

ORDINANCE NO. 1 , 2020

**AN ORDINANCE AMENDING ORDINANCE NO. 13, 2019 AUTHORIZING A
DEVELOPMENT AGREEMENT FOR THE DEVELOPMENT OF
THE MONTGOMERY QUARTER PROJECT**

WHEREAS, Council did enact Ordinance No. 13, 2019 on September 18, 2019, authorizing a Development Agreement with Gateway Partners Montgomery, LLC for the development of the Montgomery Quarter Project; and

WHEREAS, attached to such Ordinance was a proposed Development Agreement outlining the terms and conditions for the development, financing and construction of both public and private improvements within the Montgomery Quarter Project; and

WHEREAS, during continued dialogue with the Developer, the City and the Developer agreed that the goals for economic development and the goals for construction and management of the Public Parking Facilities within Stage 1 are better achieved by allowing the Port of Greater Cincinnati Development Authority to contract with the Developer and the City for the construction and ownership of the Public Parking Facilities; and

WHEREAS, to properly approve this amended structure for the Development Agreement, the Administration has recommended, and Council agrees, that Ordinance No. 13, 2019 should be amended with the updated Development Agreement attached hereto.

NOW THEREFORE, BE IT ORDAINED 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 Development Agreement, substantially in the form and under the terms and conditions of the Development Agreement attached hereto, as negotiated with Gateway Partners Montgomery, LLC, to both update the financial model for construction of the public improvements, and to join with the Developer and the Port of Greater Cincinnati Development Authority to assure the success of the project. Further, the City Manager is authorized to execute such additional documentation as may be necessary to complete the Development Agreement as modified to implement Council's intent to support the development of the Montgomery Quarter Project.

SECTION 2. This Ordinance shall take effect the earliest opportunity as allowable by law.

PASSED: January 8, 2020

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

SECTION 1. The City Manager is hereby authorized to enter into the attached Development Agreement, substantially in the form and under the terms and conditions of the Development Agreement attached hereto, as negotiated with Gateway Partners Montgomery, LLC, to both update the financial model for construction of the public improvements, and to join with the Developer and the Port of Greater Cincinnati Development Authority to assure the success of the project. Further, the City Manager is authorized to execute such additional documentation as may be necessary to complete the Development Agreement as modified to implement Council's intent to support the development of the Montgomery Quarter Project.

SECTION 2. This Ordinance shall take effect the earliest opportunity as allowable by law.

PASSED: January 8, 2020

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

Craig Margolis
Craig Margolis, Vice Mayor

APPROVED AS TO FORM:
Terrence M. Donnellon
Terrence M. Donnellon, Law Director

*Corrected signature

DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is made and entered into as of the _____ day of _____, 2020 ("Effective Date") by and between the CITY OF MONTGOMERY, OHIO ("City"), an Ohio municipal corporation, the MONTGOMERY COMMUNITY IMPROVEMENT CORPORATION ("CIC"), an Ohio not-for-profit corporation established by the City of Montgomery, Ohio for purposes of economic development and community revitalization, and GATEWAY PARTNERS MONTGOMERY, LLC, ("Developer"), an Ohio limited liability company (collectively, the City, CIC and Developer are hereinafter referred to collectively from time to time as the "Parties" and individually as a "Party").

RECITALS

WHEREAS, the City and the CIC have cooperated to develop a strategy for the comprehensive redevelopment of an area within the City known as The Montgomery Quarter ("Quarter" or "Quarter Project") encompassing approximately twenty one (21±) acres of real estate at the south gateway of the City as depicted upon Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, after extensive planning, study and analysis, the City and the CIC have determined that the successful development of the Quarter is essential to the long term economic health and competitiveness of the City, and implementation of the strategic plan to develop the site should be among the City's highest priorities; and

WHEREAS, to support the development of the site, the City has planned a significant modification to the interchange of Ronald Reagan Cross County Highway and Montgomery Road and has acquired acreage within the Quarter from Hamilton County, Ohio to support this interchange modification and to expand the area under the City's and CIC's control to support a well-developed and economically sound new development area within the community with mixed diversified uses; and

WHEREAS, the City has received grant approval and development approval for this interchange modification with the Ohio-Kentucky-Indiana Regional Council of Governments, the Ohio Department of Transportation, and Hamilton County Transportation Improvement District to both improve traffic flow and to encourage successful diverse economic growth in the Quarter and the Montgomery Road corridor; and

WHEREAS, Developer has presented to the City its two stage General Development Plan to develop a mixed use development project including residential units (both rental and owner occupied), commercial and retail spaces, a hotel, public and private parking improvements and open community space to be integrated within the City's public improvements, which the City believes will meet its plan for the strategic development of the Quarter and the southern gateway to the City; and

WHEREAS, the City in cooperation with the Developer intends to undertake further substantial public improvement projects within the Quarter to provide services and facilities to serve residents within the City, the business and personal residents within the Quarter, and to support existing businesses in the neighboring Montgomery Heritage District; and

WHEREAS, the City, CIC and Developer believe it is important for the success of the Quarter that they enter into this Agreement to outline the terms and conditions for the development of the Quarter and the respective responsibilities of all parties to this Agreement; and

WHEREAS, Council of the City of Montgomery has passed Ordinance No. 13, 2019 on September 18, 2019, a copy of which is attached hereto as **Exhibit B**, determining that the development of the proposed project by the Developer within the Quarter as described herein will confer substantial benefits upon the City including jobs, increased economic value and incentives to encourage significant development in the surrounding area, which Resolution authorizes the City Manager to execute this Agreement for and on behalf of the City, and to take or cause to be taken all necessary and proper actions to effectuate the intent of this Agreement; and

WHEREAS, the CIC has passed a Resolution by its Board of Trustees at its meeting on September 18, 2019, a copy of which is attached hereto as **Exhibit C**, also determining that the development of the proposed project within the Quarter as described herein will confer substantial benefits upon the City including jobs, increased economic value and incentives to encourage significant development in the surrounding area, which Resolution authorizes the Executive Director of the CIC to execute this Agreement for and on behalf of the CIC, and to take or cause to be taken on all necessary and proper actions to effectuate the intent of this Agreement; and

WHEREAS, Developer has passed a Member Resolution, a copy of which is attached hereto as **Exhibit D**, authorizing the execution of this Agreement and committing the Developer as outlined herein to the successful development of the Quarter Project.

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

1. **Definitions.**

1.1 In addition to the words and terms defined elsewhere in this Agreement, or by reference to another document, the words and terms set forth herein have the meaning set forth in this Section 1 unless the context or use clearly indicates another meaning or intent. As used herein:

(A) “*Agreement*” means this Development Agreement by and between the City, the CIC and Developer and dated as of the Effective Date including all Exhibits as the same may be amended from time to time.

(B) “*City Property*” means the real property owned by the City or the CIC as depicted as City Property on **Exhibit A**.

(C) “*Cooperative Agreement*” means the Cooperative Agreement to be entered into by the City, the Port of Greater Cincinnati Development Authority and the Developer as further described herein and in the form as attached hereto as Exhibit L.

(D) “*Developer*” means the Gateway Partners Montgomery, LLC, an Ohio limited liability company, and any successors or assigns thereof permitted under this Agreement.

