

CITY OF FRANKLIN, OHIO
RESOLUTION 2023-15

AUTHORIZING THE CITY MANAGER TO EXECUTE A PURCHASE AND SALE AGREEMENT AND OTHER DOCUMENTS FOR THE CITY OF FRANKLIN'S PURCHASE OF CERTAIN REAL PROPERTY IDENTIFIED AS WARREN COUNTY AUDITOR'S PARCEL ID NUMBERS 0431131004, 0431137004, 0431137035, 0431131007 AND 0431137034

WHEREAS, Section 3.03(i) of the City Charter grants the Franklin City Council with the authority to acquire title or interest in real property;

WHEREAS, the City of Franklin desires to purchase five (5) parcels of real property located in the City's corporate boundaries, more particularly identified as Warren County Auditor's Parcel ID numbers: 0431131004 (436 River Street), 0431137004 (22 W. Fifth Street), 0431137035 (S. River Street), 0431131007 (27 W. Fifth Street) and 0431137034 (506 S. River Street) (collectively, the "Property"); and

WHEREAS, the current owners of the Property have agreed to sell the Property to the City for a total purchase price of \$239,500;

WHEREAS, the City of Franklin City Council finds it to be in the best interests of the City and its residents to proceed with the purchase of the Property for \$239,500, pursuant to the terms and conditions of the Purchase and Sale Agreement negotiated by the City and Property owners, attached as Exhibit A to this Resolution.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Franklin, Ohio, a majority of the members present concurring, that:

Section 1. The City Manager is authorized to execute a Purchase and Sale Agreement in substantially the same form as the agreement attached hereto as Exhibit A, along with all other documents necessary to consummate the City's purchase of the Property.

Section 2. It is found that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council that resulted in this formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code, and the Rules of Council.

Section 3. This Resolution shall become effective immediately upon its passage.

ADOPTED: March 6, 2023

ATTEST: Khristi Dunn
Khristi Dunn, Clerk of Council

APPROVED: Brent Centers
Brent Centers, Mayor

CERTIFICATE

I, the undersigned Clerk of Council for the Franklin City Council, do hereby certify that the foregoing is a true and correct copy of a resolution passed by that body on March 6, 2023.

Khristi Dunn
Khristi Dunn, Clerk of Council

PURCHASE AND SALE AGREEMENT

This **PURCHASE AND SALE AGREEMENT** (this “Agreement”) is made and entered as of the ____ day of _____, 2023 (the “Effective Date”) by the **CITY OF FRANKLIN, OHIO**, with an address of 1 Benjamin Franklin Way, Franklin, Ohio 45005 (“Buyer”), and **RONALD D. GABBARD** and **ROSS HAROLD KRAMER**, with an address of 4209 Nelson Road, Middletown, Ohio 45042 (collectively, “Sellers”) (Buyer and Sellers may be individually referred to herein as a “Party” and collectively as the “Parties”).

In consideration of the mutual representations and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Buyer and Sellers covenant and agree as follows:

TERMS AND CONDITIONS

1. Purchase and Sale. Sellers agree to sell and convey to Buyer, and Buyer agrees to purchase from Sellers, upon the terms and conditions set forth herein, five (5) parcels of real property, together with all associated improvements, easements, rights-of-way and appurtenances belonging or in any way appertaining thereto (the “Property”). The Property is more particularly described in Exhibit A to this Agreement, attached hereto and incorporated herein by reference. The Property includes all rights, licenses, privileges and benefits which relate thereto, of every kind, character and description, now existing and/or existing on the “Closing Date” (as defined below), whether tangible or intangible, real, personal or mixed.

2. Purchase Price. The total purchase price for the Property shall be Two Hundred Thirty-Nine Thousand Five Hundred Dollars and 00/100 (\$239,500) (the “Purchase Price”). The Parties agree the Purchase Price constitutes the fair market value of the Property, and is just and reasonable compensation to Sellers for the conveyance of the Property to Buyer. If this Agreement is not terminated by Buyer pursuant to the terms and conditions set forth herein, Buyer shall pay the balance of the Purchase Price to Sellers on the Closing Date, subject to proration and credits as provided herein.

3. Due Diligence and Approval Period.

(a) Buyer’s obligations hereunder are subject to Buyer being satisfied regarding the condition and suitability of the Property in all respects, in Buyer’s sole discretion, during a period of sixty (60) days following the Effective Date (the “Due Diligence and Approval Period”).

(b) Buyer shall have the right during the Due Diligence and Approval Period to commence physical tests and inspections of the Property, and to undertake any engineering, environmental, soils or other studies on the Property, at Buyer’s sole cost; provided, however, Buyer shall give Sellers reasonable advance notice of any proposed entry onto the Property for such purposes. Sellers shall cooperate with Buyer in its Property inspections, and shall not unreasonably restrict Buyer’s access to the Property, during the Due Diligence and Approval Period. Matters subject to Buyer’s review may include, by way of example and without limitation, title, surveys, review of physical conditions, financial feasibility, development costs, utility

availability, sanitary and storm water facilities, soil and subsurface conditions, environmental conditions and restrictive covenants.

