



# LEGISLATIVE COVER MEMO

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**Introduction:** August 15, 2022

**Agenda Item:** **RESOLUTION 2022-63**

AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY AND OTHER DOCUMENTS FOR THE PURCHASE OF REAL PROPERTY LOCATED AT 50 EAST SIXTH STREET, FRANKLIN OHIO; PARCEL ID NUMBERS: 0431304003, 0431180004, 0431180005, and 04311792002

**Submitted by:** Karisa Steed, Assistant City Manager

**Scope/Description:** To allow the purchase of real property located at 50 East Sixth Street, Franklin, Ohio (the old Boxboard property).

**Budget Impact:** \$1,033,00.00. 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 2022-63

**AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY AND OTHER DOCUMENTS FOR THE PURCHASE OF REAL PROPERTY LOCATED AT 50 EAST SIXTH STREET, FRANKLIN OHIO; PARCEL ID NUMBERS: 0431304003, 0431180004, 0431180005, and 04311792002**

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 certain real property situated at 50 East Sixth Street, Franklin, Ohio, more commonly referred to as the old Boxboard property (the "Property"); and,

WHEREAS, the Franklin City Council finds it to be in the best interests of the City of Franklin, Ohio and its residents to proceed with the purchase of the Property.

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

Section 1. The City Manager is authorized to execute an Agreement of Purchase and Sale of Real Property, in substantially the same form as the agreement attached hereto as Exhibit A, and other necessary documents for the purchase of the real property located at 50 East Sixth Street, Franklin, Ohio; Warren County Parcel ID Numbers 0431304003, 0431180004, 0431180005, and 04311792002.

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 occurred 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: August 15, 2022

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 August 15, 2022.

\_\_\_\_\_  
Khristi Dunn, Clerk of Council

## **PURCHASE AND SALE AGREEMENT**

**THIS PURCHASE AND SALE AGREEMENT** (this “Agreement”) is entered into on August \_\_, 2022 (the “Effective Date”) by and between **CB PROPERTIES OF FRANKLIN, LLC**, an Ohio limited liability company (“Seller”) and **THE CITY OF FRANKLIN, WARREN COUNTY, OHIO**, an Ohio political subdivision (the “City”) (Seller and the City may be referred to herein individually as a “Party” and collectively as the “Parties”), and shall constitute an agreement for the sale of real property and improvements on the terms listed below.

**1. SALE OF PROPERTY.** Subject to the terms and conditions set forth herein, at the Closing (defined in Section 4 herein), Seller shall sell to the City, and the City shall purchase from Seller, all of Seller’s right, title and interest in and to that certain real property identified as Warren County Parcel Numbers 0431304003, 043118004, 043118005, and 04311792002, more commonly known as 50 East Sixth Street, Franklin, Ohio 45005 inclusive of all (a) appurtenant rights, privileges and easements thereon and thereto; (b) structures, fixtures, and improvements of any nature located thereon; and (c) leases or personal property associated with or located thereon (collectively, the “Property”).

**2. PURCHASE PRICE.** At the Closing, the City shall pay to Seller, and Seller shall accept from the City, as full and complete compensation for the Property, the purchase price of One Million Thirty-Three Thousand Dollars (\$1,033,000.00) (the “Purchase Price”). The Parties expressly agree that the Purchase Price constitutes the fair market value of the Property, and is just and reasonable compensation to Seller in exchange for Seller’s conveyance of all right, title and interest in and to the Property to the City.

**3. DUE DILIGENCE PERIOD.**

**(a)** Simultaneous with the execution of this Agreement, Seller will deliver to the City any existing ALTA survey of the Property, if such survey is in the possession of Seller, together with the results of any Property inspections conducted within the last twelve (12) months. The City may have the survey updated or may order a new survey. The cost of the updated or new survey will be the City’s expense.

**(b)** Within ten (10) days of the execution of this Agreement, Seller will deliver to the City all leases or other agreements relating in any way to the Property. If Seller is aware of the existence of such documents or contracts but does not possess a copy, Seller will disclose to the City the existence of the document or contract and make reasonable efforts to assist the City in obtaining a copy.

**(c)** For a period of up to ninety (90) days following the Effective Date, the City and any representatives, agents and contractors acting on its behalf, shall have the right, at the City’s sole cost and expense, to perform any investigation of any and all matters relevant to the City’s acquisition and ownership of the Property to determine if the Property is suitable in all respects for the City’s intended purpose (the “Due Diligence Period”). Due diligence matters may include (but are not limited to) review of title and survey, zoning, environmental, financial feasibility, soils and subsurface issues, access, applicable permits, consents and approvals,

availability of utilities, the need to obtain any administrative approvals and to hold all requisite formal proceedings and take all necessary action to authorize and obtain approval for consummation of the transactions contemplated hereunder, all within or prior to the expiration of the Due Diligence Period. The City's obligation to purchase the Property is contingent upon the City's determination that all due diligence items are satisfactory for the City's purposes and intended use of the Property.