(E) “*Driver Property*” means the real property Developer has acquired and as is depicted as the Driver Property on Exhibit A.

(F) “*Parcel*” means any separate tract of land or air rights within the Property or the Project existing as a separate tax parcel with the Hamilton County, Ohio Auditor’s records.

(G) “*Parcel Owner*” means individually, the owner of record of the fee interest in all or any portion of any Parcel of the Property within the Quarter development, and collectively all owners of record of the fee interest in any such Parcel in each case other than the City, the CIC or the Developer. It is anticipated that the Parcel Owners will be the transferees of land and/or improvements from the Developer upon completion of site improvements or Private Improvements on the site or the transferee of land prior to completion of Private Improvements as permitted under this Agreement.

(H) “*Port*” means the Port of Greater Cincinnati Development Authority.

(I) “*Private Improvements*” means the office, commercial and residential buildings to be constructed by Developer pursuant to this Agreement, as approximately shown on the Design Plan attached hereto as Exhibit E, subject to modifications as contemplated by the terms of this Agreement and the ancillary site improvements to be constructed concurrently with such Buildings to the extent not included within the scope of the Project Site Public Improvements.

(J) “*Project Site Public Improvements*” means those improvements within the Project to be completed by the City as detailed on Exhibit H attached including, but not limited to site preparation, grading, sanitary and storm sewers, utility construction, street, interchange and round about improvements, streetscape, the public park to be located within the Quarter Project, traffic control devices and all related engineering, planning and design and construction management fees. Project Site Public Improvements, for purposes of this Agreement, means causing the various Parcels to be graded, with utilities to the perimeter of the Parcels, such that each Parcel is ready for immediate construction of the Public Parking Facilities or Private Improvements, as the case may be (“Pad-Ready”).

(K) “*Property*” means, collectively, the Driver Property and the City Property.

(L) “*Public Infrastructure Purchase Agreement*” means the agreement between the Developer and the Port relating to the option to purchase the Public Parking Facilities by the Developer and in substantially the form as attached to the Cooperative Agreement.

(M) “*Public Parking Facilities*” means the public parking facilities to be constructed by the Port and funded by proceeds derived from the issuance of Special Revenue TIF Bonds by the City as described in this Agreement, which shall be constructed and managed pursuant to the terms of the Cooperative Agreement, which facilities are shown on a conceptual basis within the Design Plan attached hereto as **Exhibit K**, which could include both structural parking improvements and surface parking lots.

(N) “*Public Site Improvement Budget*” means the total projected cost of all Project Site Public Improvements within the Quarter Project, including adjacent public right of way improvements, as identified upon **Exhibit F** attached hereto.

(O) “*Quarter*”, “*Quarter Project*” or “*Project*” means the Property, the Private Improvements, as outlined within the General Development Plan presented by the Developer to the City outlined in **Exhibit G** attached encompassing a mix of uses, as the same may from time to time be modified pursuant and subject to the terms and conditions of this Agreement, and the Project Site Public Improvements.

(P) “*Restaurant*” means any establishment selling prepared food and/or beverage products for retail sale, including, without limitation, wine bars, coffee shops, bakeries, brew pubs, micro-breweries, distilleries for on premises or off-premises consumption.

(Q) “*Service Agreement*” means the Service Agreement by and between the Developer and the City, as the same may be amended from time to time pursuant to its terms, establishing covenants running with each Parcel, and providing for the collection of Service Payments and Minimum Service Payments for that parcel, the Developer’s obligations regarding the operation, maintenance and capital repair of improvements within the Project site, and other matters provided therein. The Service Agreement shall be in the form and content as attached hereto as **Exhibit I**.

(R) “*Stage 1*” means the portion of the Property on the Quarter Project designated on the Design Plan as Stage 1.

(S) “*Stage 2*” means the portion of the Property and Quarter Project designated on the Design Plan as Stage 2.

(T) “*Tax Increment Financing*” means the tax increment financing mechanism described in the Service Agreement and Chapter 5709 of the Ohio Revised Code, the proceeds of which shall be utilized to fund the construction of the Public Parking Facilities and the other purposes described therein or as permitted by Ohio law.

(U) “*TIF Bonds*” has the meaning described below in Section 4.3.

2. **General Agreement and Term.** For the reasons set forth in the Recitals hereto, which Recitals are incorporated herein by reference as a statement of the public purposes of this Agreement, the Parties shall cooperate in the manner described herein to facilitate the construction of the Quarter Project in the manner consistent with the objectives of the City and the CIC's strategic plan for the Quarter. The Developer acknowledges that adherence to these development plans is critical to the success of the Quarter Project, and critical to the City achieving the successful realization of its strategic plan for the Quarter. The Developer agrees that the Quarter Project will be constructed consistent with the terms and conditions of this Agreement and the Cooperative Agreement, only with modifications permitted hereunder, thereunder, or approved by the City and the CIC and consistent with the Land Usage Code of the City of Montgomery as it may now exist or hereafter be amended as a part of the Project. Further, the Developer agrees that the Project will be constructed in a manner which is consistent with generally accepted construction industry standards and guidelines applicable to similar projects in the community. If any portion of the Project does not meet accepted construction industry standards or does not meet the requirements of the Land Usage Code, the Developer acknowledges that it will be required to obtain the applicable City approvals of such portions of the Project through the appropriate reviewing public commissions and City Council or reconstruct that portion of the Project that does not meet such requirements. The Parties acknowledge that the current Stage 2 development plans may be impacted by future market conditions, trends and/or other factors, but the final Stage 2 plans would need to be approved by City and CIC and would be subject to the requirements of the Land Usage Code, all as more fully described in this Agreement.

This Agreement shall become effective as of the Effective Date and shall expire with the conclusion of the construction of Private Improvements, which is anticipated to be no later than the fourth quarter 2029. The Parties acknowledge that this Agreement may be terminated earlier than such date as provided herein if the Developer fails to meet the terms of this Agreement, subject to the materiality and notice and cure provisions contained in this Agreement, if the parties shall agree to amend or terminate the Agreement, or pursuant to other provisions herein.

3. **Representations and Warranties of the Parties.**

3.1 **City and CIC Representations and Warranties.** The City and CIC represent and warrant as of the date of delivery of this Agreement that:

(A) The City is a valid municipal corporation and political subdivision of the State of Ohio duly organized and validly existing under the Constitution and laws of the State of Ohio and its Charter.

(B) The CIC is a not-for-profit corporation in good standing with the State of Ohio empowered by Ohio law and its incorporating documents, to own real estate, to sell real estate and to execute agreements, all for the purposes of revitalizing economic development within the City of Montgomery.

(C) Neither the City nor CIC are in violation or in conflict with any provisions of the laws of the State or the United States of America applicable to the City or the CIC which would impair its ability to carry out its obligations contained in this Agreement.

(D) This Agreement has, by Council legislation and/or corporate Resolution of the CIC, been duly authorized, executed and delivered by the City and the CIC, and all steps necessary to be taken by the City or CIC have been taken to constitute this Agreement, and the obligations of the City and CIC contemplated herein are legal, valid and binding obligations of the City and CIC independently, and are enforceable in accordance with the terms outlined herein.

