

RESOLUTION NO. 37-16
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Belinda Kenley ON THE 16th
DAY OF MAY, 2016.

RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO TAKE ALL STEPS AND EXECUTE ALL DOCUMENTS NECESSARY IN ORDER TO AFFECT THE PURCHASE OF REAL PROPERTY AND A RIGHT OF ENTRY AGREEMENT WITH SPEEDWAY SUPERAMERICA LLC FOR PROPERTY LOCATED AT 5495 WILMINGTON PIKE IN MONTGOMERY COUNTY.

WHEREAS, Council has determined that it would be in the best interest of its citizens to purchase property located in the City of Centerville from Speedway Superamerica LLC for the purpose of road and signalization improvements along Wilmington Pike and East Whipp Road; and

WHEREAS, the City initiated an Appropriation action to take the property from Speedway Superamerica LLC; and

WHEREAS, Speedway Superamerica LLC has agreed to accept the City's offer of compensation and avoid the appropriation of his property; and

WHEREAS, the City of Centerville has negotiated the purchase of this real property from Speedway Superamerica LLC upon terms acceptable to the City; and

WHEREAS, the City Manager in prior consultation with the Council at an open meeting work session called pursuant to §121.22, Ohio Revised Code, discussed the purchase of the property and was instructed by the Council to execute a contract for the purchase of property for the amount of \$78,903; and

WHEREAS, it is also necessary for the City to enter upon additional property of Speedway Superamerica LLC for the purpose of the construction project; and

WHEREAS, Council has the power to enter into such Real Property Purchase Agreement and a Right of Entry Agreement by virtue of its Charter and the provisions of Article VIII, Section 16 and Article XVIII, Section 3 of the Ohio Constitution;

NOW THEREFORE, BE IT RESOLVED:

Section 1: That the City Manager is hereby authorized to execute a contract with Speedway Superamerica LLC for the purchase

of property for \$78,903.00 in a form substantially similar to the purchase Agreement marked Exhibit "A" and incorporated herein.

Section 2: That the City Manager is hereby authorized to execute a Right of Entry Agreement in a form substantially similar to Exhibit "B" with Speedway Superamerica LLC for the purpose of allowing the City to enter upon the property for the construction project. Said Agreement is attached hereto as Exhibit "B" and incorporated herein.

Section 3: That the City Manager is hereby authorized and directed to do any and everything necessary to carry out the terms of said Agreements.

PASSED THIS 16th day of May, 2016.



Mayor of the City of Centerville, Ohio

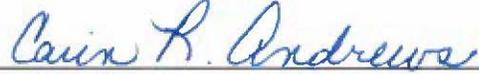
ATTEST:



Clerk of Council
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Resolution No. 37-16, passed by the Council of the City of Centerville, Ohio on the 16th day of May, 2016.



Clerk of the Council

Approved as to form, consistency
with the Charter and Constitutional Provisions.
Department of Law
Scott A. Liberman, Municipal Attorney
Municipal Attorney

Exhibit "A"

OFFER TO PURCHASE REAL ESTATE

Centerville, Ohio
May _____, 2016

1. **OFFER.** The undersigned Purchaser offers to buy on the terms and conditions set forth below, the real property (the "Property") located in the City of Centerville, County of Montgomery and State of Ohio and more particularly described as set forth in Exhibit "A" attached hereto and incorporated herein.

2. **INCLUDED IN THE SALE.** The Property shall include the land, all appurtenant rights, privileges and easements.

3. **PRICE.** The Purchaser agrees to pay for the Property the sum of SEVENTY-EIGHT THOUSAND, NINE HUNDRED THREE and no/100 DOLLARS (\$78,903.00) payable in full at closing.

4. **DEED.** Sellers shall furnish a transferable and recordable General Warranty Deed conveying to Purchaser, or nominee, a marketable title to the Property (as determined with reference to the Ohio State Bar Association Standard of Title Examination) with dower rights, if any, released, free and clear of liens, rights to take liens, and encumbrances whatsoever except (a) legal highways; (b) all installments of taxes and assessments becoming due and payable after closing; (c) zoning and other laws.

