

Date: 3/12/13
Introduced By: Mr. Bennett
Committee: Finance
Originated By: Stage/Berry
Approved: _____
Emergency: 30 Days: X
Current Expense: _____

No. : C-19-13
1st Reading: 03/18/13
Public Notice: 03/20/13
2nd Reading: 04/01/13
Passed: Rejected: _____
Codified: Code No: _____
Passage Publication: _____

ORDINANCE C-19-13

AN ORDINANCE TO AUTHORIZE THE PURCHASE OF 3959-3963 BROADWAY AND 3951 BROADWAY AND APPROPRIATE \$1,000,000.00 FROM THE GENERAL FUND FOR SAID PURCHASE

WHEREAS, the property located at 3959-3963 Broadway, Grove City, Ohio 43123, and known as Franklin County Auditor's Tax Parcel No. 040-000236-00, contains approximately 0.416 acres and is located in the Town Center Area; and

WHEREAS, the property located at 3951 Broadway, Grove City, Ohio 43123, and known as Franklin County Auditor's Tax Parcel No. 040-000131-00, contains approximately 0.198 acres and is located in the Town Center Area (collectively "Properties"); and

WHEREAS, the acquisition of these Properties are necessary in order to move forward with the Pizzuti concept plan endorsed by Council in Resolution CR-45-12.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GROVE CITY, STATE OF OHIO, THAT:

SECTION 1. Council hereby authorizes the purchase of the properties located at 3959-3963 Broadway and 3951 Broadway as set forth in Exhibit "A".

SECTION 2. There is hereby appropriated \$1,000,000.00 from the unappropriated monies of the General Fund to Acct. # 100120.571000 for the purchase price, including related closing costs.

SECTION 3. This ordinance appropriates for current expenses and shall therefore go into immediate effect.

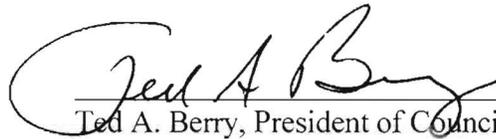
Passed: 04-01-13

Effective: 04-01-13

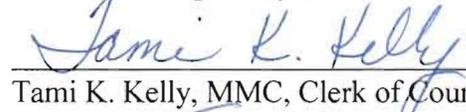
Attest:

I certify that this ordinance is correct as to form.

I certify that there is money in the treasury, or is in the process of collection to pay the within ordinance.


Ted A. Berry, President of Council


Richard L. Stage, Mayor


Tami K. Kelly, MMC, Clerk of Council


Stephen J. Smith, Director of Law


Michael A. Turner, Director of Finance

Property Report

Generated on 03/12/13 at 03:35:10 PM

Parcel ID
040-000236-00

Map Routing No
040-M088 -142-00

Card No
1

Location
3959 -963 BROADWAY

GIS



Disclaimer
This drawing is prepared for the real property inventory within this county. It is compiled from recorded deeds, survey plats, and other public records and data. Users of this drawing are notified that the public primary information source should be consulted for verification of the information contained on this drawing. The county and the mapping companies assume no legal responsibilities for the information contained on this drawing. Please notify the Franklin County GIS Division of any discrepancies.

The information on this web site is prepared for the real property inventory within this county. Users of this data are notified that the public primary information source should be consulted for verification of the information contained on this site. The county and vendors assume no legal responsibilities for the information contained on this site. Please notify the Franklin County Auditor's Real Estate Division of any discrepancies.

C-19-13
Exhibit A1

The CBR commercial land purchase contract shall be printed in 11 point Arial font, and all deviations in the standard form must be printed in 12 point or larger **courier font in bold**. Use of **courier font in bold** denotes deviation from the standard CBR purchase contract. All deletions from the standard form are to be noted by "strike-out".

Phillip Rasey
Agent
Pizzuti Management, LLC
Company
Address
Columbus OH 43215
City State Zip



Real Estate Purchase Contract
COMMERCIAL LAND
Adopted by the Columbus Board of
REALTORS®



It is recommended that all parties be represented by a REALTOR® and an Attorney.

