



LEGISLATIVE COVER MEMO

Introduction: July 29, 2024

Agenda Item: **Resolution 2024-49**

CONSENTING TO THE FIRST SUPPLEMENTAL DECLARATION OF COVENANTS AND RESTRICTIONS FOR THE FRANKLIN NEW COMMUNITY AUTHORITY AND PROVIDING RELATED AUTHORIZATIONS

Submitted by: Karisa Steed, Assistant City Manager

Scope/Description: The City of Franklin, as statutory developer of the Franklin New Community Authority (the “NCA”) under Ohio Revised Code chapter 349, by and through its City Manager, Jonathan Westendorf, has presented to council a proposed First Supplemental Declaration of Covenants and Restrictions (the “First Supplement”) that will apply “Community Development Charges” as that term is used in the Declaration over all parcels within the NCA for the benefit and use of the NCA to a specific portion of property already located within the NCA, and subject to transfer to Riley Real Estate, LLC or an affiliate thereof, to cover all or part of the cost of the acquisition, construction, operation and maintenance of land, land development and community facilities, the debt service thereof and any other cost incurred by the authority in the exercise of the powers granted by Chapter 349 of the Ohio Revised Code. The First Supplement will be recorded on the ground that is to be transferred to Riley Real Estate, LLC, as outlined in the First Supplement. currently owned by the City and within the boundaries of the NCA.

Exhibit: Exhibit A: First Supplemental Declaration of Covenants and Restrictions

Budget Impact: None

Recommendation: Approval

CITY OF FRANKLIN, OHIO
RESOLUTION 2024-49

CONSENTING TO THE FIRST SUPPLEMENTAL DECLARATION OF COVENANTS AND RESTRICTIONS FOR THE FRANKLIN NEW COMMUNITY AUTHORITY AND PROVIDING RELATED AUTHORIZATIONS

WHEREAS, the City of Franklin, Ohio (the “City”) established the Franklin New Community Authority (the “Authority”) pursuant to Ordinance 2023-10, adopted by City Council on April 17, 2023; and

WHEREAS, the City, as the statutory developer of the Authority as that term is defined in Ohio Revised Code Section 349.01(E), submitted to the City Council (the “Council”), a Declaration of Covenants and Restrictions for the Franklin New Community Authority (the “Declaration”), and Council approved the City’s execution of the Declaration pursuant to Resolution 2024-32, approved by Council on May 5, 2024; and

WHEREAS, the City has submitted to Council a First Supplemental Declaration of Covenants and Restrictions for the Franklin New Community Authority (the “First Supplement”) attached hereto as **Exhibit A**, incorporated by reference, specifically relating to particular parcels of real property within the boundaries of the Authority, and located in the City, to be transferred to Riley Real Estate, LLC (the “Transferred Property”) pursuant to Resolution 2024-21, approved by Council on March 18, 2024; and

WHEREAS, in accordance with the terms of the Declaration and Ohio Revised Code Chapter 349, it is necessary for the City to consent to the First Supplement and authorize its execution and recordation in the land records of the Warren County Recorder, in order to perfect certain “Community Development Charges” for the benefit and use of the Authority to cover all or part of the cost of the acquisition, construction, operation and maintenance of land, land development and community facilities, the debt service thereof and any other cost incurred by the authority in the exercise of the powers granted by Chapter 349 of the Ohio Revised Code.

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

Section 1. The First Supplement, substantially in the form attached hereto as **Exhibit A**, is hereby approved and its execution is authorized with changes or amendments thereto not inconsistent with this Resolution and not substantially adverse to the City, as determined by the City Manager, or his or her designee executing the Declaration, and any other documents necessary to implement the First Supplement, on behalf of the City. The City Manager, or his or her designee, is authorized to implement the First Supplement on behalf of the City.

Section 2. This Council hereby finds and determines that all formal actions taken relative to the passage of this Resolution were taken in an open meeting of this Council, and that all deliberations of this Council and of its committees, if any, which resulted in formal action, were taken in meetings open to the public, in full compliance with applicable legal requirements, including Section 121.22 of the Ohio Revised Code and the Rules of Council.

Section 3. This Resolution shall be in full force and effect immediately upon its passage.

ADOPTED: July 29,, 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 July 29, 2024.