5. **TITLE EXAMINATION.** The securing of any title examination shall be Purchaser's obligation.

6. **GOVERNMENT NOTICES.** By acceptance of this Offer, Seller warrants that Seller has not received, nor is Seller aware of any notification from any Building, or Safety or Health Department, or any other governmental or quasi-governmental authority or official requiring any work to be done on the Property. Seller warrants and agrees that Seller will promptly furnish Purchaser copies of any and all such notices received by Seller prior to the Closing. Upon learning of any work required by any such authority or official to the Property, Purchaser shall have ten (10) days to advise the Seller of any such work that is objectionable to Purchaser, and unless Seller performs such work prior to the Closing, Purchaser may elect to terminate this Agreement or to complete the purchase of the Property. Purchaser plans to demolish the existing building so this provision does not apply to any condition of the said building.

7. **DELIVERY OF THE PROPERTY.** Seller shall deliver vacant possession of the Property to Purchaser at closing and the Property shall be free and clear of all debris, trash and foreign material.

8. **HAZARDOUS SUBSTANCES.** In order to induce Purchaser to enter into this Agreement and to Purchase the Property, Seller warrants to Purchaser that Seller has no actual notice or knowledge either (1) of the existence of "Hazardous Materials" (as

defined hereinafter) on or within the ground or groundwater of the Property, in contravention of any applicable laws or (2) that any such Hazardous Materials are now or ever have been used, stored (above or below ground) spilled, released, or disposed of on or within the Property or within any improvements thereto in contravention of any applicable laws. As used herein the term "Hazardous Material" means any "hazardous substances" or "hazardous waste," as defined in or with reference in the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq. and/or the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq., as amended; or any pollutant or contaminant or hazardous, dangerous or toxic chemicals, materials, or substances within the meaning of any other applicable federal, state or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, all as amended.

9. TAXES AND OTHER EXPENSES. There shall be no conveyance fee since Purchaser is a municipality. There will be no tax pro ration at the closing. Purchaser and Seller agree to cooperate in the tax installment coming due and payable in July 2016. Purchaser shall reimburse Seller for its share of the tax bill based on an apportionment prepared by the Montgomery County officials. Also, in the event that the parcel has not been split for tax purposes in 2017, Purchaser shall continue to pay to Seller its share of the real estate tax bill.

10. SELLER'S REPRESENTATIONS. In addition to the representations set forth above, Seller further represents that those signing this Contract constitute all of the owners of the Property, together with their respective spouses; that no work has been performed or improvements constructed that may result in future assessments; that Seller has no actual knowledge that underground storage tanks are currently located on the Property nor have been previously removed from the Property and that Seller truly believes that none of the Property consists of wetlands nor have any former wetlands on the Property been filled in and has no actual knowledge to the contrary. All representations contained in this Contract shall survive the Closing for a period of one (1) year.

11. CLOSING. The Closing for the delivery of the Deed and payment of the Purchase Price shall be on or before June 30, 2016. In the event of a failure of the parties to agree, the Closing shall be held on the last day designated in this paragraph and Purchaser and Seller shall designate the time and place of Closing; provided, however, in the event of a failure to agreement as to the time and place for the closing, Purchaser must designate some place in Montgomery County, Ohio. Closing costs shall be borne equally by the parties.

12. **GENERAL PROVISIONS.** Upon acceptance, this Offer shall become a complete agreement binding upon and inuring to the benefit of Purchaser and Seller and their respective heirs, personal representatives, successors, and assigns, and shall be deemed to contain all of the terms and conditions agreed upon, there being no oral conditions, representations, warranties or agreements. Any subsequent conditions, representations, warranties or agreements shall not be valid and binding upon the parties unless in writing signed by both parties. Time is of the essence of all provisions of this Contract.