DATE: March 8, 20 13

1. PROPERTY DESCRIPTION: Buyer offers to purchase from Seller through Broker(s), the following described Real Estate including, without limitation, all land, all improvements, fixtures, appurtenant rights, privileges, right of ways, and easement located in the County of Franklin, tax parcel number 040-000131 and 040-000236 in the State of Ohio, and also known as: 3951 Broadway and 3959-63 Broadway, Grove City, Ohio

2. PRICE AND TERMS:

The purchase price is: \$ 1,000,000.

Payable as follows: Upon closing

3. ADDITIONAL TERMS: Seller to provide Buyer, within 5 days after acceptance hereof, copies of all leases encumbering the property. See also the Addendum attached hereto and incorporated herein by this reference.

4. DEED: Seller shall convey to Buyer marketable title in fee simple by transferable and recordable general warranty deed, with release of dower if any, or fiduciary deed, as appropriate, free and clear of all liens and encumbrances not excepted by this contract.

5. CONTINGENCIES:

(a) Environmental Inspection: (This paragraph 5a not applicable if number of days not inserted.) Within 60 days after the acceptance hereof, Seller agrees to permit Buyer, Buyer's lender and the qualified, professional environmental consultant of either of them to enter the property to conduct, at the expense of Buyer, an environmental site assessment. Buyer agrees to pay any litigation expenses, including reasonable attorney fees incurred by Seller, as a result of any claims resulting from such inspection and to indemnify Seller for any resulting damages.

If such assessment is obtained and the consultant recommends further inspection to determine the extent of suspected contamination or recommends remedial action, Buyer, at Buyer's option, may notify Seller in writing, within the above-specified period, that the contract is terminated, but Buyer's obligations under this paragraph 5a shall survive. Upon such termination, Buyer's earnest money deposit shall be released (pursuant to paragraph 14). Buyer shall have the right to enter upon the premises at reasonable times to make such tests.

(b) Property Inspection: (This paragraph 5b not applicable if number of days not inserted.) Buyer, at Buyer's expense, shall have 60 days after the acceptance hereof to have the property and all improvements, fixtures, and equipment inspected. Seller shall cooperate in making the property reasonably available for such inspection(s).

Buyer agrees to pay any litigation expenses, including reasonable attorney fees incurred by Seller as a result of any claims resulting from such inspection and to indemnify Seller for any resulting damages.

If Buyer is not satisfied with the condition of the property as disclosed by such inspection(s), Buyer may terminate this contract by delivering written notice of such termination to Seller within the above specified period that the contract is null and void. Upon such termination, Buyer's earnest money deposit shall be released (pursuant to paragraph 14).

(c) Other Contingencies:

Buyer shall have 60 days acceptance hereof to review any leases encumbering the property and may terminate this contract if Buyer is not in its sole discretion satisfied with such leases.

(d) If Buyer does not give written notice to Seller within the time frames set forth above that the contingencies have been satisfied or that Buyer wishes to terminate this transaction, then the above contingencies are deemed to have been waived.

6. DUE DILIGENCE INVESTIGATIONS:

(a) Survey: (This paragraph 6a not applicable if number of days not inserted.) Buyer, at Buyer's initial expense, shall obtain an acceptable boundary survey of subject property, prepared by a licensed surveyor, showing dimensions and locations of all recorded easements affecting, or appurtenant to the premises, and also showing the legal description of the premises, within 60 days after acceptance hereof. Seller shall reimburse Buyer for the survey expense at closing. If this sale does not close, Seller shall have no obligation to pay for the survey.

(b) Utilities: (This paragraph 6b not applicable if number of days not inserted.) This offer is contingent upon Buyer's satisfaction of the availability of utility connections for water, sanitary sewer, storm sewer, gas and electricity being located in a public street or right of way, or other form of public utility easement adjoining the subject premises at the property line, within 60 days after acceptance hereof. Said utilities shall be available in sufficient quantities and size for the development of the property as reasonable determined by Buyer and at a cost acceptable to Buyer.

