

**BEACHWOOD CITY COUNCIL  
SPECIAL COMMITTEE MEETING AGENDA  
MONDAY, NOVEMBER 14, 2022  
IMMEDIATELY FOLLOWING THE LEGAL AND PERSONNEL COMMITTEE MEETING  
*at* BEACHWOOD CITY HALL, COUNCIL CHAMBERS,  
25325 Fairmount Boulevard, Beachwood, Ohio 44122**

Mike Burkons  
Barbara Bellin Janovitz  
Danielle Shoykhet  
Eric Synenberg

**Agenda Items**

1. Discussion regarding Doubletree Project 3663 Park East and Development Agreement
2. Any other matters coming before the Special Committee

# # #

**CITY OF BEACHWOOD, ECONOMIC DEVELOPMENT  
INTER-OFFICE MEMORANDUM**

**TO:** Mayor Justin Bernes & Special Committee of Council

**DATE:** November 14, 2022

**SUBJECT:** My Place Development Agreement, 2022

In response to the Special Committee of Councils Order of Actions I have prepared the attached development agreement that sets forth the terms and conditions for development of the property at 3663 Park East Drive and the terms and conditions for the developers requested financial incentives.

**History:** The developer, My Place, has proposed concept plans for urban revitalization at the 10-acre vacant site of 3663 Park East Drive. Most recently, the developer is proposing demolition of the existing buildings encompassing 238,798 sq. ft. and new construction of a transformational mixed-use project estimated at over \$200 million. The developer is proposing a plan that shows significant investment as compared to other recent Northeast Ohio mixed-use projects. The developer has a gap in financing and has requested assistance from the City to support that gap financing.

**Project Details:** The project will be comprised of approximately 913,270 sq. ft. in total as provided in Exhibit A. This project is projected to create 406 jobs, generate an anticipated income tax payroll of \$20 million and continue to increase future property tax by a projected additional \$121 million incrementally. The current site tax value is \$12 million. In an effort to support the advancement of this project and fulfill directives of the City's Economic Development Strategy and directives of the City Master Plan it is my recommendation that Council enter into a development agreement as they proceed with the requested public-private partnership to support the gap financing associated with the redevelopment of this site.

**Purchasing/Financing:** In this development agreement there will be no expenditure of current funds, the project will be supported by Tax Increment Financing payments in lieu of taxes (PILOT's) and through non-tax revenues committed to the project after the developer's commitment and obligations have been met. The development agreement will commit the developer to the project as described above as detailed within the development agreement and Exhibit A.

**Tax Increment Financing (TIF .41)**

The City will declare public financing through a non-school TIF (Tax Increment Financing) at 100% of the increase in assessed value for a term of 30-Years, of which 75% of the service

payments in lieu of taxes will help support development of the project. The schools will receive full funding in connection with the project. The remaining funds and any service payments not needed to pay debt service on the TIF obligations will be retained by the City for uses pursuant to the TIF statutes. The City costs related to the project shall be paid or reimbursed from the TIF obligations. Further council action will include a Title Transfer and Indemnification Agreement, as described in Exhibit B and further legislation creating the TIF, TIF revenue fund and bond issuance.

TIF's are public financing tools used by local governments for the purposes of economic development to finance public infrastructure improvements as well as private improvements in municipal redevelopment TIF's. They have been used for more than 40 years and have been used in multiple mixed-use development projects regionally. There are more than 1,200 TIF's statewide.

### **Loans / Grants**

The development agreement provides for additional project support as requested by the developer including a grant of 50% of income tax collected from construction jobs capped at \$500,000 and paid after construction and collection. The agreement also provides a loan for tenant improvements in the Class A office space in the amount of \$200,000 upon securing a tenant lease and \$1 million in new City income tax revenue. Finally, the agreement will provide a forgivable loan in the amount of \$200,000 in which the loan will be forgiven over time to the developer upon an executed agreement for an upscale premier hotel that meets the design, amenity, and quality standards acceptable to the City. Further council action will include loan and grant agreements for each of these incentives.

**Project Summary:** The total incentive in this project is estimated to be 5% of total project costs. While this does not cover the total financial gap requested by the developer, the City has provided the developer other gap financing sources that can be sought to further assist. The developer is currently seeking those other financing sources. No obligation of the City out of this Agreement shall constitute a general obligation, debt or bonded indebtedness, or a pledge of the general credit, of the City or give rise to any financial liability of the City, but shall be payable or required to be satisfied by the City solely from Service Payments or non-tax revenues as authorized by City Council.

**Recommendations:** I am recommending that City Council enter into this development agreement through its normal legislative process to provide the necessary public-private partnership and assurances outlined in this development agreement between both parties and enabling the developer to proceed with securing the remaining necessary project financing.

