

ORDINANCE NO. 13 , 2025

**AN ORDINANCE AUTHORIZING A FOURTH AMENDMENT TO THE
DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF MONTGOMERY,
OHIO, THE MONTGOMERY COMMUNITY IMPROVEMENT CORPORATION, AND
GATEWAY PARTNERS MONTGOMERY, LLC AND DECLARING AN EMERGENCY**

WHEREAS, on or about February 19, 2020, the City Manager executed a Development Agreement by and between the City of Montgomery, Ohio, The Montgomery Community Improvement Corporation, and Gateway Partners Montgomery, LLC (“Developer”, together the “Parties”) for the development of the Montgomery Quarter Project, which Development Agreement had been approved and authorized by City Council by Ordinance No. 13, 2019; and

WHEREAS, the Development Agreement subsequently was amended August 12, 2020, November 19, 2020, and September 14, 2023 (collectively “Agreements”) to meet the stated goals of the City and The Montgomery Community Improvement Corporation to facilitate the comprehensive redevelopment of the Quarter Project which the City and CIC believe are essential to the long-term economic health and competitiveness of the City, and are consistent with the strategic plan for Development of the City; and

WHEREAS, to continue the development of the Montgomery Quarter Project, the Parties desire to amend the Agreements to outline the terms and conditions for the development of Stage 2 of the Montgomery Quarter Project to reframe the Purchase Price for the Residential Sequence Properties and the Commercial Sequence Property to facilitate immediate development.

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

SECTION 1. The City Manager is authorized to accept and to execute a Fourth Amendment to Development Agreement, in the substance and form of the draft Fourth Amendment to Development Agreement attached hereto, to conform the Development Agreement to the anticipated development of Stage 2 Residential Sequence Properties of the Montgomery Quarter Project.

SECTION 2. To be able to commence the Private Improvements on the Residential Sequence Properties to support the City's long-term goals and to stabilize pricing and a fluctuating market, this Ordinance is hereby declared to be an emergency measure necessary for the public health, safety and welfare, and this Ordinance shall effect immediately upon passage.

PASSED: September 3, 2025

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

Ronald G. Messer
Ronald G. Messer, Mayor

APPROVED AS TO FORM:

Terrence M. Donnellon
Terrence M. Donnellon, Law Director

FOURTH AMENDMENT TO DEVELOPMENT AGREEMENT

This Fourth Amendment to Development Agreement ("Fourth Amendment") is entered into among **City of Montgomery, Ohio** ("City"), an Ohio municipal corporation, **The Montgomery Community Improvement Corporation** ("CIC"), an Ohio not-for-profit corporation established by the City for purposes of economic development and community revitalization, and **Gateway Partners Montgomery, LLC**, an Ohio limited liability company ("Developer"). The City, CIC and Developer are hereinafter referred to collectively from time to time as the "Parties" and individually as a "Party". This Fourth Amendment is effective upon the last date signed and accepted by all Parties.

RECITALS

WHEREAS, the Parties entered into a certain Development Agreement executed by the City and CIC on February 19, 2020 and by Developer on February 18, 2020, as amended by an Amendment to Development Agreement dated August 12, 2020, a Second Amendment dated November 19, 2020, and a Third Amendment dated September 14, 2023 (collectively, the "Development Agreement") to develop the Montgomery Quarter Project; and

WHEREAS, to facilitate the Parties' common strategy for the comprehensive redevelopment of the Montgomery Quarter, which development is essential to the long-term economic health and competitiveness of the City, given current market conditions, the Parties believe this Amendment is important to facilitate Residential Construction within Stage 2 of the Montgomery Quarter Project, the development plans for which have been identified as *Private Improvements* and which are further detailed within the Third Amendment to Development Agreement and the Exhibits attached thereto (the "Third Amendment").

NOW, THEREFORE, in consideration of the premises and covenants contained herein, and based upon the intentions of the Parties as outlined within the Agreements and the above recitals, the Parties do hereby agree as follows:

1. **Definitions.** Unless otherwise noted herein, the words and terms defined in the Development Agreement and as amended in the Third Amendment shall have the same meaning herein.

