

**RESOLUTION NO. 16 , 2013**

**A RESOLUTION MODIFYING RESOLUTION NO. 11, 2013, WHICH  
AUTHORIZED THE PURCHASE OF REAL PROPERTY FROM BRANDICORP  
MONTGOMERY DEVELOPMENT COMPANY, LLC, TO RESERVE A  
PURCHASE OPTION TO THE SELLER**

**WHEREAS**, by Resolution No. 11, 2013 passed March 20, 2013, City Council did authorize the City Manager to enter into a Purchase Agreement with Brandicorp Montgomery Development Company, LLC (“Brandicorp”) to acquire real property in the Vintage Club along Vintage Club Boulevard for the construction of a public parking garage and other related improvements; and

**WHEREAS**, in negotiations to complete such purchase, it has been determined that it is in both the City’s and Brandicorp’s best interest to reserve to Brandicorp the first right to re-purchase the property and improvements in the future when the Special Obligation Revenue Bonds issued to acquire such real property and build such improvements have been called and paid, and the City determines that such property and improvements are no longer needed for their intended purpose; and

**WHEREAS**, Ohio law recognizes that in proceedings to acquire real property from a private party, it is appropriate to reserve to that private property owner the right to re-purchase the property appropriated if all or a part of the property is no longer needed for its intended purpose; and

**WHEREAS**, although Ohio law currently recognizes such right for a limited period of time, projections concerning this public project indicate that the City may need to extend this re-purchase right for a longer period of time; and

**WHEREAS**, Council recognizes that the equitable principle behind the Ohio law supports reserving this re-purchase right to the property owner, and to make this right effective it is appropriate to extend this re-purchase option for a longer period of time; and

**WHEREAS**, the intended purpose of this Resolution is to affirm the principle supporting this right of re-purchase, to establish a mechanism to exercise such right by both the City and property owner, and to authorize the City Manager to execute the appropriate documents within the purchase transaction with Brandicorp to reserve such rights to Brandicorp.

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

**SECTION 1.** In contracting with Brandicorp Montgomery Development Company, LLC to purchase the real estate authorized by Resolution No. 11, 2013, the City Manager is authorized to execute any and all additional documents, including an Option Agreement, to reserve to Brandicorp, its successors and assigns, the right analogous to the right established under R.C. § 163.211 to re-purchase such real property and any improvements constructed upon such real property at fair market value.

**SECTION 2.** The re-purchase option authorized herein may only be triggered under the following conditions:

A. All Special Obligation Revenue Bonds issued by the City to fund the acquisition of such real property and the construction of such improvements upon such real property have been called and paid in full;

B. The City determines that the real property and improvements are no longer needed by the City for their intended purpose, such purpose currently being the ownership and operation of a public parking garage;

C. Such purchase price shall be established at fair market value;

D. The purchase option shall run for a period as necessary to meet the conditions and intentions stated herein.

**SECTION 3.** All sections, subsections, parts and provisions of this Resolution are hereby declared to be independent sections, subsections, parts and provisions, and the holding of any section, subsection, part or provision to be unconstitutional, void or ineffective for any reason shall not affect or render invalid any other section, subsection, part or provision of this Resolution.

**SECTION 4.** This Resolution shall be in full force and effect from and after its passage.

PASSED: May 6, 2013

ATTEST:   
Susan J. Hamm, Clerk of Council

  
Ken Suer, Mayor

APPROVED AS TO FORM:

  
Terrence M. Donnellon, Law Director