(c) Feasibility: (This paragraph 6c not applicable if number of days not inserted.) Buyer shall have determined to its sole satisfaction, at Buyer's expense, that Buyer's intended development is financially feasible including, without limitation, Buyer's approval of all site preparation costs. Financial feasibility studies and all site preparation costs must be approved by Buyer within 60 days after acceptance hereof.

(d) Zoning & Permits: (This paragraph 6d not applicable if number of days not inserted.) This offer is further contingent upon Buyer obtaining rezoning, if necessary, from all applicable authorities from the current zoning to allow for Buyer's intended use which is _____, and Buyer obtaining all necessary permits, agreements, approvals (site plan/building permits), and licenses from all applicable authorities for Buyer's proposed development, by Buyer within _____ days after acceptance hereof.

Any and all costs related to Buyer obtaining such rezoning, permits, agreements, approvals and licenses shall be borne by Buyer. Seller shall execute the zoning application if needed and shall cooperate with Buyer in obtaining said rezoning but Seller shall not be required to personally attend any meetings.

(e) If Buyer does not give written notice to Seller within the time frames set forth above that the contingencies have been satisfied or that Buyer wishes to terminate this transaction, then the above contingencies are deemed to have been waived.

(f) RENTS, INTEREST, CONDOMINIUM CHARGES, INSURANCE, UTILITIES AND SECURITY DEPOSITS: Adjustments shall be made through date of closing for: (a) rents; (b) interest on any mortgage assumed by Buyer; (c) condominium or other association periodic charges; (d) transferable insurance policies, if Buyer so elects; and (e) any community development charge applicable to the premises that was created by a covenant in an instrument recorded at (insert county) _____, Vol. _____/Page No. _____ or Instrument No. _____.

[Note: If the preceding blanks are not filled in and a community development charge affects the property, this contract may not be enforceable pursuant to R.C. 349.07] Security deposits, if any, shall be transferred to Buyer. Seller shall pay, through date of possession, all accrued utility charges and any other charges that are or become a lien.

7. DAMAGE OR DESTRUCTION OF PROPERTY: Risk of loss to the property and appurtenances shall be borne by Seller until closing. If any part of the property covered by this contract is substantially damaged or destroyed before this transaction is closed, Seller shall give a written notice to Buyer and/or Buyer's Broker that the damage or destruction has occurred. Such notice must include all pertinent information regarding insurance policies and claims covering the property that has been damaged or destroyed. The written notice shall be delivered within forty-eight (48) hours from discovery of the event causing the damage or destruction. Buyer may (a) proceed with the transaction and be entitled to all insurance money, if any, payable to Seller under all policies covering the property, or (b) terminate this contract, by giving written notice to Seller and or Seller's Broker within ten (10) calendar days after Seller has received written notice of such damage or destruction. If Buyer elects to rescind, then all parties are released from liability and the earnest money deposit shall be returned to Buyer pursuant to paragraph 14. Failure by Buyer to so notify Seller or Seller's Broker shall constitute an election to proceed with the transaction.

8. EMINENT DOMAIN: If, prior to the date of closing, eminent domain proceedings shall be threatened or commenced against all or any part of the premises, Seller shall give a written notice to Buyer and/or Buyer's Broker within forty-eight (48) hours of Buyer's receipt of notice of the threatened or commenced eminent domain action setting forth the pertinent terms of the threatened or commenced eminent domain action. Buyer may: (a) elect to proceed to close the purchase of the premises in accordance with the terms of this contract, in which event the Buyer shall be entitled to all payments payable to Seller on account of such taking as is applicable to the portion of the premises being purchased; or (b) elect to terminate this contract. If Buyer elects to terminate this contract, it shall so notify Seller in writing within 20 days after Buyer has received written notice from Seller of such taking. Failure by Buyer to so notify Seller shall constitute an election to proceed to close on the purchase of the property, and Buyer shall be entitled to all payments on account of such taking. Seller represents and warrants that it has no knowledge of any threatened taking which would affect, involve, or be adverse to the property.

9. CONDITION OF IMPROVEMENTS: Seller agrees that upon delivery of deed, the improvements constituting part of the Real Estate shall be in the same condition as that on the day of this offer, reasonable wear and tear excepted and damage accepted by Buyer under Paragraph 5b.

