

RESOLUTION NO. 35 , 2025

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A
SETTLEMENT AGREEMENT WITH GATEWAY PARTNERS MONTGOMERY, LLC
REGARDING A DISPUTE FOR SITE PREPARATION COSTS**

WHEREAS, the City and The Montgomery Community Improvement Corporation ("MCIC") entered into a Development Agreement on February 19, 2020 with Gateway Partners Montgomery, LLC to develop the Montgomery Quarter site. The property within the site is owned by the MCIC; and

WHEREAS, a dispute has arisen between the Development Team and the MCIC as to whether or not the sites are *Pad-Ready* to continue development; and

WHEREAS, to avoid risk and the additional potential cost of litigation, the MCIC has negotiated a Settlement with the Development Team to reimburse them a portion of costs or damages they believe they have incurred and will incur to properly prepare the *Pad-Ready* site; and

WHEREAS, Council is asked to authorize the City Manager on behalf of the City to join in the execution of the Release and Settlement Agreement to preserve and protect the City and the City officials from any further dispute or liability with the Development Team.

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 execute a Release and Settlement Agreement for and on behalf of the City, in substance and form to the attached Agreement, to release the City from any further claim by Gateway Partners

Montgomery, LLC concerning the *Pad-Ready* costs to fully develop the Montgomery Quarter site, recognizing that the Settlement will be funded by the MCIC through a portion of the proceeds previously received from the sale of land.

SECTION 2. The City Manager is authorized to execute such additional documentation as may be necessary to resolve this potential litigation.

SECTION 3. This Resolution shall be in full force and effect from and after its 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

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement ("Settlement Agreement") is executed by and between the **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 of Montgomery, Ohio for purposes of economic development and community revitalization, and **Gateway Partners Montgomery, LLC** ("Developer"), an Ohio limited liability company. Collectively, the City, CIC and Developer are hereinafter referred to as the "Parties" and individually as a "Party".

RECITALS

WHEREAS, the Parties entered into a Development Agreement effective February 19, 2020, to cooperate in the comprehensive redevelopment of an area within the City along Montgomery Road at the terminus of the Ronald Reagan Cross County Highway and Main Street, which area then was known as the Gateway Redevelopment Area, which now is known as the Montgomery Quarter Development ("Montgomery Quarter"); and

WHEREAS, such Development Agreement, as amended August 20, 2020 and September 13, 2023, set forth the terms and conditions under which the Montgomery Quarter would be developed and more specifically the terms and conditions under which the CIC would sell to Developer certain real estate parcels ("Parcels") within the Montgomery Quarter to facilitate the staged development of the project site; and

WHEREAS, the Parties negotiated certain contingencies which the Developer required to be satisfied prior to Developer being obligated to purchase such Parcels and, specifically under Paragraph 7.2(D) of such Development Agreement, the City was obligated to cause the Parcels in Stage 2 to be *Pad-Ready*; and

WHEREAS, under Paragraph 5.3 of the Development Agreement, the term *Pad-Ready* was defined under Paragraph 5.3(A) to *include a site completed to an acceptable final grade with utilities connected from the public way to the edge of the Parcel* and other conditions as required to be able to commence construction of the Private Improvements for such Parcels; and

WHEREAS, the City back-filled, graded and prepared the Parcels as a part of a separate Public Improvement Project to construct a Round-a-bout adjacent to the Montgomery Quarter; and

WHEREAS, the Developer desires to initiate the timely development of the Residential Sequence Property with the acquisition of the Parcels defined within the Third Amendment to Development Agreement in accordance with the terms and conditions of a Fourth Amendment to Development Agreement. However, as a result of various geotechnical engineering studies, the Parties are now in dispute as to whether or not such

Parcel sites are *Pad-Ready* as defined within the terms and conditions of the Development Agreement, as amended; and

WHEREAS, to facilitate immediate development without the delays and risk of further negotiation or litigation, the Parties do desire under the terms of this Settlement Agreement to outline a framework to resolve such dispute to satisfy the Developer's contingencies and to allow the Residential Sequence Property construction to commence.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. Upon execution of this Release and Settlement Agreement, Developer hereby waives the requirement for further construction by the City and/or CIC to make Lot 5, Lot 6 and Lot 7 of the Montgomery Quarter Project (the "Phase II Residential Sequence Properties") to be *Pad-Ready*. Developer, at its cost, shall complete the work defined in **Exhibit A** attached (the "Site Preparations"), prior to construction of its intended Private Improvements on such real property.

2. The City and CIC agree that upon completion of the Site Preparations for development of the Phase II Residential Sequence Properties of the Montgomery Quarter Project, to resolve this disputed claim, the City and/or CIC shall pay to Developer as a Release Payment a sum of money equal to the cost of the Site Preparations as described in **Exhibit A**, not to be less than Six Hundred Fifty Thousand Dollars (\$650,000) but not more than Nine Hundred Fifty Thousand Dollars (\$950,000).