13. **BROKER'S COMMISSIONS.** There is no real estate commission due to any real estate broker.

Witness: City of Centerville, Ohio, an Ohio municipal corporation

By: _____
Gregory B. Horn, City Manager
PURCHASER

Make Deed To: City of Centerville, Ohio

ACCEPTANCE

Date: _____, 2016

The undersigned Seller accepts the foregoing Offer.

Witness: Speedway Superamerica LLC, a Delaware limited liability company

By: _____
Its: _____
SELLER

Exhibit "A"



CINCINNATI
COLUMBUS
DAYTON

6305 Centre Park Drive
West Chester, OH 45069
phone 513.779.7851
fax 513.779.7852
www.kleingers.com

**LEGAL DESCRIPTION
SPEEDWAY SUPERAMERICA
WATER MAIN EASEMENT**

Situated in Section 15, Town 2, Range 6, MRs, City of Centerville, Montgomery County, Ohio being part of a 1.993 acre (deed) tract of land conveyed to Speedway Super America, LLC in Deed M.F. #1998-0076E03 of the Montgomery County, Ohio Recorder's Office, the boundary of a water main easement being more particularly described as follows:

Beginning at a point in the west right of way line of Wilmington Pike, said point being S04°49'20"W a distance of 61.00 feet from the northeast corner of Lot 3 of Whipp Road Plat as recorded in P.B. 145 Pg 37;

Thence along said west right of way line, S04°49'20"W a distance of 35.71 feet;

Thence the following four (4) courses:

1. Along a curve to the left an arc distance of 55.59 feet, said curve having a radius of 7877.00 feet, a delta of 0°24'16" and a chord bearing S07°29'47"W a distance of 55.59 feet;
2. Along a curve to the right an arc distance of 8.66 feet, said curve having a radius of 36.00 feet, a delta of 13°47'17" and a chord bearing S14°11'18"W a distance of 8.64 feet;
3. N04°49'20"E a distance of 99.77 feet;
4. S85°10'40"E a distance of 4.00 feet to the point of beginning.

Containing 0.007 acres of land more or less and being subject to easements and rights of way of record.

Bearings are based on the Ohio State Plane Coordinate System (OSPC) – South Zone. The project coordinates are based on OSPC and has been scaled to ground by using a project adjustment factor of 1.0000942433 applied at a base point of N: 608674.24 E: 1515391.69. Grid and ground coordinates area identical at the base point.


MATTHEW D. HABEDANK, P.S.
OHIO PROFESSIONAL SURVEYOR NO. 8811

3/30/2014
DATE





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**LEGAL DESCRIPTION
SPEEDWAY SUPERAMERICA
0.112 ACRES**

Situated in Section 15, Town 2, Range 6, MRs, City of Centerville, Montgomery County, Ohio being part of a 1.993 acre (deed) tract of land conveyed to Speedway Super America, LLC in Deed M.F. #1998-0076E03 of the Montgomery County, Ohio Recorder's Office, the boundary of which being more particularly described as follows:

Beginning at a 5/8" iron pin set in the west right of way line of Wilmington Pike, said point being S04°49'20"W a distance of 96.71 feet from the northeast corner of Lot 3 of Whipp Road Plat as recorded in P.B. 145 Pg 37;

Thence along said west right of way line, S04°49'20"W a distance of 96.55 feet to a 5/8" iron pin found;

Thence continuing, along a curve to the right an arc distance of 23.56 feet to a 5/8" iron pin set in the north right of way line of Whipp Road, said curve having a radius of 15.00 feet, a delta of 89°59'31" and a chord bearing S49°49'05"W a distance of 21.21 feet;

Thence along said north right of way line N85°11'09"W a distance of 2.11 feet to a point, said point being witnessed by a 5/8" iron pin found lying 0.3 feet West;

