

DELIVERED SEP 08 2022

**CITY OF MIDDLEBURG HEIGHTS, OHIO**

Ordinance No. 2022- **76**

Introduced By: Mayor Matthew Castelli

**AN ORDINANCE**

**DECLARING IMPROVEMENT TO REAL PROPERTY WITHIN THE CITY OF MIDDLEBURG HEIGHTS, OHIO TO BE A PUBLIC PURPOSE; EXEMPTING SUCH IMPROVEMENT FROM REAL PROPERTY TAXATION; REQUIRING THE OWNERS OF THE PROPERTY TO MAKE SERVICE PAYMENTS IN LIEU OF REAL PROPERTY TAXES; ESTABLISHING AN URBAN REDEVELOPMENT TAX INCREMENT EQUIVALENT FUND FOR THE DEPOSIT OF SERVICE PAYMENTS; APPROVING A TAX INCREMENT FINANCING AGREEMENT; MAKING RELATED AUTHORIZATIONS PURSUANT TO OHIO REVISED CODE SECTIONS 5709.41, 5709.42, 5709.43 AND 5709.83; AND DECLARING AN EMERGENCY**

WHEREAS, Ohio Revised Code (“R.C.”) Sections 5709.41, 5709.42 and 5709.43 (the “TIF Statutes”) provide that this Council may, under certain circumstances, declare Improvement (as defined below and in the TIF Statutes) to certain parcels of real property located in the City of Middleburg Heights, Ohio (the “City”) to be a public purpose and exempt from real property taxation, provide for the payment service payments in lieu of real property taxes by the owners of such property and establish an urban redevelopment tax increment equivalent fund for the deposit of such service payments in lieu of taxes; 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 Developer has requested that the City enact this Ordinance pursuant to the TIF Statutes to assist the Developer with the development of the Project;

WHEREAS, in order to enact this Ordinance, the TIF Statutes specify that (1) the City must hold fee title to the Property prior to the adoption of this Ordinance, and (2) the Property must be conveyed or leased to any person either before or after the adoption of this Ordinance; and

WHEREAS, as authorized by Ordinance No. 2022-46, passed May 24, 2022, by quitclaim deed dated May 26, 2022, the current owners of the Property have conveyed fee title to the Property to the City, and by quitclaim deed dated May 26, 2022, the City has conveyed fee title to the Property back to the current owners of the Property; and

WHEREAS, the aforementioned deeds have been recorded in the records of the Cuyahoga County Fiscal Officer; and

WHEREAS, 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 R.C. Section 5709.41; and

WHEREAS, in connection with the Project, the Developer desires to construct certain private improvements (the “Developer Improvements”) as defined and described in Exhibit B attached hereto; and

WHEREAS, the City may, but is not required to, construct or cause to be constructed certain City improvements (the “City Improvements”) as described in Exhibit C attached hereto; and

WHEREAS, in furtherance of the development efforts articulated in the Development Plans, the City desires to pass this Ordinance to assist the Developer with the Project and the Developer Improvements; and

WHEREAS, as required by the TIF Statutes and R.C. Section 5709.83, the City has provided all required notices to the Berea City School District and the Polaris Career Center (the “School Districts”), or such notice has been waived; and

WHEREAS, an emergency exists in the usual daily operations of the City, that emergency being related to the need to pass the TIF Ordinance as quickly as possible, 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, CUYAHOGA COUNTY, OHIO, AS FOLLOWS:

Section 1. One hundred percent (100%) of the increase in the assessed value of each parcel within the Property (each a “Parcel”) after the date that the City obtained fee title to the Property (each of which increase in assessed value is an “Improvement” as defined in R.C. Section 5709.41) shall be a public purpose and shall be exempt from real property taxation commencing with the tax year after the Developer Improvements on each Parcel are completed, as evidenced by issuance of an unconditional Certificate of Occupancy by the City, and ending for each Parcel on the earlier of (a) thirty (30) years after such commencement, or (b) the date on which the City can no longer require service payments in lieu of taxes, all in accordance with the requirements of the TIF Statutes.

Section 2. As provided in R.C. Section 5709.42, the owner of any Parcel with an Improvement is required hereby to make annual payments in lieu of taxes to the Cuyahoga County Treasurer (the “County Treasurer”) on or before the final dates for payment of real property taxes. Each such payment (including interest and penalties) shall be charged and collected in the same manner and in the same amount as the real property taxes that would have been charged and payable against the Improvement if it were not exempt from taxation (with the payments in lieu of tax, including any penalties and interest, being the “Service Payments”). The County Treasurer

shall remit all Service Payments to the City for deposit in the Pearl Plaza Urban Redevelopment Tax Increment Equivalent Fund (the "Fund") established in Section 3 hereof, except for amounts paid directly to the School District as provided in Section 4 hereof. This Council hereby authorizes the Mayor or other appropriate officers of the City to provide such information and certifications and execute and deliver, or accept delivery of such instruments as are necessary and incidental to collect those Service Payments and to make such arrangements as are necessary and proper for payment of the Service Payments. Any late payments shall be subject to penalty and bear interest at the then current rate established under R.C. Sections 323.121 and 5703.47, as may be amended from time to time, or any successor provisions thereto, as the same may be amended from time to time. The Service Payments shall be allocated and deposited in accordance with Sections 3 and 4 of this Ordinance.

Section 3. This Council hereby establishes the Fund, pursuant to and in accordance with the provisions of R.C. Section 5709.43, into which shall be deposited all of the Service Payments distributed to the City with respect to the Improvement to Parcels of the Property by or on behalf of the County Treasurer, as provided in R.C. Section 5709.42, except for amounts paid directly to the School Districts as provided in Section 4 hereof, and hereby appropriates all of the moneys deposited in the Fund from time to time to pay any costs associated with the Developer Improvements and the City Improvements, including, but not limited to, all costs enumerated in R.C. Section 133.15(B) or in the TIF Agreement (defined below).

