RESOLUTION NO. 5 , 2009

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT TO PURCHASE PROPERTY LOCATED AT 7777 TED GREGORY WAY

WHEREAS, The Business Club of Montgomery, Inc. ("The Business Club") is an Ohio not-for-profit corporation located at 7777 Ted Gregory Way, Montgomery, Ohio 45242; and

WHEREAS, The Business Club, to meets its constitution and mission in winding up its affairs, has agreed to sell in-part and donate in-part its real property located at 7777 Ted Gregory Way, Montgomery, Ohio 45242, consisting of multiple parcels of real estate consolidated under Hamilton County Auditor's plot number 603-0003-0102 more particularly described on Schedule A attached hereto; and

WHEREAS, the City has completed an appropriate environmental assessment of the property and desires to acquire the property according to the terms of its proposed agreement with The Business Club.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Montgomery, Hamilton County, Ohio, that:

SECTION 1. The City Manager is hereby authorized to complete the purchase of the real estate from The Business Club of Montgomery, Inc. at 7777 Ted Gregory Way, Montgomery, Ohio 45242, as described on Schedule A attached hereto and incorporated herein by reference, according to the terms of a proposed Contract to Purchase and all Addendums to such Contract to Purchase entered into by and between the City Manager and The Business Club of Montgomery, Inc., which contract proposal is

attached hereto and identified as Schedule B. The City Manager is authorized to pay for such purchase the sum of One Hundred Thousand Dollars ($100,000.00) according to the terms of the contract and up to an additional Ten Thousand Dollars ($10,000.00) to be held in escrow according to the terms of the contract to fund additional creditor's claims due against The Business Club which may arise through the date of closing. Further, the City Manager is authorized to expend such additional funds as are necessary and appropriate Seller's costs in the ordinary course of completing such purchase.

SECTION 2. This Resolution shall be in full force and effect from and after its passage.

PASSED: January 21, 2009

ATTEST: Susan J. Hamm
Susan J. Hamm, Clerk of Council

Gerri Harbison
Gerri Harbison, Mayor

APPROVED AS TO FORM:

Terrence M. Donnellon
Terrence M. Donnellon, Law Director

SCHEDULE "A"

Parcel No. 1:

Situate in Section 3, Town 4, Entire Range 1, Miami Purchase, Sycamore Township, Village of Montgomery, Hamilton County, Ohio and being more particularly described as follows:

Being part of Lot No. 4 James I. Ross Estate as recorded in Plat Book 4, Page 319 Recorder's office with place of beginning for this conveyance being on the south line of a 33 feet in width strip, (dedicated for street purposes and recorded under Registered Land, Certificate of Title No. 7142) and North 69° 42' West, 140.00 feet from the East line of Lot No. 4, said Ross Estate; thence South 19° 38' West parallel to East line Lot No. 4, 121.21 feet to Grantor's southerly line and the southerly line of tract of Registered Land, Certificate of Title No. 6902; thence North 61° 16' West, 201.20 feet to an iron pipe at the southwest corner of said Registered Land; thence North 19° 49' East, 91.72 feet along the westerly line of said Registered Land to a point; thence South 69° 42' East, 198.28 feet along the southerly line of said 33 feet strip as dedicated for street purposes (Cert of Title No. 7142 to the place of beginning).

Subject to the exceptions mentioned in Section Twenty-Five of the Act of May 6, 1913, 103 O. L. 914 as amended, providing for the registration of land titles, and subject to the Lesser Estates and interests, liens, charges and encumbrances mentioned and described in the memorials endorsed hereon or on the sheet of memorials attached hereto.

Auditor's Parcel No.: 603-3-102
Prior Deed Reference: Registered Land Certificate # 17739

Parcel No. 2:

The following described real estate situated in the Village of Montgomery, Hamilton County, Ohio, in Section 3, Township 4, Entire Range 1, of the Miami Purchase and more particularly bounded and described as follows:

From the intersection of the north line of Straight Street and the westerly line of Lodwick Weller's Subdivision; said intersection being an iron pipe at the southwest corner of registered land Certificate No. 429; thence North 19° 38' East 26.97 feet along the westerly line of said registered land to a point; thence North 61° 10' West 158.77 feet along the southerly line of the original C. L. & N. railroad right of way to the place of beginning; thence North 22° 17' East 40.26 feet to the northerly line of old C. L. & N. railroad right of way; thence North 61° 10' West 255.73 feet along said northerly line of railroad right of way to a stone at Anna Finney's southwesterly corner; thence South 19° 49' West 40.51 feet along Finney's westerly line extended to the southerly line of former railroad right of way; thence South 61° 10' East 253.99 feet along said former right of way line to the place of beginning.

