

ORDINANCE NO. 7 , 2023

**AN ORDINANCE APPROVING AND AUTHORIZING THE RELEASE OF A PORTION
OF THE ROOSA STREET RIGHT OF WAY DEDICATED TO THE CITY BY THE
MONTGOMERY COMMUNITY IMPROVEMENT CORPORATION
SUBJECT TO CERTAIN TERMS AND CONDITIONS**

WHEREAS, the Council of the City of Montgomery, Ohio has designated The Montgomery Community Improvement Corporation ("The MCIC") as the City's agent for Industrial Commercial Distribution and Research Development within the City in accordance with R.C. § 1724.10(A); and

WHEREAS, in order to foster economic development within the City, and in furtherance of the City's Strategic Plan and the Agreement and Plan of Industrial Commercial Research and Development adopted by the City and MCIC (the "Plan"), the City acquired certain real property currently known as the Montgomery Quarter Subdivision, which has been transferred in part to The MCIC to facilitate development of the underutilized properties. The properties acquired by the City in cooperation with The MCIC are in the process of being developed, according to development plans approved by the City, by Gateway Partners Montgomery, LLC and its subsidiaries (collectively "Developer"); and

WHEREAS, upon subdividing the property acquired from the City, The MCIC dedicated a certain portion of the property as public right-of-way, being Auditor's parcel number 603-0004-0217; and

WHEREAS, in the further development of Lot 1-A of the Montgomery Quarter Subdivision (Auditor's Parcel Number 603-0004-0203 hereinafter "Primary Parcel"), it has been determined that the Montgomery Quarter Project will be improved

and the business development will be improved by expanding a portion of the Primary Parcel to a small portion of Auditor's Parcel Number 603-0004-0217 owned by The MCIC, dedicated as public right-of-way and partially developed for streetscape and roadway improvements; and

WHEREAS, the City has determined that The MCIC subdividing and transferring this 724 square foot parcel, as more specifically depicted on Schedule A attached hereto ("Secondary Parcel"), will not interfere with the use of the public right-of-way, is not necessary for the safe public use of the right-of-way, will further support the City's goal and the Plan with The MCIC for the development of the Montgomery Quarter Project, and therefore any right-of-way designation for this Secondary Parcel should be released and vacated with such transfer by The MCIC; and

WHEREAS, to facilitate development of the extended site, the City believes it is appropriate to secure a separate Covenant with the Developer to be assured that the contiguous Primary and Secondary Parcels, upon which the extended development will occur, should remain in common ownership; and

WHEREAS, to facilitate the construction of the private improvements over and across the Secondary Parcel, it is recommended that the City and The MCIC grant to the Developer a Temporary Construction Easement to enter upon the remainder of the dedicated right-of-way parcel to be retained to secure restoration of any portion of the remaining streetscape improvements in the right-of-way.

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

SECTION 1. Council hereby approves and authorizes the transfer of the Secondary Parcel described on the attached Schedule A by The MCIC by Quit-Claim Deed to Brandicorp MQ Lot 1A LLC and Neyer MQ Lot 1A LLC as Developers of the Montgomery Quarter Project.

SECTION 2. The City hereby vacates and releases any right-of-way designation upon this Secondary Parcel, but reserves the right-of-way designation upon the remainder of Parcel 603-0004-0217 within the Montgomery Quarter Subdivision.

SECTION 3. As a condition of such approved transfer and release of the right-of-way designation, the City Manager is authorized to secure a Covenant from the Developer, in substance and form to the Covenant attached hereto as Schedule B, to be assured that the contiguous Primary and Secondary Parcels upon which the extended development of Lot 1-A will occur will remain in common ownership.

SECTION 4. To facilitate construction of the extension of the Lot 1-A building upon the Secondary Parcel, the City Manager is authorized to grant to the Developer a Temporary Construction Easement to allow the Developer and/or its agents to enter upon the remaining designated right-of-way within Auditor Parcel 603-0004-0217 in and around the Secondary Parcel to complete construction of the building extension and to secure restoration of a portion of the remaining right-of-way streetscape which may be disturbed by such construction.

