

DELIVERED MAY 19 2022

CITY OF MIDDLEBURG HEIGHTS, OHIO

Ordinance No. 2022-46

Introduced By: Mayor Matthew Castelli

AN ORDINANCE

AUTHORIZING THE CITY OF MIDDLEBURG HEIGHTS, OHIO TO ACCEPT TITLE TO CERTAIN REAL PROPERTY LOCATED WITHIN THE CITY AND IMMEDIATELY TRANSFER TITLE BACK TO THE CURRENT OWNER FOR THE PURPOSE OF IMPLEMENTING TAX INCREMENT FINANCING PURSUANT TO OHIO REVISED CODE SECTION 5709.41; AND DECLARING AN EMERGENCY

the Council of the City of Middleburg Hts., Ohio, hereby certify that Ord. 2022-46 adopted by the Council of the City of Middleburg Hts., on 5/24/22 was posted for a period of fifteen days, beginning 5/25/22 and remained so posted for fifteen days at the two posting places as designated by Charter. Mary Castelli Clerk

WHEREAS, the City of Middleburg Heights, Ohio (the "City") is desirous of encouraging economic development within the City to create jobs for its residents and to increase the City's tax base; and

WHEREAS, in furtherance of those efforts, the City has implemented a Comprehensive Plan, and has undertaken efforts during 2021 and 2022 to update the Comprehensive Plan through meetings with community stakeholders and City residents (collectively, the "Development Plans"); and

WHEREAS, as evidenced by the Development Plans, the City is "engaged in urban redevelopment" as provided in Ohio Revised Code ("R.C.") Section 5709.41; and

WHEREAS, pursuant to R.C. Sections 5709.41, 5709.42 and 5709.43, the City is authorized to enact an ordinance (the "TIF Ordinance") to declare "Improvement" (as defined in R.C. Section 5709.41) to be a public purpose and exempt from real property taxation so long as (1) the City held fee title to such real property prior to the adoption of the TIF Ordinance, and (2) such real property is leased or conveyed to any person either before or after the adoption of the TIF Ordinance; and

WHEREAS, Pearl Partners LLC (the "Developer") desires to construct or cause to be constructed a commercial development (the "Project") on certain parcels of real property described and depicted on Exhibit A attached hereto (the "Property") within the City; and

WHEREAS, the City desires to support the project through the passage of the TIF Ordinance pursuant to R.C. Section 5709.41; and

WHEREAS, in order to pass the TIF Ordinance, the City is required to accept fee title to the Property and transfer fee title to the Property back to the current owner; and

WHEREAS, an emergency exists in the usual daily operations of the City, that emergency being related to the need to effectuate the property transfer as quickly as possible to allow the City to pass the TIF Ordinance, which will result in the creation and retention of jobs, all of which improve the health, safety, and welfare of the residents of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIDDLEBURG HEIGHTS, COUNTY OF CUYAHOGA, OHIO, AS FOLLOWS:

Section 1: The Mayor or any other officer of the City is hereby authorized to (a) enter into a Transfer and Indemnification Agreement, (b) accept title to the Property, as described and depicted on Exhibit A attached hereto, via quitclaim deed, (c) to immediately transfer title to the Property back to the current owner(s) via quitclaim deed, and (d) to take any and all other actions required to effectuate the transfer of the property, including, but not limited to, recording the deeds with the Cuyahoga County Recorder.

Section 2: That the property is not needed for a municipal purpose.

Section 3: That waiving competitive bidding in connection with the City's conveyance of the Property to the current owner is justified and reasonable because the property conveyances are necessary for the Project and to fulfill the City's urban redevelopment plan with respect to the same.

Section 4: It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Chapter 107 of the Middleburg Heights Code and Section 121.22 of the Ohio Revised Code.

Section 5: This Ordinance is hereby declared to be an emergency measure for the reasons stated in the preamble hereto. Wherefore, provided this Ordinance receives the affirmative vote of at least two-thirds (2/3) of the members of Council it shall take effect and be in force immediately upon its passage and approval by the Mayor.

Passed: 5/24/22

David Bortolotto
President of Council

Attest: M. Meola
Clerk of Council

Approved On: 5-24-22

Presented to Mayor: 5/24/22

Matthew Castelli
Mayor

	Yea	Nay
Bortolotto	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ali	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sage	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Meany	<input checked="" type="checkbox"/>	<input type="checkbox"/>
McGregor	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ference	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Grech	<input checked="" type="checkbox"/>	<input type="checkbox"/>

CERTIFICATE
I, Mary Ann Meola Clerk of Council of the City of Middleburg Heights, Ohio, do hereby certify that the foregoing is a true and accurate copy of Ord. 2022-46 passed on the 24th day of May 2022 by said Council.
Mary Ann Meola
Clerk of Council