The Fund shall remain in existence so long as Service Payments are collected and used for the aforesaid purposes, subject to the limits set forth in Section 1 hereof, after which said Fund shall be dissolved in accordance with R.C. Section 5709.43(D). Upon dissolution, any incidental surplus money remaining in the Fund shall be transferred to the City general fund as provided in R.C. Section 5709.43(D).

Section 4. Pursuant to R.C. Section 5709.41(C)(1), the County Treasurer shall make semi-annual payments to the School Districts, solely from the Service Payments deposited into the Fund, collectively in the amount equal to the property tax payments that the School District would otherwise have received from the Improvement had the Improvement not been exempted pursuant to this Ordinance. The County Treasurer shall remit all remaining Service Payments to the City for deposit in the Fund established in Section 3 hereof.

Section 5. The Tax Increment Financing Agreement (the "TIF Agreement") between the City and the Developer, substantially in the form attached to this Ordinance as Exhibit D, is hereby approved and authorized, with changes or amendments thereto not inconsistent with this Ordinance and not substantially adverse to the City as determined by the Mayor. The Mayor, for and in the name of the City, is hereby authorized to execute the TIF Agreement and any amendments thereto deemed by the Mayor to be necessary. The approval of changes or amendments by the Director, and the character of the changes or amendments as not being inconsistent with this Ordinance and not being substantially adverse to the City, shall be evidenced conclusively by the execution of the TIF Agreement by the Mayor.

Section 6. This Council hereby authorizes the Mayor or other appropriate officers of the City to take such actions as are necessary or appropriate to implement the transactions contemplated by this Ordinance, including the filing of one or more applications for exemption and any related forms in accordance with R.C. Section 5709.911.

I, Mary Ann Meola Clerk of the Council of the City of Middleburg Hts., Ohio, hereby certify that Ord. 2022-76 adopted by the Council of the City of Middleburg Hts., on 9/13/22 was posted for a period of fifteen days, beginning 9/14/22 and remained so posted for fifteen days at the two posting places as designated by Charter.  
Mary Ann Meola  
 Clerk

Section 7. The applicable Tax Incentive Review Council, with the membership of that Council to be constituted in accordance with R.C. Section 5709.85, shall, in accordance with R.C. Section 5709.85, review annually all exemptions from real property taxation granted by this Ordinance and any other such matters as may properly come before that Council, all in accordance with R.C. Section 5709.85.

Section 8. The City hereby incorporates by reference the nondiscriminatory hiring policies for recipients of exemptions described in Ordinance No. 2017-51, passed June 27, 2017, and hereby provides that such nondiscriminatory hiring policies shall apply to the exemptions granted pursuant to this Ordinance.

Section 9. Pursuant to R.C. Section 5709.41(E), the Mayor is hereby directed to deliver a copy of this Ordinance to the Director of the Ohio Department of Development ("ODOD") within fifteen (15) days after its passage. On or before March 31 of each year that the exemption set forth in Section 1 hereof remains in effect, the Mayor or other authorized officer of this City shall prepare and submit to the Director of ODOD the status report required under R.C. Section 5709.41(E).

Section 10. 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, and in compliance with all legal requirements, including Chapter 107 of the Middleburg Heights Code and Section 121.22 of the Ohio Revised Code.

Section 11. 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: 9/13/22

David Bortolotto  
 President of Council

Attest: M. Meola  
 Clerk of Council

Approved On: 9-14-22

Presented to Mayor: 9/14/22

Math Castella  
 Mayor

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. 2022-76 passed on the 13<sup>th</sup> day of September 2022 by said Council.  
Mary Ann Meola  
 Clerk of Council

	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"/>

Approved as to form:  
[Signature]  
 City Director of Law

## EXHIBIT A

## PROPERTY

The Property is the real estate situated in the City of Middleburg Heights, Cuyahoga County, Ohio depicted on the attached site plan, described in the attached legal description and consisting of the following tax year 2021 parcel numbers, as the same may be subdivided and/or combined in the future:

### Site Plan



## Legal Description

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: 202205190767 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: 202205190767 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: 202205190767 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.

**Parcel Numbers:** PPNs 372-18-035 and 372-20-032, comprised of the following former PPNs: 372-18-035, 372-18-036, 372-20-007, and 372-20-032, located in Middleburg Heights, Ohio

## **EXHIBIT B**

### **DEVELOPER IMPROVEMENTS**

The Developer Improvements consist of all capital improvements and costs associated with the following:

Construction and development of approximately 44,750 square feet of retail and general commercial improvements in the Project Area and all related improvements and appurtenances.

The Developer Improvements include, but are not limited to, the following categories:

1. Demolition - Building & Footers
2. Demolition - Pavement & Utilities
3. Additional Dirt
4. Fencing, Asbestos Survey, SWPPP, Waste Removal
5. Grading & Earthwork
6. Domestic Water Service
7. Fire Service & Flange to Future Development
8. Storm Sewer
9. Electric Service Conduit
10. Concrete Curb, Walks, Pads, Patios
11. Dumpster Enclosures
12. Site Lighting
13. Sanitary Sewer
14. Screen Walls
15. Grease Traps
16. Asphalt Paving
17. Landscaping
18. Miscellaneous Site Work

## EXHIBIT C

### DESCRIPTION OF CITY IMPROVEMENTS

The City Improvements include, but are not limited to, any or all of the following improvements that will benefit the Property and all related costs of permanent improvements (including, but not limited to, those costs listed in R.C. Section 133.15(B)):