**Similar Projects:** Examples of other recent and similar Northeast Ohio Public-Private Partnerships.

- Van Aken District Shaker Heights, Phase I - This was a 30 year, 100% TIF with an arrangement with the local schools for a portion of the PILOT's and 82% PILOT's to the project. There was other grant funding provided to offset the financing gap and infrastructure costs.
- Van Aken District, Shaker Heights, Phase II - 30 year TIF, 88% PILOT's to the project, with a compensation agreement in place with the local schools. The City also approved a \$4 mill forgivable loan based on new taxes generated.
- Top of the Hill, Cleveland Heights - 30 year, 100% TIF to the Project with an agreement with the local schools for a portion of the PILOT's.
- The Bowery Project, Akron - The commercial portion of the project received a 25 year, 100% TIF with an arrangement with the local schools for a portion of the PILOT's. There was a 15 Year Tax Abatement followed by 10 years of TIF PILOT's to the project for the residential portion of the project.
- Pinecrest - 30 year, 100% TIF to the project with an agreement with the schools for a portion of the PILOT's. Recently in 2021 they extended that TIF agreement for an additional 30 years to capture additional tax increment financing.

## **ECONOMIC DEVELOPMENT AGREEMENT**

This Economic Development Agreement (the “Agreement”) is hereby entered into this \_\_\_ day of November, 2022 (the “Effective Date”), by and between 3663 Park East My Place LLC, an Ohio limited liability company (the “Developer”) whose address is 3500 Lorain Avenue, Suite 100, Cleveland, Ohio 44113, and the CITY OF BEACHWOOD, an Ohio municipal corporation (the “City”), whose address is City of Beachwood, 25325 Fairmount Boulevard, Beachwood, Ohio 44122 (collectively “Parties”).

### **WITNESSED:**

**WHEREAS**, the Developer is proposing to create over 400 jobs through an approximately \$205 million transformational mixed-use commercial and residential development on real property currently owned by [the Developer] and located within the City at 3663 Park East Drive (the “Project Site” as shown and depicted in Exhibit A); and

**WHEREAS**, the City is engaging in urban revitalization for the purposes of a transformational mixed-use development project to stimulate new investment and act as a catalyst for further redevelopment in commercial areas south of Chagrin Boulevard. The proposed redevelopment project meets the vision and goals of the City’s Master Plan, as adopted by City Council on June 20, 2016, and encourages mixed-use redevelopment of outdated commercial areas, reuse and future growth as well as providing more housing options within the City.

**WHEREAS**, the City, pursuant to its Charter and the laws of the State (including, without limitation, Article VIII, Section 13 and Article XVIII, Section 3 of the Ohio Constitution and Chapter 165, Ohio Revised Code) in order to promote economic development and thereby create and preserve jobs and employment opportunities available to, and improve the economic welfare of, residents of the City and, in furtherance of that public purpose, determined to enter into this Agreement to engage in urban redevelopment at the Project Site in support of the Developer’s investment into the Project Site and the creation of a mixed-use project with new employment opportunities within the City; and

**WHEREAS**, the Parties desire to memorialize their understanding and agreements with respect to such cooperation; and

**WHEREAS**, the City’s agreement to provide financial assistance as set forth herein is contingent upon authorization pursuant to subsequent adoption of appropriate legislation by Beachwood City Council (“City Council”); and

**WHEREAS**, the City Council has approved and authorized the Mayor of the City (the “Mayor”) to enter into this Agreement in accordance with Ordinance No. [\_\_\_\_], passed on November \_\_, 2022.

**NOW THEREFORE**, in exchange for the mutual commitments and obligations contained herein, the Parties agree as set forth below:

## **Section 1. Representations and Warranties.**

A. **Developer Representations and Warranties.** Developer represents and warrants to the City as follows as of the Effective Date:

- a. Developer is a [limited liability company] duly organized and validly existing and in good standing under the laws of Ohio. Developer has the necessary power and authority to enter into this Agreement, and this Agreement constitutes the valid and binding obligation of Developer in accordance with its terms. This Agreement and the transactions contemplated hereby have been approved by the members of Developer.
- b. There is no litigation pending for which it has received notice or, to its knowledge, threatened in writing against or by Developer, wherein an unfavorable ruling or decision is reasonably likely to adversely affect Developer's ability to carry out its obligations under this Agreement.

B. **City Representations and Warranties.** The City hereby represents and warrants to the Developer as follows as of the Effective Date:

- a. The City has the necessary power and authority to enter into this Agreement, and this Agreement constitutes the valid and binding obligation of the City in accordance with its terms.
- b. There is no litigation pending for which the City has been served notice or, to the knowledge of the officers of the City signing this Agreement, threatened in writing against or by the City, wherein an unfavorable ruling or decision is reasonably likely to adversely affect the City's ability to carry out its obligations under this Agreement.

