



CITY OF

MONTGOMERY

A CHARMING PAST. A GLOWING FUTURE.

COMMUNITY IMPROVEMENT CORPORATION AGENDA

10101 Montgomery Road • Montgomery, Ohio 45242

(513) 891-2424 • Fax (513) 891-2498

AGENDA

December 2, 2020

6:45 P.M.

The meeting will be offered both in place at City Hall and by teleconference for those who cannot attend in person or feel safer sheltering at home. To participate in this meeting by teleconference please use the following phone number:
1-866-228-9900 with a passcode of 204938.

1. Call to Order
2. Guests and Residents
3. Minutes - November 4, 2020 Meeting of Trustees
4. New Business
 - a. Board Resolution to ratify and reaffirm a Declaration of Covenants and Reservation of Public Easements for the Montgomery Quarter Project and to authorize the Executive Director to execute an Agreement of Lease for a portion of the public plaza
5. Old Business
6. Other Business
7. Adjournment



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TO: Mayor Chris Dobrozsi
Members of City Council

Lee Ann Bissmeyer, President
Montgomery CIC Board of Trustees

FROM: Terrence M. Donnellon

RE: Authorizing and Ratifying a Declaration of
Covenants and Reservations of Public Easements
And a Memorandum of Understanding for a Lease
Within the Montgomery Quarter Project Site

DATE: November 24, 2020

One of the last steps to developing the Montgomery Quarter Project Site in Stage 1 is to establish certain easements and long-term maintenance responsibilities within the Project Site in and across the public improvements and the related private improvements. This Declaration sets forth the mutual responsibilities of both the Developer, the City, and The Montgomery Community Improvement Corporation for the development of the site, reserving to The Montgomery Community Improvement Corporation an easement upon which will be constructed a public plaza abutting the hotel and the commercial developments. The plaza will be an open public space to provide parking in support of the site and to host public events. The City, under its Construction Manager at Risk Agreement with Brandicorp, will complete the plaza improvements consistent with the plans for improvement which have been authorized and approved by the Planning Commission.

Once the plaza is completed, a portion of the plaza will be leased to the abutting hotel for periodic private events. The area is identified in the attached drawing. The Memorandum of Understanding outlines the terms for a Lease for a period of 30 years for that portion of the public space which will be reserved to the Developer and the hotel for periodic events. The initial Lease rate is \$12,000 per year for the first five years of the Term, and it escalates by \$3,000 per year for each Renewal five-year Term. This will enable the MCIC and the City to recover the investment for this space while also developing a capital reserve for future improvements during the 30-year term. As can be expected, it was important to have a long-term Lease so that the space could be marketed to a hotel which will know that they have control over the space to buildout their own adjacent improvements within their hotel structure.

While this is a 30-year Lease with escalators every five years, the use of the space is restricted to temporary structures which cannot remain in place for more than 48 hours. Similar to other Leases in the City, there is limited advertising permitted on the temporary structures with such advertising

supporting the City, the Montgomery Quarter, or tenants within the Project Site. It is anticipated that the hotel abutting the site will use this event center for weddings and similar receptions on weekends. It may also be used by tenants of the office building to host events for their clients.

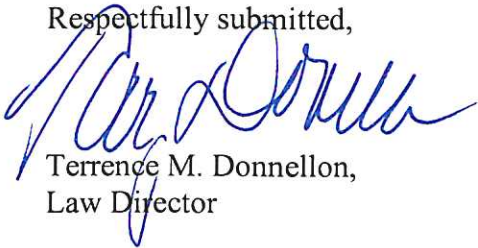
To be able to provide beverage service, the license holder must have a leased premises, so this enables them to move a temporary bar on the site for private events. It is not a permanent outdoor bar, but a temporary facility as a majority of the time the area will be used for parking.

The Declaration also restricts reserved parking to 50% of the parking spaces on the plaza.

The Declarations were a critical component for the Developers to be able to market the site. The Declarations detail the party's rights and responsibilities and assures potential tenants that this will be a vibrant public/private space. The Declarations also provide for public restrooms abutting the park within the garage to be constructed by the Port. The park facilities are not restricted, but similar to commercial space it was agreed that we will not compete, but will compliment the businesses abutting the park. The Developers were concerned that the City may use the park on frequent occasions for food events. To assure the success of the Quarter, we do not want to compete with the restaurants, but we want to compliment the restaurants with public events.

The Declarations will be recorded as an easement against the property, and as a property right it is appropriate to authorize the Declaration by Ordinance. To enable us to proceed to closing and recording the Declarations, Council is asked to pass the legislation as an emergency Ordinance rather than a Resolution so it will take effect immediately to allow timely closing.

Respectfully submitted,



Terrence M. Donnellon,
Law Director

TMD/lld

Enclosures

cc: Brian Riblet, City Manager
Connie Gaylor, Administrative Coordinator
Department Heads
File

RESOLUTION
of the Board of Trustees of
The Montgomery Community Improvement Corporation

A Special Meeting of the Board of Trustees of The Montgomery Community Improvement Corporation (“MCIC”) was called by the President, Lee Ann Bissmeyer, on Wednesday, December 2, 2020, for the purposes of ratifying and reaffirming a Declaration of Covenants and Reservation of Public Easements for the Montgomery Quarter Project and to authorize the Executive Director to execute an Agreement of Lease for a portion of the public plaza reserved to The Montgomery Community Improvement Corporation within the Project Site. Upon review of the related legislation presented to the Montgomery City Council, and in support of the recommendation from The Montgomery Community Improvement Corporation Administration the following Resolutions were adopted:

BE IT RESOLVED: The attached Declaration of Covenants and Reservation of Public Easements for Montgomery Quarter is hereby ratified and reaffirmed by the Board and the Executive Director is authorized to release the executed document for public recording.

BE IT FURTHER RESOLVED: The Executive Director is authorized to enter into an Agreement of Lease for a portion of the public plaza to be constructed within the public easement area granted within the Declarations to support the continuing economic development and vibrancy of the Montgomery Quarter Project Site consistent with the terms of the Memorandum of Understanding attached hereto.

BE IT FURTHER RESOLVED: As appropriate, the City of Montgomery is hereby authorized to complete construction of the public improvements within the easement area in support of the goal of The Montgomery Community Improvement Corporation to encourage economic development and to support the growth and development of the Montgomery Quarter Project Site.

BE IT FURTHER RESOLVED: The Executive Director is authorized to execute such additional documentation as may be necessary to implement the purposes of the Declaration and the Memorandum of Understanding.

Passed this _____ day of _____, 2020.

MONTGOMERY COMMUNITY
IMPROVEMENT CORPORATION

By: _____

Lee Ann Bissmeyer

Its: President

By: _____

Lynda Roesch

Its: Secretary/Treasurer

**DECLARATION OF COVENANTS AND RESERVATION OF
PUBLIC EASEMENTS**

FOR

MONTGOMERY QUARTER

City of Montgomery, Hamilton County, Ohio

_____, 2020

**DECLARATION OF COVENANTS AND RESERVATION OF
PUBLIC EASEMENTS
FOR
MONTGOMERY QUARTER**

THIS DECLARATION OF COVENANTS AND RESERVATION OF PUBLIC EASEMENTS FOR MONTGOMERY QUARTER (the “Declaration”) is made this _____ day of _____, 2020, by and among **CITY OF MONTGOMERY, OHIO**, an Ohio municipal corporation (“City”), **MONTGOMERY COMMUNITY IMPROVEMENT CORPORATION**, an Ohio not for profit corporation (“CIC”), **GATEWAY PARTNERS MONTGOMERY, LLC**, an Ohio limited liability company (“Developer”), and the **PORT OF GREATER CINCINNATI DEVELOPMENT AUTHORITY**, an Ohio Port Authority (“Port”) under the following circumstances:

A. Developer, City and CIC are parties to the “Development Agreement” (as hereinafter defined), pursuant to which, among other things, City has designated Developer as developer for a mixed use project known as Montgomery Quarter on land and air rights parcels as generally shown on the Master Development Plan attached hereto as Exhibit A and CIC, the current owner of such real property, agreed to sell to Developer or its assigns certain parcels of such land, including those parcels described in Exhibit B-1 attached hereto, for development of private improvements and facilities in Montgomery Quarter.

