

**RESOLUTION NO. 42-23**

**RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A DEVELOPMENT AGREEMENT WITH VIC PLACE, LLC FOR THE PURPOSES OF DEVELOPMENT AT 100 SOUTH PARK PLACE AND DECLARING AN EMERGENCY.**

**WHEREAS**, Painesville City Council desires to enter into a development agreement with Vic Place, LLC for the purposes of a transformational mixed-use development project further enhancing economic development within the downtown central business district; and,

**WHEREAS**, the City desires to redevelop the former New Market Mall/Victoria Place site consisting of a 198,276 square foot commercial building on 1.8418 acres located at 100 South Park Place Parcel # 15-C-001-0-00-001-0 (the "Property"); and,

**WHEREAS**, the City desires to engage in urban redevelopment and has adopted a redevelopment plan for the City's downtown district; and,

**WHEREAS**, the developer is undertaking the development of a mixed-use development, featuring multi-family housing, office and restaurant spaces (the "Development"); and,

**WHEREAS**, the Developer has extensive experience in renovating existing structures into residential mixed-use apartment buildings in areas similar to the Property, and desires to develop a mixed-use residential and office/restaurant building that does not contain any subsidized housing units and that is in conformance with the City's Downtown Master Plan; and,

**WHEREAS**, it is the desire of the Parties to enter into this development Agreement ("Agreement") to facilitate the completion of the Project;

**NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Painesville, Lake County, Ohio:**

**SECTION I:** That the City Council hereby authorizes and directs the City Manager to execute a development agreement with Vic Place, LLC for the purposes of engaging in urban redevelopment within the downtown central business district and to execute any and all documents necessary to execute the development agreement.

**SECTION II:** That the formal actions of this Council concerning the passage of this Resolution were adopted in an open meeting, and all deliberations of this Council, or any Committees, which resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22, of the Ohio Revised Code.

**SECTION III:** That this Resolution is declared to be an emergency measure necessary for the immediate protection and preservation of the public peace, health, safety and general welfare of the inhabitants of the City of Painesville and for the further need to submit the application by the deadline; and therefore, this Resolution shall be effective immediately upon its passage.

**PASSED:** July 21, 2023

**EFFECTIVE:** July 21, 2023



Christine Shoop  
President of Council

**ATTEST:**



Samantha Danielson  
Clerk of Council



## **VIC PLACE LLC DEVELOPMENT AGREEMENT**

VIC PLACE LLC DEVELOPMENT AGREEMENT (the “Agreement”) is made by and between THE CITY OF PAINESVILLE, (the “City”), and VIC PLACE LLC., an Ohio Limited Liability Company (the “Developer”), having its offices at 9755 Plank Road, Montville, OH 44064.

### **RECITALS:**

**WHEREAS**, the City desires to have redeveloped the Victoria Place office building consisting of 1.8418 acres located at 100 S. Park Place, Parcel #15-C-001-0-00-001-0 (the “Property”). The Property description is attached hereto as Exhibit A; and

**WHEREAS**, the City desires to engage in urban redevelopment and has adopted a redevelopment plan for the City’s downtown district known as the Downtown Master Plan; and

**WHEREAS**, the Developer has extensive experience in rehabilitating mixed-use office/retail/residential apartment buildings in areas similar to the Property; and desires to rehabilitate the existing building for use as a mixed-use office/retail/residential apartment building that is in conformance with the City’s Downtown Master Plan and similar in concept to the Site Concept Plan as submitted by Renew Partners and dated April 20, 2023, and attached hereto as Exhibit B; and

**WHEREAS**, the Developer owns the Property and seeks the opportunity to develop the Property and the City believes it is in its best interest to allow the Developer the opportunity to develop the Property by renovating the existing structure to have no less than 70 and no more than 80 apartment units, along with a minimum of 74,548 square feet of a mix of retail, commercial and restaurant space of which no more than 20,000 square feet can be used as storage, as described in this Agreement (the “Project”) and in the concept plan attached as Exhibit B; and

**WHEREAS**, it is the desire of the Parties to enter into this Development Agreement (“Agreement”) to facilitate the completion of the Project;

**NOW, THEREFORE**, in consideration of the mutual promises and covenants stated herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows.

### **CITY OF PAINESVILLE’S OBLIGATIONS:**

The City of Painesville herein agrees that the following are obligations that shall be met by the City to fulfill the needs of the Developer and ensure that the Project may proceed into construction.

1. **DD District Rezoning.** The City shall request a rezoning of the Project area. The Property and the adjacent parking lot, owned by the City on Parcel 15C-001-0-00-026-0 will be requested to be rezoned to the City’s Downtown Development (DD) District as outlined in City’s Unified Development Code Section 1117.09 to meet the minimum acreage requirement. The City will submit, as required under the DD zoning, the covenants and deed restrictions. The restrictions submitted will meet the City’s density, parking and unit size requirements for the Project.