(c) During the Due Diligence and Approval Period, Buyer may obtain a commitment for an owner's policy of title insurance insuring Buyer's ability to obtain satisfactory title to the Property.

(d) If Buyer notifies Sellers of any title defects, exceptions or survey objections (collectively, "Objections") within the Due Diligence and Approval Period, Sellers shall have ten (10) days from their receipt of such notice in which to either: (i) cure such Objections or commit to cure them on or before the Closing Date; or (ii) notify Buyer in writing that Sellers are unable or unwilling to cure such Objection(s), in which case Buyer shall have ten (10) days from its receipt of such notice in which to elect in writing to either: (i) accept such title as Sellers are willing and able to convey; or (ii) terminate this Agreement, in which case the Parties will have any further obligations to one another. Sellers shall be responsible for causing all matters of a monetary nature to be released at or prior to the Closing Date, including, without limitation, mortgages, judgment liens, mechanic's liens, penalties, and the like.

(e) Within ten (10) days after the Effective Date hereof, Sellers shall, if not already made available to Buyer, deliver or cause to be delivered copies of the following documents and materials pertaining to the Property to the extent they are within Sellers' possession or control, together with an attestation that the documents provided constitute all of the Due Diligence Materials within Sellers' possession or control: title commitments/policies, surveys, site plans and specifications, architectural plans, inspections, environmental/hazardous material reports, soils reports, governmental permits/approvals, tax information and utility letters, leases for all or any part of the Property, rent roll, copy of service contracts, certificate(s) of occupancy, warranties and guaranties, commission agreements, and other similar materials relating to the physical and environmental condition of the Property, and any other documents relating to the Property reasonably requested by Buyer (collectively the "Due Diligence Materials"). The Due Diligence and Approval Period shall be extended by one day for each day Sellers delay in making the Due Diligence Materials available to Buyer

(f) Nothing in this Agreement shall be construed as imposing any limitations upon the reasons for which Buyer may decide not to purchase the Property. Buyer shall have the right, in its sole discretion, for any reason or no reason, to terminate this Agreement by providing Sellers with written notice of Buyer's decision to terminate at any time prior to the expiration of the Due Diligence and Approval Period.

4. Other Conditions Precedent to Closing. In addition to the due diligence contingencies set forth in Section 3 above, Buyer's obligations under this Agreement are conditioned upon Buyer's legislative body holding all requisite proceedings to approve the acquisition of the Property and the transaction contemplated by this Agreement.

5. Closing; Closing Adjustments and Costs; Closing Documents.

(a) Closing Date. The closing of the purchase contemplated herein (the "Closing") shall be on a date selected by Buyer and Sellers that is no later than thirty (30) days

after the expiration of, or Buyer's earlier waiver of, the Due Diligence and Approval Period (the "Closing Date"). The Closing shall take place at such time and place as may be mutually agreed by Buyer and Sellers.

(b) Closing Costs. At Closing, Buyer shall pay all closing costs, transfer taxes, title examination fees, and title insurance premiums necessary to provide Buyer with an owner's policy of title insurance. Buyer and Sellers shall each be responsible for the payment of their own attorneys' fees and expenses. Buyer shall be further responsible for the preparation and cost of deeds associated with the conveyance of title to the Property to Buyer.

(c) Prorated Real Estate Taxes. Buyer and Sellers shall prorate all real property taxes and assessments related to the Property as of the date of Closing (collectively, "Taxes"), with the day of Closing being treated as the first day of ownership by Buyer. Sellers shall be responsible for payment of all Taxes accruing prior to the Closing Date. If the final tax bill(s) for the Property is not available at Closing, the Taxes shall be prorated based upon the latest available tax duplicate(s) for the Property, using the method customary in Warren County, Ohio.

(d) Deeds. At Closing, Sellers shall convey to Buyer good and marketable fee simple title to the Property by recordable General Warranty deeds for the involved parcels, with release of any and all dower rights (if applicable), and free and clear of all liens and encumbrances by any party claiming by, through or under Sellers, except: (i) liens for real property taxes and assessments not yet due and payable as of the Closing Date; (ii) easements and restrictions of record; and (iii) governmental laws, restrictions and ordinances affecting the Property.

(e) Other Closing Documents from Sellers. At Closing, in addition to executed deeds, Sellers shall deliver to Buyer all documents that may be reasonably requested by the closing agent or Title Company to ensure that good and marketable title is transferred to Buyer.