B. City and CIC also agreed to convey certain parcels of Montgomery Quarter as described in Exhibit B-2 attached hereto to Port and Port has agreed pursuant to the terms of the “Cooperative Agreement” (as hereinafter defined) to construct, own and operate thereon certain structured parking facilities.

C. City is to own a parcel of land included in Montgomery Quarter described in Exhibit B-3 attached hereto to be used as a public park.

D. The parties hereto desire to subject and impose upon the “Property” (as hereinafter defined) certain covenants, conditions, restrictions, reservations, easements, equitable servitudes, charges and liens as set forth in this Declaration for the purpose of insuring the proper use and appropriate development, maintenance and improvement of Montgomery Quarter and the Property with joint and symbiotic development use of private and public facilities.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City, CIC, Developer and Port hereby declare that the real property described on Exhibit B-1, Exhibit B-2 and Exhibit B-3 attached hereto and any fee simple, leasehold or other interest therein is and shall be owned, held, transferred, sold, conveyed, mortgaged, hypothecated, encumbered, leased, subleased, rented, used, occupied, developed, improved and maintained subject to the terms, provisions, covenants, conditions, restrictions, reservations and easements set forth in this Declaration.

ARTICLE 1
DEFINITIONS AND PURPOSES

1.1 Definitions. In addition to terms defined elsewhere in this Declaration, the following words, when used in this Declaration, whether capitalized or not, shall have the following meanings (such meanings to be applicable to both the singular and plural forms of the terms defined):

“Approve”, **“Approved”** or **“Approval”** means an express prior approval in a written statement signed by the approving Person.

“Attached hereto” means and has reference to the following: Attached hereto and for all purposes incorporated herein by reference.

“Business Day” means any Day excluding any Saturday, any Sunday, and any national holiday observed by the United States Government.

“CIC” means Montgomery Community Improvement Corporation, an Ohio not-for-profit corporation.

“City” means the City of Montgomery, Ohio, an Ohio municipal corporation.

“Day” means and has reference to any one calendar day, unless specifically noted to the contrary.

“Declaration” means this Declaration of Covenants and Reservation of Public Easements for Montgomery Quarter as the same shall be supplemented or amended from time to time as provided herein; and references to this Declaration mean and include each of the terms and provisions hereof, and each of the covenants, conditions, restrictions, reservations, easements, equitable servitudes, charges and liens set forth herein.

“Developer” means GATEWAY PARTNERS MONTGOMERY, LLC, an Ohio limited liability company, and its successors and assigns.

“Development Agreement” means that certain Development Agreement executed by City, CIC and Developer dated February 18, 2020, as the same has been or is in the future modified.

“Foreclosure” means, without limitation: (i) the judicial foreclosure of a Mortgage; (ii) the exercise of a power of sale contained in any Mortgage; (iii) conveyance of the property encumbered by a Mortgage in lieu of foreclosure thereof; and (iv) any action commenced or taken by a lessor to regain possession or control of property leased under a sale/leaseback.

“Garage Lots” means the Stage 1 Lots identified on Exhibit B-2 attached hereto, being Lot 1-C and Lot 2E.

“Governmental Authority” means the United States of America, the State of Ohio, Hamilton County, Ohio, the City of Montgomery, Ohio, and any agency, authority, court, department, commission, board, bureau or instrumentality of any of them.

“Governmental Requirement” means any constitution, statute, ordinance, code, regulation, resolution, rule, requirement or directive, and any decision, judgment, writ, injunction, order, decree or demand of court, administrative body or other authority construing any of the foregoing, including, without limitation, zoning ordinances, regulations and conditions.

“Herein”, **“hereunder”**, **“hereby”**, **“hereto”**, **“hereof”** and any similar term means and refers to this Declaration as a whole.

“Lot” means any of the Private Lots, Garage Lots or the Park Lot as described and defined in this Declaration.

“Maintenance and Operational Activity” means any activity or function that takes place on an ongoing basis or intermittently for the purpose of maintaining or operating any Improvement during construction, renovation or installation of the Improvement or after such construction, renovation or installation has been completed or substantially completed.

“Master Development Plan” means the Master Development Plan attached hereto Exhibit A.

“Montgomery Quarter” means the real property covered by the Development Agreement and all buildings and other improvements now or hereafter located thereon and all appurtenances thereto.

“Mortgage” means any encumbrance of any portion of the Property as security for any indebtedness or other obligation of an Owner or its successors and assigns, whether by mortgage, deed of trust, sale/leaseback, pledge, financing statement, security agreement, or other security instrument; provided, however, a mortgage or deed of trust for an individual condominium unit or cooperative ownership interest shall not constitute a Mortgage for the purpose of this Declaration.

“Mortgagee” means the holder of any Mortgage and the indebtedness or other obligation secured thereby, whether the initial holder thereof or the heirs, legal representatives, successors, transferees and assigns of such initial holder.

“Mortgagor” means the Owner of the property or property interest conveyed or encumbered by any Mortgage.

“Occupant” means, as the context requires, an Owner, a tenant, or any other lawful user or occupier of any portion of the Property or any improvements located thereon, including, without limitation, agents, employees, customers, invitees and licensees of such Owners or tenants.

“Owner” means, with respect to any portion of the Property, the owner of the fee simple interest in such portion of the Property, including City, CIC and Port. Notwithstanding the foregoing:

(a) any Mortgagee shall not be deemed an Owner with respect to the portion of the Property encumbered by the Mortgage held by such Mortgagee unless such Mortgagee shall have excluded the mortgagor from possession by appropriate legal proceedings following a default under such Mortgage or shall have acquired the interest encumbered by such Mortgage through Foreclosure;

(b) a tenant or lessee of space in the Property shall not be deemed an Owner;

(c) if any portion of the Property is owned under the condominium or cooperative form of ownership, the association of the condominium or the cooperative entity, as the case may be, shall be deemed the sole Owner with respect to such portion of the Property;

(d) any Person holding or owning any easements, rights-of-way or licenses that pertain to or affect any portion of the Property shall not be deemed the Owner solely by virtue of such easements, rights-of-way or licenses; and

(e) in the event an Owner consists of more than one Person (other than owners of individual condominium units or cooperative ownership interests), such

Persons shall, within 30 days after the date of their acquisition of any portion of the Property, execute and deliver to the Parties a written instrument, including a power of attorney, appointing and authorizing one of such Persons comprising such Owner as their designated agent to receive all notices and demands to be given to such Owner pursuant to this Declaration and to take any and all actions required or permitted to be taken by such Owner under this Declaration. Until such instrument is executed and delivered, it shall be deemed that there is no Owner for the purposes of exercising any rights of such Owner under this Declaration. Such Persons comprising an Owner may change their designated agent by written notice to the Parties, but such change shall be effective only after actual receipt by the Parties of such written notice and a replacement instrument or instruments, including a power of attorney from all Persons comprising such Owner appointing and authorizing one of such Persons comprising such Owner to act as attorney-in-fact pursuant to such power of attorney.

“Park” means the public park to be constructed, owned, operated, maintained and repaired by the City on the Park Lot pursuant to the terms and conditions of this Declaration.

“Park Improvements” means the improvements installed within the Park Lot by the City from time to time.

“Park Lot” means the portion of the Property identified and described as Lot 2-F on Exhibit B-3.