Thence continuing, along a curve to the right an arc distance of 349.47 feet to a 5/8" iron pin found at the southwest corner of the aforementioned Lot 3, said curve having a radius of 735.25 feet, a delta of 27°13'59" and a chord bearing N71°34'09"W a distance of 346.19 feet;

Thence along the west line of said Lot 3, N25°50'02"E a distance of 6.03 feet to a 5/8" iron pin set;

Thence along new division lines, the following six (6) courses:

1. Along a curve to the left an arc distance of 293.80 feet to a 5/8" iron pin set, said curve having a radius of 782.00 feet, a delta of 21°31'35" and a chord bearing S71°02'32"E a distance of 292.08 feet;
2. N89°40'56"E a distance of 25.31 feet to a 5/8" iron pin set;
3. N00°19'04"W a distance of 3.00 feet to a 5/8" iron pin set;
4. N89°40'56"E a distance of 7.94 feet to a 5/8" iron pin set;



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**LEGAL DESCRIPTION
SPEEDWAY SUPERAMERICA
WATER MAIN EASEMENT**

Situated in Section 15, Town 2, Range 6, MRs, City of Centerville, Montgomery County, Ohio being part of a 1.993 acre (deed) tract of land conveyed to Speedway Super America, LLC in Deed M.F. #1998-0076E03 of the Montgomery County, Ohio Recorder's Office, the boundary of a water main easement being more particularly described as follows:

Beginning at a point in the west right of way line of Wilmington Pike, said point being S04°49'20"W a distance of 61.00 feet from the northeast corner of Lot 3 of Whipp Road Plat as recorded in P.B. 145 Pg 37;

Thence along said west right of way line, S04°49'20"W a distance of 35.71 feet;

Thence the following four (4) courses:

1. Along a curve to the left an arc distance of 55.59 feet, said curve having a radius of 7877.00 feet, a delta of 0°24'16" and a chord bearing S07°29'47"W a distance of 55.59 feet;
2. Along a curve to the right an arc distance of 8.66 feet, said curve having a radius of 36.00 feet, a delta of 13°47'17" and a chord bearing S14°11'18"W a distance of 8.64 feet;
3. N04°49'20"E a distance of 99.77 feet;
4. S85°10'40"E a distance of 4.00 feet to the point of beginning.

Containing 0.007 acres of land more or less and being subject to easements and rights of way of record.

Bearings are based on the Ohio State Plane Coordinate System (OSPC) – South Zone. The project coordinates are based on OSPC and has been scaled to ground by using a project adjustment factor of 1.0000942433 applied at a base point of N: 608674.24 E: 1515391.69. Grid and ground coordinates area identical at the base point.

MATTHEW D. HABEDANK, P.S.
OHIO PROFESIONAL SURVEYOR NO. 8611

3/30/2014

DATE





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**LEGAL DESCRIPTION
SPEEDWAY SUPERAMERICA
0.112 ACRES**

Situated in Section 15, Town 2, Range 6, MRs, City of Centerville, Montgomery County, Ohio being part of a 1.993 acre (deed) tract of land conveyed to Speedway Super America, LLC in Deed M.F. #1998-0076E03 of the Montgomery County, Ohio Recorder's Office, the boundary of which being more particularly described as follows:

Beginning at a 5/8" iron pin set in the west right of way line of Wilmington Pike, said point being S04°49'20"W a distance of 96.71 feet from the northeast corner of Lot 3 of Whipp Road Plat as recorded in P.B. 145 Pg 37;

Thence along said west right of way line, S04°49'20"W a distance of 96.55 feet to a 5/8" iron pin found;

Thence continuing, along a curve to the right an arc distance of 23.56 feet to a 5/8" iron pin set in the north right of way line of Whipp Road, said curve having a radius of 15.00 feet, a delta of 89°59'31" and a chord bearing S49°49'05"W a distance of 21.21 feet;