SECTION 5. Council hereby authorizes the City Manager to do all things necessary and proper to fulfill the City's obligations under this Ordinance, and to effect the approved transfer of the property by The MCIC as set forth herein.

SECTION 6. Any consideration received by The MCIC from the sale of the property, after meeting its goals for development of the Montgomery Quarter site consistent with the Plan, shall be returned to the City.

SECTION 7. This Ordinance shall take effect the earliest opportunity as allowable by law.

PASSED: June 7, 2023

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

Craig D. Margolis
Craig D. Margolis, Mayor

APPROVED AS TO FORM:

Terrence M. Donnellon
Terrence M. Donnellon, Law Director

Space above this line for recording information

COVENANT

This Covenant ("Covenant") is made effective as of this ____ day of _____, 2023, by **Brandicorp MQ Lot 1A LLC**, an Ohio limited liability corporation, **Neyer MQ Lot 1A LLC**, an Ohio limited liability corporation (collectively "Grantors") and the **City of Montgomery, Ohio**, an Ohio municipal corporation ("Grantee") upon the following terms and conditions:

RECITALS

WHEREAS, Grantors are jointly the fee owners of Lot 1-A of the Montgomery Quarter Subdivision, located at _____ Montgomery Road, City of Montgomery, Hamilton County, Ohio, Auditor's parcel number 603-0004-0203, being more particularly described on **Exhibit A** attached hereto ("Primary Parcel"), upon which has been constructed a commercial building containing both retail and office space; and

WHEREAS, Grantors are the owners of a separate contiguous parcel subdivided and transferred by The Montgomery Community Improvement Corporation in the City of Montgomery, Ohio, which parcel is contiguous to the Primary Parcel, which parcel is more particularly described on **Exhibit B** attached hereto ("Secondary Parcel"); and

WHEREAS, as a part of Grantors' approved General Development Plan and Final Development Plan for the Primary Parcel as modified and accepted by the City of Montgomery Community Development Director (collectively "Development Plan"), Grantors desire to expand a portion of the existing building upon the Primary Parcel to extend onto the Secondary Parcel, which will extend over and across the north/south property line between both the Primary Parcel and Secondary Parcel as depicted on **Exhibit C** attached hereto ("Build-out Plan"); and

WHEREAS, while the Secondary Parcel may not be a buildable parcel, nor meet the necessary requirements of the Old Montgomery Gateway District for lot size, consistent with Section 150.0302, *Definitions*, of the Montgomery Code of Ordinances –

Land Usage Code, Grantee is agreeable to treat the Primary Parcel and Secondary Parcel as a combination of complete lots of record to satisfy the terms and conditions of the Land Usage Code, and to satisfy the terms and conditions of the approved Development Plan to allow the expansion of the primary building constructed onsite at the Primary Parcel, 603-0004-0203, to cross over and be constructed upon a portion of the Secondary Parcel, subject to the terms and conditions outlined in this Covenants regarding joint ownership and joint transfer.

NOW THEREFORE, in consideration of the City's issuance of any necessary approvals for the development of the Primary Parcel and Secondary Parcel, and construction of the building expansion from the Primary Parcel across a portion of the Secondary Parcel, Grantors, on behalf of themselves, their successors and assigns, hereby covenant and declare as follows:

1. Recitals. The Recitals as set forth herein are incorporated by reference as if fully rewritten as a part of the terms and condition of this Agreement.

2. Restrictions on Transfer. Grantors may not separately sell or transfer the Primary Parcel and Secondary Parcel (collectively "Parcels"), but may only complete a sale or transfer by either consolidating both parcels into one parcel and one tax lot or by transferring and selling the Primary Parcel and Secondary Parcel together in one transfer. The ownership of the Primary Parcel and Secondary Parcel may not be separated into two different entities and must always remain as a part of the entity controlling the Primary Parcel. This restriction upon the separate transfer of the Primary Parcel and Secondary Parcel is not intended to restrict or otherwise prohibit the Grantors from mortgaging either or both Parcels, or otherwise granting a security interest in either or both Parcels for financing the development of the Parcel improvements.