3. The City and the CIC shall have no responsibility for the material and labor costs for any of the Site Preparations. The Developer and/or Developer's contractor shall provide periodic detailed reports to the City concerning the cost for and the progress of the Site Preparations, and within 180 days after the earlier of (i) the substantial completion of the Site Preparations and the submission by Developer to the City documentation verifying that the Scope of Work Site Preparations, as set forth in Exhibit A have been completed and paid, or (ii) the Developer has spent Nine Hundred Fifty Thousand Dollars (\$950,000.00) or more for the Site Preparations detailed within Exhibit A and submitted documentation to the City evidencing the specific Site Preparation work has been completed and paid, the City shall pay the cost of such Site Preparation work as bracketed by the above agreed amounts as the Release Payment. The City shall not be responsible to supervise nor inspect such Site Preparation work as these site preparations are private improvements. Any changes to the scope of work for Site Preparations are under the sole discretion and control of the Developer since the City's limited liability is bracketed as set forth above.

4. This Release and Settlement Agreement and the Release Payment to be paid hereunder are a compromise of a doubtful and disputed claim among the Parties centered around the City's and/or CIC's responsibility to provide *Pad-Ready* sites for the Phase II Residential Sequence Properties. By the City and CIC agreeing to such compromised payment, the City and the CIC are not admitting liability as the City and CIC

believe that final *Pad-Ready* grade has been provided even though there is a dispute with the Developer as to whether or not that final grade constitutes suitable fill for the intended Residential Sequence development. This compromise Release Payment is intended as a compromise payment to avoid the continuing risk of litigation and to enable the effective economic development of the site without extraordinary delays as a result of continually changing market conditions.

5. This Release and Settlement Agreement is intended to be a complete release and discharge of the City and the CIC to the Developer's contingencies that the Phase II Residential Sequence Properties are not *Pad-Ready*. This Release and Settlement Agreement is not intended to include any dispute which may arise relative to the Pad-Readiness of the Commercial Sequence Property Lot 8 of the Montgomery Quarter Project or any of the City's or CIC's other obligations or responsibilities under the Development Agreement. Developer, its successors and assigns, are releasing the City, the CIC, its elected officials, officers, employees and agents from any obligations to cause the Phase II Residential Sequence Properties to be *Pad-Ready*, by accepting the consideration as outlined herein.

6. Claims, disputes, or other matters in controversy arising out of or related to the Scope or Cost of Work shall be subject to mediation as a condition precedent to any litigation. The Parties shall endeavor to resolve their dispute by mediation which, unless the Parties mutually agree otherwise, shall be administered by the Cincinnati Bar Alternative Dispute Resolution Service ("CBADR") in accordance with its Mediation Procedures in effect on the date of the any dispute. A Request for Mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the CBADR. The Parties shall agree upon a Mediator from the roster of available mediators listed in the CBADR. The Parties shall share the Mediator's fee and any filing fees equally. The mediation shall be held in Cincinnati, Ohio. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction.

7. This Release and Settlement Agreement shall be effective the last date accepted by each of the Parties. Each of the Parties further acknowledges that they have authorized their agent to execute this Agreement for and on behalf of their entity, and to bind their entity to this entire Agreement. Any separate authorization which may be required as a corporation Resolution or legislative Resolution shall be appropriately enacted to authorize this Agreement to be fully accepted.

8. Developer shall have the right to assign its rights hereunder to any owner of the Phase II Residential Sequence Properties.

EXECUTED the day and date set forth below.

City of Montgomery, Ohio
an Ohio municipal corporation

By: _____
Brian K. Riblet

Its: City Manager as authorized by
City Council under Resolution
No. _____.

Date: _____

**The Montgomery Community
Improvement Corporation**
an Ohio not-for-profit corporation

By: _____
Brian K. Riblet

Its: Executive Director as authorized
by Corporation Resolution dated

Date: _____

Gateway Partners Montgomery, LLC
an Ohio limited liability company

By: _____

Name: _____

Its: _____
as authorized under a separate
Corporate Resolution

And By: _____

Name: _____

Its: _____
as authorized under a separate
Corporate Resolution

Exhibit A

Montgomery Quarter

Item	Description	Estimated Costs
1	Retaining & Shoring Walls	\$ 689,986.00
	<i>* South property line requires a "big block" retaining wall to allow the surface parking lot to be constructed. Wall criteria is as follows: 269' L x 12' T = 3,228 SF @ \$97/SF = \$313,116; Wall Excavation = \$50,000; Gravel backfill with sock drain = \$132,150. Shoring Wall along southeast coner of property \$118,800. East Allan block retaining wall 920 SF @ \$52/SF = \$47,840; South Allan block retaining wall at pool 135 LF @ 4' T = 540 SF @ \$52/SF = \$28,080 + other related costs</i>	
2	Earthwork & Rock Excavation	\$ 915,176.00
	<i>* See revised grading plan. Mass rock excavation 5,221 CY @ \$28.80/CY = \$150,365; Export of rock \$5,221 CY @ \$28.80/CY = \$150,365; Mass dirt cut 23,761 CY @ \$5.10/CY = \$121,181; 8,845 CY fill @ \$7.20/CY = \$63,684; Export 14,916 CY @ \$28.80 = \$429,581 + other related costs</i>	