6. Sellers' Representations and Warranties. Each Seller hereby covenants, represents and warrants to Buyer, with respect to each parcel comprising the Property for which the Seller is a lawful fee simple owner, as of the Effective Date and again as of the Closing Date:

(a) Seller has all requisite power and lawful authority to enter into and perform the obligations required of Seller under this Agreement, and execute and deliver the deeds conveying title to the Property to Buyer.

(b) Seller has good and marketable fee simple title to the Property, and the same is or will be unencumbered at the Closing Date, except for matters of record, which shall be subject to Buyer's approval. There are no boundary disputes or other matters affecting title or the legal description of the Property.

(c) Seller has not entered into any unrecorded agreements to lease, sell, mortgage or otherwise encumber or dispose of any interest in the Property, except for this Agreement.

(d) Seller has not received notice of any action, suit or proceeding that is pending or threatened, before or by any judicial body, any governmental agency or authority, against or affecting all or any part of the Property.

(e) Seller has not received notice of any mechanic's lien, materialman's lien or lis pendens action affecting the Property, and, as of the Closing Date, all sewer, water and other utility bills that are then due will be paid in full.

(f) There are no private restrictions or conditions, by deed, contract relating to the Property or otherwise, which do not appear of record. There are no unrecorded easements; options; rights of first refusal; leases; licenses; agreements relating to any lease, purchase or development of the Property; or other unrecorded agreements of any kind or nature whatsoever relating to the Property that would interfere with or adversely affect this Agreement.

(g) No party other than the Parties to this Agreement will be in possession of the Property on the Closing Date.

The truth and accuracy of the foregoing representations and warranties shall be a condition precedent to the Closing. The provisions of this Section 6 shall survive the Closing.

7. Buyer's Representations and Warranties. Buyer hereby covenants, represents and warrants to Sellers, as of the Effective Date and again as of the Closing Date, that Buyer is an Ohio political subdivision organized and incorporated under the laws of the State of Ohio, and has the full right, power and authority to enter into this Agreement, to purchase the Property as provided herein, and to carry out Buyer's obligations hereunder (subject to Section 4 herein).

8. Risk of Loss. Sellers agree that they will deliver the Property to Buyer at Closing in substantially the same condition and repair as of the date of this Agreement. All risk of loss with respect to the Property shall remain with Sellers until Closing.

9. As-Is. The sale of the Property hereunder is, and except as expressly set forth in this Agreement shall be, made on an "as is", "where is", and "with all faults and defects" basis, without additional representations or warranties of any kind or nature, whether express, implied or otherwise, including any representation or warranty concerning title to the Property, the physical condition of the Property (including the condition of the soils thereon), the environmental condition of the Property, or any other representation or warranty pertaining to the Property. Buyer will acquire the Property solely on the basis of its own examinations of the Property (subject to any documents and records provided to Buyer by Sellers pursuant to this Agreement), and Buyer acknowledges that it has had or will have the opportunity to conduct sufficient due diligence prior to the Closing Date pursuant to the terms and conditions of this Agreement.

10. Damage and Condemnation. If, at any time prior to Closing, all or any part of the Property is damaged by casualty, or taken or appropriated by virtue of eminent domain or similar proceedings, or is condemned for any public or quasi-public use, then Buyer may, in its sole discretion, terminate this Agreement and thereafter neither Party will have any further obligations hereunder. If Buyer terminates this Agreement in accordance with this provision, Sellers shall be entitled to receive all insurance proceeds and/or condemnation proceeds payable for the affected

portion of the Property. If Buyer instead elects to maintain this Agreement in full force and effect: (i) Buyer shall be entitled to receive all insurance proceeds and/or condemnation proceeds payable for that portion of the Property damaged or taken, and Sellers shall execute such assignments or other instruments as are necessary to transfer such proceeds to Buyer; or (ii) Buyer shall receive a credit against the Purchase Price equal to the amount of the insurance or condemnation proceeds actually paid to Sellers with any remaining proceeds to be transferred to Buyer at Closing.

11. Default. If, following the full execution of this Agreement, either Party defaults in the performance of its duties or obligations hereunder, or any representation or warranty hereunder is otherwise untrue or incomplete, the following terms and conditions shall apply:

(a) If Buyer defaults on any obligations contained in this Agreement, Sellers must give Buyer written notice of the default and a ten (10) day opportunity to cure said default. If Buyer remains in default following the ten (10) day cure period, Sellers' sole remedy shall be to terminate this Agreement, and thereafter neither Party will have any further obligations hereunder.

(b) If either Seller defaults on any obligations contained in this Agreement, then Buyer shall have the right to either: (i) pursue specific performance against Sellers; or (ii) terminate this Agreement and pursue any remedy available at law or in equity.