3. Use. Notwithstanding the existence of the parcel lines separating the Primary Parcel and Secondary Parcel upon the subdivision plat as modified, shall at all times and for all purposes be treated by Grantors as a single parcel, and for all times and for all purposes shall be treated by the City of Montgomery as a combination of lots of record in determining minimum lot size and minimum set back requirements for the development of these Parcels.

4. General Site Standards. The purpose of this Covenant is to allow the City to treat the Parcels as a single parcel so that the building expansion may satisfy any and all requirements of the applicable Building, Fire and Land Usage Codes and other related Ordinances enacted by the City of Montgomery that may restrict constructing a building across a parcel line and/or that may require a building separation distance along parcel lines. Grantors agree to construct and maintain the building expansion as noted upon the Build-out Plan in accordance with all applicable laws, rules, Ordinances and regulations, including without limitation the City's Land Usage Code and the applicable Ohio Building Codes, as hereafter amended from time to time, as if the Parcels were a single parcel.

5. Successors/Termination. This Covenant is permanent and shall run with the land and shall inure to and be binding upon the Grantors, their successors and assigns, provided however that if the building is demolished in its entirety, or if the Parcels are consolidated by a plat recorded in the Official Records of Hamilton County, Ohio, then this Covenant shall terminate automatically and shall be of no further force or effect.

6. Amendments. Any modifications or amendments to this Covenant, regardless of the materiality, shall be made only with the prior written consent of the Grantors and Grantee.

7. No Partnership or Joint Venture. Nothing contained herein shall be deemed to create a partnership nor joint venture between the Grantors and Grantee.

8. Governing Laws. This Covenant shall be governed by the laws of the City of Montgomery and the State of Ohio. This Covenant is executed by Grantors to be effective as of the date and day set forth above.

[SIGNATURE PAGES TO FOLLOW]

GRANTORS:

Brandicorp MQ Lot 1A LLC,
an Ohio limited liability corporation

By: _____

Name: _____

Its: _____

Date: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

On this _____ day of _____, 2023, personally appeared before me, a Notary Public in and for the State of Ohio, **Brandicorp MQ Lot 1A LLC**, an Ohio limited liability company, by _____, known to be the _____ of said company and duly authorized in the premises, who acknowledged the signing and sealing of the said Covenant for himself and on behalf of said company, to be his voluntary act and deed, and the voluntary act and deed of said company. No oath or affirmation was administered to the signer in regard to this acknowledgement.

Notary Public
My commission expires: _____

GRANTORS:

Neyer MQ Lot 1A LLC,
an Ohio limited liability corporation

By: _____

Name: _____

Its: _____

Date: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

On this _____ day of _____, 2023, personally appeared before me, a Notary Public in and for the State of Ohio, **Neyer MQ Lot 1A LLC**, an Ohio limited liability company, by _____, known to be the _____ of said company and duly authorized in the premises, who acknowledged the signing and sealing of the said Covenant for himself and on behalf of said company, to be his voluntary act and deed, and the voluntary act and deed of said company. No oath or affirmation was administered to the signer in regard to this acknowledgement.

Notary Public
My commission expires: _____

GRANTEE:

City of Montgomery, Ohio,
an Ohio municipal corporation

By: _____
Brian K. Riblet

Its: City Manager

Date: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

On this _____ day of _____, 2023, personally appeared before me, a Notary Public in and for the State of Ohio, the **City of Montgomery, Ohio**, an Ohio municipal corporation, by Brian K. Riblet, known to be the City Manager of said corporation and duly authorized in the premises, who acknowledged the signing and sealing of the said Covenant for himself and on behalf of said corporation, to be his voluntary act and deed, and the voluntary act and deed of said corporation. No oath or affirmation was administered to the signer in regard to this acknowledgement.

Notary Public
My commission expires: _____

APPROVED AS TO FORM:

Terrence M. Donnellon
Law Director