## **Section 2. Developer's Commitments to the City**

A. **Project Description.** The project is more fully described in Exhibit A and is comprised of (i) the demolition of the former hotel structure at the Project Site (the "Demolition Project"), (ii) new construction of luxury multi-family residential apartments consisting of approximately 379,040 square feet and 414 units (the "Residential Project"), (iii) new construction of class A office space consisting of approximately 46,650 square feet (the "Office Project"), (iv) new construction of four buildings to provide retail space consisting of a total of approximately 69,730 square feet (the "Retail Project"), (v) new construction of structured parking consisting of approximately 1,396 parking spaces and 344,650 square feet (the "Parking Project"), and (vi) new construction of upscale premier hotel consisting of approximately 73,200 square feet and estimated 120 keys (the "Hotel Project" and together with the Demolition Project, Residential Project, Office Project, Retail Project and Parking Project, the "Project"). The Project is subject to changes in square footage between usages and unit counts as authorized by the Planning and

Zoning Commission of the City. Such authorization shall not be unreasonably withheld or delayed.

- B. **Public Improvements.** The Developer shall undertake, or cause to be undertaken, any public infrastructure improvements necessary to accommodate the development of the Project Site, as reasonably determined by the City. Any public infrastructure improvements required to be made as a result of development of the Project Site shall be made at Developer's expense and are reimbursable from the TIF Obligations described below.
- C. **Transfer and Indemnification Agreement.** Developer and an affiliated guarantor (approved by the City), shall enter into an Transfer and Indemnification Agreement, in substantially similar form to the form attached hereto as Exhibit B, in which the Developer, and an affiliated owner/guarantor, shall 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 and all suits, proceedings, claims, damages, losses and expenses (including reasonable attorneys' fees).
- D. **Deposit.** Within fifteen business days of signing this Agreement, Developer shall pay a maximum of \$15,000.00 to the City to reimburse the City for costs and expenses incurred by the City in connection with the preparation of this Agreement and any ordinances relating hereto. Any additional City costs relating to the Project shall be paid or reimbursed from the TIF or TIF Obligations pursuant to the TIF Statutes as described herein.

### **Section 3. Tax Increment Financing**

- A. **Creation of TIF Incentives.** The City and Developer acknowledge and agree that the Parties are contemplating tax increment financing ("TIF") for the Project by and through the Ohio Revised Code Sections 5709.41, 5709.42 and 5709.43 (the "TIF Statutes"). The Developer acknowledges the City intends to implement a non-school TIF to ensure full funding to the local school district in connection with the Project. The City agrees to use its best efforts to pursue the adoption by City Council of the TIF Ordinance as described in this Section 3 in order to implement the TIF for all or a portion of the Project Site. The City will make its best efforts to cause the City Council to consider the TIF Ordinance no later than July 1, 2023.
- B. **TIF Ordinance.** The City will pursue, as required by the TIF Statutes, (a) the adoption of an ordinance by City Council authorizing the City to take title to the Project Site pursuant to the City's urban redevelopment activities and then to re-convey the Project Site to or at the direction of Developer (the "Conveyance Ordinance"), and (b) the adoption of an ordinance by City Council that implements a tax increment financing incentive pursuant to Ohio Revised Code Section 5709.41 with respect to the Project Site (the "TIF Ordinance"). Neither the City nor Developer will permit third parties to access the Project Site during the City's period of ownership. After adoption of the Conveyance Ordinance, and prior to the

adoption of the TIF Ordinance, Developer will convey, or cause the conveyance of, title to the Project Site to the City and the City will re-convey title to the Project Site (at least one business day following its acceptance of title to the Project Site) to or at the direction of Developer by quitclaim deed for the further development of the Project Site in accordance with this Agreement and the Transfer and Indemnification Agreement. Such deed may include the restrictive covenants and other covenants running with the land set forth in this agreement. The City will cause the TIF Ordinance to declare that one hundred percent (100%) of the increase in the assessed value of the Project Site after the acquisition of the Project Site by the City to be a public purpose and exempt from taxation for a period of up to thirty (30) years in accordance with the TIF Statutes. The exemption provided for under the TIF Ordinance shall not take effect as to the improvements, as defined in Section 5709.41 of the Ohio Revised Code (the "Improvements"), on each parcel included within the TIF Ordinance until the first tax year an Improvement to such parcel attributable to a new structure appears on the tax list and duplicate for such parcel.

**C. Covenants to Make Payments in Lieu of Taxes with Respect to the Property.**

For the period that all or part of the Improvements are exempt from real property taxation (the "Exemption Period") pursuant to the TIF Statutes, and pursuant to the TIF Ordinance, the owner of any portion of the Project Site subject to the TIF Ordinance (the "TIF Property") shall make semiannual service payments in lieu of taxes with respect to the Improvements (the "Service Payments") pursuant to and in accordance with the requirements of the TIF Statutes, and pursuant to the TIF Ordinance. Such Service Payments shall be made semiannually to the Cuyahoga County Treasurer (or to his or her designated agent for collection of the Service Payments) on or before the date on which real property taxes would otherwise be due and payable for the Improvements. Any late Service Payments shall bear interest and shall be subject to penalties at the same rate and in the same amount and payable at the same time as delinquent taxes. Each semiannual Service Payment shall be in the same amount as the real property taxes that would have been charged and payable against the Improvements on the TIF Property had an exemption from taxation not been granted. The obligations of the owner to make the Service Payments shall be unconditional, and shall not be terminated for any cause, and there shall be no right to suspend or set off such Service Payments for any cause, including without limitation any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Project, commercial frustration of purpose, or any failure by the City to perform or observe any obligation, or covenant, whether express or implied, arising out of or connection with this Agreement.

