RESOLUTION NO. 39 , 2025

A RESOLUTION AUTHORIZING AN AGREEMENT OF PURCHASE AND SALE WITH THE H. LEE KROMBHOLZ REVOCABLE LIVING TRUST TO ACQUIRE CERTAIN REAL PROPERTY FOR FUTURE PUBLIC USE/ECONOMIC DEVELOPMENT

WHEREAS, the City Administration has negotiated a proposed Agreement of Purchase and Sale with H. Lee Krombholz, Trustee of the H. Lee Krombholz Revocable Living Trust U/A dated June 1, 2000, to acquire real property located at 9399 Shelly Lane, Montgomery, Ohio 45242, being Auditor's Parcel Number 603-0003-0015; and

WHEREAS, the Administration is recommending Council authorize an Agreement of Purchase and Sale, in substance and form to the attached **Schedule A**, to allow the City to acquire the real property as a key piece of real property within the Heritage District for future public use and/or economic development.

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

SECTION 1. The City Manager is authorized to execute the attached Agreement of Purchase and Sale with the H. Lee Krombholz Revocable Living Trust U/A dated June 1, 2000, in substance and form to the attached **Schedule A**, to acquire the real property at 9399 Shelly Lane, Montgomery, Ohio 45242, being Auditor's Parcel Number 603-0003-0015, at a Purchase Price of $965,000.00. The City Council authorizes such acquisition for a public purpose, including economic development to the future development for the vision of the Heritage District.

SECTION 2. With approval of this Resolution, the City Administration is authorized to complete the due diligence to satisfy the contingencies set forth in the

Agreement, and to either proceed to Closing or to terminate/modify the Agreement as provided therein.

SECTION 3. The City Manager is authorized to execute any and all additional documentation necessary to acquire such property and to complete the purchase of the property consistent with the Agreement of Purchase and Sale.

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

PASSED: October 8, 2025

ATTEST: Connie M. Gaylor
Connie M. Gaylor, Clerk of Council

Ron Messer
Ronald G. Messer, Mayor

APPROVED AS TO FORM:

Terrence M. Donnellon
Terrence M. Donnellon, Law Director

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE ("Agreement") is made as of the ______ day of October, 2025, by and between **H. LEE KROMBHOLZ, Trustee of the H. Lee Krombholz Revocable Living Trust U/A dated June 1, 2000, H. Lee Krombholz, Trustee** ("Seller") and **CITY OF MONTGOMERY, OHIO**, an Ohio municipal corporation ("Purchaser").

In consideration of the mutual covenants and provisions herein contained and other good and valuable consideration, Seller and Purchaser agree as follows:

ARTICLE I

DESCRIPTION OF PROPERTY; AGREEMENT OF PURCHASE AND SALE

Seller hereby agrees to sell, assign, and convey to Purchaser and Purchaser agrees to purchase from Seller, in accordance with the terms and subject to the conditions contained herein, the real property located at 9399 Shelly Lane, Montgomery, Ohio 45242, Auditor's Parcel Number 603-0003-0015, more specifically described in Exhibit A attached hereto (the "Property").

ARTICLE II

PURCHASE PRICE

2.1 The total Purchase Price which Purchaser agrees to pay and Seller agrees to accept for the Property shall be the sum of Nine Hundred Sixty-Five Thousand Dollars ($965,000.00).

2.2 The Purchase Price shall be payable as follows:

(a) Ten Thousand Dollars ($10,000.00) (the "Earnest Money Deposit") shall be deposited with Central Land Title Agency ("Escrow Agent") concurrently with the full execution of this Agreement to be held by Escrow Agent pursuant to and subject to the terms and conditions of this Agreement. Should Purchaser not terminate the Contract pursuant to Section 3.3 below, Purchaser will deposit an additional Earnest Money Deposit of Forty Thousand Dollars ($40,000) no later than November 5, 2025;

(b) The balance of the Purchase Price, less the sum of the Earnest Money Deposit, shall be payable at Closing by cash, certified or cashier's check, or wire transfer of immediately available funds. The Purchase Price shall be subject to all prorations and adjustments as hereinafter provided.

