

CITY OF FRANKLIN, OHIO  
RESOLUTION 2020-52

**AWARDING THE BID AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY AND OTHER DOCUMENTS FOR THE SALE OF REAL PROPERTY LOCATED AT 449 SOUTH MAIN STREET, FRANKLIN, OHIO; PARCEL ID: 04-31-131-017, TO EQUITY POINT INVESTMENTS, INC., 431 SOUTH MAIN STREET, FRANKLIN, OHIO**

WHEREAS, bids were scheduled to be opened and all received were opened on September 1, 2020 for the purchase of real property located at 449 South Main Street, Franklin, Ohio in accordance with the Notice to Bidders; and

WHEREAS, only one bid was received; and

WHEREAS, it is determined by Council that the bid from Equity Point Investments, Inc., doing business at 431 South Main Street, Franklin, Ohio, is a commercially reasonable bid and the highest and best; and

WHEREAS, Council passed Ordinance 2020-08 authorizing the sale of real estate situated at 449 South Main Street, Franklin, Ohio, Parcel ID: 04-31-131-017, via competitive bidding, and in accordance with the City Charter and the City complied with all notice requirements; and

WHEREAS, the sale of this property as fully described in the Purchase Agreement, attached as Exhibit A, is reasonably expected to culminate in economic benefit and development for the City of Franklin; and

WHEREAS, this Council finds it to be in the best interests of the City of Franklin, Ohio and its residents to proceed with the sale of this property to Equity Point Investments, Inc. to allow this property to undergo immediate renovation which is reasonably expected to lead to the operation of new business from this property.

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

Section 1. The bid for the sale of real property located at 449 South Main Street, Franklin, Ohio, Parcel ID: 04-31-131-017, is hereby awarded to Equity Point Investments, Inc., for the purchase price of \$21,001.99, all in accordance with the Notice to Bidders, Instructions to Bidders, General Conditions, Specifications, Plans and other documents contained in the bid packet.

Section 2. The City Manager is directed and authorized to execute an Agreement of Purchase and Sale of Real Property and other documents for the sale of the real property located at 449 South Main Street, Franklin, Ohio; Parcel ID: 04-31-131-017, to Equity Point Investments, Inc., for the purchase price of \$21,001.99.

Section 3. It is found that all formal actions of this Council concerning and relating to the adoption of this Ordinance 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 4. This Resolution shall become effective immediately upon its passage.

ADOPTED: September 21, 2020

ATTEST: Khristi Dunn  
Khristi Dunn, Clerk of Council

APPROVED: Brent W. Centers  
Brent Centers, Mayor

## AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY

1. **OFFER.** EQUITY POINT INVESTMENTS, INC. having its principal office at 431 South Main Street, P.O. Box 431, Franklin, OH 45005 (“Buyer”), hereby offers to purchase and CITY OF FRANKLIN, whose tax mailing address is 1 Benjamin Franklin Way, Franklin, Ohio 45005, (“Seller”) hereby agrees to sell, subject to the terms and conditions set forth herein, certain tracts of land owned in fee simple by the Seller, which consist of an approximate total of 0.0630 Acres (“the Land”), as more particularly described in Exhibit A, commonly known as 449 South Main Street, Parcel ID Number 04-31-131-017, which is attached hereto and made a part hereof, together with all rights, privileges and appurtenances to the Land including, without limitation, all of the Seller’s rights in any water rights, mineral rights, easements, rights-of-way, gas and hydrocarbons, and other appurtenances used or connected with the beneficial use or enjoyment of the Land.
2. **CONSIDERATION.** The purchase price for the Property shall be Twenty-one Thousand One Dollar and Ninety-nine Cents (\$21,001.99), which Buyer shall pay to the Seller at Closing, in cash or by cashier’s check, subject to any adjustments and/or prorations as provided herein (the “Purchase Price”).
3. **TITLE.**
  - a. Buyer shall obtain, at its own cost and expense, a commitment for an owner’s policy of title insurance issued by a title insurance company selected by Buyer (the “Title Company”) with respect to the Property (the “Title Commitment”). The Title Commitment shall show in Seller marketable title in fee simple free and clear of all liens and encumbrances except: (i) those created by Buyer; (ii) those specifically set forth in this Agreement; (iii) zoning ordinances; (iv) legal highways; and (v) covenants, restrictions, conditions and easements of record which do not interfere with or restrict the use of the Property contemplated by Buyer.