“Parking Garages” means the two (2) parking garage buildings and facilities to be constructed, owned and operated by Port on the Garage Lots.

“Person” means an individual, partnership, joint venture, cotenancy, association, corporation, limited liability company, business trust, real estate investment trust, trust, banking association, federal or state savings and loan institution, or any other legal entity, whether or not a part hereto.

“Plaza” means the area above the Parking Garage to be located on Lot 2-E, described as the Plaza Easement herein, intended and constructed to be used as a public plaza and the Plaza Improvements, from time to time, constructed and installed thereon by the City.

“Plaza Easement” means the easement established within the area described in Exhibit D attached hereto.

“Plaza Improvements” means the improvements, from time to time, constructed and installed by the City within the Plaza Easement.

“Prime Rate” means the prime rate published in the “Money Rates” section of the Wall Street Journal from time to time.

“Private Declaration” means that certain Declaration of Covenants, Conditions, Restrictions and Reservation of Easements being executed and recorded by Developer and other Owners of the Property after the execution and recording of this Declaration and the transfer of the Lots other than the Park Lot by the CIC to Developer and such other Owners.

“Private Improvements” means any buildings and other improvements from time to time existing on the Private Lots constructed or installed by Developer, its successors or assigns, or any other Owners of the Lots.

“Private Lots” means the Lots identified as Lots 1A, 1B, 1D, 2-A, 2-B, 2-C and 2-D on the Subdivision Plat and described in Exhibit B-1 attached hereto.

“Property” means all Lots subjected to this Declaration; and such term includes, as the context requires, all buildings and other improvements from time to time located on the Property.

“Public Access Easement” means the areas shown on Exhibit F attached hereto and the stairway, hallway, corridor and lobby area improvements from time to time located therein.

“Public Improvements” means the Improvements to be constructed and paid for by the City on the Park Lot, the Plaza Easement, on public right-of-ways, or within areas upon which the City has easement rights, including without limitation the Park Improvements, the Plaza Improvements, the Public Restroom Facilities, street trees, landscaping and other similar items installed from time to time by the City within public right-of-ways, or the above described areas.

“Public Restroom and Entryway Janitorial Specifications” means the cleaning and janitorial specifications, including frequency, as shown on Exhibit I attached hereto.

“Public Restroom Easement” means the areas shown on Exhibit G attached hereto and the improvements installed and constructed thereon.

“Public Restroom Facilities” means the restroom facilities to be constructed and installed by the Port of Greater Cincinnati Development Authority on Lot 2-C and within the building thereon intended to be open for public use, together with the stairways and entryways serving such facilities within the Public Restroom Easement.

“Public Stairways and Corridors” means the stairways, hallways, corridors, lobbies to be constructed and installed on and within the Public Access Easements by the City to be open for public use.

“Subdivision Plat” means that certain Subdivision Plat for Montgomery Gateway, Phase I, a copy of which is attached hereto as Exhibit I, and which is being recorded in the Hamilton County, Ohio Records.

“Underground Stormwater Detention Facility” means that certain stormwater detention vault and related improvements installed by the City on Lot 3 as shown on the Subdivision Plat.

“Utility Facilities” means all privately, publicly, or cooperatively owned lines, facilities, and systems for producing, transmitting, or distributing communications, power, electricity and light, gas, oil, crude products, water, steam, waste, storm water, and other similar commodities or services, including, without limitation, publicly owned fire and police signal systems, which directly or indirectly serve the Property or any part thereof.

All terms used in this Declaration with an initial capital letter which are not defined in this **Section 1.1** shall have the meanings ascribed to them elsewhere in this Declaration.

1.2 Exhibits. The following Exhibits are attached to, and incorporated in, this Declaration:

- Exhibit A - Master Development Plan
- Exhibit B-1 - Description of Private Lots
- Exhibit B-2 - Description of Garage Lots
- Exhibit B-3 - Description of Park Lot
- Exhibit C - Initial Park Improvements
- Exhibit D - Description of Plaza Easement
- Exhibit E - Plaza Improvements
- Exhibit F - Public Access Easement and Public Stairways and Corridors
- Exhibit G - Public Restroom Easement
- Exhibit H - Public Restroom Facilities
- Exhibit I - Subdivision Plat
- Exhibit J - Underground Stormwater Detention Facility Monitoring Specifications

1.3 Purpose. The purpose of this Declaration is to ensure the proper use and appropriate development and improvement of the Property in a symbiotic manner with private and public facilities so as to provide a harmonious development that will promote the general welfare of the Owners and Occupants thereof and will protect the present and future value of the Property and all parts thereof; to ensure the orderly and attractive development and use of the Property; and

to create opportunity for public uses and enjoyment of certain components of Montgomery Quarter.

1.4 Run With the Land. This Declaration and all of the provisions hereof are and shall be real covenants running with the Property and shall burden and bind the Property for the duration hereof. To that end, this Declaration shall be deemed incorporated in all deeds and conveyances hereinafter made by Developer and/or any Owner. Every Person, including a Mortgagee, acquiring or holding any interest or estate in any portion of the Property shall take or hold such interest or estate, or the security interest with respect thereof, with notice of the terms and provisions of this Declaration; and in accepting such interest or estate in, or a security interest with respect to, any portion of the Property, such Person shall be deemed to have consented or assented to this Declaration and all of the terms and provisions hereof, whether or not such Person shall have executed any document or instrument evidencing the same.

1.5 Submittal to Declaration. By executing this Agreement, Port is acknowledging and agreeing that the Garage Lots are being subjected to this Declaration, to the extent the easements, restrictions, covenants and other terms contained herein benefit, burden or affect the Garage Lots, the City is acknowledging and agreeing that the Park Lot is being subjected to this Declaration, to the extent the easements, restrictions, covenants and other terms contained herein benefit, burden or affect Park Lot, and Developer is acknowledging the Private Lots are being subjected to this Declaration to the extent the easements, restrictions, covenants and other terms contained herein benefit, burden or affect the remainder of such Private Lots.

ARTICLE II

CONTROL AND LAND USE FOR PARK LOT

2.1 General Park Lot Restrictions. CIC and City hereby covenant that the Park Lot and Park Improvements shall be used only as a public park and for no other purposes and shall be subject to the following additional covenants and restrictions:

(a) The Park Lot will initially be improved with the Park Improvements as shown on Exhibit C attached hereto. Thereafter, the Park Improvements will be replaced or supplemented only by improvements substantially similar to the nature and quality of the Park Improvements as detailed on Exhibit C attached hereto. The Park and the Park Improvements shall be maintained, repaired and replaced by City, and the Park shall be operated, maintained and managed, all at City's sole expense, as necessary to keep the Park and Park Improvements in a first-class and good, working condition at all times.

(b) City shall take no actions or permit any actions to be taken which will prevent Owners or Occupants of the Property to have unimpeded access and use of the Park and Park Improvements, together and in common with the general public.

2.2 Park Programming Process. City and CIC acknowledge and agree that it is critical for the success of the Montgomery Quarter that the Park be properly maintained and operated, and utilized on a consistent basis for public events in order to create a sense of vibrancy and activity for public events within the Park. The City shall create and implement a programming plan for such events, which shall include review of uses which are complimentary rather than competitive in nature with the uses and businesses of the Occupants of the Private Lots in the Montgomery Quarter. On at least an annual basis, the City shall review such programming plan with Developer and allow Developer to have input into such programming plan, including without limitation suggestions related to the balance of creating a vibrancy for the Montgomery Quarter and non-interference with the businesses and tenancies of Occupants of the Montgomery Quarter. Developer acknowledges that final decisions with respect to the programming plan for the Park will be determined by the City, subject to the specific covenants, and easements contained in this Article II. Programming and uses of the Park will compliment and not conflict with, or, subject to the provisions of Section 2.3, directly compete with the primary products or services provided by the commercial uses located within the Montgomery Quarter.