(E) There is no litigation pending nor to the knowledge of the individuals signing this Agreement on behalf of the City and CIC threatened against or by the City or CIC wherein any unfavorable ruling or decision would materially and adversely affect the City or CIC's ability to carry out its obligations under this Agreement.

(F) The City and CIC will do all things within their power that are reasonable and necessary in order to maintain their legal existence and to assure the assumption of its obligations under this Agreement.

3.2 Developer Representations and Warranties. The Developer represents and warrants as of the date of delivery of this Agreement that:

(A) It is a valid and existing limited liability company duly organized and in full force and effect under the laws of the State of Ohio, and has power to do business within the State of Ohio.

(B) It is not in violation of nor in conflict with any provisions of the laws of the State of Ohio or the United States of America applicable to the Developer that would impair its ability to carry out its obligations contained in this Agreement.

(C) It is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated within this Agreement, that execution, delivery and performance of this Agreement do not and will not violate nor conflict with any provision of law applicable to the Developer, and do not and will not conflict with nor result in a default under any agreement or instrument to which the Developer is a party or by which the Developer may be bound. Neither the execution and delivery of this Agreement, nor consummation of any of the transactions herein contemplated will contravene the organizational documents of the Developer nor any laws to which the Developer is subject, nor any judgment, decree, license, order or permit applicable to the Developer, or will conflict with or be inconsistent with or result in any breach of any of the terms of the covenants, conditions or provisions of, or constitute a default under or result in the creation or imposition of a lien upon any of the property or assets of the Developer.

(D) This Agreement has, by proper action, been duly authorized, executed and delivered by the Developer, and all steps necessary to be taken by the Developer have been taken to constitute this Agreement, and the covenants and agreements of the Developer contemplated herein are valid and binding obligations of the Developer enforceable in accordance with their terms.

(E) There is no litigation pending nor to the knowledge of the Developer threatened against or by the Developer wherein any unfavorable ruling or decision would materially and adversely affect the Developer's ability to carry out its obligations under this Agreement.

(F) Developer will comply with all laws and regulations including, without limitation, any zoning laws, permitting laws, or regulations thereunder applicable to its development of the Project site.

(G) Developer is in compliance with the State of Ohio campaign financing laws contained in Ohio Revised Code Chapter 3517.

(H) Developer is not aware of any finding for recovery having been issued against it by the Auditor of the State of Ohio which is unresolved.

4. **City and CIC Responsibilities.** The City and the CIC shall have the following individual and joint responsibilities:

4.1 Properly transfer and vest title to the City Property within the CIC to enable the CIC under its corporate Charter and the laws of the State of Ohio to execute this Agreement and complete any transfer and/or sale of real estate as contemplated within this Agreement and by dates which permit the acquisition of the City Property and development of the Private Improvements by Developer pursuant to deadlines for Developer's acquisition and development as contained herein.

4.2 On or before the Effective Date of this Agreement, enact appropriate TIF legislation to create Tax Increment Financing Districts within the Project Site as allowed by Chapter 5709 of the Revised Code to exempt certain private improvements within the Project Site from real property taxes, and allowing the improved value of such private improvements to generate Payments In Lieu of Taxes to support the issuance of Tax Increment Financing Bonds ("TIF Bonds") as necessary to support construction of the Public Parking Facilities. As a part of such legislation, approve Tax Increment Agreements and Compensation Agreements with the Sycamore Community School District, the Great Oaks Joint Vocational School District, and Hamilton County, Ohio to properly support the issuance of TIF Bonds to fund the Public Parking Facilities.

4.3 Within Sixty (60) days of the approval of the authorizing legislation as set forth in Paragraph 4.2 above, execute a Service Agreement with the Developer to secure the issuance of TIF Bonds, and to execute any and all related documentation or authorizing legislation to enable such TIF Bonds to be issued in the public market place. If the Service Agreement does not encompass the issuance of TIF Bonds and related documents to enable such Bonds to be issued to fund the identified Public Parking Facilities for Stage 2, the Parties agree that a separate Service Agreement and enabling legislation shall be passed and executed no less than One Hundred Twenty (120) days prior to the scheduled commencement of Stage 2 Public Parking Facilities and Private Improvements.

4.4 (A) TIF Bonds shall be issued in one or more issues to enable the City in Stage 1 of the Project to net a construction/public improvement fund in an amount not to exceed Sixteen Million Five Hundred Thousand Dollars (\$16,500,000). From such Stage 1 TIF fund, One Million Dollars (\$1,000,000) will be applied by the City to reimburse the City for design and engineering costs previously paid by the City for the Project or to offset the cost of additional public improvements to be funded by the City as a part of the Project. The remaining Stage 1 TIF funds will be used to pay for the costs of engineering and construction of the Stage 1 Public Parking Facilities pursuant to the terms of the Cooperative Agreement.

(B) TIF Bonds shall be sold in one or more issues to enable the City in Stage 2 of the Project to net a construction/public improvement fund in an amount not to exceed Sixteen Million Dollars (\$16,000,000). It is anticipated that the City will draw One Million Five Hundred Thousand Dollars (\$1,500,000) from this second fund to reimburse the City for design and engineering costs previously paid by the City for the entire Project or to offset the cost of additional public improvements to be funded by the City as part of this Project. The remaining Stage 2 TIF funds will be used to pay for the costs of engineering and construction of the Stage 2 Public Parking Facilities pursuant to the Cooperative Agreement. If by agreement of the Developer Stage 2 of the Project will not support the issuance of Bonds netting Sixteen Million Dollars (\$16,000,000) as outlined above, then such fund shall net Fifteen Million Five Hundred Thousand Dollars (\$15,500,000) to be applied for the same purposes outlined above, and the Developer separately shall pay to the City the sum of Five Hundred Thousand Dollars (\$500,000) as an additional payment for the purchase of Stage 2 land to support public improvements throughout the Project Site.

4.5 Properly contract, consistent with Ohio law, for the construction of the Project Site Public Improvements as identified on Exhibit H, attached hereto and incorporated herein by reference in accordance with the schedule for the same as attached hereto as Exhibit H-1, and cause all such Project Site Public Improvements to be completed to support the Private Improvements on or before August 31, 2020. The Parties will reach agreement on the scope of additional Project Site Public Improvements necessary for Stage 2 once the Parties have reached agreement on the plans and details for Stage 2. City is responsible for payment for the costs of the Project Site Public Improvements from sources other than the TIF Bond proceeds, except for the amounts that may be paid from the TIF Bond proceeds as described above in Section 4.4.

4.6 Continue to diligently pursue Transportation Improvement District funds for engineering of the transportation improvements, OKI funding for the interchange modification to support funding for pedestrian streetscape, Ohio Department of Natural Resources funding to support public gathering spaces within the Quarter, and such other public/private grants as may be available to support development of the Project, provided, however, the failure to obtain such funding shall not diminish or release City or the CIC from their obligations to complete such improvements, which are components of the Project Site Public Improvements.

4.7 Properly apply for and administer all grants as may be necessary to successfully construct the traffic improvements at the intersection of Ronald Reagan Cross County Highway and Montgomery Road, any interior pedestrian streetscape improvements, and any streetscape or public gathering space improvements within the Project site, including without

limitation, the public park to be included as part of the Project Site Public Improvements, provided, however, the failure to obtain such grants shall not diminish or release City or CIC from their obligations to complete such improvements, which are components of the Project Site Public Improvements.