EXHIBIT A

PROPERTY

The Property is the real estate:

Parcel 1:

Situated in the City of Middleburg Heights, County of Cuyahoga, State of Ohio, being part of Original Middleburg Township Lot No. 11, Turnpike Tract, and part of a parcel of land now or formerly owned by Pearl Partners, LLC. as recorded in AFN: 201611160607 of Cuyahoga County Records, now being further known as **Parcel 1** in the Map of Lot Split, Consolidation, and Dedication Plat for 6850 - 6860 and 6786 Pearl Road as recorded in AFN: _____ of Cuyahoga County Records, containing **1.1759 acres**, more or less, but subject to all highways, covenants, and easements of legal record as surveyed in March 2022 by Matthew A. Hildebrandt, Registered Professional Land Surveyor No. 8817 on behalf of **McSteen Land Surveyors** under Project No. 21-318.

Parcel 2:

Situated in the City of Middleburg Heights, County of Cuyahoga, State of Ohio, being part of Original Middleburg Township Lot No. 10 and Lot No. 11, Turnpike Tract, and part of a parcel of land now or formerly owned by Pearl Partners, LLC. as recorded in AFN: 201611160607 of Cuyahoga County Records, now being further known as **Parcel 2** in the Map of Lot Split, Consolidation, and Dedication Plat for 6850 - 6860 and 6786 Pearl Road as recorded in AFN: _____ of Cuyahoga County Records, containing **1.1638 acres**, more or less, but subject to all highways, covenants, and easements of legal record as surveyed in March 2022 by Matthew A. Hildebrandt, Registered Professional Land Surveyor No. 8817 on behalf of **McSteen Land Surveyors** under Project No. 21-318.

Parcel 3:

Situated in the City of Middleburg Heights, County of Cuyahoga, State of Ohio, being part of Original Middleburg Township Lot No. 10 and Lot No. 11, Turnpike Tract, and part of a parcel of land now or formerly owned by Pearl Partners, LLC. as recorded in AFN: 201611160607 and AFN: 201611230300 of Cuyahoga County Records, now being further known as **Parcel 3** in the Map of Lot Split, Consolidation, and Dedication Plat for 6850 - 6860 and 6786 Pearl Road as recorded in AFN: _____ of Cuyahoga County Records, containing **4.9973 acres**, more or less, but subject to all highways, covenants, and easements of legal record as surveyed in March 2022 by Matthew A. Hildebrandt, Registered Professional Land Surveyor No. 8817 on behalf of **McSteen Land Surveyors** under Project No. 21-318.

TRANSFER AND INDEMNIFICATION AGREEMENT
(PEARL PLAZA .41 TIF)

This Transfer and Indemnification Agreement ("Agreement") is entered into this 24 day of May, 2022, by and between Pearl Partners LLC, an Ohio limited liability company (the "Indemnitor"), and the City of Middleburg Heights, an Ohio municipal corporation (the "City").

Recitals

WHEREAS, the parties are undertaking the urban redevelopment of the real property described in Exhibit A (the "Project Site"); and

WHEREAS, to support that urban redevelopment, the City agreed to include the Project Site in a tax increment financing ("TIF") area under Ohio Revised Code Section 5709.41; and

WHEREAS, in order to include the Project Site in that TIF area, the City must have acquired fee title to the Project Site while engaged in urban redevelopment, and the parties intend to transfer fee title to the Project Site to the City and then back to the Indemnitor; and

WHEREAS, the parties desire to memorialize their agreement to convey the Project Site and protect the City against any liabilities that may occur as a result of the conveyance to the City and re-conveyance back to the Indemnitor of the Project Site.

Agreement

NOW THEREFORE, in consideration of their mutual covenants set forth herein and their respective commitments for the urban redevelopment of the Project Site, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to the foregoing and as follows:

Section 1. Transfer. The Indemnitor agrees to convey to the City title to the Project Site via quitclaim deed (the "Transfer Deed"). The City hereby agrees to reconvey to the Indemnitor or its designee title to the Project Site via quitclaim deed immediately following recordation of the Transfer Deed in the records of the Cuyahoga County Fiscal Officer.