If title to all or part of the Property is unmarketable, as determined by Ohio law with reference to the Ohio State Bar Association’s Standards of Title Examination, or is subject to liens, encumbrances, easements, conditions, restrictions or encroachments other than those excepted by this Agreement, Buyer shall have the right to object to such conditions within twenty (20) days of Buyer’s receipt of the Title Commitment. If Buyer so objects, Seller shall: (i) remedy or remove such defect, lien, encumbrance, easement, condition, restriction or encroachment within thirty (30) days; or (ii) shall, within fifteen (15) days and by written addendum to this Agreement, agree to deduct the costs of remedy and removal of such defect, lien, encumbrance, easement, condition, restriction or encroachment from the Purchase Price. If Seller fails to remedy or remove any such defect, lien, encumbrance, easement, condition, restriction or encroachment within the thirty days or fails to execute the addendum within fifteen days, Buyer shall have the option to terminate this Agreement by delivering written notice thereof to Seller.

At Closing, Seller shall sign an affidavit with respect to off-record title matters as required by the Title Company and Buyer. The issuance of a title insurance policy pursuant to the Title Commitment (the “Title Policy”) is a condition precedent to the parties’ obligation to proceed to Closing under this Agreement. The Title Policy shall be in a form reasonably acceptable to Buyer and in the amount of the Purchase Price, showing title to the Property vested of record in Buyer in fee simple, subject only to any matters approved or waived by Buyer, and any other matters that Buyer has approved in writing.

- b. If the Title Commitment discloses that the condition of title is not acceptable (the “Title Exceptions”), Buyer may notify Seller of such Exceptions within fourteen (14) days after Buyer’s receipt of the last of the Title Commitment (the “Title Notice”), whereupon Seller shall use

**commercially reasonable efforts to** cure any disapproved Title Exceptions. If Seller does not remedy any Title Exceptions before the Closing Date, Buyer may, at its option: (i) accept title subject to the objections raised by Buyer, without an adjustment to the Purchase Price, in which event said Title Exceptions shall be deemed to be waived for all purposes, or (ii) rescind this Agreement, whereupon this Agreement shall be of no further force and effect.

- c. Buyer shall pay for an owner's title insurance policy in the amount of the Purchase Price insuring marketable fee simple title in Buyer from and after the Closing, subject only to exceptions for any liens, encumbrances or other matters created or brought about by Buyer and exceptions permitted according to this Agreement. The policy shall also insure Buyer as of the date of recording of the deed or other instrument of conveyance against any lien, or right to a lien, for services, labor or material imposed by law and not shown by the public records. Seller agrees to cooperate with, and comply with the requirements of, the title insurance company for issuance of this coverage. Unless otherwise agreed or if not available for reasons other than any act of Seller, Buyer's title policy will include mechanic's lien coverage.

4. **CONDITIONS PRECEDENT.** The obligation of the Buyer to consummate the purchase of the Land shall be subject to the fulfillment on or before the Closing of all of the conditions set forth herein, any of which may be waived by the Buyer, in writing, in its sole and absolute discretion:

- a. The conditions precedent to closing provided for in Paragraph 3 being satisfied or, for any unsatisfied Title Exception, a written waiver by the Buyer of those unsatisfied Exceptions;
- b. The Title Company shall have issued or irrevocably committed to issue the Title Policy;
- c. Seller shall have performed and observed, in all material respects, all covenants and terms of this Agreement to be performed and observed by the Seller as of the Closing; and
- d. All of the representations and warranties of the Seller contained in Paragraph 8 of this Agreement shall be true and correct in all material respects at the Closing.