It is intended and agreed, that the covenants provided in this Section 3 shall be covenants running with the land and that they shall, in any event and without regard to technical classification or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity, for the benefit and in favor of and enforceable by, the City, against an owner, whether or not this Agreement remains



in effect or whether or not such provision is included by an owner in any succeeding deed by such owner conveying any real property comprising all or a portion of or interest in the TIF Property. It is further intended and agreed that these agreements and covenants shall remain in effect for the full period of exemption permitted in accordance with the requirements of the TIF Statutes and the City's TIF Ordinance.

Such covenants running with the land and the exemption on the TIF Property described herein and in the TIF Ordinance shall have priority over any other lien or encumbrance or property tax exemption on the TIF Property, except those approved by the City.

- D. Declaration of Covenants.** The TIF Property shall be made subject to the covenants running with the land provided in Section 3 hereof, by the execution and recording by Developer (or its successor) of one or more declarations of covenants (each, a "Declaration"), with respect to the TIF Property, and which Declaration shall be executed by the Developer and recorded in the official records of Cuyahoga County as soon as possible following the execution of this Agreement or after the passage of the TIF Ordinance if not already passed, and prior to any subsequent conveyance of any portion of the TIF Property, or any portion of or interest in the TIF Property and prior to commencement of any construction on the TIF Property. The Declarations and said covenants shall be specifically enforceable by the City against the Developer and any other owner of the TIF Property by mandatory injunction and/or any other remedy at law or in equity.
- E. Priority of Exemption.** The City and the Developer acknowledge and agree that the exemption from real property taxation for the Improvements authorized by the TIF Statutes and the TIF Ordinance shall be superior to any other exemption with respect to the TIF Property or portion of the TIF Property granted under any other provision of the Ohio Revised Code. Accordingly, the Developer agrees to prepare and file, in cooperation with the City, all necessary applications and supporting documents to obtain the exemption from real property taxation for the Improvements authorized by the TIF Statutes and the TIF Ordinance as soon as possible following execution of this Agreement. The Developer further agrees (i) to refrain from filing any application for exemption that would conflict with the exemption authorized by the TIF Statutes and the TIF Ordinance and (ii) to refrain from any uses of the Project or Project Site that would conflict with the exemption authorized by the TIF Statutes and the TIF Ordinance. In addition, the Developer shall cause the owner of the TIF Property to file a notice pursuant to Ohio Revised Code Section 5709.911(D) requiring future owners of the TIF Property make Service Payments. The City shall have no liability or responsibility for State Department of Taxation approval of TIF exemptions granted pursuant to the TIF Ordinance.
- F. Statutory Compliance.** The City and Developer shall cooperate in good faith to ensure compliance with all applicable requirements of the TIF Statutes necessary to establish the TIF Ordinance contemplated under this Agreement.

**G. TIF Obligations.** The City agrees to assist the Developer by issuing bonds or notes payable from no more than seventy-five percent (75%) of the Service Payments or pledging seventy-five percent (75%) of the Service Payments to support bonds, notes or loans issued or made by another governmental or private entity to pay for the development of the Project to the extent permitted by law (“TIF Obligations”). The City shall be under no obligation to issue bonds or notes until (i) the construction loan(s) and capital stack for the Project has been secured (ii) approval by City Council and (iii) approval by the City’s bond counsel. The City and the Developer agree any Service Payments not needed to pay debt service on the TIF Obligations will be retained by the City for uses permitted pursuant to the TIF Statutes. The TIF Obligations shall never constitute a general obligation, debt or bonded indebtedness, or a pledge of the general credit, of the City or give rise to any pecuniary liability of the City, but shall be payable or required to be satisfied by the City solely from Service Payments as authorized by City Council.

**Section 4. Construction Job Creation Incentive Grant.** The City and Developer shall enter into an agreement in which the City shall agree to pay to Developer an amount equal to fifty percent (50%), not to exceed \$500,000.00, of all municipal income tax withheld during construction and received by the City (less any applicable refunds) from construction employees and contractors for work performed on the Project at the Project Site.

