

DELIVERED JUN 09 2022

City of Middleburg Heights, Ohio

Ordinance No. 2022-58

Introduced by: Mayor Castelli

AN ORDINANCE AUTHORIZING AN AGREEMENT WITH OMNI MIDDLEBURG HEIGHTS LLC OR AN AFFILIATE, PROVIDING FOR A PROJECT AND A PROPERTY TAX EXEMPTION PURSUANT TO THE OHIO COMMUNITY REINVESTMENT AREA PROGRAM, AND DECLARING AN EMERGENCY.

CERTIFICATE

I, Mary Ann Meeks, Clerk of Council of the City of Middleburg Heights, Ohio, hereby certify that the foregoing is a true and accurate copy of Ord. 2022-58 passed on the 14th day of June, 2022 by said Council.

Mary Ann Meeks, Clerk of Council

WHEREAS, the General Assembly of the State of Ohio, by the enactment of Ohio Revised Code Sections 3735.65 et seq. (the "Community Reinvestment Area Program"), has heretofore authorized municipal corporations to designate Community Reinvestment Areas within the State in order to provide incentives for new residential, commercial or industrial development and/or rehabilitation in such areas, by making available property tax exemption for such new development or rehabilitation; and

WHEREAS, pursuant to said Community Reinvestment Area Program, this Council by Ordinance No. 2006-20, approved the designation of the geographic area described in said Ordinance as the CRA #1 Community Reinvestment Area (the "Community Reinvestment Area"); and

WHEREAS, OMNI Middleburg Heights, LLC, an Ohio limited liability company, or an affiliate (the "Owner") plans to construct a 152 unit multi-family senior living community, including 88 independent living apartments, 44 assisted living, and 20 memory care units, and 18 one-story villas on an 11.8 acre site at 19170 Bagley Road, Middleburg Heights, Ohio, 44130, and on current tax parcel numbers 371-08-008, 371-08-009, 371-08-010, 371-08-011, 371-08-012, 371-08-013, 371-08-014, and 371-08-015 (the "Project"); and

WHEREAS, the Owner has submitted an application to the City requesting a property tax exemption for the Project, and the City desires to enter into a Community Reinvestment Area Agreement (the "Agreement") with the Owner and the Tenant; and

WHEREAS, the Project is located in the Berea City School District and the Polaris Joint Vocational School District and the Board of Education of the Berea City School District and the Board of Education of the Polaris Joint Vocational School District have been notified of the proposed Agreement in accordance with Ohio Revised Code Section 5709.83; and

WHEREAS, this Council has determined that it will be in the best interests of the City and its citizens to proceed to enter into the Agreement with the Owner and the Tenant, and that fulfillment of such Agreement will carry out the purposes of the Community Reinvestment Area Program.

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

Section 1: This Council hereby approves the Agreement providing for the Project and for an exemption from real property taxation of 50% of the increase in the assessed valuation of real property resulting from improvements to real property for 12 years. That Agreement shall be in substantially the form of the Agreement on file with the Clerk of Council, with such revisions as are approved by the Law Director of the City; and this Council hereby authorizes the Mayor to execute the Agreement on behalf of the City.

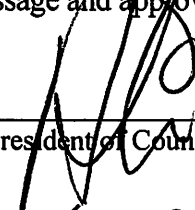
Section 2: This Council hereby authorizes the Mayor, Law Director and Director of Finance to take such additional steps, execute such documents and provide such information and certifications as are necessary and appropriate to carry out and implement the terms and conditions of the aforesaid Agreement and the requirements and policies of the Community Reinvestment Area Program.

Section 3: Pursuant to Section 3735.671 of the Ohio Revised Code, the Clerk of Council is hereby directed to deliver a copy of the Agreement to the Director of the Ohio Department of Development within fifteen days after the Agreement is entered into. 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 the Ohio Department of Development, the Berea City School District and the Polaris Joint Vocational School District a status report required under Section 3735.672 of the Ohio Revised Code.