12. Notices. Any notices delivered to a Party pursuant to this Agreement shall be delivered to the recipient-Party at the address listed below (or such other address that may be designated in writing by the Party following the Effective Date) by: (i) personal delivery; (ii) certified mailing via the U.S. Postal Service, return receipt requested; or (iii) or by a nationally recognized overnight courier service. A copy of the notice shall also be sent to the recipient-Party's designated e-mail address(es) listed below (or such other e-mail address(es) that may be designated in writing by the Party following the Effective Date). A notice properly addressed to the recipient-Party shall be deemed given and effective upon: (i) receipt by the recipient-Party, if delivered personally or by overnight courier; or (ii) the conclusion of the third business day after deposit in the mail if mailed via certified USPS mailing.

IF TO SELLERS:

Ronal D. Gabbard

Ross Harold Kramer

IF TO BUYER:

City of Franklin, Ohio
Attn: Jonathan Westendorf, City Manager
1 Benjamin Franklin Way
Franklin, Ohio 45005
Email: jwestendorf@franklinohio.org

With a copy to:

Bricker & Eckler LLP
Attn: Austin Musser, Esq.
2 E. Mulberry Street
Lebanon, Ohio 45036
Email: amusser@bricker.com

13. Possession. Sellers shall deliver exclusive possession of the Property to Buyer on the Closing Date pursuant to the terms and conditions set forth herein.

14. Time of the Essence. Time is of the essence with respect to the completion and fulfillment of all terms and conditions set forth in this Agreement.

15. No Broker. No real estate broker has been used in connection with this transaction.

16. Miscellaneous.

(a) This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto, their respective heirs, legal representatives, successors and assigns.

(b) This Agreement contains the entire agreement of the Parties with respect to the purchase and sale of the Property contemplated herein, and no other agreement, statement or promise made by any Party, or any officer, representative, employee or agent of any Party, whether express or implied, oral or written, that is not contained in this Agreement shall be binding or valid.

(c) This Agreement may be executed in any number of counterparts, each of which shall be an original, and all of which together shall constitute one and the same instrument.

(d) This Agreement may only be amended by written amendment signed by Buyer and both Sellers.

(e) The time in which any act provided by this Agreement is to be done shall be computed by excluding the first day and including the last day, unless the last day is a Saturday, Sunday, or legal holiday, in which event the last day shall also be excluded.

(f) If any Party shall be delayed or prevented from the performance of any act required by this Agreement by reason of acts of God, strikes, lockouts, pandemic, labor troubles, inability to procure materials, restrictive governmental laws or regulations, or other cause, without fault and beyond the reasonable control of the Party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay; and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

(g) No failure by either Party to insist upon the strict performance of the other Party's obligation under any covenant, agreement, term or condition set forth herein, or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach, or of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter

this Agreement, and each and every covenant, condition, agreement and term of this Agreement shall continue in full force and effect with respect to any other then-existing or subsequent breach. No waiver of any breach shall in any event be effective unless the same is in writing, signed by the non-breaching Party, and then such waiver shall be effective only in the specific instance and for the specific purpose for which it is given.

(h) If any term, covenant or condition contained in this Agreement is deemed by a court of competent jurisdiction to be invalid, illegal or unenforceable for any reason, the rights and obligations of the Parties hereunder shall be construed and enforced with such term, covenant or condition limited so as to make it valid, legal or enforceable to the greatest extent allowed by law, or, if such term, covenant or condition is totally invalid, illegal or unenforceable, the rights and obligations of the Parties hereunder shall be construed and enforced as if such term, covenant or condition was never contained herein, and all other terms, covenants and conditions set forth in this Agreement shall continue on, unchanged.

[Signature Page Follows]

Resolution 2023-15
Exhibit A

IN WITNESS WHEREOF, Sellers and Buyer have executed this Agreement as of the Effective Date.

CITY OF FRANKLIN, OHIO

By: _____
Jonathan Westendorf, City Manager

Date: _____, 2023

RONALD D. GABBARD

By: _____

Date: _____, 2023

ROSS HAROLD KRAMER

By: _____

Date: _____, 2023

EXHIBIT A
to Purchase and Sale Agreement

(Description of the Property)

1. Warren County Auditor's Parcel ID: 0431131004
Common Address: 436 River Street, Franklin, Ohio 45005
2. Warren County Auditor's Parcel ID: 0431137004
Common Address: 22 W. Fifth Street, Franklin, Ohio 45005
3. Warren County Auditor's Parcel ID: 0431137035
Common Address: S. River Street, Franklin, Ohio 45005
4. Warren County Auditor's Parcel ID: 0431131007
Common Address: 27 W. Fifth Street, Franklin, Ohio 45005
5. Warren County Auditor's Parcel ID: 0431137034
Common Address: 506 S. River Street, Franklin, Ohio 45005