10. EVIDENCE OF TITLE: Seller shall furnish and pay for an owner's title insurance commitment (without special endorsements) and policy in the amount of the purchase price. The title evidence shall be certified to within thirty (30) days prior to closing with endorsement not before 8:00 a.m. on the business day prior to the date of closing, all in accordance with the standards of the Columbus Bar Association, and shall show in Seller marketable title in fee simple free and clear of all liens and encumbrances except: (a) those created or to be assumed by Buyer; (b) those specifically set forth in this contract; (c) zoning ordinances; (d) legal highways and (e) covenants, restrictions, conditions and easements of record that do not unreasonably interfere with

SPW

present lawful use, (or Buyer's intended use which is _____). Buyer shall pay any additional costs incurred in connection with mortgage title insurance issued for the protection of Buyer's lender and any special endorsements to the owner's policy of title insurance. If Buyer desires a survey, Buyer shall pay for it.

If title to all or part of real estate 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 in this contract, Seller shall, within thirty (30) days after a written notice thereof ("Cure Period"), remedy or remove any such lien, etc. or obtain title insurance without exception therefore. In the event Seller is unable to remedy to insure against the defect within the Cure Period, Buyer may terminate this contract by written notice to Seller received by Buyer within ten (10) days of the expiration of the Cure Period. In the event that Buyer elects to terminate this contract, Buyer and Seller shall be released from any and all obligations arising under this contract with the exception of Buyer's indemnification and hold harmless obligations arising pursuant to the terms of Paragraph 5a and Paragraph 5b of this contract which expressly survive such termination. At closing, Seller shall sign an affidavit with respect to off-record title matters in accordance with the community custom and shall represent, except to the extent otherwise disclosed in the environmental site assessment performed by Buyer under Paragraph 5a, to the best of Seller's knowledge that the subject property contains no hazardous waste.

11. TAXES AND ASSESSMENTS: At closing, Seller shall pay or credit on purchase price all delinquent taxes, including penalty and interest, all assessments that are a lien on the date of contract and all agricultural use tax recoupments for years prior to the year of closing. At closing, Seller shall also pay or credit on purchase price all other unpaid real estate taxes that are a lien for years prior to closing and a portion of such taxes and agricultural use tax recoupments for year of closing, prorated through date of closing and based on a 365-day year and, if undetermined, most recent available tax rate and valuation, giving effect to applicable exemptions, recently voted millage, change in valuation, etc., whether or not certified. Seller has received no written notification from public authority or owners association of future improvements that would result in costs being assessed against the real estate. Real estate taxes and assessments are subject to retroactive change by government authority. The real estate taxes for the property for the current tax year may change as a result of the transfer or as a result of a change in the tax rate.

12. BUYER'S EXAMINATION: Buyer has examined all property involved and, in entering into this contract, is relying solely upon such examination and those inspections and due diligence reviews under Paragraphs 5a, 5b, 5c and, to the extent applicable, Paragraphs 6a through 6d with reference to the condition, character and size of land and improvements and fixtures, if any. This contract constitutes the entire agreement and there are no representations, oral or written, which have not been incorporated herein. Time is of the essence for all provisions of this contract. All provisions of this contract shall survive the closing. Buyer is not relying upon any representations by the Broker(s), except for those made by Broker(s) directly to the Buyer in writing.

13. INDEMNIFICATION, ENVIRONMENTAL DISCLAIMER BY BROKER: Seller agrees to defend, indemnify and hold harmless Seller's Broker, and their agents and employees for any cost or liability that may be incurred by or imposed on Seller's Broker for any breach by Seller of any representation of warranty or for any misrepresentation or concealment of fact by Seller in connection with the property.

Buyer and Seller acknowledge that Broker(s) have made no independent investigation to determine whether hazardous materials exist in, on or about the property.

14. EARNEST MONEY DEPOSIT:

Within 5 days of the contract being fully executed, Buyer shall deposit with Pizzuti Mgmt LLC (the "Holder") earnest money of \$ 50,000. If deposited with Broker, the earnest money deposit shall be held in Broker's trust account.

