

ORDINANCE NO. 11 , 2023

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

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

WHEREAS, the Development Agreement subsequently was amended August 12, 2020 and again November 19, 2020 (collectively “Agreements”) to enable the City and the Parties to complete Stage 1 of the Montgomery Quarter Project; and

WHEREAS, to continue the development of the Montgomery Quarter Project, the Parties desire to amend the Agreements to outline the terms and conditions for the development of Stage 2 of the Montgomery Quarter Project, including an updated mix of approvable uses to better reflect market conditions, refining the Public Improvements necessary to complete development of Stage 2, and identifying more specifically the Purchase Price and proposed Schedule for the Developer to acquire land within the Stage 2 property owned by The Montgomery Community Improvement Corporation.

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

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

SECTION 2. To be able to timely complete the Public Improvements under a separately approved Construction Management Agreement, and to commence the Private Improvements as soon as reasonably practicable upon development approval, this Ordinance is hereby declared to be an emergency measure necessary for the public health, safety and welfare, and this Ordinance shall take effect immediately upon passage.

PASSED: September 6, 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

THIRD AMENDMENT TO DEVELOPMENT AGREEMENT

This Third Amendment to Development Agreement (“Amendment”) is entered into among CITY OF MONTGOMERY, OHIO (“City”), an Ohio municipal corporation, MONTGOMERY COMMUNITY IMPROVEMENT CORPORATION (“CIC”), an Ohio not-for-profit corporation established by the City for purposes of economic development and community revitalization, and GATEWAY PARTNERS MONTGOMERY, LLC, an Ohio limited liability company (“Developer”) (collectively, the City, CIC and Developer are hereinafter referred to collectively from time to time as the “Parties” and individually as a “Party”), effective upon the last date signed and accepted by all Parties under the following circumstances:

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

WHEREAS, the Parties have determined that, due to current market conditions, it is in the best interest of the Quarter Project to make beneficial changes to the General Development Plan and to modify certain terms, provisions and conditions of the Agreement, including, among other modifications, to divide the acquisition and development of Stage 2 of the Quarter Project into two (2) or more different Sequences, (and potentially, three (3) different Sequences and Closings for the transfer of the Stage 2 Property) to initiate certain of the Public Site Improvements for Stage 2 sooner than contemplated by the Agreement, and to have a portion of the Stage 2 Property depicted in the **Third Amendment Exhibit 1** attached hereto and made a part hereof (“Lot 5”) transferred to the Developer sooner than contemplated by the Agreement.

WHEREAS, the Parties believe it is important for the continued success of the Quarter Project that they enter into this Amendment to effectuate the modifications as contained herein.

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

1. **Definitions**: Section 1 of the Agreement is hereby modified as follows:

(A) Section 1.1(I) “*Private Improvements*” is modified by supplementing and updating **Exhibit E** (Design Plan) referenced therein and attached to the Agreement with the General Development Plan attached to this Amendment identified herein as **Third Amendment Exhibit 2** and all references in the Agreement to the Design Plan shall be deemed to mean the General Development Plan attached to this Amendment as **Third Amendment Exhibit 2**.

(B) Section 1.1(J) “*Project Site Public Improvements*” is modified to add to **Exhibit H 1-4** referenced therein and attached to the Agreement the additional pages attached hereto as

Third Amendment Exhibit 3, which reflect the Project Site Public Improvements to be completed by the City for the Residential Sequences of Stage 2, and all references in the Agreement to Project Site Public Improvements shall include the improvements reflected on **Third Amendment Exhibit 3** attached to this Amendment.

(C) Section 1.1(M) “*Public Parking Facilities*” is modified to reflect that facilities shown on **Exhibit K** are the Public Parking Facilities for Stage 1, and the design and scope of the Public Parking Facilities for Stage 2 are to be agreed upon by the Parties as part of the agreement by the Parties for the plans and specifications for the Project Site Public Improvements and Private Improvements for the Commercial Sequence.

(D) Section 1.1(N) “*Public Site Improvement Budget*” is supplemented to add to **Exhibit F** referenced therein and attached to the Agreement, the additional pages attached hereto as **Third Amendment Exhibit 4**, which reflect the total projected cost of the Project Site Public Improvements for the Residential Sequences of Stage 2 and all references in the Agreement to Public Site Improvement Budget shall include **Third Amendment Exhibit 4** attached to this Amendment.

(E) Section 1.1(O) “*Quarter*”, “*Quarter Project*” or “*Project*” is modified by supplementing **Exhibit G** referenced therein and attached to the Agreement with the General Development Plan attached to this Amendment as **Third Amendment Exhibit 2** and all references in the Agreement to the General Development Plan shall be deemed to include the plan attached as **Third Amendment Exhibit 2** to this Amendment. To the extent the **Third Amendment Exhibit 2** attached to this Amendment conflicts with **Exhibit G** to the Agreement, the **Third Amendment Exhibit 2** shall prevail.

(F) Section 1.1(S) “*Stage 2*” is replaced with the following provision:

“Stage 2” means the portion of the Property and Quarter Project designated on the Design Plan as the Residential Sequence and the Commercial Sequence.

(G) Section 1.1 is further modified to add the following provisions and definitions:

(V) “Commercial Sequence” means the portion of Stage 2 as shown on the Montgomery Quarter Phase 2 General Development Plan to be developed pursuant to the General Development Plan, the terms of the Agreement and additional plans to be developed, agreed upon by the Parties and approved by the City as contemplated by the Agreement.

