



Meeting of Board of Trustees
Begins at the conclusion of the City Council Work Session that begins at 7:00 p.m.
June 22, 2016

City of Montgomery
10101 Montgomery Road
Montgomery, Ohio 45242
Council Chambers

A G E N D A

- 1. Call to Order**
- 2. Minutes – May 4, 2016**
- 3. New Business**
 - a. Board Resolution-Gateway Redevelopment Area
- 4. Old Business**
- 5. Other Business**
- 6. Adjournment**

TO: Craig Margolis, President
Members of the Board of Trustees

FROM: Terrence M. Donnellon

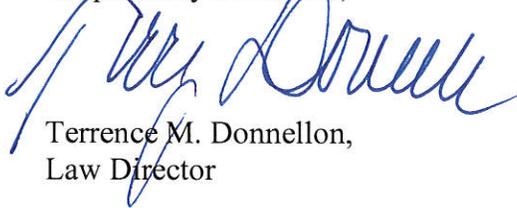
RE: Gateway Redevelopment Area / Driver Property

DATE: June 16, 2016

Traditions Development Group, LLC, a part of the Gateway partnership, has contracted to purchase property from Bob Driver on Main Street abutting the Gateway Redevelopment Area. Traditions has contracted with Dr. Driver to close by June 30, but they have requested a contract with the Montgomery Community Improvement Corporation to provide downside protection to them. The downside protection is that if we are not able to finalize a Preferred Developer Agreement with Traditions they would like to sell the property to the City at their purchase price, which is \$505,000.00. Conversely the City would like the right to purchase the property in our discretion from the developer if the Development Agreement should fall through.

The Resolution to be approved by the Board of Trustees authorizes the City Manager to enter into this Agreement setting forth the various contingencies under which the Community Improvement Corporation would acquire the property. If we are required to exercise our rights, the contract may be assigned to the City to fund the purchase. We are continuing to work closely with the development group to finalize the terms of a Preferred Developer Agreement, but this will give everyone the security needed to bring the Driver property into the development. A simple motion and a voice vote are needed to approve the Resolution and authorize the Agreement.

Respectfully submitted,



Terrence M. Donnellon,
Law Director

TMD/lld
Enclosure

cc: Connie Gaylor, Administrative Coordinator
Department Heads
File

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

A Special Meeting of the Board of Trustees of the Montgomery Community Improvement Corporation was called by President Craig Margolis to be held Wednesday, June 22, 2016 at the close of the Council Meeting of the City of Montgomery. Consistent with Article III, Section 3 of the Code of Regulations, advance notice was provided to Members of the Board of Trustees. A quorum of the Board being present, the following action was taken:

BE IT RESOLVED: That the attached contract between the Montgomery Community Improvement Corporation and Traditions Development, LLC is hereby approved and the Executive Director of the Montgomery Community Improvement Corporation is hereby authorized to execute the contract for the acquisition of certain property bordering the Gateway Redevelopment Area to be developed by the Montgomery Community Improvement Corporation. Further, the Executive Director is authorized to execute any and all additional documentation as is necessary to complete this transaction.

This Resolution is approved this _____ day of June, 2016.

MONTGOMERY COMMUNITY
IMPROVEMENT CORPORATION

By: _____

Craig D. Margolis

Its: President

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement"), entered into this _____ day of _____, 2016, is made and entered into by and between **TRADITIONS DEVELOPMENT GROUP, LLC**, an Ohio limited liability company ("Seller") and **THE MONTGOMERY COMMUNITY IMPROVEMENT CORPORATION**, an Ohio not-for-profit corporation designated as development agent for the City of Montgomery, Ohio ("CIC").