2. **City and CIC's Responsibilities.** The City and CIC responsibilities as set forth in Section 4.12 of the Development Agreement, as previously amended by Paragraph 6 of the Third Amendment to Development Agreement relative to Stage 2 of the Project, are hereby modified as follows:

A. Without intending to affect the City's obligations under the Development Agreement as modified by the Third Amendment with respect to Project Site Public Improvements, the Parties shall continue to work cooperatively to identify the

Scope of Project Site Public Improvements which are necessary for Stage 2 of the Project. While Paragraph 4.4(B) anticipates the issuance of up to Sixteen Million Dollars (\$16,000,000.00) in TIF Bonds to support Public Improvement costs, Fourteen Million Five Hundred Thousand Dollars (\$14,500,000.00) of which shall be earmarked for Stage 2 Parking Facilities for the cost, design, engineering and construction of Stage 2 Parking Facilities and related Public Improvements, the Parties agree to continue to work cooperatively to identify the size and type of Stage 2 Public Parking Facilities and related Public Improvements necessary to complete the successful development of the Commercial Sequence of Stage 2 based on the then current market conditions and opportunities. It is still the Parties' intent to support the construction of the Public Parking Facilities and the related Public Improvements jointly determined to be necessary for Stage 2 from the issuance of these TIF Bonds and to allow the City to draw down up to One Million Five Hundred Thousand Dollars (\$1,500,000.00) from such Bond issue to reimburse its cost to design, engineer and construct certain Public Improvements. The Parties agree it is premature to define such specific amounts until the Private Improvements for Stage 2 Commercial Sequence may be identified and market conditions support the successful issuance of such TIF Bonds.

B. Residential Sequence Closing / Residential Sequence Conditions.

With respect to Paragraph 6 of the Third Amendment and, as appropriate, portions of Section 4.12 of the Development Agreement, the Parties acknowledge the following:

(1) Zoning approval has been granted by the City for the construction of 239 residential apartment units across Lot 4, Lot 5, and Lot 7 of the Montgomery Quarter Subdivision, collectively referred to as Residential Sequence in the Development Agreements (as amended).

(2) An Amended Compensation Agreement between the City and Sycamore Board of Education has been signed approving the development of 239 residential apartment units in the Residential Sequence.

(3) The City and Brandicorp, LLC have executed a Construction Manager at Risk Agreement for the Residential Sequence Public Site Improvements. The City agrees to cooperate with Developer to finalize streetscape improvements within Stage 2, Sequence 1 and to schedule completion of such Public Improvements so as not to interfere with the use and occupancy of the Residential Sequence Properties.

C. Use of Commercial Sequence for Staging. The City and CIC shall permit the Developer and the owner of the Residential Sequence to use the Commercial Sequence Parcel for staging and deposit of soils and other related materials removed from the Residential Sequence Parcels for the construction of the Residential Sequence Private Improvements. The Developer and the owner of the Residential Sequence, at its expense, shall clear and remove from the commercial sequence parcel all soils and other related materials stored on the Commercial Sequence Parcel within Ninety (90) days of completion of the Residential Sequence, and restore the site to a condition which is

equivalent to or better than the site condition which existed prior to commencement of the Residential Sequence. Completion is defined as construction of the Residential Sequence to the point that a Certificate of Occupancy has been issued for such residential improvements. The Parties shall enter into a License Agreement with commercially reasonable terms detailing such arrangement (but with no rent or compensation to be paid for such uses).

3. **Developer's Responsibilities.** The Parties agree that the Developer's Responsibilities contained in Paragraph 5.1 of the Development Agreement have been satisfied relative to Stage 1. If Developer closes on the purchase of the Stage 2 Commercial Sequence Property, Developer shall continue to be responsible for costs for the Stage 2 Public Parking Facilities in excess of the TIF Bond proceeds available for Stage 2 Public Parking Facilities once the Parties determine and agree to the final appropriate amount and scope of the Stage 2 Public Parking Facilities. As noted herein, the amount of the TIF Bond proceeds available for the Stage 2 Public Parking Facilities will be determined and agreed upon once the Scope of the needed Public Parking Facilities for Stage 2, and other public improvements have been finally determined and agreed to by the Parties. The allocation of such proceeds from the Stage 2 TIF Bonds as noted in Paragraph 2(A) above shall continue to be a priority for the shared development of the Commercial Sequence Property.