4.8 Complete acquisition of such property or property rights as necessary, whether by fee or easement, to assemble the right-of-way needed for the traffic improvements contemplated at Ronald Reagan Cross County Highway at Montgomery Road as part of the Project Site Public Improvements.

4.9 Within Ninety (90) days of the Effective Date, properly survey to consolidate and ultimately subdivide the Quarter Project Property as necessary to complete the anticipated Project Site Public Improvements, Public Parking Facilities and Private Improvements, and to enable the transfer of the Property in Parcels, some of which may include air right parcels, in order that the Property can be transferred to different Parcel Owners and financed separately.

4.10 Fund a portion of the construction of the Public Parking Facilities by the Port within the Project site as identified upon Exhibit K from the proceeds of the TIF Bonds to be issued as identified in Paragraph 4.4 above and in accordance with the terms and conditions of the Cooperative Agreement.

4.11 Construct the interchange traffic improvement at the terminus of the Ronald Reagan Highway and Montgomery Road consistent with the plans attached as Exhibit H-1 to assure access to the Project Site.

4.12 Within thirty (30) days after the earlier to occur of (i) the satisfaction or waiver of the "Developer Contingencies" (as hereinafter defined) or (ii) the "Contingency Deadline" (as hereinafter defined), but subject to the terms and conditions contained in this Agreement, the CIC shall transfer to Developer fee simple title to those parcels of City Property within Stage 1 as identified herein for the development of the Stage 1 Private Improvements and convey to the Port the portions of the Property upon which the Stage 1 Public Parking Facilities will be located (the "Stage 1 Parking Facility Property"), reserving to the City all air rights above the completed Stage 1 Public Parking facilities. Such transfers (the "Stage 1 Transfers") shall be by Limited Warranty Deed, subject only to: real estate taxes and assessments not yet due and payable; easements of record as of the date of this Agreement or as otherwise agreed upon by the parties prior to the Contingency Deadline; and the other items to be created in accordance with the terms hereof (collectively, all such items hereinafter being referred to as the "Permitted Exceptions"). On or before the later of the date thirty (30) days after City and Developer have reached agreement on the final Stage 2 plans for the Stage 2 Private Improvements, and all of the Developer Contingencies for Stage 2 are satisfied, or one hundred eighty (180) days after substantial completion of the construction of the Private Improvements in Stage 1, the CIC shall transfer to Developer fee simple title to those parcels of the City Property as identified herein for the development of the Stage 2 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") reserving to the City all air rights above the completed Stage 2 Public Parking Facilities. Such transfer shall be made upon and subject to the same above described terms and

conditions applicable to the transfer of the Stage 1 Transfers. The following terms and conditions shall apply to such transfer of the City Property and the closing of each such transfer (the "Closing"):

(A) The purchase price to be paid by Developer and accepted by the CIC for the Stage 1 and Stage 2 City Property, to be used for the Private Improvements as provided herein, a portion of which will include the air rights parcels reserved to the City under Paragraph 4.12, shall be the amounts described below in Section 5.3. The Stage 1 and Stage 2 Parking Facility Property shall be conveyed by the City or CIC to the Port for no additional monetary consideration.

(B) The CIC shall deliver to Developer or to the Port, as the case may be, exclusive possession of the Property upon completion of the Closing for the Stage in question, which shall take place at the offices of the Developer's attorneys on an exact date and time to be selected by Developer with at least five (5) business days advance written notice to City and CIC.

(C) In addition to the deeds, the parties agree to execute and deliver at each Closing such assignments, affidavits, certified ordinances, certificates and other instruments as are reasonably necessary to complete the Closing, and which are typical for commercial real estate transfers and as otherwise required by this Agreement.

(D) Real estate taxes, assessments or other expenses will be prorated at each Closing as is customary for commercial real estate transfers.

4.13 Immediately upon the execution of this Agreement, permit Developer and its consultants and contractors access and entry upon the City Property in order to perform tests, audits, surveys and inspections of the Property in order for Developer to complete design and engineering for the Quarter Project Private Improvements and provide to Developer true, accurate and complete copies of all surveys, environmental audits, soils tests, title policies or commitments and any and all other due diligence materials or products in the possession or control of the City or the CIC, and all agreements and instruments executed by the City in connection with the Quarter Project, to the extent such agreements or instruments will be binding upon Developer or affect the Quarter Project.

4.14 Continue to meet with Developer on a regular basis to receive and complete plans for the components of the Quarter Project and allow Developer to have input on the plans for the construction and programming of the Project Site Public Improvements and to complete the documentation if necessary for the TIF and completion of the Quarter Project as contemplated by this Agreement.

4.15 Prior to the Contingency Deadline, City, CIC and the Developer shall reach agreement on the form and content of such easements, covenants and restrictions as the Parties determine to be necessary, if any, in order to effectuate their respective naming, development and other obligations described in this Agreement, including deed restrictions and/or other protections for Developer regarding the use and maintenance of the public park to be located within the Quarter Project, provided, however, the City shall be responsible to maintain the public park. All such

instruments will be executed and recorded at Closing or if mutually agreeable to the parties, after Closing if necessary.

4.16 Prior to the Contingency Deadline, the City and CIC shall cause any easements or other title encumbrances affecting the City Property and determined by Developer to be problematic for the Quarter Project development and construction to be vacated or terminated.

4.17 The City and CIC shall create and implement a maintenance and programming plan for the public park to be located in the Quarter Project whereby the City maintains responsibility for maintenance of such park and to ensure utilization of the park for frequent public events. The City and CIC acknowledge it is critical to the success of the Project that the park be utilized on a consistent basis for public events in order to create a sense of vibrancy and activity for public uses. The City shall share planning for public events within the park with Developer and welcome Developer's input on such planning. Provided, however, it is acknowledged that the planning and use of the park are solely to be determined by the City through its Administration, Council Committees and Commissions.

4.18 Unless the Parties may otherwise agree in awarding contracts for the construction of Project Site Public Improvements prior to the Contingency Deadline, the City or CIC will contract with Developer or its designated affiliate to oversee and coordinate construction activities between the Public Parking Facilities, the Project Site Public Improvements and the Private Improvements. The cost of such coordination services for the Project Site Public Improvements shall be separate from and in addition to costs and fees for the construction of the Public Parking Facilities or the Private Improvements and shall not exceed Fifty Thousand Dollars (\$50,000) for each Stage.

4.19 Prior to the Contingency Deadline, the City shall execute and deliver the Cooperative Agreement.

4.20 For the avoidance of doubt, the parties expressly acknowledge that neither the City nor the CIC will expend any public funds for the construction of the Private Improvements.

5. **Developer's Responsibilities.**

5.1 **Development Responsibilities.** Developer shall be responsible to fund the costs of Public Parking Facilities and all related engineering, planning and design and construction management fees for the Stage 1 Public Parking Facilities as shown conceptually on **Exhibit K** attached hereto, in excess of the net construction/public improvement fund as identified in Paragraph 4.4(A), which is anticipated to be Fifteen Million Five Hundred Thousand Dollars (\$15,500,000) after paying out One Million Dollars (\$1,000,000) to the City from the TIF Bond proceeds to enable the City to recover a portion of its design, engineering and construction costs for the City's Project Site Public Improvements. Developer shall similarly be responsible for such costs for the Stage 2 Public Parking Facilities in excess of the TIF Bond proceeds available for the Stage 2 Public Parking Facilities, once the Parties determine the final appropriate amount and scope of the Stage 2 Public Parking Facilities. The amount of TIF Bond proceeds available for the

Stage 2 Public Parking Facilities will be determined and agreed upon once the scope of the needed Public Parking Facilities for Stage 2 is finally determined.