(W) “Residential Sequence” or “Residential Sequences” means the portion of Stage 2 as shown on the Montgomery Quarter Phase 2 General Development Plan, **Third Amendment Exhibit 2**, to be developed pursuant to the General Development Plan and

additional plans to be developed, agreed upon by the Parties and approved by the City.

(X) “Residential Sequence Public Site Improvements” means those Public Site Improvements necessary for the Residential Sequences as identified in **Third Amendment Exhibit 3**.

(Y) “Lot 5” shall mean the real property included within Stage 2 as previously platted and described in **Third Amendment Exhibit 1** attached hereto and made a part hereof.

2. Residential Sequence Plan Approval. The City and CIC hereby agree and acknowledge that the plans for the Residential Sequence as attached hereto as **Third Amendment Exhibit 2** are hereby approved for purposes of Section 2 of the Agreement, provided, however, such plans remain subject to the requirements of the City’s Land Usage Code and all approvals and permits typically required for such improvements.

3. Stage 2 Public Parking Facilities. The Parties acknowledge that there will be no Public Parking Facilities within the Residential Sequence and no Service Agreement executed in connection with the start of construction of the Private Improvements located within the Residential Sequence. The last sentence of Section 4.3 of the Agreement is hereby replaced by the following sentence:

The Parties agree that a Service Agreement and enabling legislation shall be executed and passed no less than One Hundred and Twenty (120) days prior to the scheduled commencement of the Stage 2 Public Parking Facilities and Private Improvements to be located within the Commercial Sequence.

4. Residential Sequence Public Site Improvements. Pursuant to Section 4.5 of the Agreement, the Parties agree the scope of the Residential Sequence Public Site Improvements are as shown in **Third Amendment Exhibit 3** and that certain of the Residential Sequence 1 Public Site Improvements as identified on the **Third Amendment Exhibit 3** will be completed on or before _____, 2024, in order that the Residential Sequence Private Improvements can be constructed and operated with the remainder of the Residential Sequence 2 Public Site Improvements to be completed as and when described in the **Third Amendment Exhibit 3** and once the Residential Sequence Private Improvements are substantially completed so that the Residential Sequence 2 Public Site Improvements are not likely to be damaged by the remaining construction activities required to finish the Residential Sequence Private Improvements. The scope and timing for the Public Site Improvements and for the Commercial Sequence remain to be agreed upon by the Parties as contemplated by Section 4.5 of the Agreement.

5. Stage 2 Replat. On or prior to the effective date of this Amendment, the City will cause to be completed a subdivision plat for Stage 2 in conformance with the plat attached hereto as **Third Amendment Exhibit 1** and cause such subdivision plat to be approved by all required agencies and authorities and recorded.

6. Residential Sequence Closing. The third and fourth sentences of Section 4.12 of the Agreements are hereby deleted and replaced by the following:

Within thirty (30) days after (i) the execution of this Amendment, (ii) issuance of zoning and City Council approvals required for the 239 residential apartment unit project that Developer desires to construct on Lot 4 (already owned by Developer) and within the Residential Sequence, (iii) the execution of a Compensation Agreement by the City and Sycamore Board of Education by which such Board of Education approves the above-described 239 unit apartment project, (iv) all City approvals and all permits required for the Residential Sequence Public Site Improvements shall be obtained and issued; (v) City and Developer, or its designee, shall have executed a Construction Manager At-Risk Agreement for Stage 2 of the Public Site Improvements necessary for the Residential Sequence Public Site Improvements, and (vi) resolution of certain encroachments from real property adjacent to Lot 5 in a manner reasonably acceptable to Developer (collectively, the "Lot 5 Conditions"), CIC will transfer to Developer and Developer will purchase fee simple title to Lot 5 from the CIC. Within thirty (30) days after satisfaction or waiver by Developer of the "Residential Sequence Conditions" (as hereafter defined), CIC shall transfer to Developer and Developer shall purchase the remainder of the Residential Sequence Stage 2 Property from the CIC. Within thirty (30) days after City and Developer have reached agreement on the final plans for the Commercial Sequence Private Improvements and all of the Developer Contingencies to the Commercial Sequence are satisfied or waived by Developer, CIC shall transfer to Developer and Developer shall acquire those parcels of the Property needed for the Commercial Sequence Private Improvements, and transfer to the Port the portions of the Property upon which the Stage 2 Public Parking Facilities will be located (the "Stage 2 Parking Facility Property") and the CIC shall transfer to Developer air rights above the Stage 2 Public Parking Facilities, which will become building sites for development of the Private Improvements for the Commercial Sequence. Air right parcels for Private Improvements may also be created over underlying parcels upon which other Private Improvements are to be located, as City and Developer progress and agree on the final plans for the Commercial Sequence. The above-described Stage 2 transfers shall be made upon and described to the same above-described terms and conditions applicable to the transfer of the Stage 1 Property.

7. Declarations. The following is hereby added to Section 4.15 of the Agreement:

There shall be no public use areas within the Residential Sequence and therefore no need for covenants and restrictions affecting City or CIC, provided however, prior to the Closing for the Residential Sequence (other than Lot 5), easements shall be created and reserved for public storm water systems and components thereof which, by agreement of the Parties, may be maintained and repaired by the City. Developer may subject the Residential Sequence to the Private Declaration of Covenants, Conditions, Restrictions, and Reservations of Easements that

Developer recorded in connection with Stage 1 of the Project as and to the extent Developer determines appropriate. The Commercial Sequence will remain subject to the provisions contained in the first sentence of this Section 4.15 to the extent public use areas or facilities are programmed for the Commercial Sequence.

8. Public Use Areas and Facilities. The Parties acknowledge there will be no public use areas or facilities intended to be addressed by Section 4.17 within the Residential Sequence and agree Section 4.17 is not applicable to the Residential Sequence.