Auditor's Parcel No.: 603-3-105
Prior Reference No.: Deed Book 2389, Page 529

Parcel No. 3:

All that property formerly part of the Interurban Railway and Terminal Company Right of Way, being a strip 26 ft. in width, and more particularly described as follows:

Situated in Section 3, Township 4, Entire Range 1, Miami Purchase, Sycamore Township, Village of Montgomery, Hamilton County, Ohio, being part of Lot 4 of Jas. I. Ross Estate and more particularly described as follows:

From the intersection of the East line of Lot 4 of Jas. I. Ross Estate and the South line of the old Interurban Railway and Terminal Company Right of Way, measure North 61° 10' West 160.00 feet along said South line to an iron pipe and place of beginning; thence continuing North 61° 10' West 184.56 feet along said original South line of right of way to a point; thence North 19° 45' East 26.33 feet along the line between Lots 4 and 2 of said Jas. I. Ross Estate, to a point; thence South 61° 10' East 185.73 feet along original North line of Traction Company Right of Way to an iron pipe; thence South 22° 17' West 26.17 feet to the place of beginning. Containing 4814 sq. ft.

Auditor's Parcel No.: 603-3-148
Prior Reference No.: Deed Book 3456, Page 983

Parcel No. 4:

All that property formerly part of the Interurban Railway and Terminal Company Right of Way, being a strip 26 ft. in width, and more particularly described as follows:

Situated in Section 3, Township 4, Entire Range 1, Miami Purchase Sycamore Township, Village of Montgomery, Hamilton County, Ohio, and being part of Lot 2 of Jas. I. Ross Estate and being more particularly described as follows:

From the intersection of the East line of Lot 4 of Jas. I. Ross Estate and the South line of the old Interurban Railway and Terminal Company Right of Way, measure North 61° 10' West 344.56 feet along said South line to a point and the place of beginning; thence North 19° 45' East, 26.33 feet along the East line of Lot 2, Jas. I. Ross Estate to a point; thence North 61° 10' West 119.96 feet along the original North line of Traction Company's Right of Way to an iron pipe; thence South 19° 50' West 26.32 feet to an iron pipe; thence South 61° 10' East 120 feet along South line of original right of way of said Traction Company to the place of beginning, containing 3119 sq. ft.

Auditor's Parcel No.: 603-3-149
Prior Reference No.: Deed Book 3457, Page 43

Parcel No. 5:

Property situated in Section 3, Township 4, Entire Range 1, Miami Purchase, Sycamore Township, Village of Montgomery, Hamilton County, Ohio, and more particularly described as follows:

From the intersection of the east line of Lot number two (2) of the James I. Ross Estate and the north line of the old Cincinnati Lebanon and Northern Railroad right-of-way into Montgomery, said point of intersection being the southeast corner of Ruby Finney's Lot, said point being also the southwest corner of the original registration as recorded on Certificate 6902, measure north 61° 10' west sixty-nine and 00/100 (69.00)feet along the south line of Ruby Finney's Lot being also the north line of old Railroad right-of-way to her southwest corner and place of beginning; said beginning point being the original southeast corner of Naomi I. Hammel's property; thence north 61° 10' west fifty and 90/100 (50.90) feet along the north line of old Railroad right-of-way (as acquired by grantor) to a point; thence south 19° 50' west forty and 49/100 (40.49) feet to the south line of said Railroad right-of-way; thence south 61° 10' east fifty and 96/100 (50.96) feet along said south line to a point; thence north 19° 45' east forty and 50/100 (40.50) feet along the east line produced of grantor's property to the place of beginning.

Auditor's Parcel No.: 603-3-156
Prior Reference No.: Deed Book 3525, Page 673

Parcel No. 6:

Situated in Section 3, Township 4, Entire Range 1, Miami Purchase, Village of Montgomery, Hamilton County, Ohio, and more particularly described as follows:

From an iron pipe at the Southwest corner of Registered Land Certificate No. 429 and being at the intersection of the north line of Straight Street and the West line of Weller's Subdivision; thence North 61° 10' West along the South line of the old Traction Company right of way (now abandoned) 160 feet to an iron pipe at the Northeast corner of Chester W. Hammel property and place of beginning; thence South 22° 17' West 50.00 feet along said Hammel's Easterly line to a point; thence North 61° 10' West 89.64 feet to a point; thence North 22° 17' East 50.00 feet to the South line of old Traction Company right of way (now abandoned); thence along said right of way line, South 61° 10' East 89.64 feet to the place of beginning.

