

RESOLUTION NO. 8 , 2021

**A RESOLUTION AUTHORIZING AN UPDATED AMENDMENT
TO DEVELOPMENT/SERVICE AGREEMENT WITH MONTGOMERY
GATEWAY PARTNERS, LLC**

WHEREAS, Council did enact Ordinance No. 8, 2005 creating a Tax Increment Financing District encompassing properties bounded by Montgomery Road, Cooper Road and Main Street known as Montgomery Gateway District to exempt certain improvements from real property taxation for a period of twenty (20) years; and

WHEREAS, under the terms of such Ordinance, Council did authorize the City Manager to enter into a Development/Service Agreement with the Developer, Montgomery Gateway Partners, LLC, and Owners of such property to create an obligation for the payment of Service Payments in lieu of taxes to the City to provide for the cost of public improvements in, around and in support of the District; and

WHEREAS, as a result of various economic factors which negatively impacted the amount of Service Payments collected, including the re-evaluation of real estate within the Montgomery Gateway District, the Service Payments in lieu of taxes proved to be insufficient for a short period of time to meet the debt service for such public improvements; and

WHEREAS, the City negotiated an Amendment to the Development/Service Agreement in 2015 which was approved by Resolution No. 24, 2015 to allow Montgomery Gateway Partners, LLC as the Developer and the Owner of Auditor's Parcel 603-0004-0192 within the District to pay such deficiencies over the life of the tax exemption, which

the City administration believed would be beneficial to the Owner and tenants of such property; and

WHEREAS, the City and the Developer believe it is in the best interest of the parties to update such Development/Service Agreement and the 2015 Amendment to such Development/Service Agreement to better manage the deficiency; and

WHEREAS, the parties have negotiated and the Administration recommends that the Second Amendment to the Development/Service Agreement, a copy of which is attached hereto, be approved by City Council; and

WHEREAS, under the terms of the Development/Service Agreement, any amendment must be approved by City Council in a format acceptable for recording; and

WHEREAS, the intent of this Resolution is to authorize the City Manager to enter into this Second Amendment to the Development/Service Agreement.

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 enter into the attached Second Amendment to Development/Service Agreement between the City and Montgomery Gateway Partners, LLC to manage current deficiencies and any future deficiencies in the Service Payments in lieu of taxes for Montgomery Gateway District.

SECTION 2. Further, the City Manager is authorized to execute any additional documentation necessary to implement this Amendment so it may be properly recorded in the Official Records of Hamilton County, Ohio.

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

PASSED: March 3, 2021

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

Christopher P. Dobrozsi
Christopher P. Dobrozsi, Mayor

APPROVED AS TO FORM:

Terrence M. Donnellon
Terrence M. Donnellon, Law Director

SECOND AMENDMENT TO DEVELOPMENT/SERVICE AGREEMENT

This Second Amendment to Development/Service Agreement (“Second Amendment”) is entered into this _____ day of March, 2021, by and between the City of Montgomery, Ohio, an Ohio municipal corporation (“City”) and Montgomery Gateway Partners, LLC, an Ohio limited liability corporation (“Developer”).

WHEREAS, City and Developer did enter into a Development/Service Agreement dated December 27, 2005 (“Agreement”), which was executed by the City on December 27, 2005 and executed and accepted by Developer on January 11, 2006. The Agreement was recorded in the Official Records of Hamilton County, Ohio April 12, 2006 at Official Record Book 10216, Page 394 and applied to property described within Schedule A of such Agreement now consisting of Hamilton County Auditor Parcel Numbers 603-0004-0192 and 603-0004-0193; and

WHEREAS, under the terms of such Agreement, Developer, as Owner of the Site located within the City bounded by Montgomery Road, Cooper Road and Main Street, did agree to complete certain private improvements (“Private Improvements”), which Private Improvements were to be exempt from real property taxation for a period of twenty (20) years under R.C. § 5709.40; and

WHEREAS, under the terms of such Agreement, the City was to complete certain public improvements (“Public Improvements”), the cost of which were to be funded by Service Payments to be paid by the Developer and the owners of such Site in lieu of taxes during such twenty (20) year exemption period; and

WHEREAS, under the terms of such Agreement, and the Schedules and Exhibits attached thereto, the total cost of such Public Improvements was established at One Million Two Hundred Thirty Thousand Dollars (\$1,230,000.00), which Public Improvements have been completed, and which according to Paragraph 1(A) of such Agreement were to be repaid to the City by the Developer and future Owners of the Site in semi-annual Statutory Service Payments in the total annual amount of Eighty One Thousand Eight Hundred Fifty Nine Dollars (\$81,859.00) commencing in tax year 2007, collection year 2008; and

WHEREAS, under the terms of such Agreement, if such Statutory Service Payments were inadequate to service the annual debt obligation of Eighty-One Thousand Eight Hundred Fifty-Nine Dollars (\$81,859.00), the Developer and Owner of Auditor's Parcel 603-0004-0192 were obligated to pay Minimum Service Payments equivalent to the difference between the Statutory Service Payments and the minimum debt service of Eighty-One Thousand Eight Hundred Fifty-Nine Dollars (\$81,859.00) per year. Such obligation to pay Minimum Service Payments was not an obligation of any subsequent Owner of Auditor's Parcel 603-0004-0193; and

WHEREAS, although the Private Improvements have been completed, the assessed value for such Private Improvements on the Site have proved to be insufficient to meet the minimum debt service obligation. Previously, a deficiency accrued through tax year 2013 in the total amount of Two Hundred Sixteen Thousand Forty-Six Dollars and Six Cents (\$216,046.06), which deficiency was incorporated in an Amendment to the Development/Service Agreement dated August 14, 2015 and recorded in Hamilton County, Ohio, on January 5, 2016 at Official Record Book 13075, page 1484; and

WHEREAS, through various property management changes, the anticipated payments under the Amendment to the Development/Service Agreement have not adequately covered the deficiency, and the parties do desire by this Second Amendment to clarify such deficiency and to set a specific schedule to satisfy such deficiency before the close of the twenty-five (25) year period; and

WHEREAS, to support the economic development of the Site and to establish a schedule for payments to meet this deficiency, the parties do desire to amend the Agreement and the Amendment to the Development/Service Agreement consistent with Paragraph 22, which amendments are set forth within this document.