9. City and CIC Responsibilities. The City and CIC Responsibilities defined within Section 4 of the Agreement, and specifically Section 4.4(B), is hereby modified as follows:

TIF Bonds shall be sold in one or more issues to enable the City in Stage 2 of the Project to net a Stage 2 Construction/Public Improvement Fund in an amount projected to be Fifteen Million Five Hundred Thousand Dollars (\$15,500,000). It is anticipated that the City will draw at least One Million Dollars (\$1,000,000) and up to One Million Five Hundred Thousand Dollars (\$1,500,000.00) from this Stage 2 Construction/Public Improvement Fund to reimburse the City for design and engineering costs previously paid by the City for the Stage 2 Project. The remaining Stage 2 Construction/Public Improvement Fund will be used to pay for the costs of design, engineering and construction of the Stage 2 Public Parking Facilities pursuant to the Cooperative Agreement. As used herein, the Stage 2 Construction/Public Improvement Fund shall mean the funds available from the issuance and sale of the TIF Bonds to fund the above-described payment to the City and to pay for the Stage 2 Public Parking Facilities design, engineering and construction costs.

10. Stage 2 Purchase. Section 5.3 (B) of the Agreement is hereby deleted and replaced in its entirety by the following provisions and the same are hereby added to the Agreement:

(B) The Parties agree the boundaries for Stage 2 and the Residential Sequences and Commercial Sequence shall be as shown on **Third Amendment Exhibit 2** attached hereto. CIC shall transfer and Developer shall acquire Lot 5, the remaining Residential Sequence, and the Commercial Sequence at different times as further described herein.

(C) The Purchase Price for Lot 5 shall be [**Seven Hundred Sixty-Nine Thousand Nine Hundred Eighty Four Dollars (\$769,984.00)**], payable at the Closing for Lot 5, which shall occur within thirty (30) days after satisfaction of the Lot 5 Conditions described above in Section 4.12 of this Agreement.

(D) The Purchase Price for the remainder of the Residential Property shall be [**One Million Seventy-Four Thousand Eight Hundred Thirty Four Dollars (\$1,074,834.00)**], payable at the Closing for the Property, which shall occur within thirty (30) days after satisfaction of the Residential Sequence Conditions, but no later than "Stage 2 Contingency Deadline" (as hereinafter defined).

(E) The Purchase Price for the Commercial Sequence Property shall be **[Eight Hundred Fifty-Five Thousand One Hundred Eighty Dollars (\$855,180.00)]** payable at Closing, which shall occur within one hundred eighty (180) days after satisfaction or waiver by Developer of the Commercial Sequence Contingencies, but no later than February 18, 2027. Notwithstanding the foregoing, the Purchase Price for the Commercial Sequence Property shall be reduced by the amount, if any, in excess of One Million Dollars (\$1,000,000.00) made available to the City pursuant to Section 4.4(B) from the Stage 2 TIF Bond proceeds. To the extent that either the Residential Sequence or Commercial Sequence upon which Private Improvements are to be located has not been purchased and sold pursuant to terms of this Agreement on the latter of February 18, 2027 or one (i) year after the Stage 1 Private Improvements have been substantially completed (defined as the date the Stage 1 Private Improvements have been completed allowing for a Certificate of Occupancy to be issued for such Private Improvements), for any reason other than due to a default by the City or CIC under the Agreement, the right to purchase then unpurchased Stage 2 Property will terminate. In such event, Developer shall pay to CIC an amount equal to Five Hundred Thousand Dollars (\$500,000.00) multiplied by a fraction, the numerator of which is the acreage of the Stage 2 Property not purchased by Developer and the denominator of which is the total acreage of all of the Stage 2 Property to be purchased as described herein as a Release/Default agreement. Provided, however, Developer shall have the right to extend such seven (7) year period for the Stage 2 Property including the Stage 2 Contingency Deadline for three (3) additional one (1) year periods each, by notifying City and CIC of such extension and paying to the City an extension fee in an amount equal to One Hundred Thousand Dollars (\$100,000.00) for each such extension at least sixty (60) days prior to the then expiration of the Stage 2 Contingency Deadline and closing deadline. Any such extension fees paid by the Developer shall be non-refundable and non-applicable to the Purchase Price for the Stage 2 Property.

(F) Developer shall use good faith efforts to prepare Final Development Plans and to submit such plans to the City's Community Development Director in a timely manner to permit review and approval of such Plans by City and its Commission prior to the projected commencement dates identified in this Agreement.

11. Quarter Project Components.

(a) The Chart contained in Section 5.4(A) is hereby amended by deleting (j). The Parties agree the parcel upon which Building 2F1 was to be located shall become part of the Residential Sequence portion of the Quarter Project. The Parties further agree that the last paragraph of Section 5.4(A) is hereby deleted.

(b) Section 5.4 (B) is hereby modified to reflect that the Stage 2 Project will consist of the Residential Sequences and Commercial Sequence as shown on **Third Amendment Exhibit 5** attached hereto and references to the 150,000 square feet

of office space, 30,000 square feet of retail/restaurant space and 24 units of the condominium development are hereby deleted.

12. Section 5.7 of the Agreement is hereby deleted in its entirety.

13. Stage 2 Contingencies. Section 7.2 of the Agreement is deleted and replaced in its entirety by the following provisions and the same are hereby added to the Agreement.

7.2 Lot 5 Contingencies. The Closing for Lot 5 shall be contingent upon satisfaction or waiver by Developer of the conditions described in Section 4.12 of this Agreement.