2.3 As additional consideration for the Purchase Price of Nine Hundred Sixty-Five Thousand Dollars ($965,000.00), prior to the close of the Contingency Period, Purchaser will tender to Seller a Rental Agreement providing for a monthly Rent of One Dollar ($1.00) per month commencing from the date of Closing and concluding December 31, 2026 ("Initial Term"), with one (1) additional Six (6) month Renewal Term option to continue to rent the retail space for use by the Seller. The Rental Agreement shall provide a monthly Rent in the amount of Two Thousand Five Hundred Dollars ($2,500.00) per month for the Renewal Term The terms of the separate Rental Agreement shall obligate the Seller as Tenant to pay all taxes, which have not already been prorated and set off to the Purchase Price as required by Paragraph 9.2 herein, utilities and liability insurance for the use of the Property. Seller also shall be responsible to properly repair and maintain the Property including snow removal and maintenance of the landscaping. Purchaser shall insure the structure on the Property for replacement cost with both Fire and All Risk Coverage to preserve and secure the building structures erected on the Property. Seller shall be responsible to insure its personal property and contents of the Property. Seller shall have the ongoing right to terminate the Rental Agreement at any time during the Initial Term or the Renewal Term upon thirty (30) days prior written notice to Purchaser. Notwithstanding anything herein to the contrary, failure by either party to execute the Rental Agreement prior to the end of the Contingency Period shall result in this Agreement being terminated and the Earnest Money Deposit shall be returned to Purchaser.

ARTICLE III

CONTINGENCIES OF PURCHASE

The Obligation to Purchase is contingent upon satisfaction of the following:

3.1 **Inspections.** Purchaser, at its option and expense, performing any and all inspections and examinations which Purchaser may deem necessary or desirable on or before November 14, 2025 ("Contingency Period"), including, but not limited to, a Phase I environmental analysis of the Property and an examination of title. Such inspections may be made by such persons as are chosen by the Purchaser. During the Contingency Period, Seller shall reasonably cooperate with facilitating the Inspection by giving Purchaser and Purchaser's representative reasonable access to the Property. Purchaser shall promptly repair and hereby agrees to indemnify Seller from any damaged Property or personal injuries caused by Purchaser or Purchaser's representative during the inspection of the Property. This obligation of indemnification shall survive any termination of the Agreement.

3.2 **Appraisal / Evaluation.** Purchaser, at its expense, obtaining an appraisal/evaluation to justify the Purchase Price for the public expenditure of funds. Such appraisal/evaluation shall be completed as soon as reasonably practicable, but before the close of the Contingency Period. Seller shall cooperate with Purchaser's agent to allow the inspection of the Property to complete the evaluation.

3.3 **Termination.** If Purchaser, in its sole discretion, determines that the inspections and examinations set forth in Paragraph 3.1 above are not satisfactory to enable Purchaser to acquire the Property without restriction, or if the Property is not appraised or evaluated to justify the public purchase, then Purchaser may terminate this Agreement by delivering written notice of termination to Seller and Escrow Agent within Five (5) business days of the expiration of the Contingency Period. If Purchaser fails to notify Seller of its intention to terminate this Agreement within the Five (5) business days of the end of the Contingency Period, the respective contingency shall be deemed to be waived. Upon receipt of this written termination, Escrow Agent shall refund all deposits to Purchaser and Purchaser shall have no further obligation to Seller.

ARTICLE IV

SELLER'S DOCUMENTATION AND DELIVERIES

Within Ten (10) days of acceptance of this Agreement, the Seller shall deliver to the Purchaser copies of all environmental reports, engineering reports or studies, development plans, site plans, surveys (including utility surveys), and any title insurance policies issued for the subject Property in Seller's possession, or performed or issued on behalf of the Seller. If Purchaser elects to terminate this Agreement as provided herein, Purchaser shall return all delivered documents to Seller.

ARTICLE V

TITLE COMMITMENT

5.1 **Title Commitment.** Within Twenty-One (21) days of the execution of the Agreement, Purchaser may obtain, at Purchaser's expense, a current commitment showing title to the Property in the name of the Seller, wherein the issuing Title Company shall commit to issue to Purchaser an owner's title insurance policy, in the amount of the Purchase Price, with all Standard and General Exceptions deleted, insuring the marketability of the title to the Property, subject only to the following matters ("Permitted Exceptions"):

(a) All legal highways;

(b) Zoning, building and other laws, ordinances, codes and regulations;

(c) Easements, rights of way, conditions, covenants and restrictions of record;

(d) Installments of real estate taxes and assessments which are a lien upon the Property, but are not yet due and payable.

Any mortgage or other monetary or tax liens on the Property shall be discharged prior to closing or paid by Seller at the time of Closing, out of the Purchase Price.