2.3 Complimentary Uses. CIC and City acknowledge and agree that it is the intent that commercial activities within the Park not materially and adversely compete with the primary product or service then being offered for sale by any Occupant of any Private Lot.

2.4 General Encroachment Easement. CIC and City hereby establish, declare and reserve, for the benefit of Developer and all Lots adjacent to the Park Lot, an exclusive, perpetual, permanent easement, right and privilege in, on, over and across the Park Lot in favor of the Owners of such adjacent Lots for the encroachment of improvements caused by reason of (a) the design of the encroaching improvements as constructed, so long as such encroachments do not materially interfere with the use and operation of the Park or (b) shifting, settlement or movement of improvements after construction.

2.5 Construction Easement. CIC and City hereby establish, declare and reserve, for the benefit of Developer and all Private Lots, a non-exclusive, permanent, perpetual easement, right and privilege in, on, over and across the Park Lot for temporary access and temporary encroachments, including for staging, during construction, reconstruction or renovation of improvements on Private Lots, to the extent reasonably necessary to construct, reconstruct or renovate improvements on Private Lots. Developer shall notify City in advance of utilizing the temporary easement described herein and shall work cooperatively with the City to create, implement and abide by such reasonable conditions as City may require with respect to such use of the temporary easement, including without limitation, reasonable limits on days and hours of use, effects on the use of the Park Lot as the Public Park, insurance and agreements regarding restoration of Park Improvements and the Park Lot necessary due to the use of the temporary construction easement. Developer shall be responsible to restore any damage to the Park Lot as a result of such construction activity.

2.6 Assignment of Developer Rights. Developer may from time to time, with notice to City, assign to any one or more Person, including without limitation, the owners' association to be created pursuant to the Private Declaration, any or all of the rights created in favor of the Developer under this Article II, including without limitation, any of the easement rights hereunder (so long as such Person is an owner of the Property benefitted by such easements) or the right to enforce the use and other covenants and restrictions contained herein.

ARTICLE III
PLAZA EASEMENT AND PLAZA CONTROLS AND USES

3.1 Plaza Easement. City and CIC hereby establish, declare and reserve a non-exclusive, permanent, perpetual easement, right and privilege for the benefit of CIC and City to enter upon, cross, access and utilize the Plaza Easement as described in Exhibit D and the Plaza Improvements from time to time located thereon for their intended purposes, which shall be used solely as an open-air plaza, open for use and enjoyment by the public generally. The easement granted herein shall include the right to enter upon the Plaza Easement as reasonably necessary, in order to install, construct, maintain, operate and replace the Plaza Improvements, and to have pedestrian and vehicular access over walkways and driveways located from time to time on other areas of the Property as necessary to access the Plaza Easement for all such purposes.

3.2 Plaza Covenants. City and CIC covenant that the Plaza Easement shall be used by the City and CIC only as an open-space available for the use of the public for the purposes for which the Plaza Improvements are designed and constructed and the other uses described above in Section 3.1, including use by the Owners and Occupants of the Property for such purposes and specifically, that the Plaza Easement shall be subject to the following additional covenants:

(a) No improvements will be constructed within the Plaza Easement other than those described in Exhibit E attached hereto or as otherwise which are consistent in quality, appearance and nature with those described in Exhibit E and which do not materially interfere with the use of the parking lot within the Plaza Easement or the ability for Occupants of the Private Lots to use the Plaza Easement area and the Plaza Improvements for ingress and egress.

(b) CIC and City shall take no actions or permit any actions to be taken which will prevent Owners or Occupants of the Property to have unimpeded access and use of the Plaza and the Plaza Improvements, together and in common with the general public.

(c) CIC and City shall maintain, manage and police the Plaza and the use thereof in a manner which is compatible with and does not interfere with the occupancy and use of the Improvements on the Private Lots. Similar to the joint planning of public and private events as set forth in Section 2.2 herein, the Developer and the City and/or CIC shall meet on at least an annual basis to plan and discuss the scheduling of public and

private events on the Plaza so that such events do not adversely impact each other or the intended planned use of the Public Park.

(d) CIC and City shall be responsible at its own expense for replacement and repairs to the Plaza Improvements to the extent such repair expenses are capital expenditures in order that the Plaza Improvements remain in good working and safe condition at all times.

(e) CIC and City shall not utilize the Plaza or allow the utilization of the Plaza for private events, except in accordance with the lease described below in Section 3.3.

(f) In its use of the Plaza for public events, CIC and City shall abide by the provisions of Section 2.2 and Section 2.3 regarding not materially and adversely competing with primary products or services provided by the commercial activities located in Montgomery Quarter uses.

3.3 Plaza Lease. Upon request by Developer, CIC may lease to Developer or Developer's designee the portion of the Plaza shown on Exhibit D as the "Lease Area" upon terms and conditions to be agreed upon by Developer or its designee and CIC.

3.4 Parking Spaces. City agrees that the Developer, pursuant to the Private Declaration, may reserve certain parking spaces on the Plaza Easement Area; provided, however, Developer may not reserve more than fifty percent (50%) of the available parking spaces without further agreement by the City. The specific parking spaces subject to such reservation right may change from time to time pursuant to the terms and conditions of the Private Declaration. In its use of the Plaza Easement, CIC shall not cause or allow to be caused any interference with such parking, ingress and egress and other easements, provided that the City and/or CIC may restrict the use of reserved spaces and other parking spaces in the Plaza Easement Area for the public events conducted by the City or CIC on non-business days, no more than five (5) times in any one calendar year or for no more than two (2) consecutive days with sixty (60) days prior notice to Developer. The City or CIC shall be responsible to provide appropriate signage for such event regarding parking restrictions, and Developer will cooperate to provide notice to the Tenants and Occupants of Montgomery Quarter regarding the parking restrictions.

3.5 Developer's Right to Assign Plaza Related Rights. Developer shall have the right, with notice to City, to assign any or all of its rights related to the Plaza to any third Person, including any Owner of real property within Montgomery Quarter or the owner's association to be created under the Private Declaration.

ARTICLE IV
PUBLIC RESTROOM AND PUBLIC ACCESS EASEMENTS

4.1 Public Restroom Easement. CIC and City hereto establish, declare and reserve, for the benefit of the City, a non-exclusive, perpetual, permanent easement, right and privilege in and on Lot 2-C and the portion of the building to be constructed thereon as shown on Exhibit G attached hereto for the use, operation, maintenance, repair and management of the Public Restroom Facilities, which will be constructed in accordance with the plans attached hereto as Exhibit H and made a part hereof. City shall cause the Public Restroom Facilities to be open for use by the general public for at least the hours of 7:00 a.m. to 11:00 p.m., seven (7) Days a week.

4.2 Public Access Easement. CIC and City hereby establish, declare and reserve for the benefit of the City, a non-exclusive, perpetual, permanent easement, right and privilege, in and on the portions of the Property and portions for the buildings to be constructed thereon as shown on Exhibit F attached hereto for the use, operation, maintenance, repair and management of the Public Stairways and Corridors as shown and described thereon.

4.3 City Operation and Maintenance Duties for Public Restrooms and Public Stairways and Corridors. City shall be responsible, at City's expense, for the maintenance, management, repair and upkeep of the Public Restroom Facilities and the Public Stairways and Corridors, including the fixtures, doors, utility lines and related items serving the Public Restroom Facilities, which shall include daily cleaning (or more often as necessary due to excessive use) so that the Public Restrooms Facilities and the Public Stairways and Corridors are at all times in safe and good working and sanitary condition. The City shall provide security for the Public Restroom Facilities and the Public Stairways and Corridors as reasonably necessary to ensure safety for Occupants of or visitors to Montgomery Quarter and the general public. City shall also be responsible for replacing at its own expense all utility lines and related facilities serving or included within the Public Restroom Facilities at the Public Stairways and Corridors when and as necessary to keep such items in good working condition. Developer hereby grants a right of entry to the City in, on or across the Private Lots for temporary access and temporary encroachments as necessary to allow the City to maintain and repair the Public Restroom Facilities and the Public Stairways and Corridors. The City shall be responsible to restore any damage to the Private Lots as a result of such maintenance and repair. The City may delegate or contract for its management and maintenance responsibilities with respect to the Public Restrooms and Public Stairways and Corridors, with reasonable advance notice to Port and Developer, but no such delegation or contracting shall operate to relieve the City from performance of such obligations hereunder.