- Construction, reconstruction, extension, opening, improving, widening, grading, draining, curbing or changing of the lines and traffic patterns of, highways, streets, intersections, bridges (both roadway and pedestrian), sidewalks, bikeways, medians and viaducts accessible to and serving the public that benefit the Property, and providing signage (including traffic signage and informational/promotional signage), lighting systems, signalization, and traffic controls, and all other appurtenances thereto
- Construction, reconstruction, extension, opening, improving, widening, grading, draining or curbing of walking and/or multipurpose paths that benefit the Property.
- Construction, reconstruction or installation of public utility improvements (including any underground municipally owned utilities), storm and sanitary sewers (including necessary site grading therefor), water and fire protection systems, including, but not limited to, tap, capacity and connection improvements for accessing the water, storm and sanitary sewers, or fire protection systems, that benefit the Property, and all appurtenances thereto.
- Construction, reconstruction or installation of gas, electric and communication service facilities (including any underground lines or other facilities) that benefit the Property, and all appurtenances thereto.
- Construction, reconstruction and installation of stormwater and flood remediation projects and facilities that benefit the Property, including such projects and facilities on private property when determined to be necessary for public health, safety and welfare.
- Continued and ongoing maintenance, paving, repaving, striping, grading and related work on roads, highways, streets, water and sewer lines constructed as part of the City Improvements.
- Construction or installation of streetscape and landscape improvements including trees, tree grates, signage, curbs, sidewalks, scenic fencing, street and sidewalk lighting, trash receptacles, benches, newspaper racks, burial of overhead utility lines and related improvements that benefit the Property, together with all appurtenances thereto, including, but not limited to streetscape improvements in conjunction with and along the roadway improvements described above.
- Acquisition of real estate or interests in real estate (including easements) (a) necessary to accomplish any of the foregoing City Improvements or (b) in aid of industry, commerce, distribution or research, including, but not limited to, any acquisition of land in connection with the City's taking title to any City Improvements.

**EXHIBIT D**  
**FORM OF TIF AGREEMENT**  
**(attached hereto)**

## TAX INCREMENT FINANCING AGREEMENT

This Tax Increment Financing Agreement (this “Agreement”) is made and entered into as of \_\_\_\_\_, 2022 by and between the CITY OF MIDDLEBURG HEIGHTS, Cuyahoga County, Ohio (the “City”), an Ohio municipal corporation, and PEARL PARTNERS LLC, an Ohio limited liability company with an office located at 3311 Richmond Road, Suite 200, Beachwood, Ohio 44122, its affiliates, successors, nominees and/or assigns (the “Developer”).

### WITNESSETH:

WHEREAS, the Developer has acquired or intends to acquire certain real property situated in the City, a depiction of which is attached hereto as Exhibit A (the “Project Area”) and incorporated herein by reference, with each parcel of real property within the Project Area referred to herein as a “Parcel” (whether as presently appearing on the county tax duplicate or as subdivided or combined and appearing on future tax duplicates); and

WHEREAS, in order to successfully develop the Parcels into a cohesive development (the “Project”), it is necessary to construct or to cause to be constructed certain developer improvements as described in Exhibit B attached hereto (the “Developer Improvements”); and

WHEREAS, the City may, but is not required to, construct or cause to be constructed certain City improvements as described in Exhibit C attached hereto (the “City Improvements”); and

WHEREAS, the City, by its Ordinance No. \_\_\_\_\_ passed \_\_\_\_\_, 2022 (the “TIF Ordinance”), has declared that one hundred percent (100%) of the increase in the assessed value of each Parcel subsequent to the acquisition by the City of the Parcels (each such increase hereinafter referred to as an “Improvement,” as further defined in Section 5709.41 of the Ohio Revised Code and the TIF Ordinance) is a public purpose and is exempt from taxation for a period commencing for each Parcel on the effective date of the TIF Ordinance and ending for each Parcel on the earlier of (a) thirty (30) years after such commencement or (b) the date on which the City can no longer require service payments in lieu of taxes, all in accordance with the requirements of Sections 5709.41, 5709.42 and 5709.43 of the Ohio Revised Code and the TIF Ordinance (the “TIF Exemption”); and

WHEREAS, the City has determined that it is necessary and appropriate and in the best interest of the City to provide for the owner of each Parcel (referred to herein individually as an “Owner” and collectively as the “Owners”) to make annual service payments in lieu of taxes with respect to any Improvement allocable thereto (collectively for all Parcels, the “Service Payments”) to the Cuyahoga County Treasurer (the “County Treasurer”), which Service Payments will be (i) distributed, in part, to the Berea City School District (“Berea”) and the Polaris Career Center (the “Career Center,” together with Berea, the “School Districts”) in amounts equal to the real property taxes that the School Districts would have received if the Improvements had not been exempted from real property taxation pursuant to the TIF Ordinance, (ii) used to reimburse the Developer for costs of the Developer Improvements, plus interest thereon, (iii) used to reimburse the City for costs of the City Improvements, plus interest thereon, and (iv) used for such other purposes as may be authorized by law, all pursuant to and in accordance with Sections 5709.41, 5709.42 and 5709.43 of the Ohio Revised Code (collectively, the “TIF Statutes”) and the TIF Ordinance and this Agreement; and

WHEREAS, the City is engaged in urban redevelopment and City Council of the City in the TIF Ordinance approved the terms of this Agreement and authorized its execution on behalf of the City; and

WHEREAS, the Developer may from time to time transfer one or more Parcels to one (1) or more third parties for any reason including, but not limited to, development of portions of the Project;

WHEREAS, the parties desire to enter into this Agreement on the terms and conditions hereinafter set forth to provide for the collection of and disbursement of the Service Payments and to facilitate urban redevelopment through the construction of the Developer Improvements and the City Improvements, which will benefit the Project Area.

NOW, THEREFORE, in consideration of the premises and covenants contained herein and to induce the Developer to proceed with the construction of the Developer Improvements, the Developer and the City agree as follows:

Section 1. TIF Exemption and Agreements Related Thereto.