An agreement between the City and Developer for parking, as outlined in item 5 of this

Section, will be required to satisfy parking requirements pursuant to the City zoning code.

2. 5709.41 TIF. Upon the signing of this Agreement, the City shall engage Squire Patton and Boggs to file for Tax Increment Financing (TIF) under Section 5709.41 of the Ohio Revised Code (ORC). This new TIF, as provided in the ORC, will allow 100% of the “improvements” made to the Property to be abated for a period of 30 years, subject to a Compensation Agreement with the Painesville City School District (“City School District”) and any other payments required by law to be paid (including to the joint vocational school district (the “JVSD” and together with the City School District, the “School Districts”). During years 1-15 of the TIF, the City shall impose service payments pursuant to ORC 5709.42 and enter into a reimbursement agreement with the Developer to provide that (i) during years 1-15 of the TIF, 100% of the service payments received by the City will be paid to Developer to pay or reimburse costs as permitted by the ORC; (ii) during years 16-20, 75% of the service payments received by the City will be paid to Developer to pay or reimburse costs as permitted by the ORC, with the remaining 25% of service payments to be allocated between the City and the School Districts pursuant to the terms of a School Compensation Agreement; (iii) during years 21-25, 50% of the service payments received by the City will be paid to Developer to pay or reimburse costs as permitted by the ORC, with the remaining 50% of service payments to be allocated between the City and the School Districts pursuant to the terms of a School Compensation Agreement; and (iv) during years 26-30, 25% of the service payments received by the City will be paid to Developer to pay or reimburse costs as permitted by the ORC, with the remaining 75% of service payments to be allocated between the City and the School Districts pursuant to the terms of a School Compensation Agreement. Any funds to the City received from the TIF will be used for urban redevelopment and public improvements to the Project area and surrounding site improvements that would support the Project, as provided in the ORC.
  - a. In order to support this redevelopment project, the City and Developer shall enter into a Transfer and Indemnification Agreement, attached hereto as Exhibit C, which is necessary to facilitate the establishment of the TIF under Ohio Revised Code 5709.41. The Property will be acquired by the City, and subsequently will be transferred to Developer in order for Developer to undertake the Project as outlined in this Agreement.
3. Infrastructure and Easements. The City agrees to provide up to the Project site all site utilities infrastructure necessary, at no cost to the Developer, through its municipally-owned public utility companies, Painesville Municipal Electric and the Painesville Water and Sewer Departments. The City will maintain all existing utility easements on the Project site. The City further agrees to work with the Developer to provide any easements that may be necessary to facilitate the implementation of the project plans (including, but not limited to, encroachment of portions of the Project into City owned right-of-way, “no-build” area on the southern boundary of the Property, and maintenance obligations of right-of-way between “front porch” of the Project and new multi-purpose path) , the specific terms of which will be outlined as agreed to by both parties in a separate agreement.
4. Capital Projects. Pending available funding, the City shall use its best efforts to support the Project site development with infrastructure improvements as allocated within the City’s capital budget, with potential TIF Funding and local resources allocated to the Project area. These capital projects may include Streetscape Improvements and a Transformer from the Electric Department.
5. Parking Agreement. The City will enter into an agreement with the Developer to permit parking as required for the Project in the lot owned by the City and immediately adjacent to the Property (Parcel# 15-C-001-0-00-026-0.) The specific terms for use of the parking area shall be outlined as agreed to by both parties in the Parking Agreement which is separate from this Development Agreement.
6. Retail Recruitment. The City shall provide assistance to the Developer for business

recruitment for the Project retail/restaurant and commercial space. The decision to enter into a lease agreement with any prospective retail/restaurant tenant recruited by the City shall be solely at the discretion of the Developer. Developer shall be permitted to recruit and/or enter into a lease agreement with any business whose use is provided in the City's Unified Development Code Section 1113.06.

#### **DEVELOPER'S OBLIGATIONS:**

The Developer herein agrees that the following are obligations that shall be met by the Developer to fulfill the needs of the City and ensure that the Project may proceed into construction.