5.2 Service Agreement. Developer in cooperation with the City shall execute one or more Service Agreements establishing covenants running with the land and providing for collection of Service Payments in lieu of taxes and/or Minimum Service Payments as defined therein to support tax incentive compensation to the Sycamore Community School District, the Great Oaks Joint Vocational School District, Hamilton County, Ohio, and debt service for the Bonds to be issued to support the Public Parking Facilities and to provide revenue to fund public improvements to support the Project site.

5.3 Real Estate Purchase.

(A) Stage 1 Purchase. Prior to the Contingency Deadline for Stage 1, Developer, City and the CIC shall reach agreement on the real estate ownership form (air-rights and/or fee simple ownership of land) for the various Parcels of Stage 1 for the Private Improvements and the boundaries for the same. Developer shall purchase from the CIC the Stage 1 Parcels sufficient to construct the Private Improvements outlined in Exhibit E attached. The Purchase Price for the Parcels in Stage 1 shall be Two Million One Hundred Thousand Dollars (\$2,100,000) payable at Closing, which Closing shall occur no later than Thirty (30) days after the Contingency Deadline, or Ninety (90) days after the City/CIC complete the development of the Stage 1 Parcels as Pad Ready sites, whichever is later. Pad Ready shall include a site completed to an acceptable final grade with utilities connected from the public way to the edge of the Parcel and other conditions as required to be able to commence construction of the Private Improvements for such Parcels and the Project Site Public Improvements shall be completed, all in conformance with Exhibit H.

(B) Stage 2 Purchase. Developer, City and the CIC shall reach agreement on the form of ownership and boundaries for the various Parcels for the Stage 2 for the Private Improvements City Property as the plans for Stage 2 are completed and Developer shall purchase the Stage 2 Parcels as necessary to construct the Private Improvements for Stage 2. The Purchase Price for Parcels in Stage 2 shall be Two Million Seven Hundred Thousand Dollars (\$2,700,000) (or \$2,200,000, if the Stage 2 TIF Bond proceeds are available to reimburse the City for allowable Public Improvement and/or land costs pursuant to Section 4.4) payable at Closing, which Closing shall occur within One Hundred Eighty (180) days after substantial completion of the Stage 1 Private Improvements and satisfaction of the Developer Contingencies for Stage 2, but no later than Seven (7) years from the Effective Date of this Agreement. To the extent the Stage 2 Property upon which Private Improvements are to be located has not been purchased and sold pursuant to the terms of this Agreement on the latter of Seven (7) years from the Effective Date or One (1) year after the Stage 1 Private Improvements have been substantially completed, defined as the date the Stage 1 Private Improvements outlined in Paragraph 5.4 have been completed to a stage allowing for a Certificate of Occupancy to be issued for such Private Improvements, the Stage 2 Purchase rights shall terminate. In such event, Developer shall pay to the CIC the sum of Five Hundred Thousand Dollars (\$500,000) as a Release/Default payment. Provided, however, Developer shall have the right to extend such seven (7) year period for Stage 2 (including the "Stage 2 Contingency Deadline" (as hereinafter defined)) for three (3) additional one (1) year

periods each, by notifying the City and CIC of such extension and paying to the City an extension fee of One Hundred Thousand Dollars (\$100,000) for each such extension at least sixty (60) days prior to the then expiration of Stage 2 Contingency Deadline and closing deadline. Any such extension fees paid by Developer shall be non-refundable and non-applicable to the purchase price for the Stage 2 City Property. 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 Plan by the City and its Commission prior to the projected commencement dates identified in this Agreement.

5.4 Private Improvement Development.

(A) Upon transfer of the Stage 1 Parcels to Developer, Developer shall commence and complete development and construction of the anticipated Stage 1 Private Improvements prior to the dates set forth in accordance with the following schedule, subject to delays incurred due to permitting or governmental approvals not being issued on a timely basis. Developer shall use good-faith efforts to prepare Final Development Plans and to submit such Plans to the Community Development Director in a timely manner to permit review and approval of such Plan by the City and its Commissions prior to the Commencement Dates.

Private Improvement	Commencement Date	Completion Date
(a) Residential Apartments R1-L, R1-K, R1-J Up to one hundred twenty-eight (128) For Rent Apartments with no three bedroom For Rent Apartments within the development of the Parcel. Such for Rent Apartments shall be <i>Luxury for Rent Apartments</i> defined as for rent residential units having a market rental rate in the top ten percent (10%) of the residential rental rates within the Greater Cincinnati market.	90 days after completion of Stage 1 Project Site Public Improvements and the Stage 1 Public Parking Facilities	365 days after construction commences
(b) Commercial Building 2B-1 3 Story Office Building – minimum 40,000 sq. ft.	90 days after completion of Stage 1 Project Site Public Improvements and the Stage 1 Public Parking Facilities	365 days after construction commences
(c) Commercial Building 2A-1 3 Story Office Building – minimum 40,000 sq. ft.	120 days after completion of Commercial Building 2B-1 and 80% occupancy of	365 days after construction commences

	Commercial Building 2A-1	
(d) Commercial Building 1-H minimum 4,000 sq. ft. for each of two (2) floors commercial	90 days after completion of Stage 1 Project Site Public Improvements and the Stage 1 Public Parking Facilities	365 days after construction commences
(e) 2-C1 minimum 3,000 sq. ft. Restaurant/Commercial	90 days after completion of Stage 1 Project Site Public Improvements and the Stage 1 Public Parking Facilities	365 days after construction commences
(f) 2-C2 minimum 3,000 sq. ft. Restaurant/Commercial	120 days after completion of 2-C1 and 80% occupancy of 2-C1	365 days after construction commences
(g) 1F minimum 4,000 sq. ft. for each of two (2) floors Restaurant/Commercial	90 days after completion of Stage 1 Project Site Public Improvements and the Stage 1 Public Parking Facilities	365 days after construction commences
(h) 1G minimum of 2,500 sq. ft. Restaurant/Commercial	90 days after completion of Stage 1 Project Site Public Improvements and Stage 1 Public Parking Facilities and at least 50% pre-leasing of 1G.	365 days after construction commences

(i) 2-D minimum of 50 Room Hotel	180 days after completion of Stage 1 Project Site Public Improvements and Stage 1 Public Parking Facilities	480days after construction commences
(j) 2F-1 approximately Twenty-Four (24) Residential Units shall be constructed, sold and owned as individual residential units by the occupying resident which shall be one or two bedroom units. Provided, however, consistent with the terms of a separate Tax Incentive Agreement with the Sycamore Community School District, a combined total of Four (4) three bedroom units are permitted within 2-F1 in Stage 1 and 2F-2 in Stage 2 if pre-approved by the City Manager and the Superintendent of Schools.	365 days after completion of Stage 1 Project Site Public Improvements and pre-sales of at least 50%	365 days after construction commences on the Stage 1 Public Parking Facilities

The parties acknowledge that the uses for Stage 1 may vary dependent upon then existing market conditions, and that Developer may from time to time modify the specific number of square feet dedicated to specific uses so long as the Stage 1 Project contains at least 10,000 square feet of Restaurant space and at least 110,000 square feet of office and other commercial uses (inclusive of the above identified Hotel use).