A. In connection with the construction of the Developer Improvements and the City Improvements, the City, through the TIF Ordinance, has granted, among other things, with respect to the Improvements, a one hundred percent (100%) exemption from real property taxation, commencing with the tax year after the Developer Improvements on each Parcel are completed, as evidenced by issuance of an unconditional Certificate of Occupancy by the City, and ending for each Parcel on the earlier of (a) thirty (30) years after such commencement, or (b) the date on which the City can no longer require service payments in lieu of taxes, all in accordance with the requirements of Sections 5709.41, 5709.42 and 5709.43 of the Ohio Revised Code and the TIF Ordinance.

B. The City and the Developer shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve and maintain the exemptions from real property taxation granted under the TIF Ordinance and this Agreement, including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.

Section 2. Obligation to Make Service Payments.

A. Service Payments. The Owner hereby agrees to make the Service Payments due during its period of ownership of each Parcel, all pursuant to and in accordance with the requirements of the TIF Statutes, the TIF Ordinance, the provisions of Ohio law relating to real property tax collections, and any subsequent amendments or supplements thereto. Service Payments will be made semiannually to the County Treasurer (or to the County Treasurer's designated agent for collection of the Service Payments) on or before the final dates for payment of real property taxes for the Parcels, until expiration of the TIF Exemption. Any late payments will bear penalties and interest at the then current rate established under Sections 323.121 and 5703.47 of the Ohio Revised Code or any successor provisions thereto, as the same may be amended from time to time. Service Payments will be made in accordance with the requirements

of the TIF Statutes and the TIF Ordinance and, for each Parcel, will be in the same amount as the real property taxes that would have been charged and payable against the Improvement to that Parcel if it were not exempt from taxation pursuant to the TIF Exemption, including any penalties and interest. The Owner will not, under any circumstances, be required for any tax year to pay both real property taxes and Service Payments with respect to any portion of the Improvement to a Parcel, whether pursuant to Section 5709.42 of the Ohio Revised Code or this Agreement. The City and the Owner agree that the Pearl Plaza Urban Redevelopment Tax Increment Equivalent Fund referred to in Section 3 of the TIF Ordinance (the "TIF Fund") will receive all Service Payments made with respect to the Improvement to each Parcel that are payable to the City.

B. Priority of Lien. The Owner acknowledges, for itself and any and all future Owners, that the provisions of Section 5709.91 of the Ohio Revised Code, which specify that the Service Payments for each Parcel will be treated in the same manner as taxes for all purposes of the lien described in Section 323.11 of the Ohio Revised Code, including, but not limited to, the priority of the lien and the collection of Service Payments, will apply to this Agreement and to the Parcels and any Improvements thereon.

Section 3. Establishment of a TIF Fund by the City; Distribution of Funds. The City agrees that it shall establish the TIF Fund as a depository fund to be held in the custody of the City for the sole purpose of receiving the Service Payments made from the Owners to the County Treasurer and payable to the City. Upon distribution of the Service Payments to the City (after compensation amounts have been paid to the School Districts as set forth in Section 5 of this Agreement or otherwise required by law), those Service Payments shall be deposited to an account of the TIF Fund that applies to only the Project Area (the "Account"). Amounts on deposit in the Account shall be used by the City to pay any extraordinary administrative expenses relating to, and to maintain, the exemption granted in the TIF Ordinance, reimburse the Developer for costs of the Developer Improvements and to pay costs associated with the City Improvements in the manner and amounts described and permitted herein.

Section 4. Exemption Applications, Maintenance and Notice. In accordance with Ohio Revised Code Sections 5715.27 and 5709.911, the Developer or the City, at the Developer's request, shall file or cause to be filed an application prepared by the Developer for an exemption from real property taxation (DTE Form 24 or its successor form) with the Cuyahoga County Fiscal Officer (the "County Fiscal Officer") for the Improvements. The Developer and the City agree to cooperate with each other for this purpose, and to cooperate with the County Fiscal Officer, the Ohio Department of Taxation and other public officials and governmental agencies in the performance by the public officials and governmental agencies of their duties in connection with the TIF Ordinance and this Agreement.

Section 5. Payments to School Districts. As provided in the TIF Ordinance or as otherwise required by law, the School Districts shall receive from the Service Payments, and prior to the deposit of any of those Service Payments into the TIF Fund, an amount equal to the amount that the School Districts would otherwise have received as real property tax payments derived from the Improvements to the Parcels if the Improvements had not been exempt from taxation. In the event any funds that are due to the School Districts, pursuant to the TIF Ordinance, are deposited into the TIF Fund, the City shall transfer said funds to the School District.

Section 6. Reimbursements to Developer and City from TIF Fund. The City shall pay to the Developer in accordance with the terms of this Agreement, with respect to the Developer

Improvements for which a written requisition substantially in the form attached as Exhibit D (a "Written Requisition") is submitted to the City, the actual costs of those Developer Improvements (with the costs of all those Developer Improvements collectively referred to herein as the "Costs"), plus interest on those Costs at the Interest Rate provided for below. Except as otherwise agreed between the Developer and the City Finance Director, the Developer shall submit an initial Written Requisition after first incurring eligible Costs, and shall submit a written letter request (each a "Letter Request") for reimbursement for any subsequent years for which reimbursement is sought. The Developer shall be entitled to 50% of the amount on deposit in the Account for Costs of the Developer Improvements, less 50% of any extraordinary administrative costs necessary to maintain the exemption granted in the TIF Ordinance (the "Developer's Share"), and the City shall be entitled to the remaining amount on deposit in the Account for Costs of the City Improvements. After the Developer is fully reimbursed for its Costs, the City shall be entitled to use 100% of the amount on deposit in the Account for any lawful purpose.