7.3 Residential Sequence Contingencies. Developer shall have no obligation to acquire the remainder of the Residential Sequence Property other than Lot 5, or to develop and construct the Residential Sequence of the Quarter Project unless and until the following contingencies (collectively, the “Residential Sequence Contingences”) have been satisfied or waived by Developer in writing:

(A) All necessary building and construction permits and approvals required for the Residential Sequence Private Improvements and all components thereof shall have been issued with only such conditions as are contemplated in this Agreement or as otherwise reasonably acceptable to Developer in its sole discretion; and any applicable approval on referendum periods for the same shall have expired without any such approval or referendum having been initiated.

(B) All Residential Sequence Public Site Improvements required for the construction of the Residential Sequence Private Improvements, shall be completed, the remainder of the Residential Sequence Public Site Improvements shall be fully contracted for under an amendment to the construction agreement for the Residential Sequence 1 Public Site Improvements, or a separate construction contract, with agreed to pricing and timing for such Public Site Improvements and City shall cause the Residential Sequence Property to be Pad-Ready as described above in the Agreement.

(C) Developer shall secure financing for the construction of the Residential Sequence Private Improvements in an amount and pursuant to terms and conditions acceptable to Developer in its sole but reasonable discretion.

(D) Developer and City shall have reached agreement on the form and content of the easement agreements or instruments to address the City’s obligations to maintain and repair the public storm water drainage system located on the Residential Sequence Properties and providing easements for the City to do so.

(E) Developer and the City modifying the Tax Increment Financing Districts created by the City encompassing the Residential Sequence lots, if appropriate and if agreeable with the Board of Education to maximize TIF funding available for Public Improvements in Stage 2.

7.4 Commercial Sequence. Developer shall have no obligation to acquire the Commercial Sequence or to develop and construct the Commercial Sequence of the Quarter Project unless and until all of the following contingencies (collectively, the “Commercial Sequence Contingencies”) have been satisfied or waived by Developer in writing:

(A) The Developer and the City shall have reached agreement on and shall have approved all of the plans and specifications for the Project Site Public Improvements necessary for Commercial Sequence and the Commercial Sequence Private Improvements and the schedule for completion of such improvements.

(B) All necessary building and construction permits and approvals required for the Commercial Sequence Private Improvements and all components thereof shall have been issued with only such conditions as are contemplated in this Agreement or as are otherwise reasonably acceptable to the Developer, in its sole discretion, and any applicable appeal or referendum periods for the same shall have expired without any such appeal or referendum having been initiated.

(C) The City shall have entered into construction contracts for the completion of the Project Site Public Improvements for the Commercial Sequence pursuant to terms, with contractors and with bonds or other surety, all of which are satisfactory to Developer to ensure the Project Site Public Improvements for the Commercial Sequence will be completed in conformance with the overall agreed to project schedule.

(D) The City shall have completed the components of the Project Site Public Improvements necessary in order for Developer to immediately commence construction of the Commercial Sequence Private Improvements and shall have cause the Commercial Sequence Projects to be Pad-Ready as described above in this Agreement.

(E) The Parties shall have reached agreement on the amount and terms of the TIF Bonds and Service Agreement for Stage 2 and Developer shall have reviewed and approved the TIF and all binding documents and components of the same affecting the Property and Stage 2 of the Quarter Project and all necessary approvals and actions required to effectuate the TIF shall have been completed.

(F) The City shall have delivered to Developer proof reasonably acceptable to Developer that the City has sufficient funding available to satisfy its payment, construction, and other obligations under this Agreement for the Commercial Sequence.

(G) The City and CIC shall have completed all of the obligations contained in Section 4 of this Agreement as to Stage 2.

7.5 Deadlines. Unless all of the Developer's Contingencies set forth above in Sections 7.2, 7.3, and 7.4 are satisfied or waived in writing by the Developer on or before February 18, 2027 (the "Stage 2 Contingency Deadline"), then the Developer shall have the right to terminate the Agreement as to the portion of Stage 2 Property not then closed by written notice to the City. The Developer shall then be liable to the CIC to pay the Release/Default payment as outlined in Section 5.3 of the Agreement as modified herein, unless such termination is due to the failure by the City or CIC to perform their respective obligations under this Agreement. The Developer shall have the right to extend the Stage 2 Contingency Deadline by providing notice and paying the extension payments as described in Section 5.3(B) of this Agreement. In addition, if prior to such date the Developer determines that any or all of the Developer's Contingencies as to any portion of Stage 2 will not be satisfied by the above described deadline, the Developer may elect to terminate this Agreement as to such portion of Stage 2 by written notice to the City upon such termination. Any or all of the Developer Contingencies may be waived by the Developer, but only by a written instrument executed by the Developer; provided, however, that if the Developer does not terminate this Agreement, pursuant to its right above in this paragraph, by the Stage 2 Contingency Deadline, Developer shall be deemed to have satisfied or waived the Developer Contingencies as to all of Stage 2. Upon any termination of this Agreement by the Developer pursuant to this Section above, neither party hereto shall have any further obligations to the other hereunder as to any portion of Stage 2 not acquired by Developer, except for any obligations specifically stated herein for the Release/Default payment and any other obligations intended to survive such termination. Termination of this Agreement as to any or all of Stage 2 will not affect the Parties' rights and responsibilities with respect to Stage 1.

14. Capitalized Terms. All capitalized terms contracted in this Amendment not typically capitalized and not specifically defined herein have the meanings assigned to such terms by the Agreement.

15. Conflict. To the extent of any terms or provisions of this Amendment conflict with any of the terms or provisions of the Agreement, the terms and provisions of this Amendment shall prevail.