WHEREAS, Seller has contracted by separate Agreement to purchase certain real property in the City of Montgomery identified as 9346 Main St., Cincinnati, Ohio 45242, Auditor's Parcel No. **603-0004-0057** which is more particularly described on Exhibit A, attached hereto and incorporated herein by reference ("Property"); and

WHEREAS, GATEWAY PARTNERS LLC, an Ohio limited liability company ("Gateway"), in which Seller has an interest, owns or intends to purchase from the City of Montgomery and/or the CIC a parcel of Property adjacent to the Property (the "City Property"), and if certain conditions are met, to develop that parcel and the Property together ("Project") according to a development agreement to be entered into between CIC and Gateway ("Development Agreement"); and

WHEREAS, if a Development Agreement is not agreed upon or if the Development Agreement terminates, the CIC desires to purchase the Property, and Seller agrees to sell the Property to the CIC, upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. Sale by Seller and Purchase by CIC. Seller and CIC hereby agree that if a Development Agreement is not agreed upon or, all conditions of the Development Agreement are not timely satisfied or waived by Gateway in accordance with the Development Agreement, such that the Development Agreement terminates, or if for any other reason the Project does not proceed as specified in the Development Agreement or Seller does not purchase the City Property, then Seller shall sell to CIC, and CIC shall purchase the Property from Seller, as provided herein at a price of Five Hundred Five Thousand Dollars (\$505,000.00) (the "Purchase Price").

2. CIC's Obligation to Purchase. CIC shall be obligated to purchase the Property as agreed herein, and no conveyance or purported conveyance of the Property by Seller to any party other than CIC shall be valid without CIC's consent. Provided however that if CIC has not paid the Purchase Price as required by Paragraph 4 below, Seller shall be permitted to convey the Property to a Third Party.

3. Conditions for Sale and Purchase. In the event that a Development Agreement is not agreed upon or, all conditions of the Development Agreement are not timely satisfied or waived by Gateway in accordance with the Development Agreement, such that the Development Agreement terminates, or if for any other reason the Project does not proceed as specified in the

Development Agreement and Seller does not purchase the City Property, then either party shall deliver notice to the other party that they are exercising their respective right to either purchase or sell the Property as obligated herein. Such notice shall include a statement setting forth the specific requirements of the Development Agreement that were not satisfied such that the Project did not proceed, signed by the notifying party.

4. Conveyance. CIC shall pay the Purchase Price and Seller shall convey the Property to CIC by General Warranty Deed within 30 days after the date of receipt of the party's notice, as set forth in Paragraph 3 above, at a date, time, and location of closing mutually agreeable to Seller and CIC. Seller may convey the Property subject to all conditions, restrictions, encumbrances, defects, and other title matters to which the Property was subject when Seller took title ("Title Exceptions"). Seller may, but shall not be required to, remove any such Title Exceptions upon conveyance to the CIC.

5. Representations and Warranties. Seller hereby makes the following representations and warranties to CIC, all of which shall be true as of the Effective Date and at Closing, and all of which shall survive this Agreement for one (1) year after the date of the Closing without the necessity of any further action or documentation, but which Seller shall, at CIC's request, ratify, confirm and update at the Closing:

(a) Seller has or will acquire good and marketable fee simple title in and to the Property in a separate purchase transaction;

(b) Seller has no knowledge of any pending or threatened litigation or condemnation concerning all or any portion of the Property;

(c) Seller warrants and represents to CIC that the Property is not and as of the Closing will not be, in violation of any federal, state, or local law, ordinance, or regulation relating to industrial hygiene or to the environmental conditions on, under, or about the Property, including, but not limited to, soil and groundwater conditions. Seller represents and warrants that there are no Hazardous Materials (as defined below) present on the Property. Seller further warrants and represents that during the time in which Seller owned the Property, neither Seller nor any third party has used, generated, manufactured, produced, stored, or disposed of on, under, or about the Property or transported to or from the Property any Hazardous Materials. There is no proceeding or inquiry by any governmental authority with respect to the presence of Hazardous Materials on the Property or the migration of Hazardous Materials from or to the Property. There are no storage tanks, with the exception of an oil storage tank, used for heating the office building located on the Lot disclosed by Seller, located in or under the Property. The term "Hazardous Material" means, but is not limited to, substance, material, or waste which is toxic, ignitable, reactive, or corrosive; which is or can be injurious to the health, safety, or welfare of the public or environment, and which is or becomes regulated by any local or state governmental authority or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "Hazardous substance," "pollutant or contaminated," or "hazardous material," by any local or state law, (ii) oil and petroleum products and their byproducts, (iii) asbestos or asbestos-containing materials, (iv) designated as a "hazardous substance" pursuant to the Federal Water Pollution Control Act, (v) defined as a "hazardous waste" pursuant to the Federal Resource

Conservation and Recovery Act, or (vi) defined as a “hazardous substance” pursuant to the Comprehensive Environmental Response, Compensation and Liability Act. Seller has disclosed to CIC in writing all information in Seller’s possession or control which relates to the environmental conditions.