Khristi Dunn, Clerk of Council

**FIRST SUPPLEMENTAL DECLARATION TO
THE DECLARATION OF COVENANTS AND RESTRICTIONS
FOR THE FRANKLIN NEW COMMUNITY AUTHORITY
WARREN COUNTY, OHIO**

WHEREAS, the City of Franklin, Ohio (the “Developer”), an Ohio municipal corporation, as developer pursuant to Section 349.01 of the Ohio Revised Code, caused the execution of the Declaration of Covenants and Restrictions (the “Declaration”) (capitalized terms not herein defined having the meanings provided to them in the Declaration) for the Franklin New Community Authority (the “Authority”) on _____, 2024, recorded on _____, 2024 in the Official Records Volume _____, Pages _____, Recorder’s Office, Warren County, Ohio, a copy of which Declaration is attached hereto as Exhibit A and made a part hereof;

WHEREAS, by virtue of a certain [_____] deed dated as of [_____] , 2024, a copy of which is attached hereto as Exhibit B and made a part hereof, the Developer conveyed certain interests in real property within the boundaries of the Authority including, specifically, the following parcels in the City of Franklin, Ohio identified by the Warren County Auditor for tax year 2023: 0431138016, 0431138017, 0431138018, 0431138022, 0431138024, 0431138025, 0431138026, 0431138027 (each a Parcel, and, collectively, the “Transferred Property”) to Riley Real Estate, LLC an affiliate of Slipcast Brewing, LLC, an Ohio limited liability company (“Slipcast”); and

WHEREAS, the Transferred Property, prior to conveyance from the Developer to Slipcast qualified as Initial Property within the Authority, and upon the conveyance to Slipcast, the Transferred Property now qualifies as Chargeable Property within the Authority, and each parcel within the Transferred Property now qualifies as a Chargeable Parcel; and

WHEREAS, pursuant to Section 5.02 of the Declaration, the Community Development Charges applicable to the Transferred Property will be modified in this supplemental declaration (the First Supplemental Declaration”) as requested by Slipcast, and agreed upon by the Board of Trustees of the Authority, and the Developer

WHEREAS, the Developer and Slipcast have caused the execution of this First Supplemental Declaration; and

WHEREAS, the Authority has joined this First Supplemental Declaration pursuant to Resolution No. [_____] adopted by the Board of Trustees of the Authority on [_____] , 2024, a copy of which is attached hereto as Exhibit C.

NOW, THEREFORE, pursuant to the Declaration, the Developer, and Slipcast, do hereby submit the Transferred Property to the provisions set forth in the Declaration, do hereby consent to the conversion of the Transferred Property from Initial Property to Chargeable Property, as more fully provided hereinbelow, and do hereby consent to the application of the Restrictions as set forth in the Declaration to the Transferred Property.

Section 1. The Transferred Property is hereby made subject to the Restrictions as set forth in the Declaration applicable to Chargeable Property, subject to the provisions of this First Supplemental Declaration. For the avoidance of any doubt, this First Supplemental Declaration is intended to amend and supplement the terms of the Declaration with respect to the Transferred Property; however, to the extent that any terms of this First Supplemental Declaration are inconsistent with the terms of the Declaration, this First Supplemental Declaration shall control.

Section 2. Notwithstanding Section 8.02 of the Declaration, unless amended or terminated as provided in Article VIII of the Declaration, the Restrictions shall continue in full force and effect with respect to each Parcel in the Transferred Property, without reduction of the Community Development Charges other than as provided in Article VI of the Declaration, until the later of (a) the date when any Obligations plus any interest thereon and any expenses and Administrative Expenses related thereto are paid in full; or (b) the date mutually agreed upon by the Developer and the Authority in a recorded written instrument, each as defined in the Declaration.

Section 3. Pursuant to Section 5.02 of the Declaration, the Developer and Slipcast acknowledge and agree that the Community Development Charges with respect to the Transferred Property shall be equal to: (a) the CRA Abatement Replacement Charge, if applicable, (b) the Additional Charge, in an amount of five (5) mills, and (c) a Sales Charge in an amount of one percent (1%) on the gross receipts of any Sale of any goods that would otherwise not qualify as a "Retail Sale" pursuant to Ohio Revised Code Section 5739.01. The revenues of which Community Development Charges described in items (a) through (c) above, inclusive, shall be allocated and applied as provided in Section 5.02 of the Declaration.

Section 4. The Developer consents to the amendment of the Restrictions of the Declaration that are contained in this Supplemental Declaration applicable to the Transferred Property as provided in Section 9.01 of the Declaration.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned Secretary of the Authority hereby confirms pursuant to Section 9.02 of the Declaration the receipt of all necessary consents with respect to this Supplemental Declaration.

FRANKLIN NEW COMMUNITY
AUTHORITY

By: _____

Name: _____

Title: Secretary
Franklin New Community Authority

[Secretary Signature Page to First Supplemental Declaration to the Declaration of
Covenants and Restrictions for the Franklin New Community Authority]

**Exhibit A to the First Supplemental Declaration to the Declaration of Covenants
and Restrictions for Franklin New Community Authority, Warren County, Ohio**

[See Attached Declaration]

**Exhibit B to the First Supplemental Declaration to the Declaration of Covenants
and Restrictions for Franklin New Community Authority, Warren County, Ohio**

[See attached legal description, which reflects the Transferred Property]

**Exhibit C to the First Supplemental Declaration to the Declaration of Covenants
and Restrictions for Franklin New Community Authority, Warren County, Ohio**

[See attached Authority resolution joining in the First Supplemental Declaration]