(B) Upon transfer of the Stage 2 Parcels to Developer, Developer shall commence and complete development and construction of the anticipated Private Improvements prior to the dates set forth in a schedule to be agreed upon by the Parties as and when they reach agreement on the scope and types of Private Improvements. The Parties acknowledge that the uses for Stage 2 may vary dependent upon then existing market conditions, but that the current general intent is that the Stage 2 Project will, to the extent practical under the existing circumstances, conform to those shown on the Design Plan attached hereto as **Exhibit E**, and consist of approximately 150,000 square feet of office space, approximately 30,000 square feet of retail/restaurant space and the second 24 units of the condominium development.

5.5 Coordination of Project Site Public Improvements. Unless Developer or an entity substantially controlled by Developer is awarded a separate contract for the construction of the Project Site Public Improvements, Developer shall coordinate the construction of the Project Site Public Improvements for the City in an owner's representative role, including coordinating the work of the City's contractors, administering the construction contracts, attending meetings with the contractors and establishing and enforcing schedules for the various components of the Project Site Public Improvements, in accordance with the agreement to be entered into pursuant to Section 4.18 of this Agreement.

5.6 Driver Parcel. Developer shall cause the Driver Property to be conveyed to the City or CIC when and as necessary for the City to consolidate the Property with the City Property. Upon acquiring and consolidating the Driver Parcel with the City Property, the City shall complete such portion of the Project site Public Improvements upon the consolidated property to be Pad-Ready as required under this Agreement. Thereafter, the City shall subdivide the consolidated Property into the Parcels to complete the configuration required for the Quarter Project. The City or CIC shall re-convey the Driver Property to Developer if the closing for Stage I does not occur. Developer shall, at Developer's cost, remove the building and related building improvements and all demolition debris from the Driver Parcel in a timely manner to allow the City to prepare the site. Developer also shall be responsible to remove and remediate from the Driver Parcel any hazardous materials.

5.7 Re-purchase Rights of City or CIC. The City or CIC shall have re-purchase rights with respect to Parcels acquired by the Developer from the City or CIC if Developer does not commence construction of the Private Improvements slated for any such Parcel by the above provisions of this Section 5 by, for Stage 1, the above described deadlines, and for Stage 2, by the deadlines agreed to by the City and Developer as contemplated by this Agreement, all pursuant and subject to the terms and conditions of this Section 5.7. The re-purchase right shall not apply to the Stage 1 or Stage 2 Parking Facility Property transferred to the Port.

(A) The City or CIC may exercise the right to re-purchase any Parcel if the Developer does not commence construction of the Private Improvements for the Parcel in question at any time after the deadline for commencement of such Private Improvements, but before such construction commences and after providing the "Default Notice" and cure opportunity as described below in Section 8.5, by providing written notice to Developer. If the City or CIC exercise any such right of re-purchase, then within ninety (90) days after such exercise, the Parties shall close the sale and purchase of the Parcel in question pursuant to the terms and provisions contained herein.

(B) At the closing for the re-purchase of any Parcel, the City or CIC, as the case may be, shall pay to the Developer the re-purchase price for the Parcel in question as delineated on Exhibit L-1 attached hereto and made a part hereof. The Developer shall convey or cause to be conveyed to the City or CIC, as directed, the Developer's right, title and interest in and to the Parcel in question by Limited Warranty deed, subject only to real estate taxes and assessments (including service payments) not yet due and payable, covenants, restrictions and easements of record when the Developer acquired the Parcel, approved by the City or CIC, or created by the Developer while the Developer owned the Parcel so long as such matters do not adversely and materially affect the ability to develop and construct the Private Improvements planned for the Parcel in question. All of the other terms and conditions for the re-purchase of any Parcel shall be as is typical and customary for sales and purchases of commercial real estate in the Greater Cincinnati, Ohio area.

(C) The right to re-purchase in favor of the City and the CIC shall expire as to each Parcel upon the earlier of (i) the initiation of construction of the Private Improvements Planned for the Parcel in question or (ii) the closing by Developer of a construction loan specifically intended to fund the construction of the Private Improvements planned for the Parcel

in question. Upon request by Developer or Developer's construction lender for the Private Improvements to be constructed on any Parcel, the City and CIC shall provide a written confirmation of the termination of the right to re-purchase the Parcel in question.

(D) The dates for initiating and completing construction of the Private Improvements and the dates that the City or CIC may elect to re-purchase any Parcel shall be subject to the provisions described in Section 10.18, and shall be extended as necessary due to the events described therein.

5.8 Execution of Development Documents. Consistent with the deadlines for development outlined herein, subject to Developer, City, CIC, Port, and any other necessary parties, reaching agreement on the form and substance of the same, Developer shall timely execute and deliver to the City and/or CIC the Service Agreement, the Cooperative Agreement, the Public Parking Facilities Management Agreement and the Public Infrastructure Purchase Agreement.

6. Operation and Maintenance of Parking Facilities. The Developer will enter into separate Public Parking Facilities Management Agreements with the Port for each of the Public Parking Facilities identified on Exhibit K, attached hereto and incorporated herein by reference, in substantially the same form of the Public Parking Facilities Management Agreement, attached as an Exhibit to the Cooperative Agreement, or in such other form as the City, the Developer, and the Port may in their discretion agree to be consistent with the Internal Revenue Code and regulations once it is determined if the TIF Bonds to be issued by the City are taxable or tax exempt.

7. Contingencies.

7.1 Stage 1 Contingencies. Developer shall have no obligation to acquire the Stage 1 City Property hereunder or to develop and construct the Quarter Project unless and until all of the following contingencies (collectively, the "Developer 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 the Stage 1 Private Improvements.

(B) All necessary building and construction permits and approvals required for the Stage 1 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 periods for the same shall have expired without any such appeal having been initiated, or Developer shall have determined to its sole satisfaction that such permits and approvals can and will be obtained on a timely basis.

(C) The City shall have entered into construction contracts for the completion of the Project Site Public Improvements 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 will be completed in conformance with the overall 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 Stage 1 Private Improvements and shall have caused the Parcels in Stage 1 to be Pad-Ready as described above in this Agreement.

(E) Developer shall have reviewed and approved the TIF and all binding documents and components of the same affecting the Property and 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.

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

(H) Developer shall be satisfied, in its sole discretion, with the results of Developer's due diligence efforts with respect to the Property and the Quarter Project, including, without limitation, title, survey, environmental, and geotechnical studies.

(I) Developer shall be satisfied with the final configuration of the Parcels and with any and all easements, covenants and restrictions determined to be necessary, if any, as described above in Section 4.

(J) The City and Port shall have executed and delivered or unconditionally committed to execute and deliver, in the case of the City, the Service Agreement, and in the case of the City and the Port, the Public Parking Facilities Management Agreement, and the Cooperative Agreement and in the case of the Port, the Public Infrastructure Purchase Agreement, as to Stage 1.