ARTICLE VI

SELLER'S REPRESENTATIONS AND WARRANTIES

Seller represents, warrants and covenants to Purchaser the following, to Seller's actual knowledge without independent investigation:

(a) No Consents Necessary. Seller has the legal right, power, capacity and authority to enter into and perform its obligations under this Agreement, and no approval or consent of any other person or entity is necessary to authorize the execution of this Agreement by Seller or the consummation by Seller of the transactions contemplated hereby. The execution and delivery of this Agreement and every other document delivered pursuant to this Agreement by Seller, and the consummation of the transactions contemplated by this Agreement have been duly authorized and validly executed and delivered by Seller;

(b) No Violations. Seller has not received any written notice (i) of any violations by Seller or the Property or any part thereof, of any law, rule, regulation, order or ordinance, or (ii) from any governmental authority of the existence of any material and adverse condition which requires work to be done to cure such condition with respect to the Property, and Seller has no knowledge that any such notices are forthcoming or that any such conditions or violations exist;

(c) No Pending Proceedings. There is no pending or, to Seller's knowledge, threatened, condemnation action, litigation, arbitration, administrative action or examination, claim, demand, attachment, execution or similar proceeding whatsoever, relating to the Property or Seller which would adversely affect the Property. Seller shall immediately notify Purchaser of any such claim or proceeding which is made, filed, threatened or instituted by or against Seller or the Property after the date of this Agreement;

(d) No Third-Party Rights. No tenant or other third party has any agreement, option, or other right of first refusal, to purchase the Property, or any part thereof nor does any party have any occupancy rights with respect to the Property;

(e) No Mechanics' Liens. All bills and claims for labor performed or services and materials furnished to or for the benefit of the Property or any part thereof have been paid in full or will be paid in full as of the date of each closing, and there are no mechanic's liens or material man's liens on or affecting the Property or any part thereof;

(f) Assessments and Impact Fees. There are no public or private improvements which have been ordered to be made and/or which have not heretofore been assessed, and there are no impact fees or no special, general, or other assessments pending, or to Seller's knowledge, threatened against or affecting the Property;

(g) Hazardous Substances. Seller has not received notice from any public authority or from any other source and has no knowledge that the Property or any part thereof contains any hazardous substance, hazardous waste, lead, lead based paint, asbestos, methane gas, urea formaldehyde insulation, oil, toxic substance, underground storage tanks, polychlorinated biphenyls (PCBs), or radon, and no part of the Property is affected by the presence of oil, toxic substances or other pollutants in violation of any local, state or federal law or regulations. Seller has no knowledge that any violation of the Clean Air Act, Clean Water Act, Response Conservation and Recovery Act, Toxic Substance Control Act, Safe Drinking Water Control Act, Comprehensive Environmental Resource Compensation and Liability Act, or Occupational Safety and Health Act has occurred or is occurring. Seller has not, during his ownership of the Property, stored thereon any of the aforementioned substances, materials or wastes in violation of any state, local or federal law;

(h) Other Agreements. Seller is not in violation of any instrument, agreement, law, order, rule or regulation relating to the Property, which would preclude Seller from consummating the transactions contemplated hereby; and no event or failure of performance by Seller has occurred which, with the passage of time or the giving of notice, or both, would result in any such violation. The execution and delivery by Seller of this Agreement and the performance by Seller of his obligations hereunder will not result in any such violation;

(i) No Encroachments. There are no encroachments onto the Property of any improvements on any adjoining real estate, and there are no encroachments onto any adjoining real estate of any improvements on the Property; and

(j) No Commitments. Seller has not made and has no knowledge of any commitments to any public authority, school board, church or other religious body, or to any other organization, group or individual relating to the Property which would impose any obligations upon Purchaser to make any contributions of money or land or to install or maintain any improvements for which would interfere with Purchaser's ability to use, develop and improve the Property as herein contemplated.

ARTICLE VII

CLOSING AND TRANSFER OF TITLE

7.1 **Closing.** The parties hereto agree to close this purchase and sale on or before December 19, 2025 (the "Closing") at the offices of Purchaser's legal counsel or

Purchaser's selected title agency. Seller shall be responsible for the cost of Deed preparation, transfer conveyance tax, and such other customary Seller Closing expenses.

7.2 **Seller's Documents; other Deliveries.** At Closing, Seller shall execute and deliver to Purchaser the following documents, and shall also make the other deliveries provided for hereinafter, all as follows:

7.2.1 A General Warranty Deed, proper for recording, conveying marketable title to the Property to Purchaser, free, clear and unencumbered both of record and in fact, subject only to the Permitted Exceptions together with all proof of authority for the Seller to complete such sale, as the Title Company may request;

7.2.2 Possession, subject to the Rental Agreement as described in Section 2.3 above, shall be delivered by Seller to Purchaser at Closing.