**Section 5. Hotel Project Occupancy Forgivable Loan.** The City and Developer shall enter into an agreement in which the City shall agree to make an occupancy loan to the Developer in the amount of \$200,000.00 upon (a) the Developer’s completion of the Hotel Project and (b) an executed agreement for an upscale premier hotel that meets the design, amenity, and quality standards acceptable to the City, to operate the Hotel Project. The loan agreement shall provide that for each year of occupancy by the approved hotel project operator and the Developer, while the Developer also meets any other requirements agreed to between the City and the Developer, the City shall forgive \$40,000.00 per year to the Developer until fully forgiven. Any loan that is not forgiven will require repayment at a term of 60 months at a rate of interest of 2.5%.

**Section 6. Office Project Occupancy Loan.** The City and Developer shall enter into an agreement in which the City shall agree to make a loan to Developer in the amount of \$200,000.00 upon (a) the Developer’s completion of the Office Project, (b) an executed tenant lease, for a minimum of 3 years; and (c) a tenant with a minimum of \$1 million in new annual income tax payroll to the City. The loan shall be used for tenant improvements at the Office Project and shall be repaid to the City. The agreement will define the terms of the loan repayment, including a term of 60 months at a rate of interest not to exceed 2.5%.

**Section 7. Insurance Requirements.** During construction, and until completion of each of the Project, the Developer, shall maintain, or cause its contractors and/or ground lessees, to maintain the following policies:

- A. **Builders Risk Insurance.** All builders' risk and fire insurance with extended coverage upon Project improvements then to be constructed in the amount of one hundred percent (100%) of the replacement cost thereof; and
- B. **Commercial General Liability Insurance.** Insure against all claims for personal injury or death or property damage occurring on or about the Project Site, with a reputable insurer licensed in the State of Ohio, with a Best's rating of A-X or better, with minimum limits of liability of One Million Dollars (\$1,000,000) per occurrence, Five Million Dollars (\$5,000,000) aggregate, with an umbrella excess liability policy in minimum amount of Three Million Dollars (\$3,000,000) per occurrence bodily injury/property and Ten Million Dollars (\$10,000,000) aggregate damage/occurrence, naming the City as an additional insured. The Developer will deliver to the City a certificate of insurance in form satisfactory to the City at least one (1) week prior to the commencement of construction and certificates for replacement policies will be delivered at least fifteen (15) days prior to the expiration of the policy. All such policies shall contain agreements of the insurer that the policies shall not be canceled except upon thirty (30) days prior written notice to the Developer and to the City. The Developer shall promptly forward to the City a copy of any such notice of cancellation.

**Section 8. Notices.** Notice from one of the Parties to the other under this Agreement will be sufficient for the purpose if it is contained in a writing mailed by first class mail, postage prepaid, or sent by facsimile or electronic transmission (and a transmission receipt or confirmation is obtained), to the following respective addresses or facsimile numbers:

If to the City:                   The City of Beachwood  
City Hall  
25325 Fairmount Boulevard  
Beachwood, Ohio 44122  
Attention: Office of the Mayor  
Phone No.: (216) 292-1915  
Email: Catherine.bieterman@beachwoodohio.com

With a copy to:                   The City of Beachwood  
City Hall  
25325 Fairmount Boulevard  
Beachwood, Ohio 44122  
Attention: Law Department  
Phone No.: (216) 595-5462  
Email: stewart.hastings@beachwoodohio.com

If to the  
Developer: My Place Cleveland LLC  
3500 Lorain Avenue, Suite 100  
Cleveland, Ohio 44113  
Attention: Chad Kertesz  
Phone No.: 216-544-3822  
Email: [chad@myplacecleveland.com](mailto:chad@myplacecleveland.com)

With a copy to: Ronnie Kertesz  
General Counsel  
3439 West Brainard Rd. Suite 260  
Woodmere, Ohio  
Phone No.: 216-831-9110  
Email: [rmkertesz@azmanagement.com](mailto:rmkertesz@azmanagement.com)

#### **Section 10. Miscellaneous**

- A. This Agreement constitutes the entire terms between the Parties concerning its subject matter, and there are no other agreements, promises, terms, conditions, or understandings, either oral or written, between them concerning the matters addressed herein other than those herein set forth. No subsequent alteration or amendment to this Agreement shall be binding upon the Parties unless approved by the City Council, in writing and signed by both the City and the Developer. The Parties expressly contemplate that they will be required to enter into formal amendments to existing agreements and/or new agreements in order to effectuate their respective commitments.
- B. The financial obligation of the City for the payment of money under this Agreement is subject to and contingent upon such funds first having been appropriated and authorized to be expended for such purposes by the City Council and having been certified by the City Finance Director as available in the fund to be charged for the payment thereof and not appropriated or expended for any other purpose. *No obligation of the City created by or arising out of this Agreement shall ever constitute a general obligation, debt or bonded indebtedness, or a pledge of the general credit, of the City or give rise to any pecuniary liability of the City, but shall be payable or required to be satisfied by the City solely from Service Payments or non-tax revenues as authorized by City Council.*

**Section 11. Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the respective successors and assigns (including successive, as well as immediate, successors and assignees) of the Parties. The Developer may not assign this Agreement to any person, without the written consent of the Mayor and approval by City Council, which consent may be withheld for any or no reason.