4.4 Utility Easements. CIC and City hereby reserve for the benefit of the City such easements on, over, across and for the installation, use, repair, replacement and maintenance of electric and other energy, data transportation, gas, water and sewer lines and related facilities as necessary to operate the Public Restroom Facilities and the Public Stairways and Corridors. The specific location and the methods and timing of installation, repairs and replacements shall be

subject to the reasonable prior approval of the Owner of the Lot, Private Improvements or Parking Garage in which the same are or are to be located.

4.5 Utility Expenses. City shall be responsible for paying all expenses of utility services utilized in the operation and maintenance of the Park, the Public Restroom Facilities, the Public Stairways and Corridors, the Plaza and landscaping within public right of ways, including without limitation, gas, electricity and water. At the City's option, (i) the City shall have separate utility accounts for such utilities with the utility providers, with separate meters installed and operated at the City's expense, or (ii) cause such utilities to be provided by Developer or the Operator under the Private Declaration with consumption for such areas and items measured by tab-meters. To the extent City requests Developer to provide such utilities City shall pay for the costs of such electricity and water consumed, as measured by such tab meters, at the same rates as charged to Developer or the Operator under the Private Declaration, within thirty (30) days after being invoiced for the same. Such charges may be invoiced monthly or quarterly by Developer or the Operator under the Private Declaration.

4.6 Underground Stormwater Detention Facility Monitoring Costs. Developer shall reimburse the City or cause the City to be reimbursed for the City's out of pocket third party costs for performing the monitoring and testing program for the Underground Stormwater Detention Facility as described in Exhibit J attached hereto and made a part hereof, provided however, the maximum amount owed to the City for such activities conducted during any one (1) calendar year shall be limited to Four Thousand Dollars (\$4,000.00). The reimbursement payment shall be made within thirty (30) days after the City invoices the Developer or Operator under the Private Declaration and provides copies of paid bills and invoices evidencing the costs incurred by the City. Developer shall have the right to delegate the payment obligation under this Section 4.6 to the Association or other Operator under the Private Declaration, and once Developer makes such delegation and notifies City of such delegation, City agrees to limit its recourse for collection of payments due hereunder to the Association or other Operator under the Private Declaration. For avoidance of doubt, the Developer's reimbursement obligation hereunder (as the same may be delegated in accordance herewith), is an in gross, personal obligation of Developer (or, if delegated, of its delegee) to the City and the same is not intended to, and shall not, encumber or be appurtenant to the Property upon which the Underground Stormwater Detention Facility is located, nor shall the reimbursement obligations bind the Developer's successors or assigns in title to all or any portion of such Property.

ARTICLE V

GENERAL PROVISIONS

5.1 Easement to Enter to Cure Defaults. There is hereby established, declared and reserved, a non-exclusive, perpetual, permanent easement right and privilege in favor of all Lot Owners or their successors or assigns, to enter upon any Lots and the improvements located thereon from time to time as reasonably necessary to cure defaults by other Owners in performance of their respective obligations under this Declaration. Lot Owners may assign the self-help rights

hereunder to their respective tenants. Any Person exercising the easement rights under this **Section 5.1** shall be exercised in such a manner as to minimize interference with the operation of the Improvements located on the Lot in question. The exercise of any such self-help rights shall not preclude the pursuit or enforcement of any other legal or equitable remedies available as a result of the default in question.

5.2 Self-Help Costs. Any Owner exercising the self-help rights described above in **Section 5.1** shall be reimbursed upon demand by the defaulting Owner for its reasonable out-of-pocket expenses incurred in performing such self-help rights, plus interest on such expenses from the date incurred until paid in full at a rate equal to the Prime Rate plus six percent (6%).

5.3 Manner of Exercising Maintenance and Operational Authority. Developer, City and all other Owners and Persons shall exercise Maintenance and Operational Authority on any Lot not owned by it in a manner so as to minimize any interruption and interference to the Owners in the normal operation of their Lots and the improvements thereon.

5.4 Use of Easement Areas by Lot Owners. Subject to specific limitations, restrictions or conditions contained herein, Owners of Lots shall have the right to use their Lots, including areas encumbered by easements created hereunder, for any purposes whatsoever which do not substantially interfere or impede with the use of the easements for their intended purposes.

5.5 Binding Effect. Each Owner of a Lot (including any purchaser at Foreclosure), by acceptance of a deed, lease, sublease or other instrument granting or conveying title to such Lot, whether or not it shall be so expressed in any such deed, lease, sublease or other instrument, thereby agrees that the conditions, covenants, restrictions, easements, and reservations of this Declaration may be amended, terminated or extended as provided above.

5.6 Effective Date of Declaration. The effective date of this Declaration shall be the date of its filing for record in the real property records of Hamilton County, Ohio.

5.7 Rights of Third Persons. This Declaration shall be recorded for the benefit of Developer, City, CIC and the other Owners and their respective Mortgagees as herein provided, and by such recording, no adjoining property owner or other Person shall have any right, title or interest whatsoever in the Property, this Declaration, the operation or continuation of this Declaration or the enforcement of any of the provisions hereof, and this Declaration may be amended, modified or otherwise changed in accordance with its terms without the consent, permission or approval of any adjoining owner or third Person.

5.8 Responsibility of Owner. Each Owner, including without limitation, City, shall be responsible for compliance with the terms, provisions, and conditions of this Declaration by its tenants, Occupants, employees, agents, independent contractors, tenants, customers, and visitors.

5.9 Defaults. Any Owner shall be deemed to be in default of obligations or provisions imposed upon it under this Declaration if such Owner fails to cure its failure to perform obligations or conform to the provisions imposed upon it within ten (10) Days after written demand from any Person entitled to enforce or benefitted from the same; provided, however, in the event of an emergency, only such notice as is reasonable under the circumstances shall be required. Such a default and failure to cure during the notice and cure period of any term, provision, or condition contained herein shall give to Developer, City, CIC, Port or the other Person benefitted by the term, provision or condition violated the right to prosecute a proceeding at law or in equity against the Person who has violated, is attempting to violate, or is permitting (or is allowing to exist) the violation or breach on its Lot of any term, provision, or condition contained herein or in any other document promulgated pursuant hereto. The right to prosecute such proceeding shall include, without limitation, the right to bring actions to enjoin or prevent such Person from committing such violation or breach or to cause said violation or breach to be remedied, each Owner of a Lot (including any purchaser at Foreclosure), by acceptance of a deed, lease, sublease or other instrument granting or conveying title to such Lot, whether or not it shall be so expressed in any such deed, lease, sublease or other instrument, thereby acknowledging that no adequate remedy exists at law to cure such violations or breaches.

5.10 Failure to Enforce Not a Waiver. The failure of any Person to enforce any provision herein contained shall in no event be deemed to be a waiver of the right to do so, nor of the right to enforce any other restriction. No suit shall lie against Developer or any other Person for any failure, refusal, or omission to institute or join in any action or proceeding for the enforcement hereof or to restrain the violation of any of the provisions hereof.