A. **Stage 2 Purchase.** Paragraph 10 of the Third Amendment, entitled *Stage 2 Purchase*, and as appropriate Paragraph 5.3(B) of the Development Agreement, are hereby amended to facilitate immediate construction of the Residential Sequence Private Improvements as follows:

The Closing Purchase Price for Lot 5 paid by the Developer to the CIC shall be One Dollar (\$1.00) with the remainder of the Purchase Price, Seven Hundred Sixty-Nine Thousand Nine Hundred Eighty Four Dollars (\$769,984.00) added to and deferred to the Purchase Price for the Commercial Sequence Property.

The Closing Purchase Price for Lot 7 paid by the Developer to the CIC shall be One Dollar (\$1.00) with the remainder of the Purchase Price, One Million Seventy-Four Thousand Eight Hundred Thirty Four Dollars (\$1,074,834.00) added to and deferred to the Purchase Price for the Commercial Sequence Property.

The Purchase Price for the Commercial Sequence Property shall be Two Million Seven Hundred Thousand Dollars (\$2,700,000.00) payable at Closing unless otherwise adjusted as provided herein. At such time as the City is able to issue "additional bonds" (within the meaning of Section 3.C. of the Service Agreement between the City and Developer dated December 1, 2020 ("Service Agreement" and such additional bonds being hereinafter referred to as "Parity Bonds"), to reclassify certain Bond Anticipation Notes issued for

Stage 1 Public Improvements currently outstanding in the amount of Five Million Five Hundred Thousand Dollars (\$5,500,000.00), and to generate up to an additional One Million Five Hundred Thousand Dollars (\$1,500,000.00) within such Parity Bonds to reimburse the City for Public Improvement expenses incurred by the City for the development of Public Improvements for the benefit of Stage 1, the Purchase Price for the Commercial Sequence Property shall be reframed to be Eight Hundred Fifty-Five Thousand One Hundred Eighty Dollars (\$855,180.00). It is anticipated that such Parity Bonds shall be issued as soon as reasonably practicable in fiscal year 2026 when forecasted pledged revenues from the Stage 1 Private Improvements, for two fiscal years following the issuance of such Parity Bonds, is equal to at least One Hundred Twenty Percent (120%) of the maximum Principal and Interest due on the December 2020 Special Obligation Revenue Bonds and such Parity Bonds. The City agrees to use commercially reasonable efforts to cause the above-described Bond related actions to occur as soon as reasonably practicable.

To facilitate the timely issuance and security for the Parity Bonds contemplated herein, the Developer agrees to execute an Addendum to the Service Agreement agreeing to assume Minimum Service Payment Liability for the Parity Bonds referred to herein. This Addendum shall not otherwise modify Developer's Minimum Service Payment liability relative to the 2020 Special Obligation Revenue Bonds which Minimum Service Payment liability is guaranteed by the Owners and subsequent Owners of the pledged properties according to Section 3 of the Service Agreement.

Paragraph 10, Subparagraph (E) of the Third Amendment is hereby replaced and modified as follows:

(E) The Purchase Price for the Commercial Sequence Property shall be payable at Closing, which shall occur One Hundred Eighty (180) days after satisfaction of the Commercial Sequence Contingencies. Notwithstanding the foregoing, the Purchase Price for the Commercial Sequence Property shall be reduced by the amount, if any, in excess of One Million Dollars (\$1,000,000.00) made available to the City pursuant to Section 4.4(B) of the Development Agreement from the Stage 2 TIF Bond proceeds. To the extent that the Commercial Sequence upon which Private Improvements are to be located has not been purchased and sold pursuant to terms of this Agreement on the latter of February 18, 2027 or Two (2) years after the Residential Sequence Private Improvements have been substantially completed (defined as the date all the Residential Sequence Private Improvements have been completed allowing for a Certificate of Occupancy to be issued for