Except as otherwise provided herein, the City shall pay the Developer's Share to or as directed by the Developer within sixty (60) days after receipt of a Letter Request for eligible Costs (each, a "Payment Date") until all of the Costs and all interest thereon have been paid in full. Payments for the portion of Costs of the Developer Improvements and any interest thereon will be made beginning with the first Payment Date. In addition to submission of a Letter Request for the Costs, the Developer shall deliver to the City, at least fifteen (15) days prior to each Payment Date, a statement showing the total amount of interest then due to the Developer under this Agreement, along with a brief description of the basis and calculations for the same; provided, however, that failure by the Developer to deliver this statement shall not excuse the City from its payment obligation on each Payment Date if the City knows or reasonably should know that amounts are due the Developer under this Agreement on that Payment Date, and provided further that in all other cases, that failure by the Developer shall only delay payment to the same extent delivery of the statement was delayed. Any monies paid pursuant to this Agreement will be applied first to the payment of interest on those Costs at the applicable Interest Rate provided for below and second to the payment of the Costs, so that all interest due shall be paid before the payment of any Costs.

Interest on the portion of Costs of the Developer Improvements begins accruing on the date of payment. Any interest on any Costs that remain unpaid on the date following each Payment Date will itself accrue interest in the same manner as the Costs. As used in this Agreement, "Interest Rate" means [eight percent (8%)] per annum.

For purposes of this Agreement, "costs" of the Developer Improvements includable in "Costs" under this Agreement include, without limitation as to other costs properly allocable to Developer Improvements, the costs of: acquiring, constructing, reconstructing, rehabilitating, installing, remodeling, renovating, enlarging, equipping, furnishing, or otherwise improving the Developer Improvements; site clearance, improvement, and preparation; acquisition of real or personal property; indemnity and surety bonds and premiums on insurance; all related direct administrative expenses and allocable portions of direct costs of the Developer, including but not limited to engineering, architectural, legal, management fees and other consulting and professional services; designs, plans, specifications, feasibility or rate studies, appraisals, surveys, and estimates of cost; interest or interest equivalent, whether capitalized or not; financing costs; title work and title commitment, insurance, and guaranties; audits; the reimbursement of moneys advanced or applied by or borrowed from any person, whether to or by the City, any other political subdivision or the Developer or others, from whatever source provided, for the payment of any item or items

of cost of Developer Improvements, including interest or interest equivalent thereon; and all other expenses necessary or incidental to planning (including but not limited to traffic studies) or determining feasibility or practicability with respect to permanent improvements, or necessary or incidental to the acquisition, construction, reconstruction, rehabilitation, installation, operation, maintenance, remodeling, renovating, enlargement, equipping, furnishing, or other improvement of the permanent improvements, including, but not limited to, the close-out thereof, the financing of the permanent improvements, and the placing and maintaining of the permanent improvements in condition for use and operation, and all like or related costs, including any one, part, or combination of, those costs and expenses. As used in this paragraph, "financing costs", "interest" and "interest equivalent" have the meanings given in Ohio Revised Code Section 133.01.

All payments to the Developer hereunder on each Payment Date shall be made pursuant to written instructions provided by the Developer.

Notwithstanding any other provision of this Agreement, the City's payment obligations hereunder are limited to the monies in the TIF Fund and do not constitute an indebtedness of the City within the provisions and limitations of the laws and the Constitution of the State of Ohio, and the Developer does not have the right to have taxes or excises levied by the City for the payment of the Costs and interest thereon.

Section 7. Representations of the Parties. The Developer hereby represents that it has full power and authority to enter into this Agreement and carry out its terms. The City hereby represents that the TIF Ordinance was passed by the Council on \_\_\_\_\_, 2022 and remains in full force and effect, that this Agreement is authorized by the TIF Ordinance and that the City has full power and authority to enter into this Agreement, to carry out its terms and to perform its obligations hereunder and thereunder. The City further represents and warrants that it shall not take action which would result in a reduction in the period of the TIF Exemption, the percentage of the TIF Exemption, or the amount of Service Payments to be received and made available to pay the Costs of the Developer Improvements.

Section 8. Provision of Information. The Developer, as Owner, agrees for itself and each successive Owner to (i) cooperate in all reasonable ways with, and provide necessary and reasonable information to, the designated tax incentive review council to enable that tax incentive review council to review and determine annually during the term of this Agreement the compliance of the Owners with the terms of this Agreement; and (ii) to cooperate in all reasonable ways with, and provide necessary and reasonable information to the City to enable the City to submit the status report required by Section 5709.41(E) of the Ohio Revised Code to the Director of the Ohio Department of Development on or before March 31 of each year.

Section 9. Nondiscriminatory Hiring Policy. The Developer, as Owner, agrees for itself and each successive Owner to comply with the City's nondiscriminatory hiring policy adopted pursuant to Ohio Revised Code Section 5709.832 to ensure that recipients of tax exemptions practice nondiscriminatory hiring in their operations. The City will provide a copy of that policy and any updates to that policy to the Developer and each Owner. In furtherance of that policy, the Developer agrees for itself and each successive owner that they will not deny any individual employment solely on the basis of race, religion, sex, disability, color, national origin or ancestry.

Section 10. Estoppel Certificate. Within thirty (30) days after a request from a Developer or any Owner of a Parcel, the City will execute and deliver to that Developer or an Owner or any

proposed purchaser, mortgagee or lessee of that Parcel, a certificate stating that, with respect to that Parcel, if the same is true: (i) this Agreement is in full force and effect; (ii) the requesting Developer or Owner is not in default under any of the terms, covenants or conditions of this Agreement, or, if that Developer or Owner is in default, specifying same; and (iii) such other matters as that Developer or an Owner reasonably requests.