Thence along said north right of way line N85°11'09"W a distance of 2.11 feet to a point, said point being witnessed by a 5/8" iron pin found lying 0.3 feet West;

Thence continuing, along a curve to the right an arc distance of 349.47 feet to a 5/8" iron pin found at the southwest corner of the aforementioned Lot 3, said curve having a radius of 735.25 feet, a delta of 27°13'59" and a chord bearing N71°34'09"W a distance of 346.19 feet;

Thence along the west line of said Lot 3, N25°50'02"E a distance of 6.03 feet to a 5/8" iron pin set;

Thence along new division lines, the following six (6) courses:

1. Along a curve to the left an arc distance of 293.80 feet to a 5/8" iron pin set, said curve having a radius of 782.00 feet, a delta of 21°31'35" and a chord bearing S71°02'32"E a distance of 292.08 feet;
2. N89°40'56"E a distance of 25.31 feet to a 5/8" iron pin set;
3. N00°19'04"W a distance of 3.00 feet to a 5/8" iron pin set;
4. N89°40'56"E a distance of 7.94 feet to a 5/8" iron pin set;

**THE
KLEINGERS
GROUP**



5. Along a curve to the left an arc distance of 51.77 feet to a 5/8" Iron pin set, said curve having a radius of 36.00 feet, a delta of 82°23'16" and a chord bearing N48°29'18"E a distance of 47.42 feet;
6. Along a curve to the right an arc distance of 55.59 feet to the point of beginning, said curve having a radius of 7877.00 feet, a delta of 0°24'16" and a chord bearing N07°29'47"E a distance of 55.59 feet.

Containing 0.112 acres of land more or less and being subject to easements and rights of way of record.

Bearings are based on the Ohio State Plane Coordinate System (OSPC) – South Zone. The project coordinates are based on OSPC and has been scaled to ground by using a project adjustment factor of 1.0000942433 applied at a base point of N: 608674.24 E: 1515391.69. Grid and ground coordinates area identical at the base point.

The above description is based upon a field survey made by The Kleingers Group under the direction of Matthew D. Habedank, Ohio Professional Surveyor No. 8611. A plat of survey is recorded in Volume _____ Page _____ of the Montgomery County Engineers Record of Land Surveys.

MATTHEW D. HABEDANK, P.S.
OHIO PROFESIONAL SURVEYOR NO. 8611

3/30/2016
DATE





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**LEGAL DESCRIPTION
SPEEDWAY SUPER AMERICA
TEMPORARY CONSTRUCTION EASEMENT**

Situated in Section 15, Town 2, Range 6, MRs, City of Centerville, Montgomery County, Ohio being part of a 1.993 acre (deed) tract of land conveyed to Speedway Super America, LLC in Deed M.F. #1998-0076E03 of the Montgomery County, Ohio Recorder's Office, the boundary of a temporary construction easement being more particularly described as follows:

Beginning at the northeast corner of Lot 3 of Whipp Road Plat as recorded in P.B. 145 Pg 37;

Thence along the west right of way line of Wilmington Pike, S04°49'20"W a distance of 61.00 feet;

Thence the following seven (7) courses:

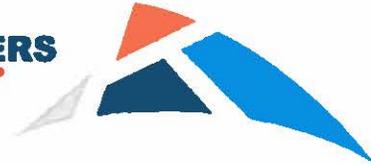
1. N85°10'40"W a distance of 4.00 feet;
2. S04°49'20"W a distance of 99.77 feet;
3. Along a curve to the right an arc distance of 43.11 feet, said curve having a radius of 36.00, a delta of 68°35'59" and a chord bearing S55°22'56"W a distance of 40.57 feet;
4. S89°40'56"W a distance of 7.94 feet;
5. S00°19'04"E a distance of 3.00 feet;
6. S89°40'56"W a distance of 25.31 feet;
7. Along a curve to the right an arc distance of 293.80 feet to a point in the west line of the aforementioned Lot 3, said curve having a radius of 782.00 feet, a delta of 21°31'35" and a chord bearing N71°02'32"W a distance of 292.08 feet;