Auditor's Parcel No.: 603-3-160
Prior Reference No.: Deed Book 3571, Page 275

CONTRACT TO PURCHASE

The undersigned, **The City of Montgomery, Ohio, an Ohio municipal corporation, by and through its City Manager, Cheryl A. Hilvert**, (hereinafter referred to as "Montgomery"), offers to purchase from **The Business Club of Montgomery, Inc., an Ohio not-for-profit corporation**, (hereinafter referred to as "Business Club"), the real property located at **7777 Ted Gregory Way (previously known as Sycamore Street), Montgomery, Ohio 45242**, as more fully described on Schedule "A" attached hereto.

1. The purchase price shall be **One Hundred Thousand Dollars ($100,000.00)** payable as follows:

(a) **One Thousand Dollars ($1,000.00)** as earnest money to apply toward the purchase price to be held by Wood & Lamping, LLP as agent for the Business Club in escrow pending closing. If the offer is not accepted or if the Business Club defaults in the performance of this Agreement or Montgomery terminates this Agreement as hereinafter provided for, the earnest money will be returned to Montgomery as soon as reasonably possible. If Montgomery defaults in the performance of this Agreement, then this earnest money shall be paid to the Business Club, not as liquidated damages, but to apply to damages which the Business Club may sustain as a result of Montgomery's default.

(b) The balance of the purchase price shall be paid in cash, certified check or cashier's check upon delivery of the deed at the time and date set for closing by the parties.

2. This sale is contingent upon:

(a) Montgomery obtaining a satisfactory Phase One environmental assessment and whole building property inspection to determine the presence of asbestos or other hazardous materials to assess any environmental remediation requirements for the property. If Montgomery determines, in its sole discretion, that either the cost of abatement or the nature of the abatement is unsatisfactory, Montgomery, at its option, may terminate this Contract immediately. Montgomery will exercise due diligence to obtain such inspections and reports, with the full cooperation of the Business Club, within ninety (90) days.

(b) Montgomery obtaining appropriate Affidavits or other evidence,

satisfactory to Montgomery, in its sole discretion, that the Business Club is appropriately authorized to implement this Contract and to sell such real estate.

3. The real estate located at **7777 Ted Gregory Way, Montgomery, Ohio 45242,** which is the subject of this Agreement, shall include the land, all appurtenant rights, privileges and easements and all buildings and fixtures in their present condition, including, but not limited to, such of the following as are now on the property: Business Club at its option may remove any personal property from the real estate prior to closing, and Business Club agrees that any personal property remaining on the property after the date of closing shall become the property of Montgomery and Montgomery may dispose of such property as it deems appropriate.

4. The Business Club shall convey title to this real estate by General Warranty Deed, in fee simple, with release of dower, on or before **January 30, 2009**, free, clear and unencumbered as of the date of closing except restrictions and easements of record. The Business Club shall have the right to remove any and all encumbrances or liens at the time of delivery of the deed out of the purchase monies.

5. Business Club shall pay all real estate taxes and assessments, including penalties thereon, due and owing and prorated up to the date of closing. The prorated undetermined taxes shall be based upon a 365 day year and on the last available rate and evaluation as shown for real property on tax duplicate of Hamilton County, Ohio.

6. The Business Club agrees that upon delivery of the deed, the real estate, and any improvements constituting a part of the real estate, will be in the same condition as they are on the date of this offer excepting reasonable wear and tear. If the real estate or any improvements are damaged or destroyed by fire or other casualty prior to closing, and are not repaired or restored by the Business Club to a condition at least as good as they were prior to the damage or destruction, then Montgomery at its option may terminate this Agreement by written notice to the Business Club.

7. Montgomery will have occupancy immediately upon the date of closing. All

utilities used by the Business Club during this period will be at the Business Club's expense.

8. The undersigned warrant and represent that they are duly authorized to execute this Contract and/or Offer and Acceptance for and on behalf of their principal, and each party is entitled to rely upon such representation in implementing the terms of this Agreement.

9. This offer will remain open for acceptance until the **December 8, 2008, 5:00 P.M.** If accepted by the Business Club, a signed copy of this Agreement will be returned promptly to Montgomery.

10. This offer and its acceptance will constitute the entire Agreement of the parties, and no oral, verbal or implied agreements or understanding will vary the terms of this contract. This offer, when accepted, shall bind the parties, their heirs, administrators, executors and assigns.