16. Effect on Agreement. Except as specifically modified by the terms of this Amendment, all of the terms and provisions of the Agreement remain in full force and effect and unmodified.

IN WITNESS WHEREOF, the City, CIC and the Developer have caused this Amendment Agreement to be executed in their respective names by their duly authorized officers as of the last date set forth below.

CITY:

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, Hamilton County, Ohio, by Brian K. Riblet, its City Manager, known to be the City Manager of said City and duly authorized in the premises, who acknowledged the signing and sealing of the said Development 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
My commission expires: _____

APPROVED AS TO FORM:

Terrence M. Donnellon
Director of Law
City of Montgomery, Ohio

(Signature Page for CIC – Montgomery Community Improvement Corporation)

CIC:

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

By: _____
 Brian K. Riblet

Its: Executive Director

Date: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

On this ____ day of _____, 2023, personally appeared before me, a Notary Public in and for the State of Ohio, Montgomery Community Improvement Corporation, by Brian K. Riblet, its Executive Director, known to be the Executive Director of said company and duly authorized in the premises, who acknowledged the signing and sealing of the said Development Agreement for himself and on behalf of said company, to be his voluntary act and deed, and the voluntary act and deed of said company.

Notary Public

My commission expires: _____

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

DEVELOPER:

GATEWAY PARTNERS MONTGOMERY,
LLC
An Ohio limited liability company

By: _____
Michael T. Brandy

Its: Manager

Date: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

On this _____ day of _____, 2023, personally appeared before me, a Notary Public in and for the State of Ohio, Gateway Partners Montgomery, LLC, by Michael T. Brandy, its Manager, known to be the Manager of said company and duly authorized in the premises, who acknowledged the signing and sealing of the said Development Agreement for himself/herself and on behalf of said company, to be his/her voluntary act and deed, and the voluntary act and deed of said company.

Notary Public

My commission expires: _____

DEVELOPER:

GATEWAY PARTNERS MONTGOMERY,
LLC
An Ohio limited liability company

By: _____

Daniel A. Neyer

Its: Manager

Date: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

On this ____ day of _____, 2023, personally appeared before me, a Notary Public in and for the State of Ohio, Gateway Partners Montgomery, LLC, by Daniel A. Neyer, its Manager, known to be the Manager of said company and duly authorized in the premises, who acknowledged the signing and sealing of the said Development Agreement for himself/herself and on behalf of said company, to be his/her voluntary act and deed, and the voluntary act and deed of said company.

Notary Public

My commission expires: _____

Exhibit List for Third Amendment to Development Agreement

Third Amendment Exhibit 1 – Site Plat

Third Amendment Exhibit 2 – General Development Plan

Third Amendment Exhibit 3 – Project Site Public Improvements (Project Criteria)

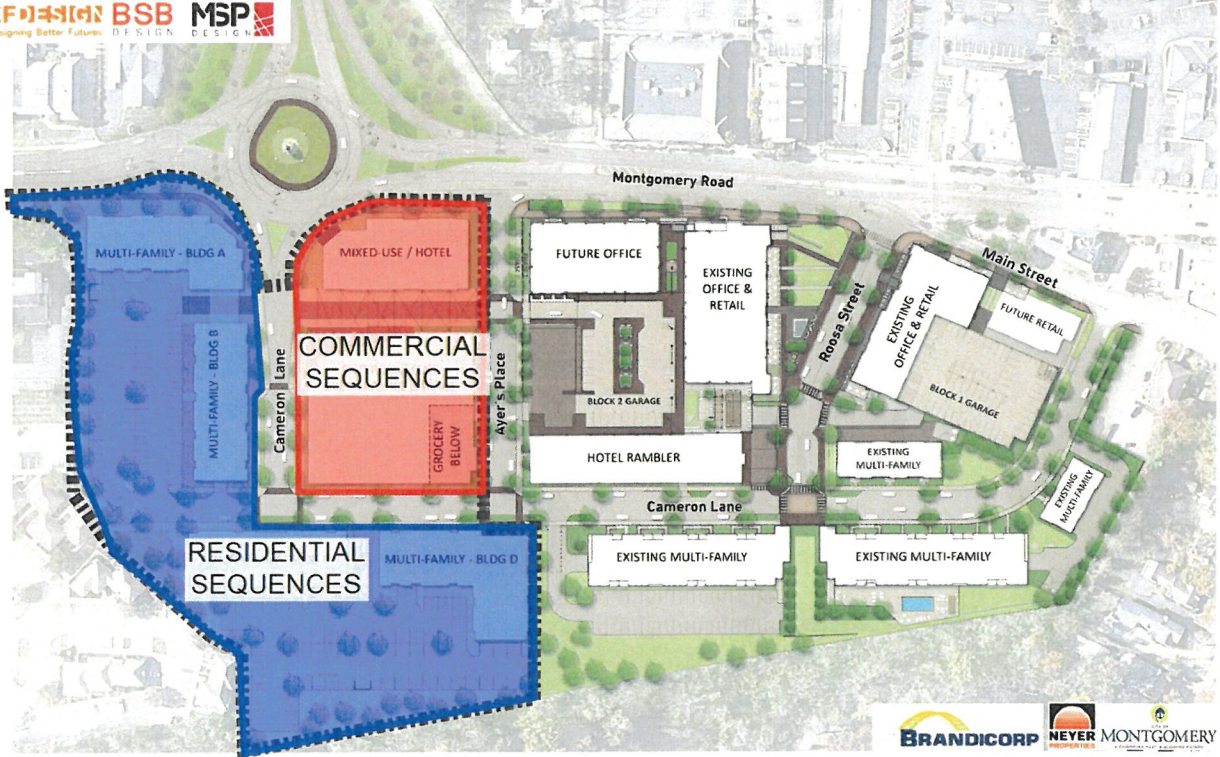
Third Amendment Exhibit 4 – Public Site Improvement Budget

