

DELIVERED NOV 09 2023

CITY OF MIDDLEBURG HEIGHTS, OHIO

Ordinance No. 2023- **93**

Introduced by: Mr. Bortolotto, Mr. Meany, and Mr. Grech

AN ORDINANCE

PROVIDING FOR THE ISSUANCE AND SALE OF \$450,000 OF ECONOMIC DEVELOPMENT NONTAX REVENUE BOND ANTICIPATION NOTES, IN ANTICIPATION OF THE ISSUANCE OF BONDS, FOR THE PURPOSE OF PAYING COSTS OF ACQUIRING APPROXIMATELY 3.86 ACRES OF REAL PROPERTY LOCATED AT 6950 WEST 130th STREET IN THE CITY FOR SALE OR LEASE FOR PRIVATE REDEVELOPMENT, APPROPRIATING THE PROCEEDS OF THE NOTES AND AUTHORIZING THE EXPENDITURE OF THOSE PROCEEDS FOR THAT PURPOSE, AND DECLARING AN EMERGENCY.

WHEREAS, the City is authorized and empowered by virtue of the laws of the State of Ohio, including, without limitation, Section 13 of Article VIII of the Ohio Constitution and Chapter 165 of the Revised Code, among other things, to (i) issue bond anticipation notes and bonds to acquire, construct, reconstruct, equip, or improve a “project” as defined in Section 165.01 of the Revised Code, comprising an industrial, commercial or research facility, located within the boundaries of the City, for the purpose of creating or preserving jobs and employment opportunities and improving the economic welfare of the people of the City and of the State, (ii) secure such notes and bonds by a pledge of nontax revenues, as provided herein, and (iii) pass this Ordinance and enter into related agreements, upon the terms and conditions provided herein; and

WHEREAS, for the purpose of creating or preserving jobs and employment opportunities and improving the economic welfare of the people of the City and of the State, the City has determined to issue the economic development nontax revenue bond anticipation notes authorized herein, in anticipation of the issuance of bonds described in Section 4, to provide funds necessary to pay costs of acquiring lots and lands identified in the records of the Cuyahoga County Fiscal Officer as Permanent Parcel No. 372-31-009, being approximately 3.86 acres of real property formerly owned by Seritage SRC Finance LLC, which real property is located at 6950 West 130th Street in the City;

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

Section 1. Definitions and Interpretation. In addition to the words and terms defined elsewhere in this Ordinance or by reference to the Act, unless the context or use clearly indicates another meaning or intent:

“Act” means Chapter 165 of the Revised Code, as enacted and amended pursuant to Section 13 of Article VIII of the Ohio Constitution.

“Bonds” means the bonds in anticipation of which the Notes are issued, the estimated terms of which are described in Section 4.

“Certificate of Award” means the certificate signed by the Fiscal Officer pursuant to Sections 3 and 7 determining and specifying those final terms or other matters pertaining to the Notes or their issuance, sale and delivery as this Ordinance requires or authorizes to be set forth or determined therein.

“Clerk of Council” means the Clerk of Council or the person at the time performing the duties of the clerk of council of the City.

“Director of Law” means the Director of Law or the person at the time performing the duties of the chief legal officer of the City.

“Fiscal Officer” means the Director of Finance or the person at the time performing the duties of the chief financial officer and fiscal officer of the City.

“Mayor” means the Mayor or the person at the time performing the duties of the chief executive officer of the City.

“Nontax Revenues” means all moneys of the City which are not moneys raised by taxation, to the extent available for the purpose of paying Note service charges, including, but not limited to the following: (a) proceeds from the sale or lease of all or a portion of the Project Site, (b) grants from the United States of America and the State, (c) payments in lieu of taxes now or hereafter authorized by State statute to the extent not pledged to pay debt charges on other City indebtedness, (d) fines and forfeitures which are deposited in the City’s General Fund, (e) fees deposited in the City’s General Fund for services provided and from properly imposed licenses and permits, (f) investment earnings on the City’s General Fund, (g) investment earnings on other funds of the City that are credited to the City’s General Fund, including, without limitation, investment earnings on the Project Fund which are paid into the General Fund, (h) proceeds from the sale of assets which are deposited in the City’s General Fund, (i) gifts and donations, (j) all rental payments which are deposited in the City’s General Fund and (k) any moneys in the Project Fund which are not needed to pay costs of the Project.

“Note service charges” means, for any period of time, the principal of and interest required to be paid by the City on the Notes for such time period.

“Notes” means the Economic Development Nontax Revenue Notes, Series 2023B (Federally Taxable) (Southland Area Redevelopment Project), of the City authorized in Section 3.

“Ordinance” means this Ordinance as amended or supplemented from time to time.

“Original Purchaser” means the City of Middleburg Heights, Ohio.

“Parity Obligations” means bonds, notes or other obligations of or guaranties by the City payable from Nontax Revenues on a parity with or prior to the Notes or Bonds.

“Paying Agent” means the Fiscal Officer.

“Project” means acquiring the Project Site, for sale or lease to a single developer or developers for development of commercial facilities, all of which constitutes a “project,” as defined in the Act.

“Project Fund” means the Project Fund described in Section 8.

“Project Site” means the lots and lands identified in the records of the Cuyahoga County Fiscal Officer as Permanent Parcel No. 372-31-009, being approximately 3.86 acres of real property formerly owned by Seritage SRC Finance LLC, which real property is located at 6950 West 130th Street in the City.

“State” means the State of Ohio.