Section 11. 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 must be in writing and will 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 has previously notified the sender of in writing, and will be deemed received upon actual receipt, unless sent by certified mail, in which event such notice will be deemed to have been received when the return receipt is signed or refused. The parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications must be sent. The present addresses of the parties follow:

- (a) To the Developer at: 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
- (b) To the City at: City of Middleburg Heights, Ohio  
15700 Bagley Road  
Middleburg Heights, Ohio 44130  
Attention: Economic Development Director  
Phone: (440) 234-8811
- With a copy to: City of Middleburg Heights, Ohio  
15700 Bagley Road  
Middleburg Heights, Ohio 44130  
Attention: Law Director  
Phone: (440) 234-8811

Section 12. Successors; Assignment; Amendments; City Consents. This Agreement will be binding upon the parties hereto and their successors and assigns. Each Owner's obligations under this Agreement, including, without limitation, its obligation to make Service Payments with respect to each Parcel it owns, are absolute and unconditional covenants running with the land and are enforceable by the City. Each Owner further agrees that all covenants herein, including, without

limitation, its obligation to make Service Payments, whether or not these covenants are included by any Owner of any Parcel in any deed or instrument of conveyance to that Owner's successors and assigns, are binding upon each subsequent owner and are enforceable by the City. Any future Owner of any Parcel, or any successors or assigns of such Owner, will be treated as an Owner for all purposes of this Agreement. Nothing in this Agreement prevents an Owner from transferring any or all of its interest in the Parcels to another person or entity. Each Owner shall only be responsible for making Service Payments that become due and payable during the period of that Owner's ownership of all or any portion of a Parcel and only with respect to the portion of a Parcel owned by the Owner. Upon satisfaction of the obligations under this Agreement and termination of the obligations of the Owner to make the Service Payments, the City shall, upon the request of an Owner, execute an instrument in recordable form evidencing such termination as to such Owner only, without invalidating or terminating the obligations hereunder as to any successor Owner.

Notwithstanding anything contained herein to the contrary, the City acknowledges that the Developer may from time to time transfer one or more Parcels to one or more third parties for any reason including, but not limited to, development of portions of the Project, subject to this Agreement. As such, this Agreement and the benefits and obligations hereof may be assigned, in whole or in part, without consent of, but upon notice to, the City, to: (i) any entity related to, affiliated with or under common control with the Developer (including but not limited to parents, subsidiaries, and/or affiliates); (ii) a lender in connection with the Developer obtaining financing related to the Project; (iii) successor entities to the Developer as a result of a consolidation, reorganization, acquisition or merger; (iv) with the consent of the City, not to be unreasonably withheld, to any successor/partner developer; and (v) with the consent of the City, which may be granted or withheld in the City's sole discretion, to any other third party not otherwise specified in clauses (i) through (iv) of this sentence. In the event of any such transfer and assignment, Developer shall have the right to transfer or assign its right to be reimbursed for Project Costs from the Account to any third party; provided, however, that such right shall not be deemed to be transferred or assigned unless the same is explicitly set forth in a document signed by Developer.

Section 13. Extent of Covenants; No Personal Liability. All covenants, stipulations, obligations and agreements of the parties contained in this Agreement are effective and enforceable to the extent authorized and permitted by applicable law. The obligations of the City may be enforced to the extent permitted by law by mandamus or any suit or proceeding in law or equity. No such covenant, stipulation, obligation or agreement will be deemed a covenant, stipulation, obligation or agreement of any present or future member, officer, agent or employee of any of the parties hereto in their individual capacity, and neither the members of the City Council nor any City official executing this Agreement, or any individual person executing this Agreement on behalf of the Developer, will be liable personally by reason of the covenants, stipulations, obligations or agreements of the City or the Developer contained in this Agreement. The obligation to perform and observe the agreements contained herein on the part of an Owner shall be binding and enforceable by the City against such Owner with respect to (and only to) such Owner's interest in its portion of the Parcels and the Improvements, or any parts thereof or any interest therein.

Section 14. Events of Default and Remedies.

A. Any one or more of the following constitutes an "Event of Default" under this Agreement:

(i) The Developer or the City fails to perform or observe any material obligation punctually and as due under this Agreement, provided that if a Force Majeure (as such term is defined below) event causes the failure, the Developer or City shall receive an additional period of time as is reasonably necessary to perform or observe the material obligation in light of the event if it notifies the other of the potential event and the extent of the delay promptly after becoming aware of the event;

(ii) The Developer or the City makes a representation or warranty in this Agreement that is materially false or misleading at the time it is made;

(iii) The Developer files a petition for the appointment of a receiver or a trustee with respect to it or any of its property;

(iv) The Developer makes a general assignment for the benefit of creditors;

(v) A court enters an order 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 debtor; or;

(vi) The Developer files an insolvency proceeding with respect to itself or any proceeding with respect to itself for compromise, adjustment or other relief under the laws of any country or state relating to the relief of debtors;

As used in this Section, "Force Majeure" means any event that is not within the control of a party or its affiliates, employees, contractors, subcontractors or material suppliers that delays performance of any obligation under this Agreement including, but not limited to, the following acts: acts of God; fires; epidemics; landslides; floods; strikes; lockouts or other industrial disturbances; acts of public enemies; acts or orders of any kind of any governmental authority; insurrections; riots; civil disturbances; arrests; explosions; breakage or malfunctions of or accidents to machinery, transmission pipes or canals; partial or entire failures of utilities; shortages of labor, materials, supplies or transportation; lightning, earthquakes, hurricanes, tornadoes, storms or droughts; periods of unusually inclement weather or excessive precipitation; or orders or restraints of any kind of the government of the United States or of the State (and in the case of a Force Majeure claim by a Developer, the City or any departments, agencies, political subdivisions or officials that are not in response to a violation of law or regulations.

B. General Right to Cure. In the event of any Event of Default in or breach of this Agreement, or any of its terms or conditions, by any party hereto, the defaulting party will, upon written notice from the other, proceed, as soon as reasonably possible, to cure or remedy such Event of Default or breach, and, in any event, within thirty (30) days after receipt of such notice. In the event such Event of Default or breach is of such nature that it cannot be cured or remedied within said thirty (30) day period, then in such event the defaulting party will upon written notice from the other commence its actions to cure or remedy said breach within said thirty (30) day period, and proceed diligently thereafter to cure or remedy said breach.

