RESOLUTION NO. R-306-97

11a.

RESOLUTION

A RESOLUTION OF THE COUNCIL OF THE CITY OF KNOXVILLE AUTHORIZING THE PURCHASE OF CERTAIN REAL PROPERTY FROM MONTCARL, LLC, FOR AN AMOUNT NOT TO EXCEED $522,599.00 AND TO AUTHORIZE THE MAYOR TO SIGN ALL DOCUMENTS FOR PURCHASE OF SAID PROPERTY.

RESOLUTION NO: R-306-97

REQUESTED BY: Mayor

PREPARED BY: Law

APPROVED AS TO FORM AND CORRECTNESS: _____ Director of Law

APPROVED: 8-11-97

APPROVED AS AN EMERGENCY MEASURE: _____

MINUTE BOOK 61 PAGE _____

WHEREAS, the City of Knoxville desires to purchase certain real property as described in the Real Estate Contract and accompanying exhibits attached hereto; and

WHEREAS, Montcarl, LLC is willing to sell the property to the City of Knoxville for an amount not to exceed $522,599.00; and

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KNOXVILLE:

SECTION 1: The City of Knoxville be, and hereby is, authorized to purchase certain real property as set out in the Real Estate Contract attached hereto from Montcarl, LLC for an amount not to exceed FIVE HUNDRED TWENTY-TWO THOUSAND FIVE HUNDRED NINETY-NINE AND NO/100 DOLLARS ($522,599.00), and the Mayor of the City of Knoxville is hereby authorized to execute any and all documents for purchase of said property.

SECTION 2: This Resolution shall take effect from and after its passage, the welfare of the City requiring it.

Presiding Officer of the Council

Recorder

This Instrument Prepared By:
_____
_____
_____
_____

REAL ESTATE SALES CONTRACT

CITY OF KNOXVILLE, a municipality organized and existing under the laws of the State of Tennessee, whose mailing address is P. O. Box 1631, Knoxville, Tennessee 37901, **(PURCHASER)**, offers to purchase certain real property ("the property" or "the premises") from **MONTCARL, LLC,** a Tennessee limited liability company **(SELLER)**, on the following terms and conditions:

1. Description: The description of the property is set out on the map shown as Exhibit "A" attached. On the deed and all other instruments Purchaser may, at its option, substitute a more complete, accurate or current description of the property for the description on Exhibit A. It is expressly understood that the interest to be conveyed is a fee simple interest in the entire property, and without lien, encumbrance or reservation.

2. Consideration: The agreed purchase price for the premises is FIVE HUNDRED TWENTY-TWO THOUSAND AND FIVE HUNDRED NINETY-NINE AND NO/100 DOLLARS ($522,599.00), to be paid at closing.

3. Time of Closing: The Closing shall occur on or before October 31, 1997. Time is of the essence.

4. Place of Closing: Closing shall take place at the Offices, of Tennessee Valley Title Company, 2210 Plaza Tower, Knoxville, Tennessee, or such other place as the parties may mutually agree in writing.

5. Environmental: To Seller's best knowledge, the property has not been used for the storage or dispensing of motor fuels, waste oil, or heating oil.

Purchaser may, at Purchaser's option, notify Seller of Purchaser's intention to enter upon the property to inspect, survey, and conduct such topographical surveys and testing for pollution and contamination in the surface and subsurface of the property as Purchaser shall desire. Seller hereby grants Purchaser permission to enter upon the property upon prior specific approval for these purposes subject to the following conditions: (1) Purchaser shall hold Seller harmless from any and all damages, claims, liabilities, penalties, costs and expenses (including

attorney's fees) resulting therefrom. (2) It being understood that the inspecting, surveying and/or testing as described herein above, which Purchaser may conduct, shall be completed by Purchaser within sixty (60) calendar days after the contract date.

In the event that the results of such testing disclose levels of petroleum hydrocarbons or other contamination in levels unacceptable to Purchaser, either party may before closing and upon prior written notice to the other party, cancel this Contract whereupon neither party shall have any further obligations or liabilities to the other hereunder.

In the event that the results of such testing disclose no petroleum hydrocarbons or other contamination, or should neither party elect to terminate this Contract in accordance with the above paragraph, Purchaser shall proceed to closing with no reduction in the purchase price.

