



LEGISLATIVE COVER MEMO

Introduction: April 15, 2024

Agenda Item: **Resolution 2024-30**

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 NUMBER 0431101006

Submitted by: Karisa Steed, Assistant City Manager/Econ. Development

Scope/Description: To allow the City Manager to execute a purchase and sale agreement for the City's purchase of 535 S. River Street.

Budget Impact: \$150,000. The purchase of this real property described in this Resolution is expected to be in the best interests of the general welfare of City of Franklin residents by furthering economic development, growth, and stability in the City's downtown area.

Exhibits: Exhibit A: Purchase and Sale Agreement

Recommendation: Approval

CITY OF FRANKLIN, OHIO
RESOLUTION 2024-30

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 NUMBER 0431101006

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 a parcel of real property located in the City’s corporate boundaries, more particularly identified as Warren County Auditor’s Parcel ID number: 0431101006 (535 S. River Street) (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 \$150,000;

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 \$150,000, 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: April 15, 2024

ATTEST: _____
Khristi Dunn, Clerk of Council

APPROVED: _____
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 April 15, 2024.

Khristi Dunn, Clerk of Council

PURCHASE AND SALE AGREEMENT

This **PURCHASE AND SALE AGREEMENT** (this “Agreement”) is made and entered into as of the 10th day of April, 2024 (the “Effective Date”) by **THE CITY OF FRANKLIN, OHIO**, an Ohio municipal corporation having an address of 1 Benjamin Franklin Way, Franklin, Ohio 45005 (“Buyer”) and **EVERYBODY FITNESS, LLC**, a limited liability corporation having an address at P.O. Box 110688, Nashville, Tennessee 37222 (“Seller”). In consideration of the mutual representations and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Seller and Buyer (the “Parties”) covenant and agree as follows:

1. Purchase and Sale. Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase from Seller, upon the terms and conditions set forth herein, the real property located at 535 S. River Street, Franklin, Ohio 45005, and identified as Warren County Auditor’s Parcel ID No. 0431101006 and depicted on the attached Exhibit A (the “Property”). The Property includes all improvements, easements, rights-of-way and appurtenances belonging or in any way appertaining thereto, and all rights, licenses, privileges and benefits which relate thereto, of every kind, character and description, now existing or existing at the Closing (as defined below), whether tangible or intangible, real, personal or mixed.

2. Purchase Price. Buyer shall purchase the Property for a price of One Hundred Fifty Thousand and no/100 Dollars (\$150,000.00) (the “Purchase Price”). The Purchase Price shall be paid at Closing by wire transfer, subject to adjustments set forth herein.

As additional consideration, the Buyer shall, at Buyer’s cost and expense, perform the following actions (the “Work”) with respect to certain other property owned by an affiliate of Seller at 9762 N. Dixie Highway, Franklin, Ohio 45005, Warren County Parcel ID number 0427152002: (1) installation, repair, or conversion of a concrete catch basin in the center of the parking lot; (2) use an 8” drain line to connect the catch basin to a 12” drain line going north across the property along Dixie Highway; (3) replace the lid on the catch basin located at the north edge of the property; (4) restore the property to substantially the same condition it was in prior to performing the work. Buyer’s obligation hereunder is contingent on Seller obtaining the necessary access and construction rights to the property and providing the same to Buyer in order to perform the Work.

3. Due Diligence 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. Buyer shall have the opportunity and right to inspect and investigate the Property’s condition and suitability for a period of up to sixty (60) days following the Effective Date (the “Due Diligence Period”). Buyer has the option to extend the Due Diligence Period up to one (1) time for an additional sixty (60) day period by giving written notice to Seller prior to expiration of the initial Due Diligence Period.

(b) Buyer shall have the right during the Due Diligence Period to commence physical tests and inspections of the Property and to undertake any engineering, environmental, soils, or other studies on the Property (all at Buyer's sole cost); provided, however, Buyer shall give Seller reasonable advance notice of any proposed entry onto the Property for such purposes. Seller shall cooperate with Buyer in its Property inspections, and shall not unreasonably restrict Buyer's access to the Property, during the Due Diligence 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) If Buyer notifies Seller of any title defects, exceptions or survey objections (collectively, "Objections") prior to the expiration of the Due Diligence Period, Seller shall have ten (10) days from its receipt of such notice in which to either: (i) cure such Objection(s) or commit to cure them on or before the Closing Date; or (ii) notify Buyer in writing that Seller is unable or unwilling to cure such Objection(s). If Seller notifies Buyer that Seller is unable or unwilling to cure any Objection, 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 Seller is willing and able to convey; or (ii) terminate this Agreement, in which case the Parties will have no further obligations to one another.