5.11 Remedies Cumulative. The remedies provided herein shall be in addition to and not in substitution for any rights and remedies now or hereafter existing at law or in equity. The remedies provided herein or otherwise available shall be cumulative and may be exercised concurrently. The failure to exercise any one of the remedies provided herein shall not constitute a waiver thereof, nor shall use of any of the remedies provided herein prevent the subsequent or concurrent resort to any other remedy or remedies.

5.12 Restoration Obligations. In the event of a casualty causing damage or destruction to any Public Improvements, the City shall, at its sole cost and expense repair and restore such Public Improvements as soon as reasonably possible, but in any event within the one hundred eighty (180) days after the date of the casualty event; provided, however, if it is not possible to repair and restore the Public Improvements until such time as damaged or destructed Private Improvements are restored, then the City's period to restore shall be extended for a period equal to such period the City is not able to restore.

5.13 Assignment of Developer Interest. The Developer's rights and interests hereunder, may be assigned by Developer, in whole or in part, to any Person that agrees, to the extent of such assignment, to assume the obligations associated with such rights or interests arising from and after the date of such assignment. To be effective, such assignment must be in writing

and in recordable form and specifically refer to the rights and interests, or portion thereof, which is being assigned. Upon acceptance of such assignment, such assignee shall, to the extent of such assignment, assume the obligations arising from and after the date of such assignment and shall have the Developer's rights associated with such matter, but shall have no liability for the acts or omissions of any prior Person. Upon such assignment, and to the extent thereof, the assigning Developer shall be relieved from all assigned obligations arising from and after the date of such assignment. The term "Developer", as used herein, includes all such assignees and their heirs, successors and assigns. Notwithstanding anything to the contrary set forth herein, the mere conveyance or transfer of ownership of or any other interest or estate in land within the Property by Developer to any Person, whether by deed, lease, sublease or other instrument, shall in no way convey all or any portion of the Developer's rights and interests.

5.14 Additional Declarations. Owners may subject their Lots to additional declarations of easements, covenants, conditions and restrictions (including, without limitation, condominium declarations), and nothing in this Declaration shall prohibit or preclude any such additional declarations.

5.15 Certificate of Compliance. Upon written request of any Owner, tenant or Mortgagee, or any prospective Owner, tenant or Mortgagee, shall issue and acknowledge a certificate in recordable form setting forth generally whether or not, to their actual knowledge, there is any subsisting violation or breach of this Declaration in respect of such Lot. Said written statement shall be conclusive upon the Person issuing the same, as the case may be, in favor of the Persons who rely thereon in good faith.

5.16 Parties Bound. This Declaration shall run with the Property and each and every part thereof, shall bind Developer, the Owners and all Persons having or acquiring any interest in the Property or any part thereof, and their respective heirs, successors, personal representatives and assigns, and shall inure to the benefit of and be enforceable by, Developer and its successors and assigns, and each Owner and its successors and assigns. Every Person, including a Mortgagee, acquiring or holding any interest or estate in any portion of the Property shall take or hold such interest or estate, or the security interest with respect thereto, with notice of the terms and provisions of this Declaration; and in accepting such interest or estate in, or a security interest with respect to, any portion of the Property, such Person shall be deemed to have consented or assented to this Declaration and all of the terms and provisions hereof, whether or not such Person shall have executed any document or instrument evidencing the same. Notwithstanding the foregoing, upon an Owner's sale, transfer or conveyance of all of its right, title and interest in and to its Lot, the selling, transferring or conveying Owner shall not have any liability for any duty, obligation, liability or responsibility which shall first accrue under this Declaration in respect of such Lot after the date that (i) evidence of such sale, transfer or conveyance is recorded in the real property records of Hamilton County, Ohio, and (ii) the Owner has given Developer written notice of such sale, transfer or conveyance which sets forth the name and address of the transferee and a copy of the instrument of sale, transfer or conveyance; provided, however, that nothing herein shall be deemed or construed so as to relieve any such owner from any duty, obligation, liability or

responsibility that accrued under this Declaration in respect of such Lot prior to such sale, transfer or conveyance.

5.17 Applicable Law, Venue and Jury Trial Waiver. This Declaration concerns real property located in the State of Ohio and shall be governed by and interpreted in accordance with the laws of the State of Ohio. The venue for any action or suit brought against any Owner relating to this Declaration or the enforcement of any provisions hereof shall be exclusively in Hamilton County, Ohio. Any Person affected hereby submits to the jurisdiction of the state and Federal courts sitting in Hamilton County, Ohio, and waives the right to sue or be sued elsewhere. **EACH OWNER AND OTHER PERSON AFFECTED HEREBY WAIVES ITS RIGHT TO A TRIAL BY JURY.**

5.18 Severability. If any Articles, Section, Subsection, term or provision of this Declaration shall be or become illegal, null, void or unenforceable for any person or shall be held by any court of competent jurisdiction to be illegal, null, void or unenforceable, the remaining Articles, Sections, Subsections, terms and provisions will continue to remain in full force and effect irrespective of the fact that any one or more of the other Articles, Sections, Subsections, terms or provisions shall become or be illegal, null, void or unenforceable.

5.19 Conflicts. All applicable building and inspection codes and regulations, and any and all other Governmental Requirements shall be observed. In the event of any conflict between this Declaration and such Governmental Requirements, the provisions which require more restrictive standards shall apply.

5.20 No Reverter. No covenant or restriction set forth in this Declaration is intended to be or shall be construed as a condition subsequent, a conditional limitation, or as creating a possibility of reverter.

5.21 Grants and Agreements. The grants, reservations, creation and establishment of the easements, rights and privileges in this Declaration are independent of any contractual agreements or undertakings hereunder and a breach by any Owner or any Occupant of any such contractual agreements or undertakings shall not cause or result in a forfeiture, termination or reversion of the easements, rights and privileges created by this Declaration.

5.22 Interpretations. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which will best effect the intent of the purpose set forth in **Article I** hereof. No provision of this Declaration shall be construed against or interpreted to the disadvantage of any Owner, including, without limitation, Developer, by any court or other Governmental Authority by reason of such Owner's having or being deemed to have structured or dictated such provision.

5.23 Captions. The captions of each Article, Section and Subsection hereof are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular Article, Section or Subsection to which they refer.

5.24 Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or to other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

5.25 Rights of First Mortgagees. Each first priority Mortgage shall be entitled to written notice from Developer of any default by the Owner of the Lot encumbered by its Mortgage in the performance of its obligations under this Declaration which is not cured within sixty (60) days; **provided, however,** that each such first priority Mortgagee shall have first filed with Developer a written request that notices of default, notices of meetings and copies of financial reports be sent to a named agent or representative of such Mortgagee at an address stated in such notice.

5.26 Time is of Essence. Time is of the essence of this Declaration and every provision hereof.

5.27 Force Majeure. Notwithstanding anything herein to the contrary, Developer, City, CIC and each other Owner shall have an extension with respect to all time periods within which Developer, City, CIC or such other Owner must act or react equal to the number of Days of delay caused by adverse weather conditions, labor disputes, fire, casualty, epidemics or pandemics, acts of God or any other similar event beyond the direct control of such Person, as the case may be, other than the financial inability of an Owner.

5.28 Notices. Any notice to be given under this Declaration shall be in writing, shall be addressed to the party to be notified at the address set forth below or at such other address as each party may designate for itself from time to time by notice hereunder, and shall be deemed to have been given upon the earlier of (a) the next business day after delivery to a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement, satisfactory with such carrier, made for the payment of such fees, or (b) receipt of notice given by telecopy or personal delivery. The address for an Owner shall be the most recent address of said Owner designated in writing to Developer and given in accordance with this **Section 6.28**, or if not so designated, as shown on the tax rolls of Hamilton County, Ohio.