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

1. It is hereby agreed that the deficiency accumulated in the Minimum Statutory Payments through December 31, 2020 (tax year 2019) reduced by any additional Deficiency Payments paid under the Amendment to Development/Service Agreement is One Hundred Sixty Thousand Five Hundred Sixty-Six Dollars and Seventy-Six Cents (\$160,566.76) ("Amended Deficiency"). The parties hereby agree that in addition to any other payment to which Developer may be obligated under the terms of the Agreement, this Amended Deficiency will be paid by the Developer and the Owner of Auditor's Parcel 603-0004-0192, more particularly described upon Exhibit 1 attached hereto, in Twelve (12) equal installments, the first of which representing the installment due February 1, 2021, shall be paid with the execution of this Second Amendment. Such installment payments shall be Thirteen Thousand Three Hundred Eighty Dollars and Fifty-Six Cents (\$13,380.56). Such installment payments shall be due February 1 and August 1 of each calendar year commencing February 1, 2021. All installment payments to satisfy the Amended Deficiency shall be made to the City of Montgomery, Ohio, Attention Director of Finance, 10101 Montgomery Road, Montgomery, Ohio 45242. These semi-annual installment payments shall be

due as a separate obligation under the terms of the Development/Service Agreement and supersede the agreed Deficiency Payments defined in the Amendment to Development/Service Agreement dated August 14, 2015.

2. So long as Developer remains current in paying the Amended Deficiency payments, there shall be no additional interest penalty assessed against such Amended Deficiency and the amortized balance of the Amended Deficiency then due. Provided, however, if Developer should default at any time in making the Amended Deficiency payments, interest shall begin to accrue from the date of such payment default and be due and payable upon such Amended Deficiency consistent with Paragraph 1(D) of the Agreement at Ten Percent (10%) per annum until such Amended Deficiency payments are brought current.

3. The City agrees that if during the term of the Agreement and this Second Amendment, there accrues any excess in the Statutory Service Payments over and above the debt service in any calendar year, the City will credit this amount against the total Amended Deficiency due which shall be applied to the anticipated final installment payments due in 2025 and 2026. The City agrees to provide an annual accounting to the Developer for such accumulated excess. During the remaining term of the Agreement and this Second Amendment, after all deficiencies have been satisfied, any excess Statutory Service Payments may be applied by the City in the priority established under Paragraph 4(C) of the Agreement.

4. It is understood and agreed by all parties that no additional deficiency shall accrue under the terms of the Agreement. This Amendment shall not in any other way modify Developer's obligations now and through the balance of the term of the Agreement to pay Statutory Service Payments and/or Minimum Service Payments in the future. Provided, however, the parties further agree to amend Paragraph 4(B) of the Agreement in part to provide that if there accrues any additional deficiencies triggering a Minimum Service Payment, commencing with tax year 2020/collection year 2021, then the Minimum Service Payment shall be due and payable for such tax year on or before August 1 of the collection year. Deferring such Minimum Service Payment to the second installment date in a collection year will allow the parties to calculate any Minimum Service Payment in a timely manner and it will allow the Developer/Owner to accrue sufficient funds to pay such Minimum Service Payment in a timely manner.

5. This Second Amendment represents the entire modification to the Agreement and the Amendment to the Agreement between the parties and represents an appropriate and binding Amendment as provided in Paragraph 22 of the Agreement. Further, by executing this Amendment the parties hereby ratify and reaffirm all other terms and conditions of the Agreement as if fully restated herein.

This Second Amendment to Development/Service Agreement has been appropriately authorized and executed effective the day and date set forth below.

CITY:

CITY OF MONTGOMERY

By: _____
Brian K. Riblet

Its: City Manager

Date: _____

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

On this _____ day of _____, 2021, personally appeared before me, a Notary Public in and for the State of Ohio, Hamilton County Ohio, Brian K. Riblet, City Manager of the City of Montgomery Ohio, who acknowledged the signing and sealing of the said Second Amendment to Development/Service Agreement for himself and on behalf of said City, to be his voluntary act and deed, and the voluntary act and deed of said City.

Notary Public

DEVELOPER:

MONTGOMERY GATEWAY
PARTNERS, LLC

By: _____

Name: _____

Its: _____

Date: _____

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

On this _____ day of _____, 2021, personally appeared before me, a Notary Public in and for the State of Ohio, Hamilton County Ohio, _____, _____ of Montgomery Gateway Partners, LLC, who acknowledged the signing and sealing of the said Second Amendment to Development/Service Agreement for _____ self and on behalf of said company, to be _____ voluntary act and deed, and the voluntary act and deed of said company.

Notary Public

APPROVED AS TO FORM:

Terrence M. Donnellon, Law Director