(d) Seller has no knowledge of any violation or alleged violation of any applicable laws, ordinances, statutes, rules or regulations with respect to the Property;

(e) There are no parties in possession of any portion of the Property (other than Seller), the Property is not subject to any lease, license or other possessory interest, and no party has any option, right of first offer, or right of first refusal to purchase the Property.

6. Notice. All notices required or desired to be given shall be in writing, delivered by one of the following methods: (i) certified mail, return receipt requested, (ii) nationally recognized overnight delivery service, or (iii) courier with written receipt of delivery, and such notice shall be deemed given upon receipt by the addressee. The notice shall be addressed to Seller or CIC at the address set forth below, or to such other address for which prior notice has been given as required for notices herein. If delivery of the notice is refused by the addressee, or if the notice is returned as undeliverable or unclaimed, delivery will be deemed given upon the date delivery was first attempted.

As if to CIC:

The Montgomery Community
Improvement Corporation
c/o Wayne S. Davis
Executive Director
10101 Montgomery Road
Montgomery, Ohio 45242
(513) 891-2424

With a copy to:

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

As if to SELLER:

Traditions Development Group, LLC
4000 Executive Park Drive, Suite 250
Cincinnati, Ohio 45241
Attn: Thomas H. Humes, President
(513) 563-4510

With a copy to:

Daniel M. Bennie, Esquire
Barron Peck Bennie & Schlemmer
3074 Madison Road
Cincinnati, Ohio 45209
(513) 533-2005

7. Successors and Assigns. Both Seller and CIC shall have the right, in their sole and absolute discretion, to assign this Agreement and all rights hereunder. This Agreement shall inure to the benefit of the parties, and shall be binding upon the parties and their successors, and assigns.

8. Recording. This Agreement may be recorded in the records of Hamilton County, Ohio, by either party at its own expense.

9. Term. If Seller has not acquired title to the Property on or before December 31, 2016, this Agreement shall terminate without further notice or action by either Party, unless terminated earlier as provided herein or extended in writing by mutual agreement of the parties.

[SIGNATURE PAGES TO FOLLOW]

CIC:

**THE MONTGOMERY COMMUNITY
IMPROVEMENT CORPORATION,**

an Ohio not-for-profit corporation

By: _____

Name: _____

Title: _____

STATE OF OHIO)
) ss
COUNTY OF HAMILTON)

The foregoing instrument was subscribed, sworn to, and acknowledged before me, a Notary Public, this ____ day of _____, 2016 by _____, the _____ of THE MONTGOMERY COMMUNITY IMPROVEMENT CORPORATION, an Ohio not-for-profit corporation designated as development agent for the City of Montgomery, Ohio.

Notary Public

This instrument prepared in its unexecuted form by:
Barron Peck Bennie & Schlemmer Co., LPA
3074 Madison Rd., Cincinnati, OH 45209
513 721-1350

AGREEMENT OF MORTGAGEE

For valuable consideration paid, _____ Bank ("Mortgagee"), being the owner and holder of a certain _____ Mortgage in the original principal amount of \$ _____ and dated _____, 201__, recorded at O.R. Vol. _____, Page _____, in the records of Hamilton County, Ohio, encumbering the real property more particularly described in Exhibit A ("Mortgage"), hereby agrees as follows: (i) the Mortgage is hereby subordinated to the Option Purchase Agreement ("Agreement"); and (ii) Mortgagee hereby consents to the Agreement without in anyway affecting the priority or validity of the lien of the Mortgage encumbrance with respect to such Agreement, and (iii) without in any other manner releasing or relinquishing the lien of the Mortgage encumbrance upon the Property or its priority.

IN WITNESS WHEREOF, the undersigned has caused this Agreement of Mortgagee to be executed as set forth below.

Mortgagee:

By: _____
Printed Name: _____
Title: _____

STATE OF OHIO)
) ss
COUNTY OF HAMILTON)

The foregoing instrument was subscribed, sworn to, and acknowledged before me, a Notary Public, this ____ day of _____, 2016 by _____, the _____ of _____, a _____, on behalf of the _____.

Notary Public

EXHIBIT A
DEED TO PROPERTY