C. Remedies. If a defaulting party fails to cure any Event of Default pursuant to paragraph (B) of this Section, a party may institute such proceedings against the defaulting party as may be necessary or desirable in its opinion to cure and remedy such default or breach. Such remedies

include, but are not limited to: (i) instituting proceedings to compel specific performance by the defaulting party, (ii) suspending or terminating the obligations of the non-defaulting party under this Agreement, provided the aggrieved party must provide thirty (30) days' notice of any termination to the defaulting party and provided further that the aggrieved party must rescind the termination notice and not terminate the Agreement if the defaulting party cures all Events of Default within a reasonable time thereafter, and (iii) any other rights and remedies available at law, in equity or otherwise to collect all amounts then becoming due or to enforce the performance of any obligation under this Agreement. The obligations of the City may be enforced to the extent permitted by law by mandamus or any suit or proceeding in law or equity.

**Section 15. Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable, said provision will be fully severable. This Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised 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. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible that is and will be legal, valid and enforceable.

**Section 16. Separate Counterparts; Captions.** This Agreement may be executed by the parties hereto in one or more counterparts or duplicate signature pages, each of which when so executed and delivered will be an original, with the same force and effect as if all required signatures were contained in a single original instrument. Any one or more of such counterparts or duplicate signature pages may be removed from any one or more original copies of this Agreement and annexed to other counterparts or duplicate signature pages to form a completely executed original instrument. Captions have been provided herein for the convenience of the reader and shall not affect the construction of this Agreement.

**Section 17. 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.

**Section 18. Governing Law and Choice of Forum.** This Agreement will be governed by and construed in accordance with the laws of the State of Ohio. All claims, counterclaims, disputes and other matters in question among the City, its employees, contractors, subcontractors and agents, the Developer, its employees, contractors, subcontractors and agents arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within the County of Cuyahoga, State of Ohio.

**Section 19. Additional Documents.** The City, the Developer, and their respective successors, assigns and transferees agree to execute any further agreements, documents, or instruments as may be reasonably necessary to fully effectuate the purpose and intent of this Agreement.

**Section 20. Recordation.** No later than fifteen (15) days following the execution of this Agreement by each of the Developer and the City, the Developer will cause this Agreement to be recorded in the Cuyahoga County, Ohio real property records on each Parcel. During the term of this

Agreement, the Developer and each Owner will cause all instruments of conveyance of interests in all or any portion of such Developer's or Owner's Parcel to subsequent mortgagees, successors, lessees, assigns, or other transferees to be made expressly subject to this Agreement; provided, however, that any failure by any Owner to make any such instrument of conveyance expressly subject to this Agreement shall not affect the unconditional and binding nature of this Agreement on each such subsequent mortgagee, successor, lessee, or assign.

Section 21. Indemnification. The Developer agrees that they will indemnify, defend and hold harmless the City and its officials and employees (each an "Indemnified Party") from and against any and all liability, and in any way and all suits, proceedings, claims, damages, losses and expenses (including reasonable attorneys' fees), including without limitation, any environmental liability, incurred by an Indemnified Party resulting from Developer's breach of this Agreement or an act or omission by the Developer or their employees, agents or contractors in the design and construction of any improvements funded in whole or in part from payments pursuant to this Agreement; provided, however, that the foregoing indemnification and agreement to defend and 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.

Section 22. Right to Contest. Nothing herein is intended to prevent the Owner, at its expense and in good faith, from contesting the amount or validity of any taxes, assessments or other charges, and further provided that the Owner shall not contest the amount or validity of the TIF Exemption or challenge or contest in any manner the validity and imposition of the Service Payments, or the obligation to pay the Service Payments.

Section 23. Interpretation. The term "Owner" as used herein shall mean, as the context shall require, any party (including, but not limited to Developer) that owns one (1) or more Parcels in the Project Area. To the extent that certain provisions herein refer to "Developer" only, they shall be interpreted and construed to mean any Owner as the context shall require.

[The Remainder of This Page Intentionally Left Blank]

IN WITNESS WHEREOF, the City and the Developer have caused this Agreement to be executed in their respective names by their duly authorized officers or representatives, as of the date hereinabove written.

CITY OF MIDDLEBURG HEIGHTS

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

By Ordinance No. \_\_\_\_ - \_\_\_\_ dated \_\_\_\_\_, 2022  
Verified and Certified:

\_\_\_\_\_  
Clerk of Council

Approved as to Form:

\_\_\_\_\_  
City Director of Law

PEARL PARTNERS LLC,  
An Ohio limited liability company

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

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

STATE OF OHIO,

COUNTY OF \_\_\_\_\_, SS:

The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

The foregoing instrument was signed and acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_, the \_\_\_\_\_ of the City of Middleburg Heights, a municipal corporation of the State of Ohio, on behalf of the municipal corporation.

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

STATE OF OHIO,

COUNTY OF \_\_\_\_\_, SS:

The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

The foregoing instrument was signed and acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_, \_\_\_\_\_ of Pearl Partners LLC, an Ohio limited liability company, on behalf of the limited liability company.

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

**FISCAL OFFICER'S CERTIFICATE**

As fiscal officer for the City of Middleburg Heights, I hereby certify that funds sufficient to meet the obligations of the City in this Agreement (including specifically the funds required to meet the obligation of the City in the year 2022) have been lawfully appropriated for the purposes thereof and are available in the treasury, and/or are in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. The City has no obligation to make payments pursuant to this Agreement except from Service Payments to be collected for deposit into the TIF Fund, which Service Payments are in the process of collection. No City expenditures will be required in 2022. This certificate is given in compliance with Ohio Revised Code Sections 5705.41 et seq.