14.1 Holder shall maintain the earnest money until one of the following occurs:

(a) The transaction closes, at which time Holder shall disburse the earnest money to the closing agent or pursuant to the terms of the purchase contract.

(b) The parties direct the Holder, pursuant to written instructions signed by both parties, how the earnest money is to be disbursed.

(c) The Holder is directed by court order how the earnest money is to be disbursed.

(d) The earnest money becomes unclaimed funds, as defined in R.C. 169.02(M)(2). After providing notice as required by R.C. 169.03(D), Holder shall report the earnest money to the director of commerce, pursuant to R.C. 169.03, and remit the earnest money to the director.

14.2 If Holder holds the earnest money for two years, and the parties have failed to provide Holder with written instructions, signed by both parties, or a court order that directs Holder how to disburse the earnest money deposit, then Holder shall as soon as possible return the earnest money to Buyer without notice to Seller. If Holder cannot locate Buyer, Holder shall report the earnest money to the director of commerce, pursuant to R.C. 169.03, and remit the earnest money to the director.

14.3. The return of the earnest money deposit shall in no way prejudice the rights of Seller, Buyer or Broker in any action for damages or specific performance.

15. CLOSING AND POSSESSION: If all of the conditions and contingencies in Sections 5 and 6 by Buyer are either satisfied, waived by Buyer, or deemed waived as the result of lapse of time, then Buyer and Seller hereby agree to close this transaction within 60 days ~~of the waiver or satisfaction of the last contingency at a time and place reasonably acceptable to Buyer and Seller.~~ *of the contract being fully executed*

At closing, Seller shall pay transfer taxes and deed preparation and shall convey to Buyer marketable title (as described in Sections 4 and 11) to the real estate by deed in fee simple by transferable and recordable and general warranty deed (or appropriate fiduciary deed if Seller is a fiduciary) in fee simple, with release of dower, if any.

16. 1031 EXCHANGE: If requested by either party, both parties will cooperate in effecting the transaction contemplated by this Agreement as a like kind exchange through a qualified intermediary in accordance with §1031 of the Internal Revenue Code. The party requesting the §1031 Exchange shall be solely responsible for the qualification of the transaction as a §1031 Exchange.

17. MISCELLANEOUS:

(a) This contract constitutes the entire agreement and no oral or implied agreement exists. Any amendments to this contract shall be in writing, signed by Buyer(s) and Seller(s) and copies provided to them. This contract shall be binding upon the parties, their heirs, administrators, executors, successors and assigns. If this contract involves Seller financing, it may not be assigned. Time is of the essence of all provisions of this contract. All provisions of this contract shall survive the closing.

*sh
P.L.H*

S.M.

(b) It is illegal, pursuant to the Ohio Fair Housing Law, Division (H) of Section 4112.02 of the Revised Code and the Federal Fair Housing Law, 42 U.S.C.A. 3601, to refuse to sell, transfer, assign, rent, lease, sublease, or finance housing accommodations, refuse to negotiate for the sale or rental of housing accommodations, or otherwise deny or make unavailable housing accommodations because of race, color, religion, sex, familial status as defined in Section 4112.01 of the Revised Code, ancestry, military status as defined in that section, disability as defined in that section, or national origin or to so discriminate in advertising the sale or rental of housing, in the financing of housing, or in the provision of real estate brokerage services.

(c) It is illegal, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry into the neighborhood of a person or persons belonging to one of the protected classes.

(d) Each of the parties hereby represents and warrants to the other that it has all requisite power to enter into this contract and to perform the terms, covenants and conditions hereof; that the execution and delivery of this contract has been duly authorized by all necessary persons or entities, and when executed and delivered, this contract will be a legal, valid and binding obligation of such party, enforceable against it in accordance with its terms, and that its signatory is duly authorized and empowered to execute this contract on its behalf. Whenever a date specified herein shall fall on a weekend or legal holiday, the date shall be extended to the next business day.