Section 4: This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council and that all deliberations of this Council and of any committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 5: This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City, and for the further reason that this Ordinance is required to be immediately effective so that the Project may commence immediately to provide for creation of jobs and economic opportunities, which are vitally needed in order to enhance revenues for the City and to improve the economic welfare of the people, therefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

Passed: 6/14/22

  
 \_\_\_\_\_  
 President of Council Pro Tem

Attest: M. Meola  
 Clerk of Council

Approved On: 6-15-22

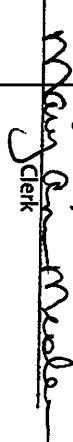
Presented to Mayor: 6/15/22

  
 \_\_\_\_\_  
 Mayor

	Yea	Nay
Bortolotto	<u>ABSENT</u>	
Ali	<u>X</u>	
Sage	<u>X</u>	
Meany	<u>X</u>	
McGregor	<u>X</u>	

	Yea	Nay
Ference	<u>X</u>	
Grech	<u>X</u>	

I, IVANKA ANTONOVA, Clerk of the Council of the City of Middleburg Hts., Ohio, hereby certify that Ord. 2022-58 adopted by the Council of the City of Middleburg Hts. on 6/14/22 was posted for a period of fifteen days, beginning 6/14/22 and remained so posted for fifteen days at the two posting places as designated by Charter.

  
 Clerk

## COMMUNITY REINVESTMENT AREA AGREEMENT

This Community Reinvestment Area Agreement (this "Agreement") made and entered into by and between the City of Middleburg Heights, Cuyahoga County, Ohio (the "City"), a municipal corporation formed and existing under the laws of the State of Ohio (the "State") and Omni Middleburg Heights LLC, an Ohio limited liability company, with its main offices located at 33095 Bainbridge Road, Solon, Ohio 44139 (the "Company").

### WITNESSETH:

**WHEREAS**, the City desires to pursue all reasonable and legitimate incentive measures to assist, encourage and stimulate development in specific areas of the City that have not enjoyed sufficient reinvestment from remodeling or new construction; and

**WHEREAS**, the City, by Ordinance No. 2006-20, adopted by City Council on March 28, 2006 (the "Ordinance"), designated the area specified in the Ordinance as the Middleburg Heights Community Reinvestment Area No. 1 (the "CRA") pursuant to Ohio Revised Code ("R.C.") Sections 3735.65 through 3735.70 (the "CRA Act"), and authorized real property tax exemption for the construction of new structures and the remodeling of existing structures in the CRA in accordance with the CRA Act; and

**WHEREAS**, in accordance with R.C. Section 3735.66, the Director of the Ohio Development Services Agency has forwarded to the City the Director's determination, dated April 24, 2006, that the findings contained in the Ordinance are valid, and that the CRA qualifies as a community reinvestment area under the CRA Act; and

**WHEREAS**, the Company will acquire the real property contained within the City and the CRA described in Exhibit A attached hereto (the "Project Site"); and

**WHEREAS**, the Company has submitted to the City an application for a community reinvestment area agreement, attached hereto as Exhibit B (the "Application"); and

**WHEREAS**, the Company proposes to establish at the Project Site a new 152 unit multi-family senior living community, including 88 independent living apartments, 44 assisted living units, 20 memory care units, and 18 one-story villas together with related site improvements, all as more particularly described in the Application (collectively, the "Project"), provided that the appropriate development incentives are available to support the economic viability of the Project; and

**WHEREAS**, the Company has remitted with the Application the required state application fee of \$750.00, made payable to the Ohio Department of Development, to be forwarded with the executed Agreement, and has paid any applicable local fees; and

**WHEREAS**, pursuant to R.C. Section 3735.67(A) and in conformance with the format required under R.C. Section 3735.671(B), the City and the Company desire to formalize their agreement with respect to matters hereinafter contained; and

**WHEREAS**, the Project Site is located in the Berea City School District (the "School District") and in the Polaris Joint Vocational School District, and the board of education of each such district has been notified of the proposed approval of this Agreement in accordance with R.C. Sections 3735.671 and 5709.83, or has waived such notice, and has been given a copy of the Application; and

**WHEREAS**, City Council, by Ordinance No. \_\_\_\_\_, adopted \_\_\_\_\_, 2022, has approved the terms of this Agreement and authorized its execution on behalf of the City; and

**WHEREAS**, pursuant to R.C. Section 3735.671(A)(2), because the real property taxes from the non-exempt portions of the Project will equal or exceed 50% of the amount of real property taxes that would have been payable but for the exemption provided in this Agreement, approval of this Agreement from the Board of Education of the School District is not required;

**NOW, THEREFORE**, in consideration of the mutual covenants hereinafter contained and the benefit to be derived by the parties from the execution hereof, the receipt and sufficiency of which are hereby acknowledged, the parties herein agree as follows:

1. **Project.** The Company and/or its successors or assigns shall make a good faith effort to complete the Project. The cost of the investments to be made in connection with the Project by the Company and/or its successors or assigns is estimated as (i) approximately \$32,211,000 for construction of a 152 unit multi-family senior housing complex and 18 one-story villas on a 11.8 acre site, including on-site infrastructure; (ii) approximately \$1,440,000 for acquisition of land; (iii) approximately \$1,650,000 for acquisition of machinery and equipment; (iv) \$1,104,000 for acquisition of furniture and fixtures; (v) approximately \$1,104,000 in environmental costs; (vi) and approximately \$8,950,000 in associated soft costs. There are no existing buildings at the Project Site. The estimates provided in this Section are good faith estimates provided pursuant to R.C. Section 3735.671(B) and shall not be construed in a manner that would limit the amount or term of the tax exemptions provided in this Agreement. The parties recognize that costs do not necessarily equal otherwise taxable value.

2. **Values of Personal Property.** The value for Ohio personal property tax purposes of the personal property of the Company, including, but not limited to, machinery, equipment, furniture, and fixtures, located at another location in Ohio prior to the execution of this Agreement and relocated or to be relocated from that location to the Project Site, is \$0. The value for Ohio personal property tax purposes of the personal property of the Company, including, but not limited to, machinery, equipment, furniture, and fixtures, at the Project Site prior to the execution of this Agreement is \$0. The average value for Ohio personal property tax purposes of the inventory of the Company held at another location in Ohio prior to the execution of this Agreement and to be relocated from that location to the Project Site is \$0. The average value for Ohio personal property tax purposes of the inventory of the Company at the Project Site prior to the execution of this Agreement is \$0.

3. **Project Schedule.** The scheduled estimated starting date for the Project investments to be made in building, machinery, equipment, furniture, fixtures and/or inventory is approximately third quarter 2022; and the scheduled estimated completion date for such investments is no later than approximately December 2024. The estimates provided in this Section are good faith estimates provided pursuant to R.C. Section 3735.671(B) and shall not be construed in a manner that would limit the amount or term of the tax exemptions provided in this Agreement, other than as those tax exemptions are limited in Section 6 of this Agreement.

4. **Employee Positions.** The Company shall use its best efforts to cause and/or facilitate the creation at the Project Site of, cumulatively, (i) approximately 50 full-time permanent employee positions with a total annual payroll of approximately \$2,250,000, (ii) 0 full-time temporary employee positions, (iii) 0 part-time permanent employee positions and (iv) 0 part-time temporary employee positions. Hiring of such employees is estimated to commence in approximately 2024 and be completed by no later than December 2026. Currently, the Company has no employees at the Project Site. The approximate number of employee positions of the Company in Ohio at locations other than the Project Site as of the date of execution of this Agreement is 0 full-time permanent employee positions, 0 part-time permanent employee

positions, 0 full-time temporary employee positions, and 0 part-time temporary employee positions. The estimates provided in this Section 4 are good faith estimates provided pursuant to R.C. Section 3735.671(B) and shall not be construed in a manner that would limit the amount or term of the tax exemptions provided in this Agreement. The parties recognize that it is anticipated that all employees at the Project Site will be hired by entities other than the Company.

5. **Provision of Information.** The Company shall provide to the proper tax incentive review council (the "Council") any information reasonably required by the Council to evaluate the compliance of the Company with the Agreement, including returns or annual reports of the Company filed pursuant to R.C. Section 5711.02 if requested by the Council. In addition, the Company shall use commercially reasonable efforts to provide the City with any information reasonably requested by the City to ensure compliance by the Company with the terms of this Agreement, including, but not limited to, , square footage used by residents , number of employees and associated payroll; provided, however, that the City recognizes that the Company may not have the ability to compel others to provide the Company or the City with some or all of the requested information. It is understood that the Company shall have no obligation to disclose the identity of its residents for privacy reasons.

6. **Real Property Tax Exemption.** The City hereby grants a twelve (12) year, 50% real property tax exemption pursuant to R.C. Section 3735.67 for the Project constructed at the Project Site. The exemption commences the first year such real property improvement would first be taxable were that property not hereby exempted from taxation. No exemption shall commence after tax year 2025 (i.e., tax lien date January 1, 2025) nor extend beyond tax year 2036 (i.e., tax lien date January 1, 2036).

7. **Application for Exemption.** The Company acknowledges that the tax exemption with respect to each real property improvement is subject to the filing of a real property tax exemption application with the Housing Officer designated by the City for the CRA, following the completion of construction of that real property improvement. The City agrees that (i) upon receipt of the real property tax exemption application, the Housing Officer shall verify and investigate the facts and circumstances necessary to determine whether the real property improvement is eligible for a tax exemption pursuant to this Agreement; and (ii) if the Housing Officer determines that the real property improvement is eligible for a tax exemption, the Housing Officer shall certify the tax exemption to the Cuyahoga County Fiscal Officer.