**Section 12. Governing Law and Forum.** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. All claims, counterclaims,

disputes and other matters in question between the City, its agents and employees, and the Developer, their 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 13. Severability.** Any provisions of this Agreement are severable and in the event that one or more of the provisions are found to be inconsistent with legal requirements upon any party, and therefore unenforceable, the remaining provisions shall remain in full force and effect.

**Section 14. No Personal Liability.** All covenants, obligations and agreements of the Parties contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, officer, agent or employee of the City other than in his or her official capacity, and neither the members of the legislative body of the City nor any City official executing this Agreement shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the execution thereof or by reason of the covenants, obligations or agreements of the City contained in this Agreement.

**Section 15. Counterparts.** This Agreement may be signed in several counterparts, including electronically transmitted or stored counterparts (such as e-mailed .pdfs), each of which shall be deemed an original and all of which together shall constitute one contract.

**Section 16. Headings.** The headings contained in this Agreement are included only for convenience of reference and do not define, limit, explain or modify this Agreement or its interpretation, construction or meaning and are in no way to be construed as a part of this Agreement.

**Section 17. Termination.** The City reserves the right to terminate this entire Agreement or any commitments contained in Sections 3, 4, 5 or 6 of this Agreement if the Developer has not either commenced construction of a portion of the Project within two years of the execution of this Agreement or completed the construction of a portion of the Project within four years of the execution of this Agreement.

**ADDITIONAL DOCUMENTATION:** The following exhibits are hereby incorporated into and made part of this Agreement as though specifically rewritten herein:

EXHIBIT A – Project Site and Project Conceptual Plan

EXHIBIT B – Form of Transfer and Indemnification Agreement

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date first set forth above.

**3663 Park East My Place, LLC**

By: \_\_\_\_\_  
Chad Kertesz, Manager

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

**CITY OF BEACHWOOD**

By: \_\_\_\_\_  
Justin Berns, Mayor

Approved as to Form:

\_\_\_\_\_  
L. Stewart Hastings, City Law Director

**FISCAL OFFICER'S CERTIFICATE**

The undersigned, fiscal officer of the City of Beachwood (the "City"), hereby certifies that the moneys required to meet the obligations of the City during the year 2022 under the aforesaid Agreement have been lawfully appropriated by the legislative body of the City for such purposes and are in the treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

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

\_\_\_\_\_  
Larry Heiser, Finance Director

**EXHIBIT A – PROJECT SITE AND PROJECT CONCEPTUAL PLAN**

**[To be attached]**







**3663 PARK EAST VOCON PLAN**

**SEE ATTACHED**

**EXHIBIT B – FORM OF TRANSFER AND INDEMNIFICATION  
AGREEMENT**

**TRANSFER AND INDEMNIFICATION AGREEMENT**  
**(Project My Place .41 TIF)**

This Transfer and Indemnification Agreement (“Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2022, by and among 3663 Park East My Place LLC, an Ohio limited liability company (the “Owner”), 3663 Park East My Place LLC an Ohio limited liability company (“Developer” and together with the Owner, the “Indemnitor”), and the **City of Beachwood**, Ohio a municipal corporation (the “City”).

**Recitals**

WHEREAS, the Owner is the fee title owner of the real property described in Exhibit A (the “Project Site”); and

WHEREAS, Developer and City have entered into an agreement under which Owner or an affiliate will undertake the urban redevelopment 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 prior to the enactment by the City Council of the TIF ordinance under Ohio Revised Code Section 5709.41, and the Owner intends to transfer fee title to the Project Site to the City with the City then transferring that title to the Project Site to the Owner; 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 Owner 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 Owner agrees to convey to the City title to the Project Site via limited warranty deed. The City hereby agrees to reconvey to the Owner or its designee title to the Project Site via quitclaim deed within three days following its acceptance of title to the Project Site.

Section 2.     Indemnification. The Indemnitor, jointly and severally, 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 Owner or the re-conveyance of the Project Site by the City to the Owner 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. 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.

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

Section 3.     Costs. The Indemnitor shall be responsible for all actual costs incurred by the City, including reasonable attorney fees, in connection with the transfer of the Project Site.