(d) Notwithstanding the foregoing, Seller shall be responsible for causing all matters of a monetary nature arising from the act or omission of Seller to be released at or prior to Closing, including, without limitation, mortgages, judgment liens, mechanic's liens, penalties, and the like; and Buyer shall have no obligation to notify Seller that any such matters are objectionable or otherwise must be released prior to Closing.

(e) 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 Seller with written notice of Buyer's decision to terminate at any time prior to the expiration of the Due Diligence Period and the parties shall thereafter have no rights or obligations with respect to one another under this Agreement except those which expressly survive Closing or termination hereof.

4. Closing; Closing Adjustments and Costs; Closing Documents.

(a) Closing Date. The closing of the purchase contemplated herein shall be on a date selected by the Parties that is no later than ten (10) days after the expiration or Buyer's earlier waiver of the Due Diligence Period (the "Closing"). The Closing shall take place at such time and place as is mutually agreed by the Parties, and shall occur no later than July 22, 2024.

(b) Closing Costs. At Closing, Buyer shall pay all transfer taxes. Seller shall pay all title examination fees and title insurance premiums necessary to provide Buyer with an owner's policy of title insurance insuring fee simple title ownership to the Property. Buyer and Seller shall equally divide the costs associated with preparation of the General Warranty Deed, recording costs, and all other closing costs. Buyer and Seller shall each be responsible for the payment of their respective attorneys' fees and expenses.

(c) Prorated Real Estate Taxes. Buyer and Seller shall prorate all real property taxes and assessments related to the Property as of the date of Closing (collectively, "Taxes"), with the date of Closing being treated as the first day of ownership by Buyer. Seller shall be responsible for payment of all Taxes accruing prior to Closing. If the final tax bill 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) Deed. At Closing, Seller shall convey to Buyer good and marketable fee simple title to the Property by recordable General Warranty Deed, with release of dower where applicable, free and clear of all liens and encumbrances by any party claiming by, through or under Seller, except: (i) liens for Taxes not yet due and payable as of Closing; (ii) easements and restrictions of record; and (iii) governmental laws, restrictions and ordinances affecting the Property. Seller shall deliver exclusive possession of the Property to Buyer at Closing pursuant to the terms and conditions set forth herein.

(e) Other Closing Documents from Seller. At Closing, in addition to the above-referenced General Warranty Deed, Seller 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.

5. Seller Representations and Warranties. Seller hereby covenants, represents and warrants to Buyer, to the best of Seller's actual knowledge, 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 for Seller to execute and deliver a General Warranty Deed conveying title to the Property to Buyer.

(b) 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.

(c) 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.

(d) 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 5 shall survive Closing for a period of two years thereafter.

6. Risk of Loss. Seller agrees that it 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 Seller until Closing.

7. 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 none of the Parties will have any further obligations hereunder. If Buyer terminates this Agreement in accordance with this provision, Seller 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 Seller 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 Seller with any remaining proceeds to be transferred to Buyer at Closing.

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

(a) If Buyer defaults on any obligation contained in this Agreement, Seller 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, Seller's sole remedy shall be to terminate this Agreement, and thereafter none of the Parties will have any further obligations hereunder.

(b) If Seller defaults on any obligations contained in this Agreement, Buyer must give Seller written notice of the default and a ten (10) day opportunity to cure said default. If Seller remains in default following the ten (10) day cure period, then Buyer shall have the right to: (i) pursue specific performance against Seller; or (ii) terminate this Agreement and recover damages incurred by Buyer in connection with this Agreement and the Property.

9. 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; or (ii) 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 listed below (or such other e-mail address 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 receipt by the recipient-Party.

IF TO SELLER:

Name: Everybody Fitness LLC
Address: PO Box 20457 Dayton, OH 45420
Email: wesley@everybodyfitness.com

IF TO BUYER:

Name: City of Franklin
Attn: Jonathan Westendorf, City Manager
Address: 1 Benjamin Franklin Way, Franklin, Ohio
E-mail: jwestendorf@franklinohio.org

10. Miscellaneous.

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

(b) Seller and Buyer each warrant and represent to the other that neither has engaged any real estate agent or broker in connection with the transaction contemplated by this Agreement.

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

(d) This Agreement contains the entire agreement of the Parties with respect to the purchase and sale of the Property, 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.

(e) 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.

(f) This Agreement may only be amended by written amendment signed by Buyer and Seller.

(g) 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.

(h) Buyer is entitled to assign its rights and obligations under this Agreement to a third party upon written notice thereof to Seller.

(i) The prevailing party in any litigation concerning this Agreement shall be entitled to recover its reasonable attorney fees incurred in connection with this Agreement or litigation concerning this Agreement.

(j) 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.

(k) 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.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.


CITY OF FRANKLIN, OHIO

Jonathan Westendorf, City Manager

Approved as to form:

Benjamin Yoder, Law Director

EVERYBODY FITNESS LLC



Name: Wesley Harrell
Title: owner/ president

EXHIBIT A
(Depiction of Property)