5. **CLOSING.**

- a. The closing of the purchase and sale of the Land shall be on or before a date that is one hundred twenty (120) days from the execution date of this Agreement (the date this Agreement is executed by both the Buyer and the Seller), unless such date is extended, in writing, upon the agreement of the Buyer and the Seller.
- b. In addition to the satisfaction of the Conditions Precedent contained in Paragraph 4 hereof, the Buyer's obligations under this Agreement are subject to and contingent upon the occurrence of the following, on before the Closing: (i) all of Seller's representations and warranties hereunder remaining true and correct; and (ii) no moratorium, statute, order, regulation, ordinance or judgment of any court or government agency shall have been enacted, adopted, issued or initiated that would materially and adversely affect the Property or Buyer's use thereof as contemplated herein.
- c. Seller shall execute and deliver to the Buyer at Closing a transferable and recordable quit claim deed conveying a marketable, fee simple title to the Land to the Buyer, free and clear of all liens and encumbrances, but subject to any easements or restrictions of record.

- d. Seller shall furnish to Buyer at Closing an affidavit attesting to the absence of any security interest in, or financing statement, claim, lien, or potential lien known to Seller with respect to the Land, and further attesting that there have been no improvements to the Land for one hundred twenty (120) days immediately prior to the Closing, excepting any known claims or liens that are addressed by addendum to this Agreement, in accordance with Paragraph 3 a., above.
- e. Seller shall execute an Affidavit of Title, **limited to Seller's knowledge**.
- f. Seller shall execute a certification, certifying that as of the date of Closing, all representations and warranties by Seller set forth in this Agreement remain true and correct.
- g. Seller shall provide such proof of Seller's authority and authorization to enter into this Agreement and perform its obligations hereunder as may be reasonably required by the Title Company, including corporate resolutions and incumbency certificates.
- h. Seller shall execute such affidavits and indemnities as the Title Company may reasonably require in order to omit from the Title Policy all exceptions for (i) parties in possession; (ii) mechanic's liens; (iii) unrecorded assessments and other matters an accurate survey of the Land would disclose, and (iv) nondelinquent real estate taxes, water, sewer and other charges of municipal and governmental authorities and utility companies.
- i. Buyer and Seller shall execute such other documents as may be reasonably requested to enable the consummation of the transaction contemplated by this Agreement.

**6. CLOSING COSTS AND OTHER PRORATIONS.**

- a. Closing Costs.
  - (i) Except as otherwise expressly provided herein, Seller shall pay at the Closing: the costs of releasing any mortgage, financing statement or other debt security, or any attachments, assessments, mechanic's or materialmen's liens outstanding against the Land; the costs of curing, remedying or removing any Exceptions and/or Conditions that the Seller is under obligation to cure, remedy or remove; and the costs of preparing and recording the deed.
  - (ii) Except as otherwise expressly provided herein, Buyer shall pay at Closing: the costs of the Title Commitment and the Title Policy and any special endorsements to the Title Policy not required to cure an Exception and/or Conditions; and any other documents required in connection with the title insurance commitment; any transfer taxes.
  - (iii) The Seller and Buyer shall each pay its own attorney's fees incurred with respect to the preparation and negotiation of this Agreement and the Closing of the transactions contemplated hereby.
- b. Taxes. All real property taxes and assessments (the "Taxes"), including penalties thereon, which are delinquent shall be paid on or before the Closing by the Seller. Any nondelinquent taxes shall be prorated between Buyer and Seller on a **cash** basis, as of the date of Closing for the year of Closing, and thereafter shall be the responsibility of Buyer, subject to applicable law. If the closing shall occur before the tax rate is fixed for the then current year, the apportionment of taxes shall be upon the basis of the tax rate of the preceding year applied to the latest assessed valuation. However, if the Land was materially improved following the determination of the assessed value upon which the prior year's taxes were based, taxes will be estimated based on the preceding year's

levy at the more current assessed value, if ascertainable, and the estimated amount prorated. The parties also agree that if the Land has been reappraised or reclassified within the preceding year and the actual taxes based on the new value are not available, they will agree to a reasonable estimation of the current year's taxes based on the information available on the Closing.