Section 4.     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:

If to the City:           The City of Beachwood  
City Hall  
25325 Fairmount Boulevard  
Beachwood, Ohio 44122  
Attention: Mayor  
Phone No.: \_\_\_\_\_  
Email: \_\_\_\_\_

The City of Beachwood  
City Hall  
25325 Fairmount Boulevard  
Beachwood, Ohio 44122  
Attention: Law Director  
Phone No.: \_\_\_\_\_  
Email: \_\_\_\_\_

If to the Owner:       3663 Park East My Place LLC  
3500 Lorain Avenue, Suite 100  
Cleveland, Ohio 44113  
Attention: Chad Kertesz  
Phone No.: 216-544-3822  
Email: [chad@myplacecleveland.com](mailto:chad@myplacecleveland.com)

If to the Developer:   3663 Park East My Place LLC  
3500 Lorain Avenue, Suite 100  
Cleveland, Ohio 44113  
Attention: Chad Kertesz  
Phone No.: 216-544-3822  
Email: [chad@myplacecleveland.com](mailto:chad@myplacecleveland.com)

If to the Attorney:    Ronnie Kertesz  
General Counsel  
3439 West Brainard Rd. Suite 260  
Woodmere, Ohio  
Phone No.: 216-831-9110  
Email: [rmkertesz@azmanagement.com](mailto:rmkertesz@azmanagement.com)

Section 5. 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 6. 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 7. 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 8. 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 9. 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 10. Non-Merger. Any term or obligation of this Agreement not given effect upon the transfer of the Project Site (including, but without limitation, the indemnity obligation of Indemnitor pursuant to Section 2 hereof) shall not merge and shall remain in full force and effect notwithstanding the transfer of the Project Site contemplated by this Agreement.

Section 11. Governing Law and Consent to Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio. Any claim or cause of action based on or arising hereunder this Agreement shall be brought in the Cuyahoga County, Ohio Court of Common Pleas.

[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.

**3663 Park East My Place LLC, as Owner**

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

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

**3663 Park East My Place, LLC , as Indemnitor**

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

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

**CITY OF BEACHWOOD**

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

Justin Berns, Mayor

Approved as to Form:

\_\_\_\_\_  
L. Stewart Hastings, City Law Director

## Tactical Planning, LLC

P.O. Box 3163  
Cuyahoga Falls, Ohio 44223  
Ph: 440-725-1886  
geosmerigan@gmail.com

TO: Justin Berns, Mayor  
Special Council Committee

FROM: George Smerigan, City Planner

DATE: November 9, 2022

RE: **My Place Mixed-Use Development**

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In September the Administration was requested to prepare an "Order of Actions" setting forth the process for handling and processing the zoning applications pending before City Council for the My Place mixed-use development project in order to identify both the necessary procedural steps and their required order of accomplishment. That document is attached for reference.

At the City's request, the developer revised the proposed development plan to incorporate the demolition of the existing hotel building and the provision of underground and connected parking for the entire project, changes which substantially increased the overall cost of the development. The developer requested that the City provide some financial incentives in exchange for making those requested changes and for agreeing to certain other requirements intended to ensure the overall quality of the project.

We are now at the point where the Special Committee of Council needs to make a recommendation to City Council with regard to the Development Agreement that sets forth the offered incentive package and the performance requirements. (See Step 3 in the Order of Actions). The draft Development Agreement and an explanatory memorandum by the Economic Director are included in the packet for this meeting.

Should the Special Committee recommend adoption of the Development Agreement, it is anticipated that the next Council agenda would include three (3) ordinances for concurrent action regarding the My Place project. Those ordinances include:

- Ordinance 2022-41, with the recommended changes dated October 3, 2022, which creates the new U-4C Integrated Mixed-Use District as a planned development district, so that the property can only be developed in conformance with the approved plan.

Memorandum  
Special Council Committee  
Justin Berns, Mayor  
My Place Mixed-Use Development  
November 9, 2022  
Page 2

- Ordinance 2022-42, which rezones the 10 acre site on Park East Drive into the newly created U-4C District.
- An ordinance (no number assigned yet) adopting the Development Agreement.

This would accomplish Steps 2A, 2B, and 3 as set forth in the Order of Actions.

While I will defer to the Economic Development Director and Finance Director to explain the specifics of the Development Agreement, I would note the following:

- Every substantial mixed-use development project constructed in Northeast Ohio has been done as a public-private partnership with similar incentive packages. The principal difference being that our incentive package is more conservative than any of those done by other communities.
- Since we are proposing only a non-school TIF, the proposed incentives are very similar to what the city has provided for past projects.
- Because it is gap financing, the incentives are only funding a very small percentage of the overall development cost (estimated at 5%). That means that private financing will be shouldering 95% of the construction costs.
- Because of the way the incentives have been structured, there is no financial risk to the City or its general fund.
- Each of the additional actions required under the terms of the Development Agreement will come back to City Council for your approval.

In summary, the Administration is recommending that the Special Committee recommend placement of the Development Agreement on the next Council agenda for adoption along with Ordinances 2022-41 and 2022-42.



