

**RESOLUTION NO. 24 , 2015**

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

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

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

**WHEREAS**, as a result of various economic factors over the past several years, including the re-evaluation of real estate within the District, the Service Payments in lieu of taxes have proved to be insufficient to meet the debt service for such public improvements; and

**WHEREAS**, the City Manager has negotiated an Amendment to the Development/Service Agreement to allow Montgomery Gateway Partners, LLC as the Developer and the Owner of Auditor's Parcel 603-0004-0192 within the District to pay such deficiencies over the life of the tax exemption, which the City administration believes will be beneficial to the Owner and tenants of such property; and

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

**WHEREAS**, the intent of this Resolution is to authorize the City Manager to enter into an Amendment to the Service Agreement, a copy of which proposed Amendment is attached hereto.

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

**SECTION 1.** The City Manager is hereby authorized to enter into the attached Amendment to Development/Service Agreement between the City and Gateway Partners, LLC to govern current deficiencies and any future deficiencies in the Service Payment in lieu of taxes for Montgomery Gateway District.

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

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

PASSED: August 5, 2015

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

Todd A. Steinbrink  
Todd A. Steinbrink, Mayor

APPROVED AS TO FORM:

Terrence M. Donnellon  
Terrence M. Donnellon, Law Director

## **AMENDMENT TO DEVELOPMENT/SERVICE AGREEMENT**

This Amendment To Development/Service Agreement (“Amendment”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between the City of Montgomery, Ohio, an Ohio municipal corporation (“City”) and Montgomery Gateway Partners, LLC, an Ohio limited liability corporation (“Developer”).

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

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

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

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

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

WHEREAS, under the terms of Paragraph 1(D) of such Agreement, if the Developer did default in the payment of the Minimum Statutory Payment, there would be a ten percent (10%) per annum penalty added to such Minimum Statutory Payment until appropriately paid; and

WHEREAS, although the Private Improvements have been completed, the assessed value for such improvements on the Site have proved to be insufficient to meet the minimum debt service obligation and a deficiency has accrued through tax year 2013 in the total amount of Two Hundred Sixteen Thousand Forty Six Dollars and Six Cents (\$216,046.06) which should have been paid as Minimum Service Payments since 2006; and

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

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

1. It is hereby agreed that the deficiency accumulated in the Minimum Statutory Payments through tax year 2013 is Two Hundred Sixteen Thousand Forty Six Dollars and Six Cents (\$216,046.06) ("Deficiency"). This includes all collections and payments through the collection year 2014. The parties hereby agree that in addition to any other payment to which Developer may be obligated under the terms of the Agreement, this Deficiency will be paid by the Developer and Owner of Auditor's Parcel 603-0004-0192, more particularly described upon Exhibit 1 attached hereto, in twenty-three (23) equal installments of Nine Thousand Three Hundred Ninety Three and Thirty-One Cents (\$9,393.31) due on or before February 1 and August 1 of each calendar year commencing August 1, 2015 and continuing during the remaining term of the Agreement. These semi-annual installments due as a separate obligation under the terms of this Amendment are hereinafter referred to as "Deficiency Payments".

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

3. The City agrees that if during the term of the Agreement there accrues any excess in the Statutory Service Payments over the debt service in any calendar year, that the City will apply such excess to the outstanding Deficiency and ratably reduce the balance of any Deficiency Payments which may be due during the remaining term. During the remaining term of the Agreement, after all deficiencies have been satisfied, any excess Statutory Service Payments will be applied in the priority established under Paragraph 4(C) of the Agreement.

4. It is understood and agreed by all parties that no additional deficiency shall accrue under the terms of the Agreement. This Amendment shall not in any other way modify Developer's obligations now and through the balance of the term of the Agreement to pay Statutory Service Payments and/or Minimum Service Payments in the future. Provided, however, the parties further agree to amend Paragraph 4(B) of the Agreement in part to provide that if there accrues any additional deficiencies triggering a Minimum Service Payment, commencing with tax year 2014/collection year 2015, then the Minimum Service Payment shall be due and payable for such tax year on or before August 1 of the collection year. Deferring such Minimum Service Payment to the second installment date in a collection year will allow the parties to calculate any Minimum Service Payment in a timely manner and it will allow the Developer/Owner to accrue sufficient funds to pay such Minimum Service Payment in a timely manner.

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

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

[SIGNATURE PAGES TO FOLLOW]

CITY:

CITY OF MONTGOMERY

By: \_\_\_\_\_  
Wayne S. Davis

Its: City Manager

STATE OF OHIO                    )  
  ) ss:  
COUNTY OF HAMILTON    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, personally appeared before me, a Notary Public in and for the State of Ohio, Hamilton County Ohio, Wayne S. Davis, City Manager of the City of Montgomery Ohio, who acknowledged the signing and sealing of the said Amendment to Development/Service Agreement for himself and on behalf of said City, to be his voluntary act and deed, and the voluntary act and deed of said City.

\_\_\_\_\_  
Notary Public

DEVELOPER:

MONTGOMERY GATEWAY  
PARTNERS, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF OHIO                    )  
  ) ss:  
COUNTY OF HAMILTON        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, personally appeared before me, a Notary Public in and for the State of Ohio, Hamilton County Ohio, \_\_\_\_\_, \_\_\_\_\_ of Montgomery Gateway Partners, LLC, who acknowledged the signing and sealing of the said Amendment to Development/Service Agreement for \_\_\_\_\_ self and on behalf of said company, to be \_\_\_\_\_ voluntary act and deed, and the voluntary act and deed of said company.

\_\_\_\_\_  
Notary Public

APPROVED AS TO FORM:

\_\_\_\_\_  
Terrence M. Donnellon, Law Director