7.2.3 Such other documents or instruments as may be reasonably required by Purchaser, required by other provisions of this Agreement, required by the title company, or reasonably necessary to effectuate the Closing.

ARTICLE VIII

FAILURE TO CLOSE

In the event that Seller is ready, willing and able to convey and transfer the Property in accordance with this Agreement, and Purchaser is obligated under the terms of this Agreement to consummate the transaction evidenced by this Agreement but fails to consummate the transaction and take title, then the parties hereto recognize and agree that the damages that Seller will sustain as a result thereof will be difficult if not impossible to ascertain. Therefore, the parties agree that in the event of Purchaser's default, Seller shall receive the Earnest Money Deposit paid by Purchaser in accordance with Article II of this Agreement as liquidated damages for such failure to Close. Seller's right to receive the Earnest Money Deposit constitutes the waiver by Seller of all other rights and remedies against Purchaser, and Purchaser shall be relieved of all other liability to Seller of any nature whatsoever.

If the Closing is not concluded at no fault of the Purchaser, Purchaser, at its option (a) may elect to enforce the terms hereof by action for specific performance, and/or exercise any other right or remedy available to it at law or in equity, or (b) may terminate this Agreement by notice to Seller. In either of the foregoing events, Purchaser shall be entitled to an immediate refund of the Earnest Money Deposit.

ARTICLE IX

PRORATION OF REAL ESTATE TAXES AND UTILITIES

9.1 **Utility Expenses.** Final readings on all gas, water and electric meters for which the Seller is required to pay shall be made as of the date of Closing, if possible. Seller shall be responsible for all charges for consumption of utilities prior to the date of Closing and, except as may otherwise be provided in the Rental Agreement contemplated by Paragraph 7.2.2, Purchaser shall be responsible for utility charges on and after the date of Closing.

9.2 **Real Estate Taxes.** Real estate taxes for the year in which the Closing occurs shall be prorated as of the date of Closing, based upon the current tax rates and valuation applied to the Property.

ARTICLE X

BROKER

Seller has been represented in this purchase/sale by Bergman Group, Inc., d/b/a NAI Bergman ("Bergman"). Seller shall be responsible to pay any commissions, fees or costs due Bergman from the proceeds of the sale, and Seller agrees to indemnify, defend and hold harmless the Purchaser from any liability, cause, claim or demand (including reasonable attorney's fees) by Bergman or any other broker, finder or sales person arising out of the transaction contemplated by this Agreement. Purchaser has not been represented in this purchase/sale by any real estate broker, finder or salesperson. Purchaser agrees to defend and hold harmless Seller from any liability, cause, claim or demand (including reasonable attorney's fees) by any such person or entity making a claim for a commission or fee on behalf of Purchaser.

ARTICLE XI

INDEMNIFICATION

Seller's Representations and Warranties, and any indemnification as provided herein, shall survive the termination of this Agreement by either party and remain in full force and effect unless otherwise agreed among the parties, or unless specifically excepted herein.

ARTICLE XII

BINDING EFFECT

This Agreement and all the terms and conditions hereof shall be binding upon and shall inure to the benefit of the parties and their respective heirs, successors and assigns. Purchaser shall be permitted to assign its rights under this Agreement, and upon any such assignment, Purchaser shall be released from any and all obligations under or related to this Agreement.

ARTICLE XIII

NOTICES

All notices hereunder or required by law shall be in writing, and shall be deemed properly delivered when deposited in the United States mail, postage prepaid, certified or registered service, by Federal Express or similar type of overnight delivery service, receipted hand delivery or other means of prepaid recorded communication, addressed to the parties hereto at their respective addresses set forth below or as they may hereafter specify by written notice delivered in accordance herewith:

PURCHASER:	City of Montgomery, Ohio 10101 Montgomery Road Cincinnati, Ohio 45242 Attn: Brian K. Riblet, City Manager
With a Copy to:	Terrence M. Donnellon, Esq. Director of Law Donnellon, Donnellon & Miller, LPA 9079 Montgomery Road Cincinnati, Ohio 45242
SELLER:	H. Lee Krombholz, Trustee of the H. Lee Krombholz Revocable Living Trust U/A Dated June 1, 2000 9399 Shelly Lane Montgomery, Ohio 45242

ARTICLE XIV

MISCELLANEOUS

14.1 **Captions.** The captions in this Agreement are inserted only for the purpose of convenient reference and in no way define, limit or prescribe the scope or intent of this Agreement or any part hereof.