**ORDER OF ACTIONS  
MY PLACE DEVELOPMENT  
PARK EAST DRIVE**

<b>Step Order</b>	<b>Action By</b>	<b>Action / Operation Description</b>
1.	City Council	Adopt Zoning Text Amendment Creating U-4C Mixed Use District
2A.	City Council	Adopt Map Amendment Rezoning 10 Acre My Place Site Into The New U-4C District Pursuant And Subject To The Overall Concept Development Plan (To Be Done Concurrent With Item 2B)
2B.	City Council	Approve The Overall Concept Development Plan Which Shall Become The Zoning Standard For The Property And Will Control All Future Development On The Subject Site (To Be Done Concurrent With Item 2A)
3.	Special Committee and City Council	Approve A Development Agreement With My Place Setting Forth The Terms And Conditions For Development Of The Property And The Terms And Conditions For Financial Incentives With Appropriate Claw Back Conditions and Controls. This Item Includes Any Other Formal Actions Necessary To Finalize And Accomplish The Offered Incentives.
4.	Planning and Zoning Commission	Approve Final Site Development Plan Including Final Construction And Design Drawings For The Project Which Must Be In Substantial Compliance With The Approved Overall Concept Development Plan (See Item 2B) And All Applicable Terms And Conditions Of The Development Agreement (See Item 3)
5.	Architectural Review Board	Approve Final Architectural Treatments For All Of The Buildings To Be Constructed Which Must Be In Substantial Conformance With The Approved Overall Concept Development Plan (See Item 2B) And Any Applicable Terms And Conditions Of The Development Agreement (See Item 3)
6.	Building Department	Approve Final Construction Plans For All Buildings Based On The Final Site Development Plan (See Item 4), The Development Agreement (See item 3), And The Approved Architectural Treatments (See Item 5)



UPDATED MASTERPLAN CONCEPTS

SEPTEMBER 1 2022

**MY PLACE GROUP**  
**3663 PARK EAST**

MASTERPLAN





MASTERPLAN





AERIAL VIEW LOOKING SOUTHEAST





PARK EAST DRIVE LOOKING SOUTH





ENTRY DRIVE LOOKING EAST





MARKET HALL PLAZA





MARKET HALL PLAZA





MARKET HALL LAWN





VIEW SOUTH TO HOTEL





VIEW FROM PAVILION ROOF TERRACE





VIEW NORTH TO OFFICE BUILDING





VIEW NORTH ALONG PARK EAST DRIVE





PLAZA AERIAL





MASTERPLAN CONCEPT - DATA SUMMARY

BUILDING A - NORTH BUILDING		RETAIL		OFFICE	
LEVEL 1		12630		1800	
LEVEL 2				14950	
LEVEL 3				14950	
LEVEL 4				14950	
		12630		46650	
BUILDING B - EAST BUILDING		RETAIL	RESIDENTIAL	PARKING	
LEVEL 0 - BELOW GRADE PARKING				137250	
LEVEL 1 - RETAIL/PARKING	28150		6200	103700	
LEVEL 2 - PARKING				103700	
LEVEL 3- RESIDENTIAL			93210		
LEVEL 4- RESIDENTIAL			93210		
LEVEL 5- RESIDENTIAL			93210		
LEVEL 6 - RESIDENTIAL			93210		
	28150	379040	344650		
BUILDING C - SOUTH BUILDING		RETAIL	RESIDENTIAL	PARKING	HOTEL
LEVEL 0					
LEVEL 1 - RETAIL/PARKING	12150				7200
LEVEL 2 - RES					16500
LEVEL 3- RES					16500
LEVEL 4 - RES					16500
LEVEL 5 - RES					16500
	12150	0	0		73200
BUILDING D - RETAIL PAVILION		RETAIL			
LEVEL 1	8400				
LEVEL 2	8400				
	16800				
		RETAIL	RESIDENTIAL	PARKING	OFFICE HOTEL
TOTALS		69730	379040	344650	46650 73200
TOTAL PROJECT AREA	913270				
TOTAL PROJECT AREA WITHOUT PARKING	568620				
PERCENTAGE OF PROJECT AREA	12%		67%		8% 13%
GARAGE PARKING					
LEVEL 0				411	
LEVEL 1				319	
LEVEL 2				297	
				1027	
SURFACE PARKING				365	
TOTAL PARKING				1412	
		444 UNITS TOTAL			
TOTAL SITE AREA	439,800				
LOT COVERAGE	189950		43%		
LANDSCAPE RATIO	132930		30%		



MASTERPLAN OPTION 2A - PARKING SUMMARY

RESIDENTIAL UNITS	NO. OF UNITS	RATIO	SPACES	PROVIDED
UNITS	414	1.5	621	
HOTEL (120) KEYS)	120		132	
OFFICE (3.8:1000)	46,650		177	
RETAIL (4:1000)	41,730		167	
RESTAURANT (14.7:1000)	28,000		411.6	
SUBTOTAL			1509	
NON RESIDENTIAL USES			888	
SHARED PARKING CREDIT for Non-residential Spaces	20% of 829 spcs		-177.558	
TOTAL			1331	1412



**vocon.**

**LET YOUR  
SPACES SPEAK.**