of said Sycamore Township Board of Trustees lands as recorded in O.R. Vol. 11453, Page 1330 of said deed records; thence South 27° 00' 00" East along a line of said Sycamore Township Board of Trustees lands, a distance of 325.37 feet to the place of beginning.

Containing 1.8183 acres of land, more or less, being subject to easements and restrictions of record.

The above description is the result of a survey and plat made by John M. Duffy of John J. Duffy & Associates, Inc. Ohio Registered Surveyor No. 7757 dated June 13, 2017.