1. DD Zoning Documentation Review. The Developer shall review and submit any concerns to the City Planner related to the site preliminary Covenants and Deed Restrictions, attached as Exhibit D, proposed to be submitted to the Planning Commission for the DD District Rezoning. The Developer review shall ensure that there are no restrictions that are impediments to the Project's development. The Developer will submit concept drawings and draft architectural drawings 30 days prior to the Planning Commission meeting to rezone this property to the DD District.
2. Project Concept Plan and Draft Architectural Plans. The Developer shall submit to the City a site concept plan and draft architectural drawings for the Project as required in the Unified Development Code (UDC). This concept plan shall include at a minimum (i) the number of residential units for the Project; (ii) the size of residential units for the Project; (iii) the parking requirements for the Project; and (iv) the proposed time frames for site preparation and building construction and building elevations. The City Administration may conduct an informal review and either approve or reject the draft architectural plans. If the plans are rejected by the City, the City shall detail the reasons that they rejected the plans, and where possible, suggest suitable alternatives. The Developer shall then have 45 days to submit new plans and if the City rejects the revised plans, and the City and Developer after good faith efforts by both parties are unable to reach agreement on design, then this Agreement is terminated and becomes null and void. If the plans are acceptable, the plans shall be submitted to the Planning Commission for approval of a Conditional Use Permit as required by the Unified Development Code section 1117.09(a).
3. Restrictions on the Use of the Property. The Project shall consist of no less than 70 and no more than 80 market-rate residential apartment units, along with a minimum of 74,548 square feet of a mix of retail, commercial and restaurant space of which no more than 20,000 square feet can be used as storage, as approved by the City. The Property shall be developed in accordance with the City's Unified Development Code, Downtown Development District (DD) Zoning regulations, Design Review Standards, assigned Covenants and Deed Restrictions as well as in accordance with the City's Downtown Master Plan and in reasonable conformity with Developer's preliminary concept plans attached hereto as Exhibit B. This residential component of the mixed-use development shall consist of a blend of unit sizes as submitted within the City's rezoning request. The Developer further agrees (i) to refrain from filing any application for exemption that would conflict with the exemption authorized in connection with the TIF and (ii) to refrain from any uses of the Project or the Property that would conflict with the exemption authorized by the TIF.
4. Deed Restriction. No federal, state or locally subsidized housing development shall occur on any part of the Property. Developer will file a deed restriction with the Lake County Records' Office for such purpose after the design has been approved as indicated in paragraph 2 of this section. The City shall have the right to approve the language in the deed restriction before it is recorded.
5. Infrastructure. Developer shall provide all utility connections, relocations and improvements that are needed to the Project at its own expense, but Developer may utilize available TIF proceeds to do so.
6. Developer Cooperation. The Developer agrees to provide any and all information necessary to assist the City in moving forward with the rezoning of the Property, and to fully cooperate as necessary to establish the TIF as outlined above, including, without

limitation, review and consent to the ordinance authorizing the TIF and imposition of service payments.

7. ProForma. If requested by the City, the Developer will provide a Proforma and 30-year tax analysis pertaining to the Project to the City's third party independent financial consultant for review in order for the City to consult with its financial consultant on the Project. Such Proforma contains the Developer's trade secret information and shall not be made part of the public record.
8. Grant/Other Financing Obligations. The City recognizes that the Developer has been awarded financial assistance in the form of a grant through the JobsOhio Vibrant Community program, and in the form of a tax credit allocation through the Ohio Department of Development Transformational Mixed-Use Development (TMUD) program, both of which are critical to ensure the timely completion of the Project. Developer agrees to keep the City apprised of the status of these and any other public financing obligations, and Developer will provide status updates to the City at the same time that they are submitted to any grant or tax credit authority.

### **PROJECT FEASIBILITY:**

Project Feasibility. If, after completion of the activities contemplated by this Agreement, the parties mutually agree that the Project is feasible and the parties agree that construction can commence, the following shall be executed.

1. Legislative Approval. Legislative approvals are required before City Council for the sale and transfer of the Property to permit the City to file for Tax Increment Financing (TIF) under Section 5709.41 of the Ohio Revised Code (ORC). In the event Developer has not commenced construction of the Project by the time frame required by the TMUD grant, but no later than May 15, 2024 and within the proposed timeframes submitted to the City pursuant to DEVELOPERS OBLIGATIONS: Section 2 and/or Section 3 above, Developer shall also have the right to request extensions from the City Planning Commission as set forth in the Unified Development Code Section 1111.08 (g) as permitted to commence construction of the Project if adverse conditions arise pertaining to economic, market, pandemic, supply chain, financing, and/or weather, force majeure or other acts of God, war or terrorism that would reasonably cause delay in commencement of construction of the Project. The project shall be completed within three (3) years of the commencement of the construction. In the event that the project is not started or completed by the dates set forth above, subject to extensions approved by City Planning Commission, then this agreement is null and void and the city has no further obligations under this agreement.