7. **POSSESSION.** Possession of the Property shall be granted to Buyer, free and clear of the rights of third parties (other than as set forth in the Title Policy), on the Closing Date.
8. **REPRESENTATIONS AND WARRANTIES OF SELLER.** The Seller warrants and represents to Buyer as to the following matters, each of which is so represented to be true and correct as of the date hereof and also to be true and correct as of the Closing Date, and which shall survive the closing and delivery of deed.
  - a. Authority of Signatories; No Breach of Other Agreements, etc.: The execution, delivery of and performance under this Agreement is pursuant to authority validly and duly conferred upon Seller and the signatories hereto. The consummation of the transaction herein contemplated and the compliance by Seller with the terms of this Agreement do not and will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any agreement, arrangements, understanding, accord, document or instrument by which Seller or the Land are bound; and will not and does not, to the best knowledge and belief of Seller, constitute a violation of any applicable law, rule, regulation, judgment, order or decree of any governmental instrumentality or court, domestic or foreign, to which Seller or the Land are subject or bound.
  - b. Accuracy of Information: To Seller's knowledge the Records and all other documents being delivered by Seller and prepared by Seller are true, accurate and complete.
  - c. Executory Agreements: To Seller's knowledge Seller is not a party to, and the Land is not subject to, any Agreement or agreement of any kind whatsoever, written or oral, formal or informal, with respect to the Land, other than this Agreement. Buyer shall not, by reason of entering into or closing under this Agreement, become subject to or bound by any agreement, Agreement, lease, license, invoice, bill, undertaking or understanding which it shall not have previously agreed in writing to accept.
  - d. Rights in the Land: To Seller's knowledge, other than this Agreement, there are no purchase Agreements, options or any other agreements of any kind, written or oral, formal or informal, choate or inchoate, recorded or unrecorded, whereby any person or entity other than Seller has acquired or have any basis to assert any right, title or interest in, or right to possession, use, enjoyment or proceeds of all or any portion of the Land.
  - e. Violations: To the Seller's knowledge, the Seller has not received any written notice from any party alleging that the Land or its current uses are in violation of any environmental, zoning, building, health, traffic, flood control or all other applicable rules, regulations, codes, ordinances, or statutes of any local, state or federal authority or any other governmental authority asserting jurisdiction over the Property, which violations, if any, have not heretofore been corrected in all material respects.
  - f. In the event of the breach of any warranty or representation made herein or elsewhere in this Agreement by Seller, Seller hereby agrees to indemnify and hold Buyer harmless against all losses, damages, liabilities, costs, expenses (including reasonable attorneys' fees), and charges which Buyer may incur or to which Buyer may become subject as a direct consequence of such breach of liability, provided a written claim is made against Seller within one year of Closing.

- g. When used in this Paragraph, the expression "to the knowledge of Seller", or similar language, is deemed to mean that Seller, without additional inquiry, is not aware either actually or, through any agent constructively, of anything, matter or the like that is contrary, negates, diminishes or vitiates that which such term precedes. The knowledge of any agent or manager shall not be imputed to the Seller in connection with any and all representations and warranties made hereunder.

**9. DEFAULTS AND REMEDIES.**

- a. Failure of either Party to comply with any material covenant, agreement, or obligation within the time limits required by this Agreement shall constitute a material default. Following a material default by either Buyer or Seller, the other Party may only pursue all available remedies available at law.

10. **NOTICES.** All notices, waivers, demands, requests or other communications (herein collectively referred to as the "Notice") required or permitted hereunder shall, unless otherwise expressly provided, be in writing and be deemed to have been properly given, served and received (i) if delivered by messenger, when delivered; (ii) if mailed, by United States mail, certified or registered, postage prepaid, return receipt requested, upon acceptance of delivery; or (iii) if delivered by reputable overnight express courier, freight prepaid, upon acceptance of delivery. In every case, the Notice addressed to the party to be notified shall be as follows:

If to Buyer: EQUITY POINT INVESTMENTS, INC.,  
By Messenger or Courier: 431 SOUTH MAIN STREET, FRANKLIN, OHIO  
45005  
By Mail: P.O. BOX 431, FRANKLIN, OHIO 45005

If to Seller: CITY MANAGER SONNY LEWIS, CITY OF FRANKLIN, 1 BENJAMIN  
FRANKLIN WAY, FRANKLIN, OHIO 45005

Either party hereto may change the names and addresses (physical and P.O. Box) of the designee to whom notice shall be sent by giving written notice of such change to the other party hereto in the same manner as all other notices are required to be delivered hereunder.