8. **Payment of Non-Exempt Taxes.** The Company shall pay such real property taxes as are not exempted under this Agreement or otherwise exempted and are charged against the Project Site and shall file all tax reports and returns as required by law. If the Company fails to pay such taxes or file such returns and reports, and such failure is not corrected within thirty days of written notice thereof to the Company, all exemptions from taxation granted under this Agreement are rescinded beginning with the year for which such unpaid taxes are charged or such unfiled reports or returns are required to be filed and thereafter; provided, however, to the extent permitted by law, the City may elect to reinstate such exemptions under terms acceptable to the City.

9. **Cooperation of the City.** The City shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve, and maintain exemptions from taxation granted under this Agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions. The City shall give its fullest cooperation in the development of the Project, including, but not limited to: (i) the review, processing and approval of all building, signage or other permits, and (ii) all other activities related to the Project.

10. **Revocation of CRA.** If for any reason the City revokes the designation of the CRA, entitlements granted under this Agreement shall continue for the number of years specified in this

Agreement, unless the Company materially fails to fulfill its obligations under this Agreement and such failure is not corrected within thirty days of written notice thereof, and consequently, the City terminates or modifies the exemptions from taxation pursuant to this Agreement.

11. **Certification as to No Delinquent Taxes.** The Company hereby certifies that at the time this Agreement is executed, it does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State of Ohio, and does not owe delinquent taxes for which the Company is liable under Chapter 5733., 5735., 5739., 5741., 5743., 5747., or 5753. of the Ohio Revised Code, or, if such delinquent taxes are owed, the Company currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State of Ohio or an agent or instrumentality thereof, has filed a petition in bankruptcy under 11 U.S.C.A. 101, et seq., or such a petition has been filed against the Company. For the purposes of this certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Revised Code governing payment of those taxes.

12. **Termination or Modification Upon Default.** If the Company materially fails to fulfill its obligations under this Agreement, and such failure is not corrected within thirty days of written notice thereof to the Company, or if the City determines that the certification as to delinquent taxes required by this Agreement is fraudulent, the City may terminate or modify the exemptions from taxation granted under the Agreement.

13. **Approval by the City.** The Company and the City acknowledge that this Agreement must be approved by formal actions of the legislative authority of the City as a condition for this Agreement to take effect. This Agreement takes effect upon such approval. Because this Agreement was approved by Ordinance No. \_\_\_\_\_ on \_\_\_\_\_, 2022, this Agreement shall be effective immediately upon its execution.

14. **Non-Discriminatory Hiring.** By executing this Agreement, the Company is committing to following non-discriminating hiring practices, acknowledging that no individual may be denied employment solely on the basis of race, religion, sex, disability, color, national origin, or ancestry.

15. **Revocation of Exemptions.** Exemptions from taxation granted under this Agreement shall be revoked if it is determined that the Company, any successor to that person, or any related member (as those terms are defined in division (E) of Section 3735.671 of the Ohio Revised Code) has violated the prohibition against entering into the Agreement under Division (E) of Section 3735.671 or Section 5709.62 or 5709.63 of the Ohio Revised Code prior to the time prescribed by that division or either of those sections.

16. **Transfer and/or Assignment; Release from Liability.** This Agreement and the benefits and obligations thereof are not transferable or assignable without the express, written approval of the City. The City shall not unreasonably withhold or delay such approval.

17. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Agreement. Counterparts or signatures transmitted by facsimile or electronic means (such as e-mailed .pdfs) are deemed to be original counterparts or signatures.

18. **Severability; Construction; Headings.** If any provision of this Agreement or the application of any such provision to any such person or any circumstance shall be determined to be invalid or unenforceable, then such determination shall not affect any other provision of this Agreement or the application of such provision to any other person or circumstance, all of which other provisions shall remain in full force and effect. If any provision of this Agreement is capable of two constructions one of which would render the provision valid, then such provision shall have the meaning which renders it valid. The

captions and headings in this Agreement are for convenience only and in no way define, limit, prescribe or modify the meaning, scope or intent of any provisions hereof.

19. **Validity.** The Company and the City covenant and agree that they are prohibited from challenging the validity of this Agreement or the CRA. In that regard, the Company and the City waive any defects in any proceedings related to the CRA or this Agreement. If the validity of the CRA or this Agreement is challenged by any entity or individual, whether private or public, the Company and the City shall advocate diligently and in good faith in support of the validity of the CRA and this Agreement.