(d) The City shall have the right during the Due Diligence Period, subject to Seller's reasonable confidentiality concerns, to commence physical tests and inspections of the Property, and to undertake any engineering, environmental, soils or other studies on the Property; Seller shall cooperate with the City, and shall not unreasonably restrict the City's access to the Property, during the Due Diligence Period.

(e) Seller agrees to not enter into any further leases or other agreements relating to the Property during the Due Diligence Period.

4. **CLOSING.** The closing of the purchase and sale of the Property in accordance with the terms and conditions of this Agreement (the "Closing") shall occur at a location mutually acceptable to the Parties on or before December 15, 2022 (the "Closing Date"). The City shall be responsible for payment of the Purchase Price and all applicable closing costs, including but not limited to any title search, commitment and policy costs in connection with the Property; recording fees; and any escrow and closing fees or costs charged by the title company. The City will pay its prorated share of real estate taxes for the calendar year in which Closing occurs. Seller will be responsible for any transfer taxes and all property taxes and assessments for the period prior to Closing and not expressly assumed by the City. At Closing, the City and Seller will each provide documentation as may be required by the Title Company to properly transfer and insure good and marketable title to the Property.

5. **TRANSFER OF TITLE AND OWNERSHIP.** If all terms and conditions of this Agreement are satisfied, Seller shall deliver possession of, and convey good and marketable title to, the Property to the City at Closing through the execution of a general warranty deed. Seller agrees to transfer, and the City agrees to accept, ownership of the Property free and clear of all claims and rights of others, except for: (i) designated rights-of-way for streets, alleys and utility easements; (ii) all matters that would be disclosed by a complete and accurate search of all applicable federal, State and local records; and (iii) such facts which would be shown by an accurate survey of the Property.

6. **CITY REPRESENTATIONS, WARRANTIES AND COVENANTS:** The City hereby covenants, represents and warrants to Seller, as of the Effective Date and again as of the Closing Date that the City is an Ohio political subdivision organized and incorporated under the laws of the State of Ohio and its own Charter, and has the full right, power and authority to enter into this Agreement, to purchase the Property as provided herein, and to carry out the City's obligations hereunder.

7. **SELLER REPRESENTATIONS, WARRANTIES AND COVENANTS.** Seller hereby covenants, represents and warrants to the City, as of the Effective Date, again as of the Closing Date, and following Closing for a period of one (1) year:

**(a)** Seller is a limited liability company duly organized and validly existing under the laws of the State of Ohio, Seller has lawful ownership of the Property, and has all requisite power and authority to enter into and perform the obligations required of Seller under this Agreement.

**(b)** Seller has taken all necessary action to lawfully authorize and execute this Agreement, or will take such action prior to execution. Upon lawful execution of this Agreement, the Agreement shall be a valid and legally binding instrument of Seller, enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting creditors' rights generally. The representative executing this Agreement on behalf of Seller has been duly authorized to act for and to bind Seller to the terms and conditions set forth herein. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court, governmental authority, regulatory body or third party, is required for the execution, delivery and performance of this Agreement by Seller.

**(c)** The execution and delivery of this Agreement, the consummation of the transaction contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented by, limited by, in conflict with, and will not result in a breach of, the terms, conditions or provisions of any other contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which Seller is now a party or by which it is bound; nor do they constitute a default under any of the foregoing.

**(d)** To Seller's knowledge, Seller has not received any notice from any federal, State or local official that Seller's previous or current activities or operations with respect to the Property may or will be in violation of any environmental law or regulation (other than those notices, if any, of which the City has previously been notified in writing). Seller is not currently aware of any claim filed or planned to be filed by any party relating to any violation of any federal, State or local environmental law, regulation or review procedure applicable to the Property. Nor is Seller currently aware of any unresolved violation of any federal, State or local environmental law, regulation or review procedure applicable to the Property.

**(e)** To Seller's knowledge, there are no actions, suits or proceedings pending, threatened against, or affecting Seller or the Property in any court, before any arbitrator, or before or by any governmental body which in any manner raises any questions affecting the validity of the Agreement or Seller's ability to perform its obligations under this Agreement.