Unless all of the Developer's Contingencies set forth above in subsections (A) through (J) are satisfied or waived in writing by the Developer on or before the date one hundred eighty (180) days after the Effective Date (the "Contingency Deadline"), then the Developer shall have the right to terminate this Agreement by written notice to the City. In addition, if prior to such date the Developer determines that any or all of the Developer's Contingencies will not be satisfied by the above described deadline, the Developer may elect to terminate this Agreement by written notice to the City prior to such date. 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 Contingency Deadline, Developer shall be deemed to have satisfied or waived the Developer Contingencies. 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, except for any obligations specifically stated herein to survive such termination.

7.2 Stage 2 Contingencies. Developer shall have no obligation to acquire the Stage 2 Property or to develop and construct Stage 2 of the Quarter Project unless and until all of the following Developer 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 Stage 2 and the Stage 2 Private Improvements and the schedule for completion of such improvements.

(B) All necessary building and construction permits and approvals required for the Stage 2 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 Stage 2 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 Stage 2 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 Stage 2 Private Improvements and shall have caused the Parcels in Stage 2 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 Stage 2.

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

Unless all of the Developer's Contingencies set forth above in subsections (A) through (G) are satisfied or waived in writing by the Developer on or before the date Seven (7) years after the Effective Date (the "Stage 2 Contingency Deadline"), then the Developer shall have the right to terminate this Agreement as to Stage 2 by written notice to the City. 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 will not be satisfied by the above described deadline, the Developer may elect to terminate this

Agreement as to Stage 2 by written notice to the City prior to such date. 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. 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 Stage 2, except for any obligations specifically stated herein to survive such termination. Termination of this Agreement as to Stage 2 will not affect the parties' rights and responsibilities with respect to Stage 1.

8. **Events of Default and Remedies.**

8.1 **Developer Default.** Any one or more of the following shall constitute a "Developer Default":

(A) Default by the Developer in the due and punctual performance or observance of any material obligation of the Developer under this Agreement as to which the City has given a Default Notice to the Developer and which default the Developer does not cure within the period of time specified for cure in such Default Notice;

(B) Any representation or warranty made by the Developer in this Agreement which is false or misleading in any material respect as of the time made;

(C) Any report, certificate or other document furnished by the Developer to the City or the CIC pursuant to this Agreement which is false or misleading in any material respect as of the time furnished and has been relied upon by the City or the CIC to its material detriment prior to correction by the Developer;

(D) The filing by the Developer of a petition for the appointment of a receiver or Trustee;

(E) The making by the Developer of a general assignment for the benefit of creditors;

(F) An application for relief pursuant to any Chapter of Title 11 of the U.S. Code, as the same may be amended from time to time, with the Developer as a debtor;

(G) The filing by the Developer of any insolvency proceeding with respect to the Developer or any proceeding with respect to the Developer for compromise, adjustment or other relief under the laws of any country or state relating to the relief of debtors.

8.2 **Remedies for Developer Default.** At any time as of which a Developer Default exists, the City or CIC, at its option, may, but shall not be obligated to, exercise any one or more of the following remedies:

(A) By written notice to the Developer, terminate this Agreement, which termination shall forfeit any future rights to the development of the Quarter Project site which may have accrued but have not yet vested property rights to the Developer in any portion of the Quarter Project site. Such termination shall not affect the obligations of the Developer that have then accrued and are required to be performed.

(B) Enforce or avail themselves of any other remedies available to the City or the CIC, at law or in equity including specific performance, provided however, in no event shall the Developer be liable for indirect or consequential damages.

(C) Notwithstanding the foregoing or any other provision of this Agreement to the contrary, the City's and CIC's sole and exclusive remedy for Developer's failure to commence construction of any Private Improvement by the required deadline for the same shall be to exercise the re-purchase rights described above in Section 5.7 of this Agreement.

8.3 City Default. Any one or more of the following shall constitute a "City Default":

(A) Default by the City or CIC in the due and punctual performance or observance of any material obligation of the City and CIC under this Agreement as to which the Developer has given a Default Notice to the City or the CIC and which default the City or the CIC does not cure within the period of time specified for cure in such Default Notice.

(B) Any representation or warranty made by the City and the CIC in this Agreement is false or misleading in any material respect as of the time made.

8.4 Remedies for City Default. Upon the occurrence of any City Default, Developer may enforce or avail itself of any remedies available to Developer at law or in equity, including specific performance, provided however, in no event shall the City or CIC be liable for indirect or consequential damages.

8.5 Default Notices. At any time when there exists a default by the Developer, the City or the CIC, in the due and punctual payment, performance or observance of any of their respective obligations under this Agreement, the non-defaulting party may give the defaulting party a written notice indicated as being a "Default Notice" under this section, identifying the default and specifying a period of time for cure of the default. Any notice given in accordance with this section is defined as a Default Notice. The period of time for cure to be set forth in any Default Notice may be not shorter than such period of time as is reasonable in light of the nature of the default and the time reasonably required to cure the default, and, in any event, shall be at least thirty (30) days after the Default Notice is delivered.

8.6 Enforcement. As the remedy at law for the breach of any of the terms of this Agreement may be inadequate, the Developer, the City and/or CIC has a right of temporary and permanent injunction, specific performance and other equitable relief that may be granted in any proceeding brought to enforce any provision hereof, without the necessity of proof of actual damage or inadequacy of any legal remedy.

8.7 Cost of Enforcement. If an action is brought by the Developer or the City for the enforcement of any provision of this Agreement, and the other party is found to be in default or breach of this Agreement, the defaulting party will pay to the non-defaulting party all costs and other expenses that may become payable as a result thereof, including without limitation, reasonable attorney's fees.

9. Notices. Except as otherwise specifically set forth in this Agreement, all notices, demands, requests, consents or approvals given, required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given if actually received or if hand-delivered or sent by recognized, overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the other party at the address set forth in this Agreement or any addendum to or counterpart of this Agreement, or to such other address as the recipient shall have previously notified the sender of in writing, and shall be deemed received upon actual receipt, unless sent by certified mail, in which event such notice shall be deemed to have been received when the return receipt is signed or refused. For purposes of this Agreement, notices shall be addressed to:

As if to City:

The City Manager
City of Montgomery, Ohio
10101 Montgomery Road
Montgomery, Ohio 45242
(513) 891-2424
City Manager: Brian K. Riblet

As if to CIC

Montgomery Community Improvement
Corporation
Executive Director
10101 Montgomery Road
Montgomery, Ohio 45242
(513) 891-2424
Executive Director: Brian K. Riblet

With a copy for both the
City and the CIC to:

City of Montgomery Director of Law
Terrence M. Donnellon, Esquire
Donnellon, Donnellon & Miller
9079 Montgomery Road
Cincinnati, Ohio 45242
(513) 891-7087

As if to the Developer:

Gateway Partners Montgomery, LLC
c/o Michael Brandy
45 Fairfield Avenue, Suite 200
Bellevue, KY 41073

and

Gateway Partners Montgomery, LLC
c/o Mr. Daniel A. Neyer
2135 Dana Avenue, Suite 200
Cincinnati, Ohio 45207

With a copy to:

Griffin Fletcher & Herndon LLP
c/o Richard D. Herndon, Esq.
3500 Red Bank Road
Cincinnati, Ohio 45227
(513) 763-3517

10. **Miscellaneous.**

10.1 **Authorized Officers.** Each signatory to this Agreement certifies that he has the authority to enter into this Agreement on behalf of his respective organization.