Thence along said west line, N25°50'02"E a distance of 10.02 feet;

Thence the following five (5) courses:

1. Along a curve to the left an arc distance of 226.20 feet, said curve having a radius of 772.00 feet, a delta of 16°47'16" and a chord bearing S68°37'21"E a distance of 225.39 feet;
2. N14°29'55"E a distance of 12.47 feet;
3. S78°17'54"E a distance of 71.91 feet;
4. N29°30'43"E a distance of 91.07 feet;
5. N04°51'32"E a distance of 89.61 feet to a point in the north line of the aforementioned Lot 3;

THE
KLEINGERS
GROUP



Thence along said north line, S85°11'11"E a distance of 20.19 feet to the point of beginning.

Containing 0.209 acres of land more or less and being subject to easements and rights of way of record.

Bearings are based on the Ohio State Plane Coordinate System (OSPC) – South Zone. The project coordinates are based on OSPC and has been scaled to ground by using a project adjustment factor of 1.0000942433 applied at a base point of N: 608674.24 E: 1515391.69. Grid and ground coordinates area identical at the base point.

MATTHEW D. HABEDANK, P.S.
OHIO PROFESIONAL SURVEYOR NO. 8611

3/30/2016
DATE



EXHIBIT "D"

LINE	BEARING	DISTANCE	AREA
1	S 89° 59' 57" W	111.1	
2	S 89° 59' 57" W	200.0	
3	S 89° 59' 57" W	200.0	
4	S 89° 59' 57" W	200.0	
5	S 89° 59' 57" W	200.0	
6	S 89° 59' 57" W	200.0	
7	S 89° 59' 57" W	200.0	
8	S 89° 59' 57" W	200.0	
9	S 89° 59' 57" W	200.0	
10	S 89° 59' 57" W	200.0	
11	S 89° 59' 57" W	200.0	
12	S 89° 59' 57" W	200.0	
13	S 89° 59' 57" W	200.0	
14	S 89° 59' 57" W	200.0	
15	S 89° 59' 57" W	200.0	