such Private Improvements), for any reason other than due to a default by the City or CIC under the Development Agreement, the right to purchase then unpurchased Stage 2 Property will terminate. In such event, Developer shall pay to CIC an amount equal to One Hundred Fifty Eight Thousand Three Hundred Sixty-Four and 11/100 Dollars (\$158,364.11). If the Developer's right to acquire the Commercial Sequence is terminated as described herein, Developer shall have no obligation with respect to the Commercial Sequence including without limitation any obligation to pay for Stage 2 Parking Facilities or any responsibilities with respect to the Stage 2 TIF Bonds. Developer shall have the right to extend such period for the Commercial Sequence Property including the Stage 2 Contingency Deadline for Three (3) additional One (1) year periods each, by notifying City and CIC of such extension and paying to the City an extension fee in an amount equal to One Hundred Thousand Dollars (\$100,000.00) for each such extension at least Sixty (60) days prior to the then expiration of the Stage 2 Contingency Deadline and Closing deadline. Any such extension fees paid by the Developer shall be non-refundable and non-applicable to the Purchase Price for the Commercial Sequence Property.

4. **Reaffirmation.** Except as specifically modified by the terms of this Fourth Amendment, all other terms, conditions and obligations of the Agreements shall remain in full force and effect and unmodified and are hereby reaffirmed.

5. **Authority.** This Fourth Amendment to Development Agreement shall be appropriately authorized by the Council of the City of Montgomery and CIC consistent with the approval process for the prior Development Agreement and Amendments to such Development Agreement. A copy of such approving legislation, including a Resolution by the Board of Trustees of the CIC, shall be attached hereto.

Developer has passed a Member Resolution, a copy of which shall be attached hereto, authorizing the execution of this Fourth Amendment to Development Agreement and committing the Developer as outlined herein to the continuing successful development of the Quarter Project.

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**(Signature Page for CIC –
The Montgomery Community Improvement Corporation)**

CIC:

THE MONTGOMERY COMMUNITY
IMPROVEMENT CORPORATION
an Ohio not-for-profit corporation

By: _____

Brian K. Riblet

Its: Executive Director

Date: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

On this _____ day of _____, 2025, personally appeared before me, a Notary Public in and for the State of Ohio, **The Montgomery Community Improvement Corporation**, by Brian K. Riblet, its Executive Director, and duly authorized in the premises, who acknowledged the signing and sealing of the said Fourth Amendment to Development Agreement for himself and on behalf of said company, to be his voluntary act and deed, and the voluntary act and deed of said company.

Notary Public

My commission expires: _____

(Signature Page for Developer – Gateway Partners Montgomery, LLC)

DEVELOPER:

GATEWAY PARTNERS
MONTGOMERY, LLC,
an Ohio limited liability company

By: _____
Michael T. Brandy
Its: Manager

Date: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

On this _____ day of _____, 2025, personally appeared before me, a Notary Public in and for the State of Ohio, **Gateway Partners Montgomery, LLC**, by Michael T. Brandy, its Manager, and duly authorized in the premises, who acknowledged the signing and sealing of the said Development Agreement for himself/herself and on behalf of said company, to be his/her voluntary act and deed, and the voluntary act and deed of said company.

Notary Public

My commission expires: _____

DEVELOPER:

GATEWAY PARTNERS
MONTGOMERY, LLC
an Ohio limited liability company

By: _____
Daniel A. Neyer
Its: Manager

Date: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

On this _____ day of _____, 2025, personally appeared before me, a Notary Public in and for the State of Ohio, **Gateway Partners Montgomery, LLC**, by Daniel A. Neyer, its Manager, and duly authorized in the premises, who acknowledged the signing and sealing of the said Fourth Amendment to Development Agreement for himself and on behalf of said company, to be his voluntary act and deed, and the voluntary act and deed of said company.

Notary Public
My commission expires: _____