**(f)** To Seller's knowledge, Seller has not received notice of any material violation of any law or municipal ordinance, order or requirement noted or issued against the Property.

**(g)** To Seller's knowledge, there are not and have not been any: (i) liens or encumbrances on the Property; (ii) environmental issues; or (iii) discoverable, latent, or undiscoverable defect of any kind or nature whatsoever on the Property occurring at any time during Seller's ownership of the same, which have not otherwise been disclosed to the City; (iv) leases, easements, or any other unrecorded agreement affecting or encumbering full title to the Property except for those disclosed pursuant to section 4(a) hereof.

(h) Other than as has been disclosed to the City, Seller has no actual knowledge of any hazardous substances (as the same or defined in 42 U.S.C.A. section 8601, et seq. and/or 42 U.S.C.A. section 8903, et seq., the laws of the State of Ohio, and any other federal, state or local law, regulation or ordinance supplemental or amendatory thereto) or toxic or damaging substances or pollutants having been disposed of, on, in, or at the Property (including the land, surface water, ground water and improvements).

(i) To the best of Seller's knowledge and belief after due inquiry, no officer or employee of the City, or its designees or agents, nor any consultant or member of the governing body of the City, and no other public official of the City who exercises or has exercised any functions or responsibilities with respect to the purchase and sale transaction contemplated hereunder, or who is in a position to participate in a decision-making process or gain insider information with regard to the transaction, has had or shall have any interest, direct or indirect, in this Agreement at any time during or after such person's tenure.

(j) As of the Closing Date, the City will have the sole right to possession of the Property and there will be no tenants or other parties who will be in possession of or will have the right of possession respecting the Property at or beyond the Closing Date.

(k) Any and all service contracts affecting the Property will be terminated at or prior to Closing and the City shall have no obligations or liabilities with respect to any such contracts. Seller shall be solely responsible for all costs and obligations related to such contracts.

**8. CONDITION OF THE PROPERTY; CITY'S ASSUMPTION OF RISK.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, SELLER IS NOT MAKING ANY REPRESENTATIONS OR WARRANTIES REGARDING THE PROPERTY, EXPRESS OR IMPLIED AND THE CITY ACKNOWLEDGES THAT THE PROPERTY IS CONVEYED "AS IS," "WHERE IS" AND "WITH ALL FAULTS," WITHOUT REPRESENTATION, RECOURSE OR WARRANTY, AND THAT ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE DISCLAIMED. THE CITY HAS RELIED AND IS RELYING ON ITS OWN DUE DILIGENCE AND INVESTIGATION AND IS NOT RELYING ON ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES OF SELLER. MORE SPECIFICALLY, THE CITY IS RELYING SOLELY ON ITS OWN INSPECTIONS OF THE PROPERTY AND ON THE REPORTS, DOCUMENTS, STUDIES, EXAMINATIONS AND INFORMATION PERTAINING TO THE PROPERTY DELIVERED TO IT BY THIRD PARTIES ENGAGED BY THE CITY IN DETERMINING THE CONDITION OF THE PROPERTY, AND IS NOT RELYING ON ANY OTHER REPRESENTATIONS OR WARRANTIES OF SELLER OTHER THAN THOSE SET FORTH HEREIN.

**9. CONDITIONS PRECEDENT TO AGREEMENT.** The Parties expressly recognize and agree that their rights and obligations contained herein are subject to the following conditions precedent:

(a) The representations, warranties and covenants made by the Parties in this Agreement shall be true and correct in all material respects as of the Effective Date and continuing at all times through the Closing Date. Notwithstanding the foregoing, neither Party shall be entitled

to terminate this Agreement due to a material breach of their own respective representations, warranties and covenants.

(b) Neither Party has defaulted under any of the terms or conditions contained herein.

**11. DEFAULT.**

(a) **Default by Seller.** If Seller defaults under its obligation to close under this Agreement or otherwise defaults under Seller's material obligations under this Agreement, the City may, at the City's option after five (5) days written notice to Seller (during which five (5) day period Seller may cure the default) either (i): terminate this Agreement by written notice forwarded to Seller on or prior to the Closing Date, or (ii) the City may elect to enforce this Agreement by an action for specific performance. These are the City's sole and exclusive remedies.


(b) **Default by City.** In the event the City defaults in its obligations to close the purchase of the Property, or otherwise defaults under the City's material obligations under this Agreement, then Seller may, as Seller's sole and exclusive remedy (and in lieu of any other remedy, legal or equitable in nature), after five (5) days written notice to the City (during which five (5) day period the City may cure the default to avoid termination) terminate this Agreement.