20. **Notices.** Any notices, statements, acknowledgements, consents, approvals, certificates or requests required to be given on behalf of any party to this Agreement shall be made in writing addressed as follows and sent by (i) registered or certified mail, return receipt requested, and shall be deemed delivered when the return receipt is signed, refused or unclaimed, or (ii) by nationally recognized overnight delivery courier service, and shall be deemed delivered the next business day after acceptance by the courier service with instructions for next-business-day delivery:

If to the City, to:

Development Director  
City of Middleburg Heights, Ohio  
15700 Bagley Road  
Middleburg Heights, OH 44130

With a copy to:

Law Director  
City of Middleburg Heights, Ohio  
15700 Bagley Road  
Middleburg Heights, OH 44130

If to the Company, to:

Omni SLF Middleburg Heights, LLC  
33095 Bainbridge Road  
Solon, Ohio 44139 Attn: Mario Sinicariello, President

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or to any such other addresses as may be specified by any party, from time to time, by prior written notification.

21. **R.C. Section 9.66 Covenants.** The Company affirmatively covenants that it has made no false statements to the State or any local political subdivision in the process of obtaining approval of the CRA tax exemptions; and that it does not owe: (i) any delinquent taxes to the State or a political subdivision of the State; (ii) any moneys to the State or a State agency for the administration or enforcement of any

environmental laws of the State; and (3) any other moneys to the State, a State agency or a political subdivision of the State that are past due, whether the amounts owed are being contested in a court of law or not. If any representative of the Company has knowingly made a false statement to the State or any local political subdivision to obtain the CRA tax exemptions, the Company shall be required to immediately return all benefits received by it under this Agreement pursuant to R.C. Section 9.66(C)(2) and the Company shall be ineligible for any future economic development assistance from the State, any State agency or a political subdivision pursuant to R.C. Section 9.66(C)(1). Any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to R.C. Section 2921.13(D)(1), which is punishable by a fine of not more than \$1,000 and/or a term of imprisonment of not more than six months.

22. **Annual Fee.** The Company shall pay an annual fee to the City equal to the greater of one per cent of the amount of taxes exempted under the agreement or five hundred dollars; provided, however, that if the value of the incentives exceeds two hundred fifty thousand dollars, the fee shall not exceed two thousand five hundred dollars (\$2,500). The fee shall be paid by the Company to the City once per year, on or after July 1st of each year this Agreement is in effect, within thirty (30) days of receipt of an invoice from the City. This fee shall be deposited in a special fund created for such purpose and shall be used exclusively for the purpose of complying with R.C. Section 3735.672 and by the Council created under R.C. Section 5709.85 exclusively for the purposes of performing the duties prescribed under that Section.

23. **Additional Project Site Exemptions.** The Company acknowledges the City's intent to adopt a real property tax exemption pursuant to R.C. Section 5709.40(B) (the "TIF Exemption") on the Project Site and the TIF Exemption and related service payments are necessary to provide funding for the City to make certain public infrastructure improvements that will benefit the Project Site. The Company agrees to assist the City in obtaining the TIF Exemption for the Project Site and hereby provides the City written consent to file the application for the TIF Exemption, or the Company shall file the application for exemption. The Company acknowledges and consents to the City filing a notice pursuant to R.C. Section 5709.911 with the Cuyahoga County Fiscal Officer, prohibiting any additional exemptions on the Project Site (other than the TIF Exemption and the exemption granted in Section 6 of this Agreement) until the expiration of the TIF Exemption. The Company shall pay all reasonable and actual expenses of the City, including attorney fees, incurred and related to the Project Site exemptions, in an amount not to exceed Fifteen Thousand and 00/100 Dollars (\$15,000.00).

24. **Termination.** This Agreement shall be in full force and effect until December 31 of the last tax year in which exemptions can be claimed pursuant to Section 6 of this Agreement, after which this Agreement and the obligations of all parties hereto shall terminate.

[Remainder of page intentionally left blank]



**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their duly authorized representative to be effective as of \_\_\_\_\_, 2022.

CITY OF MIDDLEBURG HEIGHTS, OHIO

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

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

Title: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Law Director

**OMNI MIDDLEBURG HEIGHTS LLC,  
an Ohio limited liability company**

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

**Print Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**EXHIBIT A**  
**DEPICTION OF PROJECT SITE**  
**(ATTACHED)**

**EXHIBIT B**  
**CRA APPLICATION**  
**(ATTACHED)**