Section 2. Indemnification. The Indemnitor agrees to indemnify the City and hold harmless and defend the City from and against, and pay for, any and all costs, losses, liabilities, damages and expenses, including reasonable fees and expenses of attorneys, that are not offset by insurance proceeds and that are paid or incurred by the City as a result of or relating to the conveyance of the Project Site to the City by Indemnitor or the re-conveyance of the Project Site by the City to the Indemnitor or its designee, including but not limited to costs, losses, liabilities, damages, and expenses incurred due to claims of any violations of any local, state, or federal environmental rules, ordinances, acts, laws or regulations; provided, however, that the foregoing indemnification and agreement to hold harmless shall not include any costs, losses, liabilities, damages, or expenses paid or incurred by the City to the extent that the same result from the act or

omission of the City, its elected officials, employees, contractors, agents, or others under the City's control. The City must give prompt notice to the Indemnitor of the assertion of any claim or the commencement of any suit, action or proceeding with respect to which indemnity may be sought hereunder, specifying, if known, the facts pertaining thereto and the amount or an estimate of the amount of the liability arising therefrom, provided, however, failure to give such notice does not relieve the Indemnitor of any liability hereunder (except to the extent the Indemnitor has suffered actual prejudice thereby). The Indemnitor has the right to participate in or assume the defense of any such suit, action or proceeding at its own expense, and the City has the right (but not the duty) to participate in the defense thereof, which will be at the Indemnitor's expense unless it has assumed the defense thereof. Whether or not the Indemnitor chooses to defend or prosecute any claim, the Indemnitor and the City will cooperate in the defense or prosecution thereof and will take all such actions as may be reasonably requested in connection therewith.

The Indemnitor also hereby agrees to forever acquit and discharge the City from any and all liabilities, damages, losses, costs, actions, manners of action, causes of action, claims and/or demands of any nature and description, both known and unknown, suspected and unsuspected, foreseen and unforeseen, and whether arising in law or in equity, which result or may result in the future as a result of or relating to the conveyance of the Project Site to the City by the Indemnitor, or the re-conveyance of the Project Site by the City to the Indemnitor or its designee; provided, however, that the foregoing acquittal and discharge shall not include any costs, losses, liabilities, damages and expenses, including reasonable fees and expenses of attorneys, that are not offset by insurance proceeds and that are paid or incurred by Indemnitor, to the extent that the same result from the act or omission of the City, its elected officials, employees, contractors, agents, or others under the City's control.

The Indemnitor must obtain the same release of the City as that contained in Paragraph 2 above from any other developer(s) with whom it partners in connection with the development of the Project Site.

Section 3. Notices. All notices or other correspondence relating to this Agreement must be in writing (including e-mail or facsimile) and must be delivered or sent guaranteed overnight delivery, by facsimile or e-mail (to be followed by personal or overnight guaranteed delivery, of requested) or by postage prepaid registered or certified mail, return receipt requested, and will be deemed to be given for purposes of this Agreement on the date such writing is received by the intended recipient. Unless otherwise specified in a notice sent in accordance with this section, all communications in writing must be given to the parties at the following addresses:

As to the City:
City of Middleburg Heights, Ohio
15700 Bagley Road
Middleburg Heights, Ohio 44130
Attn: Director of Economic Development

With a copy to:
City of Middleburg Heights, Ohio
15700 Bagley Road
Middleburg Heights, Ohio 44130
Attention: Law Director
Phone: (440) 234-8811

As to the Indemnitor:
Pearl Partners LLC
3311 Richmond Road, Suite 200
Beachwood, Ohio 44122
Attention: Marc Glick
Phone: (216) 464-2000

With a copy to:
Singerman Mills Desberg & Kauntz Co. LPA
3333 Richmond Road, Suite 370
Cleveland, Ohio 44122
Attention: Gary S. Desberg
Phone: (216) 292-5807

Section 4. Successors; Assignment; Amendments, Changes and Modifications. This Agreement is binding upon the Indemnitor, the City and their respective successors in interest and the City and its successors in interest. This Agreement may not be assigned by the Indemnitor or the City without the prior written consent of the other. This Agreement may only be amended by written instrument executed by the City and the Indemnitor.

Section 5. Extent of Covenants; No Personal Liability. All obligations of the parties contained in this Agreement are effective and enforceable to the extent authorized and permitted by applicable law. No such obligation will be deemed an obligation of any present or future member, officer, agent, or employee of any of the parties hereto in their individual capacity.

Section 6. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable, that provision is fully severable. This Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never formed a part of this Agreement and the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement.

Section 7. Separate Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered will be an original, but all such counterparts will together constitute one and the same instrument. Electronic signatures (such as documents executed pursuant to a reputable document execution software, e.g. DocuSign) or signatures transmitted or stored by facsimile or electronic means are deemed original signatures and duplicates are deemed original copies of this Agreement.

Section 8. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the matters covered herein and supersedes prior agreements and understandings between the parties on this subject matter.

Section 9. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio.

[Signatures on next page]

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Agreement as of the date first set forth above.

PEARL PARTNERS LLC. an Ohio limited liability company

By: 
Name: Marc A. Glick
Title: Manager

CITY OF MIDDLEBURG HEIGHTS, OHIO. an Ohio municipal corporation

By: 
Matthew J. Castelli, Mayor

Approved as to form:


Law Director

Exhibit A
[See Attached]