The initial address for Developer shall be:

Gateway Partners Montgomery, LLC
45 Fairfield Avenue, Suite 200
Bellevue, Kentucky 41073

and

Gateway Partners Montgomery, LLC
2135 Dana Avenue, Suite 200
Cincinnati, Ohio 45207

The initial address for City shall be:

The City Manager
City of Montgomery, Ohio
10101 Montgomery Road
Montgomery, Ohio 45242
City Manager: Brian K. Riblet

The initial address for CIC shall be:

Montgomery Community Improvement Corporation
Executive Director
10101 Montgomery Road
Montgomery, Ohio 45242
Executive Director: Brian K. Riblet

With a copy for both the City and CIC to:

City of Montgomery Director of Law
Terrence M. Donnellon, Esquire
Donnellon, Donnellon & Miller
9079 Montgomery Road
Cincinnati, Ohio 45242

The initial address for Port shall be:

Port of Greater Cincinnati Development Authority
3 East Fourth Street, Suite 300
Cincinnati, Ohio 45202
Attn: Vice President of Public Finance

With a copy to:

Frost Brown Todd LLC
301 East Fourth Street, Suite 3300
Cincinnati, Ohio 45202
Attn: Patrick M. Woodside, Esq.

[Remainder of page intentionally left blank – signature pages follow.]

IN WITNESS WHEREOF, Developer has executed, sealed and delivered this Declaration, as of the ____ day of _____, 2020.

DEVELOPER:

GATEWAY PARTNERS MONTGOMERY, LLC,
an Ohio limited liability company

By: _____
Michael T. Brandy
Its Manager

STATE OF _____)
COUNTY OF _____) ss:

The foregoing was acknowledged before me, a Notary Public, in and for said County, by Michael T. Brandy, who is personally known to me, and who is the Manager of GATEWAY PARTNERS MONTGOMERY, LLC, an Ohio limited liability company on behalf of the limited liability company, this _____ day of _____, 2020. This is an acknowledgment clause. No oath or affirmation was administered to the signer.

Notary Public

GATEWAY PARTNERS MONTGOMERY, LLC,
an Ohio limited liability company

By: _____
Daniel A. Neyer
Its Manager

STATE OF _____)
COUNTY OF _____) ss:

The foregoing was acknowledged before me, a Notary Public, in and for said County, by Daniel A. Neyer, who is personally known to me, and who is the Manager of GATEWAY PARTNERS MONTGOMERY, LLC, an Ohio limited liability company on behalf of the limited liability company, this _____ day of _____, 2020. This is an acknowledgment clause. No oath or affirmation was administered to the signer.

Notary Public

PORT:

**PORT OF GREATER CINCINNATI
DEVELOPMENT AUTHORITY**

By: _____
Laura N. Brunner, President/CEO

STATE OF OHIO)
COUNTY OF HAMILTON) ss:

The foregoing instrument was acknowledged before me this _____ day of _____, 2020 by Laura N. Brunner, as President/CEO of the Port of Greater Cincinnati Development Authority, an Ohio port authority, on behalf of such authority. This is an acknowledgment clause. No oath or affirmation was administered to the signer.

Notary Public

CIC:

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

By: B.K. Riblet

Brian K. Riblet

Its: Executive Director

Date: 11/23/2020

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

On this 23 day of November, 2020, personally appeared before me, a Notary Public in and for the State of Ohio, The Montgomery Community Improvement Corporation, by Brian K. Riblet, known to be the Executive Director of said corporation and duly authorized in the premises, who acknowledged the signing and sealing of the said Declaration of Covenants and Reservation of Public Easements for himself and on behalf of said corporation, to be his voluntary act and deed, and the voluntary act and deed of said corporation.



Terrence M. Donnellon, Attorney At Law
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date
Sec. 147.03 R.C.

Terrence M. Donnellon
Notary Public

My commission expires: _____

This instrument was prepared by:

Richard D. Herndon, Esq.
Griffin Fletcher & Herndon LLP
3500 Red Bank Road
Cincinnati, Ohio 45227

LIST OF EXHIBITS

- A - Master Development Plan
- B-1 - Private Lots 1A, 1B, 1D, 2A, 2A, 2B, 2C, 2D
- B-2 - Garage Lots 1C, 2E
- B-3 - Park Lot 2F
- C - Initial Park Improvements
- D - Plaza Easement (Description or Drawing)
- E - Initial Plaza Improvements
- F - Public Access Easement
- G - Public Restroom Easement
- H - Public Restroom Facilities
- I - Subdivision Plat
- J - Underground Stormwater Detention Facility Monitoring Specifications

MEMORANDUM OF UNDERSTANDING REGARDING PLAZA LEASE

This Memorandum of Understanding Regarding Plaza Lease is entered into effective as of November 23, 2020, by and between the **City Of Montgomery, Ohio**, and **The Montgomery Community Improvement Corporation** (individually and collectively "Montgomery") and **Gateway Partners Montgomery, LLC**, an Ohio limited liability company ("Developer"), concerning the continuing development of land now owned by the Montgomery Community Improvement Corporation in the 9200 block of Montgomery Road and what is now known as the Montgomery Quarter Project Site and specifically the use and lease of a portion of the "Plaza", as defined in the Declaration of Covenants and Reservation of Public Easements for Public Easements being entered into by the parties the "Public Declaration").

The purpose of this Memorandum of Understanding is to outline the mutual intentions of the parties as the parties move forward to negotiate and document a lease agreement (the "Lease") for the portion of the Plaza described in the Public Declaration as the "Lease Area", pending approval by Montgomery City Council and Trustees for The Montgomery Community Improvement Corporation.

With these purposes in mind, the parties agree as follows:

1. Right to Lease. Developer shall have the exclusive right to lease the Lease Area to use the same for private events upon the terms and conditions contained herein. The term of the Lease and rent payments shall commence on the date the hotel planned for the Plaza is open for business, or sooner, if Developer elects to commence the Lease early to utilize the Lease Area for events before the hotel opens for business. The term of the Lease shall be for five (5) years, and shall renew automatically for five (5) additional renewal terms of five (5) years each unless Developer elects to terminate the same with at least sixty (60) days advance notice to Montgomery.

2. Rent. The Rent under the Lease for the initial term shall be \$12,000 annually, payable in advance on January 1 of each year in the term. If the commencement date for the Initial Term is other than January 1, the first year of the Initial Term and the first annual payment shall be prorated for that first year. Annual Rent for each renewal term shall increase by \$3,000.00.

3. Montgomery's Rights to Use Lease Area. The Lease shall provide that the Developer has the exclusive right to use the Lease Area for private events, provided however Montgomery may conduct public events within the Lease Area up to five (5) times during any one calendar year, subject to the following conditions:

(a) Such public events shall not take place during normal office business hours on normal Business Days, except for incidental event set-up purposes, subject to Developer's Approval.

(b) Montgomery shall notify Developer of dates and times for public events.

(c) Montgomery shall give Developer notice of such intended public event a minimum of sixty (60) days in advance of the public event.

(d) Montgomery shall be required to pay for the costs of clean-up and restoration after any public event conducted on the Plaza, or to complete such clean-up and restoration at its own expense immediately after the completion of the public event and Montgomery shall be responsible for utility expenses incurred due to the public event being conducted.

(e) The use and programming provisions contained in Sections 2.2 and 2.3 of the Public Declaration shall apply with respect to the Montgomery's use of the Plaza for public events.

(f) Montgomery shall comply with any reasonable requests by Developer with respect to Montgomery's use of the Plaza for public events, including without limitation, providing evidence of liability insurance, set-up and clean-up requirements and other reasonable conditions.

4. Coordination of Events. Pursuant to the terms of the Public Declaration, Montgomery and Developer will share information and scheduling of events conducted in the Plaza and the "Park" (as defined in the Public Declaration) in order to minimize adverse impacts upon the events conducted in both venues.