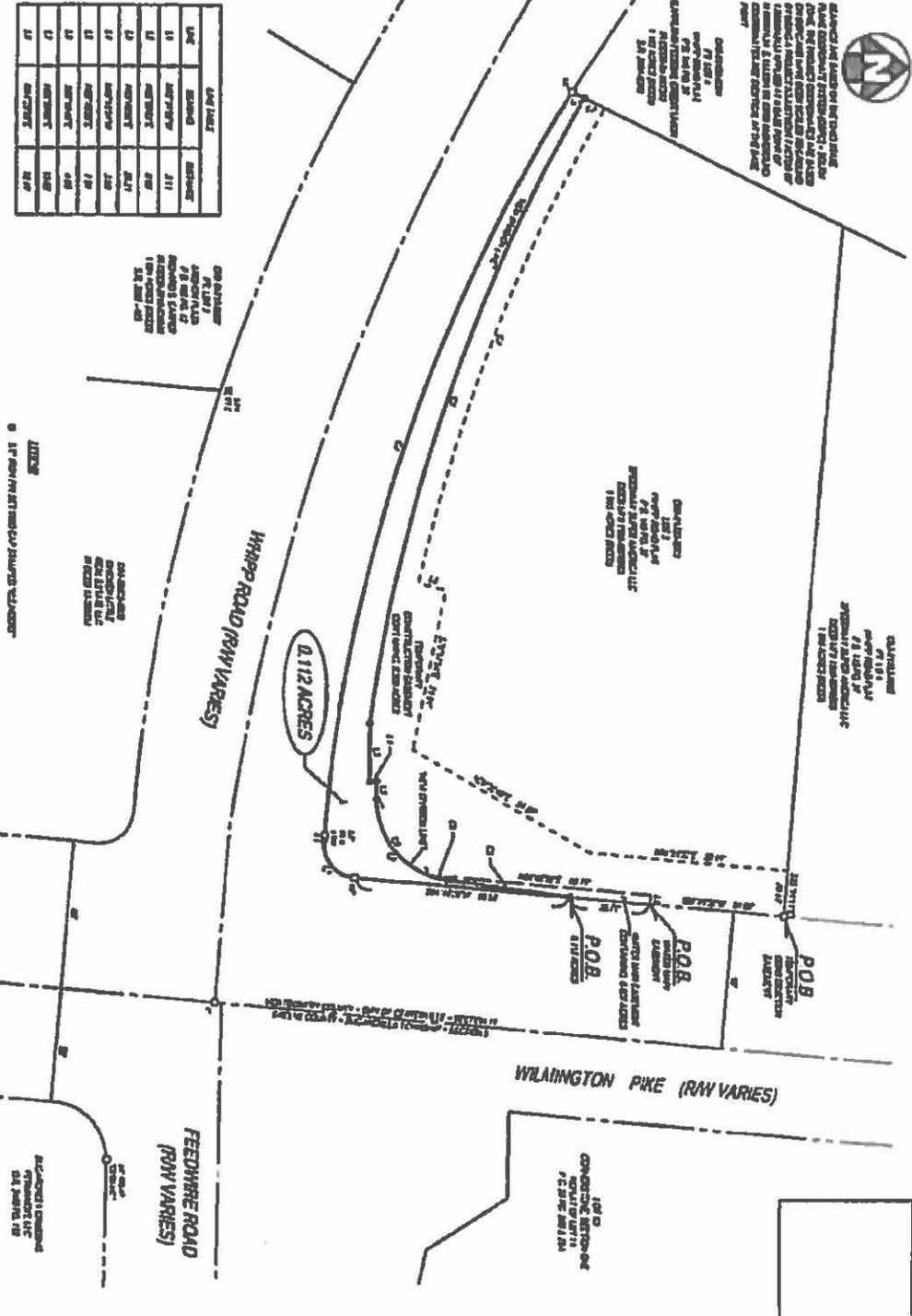
LINE	BEARING	DISTANCE	AREA
1	S 89° 59' 57" W	111.1	
2	S 89° 59' 57" W	200.0	
3	S 89° 59' 57" W	200.0	
4	S 89° 59' 57" W	200.0	
5	S 89° 59' 57" W	200.0	
6	S 89° 59' 57" W	200.0	
7	S 89° 59' 57" W	200.0	
8	S 89° 59' 57" W	200.0	
9	S 89° 59' 57" W	200.0	
10	S 89° 59' 57" W	200.0	
11	S 89° 59' 57" W	200.0	
12	S 89° 59' 57" W	200.0	
13	S 89° 59' 57" W	200.0	
14	S 89° 59' 57" W	200.0	
15	S 89° 59' 57" W	200.0	

1. ALL RIGHTS RESERVED BY SUPER AMERICA
 2. ALL RIGHTS RESERVED BY SUPER AMERICA
 3. ALL RIGHTS RESERVED BY SUPER AMERICA

4. ALL RIGHTS RESERVED BY SUPER AMERICA
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10. ALL RIGHTS RESERVED BY SUPER AMERICA
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 12. ALL RIGHTS RESERVED BY SUPER AMERICA



1 OF 1
SPEEDWAY SUPER AMERICA
 1. ALL RIGHTS RESERVED BY SUPER AMERICA
 2. ALL RIGHTS RESERVED BY SUPER AMERICA
 3. ALL RIGHTS RESERVED BY SUPER AMERICA

BOUNDARY SURVEY
0.112 ACRES
 SUPER AMERICA
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 3. ALL RIGHTS RESERVED BY SUPER AMERICA

STATE OF OHIO
 SUPER AMERICA
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SUPER AMERICA
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THE KLEINGERS GROUP
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