Third Amendment Exhibit 5 – Use Allocations

Third Amendment Exhibit 2
General Development Plan

2023 GENERAL DEVELOPMENT PLAN

Montgomery Quarter Phase 2
General Development Plan Submittal - May 11, 2023



Third Amendment Exhibit 3
Project Site Public Improvements (Project Criteria)

Sequence 1 – Residential Site Public Improvements Related

- 1) Clearing & Demolition
- 2) Erosion Control
- 3) Mass Excavation – Cut/Fill – No Export, pad ready for private construction to commence
- 4) Site Utilities
 - a) Storm Piping & Structures – Roadway & Connection to Existing Detention
 - b) Sanitary Laterals & Piping
 - c) Gas Conduit and Main Line – Coordination with Duke Energy
 - d) Electrical Duct Bank Conduits & transformer pads – Coordination with Duke Energy & Data/Tele Providers
 - e) GCWW Water Main Line
 - f) Water Branch services, connections, fees
- 5) Aggregate base & base asphalt for Cameron Lane and Quarter Blvd
- 6) Concrete Sidewalks, excluding block 3 sides, option for temporary sidewalks to be reviewed with Montgomery Public Works

Montgomery Quarter – Site Public Improvements, Stage II, Phase 1 – Final Development Plans

Item	DWG	Description	Drawing Issue	Issue Date
1)	1	Cover Sheet	Issued for Permit	8-22-2023
2)	2	Overall Site Plan	Issued for Permit	8-22-2023
3)	3	Existing Conditions	Issued for Permit	8-22-2023
4)	4	Demolition Plan	Issued for Permit	8-22-2023
5)	5	Layout Plans	Issued for Permit	8-22-2023
6)	6	Layout Plans	Issued for Permit	8-22-2023
7)	7	Utility Plans	Issued for Permit	8-22-2023
8)	8	Utility Plans	Issued for Permit	8-22-2023
9)	9	Grading Plan North & SWP3	Issued for Permit	8-22-2023
10)	10	Intersection Detl & Grading Plan & SWP3 South	Issued for Permit	8-22-2023
11)	11	Profiles	Issued for Permit	8-22-2023
12)	12	Notes & Details	Issued for Permit	8-22-2023
13)	13	Notes & Details	Issued for Permit	8-22-2023
14)	14	Notes & Details	Issued for Permit	8-22-2023

WSL 3635 Phase 3 Montgomery Quarter Stage II, Phase 1

(These drawings are under review by GCWW and are subject to change, if changes occur, costing will be updated accordingly.)

Item	DWG	Description	Drawing Issue	Issue Date
1)	1 of 3	General Provisions & Details	Issued for Review	8-4-2023
2)	2 of 3	Overall Plan	Issued for Review	8-4-2023
3)	3 of 3	GCWW Plan	Issued for Review	8-4-2023

Sequence 2 – Future Phase to be Reviewed and Agreed Upon (outline below)

- 1) Block 3 Demolition
- 2) Block 3 Mass Excavation – Export
- 3) Block 3 Lag Wall
- 4) Block 3 Site Utilities

- a) Storm Piping & Structures – Completion of Block 3 and any other items
 - b) Sanitary Laterals & Piping
 - c) Gas Conduit Crossovers & Extensions
 - d) Electrical Duct Bank Conduit Extensions and transformer pads
 - e) Water Branch services, water meter pits, tap fees
- 5) Asphalt Surface Coarse
 - 6) Concrete Curbs
 - 7) Block 3 Concrete Sidewalks, option to upgrade Quarter Blvd.
 - 8) ROW lights, landscaping, irrigation, site furnishings
 - 9) Other Items to be determined

Sequence 3 – Future Phase to be Reviewed and Agreed Upon (outline below)

- 1) “Activity Alley” – hardscape, landscape and irrigation
- 2) “Activity Alley” – lighting, poles, site furnishings
- 3) “Activity Alley” – waterproofing, brick pavers
- 4) “Activity Alley” – granite stonework & finishes, decorative metals, fencings
- 5) “Activity Alley” – bollards, seat walls, water feature(s)
- 6) “Activity Alley” – concrete, paving, sidewalks, patios
- 7) “Activity Alley” – decorative finishes, speakers, wifi, electric, cameras
- 8) Other items to be determined