Dated: \_\_\_\_\_, 2022

\_\_\_\_\_  
Director of Finance  
City of Middleburg Heights,  
Cuyahoga County, Ohio

**EXHIBIT A**  
**DEPICTION OF THE PROJECT AREA**  
**[including parcel numbers]**

## **EXHIBIT B**

### **DESCRIPTION OF DEVELOPER IMPROVEMENTS**

The Developer Improvements include, but are not limited to, any or all of the following improvements and all related costs of permanent improvements (including, but not limited to, those costs listed in R.C. Section 133.15(B)):

Construction and development of approximately 44,750 square feet of retail and general commercial improvements in the Project Area and all related improvements and appurtenances.

The Developer Improvements include, but are not limited to, the following categories<sup>1</sup>:

19. Demolition - Building & Footers
20. Demolition - Pavement & Utilities
21. Additional Dirt
22. Fencing, Asbestos Survey, SWPPP, Waste Removal
23. Grading & Earthwork
24. Domestic Water Service
25. Fire Service & Flange to Future Development
26. Storm Sewer
27. Electric Service Conduit
28. Concrete Curb, Walks, Pads, Patios
29. Dumpster Enclosures
30. Site Lighting
31. Sanitary Sewer
32. Screen Walls
33. Grease Traps
34. Asphalt Paving
35. Landscaping
36. Miscellaneous Site Work

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<sup>1</sup> As of the date of this Agreement, the projected costs of the Developer Improvements in these categories is \$1,741,900; provided, however, that the parties agree that such sum represents an estimate only and shall not limit the total actual cost of eligible Developer Improvements pursuant to this Agreement and the Ohio Revised Code.

## **EXHIBIT C**

### **DESCRIPTION OF CITY IMPROVEMENTS**

The City Improvements include, but are not limited to, any or all of the following improvements that will benefit the Project Area and all related costs of permanent improvements (including, but not limited to, those costs listed in R.C. Section 133.15(B)):

- Construction, reconstruction, extension, opening, improving, widening, grading, draining, curbing or changing of the lines and traffic patterns of, highways, streets, intersections, bridges (both roadway and pedestrian), sidewalks, bikeways, medians and viaducts accessible to and serving the public that benefit the Project Area, and providing signage (including traffic signage and informational/promotional signage), lighting systems, signalization, and traffic controls, and all other appurtenances thereto
- Construction, reconstruction, extension, opening, improving, widening, grading, draining or curbing of walking and/or multipurpose paths that benefit the Project Area.
- Construction, reconstruction or installation of public utility improvements (including any underground municipally owned utilities), storm and sanitary sewers (including necessary site grading therefor), water and fire protection systems, including, but not limited to, tap, capacity and connection improvements for accessing the water, storm and sanitary sewers, or fire protection systems, that benefit the Project Area, and all appurtenances thereto.
- Construction, reconstruction or installation of gas, electric and communication service facilities (including any underground lines or other facilities) that benefit the Project Area, and all appurtenances thereto.
- Construction, reconstruction and installation of stormwater and flood remediation projects and facilities that benefit the Project Area, including such projects and facilities on private property when determined to be necessary for public health, safety and welfare.
- Continued and ongoing maintenance, paving, repaving, striping, grading and related work on roads, highways, streets, water and sewer lines constructed as part of the City Improvements.
- Construction or installation of streetscape and landscape improvements including trees, tree grates, signage, curbs, sidewalks, scenic fencing, street and sidewalk lighting, trash receptacles, benches, newspaper racks, burial of overhead utility lines and related improvements that benefit the Project Area, together with all appurtenances thereto, including, but not limited to streetscape improvements in conjunction with and along the roadway improvements described above.
- Acquisition of real estate or interests in real estate (including easements) (a) necessary to accomplish any of the foregoing City Improvements or (b) in aid of industry, commerce,

distribution or research, including, but not limited to, any acquisition of land in connection with the City's taking title to any City Improvements.

**EXHIBIT D**

**FORM OF WRITTEN REQUISITION**

No. \_\_\_\_

(For Costs of Developer Improvements)

To: City of Middleburg Heights, Ohio

Attention: \_\_\_\_\_

Subject: Written Requisition for Developer Improvements pursuant to the terms of the Tax Increment Financing Agreement dated \_\_\_\_\_, 2022 (the "Agreement"), by and between the City of Middleburg Heights, Ohio, and Pearl Partners LLC (the "*Developer*").

You are hereby requested to approve the amount of \$\_\_\_\_\_ as Costs of the Developer Improvements for the purposes set forth in Item I attached hereto. Unless otherwise defined herein, all capitalized terms set forth but not defined in this Written Requisition have the respective meanings assigned to them in the Agreement.

The undersigned authorized representative of the Developer does hereby certify on behalf of the Developer that:

- (a) I have read the Agreement and definitions relating thereto and have reviewed appropriate records and documents relating to the matters covered by this Written Requisition;
- (b) The disbursement herein requested is for an obligation properly incurred, is a proper charge as Costs of the Developer Improvements (as defined in the Agreement), and has not been the basis of any previous reimbursement request;
- (c) The Developer is in material compliance with all provisions and requirements of the Agreement;
- (d) The reimbursement requested hereby does not include any amount which is being retained under any holdbacks or retainages provided for in any applicable agreement;
- (e) The Developer is either (i) not aware of any unpaid account claim from any subcontractor, material supplier or laborer who has performed labor or work or has furnished materials for the Developer for which reimbursement is requested pursuant to this Written Requisition; or (ii) has provided security discharging any known unpaid account claims.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 2022.

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

**Printed:** \_\_\_\_\_

**Title:**

ITEM I

Requisition No. \_\_\_\_\_ for the Developer Improvements

Pay to \_\_\_\_\_

Amount \$ \_\_\_\_\_

For Account of:

Account Number:

Wiring Instructions:

For the purpose of reimbursing the following payments previously paid by the Developer for the Developer Improvements:

Name of Vendor	Service Rendered	Time Period	Cost of Service Rendered
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1.

2.