14.2 **Construction.** No provisions of this Agreement shall be construed by any court or other judicial authority against any party hereto by reason of such party's being deemed to have drafted or structured such provisions.

14.3 **Entire Agreement.** This Agreement constitutes the entire contract between the parties hereto and supersedes all prior agreements or understandings. Any subsequent conditions, representations, warranties, or agreements shall not be valid and binding upon the parties unless in writing and signed by both parties.

14.4 **Invalid Provisions**. In the event that any one or more of the provisions contained in this Agreement are held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

14.5 **Authority to Execute.** Each party represents to the other party that all enabling legislation or corporate resolutions have been enacted to enable the undersigned authorized agents to execute this Agreement for and on behalf of their respective principals and to bind their principals to performance of this Agreement.

14.6 **Original Document.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of such counterparts taken together shall constitute one and the same Agreement.

14.7 **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Following the expiration of the Contingency Period, Purchaser may assign all or any portion of its rights under this Agreement to the City's Community Improvement Corporation, but no other assignment or sale is permitted without Purchaser's express written permission before closing on the purchase.

14.8 **Governing Law.** This Agreement shall be construed, and the rights and obligations of Seller and Purchaser hereunder shall be determined, in accordance with the laws of the State of Ohio.

ARTICLE XV

ESCROW AND DISBURSEMENT OF DEPOSIT

The undersigned Escrow Agent acknowledges receipt of the Earnest Money Deposit and agrees to hold it in escrow and disburse it as follows:

15.1 If the Closing occurs, Escrow Agent shall disburse the Earnest Money Deposit to be applied to the Purchase Price at Closing;

15.2 Upon notice from Purchaser that Purchaser is terminating the Agreement pursuant to an express right to do so as provided in the Agreement, Escrow Agent shall promptly return the Earnest Money Deposit to Purchaser;

15.3 If there is a failure to close under the Agreement for any reason other than a termination of the Agreement by Purchaser pursuant to an express right to do so, then either Seller or Purchaser may give notice to the other party and to Escrow Agent that the failure of Closing is as a result of the fault of the other party. The party allegedly at fault shall have Five (5) days after such notice to notify Escrow Agent that it is not at fault. If the party allegedly at fault does so deny any fault by notice to Escrow Agent within the Five (5) day period, then then Escrow Agent shall continue to hold the Earnest Money Deposit until it receives a joint instruction from both Seller and Purchaser or instruction (by order) from a court of competent jurisdiction. If the party allegedly at fault does not deny its fault within the Five (5) day period, then Escrow Agent shall disburse the Earnest Money Deposit to the other party.

15.4 Escrow Agent agrees to follow any joint written instruction concerning the Earnest Money Deposit from Seller and Purchaser or any instruction concerning the Earnest Money Deposit from a court of competent jurisdiction.

15.5 The Escrow Agent shall have no liability relative to this Agreement, except for its gross negligence or willful misconduct. Purchaser and Seller hereby agree to fully defend and save harmless Escrow Agent from any and all losses and expenses, including, but not limited to, court costs and attorney fees which it may sustain, suffer, or be put to under this escrow arrangement.

[SIGNATURE PAGE TO FOLLOW]

EXECUTED as of the day and year first above written.

PURCHASER:

CITY OF MONTGOMERY, OHIO
an Ohio municipal corporation

By: ______________________________
Brian K. Riblet, City Manager

Witness and Acknowledged
In the Presence of:

____
Print Name ______________________

____
Print Name ______________________

SELLER:

H. Lee Krombholz, Trustee of the
H. Lee Krombholz Revocable Living
Trust U/A dated June 1, 2000

By: ______________________________
H. Lee Krombholz, Trustee

____
Print Name ______________________

____
Print Name ______________________

ESCROW AGENT:

CENTRAL LAND TITLE AGENCY CO.

By: ______________________________

Name: ____________________________

Its: ______________________________

____
Print Name ______________________

____
Print Name ______________________

APPROVED AS TO FORM:

____
Terrence M. Donnellon,
Director of Law

DIRECTOR OF FINANCE CERTIFICATION

This signature certifies the amount required to meet the obligation in the fiscal year in which this Agreement is made and finalized for Closing has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund fee from any previous encumbrances.

____

Maura Gray
Director of Finance