### ADDITIONAL CLAUSES

1. Due Diligence. Each party shall use due diligence to carry out its obligations set forth in this Agreement.
2. Guaranties. Neither party guaranties or insures to the other party the success of the Project.
3. Savings Clause; Governing Law. If one or more provisions of this Agreement or any application of any provision shall be deemed or declared to be invalid, illegal or unenforceable in any respect, the validity, legality, or enforceability of the remaining provisions of this Agreement shall in no way be affected or implied. This Agreement shall be governed by and construed in accordance with the laws of the City of Painesville, Ohio and the State of Ohio. All actions regarding this Agreement shall be brought in the Lake County Court of Common Pleas, and Developer agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.
4. Modification. This Agreement shall not be changed, modified or amended, except by a writing signed by both parties.
5. Status of Parties. The relationship caused by this Agreement shall be, at all times and



under all circumstances, one of contracting parties; and shall not be one of joint venture or partnership for any intents, purposes, designs or in any activities described in this Agreement. This Agreement, however, shall not modify or affect the rights of any party hereto under any other contract or agreement between the parties.

6. No Third-Party Beneficiaries. There are neither actual nor intended third-party beneficiaries to this Agreement.
7. No Continuing Waiver. The waiver of either party of breach of any provision of this Agreement shall not operate or be construed to be a waiver of any subsequent breach.
8. Assignment. This Agreement is non-assignable unless consent of assignment is approved by the City, and shall bind and inure to the benefit and burden of the parties to the extent stated herein. Notwithstanding the foregoing and with City approval, this Agreement may be assigned to an entity that would be the legal entity under which the Project would be completed so long as such entity is controlled by Developer. Such approval shall not be unreasonably withheld or delayed.
9. Integration. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter of this Agreement and supersedes all other prior or contemporaneous agreements or understandings of the parties in connection with its subject matter.
10. Liability. The City assumes no liability for the actions of the Developer under this Agreement. The Developer agrees to fully indemnify and hold harmless the City, its council members and employees (collectively, the "Indemnified Parties"), against any and all liability, loss, damage, or expense which the Indemnified Parties may sustain or be required to pay as a result of any acts or omissions of the Developer, its agents, employees, contractors, subcontractors, licensees, invitees or anyone else acting at the request of the Developer in performance of its services and obligations under this Agreement. The Developer agrees that in order to protect itself as well as the City under the indemnification provision set forth above, it will obtain and keep in full force and effect at all times during the term of this Agreement, a liability insurance policy issued by a company authorized to do business in the State of Ohio and approved by the City with liability coverage in the amount of \$1,000,000.00. Said policy shall name the City as an additional insured.
11. Notices. All notices given by the parties hereunder shall be deemed given if delivered by Federal Express, UPS or other recognized overnight courier, or personally delivered to the parties at their addresses below or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt.

To the City: Douglas L. Lewis  
Painesville City Manager  
7 Richmond Street  
Painesville, Ohio 44077

With a copy to: Painesville City Law Director  
7 Richmond Street  
Painesville, Ohio 44077

To Developer: Vic Place LLC  
Attn: Shawn Neece  
9755 Plank Road  
Montville, OH 44064

And a copy to: Sikora Law LLC  
c/o Michael David  
737 Bolivar Road Suite 270  
Cleveland, Ohio 44115  
mdavid@sikoralaw.com

12. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns. Each party to this Agreement hereby represents and warrants that it is executing this Agreement with the full and proper authority and that the parties whose names appear hereon are duly authorized and empowered to make and execute this Agreement.
13. Time. Time is of the essence with respect to the performance by the parties of their respective obligations under this Agreement.
14. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.
15. Development Agreement Approval. Upon City Council's approval of this Agreement substantially in the form hereto, the City Manager may finalize, sign and execute the Vic Place LLC Development Agreement with the Developer, which such final Development Agreement shall be entered into by the City and the Developer by no later than August 22, 2023.
16. Contingency for Legislative Authorization from City Council. Notwithstanding anything to the contrary in this Agreement, the City shall not be in breach of this Agreement if for any reason City Council or the Planning Commission does not pass any and all additional ordinances as may be necessary for the City to enter into any agreements and amendments to this Agreement. In the event City Council or the Planning Commission shall fail to pass any ordinance or legislation necessary for the terms of this Agreement, Developer may terminate this Agreement upon written notice to the City.

**[Signatures on the following page]**

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the date first set forth above.

CITY:

CITY OF PAINESVILLE, an  
Ohio Municipal Government

Date: \_\_\_\_\_

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

DOUGLAS L. LEWIS  
CITY MANAGER  
CITY OF PAINESVILLE

DEVELOPER:

VIC PLACE LLC an  
Ohio Limited Liability Company

Date: \_\_\_\_\_

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

SHAWN NEECE  
AUTHORIZED REPRESENTATIVE  
RENEW PARTNERS LLC

Approved as to form by Painesville Law Director:

Date: \_\_\_\_\_

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

JAMES LYONS  
LAW DIRECTOR