18. BROKER'S ACKNOWLEDGEMENT: Seller and Buyer acknowledge that there are no other Broker(s) involved in this transaction except as follows:

Buyer Pizzuti Management LLC - any commission to be paid by Buyer
Seller NONE

19. PROFESSIONAL ADVICE AND ASSISTANCE: The parties acknowledge and agree that the purchase of real property encompasses many professional disciplines. While Broker possesses considerable general knowledge, Broker is not an expert on matters of law, tax, financing, surveying, structural conditions, hazardous materials, environmental conditions, inspections, engineering, etc. Broker hereby advises the parties, and the parties acknowledge that they should seek professional expert assistance and advice in these and other areas of professional expertise. In the event Broker provides to the parties names of companies or sources for such advice and assistance, the parties additionally acknowledge and agree that Broker does not warrant, guarantee, or endorse the services and/or products of such companies or sources.

20. SIGNATURES: Only original manual signatures or facsimile signatures (which includes both faxes and PDF documents sent by e-mail) shall be valid for purposes of this contract and any amendments or any notices to be delivered in connection with this contract. Only original, manually signed documents shall be valid for deeds or other documents to be delivered at closing. This paragraph 20 cannot be waived except by a manually signed agreement of the parties.



21. TERMINATION: If this Contract is terminated pursuant to Paragraphs 6a through 6d, 7, 8, or 10, then, with the exception of Buyer's indemnification and hold harmless obligations arising under Paragraphs 5a and 5b, Buyer and Seller shall be released from all obligations arising under this Contract.

22. DURATION OF OFFER AND ACCEPTANCE: This offer shall be open for acceptance through 5:00 PM, Month March Day 16 Year 2013, Columbus, Ohio time. Buyer makes this offer on this Seller accepts this offer on this

Buyer makes this offer on this
8 day of March, 2013.

Seller accepts this offer on this
16 day of MARCH, 2013.

(Buyer) Pizzuti Builders LLC
Scott B West
(Buyer) By: Scott B. West, EVP

(Seller)
Robert L Foreman
(Seller)

Address 2 Miranova Place Suite 800
Columbus, OH 43215

Address _____

Phone 614-280-4008
Fax 614-280-5008

Phone _____
Fax _____

Deed to: _____

Name of Seller's Attorney Jeff Anderson
614 875 4817

Name of Buyer's Attorney Scott West

ALL PARTIES TO THIS CONTRACT MUST BE PROVIDED WITH A COPY.

ADDENDUM

By signing this Addendum to Real Estate Purchase Contract dated March 8, 2013, the parties accept and incorporate the following changes to that Contract regarding the purchase and sale of 3951 Broadway and 3959-63 Broadway, Grove City, Ohio:

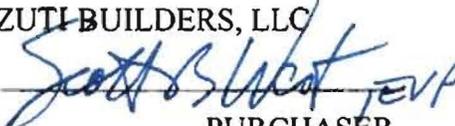
1. Seller to have salvage rights to all improvements on the property, including such fixtures as furnaces, wiring, pipes, doors, windows and the like. This salvage work will be at Seller's risk and Seller will not remove exterior doors or otherwise open up the building to weather or other persons except with the approval of the Purchaser. Seller agrees to indemnify Purchaser for any damages, losses, costs or expenses (including reasonable attorney fees) incurred as a result of Seller's salvage work.

2. Seller will have 120 days after the closing to conduct this salvage work and to arrange for all tenants to vacate the property.

3. Seller represents and warrants to Purchaser that all Leases encumbering the property can be terminated at closing or within 30 days thereafter. Notwithstanding the foregoing or the terms of the Leases, Purchaser will give Seller up to 120 days after closing to cause the Tenants to vacate their premises. Seller agrees that it will not amend any leases after the date hereof without Purchaser's written consent.

4. The closing date and location shall be designated by Buyer upon not less than three (3) days' notice to Seller.

5. Notwithstanding any provision in the Contract to the contrary, if Purchaser does not purchase the property for any reason other than due to Seller's default, then Seller will receive the \$50,000.00 deposit.

PIZZUTI BUILDERS, LLC
By:  ^{TEVP}
PURCHASER


Robert L. Foreman
SELLER