5. Structures and Signs. With respect to tents, awnings or other structures used by Developer on the Lease Area, the Lease shall impose the following restrictions:

(a) Structures installed and utilized on the Lease Area may be temporary in nature only and not permanent types of structures.

(b) Tents, awnings and other structures may only be on the Lease Area for 48 consecutive hours or less.

(c) Paid advertising shall not be permitted on structures or on signs, without prior approval from Montgomery, providing, however, this restriction shall not prohibit signs that use the City logo or the branded logo for the Montgomery Quarter, including way-finding signs, or logos for events sponsored by Owners, Occupants or Tenants of the Montgomery Quarter.

(d) All temporary structures used for events on the Lease Area shall be of first class quality, consistent with the quality of the Park, Plaza and the private improvements in Montgomery Quarter.

(e) All temporary structures will be in conformance with all applicable Zoning Code and other requirements for such temporary structures.

6. Insurance and Indemnification. The Lease shall contain indemnification and hold harmless provisions from Developer in favor of Montgomery for activities and events conducted by Developer on the Lease Area, and shall also require Developer to cause appropriate commercial liability insurance and liquor liability insurance in effect for any events conducted by Developer, which insurance shall include Montgomery as additional insured.

7. Event Traffic Control. The Lease shall require Developer to be responsible for erecting any needed temporary signs and any safe barriers around the Lease Area to safely control traffic monument when private events are occurring on the Lease Area.

8. Legal Requirements. In its use of the Lease Space and the conduct of private events thereon, Developer shall be responsible for causing such use of the Lease Space to conform with all applicable legal requirements, including without limitation, the Montgomery Noise Ordinance and liquor license requirements, as applicable.

9. Management of Lease Area. The Lease shall provide that the Developer or it's designee or assignee shall manage the calendar and uses of the Lease Area, and the tenant under the Lease shall be responsible for the maintenance and management of the Lease Area, except for Montgomery's responsibilities described above for public events.

10. Use of Other Plaza Area. The Lease shall provide the right for the Developer to occasionally utilize the other portions of the Plaza for large private events, depending upon availability, pursuant to terms to be agreed to and documented in the Lease.

11. Severability. The Lease shall provide that if any provision or term of the Lease is determined to be illegal or unenforceable, prior to terminating the Lease, the parties thereto will adjust the provisions or terms of the Lease to bring the Lease into compliance with applicable legal requirements to be enforceable, and to reflect the intent of the parties thereto.

The parties understand and agree that this is a Memorandum of Understanding and is not a binding contractual commitment, and is subject to Council and Trustee approvals. The purpose of the Memorandum of Understanding is to outline the substantive business terms for the Lease. The parties agree to utilize good faith efforts to negotiate and agree to the terms and form of the Lease as soon as possible.

CITY OF MONTGOMERY, OHIO

By: B.K. Riblet
Brian K. Riblet
Its: City Manager

**THE MONTGOMERY COMMUNITY
IMPROVEMENT CORPORATION**

By: B.K. Riblet
Brian K. Riblet
Its: Executive Director

**GATEWAY PARTNERS
MONTGOMERY, LLC**

By: Michael T. Brandy
Michael T. Brandy
Its: Manager

By: D. Neyer
Daniel A. Neyer
Its: Manager

These minutes are a draft of the proposed minutes from the Community Improvement Corporation. They do not represent the official record of proceedings until formally adopted by the Corporation. Formal adoption is noted by signature of the Secretary/Treasurer within the minutes.

City of Montgomery
Community Improvement Corporation
Meeting of the Board of Trustees
November 4, 2020

Present

Brian Riblet, City Manager
Terry Donnellon, Law Director
John Crowell, Police Chief
Gary Heitkamp, Public Works Director
Tracy Roblero, Asst. City Manager/Acting Comm. Dev. Dir- Phone
Matthew Vanderhorst, Community and Information Services Director
Katie Smiddy, Finance Director
Shawn Cooper, Customer Service Representative

Board of Trustees Present

Lee Ann Bissmeyer, President-phone
Mike Cappel - teleconference
Chris Dobrozsi
Gerri Harbison
Craig Margolis
Lynda Roesch-teleconference
Ken Suer

President Bissmeyer called the meeting of the Trustees of the Community Improvement Corporation (CIC) for November 4, 2020, to order at 6:45 p.m. in a hybrid meeting at City Hall and by telephone conference with President Bissmeyer presiding. This remote access meeting was allowed by emergency legislation adopted by the Ohio General Assembly and approved by the Governor. The emergency legislation added language to RC Section 121.22 allowing public meetings by telephone conference during the current pandemic and declared State of Emergency. As required by the statute, notice of the telephonic meeting was publicized more than 24 hours in advance to allow public access through the same conference call-in service. The public was also given a backup number to call in the event there were technical difficulties. This Notice was posted on the City's website, and a similar Notice was sent to The Cincinnati Enquirer.

Roll Call

Mrs. Bissmeyer asked for the roll to be called.

The roll was called with all members answering as present.

Minutes

Mrs. Bissmeyer asked for a motion to approve the September 23, 2020, CIC Meeting minutes.

Vice Mayor Margolis made a motion to approve the minutes. Mr. Cappel seconded. City Council unanimously agreed.

New Business

President Bissmeyer explained the items on the agenda today are to clean up some loose ends allowing the Gateway Development to continue progressing. The items for approval today are a second amendment to the development agreement and a purchase agreement. Mrs. Bissmeyer turned it over to Mr. Donnellon for further explanation.

Mr. Donnellon explained we are at the point of closing on the sale of the properties and preparing to issue bonds. This is the second amendment to the agreement, which confirms the net return from the sale of the bonds will be \$19,000,000, \$18,000,000 of which will be allocated to construct the garages. \$18,000,000 is also the cap for funding for the public garages obligating the Developer to assume all costs above \$18,000,000 for that project. Mr. Donnellon also explained the City has cut back on some of the public improvements, particularly what is called the Amenities Deck, which is the space between the hotel and the office building. The City will not develop this portion, but the Developer, as it will benefit the hotel and office building to use for private events.

These minutes are a draft of the proposed minutes from the Community Improvement Corporation. They do not represent the official record of proceedings until formally adopted by the Corporation. Formal adoption is noted by signature of the Secretary/Treasurer within the minutes.

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Mr. Donnellon further explained the Developer's responsibilities again acknowledge the cap is \$18,000,000. Their budget is currently set at \$18,000,000 with about \$350,000 contingency. Mr. Donnellon expressed he believes it will come in below that amount. The City will only pay what the final cost is.

Mr. Donnellon also explained this amendment cleans up paragraph 5.3, acknowledging the seven lots are valued at \$300,000 each, as well as section 5.4, which increases the number of rental units to 148. The rental units are still required to be categorized as Luxury for Rent Apartments, defined as having a market rental rate in the top 10% of the market rates.

Mr. Donnellon explained MCIC is the owner of the property and will be completing the sale. The second portion of the resolution authorizes the purchase of sale agreement to be signed by Mr. Riblet as Executive Director.

The entire package is being sold for 2.1 million dollars and the value disbursed between the seven lots as discussed. Because of the complexity that this project has not yet been subdivided but taxed for the tax year 2020, the amendment will allow real estate taxes to be prorated until closing and know how the auditor's office will allocate the taxes between each of the parcels.

Mrs. Harbison asked if Council will vote on each resolution separately or as one package.

Mr. Donnellon explained both resolutions had been combined into one resolution, so the vote will approve them simultaneously.

Mr. Donnellon asked for a motion to approve the resolution as attached. Mrs. Harbison moved to approve the resolution. Mr. Cappel seconded. City Council unanimously agreed.

Mr. Cappel motioned to adjourn. Vice Mayor Margolis seconded. The meeting was adjourned at 7:00 p.m.

Secretary/Treasurer

Date