**11. MISCELLANEOUS.**

- a. Binding Effect. This Agreement shall be binding upon the parties hereto, and their respective successors and assignees.
- b. Entire Agreement. This Agreement and the Exhibits and Schedules attached hereto or required hereby embody the entire Agreement between the parties hereto with respect to the Property and supersedes any and all prior agreements and understandings, written or oral, formal or informal. No extensions, changes, modifications or amendments to or of this Agreement, of any kind whatsoever, shall be made or claimed by Seller or Buyer, and no notice of any extension, change, modification or amendment made or claimed by Seller or Buyer (except with respect to the Escrow Agreement or with respect to permitted unilateral waivers of conditions precedent by Buyer) shall have any force or effect whatsoever unless the same shall be endorsed in writing and fully signed by Seller and Buyer.
- c. Survival of Representations and Warranties. The terms, provisions, warranties and covenants made herein, shall survive the Closing and delivery of the Deed and other instruments of conveyance,

and this Agreement shall not be merged therein, but shall remain binding upon and for the parties hereto until fully observed, kept or performed.

- d. Parties. Unless identified as Seller or Buyer, no real estate professional, Escrowee, escrow agent or closing agent is a party to this Agreement. Seller and Buyer each represent and warrant to the other that it has not dealt with any agents, brokers or finders in connection with the transaction covered by this Agreement. Seller and Buyer hereby acknowledge that the foregoing representation and warranty shall survive the Closing.
- e. Governing Law. This Agreement provides for the purchase and sale of real and personal property located in the State of Ohio, and is to be performed within the State of Ohio. Accordingly, this Agreement, and all questions of interpretation, construction and enforcement hereof, and all controversies hereunder, shall be governed by the applicable statutory and common law of the State of Ohio.
- f. Attorney's Fees and Costs. In the event that either party is forced to retain an attorney to enforce the terms of this Agreement, the prevailing party may seek to recover court costs and attorney's fees so incurred as a part of said litigation.
- g. Severability. In the event any term or provision of this Agreement shall be held illegal, invalid, unenforceable or inoperative as a matter of law, the remaining terms and provisions of this Agreement shall not be affected thereby, but each such term and provision shall be valid and shall remain in full force and effect.
- h. Headings. Headings used in this Agreement are provided for convenience only and shall not be used to construe the meaning or intent of any term.
- i. Counterparts. This Agreement may be executed in counterparts each of which shall constitute an original, but all together shall constitute one and the same Agreement.
- j. Interpretation. Whenever the context hereof shall require, the singular shall include the plural, the male gender shall include the female gender and the neuter, and vice versa. The terms "Agreement" and "Agreement" shall be interchangeable.
- k. Time. Time is of the essence of this Agreement. Any reference herein to time periods shall, in computation thereof, exclude Saturdays, Sundays and legal holidays, and any time period provided for herein which shall end on a Saturday, Sunday or legal holiday shall extend to 5:00 p.m. of the next business day.
- l. All action required pursuant to this Agreement necessary to effectuate the transaction contemplated herein has been or will be taken promptly and in good faith by Buyer and Seller and their representatives and agents.

SELLER: CITY OF FRANKLIN, OHIO

By: \_\_\_\_\_  
Sonny Lewis

Date: \_\_\_\_\_

City Manager  
\_\_\_\_\_  
Title





BUYER: EQUITY POINT INVESTMENTS, INC.

By: \_\_\_\_\_  
Rodney K. Litteral

Date: \_\_\_\_\_

\_\_\_\_\_  
Managing Member  
Title

EXHIBIT A

DESCRIPTION OF LAND

Situate in the County of Warren, in the State of Ohio, and in the City of Franklin: Lot Numbered FIVE HUNDRED TWENTY SEVEN (527) as the same is known and designated on the revised plat of the said City of Franklin, Warren County, Ohio, as recorded in Plat Book 2, Pages 17 through 37 of the Plat Records of Warren County, Ohio.

More commonly known as: 449 S. Main Street, Franklin, OH 45005

Parcel ID: 04-31-131-017

Subject to all restrictions, easements, conditions and covenants of record, and all legal highways, and subject to real estate taxes and assessments becoming due and payable in the month of June or December, next following the execution of this deed, whichever first occurs and thereafter.

Prior Deed References: Deed 2014-0009435; Official Record 3963, Page 733 – Deed Records of Warren County, Ohio.