Third Amendment Exhibit 4
Public Site Improvement Budget

Montgomery Quarter City of Montgomery, Ohio					28-Aug-23
CMAR Costs - Stage 2 Public Improvements					Notes
Project Duration	6	Mths	****	2 Months Precon; 4 Months Construction; Sequences 2 and 3 Duration TBD	
					**** Phased Construction for multiple areas shown below.
Item	Description of Work	Qty	Unit	Unit Cost	Total Cost Estimate
01	Property Acquisition				
01	Land	1.000	AC	\$0	\$0
	Subtotal Land				\$0
02	Soft Costs				Sequence 1
					Prime Contractor soft costs as shown under subcontracts
01	Lot Split - Meets & Bounds	1	LS	\$0	\$0 By City
02	Easement Establishment	1	LS	\$0	\$0 By City
03	Legal - City	1	AL	\$0	\$0 By City
03	Legal - CMAR	1	AL	\$5,000	\$5,000 Contracts, Etc.; By City as well
04	Civil Engineering	1	LS	\$0	\$0 By City
05	Project Management	87	HR	\$10,000	\$10,000
06	Geotechnical Engineering	1	LS	\$0	\$0 Alt & Witzig Reliance; add borings at east and south - by City
06	Environmental	1	LS	\$0	\$0 Phase 1 and Reliance Letter - by City
07	Landscape Design	1	LS	\$0	\$0 By City
08	Structural Engineering (Vault)	1	LS	\$0	\$0 By City
09	Signage Design (Wayfinding)	1	LS	\$0	\$0 By City
10	Surveying	1	LS	\$10,000	\$10,000 General Control
11	Inspections	1	LS	\$0	\$0 By City as well as CT
12	Zoning Administration	1	LS	\$2,500	\$2,500 KZF/Clete
13	Building Permits	1	AL	\$0	\$0 By City
14	Jobsite Safety	4	Mth	\$0	\$0 3rd Party Safety Inspections
15	General Liability Insurance	1	LS	\$14,850	\$14,850 Brandicorp
16	Consulting - Zoning	1	LS	\$0	\$0
17	Design Contingency	1	LS	\$0	\$0 By City
18	Performance & Paymnet Bond - CMAR	1	LS	\$32,500	\$32,500
19	Miscellaneous Expenses	1	LS	\$15,000	\$15,000 advertising, printing, bid
					Assumes starting in September '23, if delayed costing will be adjusted accordingly.
	Subtotal Soft Costs				\$89,850
03	General Conditions				share with private - 50%
	Management				Prime Contractor management as shown under subcontracts
01	Preconstruction	173	HR	\$115	\$19,895 Brandicorp (2 months at 50%)
02	Project Superintendent	0	HR	\$0	\$0 Prime Contractor
03	Superintendent Reimbursables	0	LS	\$0	\$0 Prime Contractor
04	Project Manager	346	HR	\$115	\$39,790 Brandicorp (4 months at 50%)
05	Project Manager Reimbursables	1	LS	\$3,200	\$3,200
06	3rd Party Safety Inspections	0	HR	\$0	\$0
07	Assistant Project Manager	0	HR	\$0	\$0
08	Construction Accounting	130	HR	\$65	\$8,450 (5 months at 15%)
09	Administrative Assistant	217	HR	\$35	\$7,595 (5 months at 25%)
10	Travel Reimbursables	1	LS	\$1,000	\$1,000
11	Blue Print/Document Control	1	LS	\$750	\$750
					Assumes starting in September '23, if delayed costing will be adjusted accordingly.
	Subtotal Management				\$80,680

Item	Description of Work	Qty	Unit	Unit Cost	Total Cost Estimate	
	Temporary Facilities					Prime Contractor GC's as shown under subcontracts
01	Jobsite Trailer/Steps	4	Mth	\$1,000	\$4,000	share with private - 50%
02	Jobsite Office Supplies	4	Mth	\$100	\$400	
03	Jobsite Phone/Internet	4	Mth	\$100	\$400	
04	Jobsite Office Cleaning	26	Wk	\$40	\$1,040	
05	Jobsite Office Water	4	Mth	\$40	\$160	
06	Jobsite Office Electric	4	Mth	\$250	\$1,000	
07	Jobsite Office Furniture	1	LS	\$400	\$400	
08	Jobsite Toilet/Port-a-let	4	Mth	\$300	\$1,200	
09	Fire Extinguishers	1	LS	\$250	\$250	
10	Postage & Deliveries	1	LS	\$250	\$250	
11	Temporary Signs	1	LS	\$1,500	\$1,500	
12	Photographs/Aerial Photography	4	Mth	\$600	\$2,400	
13	Security	4	Mth	\$200	\$800	
14	Temporary Electric	4	Mth	\$225	\$900	
15	Fencing/Gates	1	LS	\$2,250	\$2,250	
16	Construction Clean-Up	1	LS	\$4,000	\$4,000	
17	Dumpsters	4	Mth	\$700	\$2,800	
18	Street Cleaning	4	Mth	\$1,000	\$4,000	
19	Equipment Rental	4	Mth	\$750	\$3,000	
						Assumes starting in September '23, if delayed costing will be adjusted accordingly.
	Subtotal Temporary Facilities				\$30,750	
04	Subcontracts					Assumes starting in September '23, if delayed costing will be adjusted accordingly.
01	Demolition & Clearing				\$114,144	
	Mobilization					Temp Facilities, GC's from Prime
	Layout/Surveying/Control					
	Clearing & Grubbing					
	Remove Existing Pavement			Allowance	\$75,000	Concrete found under pavement per Geotec
	Remove Existing Pavement (Temp. Staging)					
	Remove Existing Catch Basins					
	Remove Existing 18" Storm					
	Remove Existing Concrete Sidewalk					
	Remove Existing Concrete Curb					
	Sawcut Pavement					
	Remove Existing Storm Sewer					
	Stockpile Salvaged Asphalt/Gravel					
02	Erosion Control				\$12,190	
	Silt Fence/Mulch Berm					
	Inlet Filter					
	Stone Construction Entrances					
	Rock Check Dam					
	Concrete Washout					
	Seed/Mulch/Fertilizer					
	SWPPP Inspection				\$2,000	
	SWPPP Maintenance				\$7,500	
	SWPPP Removal				\$3,200	
03	Sanitary Sewer				\$109,558	
	Extend 6" Sanitary Laterals					
	Reset Sanitary Manhole					
04	Storm Sewer				\$246,276	Street and Site Storm Water
	8" Storm Sewer					Detention Vault modifications - see below.
	12" Storm Pipe					
	18" Storm Pipe					
	24" Storm Pipe					
	CB 3					
	CB 3A					
	CB 3AM					
	CB 2-2B					
	CB 2-3					
	Storm Manhole					