Witness

Witness

THE CITY OF MONTGOMERY, OHIO

By: 11-25-08; 11:10 a.m.

Cheryl A. Hilvert DATE & TIME

Its: City Manager

10101 Montgomery Road

Montgomery, OH 45242

BUSINESS CLUB'S ACCEPTANCE

I accept the above offer as submitted to me and acknowledge receipt of One Thousand Dollars ($1,000.00) as earnest money, which Wood & Lamping, LLP as agent for the Business Club will hold in escrow pending closing.

THE BUSINESS CLUB OF MONTGOMERY, INC. 12/15/08 1201 PM

Richard A Wilkerson
Witness

By: Paul A. Nann
PAUL NANN,
President
DATE & TIME

Marilyn Nann
Witness

December ____, 2008

CONTRACT ADDENDUM

This Addendum, when accepted by both parties, shall amend the Contract to Purchase ("Contract") originally dated November 25, 2008 by and between Montgomery and the Business Club and shall bind the parties thereto:

Montgomery agrees that in addition to the Purchase Price of One Hundred Thousand Dollars ($100,000.00) offered within the Contract, that to assist the Business Club in winding down its operations in conjunction with the sale of the real property at 7777 Ted Gregory Way, Montgomery, Ohio, Montgomery will fund an escrow account in the amount of Ten Thousand Dollars ($10,000.00) to be used as set forth herein to offset additional expenses of the Business Club.

The Business Club has estimated to date that the Purchase Price shall be exhausted by the following debts due:

Taxes – Hamilton County Treasurer	$ 34,305.20
Real Estate Commissions – Sibcy Cline	21,000.00
Security Deposits	700.00
Professional Fees	6,500.00
Insurance	850.00
Trash Removal	200.00
Utilities	3,800.00
Zeh Catering	32,644.80
TOTAL:	$100,000.00

To the extent the actual expenses incurred in the windup of the operations of the Business Club are in excess of the amounts estimated above, if such expenses are incurred prior to the date of closing, such excess expenses shall be paid from the escrow account, provided such expense reimbursement is submitted within forty-five (45) days of the date of closing. These expenses or any other claims or expenses which may be asserted against the Business Club from its operations through the date of closing may be submitted for reimbursement to the extent there are insufficient funds available from the Purchase Price of the property to meet those debts as outlined above.

To obtain reimbursement from the escrow account, the Business Club agrees to submit evidence of the monies paid to meet the debts as outlined above and invoices for the additional

expenses incurred for operations in excess of those monies as outlined above, recognizing however that the monies due the Hamilton County Treasurer will be withheld and paid from the closing proceeds. The recognized expenses will then be paid to the Business Club by Montgomery up to the total amount of Ten Thousand Dollars ($10,000.00).

At the conclusion of the forty-five (45) day period, any funds remaining in the escrow account shall revert to the City of Montgomery without further action, and no further monies shall be due the Business Club.

All other terms and conditions of the Contract are hereby ratified and reaffirmed.

THE CITY OF MONTGOMERY, OHIO

Ken Suer
Witness

By: Cheryl A. Hilvert
Cheryl A. Hilvert
Its: City Manager

Witness

Date: 12-17-08

THE BUSINESS CLUB OF MONTGOMERY, INC.

Richard A Welkerson
Witness

By: Paul A Nann
PAUL NANN
Its: President

Marilyn Nann
Witness

Date: December 15, 2008

SECOND CONTRACT ADDENDUM

This Second Contract Addendum, when accepted by both parties, shall amend the Contract to Purchase ("Contract") originally dated November 25, 2008 and the first Contract Addendum submitted as a supplement to the Contract by and between Montgomery and the Business Club, and shall bind the parties thereto.

Montgomery agrees to amend the original Contract to extend the time within which the Business Club may accept the purchase offer and Contract Addendum to 5:00 p.m. Wednesday, December 17, 2008.

Secondly, Montgomery and the Business Club agree to extend the date by which the purchase shall close to Friday, February 13, 2009.

All other terms and conditions of the Contract and the first Addendum are hereby ratified and reaffirmed with the acceptance of this Contract extension and Second Contract Addendum.

THE CITY OF MONTGOMERY, OHIO

Janet L. Hugle
Witness

By: Cheryl A. Hilvert
Cheryl A. Hilvert
Its: City Manager

Tracy Robbins
Witness

Date: 12-9-08

THE BUSINESS CLUB OF MONTGOMERY, INC.

Richard A. Welkerson
Witness

By: Paul A. Nann
PAUL NANN
Its: President

Marilyn Nann
Witness

Date: December 15, 2008