**12. CONDEMNATION.** If any taking occurs, or is commenced by eminent domain proceedings or by deed in lieu thereof, by any entity with the power of eminent domain prior to the Closing, Seller shall promptly notify the City of such fact (the "Condemnation Notice"). Following the City's receipt of the Condemnation Notice, the City shall elect to either: (i) terminate this Agreement by written notice to Seller, in which neither Party shall have any continuing rights or obligations to one another under this Agreement other than those obligations that expressly survive pursuant to the terms herein; or (ii) proceed to Closing, in which event the City shall be entitled to all condemnation proceeds or awards otherwise payable to Seller.

**13. RISK OF LOSS.** Risk of loss to the Property from environmental hazard or other casualty shall be borne by Seller until Closing, provided that, if said Property is damaged or destroyed by fire, environmental hazard, or other casualty prior to the Closing, the City may: (i) elect to proceed with the transaction, in which event the City shall be entitled to all insurance proceeds, if any, payable to Seller under any and all policies of insurance covering the Property so damaged or destroyed, and the City shall receive a credit for any deductible amount applicable under Seller's insurance policies; or (ii) elect to rescind this Agreement and all parties hereto shall be released from all liability hereunder. If the City elects to rescind this Agreement, it shall so notify Seller in writing within thirty (30) days after the City receives written notice from Seller of such damage or destruction and the amount of insurance proceeds that will be available for restoration. Failure by the City to timely notify Seller shall constitute an election not to rescind.

**14. ACKNOWLEDGMENTS.** The Parties hereby represent and warrant that they are entering into this Agreement voluntarily, without any duress or undue influence. Authorized representatives of both Parties have carefully read this Agreement, and understood and negotiated its terms in good faith, with the opportunity to seek the representation and advice of an attorney of their respective choice, if so desired prior to executing this Agreement.

**15. NOTICES.** All notices required to be given under this Agreement must be in writing. A written notice shall be deemed sufficiently given when properly addressed and sent to the recipient-Party at the address set forth below via: (i) United States certified mail, return receipt requested; (ii) overnight courier with receipt verification; or (iii) by personal delivery to the recipient-Party. Either Party may change its address for receipt of notices by providing written notice of such address change to the other Party.

<u>The City:</u> City of Franklin Attn: Jonathan Westendorf, City Manager 1 Benjamin Franklin Way Franklin, Ohio 45005	<u>Seller:</u> CB Properties of Franklin, LLC Attn: Drew Lammers 
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**16. BROKER:** The City has not engaged a real estate broker with respect to the Property. Seller shall be solely responsible to pay the commission due to any broker that may have been retained by Seller.

**17. MISCELLANEOUS:**

**(a) Timing.** Time is of the essence with respect to this Agreement. Unless otherwise specified herein, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday under federal law, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday.

**(b) Relationship.** This Agreement shall not be interpreted as creating any partnership, joint venture or similar relationship between the Parties in any respect whatsoever.

**(c) Assignment.** The City and Seller shall have the right to assign their respective rights under this Agreement upon written notice to the other party, provided, however, that neither party shall be released from any of its obligations under this Agreement upon such assignment.

**(d) Severability.** Any provision(s) of this Agreement later held to be unenforceable for any reason shall be deemed void, and all remaining provisions shall continue in full force and effect.

**(e) Waiver.** Any failure by either Party to require strict compliance with any provision of this Agreement shall not be construed as a waiver of such provision in the future, and such Party may subsequently require strict compliance at any time, notwithstanding any prior failure to do so.

**(f) No Personal Liability.** Notwithstanding anything to the contrary contained herein, the direct and indirect members, officers, directors, employees, agents and security holders



of the Seller are not assuming any, and shall have no, personal liability for any obligations of the Seller hereto under this Agreement.

(g) Amendment. Any modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement shall be binding only if evidenced in a written instrument signed by each Party or an authorized representative of each Party.

(h) Counterparts. This Agreement may be executed in any number of counterparts and by the different Parties hereto in separate counterparts, each of which when so executed will be deemed to be an original and all of which taken together will constitute one and the same Agreement.

(i) Entire Agreement; Modification. This Agreement embodies the entire agreement and understanding between the Parties, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. At Closing, except as expressly provided herein, all warranties, representations and covenants contained herein shall merge within said Deed.

*[Signature page follows]*

**IN WITNESS WHEREOF**, the Parties have executed this Agreement to be effective on the date first referenced above.

**CITY OF FRANKLIN,  
WARREN COUNTY, OHIO**

\_\_\_\_\_  
Jonathan Westendorf, City Manager

**CB PROPERTIES OF FRANKLIN, LLC**

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_