Item	Description of Work	Qty	Unit	Unit Cost	Total Cost Estimate	
	Reset Storm Manhole					
	4" Perf. Underdrain					
	304 GBF					
	Bedding					
	RIP RAP					
05	Ductbank				\$251,475	
	Joint Ductbank Type 2D					
	4" Conduit					
	Gas Main Line (Duke)					
	Conduits & Laterals					
	Concrete Encasement					
06	Water				\$290,073	
	8" Waterline					
	8" Valve & Box					
	6" Fire Hydrant, Complete					
	Water Meter Vaults					
	Branch Services				\$140,000	Also need to obtain final GCWW notes
	Permits & Inspections					
	Existing Main Tie-In					
07	Earthwork - Block 3					Delay till Stage 2, Sequence 2
	Excavation					
	Soldier Piles & Lagging					
	Export					
	Fine Grade Building Pads					
	Temp Fill to Provide Laydown					
07A	Earthwork - ROW & Pads				\$194,526	Currently export, City RAB needs 6K Cys
	Excavation					
	Embankment					
	Export					
	Fine Grade Pavement					
	Topsoil Respread				\$20,000	
	Seed & Straw Disturbed Areas				\$12,000	
08	Retaining Wall				\$0	block 3
	Mobilization					
	Layout/Survey					
	Lag Wall - Design-Build					
	Excavator time					
	Backfill					
	Engineering, Permitting & Inspections					
09	Asphalt & Curbs & Sidewalks				\$177,865	
	Asphalt Paving - Temporary				\$30,322	1' overpave
	304 Aggregate Base					
	301 Bituminous Aggregate Base (7")					
	448 Asphalt Surface Course Type 1 (2")					
	Concrete Apron					
	ODOT Type 6 Curb					
	Curb Ramp					
	Concrete Walk				\$100,000	hold out for block 3 side from sub bid
	Striping/Pavement Markings					
	Thermoplastic Striping				\$15,000	Changes from plans forthcoming
	Signage					
	Block 3 Temp Gravel Lot				\$10,000	Create temp laydown on block 3
	Upgraded Walks on Quarter Blvd.				\$0	Move to Next Sequence(s)
10	Storm Water Detention Vault			Allowance	\$55,000	Existing detention modifications
	Mobilization					Concept from MSP
	Layout/Survey					
	Detention Vault					
	Detention Vault - Excavation					
	Detention Vault - Backfill					
	4" Perimeter Drain					
	8" Overflow Pipe					
	Access Risers & Extensions					
	Waterstop & Waterproofing					

Item	Description of Work	Qty	Unit	Unit Cost	Total Cost Estimate	
	Temporary Roads & Access					
	Inspections & Testing					
	Total Subcontracted Work				\$1,866,129	
11	Allowances					Potential - Need Geotech Report
	Additional Undercutting			Allowance	\$40,000	some preliminary results from A&W
	Export of Unsuitable Materials			Allowance	\$18,000	May need for debris not able to salvage
	Lime Mixing			Allowance	\$30,000	May need for fall work
	Rock Cut - Mass Excavation				\$0	
	Rock Cut - Trenches				\$0	
	Building Spoils				\$0	
	Topsoil Import				\$0	
	Special Inspections			Allowance	\$50,000	A&W
	Dewatering				\$0	
	Third Party Costs				\$0	
	Additional Seed/Straw				\$0	
	Miscellaneous				\$0	
	Duke Energy Gas Main			Allowance	\$20,000	Dig only - Duke may perform
	Duke Energy - Aid to construction				\$0	
	Subtotal				\$158,000	\$ -
05	Subtotals					
	Land				\$0	
	Soft Costs				\$89,850	
	Management				\$80,680	
	Temporary Facilities				\$30,750	
	Subcontracted Work				\$1,866,129	
	Allowances				\$158,000	
	Total				\$2,225,409	
06	Project Costs					
1	Project Contingency	8%			\$178,033	
2	Project Overhead & Fee	3.5	PCT		\$84,120	
3	Builders Risk Insurance	0.50%	PCT		\$12,438	
4	Warranty	0.00%	PCT		\$0	By Subcontractors/GC
	CONTRACT SUM				\$2,500,000	
07	Stage II, Sequence II					
1	Soft Costs, GC's, Temp Facilities				\$349,785	
2	Subcontracted Work (excluding below)				\$1,450,000	
3	Block 3 Lag wall, Export				\$3,400,000	
4	Contingency				\$415,983	
5	Fee & Insurance				\$196,992	
	Subtotal				\$5,812,760	
08	Stage II, Sequence III					
1	Gingerbread + Wayfinding Signage				\$2,500,000	Activity Alley - Quarter Blvd
2	Other				\$125,000	
3	GC's, Temp Facilities, Management				\$175,000	
4	Contingency				\$224,000	
5	Fee + Insurance				\$140,840	
	Subtotal				\$3,164,840	
	GRAND TOTAL				\$11,477,600	Stage 2 Complete

*Need to review overall timing of subsequent phases and what the pricing market may impact conceptual estimates above.

Third Amendment Exhibit 5
Use Allocations

Block 3 – Anticipated Uses

- 1) 2-story Parking Garage
- 2) Indoor/Outdoor Entertainment Facility with Restaurant
- 3) Grocery/Retail
- 4) 40,000-80,000 SF Mixed Use Building / Hotel
- 5) Public Space “Activity Alley”

Block 4 – Anticipated Uses

- 1) Combination of Surface Parking Lots & Basement Parking Garages
- 2) 239 Multi-Family Residential Units