10.2 **Assignment.** Neither party has the right to assign this Agreement without the consent of the other. Notwithstanding the foregoing, this Agreement shall inure to the benefit of and be binding on the parties hereto, their successors, and assigns. Notwithstanding the foregoing to the contrary, Developer shall have the right to assign the rights and benefits under the Agreement in part to the various Parcel Owners to own and develop various components of the Quarter Project. Such assignee shall agree to be bound by the terms and conditions of this Agreement concerning the development and timing of the development of all Private Improvements to be constructed upon such assigned parcel/site. No assignment shall release Developer, in whole or in part, from any of the obligations set forth herein.

10.3 **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Nothing in this Agreement, expressed or implied, is intended to confer on any other person other than the parties hereto, or their respective successors and assigns, any rights, remedies, obligations under or by reason of this Agreement.

10.4 **Captions.** The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

10.5 **Entire Agreement.** This Agreement constitutes the entire agreement among the parties hereto with respect to the subject matter hereof and it supersedes all prior discussions, understandings or agreements between the Parties. The parties hereto acknowledge that they have not relied on any verbal or written statements, representations, or information pertaining to the transaction contemplated by this Agreement and hereby agree that neither shall be liable nor bound by any such statements, representations, or information not contained herein. This Agreement shall not be modified or amended except by an instrument in writing signed by all Parties.

10.6 Executed Counterparts. This Agreement may be executed in any number of facsimile and/or email/electronic transmitted counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

10.7 Governing Law. This Agreement and the legal relations between the parties hereto shall be governed by and construed in accordance with the laws of the State of Ohio.

10.8 No Waiver. Failure by any party to insist upon or enforce any of its rights hereto shall not constitute a waiver or modification thereof.

10.9 Recitals. The parties acknowledge and agree that the facts and circumstances as described in the Recitals hereto are in integral part of this Agreement and as such are incorporated herein by reference.

10.10 Severability. If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

10.11 Survival of Representations and Warranties. Each of the parties hereto covenants and agrees that its representations and warranties contained in this Agreement and in any document delivered or to be delivered pursuant to this Agreement shall survive the termination of this Agreement, unless specifically stated otherwise herein.

10.12 Time of the Essence. Time is of the essence of this Agreement.

10.13 Construction. If any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability shall not affect any other provision hereof. Where the context requires, the masculine, feminine and neuter genders may be substituted for one another, as may be the singular for the plural number, and vice versa. Inasmuch as this Agreement is the result of negotiations between sophisticated parties of equal bargaining power, no inference in favor of or against either party will be drawn from the fact that any portion of this Agreement has been drafted by or on behalf of such party. Each party hereby acknowledges that it has been given an opportunity to consult with an attorney prior to executing this Agreement.

10.14 Successors and Assigns. This Agreement is binding upon and inures to the benefit of the parties and their respective successors and assigns, provided that this does not authorize any assignment or transfer not permitted by this Agreement.

10.15 Exhibits. This Agreement and the exhibits attached hereto contain the entire agreement of the parties with respect to the subject matter of this Agreement, and supersede all prior negotiations, agreements and understandings with respect thereto, written or oral.

10.16 Diligent Performance. With respect to any duty or obligation imposed on a party by this Agreement, unless a time limit is specified for the performance of such duty or obligation, it is the obligation of that party to commence and perform the same in a diligent and workmanlike manner and to complete the performance of that obligation as soon as reasonably practicable after commencement of performance.

10.17 No Partnership. This Agreement does not and may not be construed to create a partnership or joint venture between or among any of the parties.

10.18 Force Majeure. If any party to this Agreement is delayed, hindered in, or prevented from the performance of any act required to be performed by that party by reason of acts of God, strikes, lock-outs, unavailability of materials, failure of power, riots, insurrections, adverse weather conditions preventing the performance of work as certified by the architect for the component of the Project in question, war, acts of terrorism, or other reason beyond that party's reasonable control and for which, in each of the aforesaid circumstances, the party is diligently and in good faith and with reasonable dispatch seeking to abate and remove the circumstances causing the delay or hindrance or prevention from performance of the act required to be performed by that party, then the time for performance of the act shall be extended for a period equivalent to the period of the delay. Lack of adequate funds or financial inability to perform or financial or economic losses or hardship resulting from performance shall not be deemed to be a cause beyond the reasonable control of such party.

10.19 Approvals of the City. Except such approval as required by the Land Usage Code or Building Code requiring Commission approval and/or Code Official approval, the City Manager for the City shall have the right to make decisions for the City under this Agreement and to administer this Agreement on a day to day basis on behalf of the City. Any provision of this Agreement requiring the approval of the City, the satisfaction or evidence of satisfaction from the City, certificate or certification by the City, or the opinion of the City, shall be interpreted as requiring such action by the Manager of the City granting, authorizing or expressing such approval, satisfaction, certification or opinion, as the case may be, and Developer shall have the right to rely upon any of the same executed, delivered or provided by the Manager of the City. If, for any reason, the current City Manager is no longer employed as the Manager of the City, the City shall immediately provide a competent administrative professional to serve in such role for the Developer

10.20. Estoppel Certificate. Each party hereto agrees that, within fifteen (15) days after receipt of written request from the other party, it will issue to such requesting party, or its prospective mortgagee or successors, an estoppel certificate stating, to the best of such party's knowledge, as of such date:

(A) whether it knows of any default under this Agreement by the requesting party, and if there are any known defaults, specifying the nature thereof;

(B) whether this Agreement has been assigned, modified or amended in any way by it and if so, then stating the nature thereof;

- (C) whether this Agreement is in full force and effect; and
- (D) any other reasonable matters relating to the transactions described in this Agreement.

10.21. Termination of Agreement. Upon completion of the Quarter Project and the performance by both parties hereto of all other obligations of the City and the Developer hereunder, or in the event of termination of this Agreement as a matter of right pursuant to any of its terms, the parties agree to execute, in recordable form if requested by either party, a statement confirming termination of this Agreement.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the City, CIC and the Developer have caused this Development 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 _____, 2020, 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: _____

(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 _____, 2020, 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: _____

Its: _____

Date: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

On this _____ day of _____, 2020, personally appeared before me, a Notary Public in and for the State of Ohio, Gateway Partners Montgomery, LLC, by _____, its _____, known to be the _____ 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: _____

APPROVED AS TO FORM:

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

EXHIBITS

- A – Depiction of Project Property/Stages
- B – City Resolution
- C – CIC Resolution
- D – Developer Resolution
- E – Design Plan for Private Improvements
- F – Project Site Public Improvement Budget
- G – Outline of Uses and Plans
- H – Project Site Public Improvements
- H-1 – Public Project Site Public Improvements Schedule
- I – Service Agreement Form
- J – Public Parking Facilities Management Agreement
- K – Public Parking Facilities Concept Plan
- L – Cooperative Agreement