The Seller warrants to the Purchaser that Seller is unaware of any hazardous wastes present on said property, but that Seller is not attempting to transfer any liability for any hazardous substance, as defined by 42 U.S.C.A., Section 9601, which may be found on the property. This clause shall survive closing.

6. Each party represents that it has done nothing which would obligate either party to pay a broker or finder's fee on this transaction, and each party shall hold the other party harmless from any claim or liability for any such fee. This clause shall survive closing.

7. In the event of loss or damage to the premises by fire or other casualty prior to delivery of the deed hereunder, Purchaser shall have the right to terminate this contract, without further liability hereunder, upon written notice to that effect to Seller, provided, however, in the event of such loss or damage, the parties hereto may, by mutual agreement, agree to a new purchase price reflecting such loss or damage.

8. At closing Seller shall deliver to Purchaser a standard warranty deed upon payment of Purchase Price, said deed to be free of any liens or encumbrances except for real estate taxes for the current year, which are not yet due and payable.

9. Seller, at its own expense, will furnish the deed.

10. Purchaser is responsible for obtaining, at Purchaser's expense, any survey, abstracts, title examination and title insurance. (Purchaser shall furnish to Seller's attorney a copy of any survey, title report or title insurance commitment that Purchaser procures.) Purchaser shall pay all recording fees, escrow fees charged by any title company, costs of closing fees and fees for

tax certificates. Real property taxes, installments of special assessments for the current year, and water and sewer charges, if any, shall be prorated to the date of closing.

11. Under the following circumstances, Purchaser may, as Purchaser's sole and exclusive remedy, cancel this Contract:

(a) if Purchaser objects in writing to any encumbrance upon or defect in the title to the property within sixty (60) days after the contract date and Seller fails or refuses to remove or cure such matter at closing;

(b) if Purchaser, prior to the closing hereunder, obtains, at Purchaser's expense, soil or groundwater analysis, percolation tests, engineering borings or other tests showing that the soil or groundwater at the property is contaminated by hydrocarbons or other regulated or hazardous substances;

(c) if Purchaser does not approve of the title of the premises;

(d) if the Knoxville City Council does not approve this Contract;

(e) if the conditions of paragraph 16 of this Contract are not met.

12. If Purchaser fails to pay the Purchase Price when and as required, or refuses at time of closing to accept a deed drawn in accordance with this Contract, Seller may cancel this Contract, and settle all duties and obligations relating hereto without any further liabilities or rights hereunder for damages or other remedies.

13. If on the date of closing Seller shall be unable to convey title to said premises as hereinbefore provided, Purchaser may cancel this Contract and neither party shall have any further obligations for liabilities to the other hereunder, or in the alternative Purchaser may proceed to closing with no reduction in Purchase Price.

14. Any notice required to be sent hereunder shall be sent by recognized overnight carrier or by certified U. S. Mail, return receipt requested, addressed to the respective parties at:

TO SELLER: **DR. JOHN L. MONTGOMERY, JR.**
12309 Northshore
Knoxville, TN 37922

TO PURCHASER: **CITY OF KNOXVILLE LAW DEPARTMENT**
c/o Director of Law
P. O. Box 1631
400 W. Main Avenue
Knoxville, TN 37901

Notices sent in this manner shall be deemed given on the date postmarked.

15. Purchaser has submitted executed duplicate originals of this offer. Seller has the right to reject this offer for any reason whatsoever and Purchaser waives and releases Seller of all claims and holds Seller free and harmless from any such rejection of this offer to purchase or acceptance of other offers for sale of the property herein.

16. Purchaser has proposed annexations in the Kingston Woods Subdivision of Knox County and fully anticipates those annexations to occur. Such proposed annexations will be more fully described in City ordinances to be considered on first reading on August 11, 1997; and Purchaser shall proceed with all due diligence to complete such annexations. In the event such annexations do not take place and the properties to be annexed do not come within the city limits, Purchaser may cancel this Contract and the parties will have no further liability thereunder.

PURCHASER:

CITY OF KNOXVILLE

_____ **BY:** _____
DATE **VICTOR ASHE, MAYOR**

SELLERS:

MONTCARL, LLC

_____ **BY:** _____
DATE **JOHN L. MONTGOMERY, JR., Member**

_____ **BY:** _____
DATE **MICHAEL CARLTON, Member**

APPROVED AS TO FORM:

_____
THOMAS A. VARLAN,
Law Director

FUNDS CERTIFIED:

_____
RANDOLPH B. VINEYARD,
Finance Director

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