Any reference herein to the City, to this Council, or to any officer or member of either, includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of the Constitution of the State or the Act or the Revised Code includes that section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; provided, that no such amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this provision if it constitutes in any way an impairment of the rights or obligations of the City or the holder of the Notes under this Ordinance, the Notes or any other instrument or document entered into in connection with any of the foregoing, including, without limitation, any alteration of the obligation to pay the Note service charges in the amount and manner, at the times and from the sources provided in this Ordinance, except as permitted herein.

Unless the context indicates otherwise, words importing the singular number shall include the plural number and vice versa. The terms “hereof,” “hereby,” “herein,” “hereto,” “hereunder” and similar terms refer to this Ordinance; and the term “hereafter” means after, and the term “heretofore” means before, the effective date of this Ordinance. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

The captions and headings in this Ordinance are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Sections, subsections, paragraphs, subparagraphs or clauses hereof. Reference to a Section means a section of this Ordinance unless otherwise indicated.

Section 2. Determinations by Council. This Council determines that (i) the Project is a “project” as defined in the Act and is consistent with the purposes of Section 13 of Article VIII of the Ohio Constitution, (ii) the utilization of the Project is in furtherance of the purposes of the Act and will

benefit the people of the City and of the State by creating and preserving jobs and employment opportunities and improving the economic welfare of the people of the City and of the State and (iii) it is necessary for the City to borrow money, by the issuance and sale of the Notes, as provided herein, to provide funds necessary to pay costs of the Project.

Section 3. Authorization and Terms of Notes; Parity Obligations. This Council determines it to be necessary to issue, and the City shall, issue, sell and deliver, as provided and authorized herein and pursuant to the authority of the Act, the Notes, in anticipation of the issuance of bonds, in the aggregate principal amount of \$450,000 for the purpose of paying costs of the Project. The Notes shall be designated "Economic Development Nontax Revenue Notes, Series 2023B (Federally Taxable) (Southland Area Redevelopment Project)" unless otherwise designated in the Certificate of Award, and shall be numbered or designated by series or project identification as determined by the Fiscal Officer, to distinguish the Notes from other City notes.

The Notes shall be dated the date of issuance and shall mature, subject to prepayment as provided in Section 5, not later than one year from their date of issuance, as shall be fixed by the Fiscal Officer in the Certificate of Award. The Notes shall bear interest from their date of issuance at a rate not to exceed 8% per year (computed on the basis of a 360-day year consisting of 12 30-day months), payable at maturity or at any date of earlier prepayment as provided for in Section 5 and until the principal amount is paid or payment is provided for.

The Note service charges shall be payable in lawful money of the United States of America, and shall be payable, without deduction for services of the Paying Agent, at the office of the Paying Agent.

Based on the best interests of and financial advantages to the City and conditions then existing in the financial markets and subject to the limitations set forth in this Section, the Fiscal Officer shall determine and specify in the Certificate of Award the date of issuance and maturity of the Notes and the rate of interest that Notes shall bear.

The City may in the future issue Parity Obligations. The City covenants that, so long as any of the Notes are outstanding, it shall not issue any Parity Obligations unless the Fiscal Officer shall have certified to this Council that the average annual Nontax Revenues received by the City during the preceding two years, adjusted to reflect, if necessary, changes in the rates or charges resulting in the Nontax Revenues, aggregate in amount not less than 100% of the highest amount of (i) Bond debt charges and (b) required payments on such proposed Parity Obligations and any outstanding Parity Obligations due in any succeeding calendar year.

Section 4. Estimated Bond Terms. The Bonds shall be dated approximately December 1, 2024, shall bear interest at the now estimated rate of 8% per year, payable semiannually until the principal amount is paid, and are estimated to mature in 30 annual principal installments beginning December 1, 2025, that are such that the total amount of principal and interest payments on the Bonds in any fiscal year in which principal is payable is substantially equal to the total amount of those payments in each other such fiscal year. Nothing in this Ordinance shall prevent the City from retiring the Notes

with the proceeds of bond anticipation notes or with the proceeds of Bonds or other obligations containing terms different than those described in this Ordinance.

Section 5. Prepayment Provisions. If agreed to by the Original Purchaser, the Notes shall be subject to prepayment prior to stated maturity, by and at the sole option of the City, in whole or in part on any date, at a prepayment price equal to the principal amount prepaid, plus interest accrued to the prepayment date. Prepayment prior to maturity shall be made by deposit with the Original Purchaser of the principal amount of the Notes to be prepaid together with interest accrued thereon to the date of prepayment. The City's right of prepayment shall be exercised by mailing or otherwise delivering a notice of prepayment, stating the date of prepayment and the name and address of the Original Purchaser, by certified or registered mail to the Original Purchaser of the Notes not less than seven days prior to the date of that deposit, unless that notice is waived by the Original Purchaser of the Notes. If money for prepayment is on deposit with the Original Purchaser on the specified prepayment date following the giving of that notice (unless the requirement of that notice is waived as stated above), interest on the principal amount prepaid shall cease to accrue on the prepayment date, and upon the request of the Fiscal Officer the Original Purchaser of the Notes shall arrange for the delivery of the Notes to be prepaid at the office of the Original Purchaser for prepayment and surrender and cancellation.

Section 6. Execution. The Notes shall be negotiable instruments in accordance with the Act, and each Note shall express on its face the purpose for which it is issued and such other statements or legends as may be required by law.

The Notes shall be signed by the Mayor and the Fiscal Officer, in the name of the City and in their official capacities, provided that one of those signatures may be a facsimile.

Section 7. Sale of Notes. The Notes shall be awarded and sold by the Fiscal Officer at private sale to the Original Purchaser, in accordance with this Ordinance, at a purchase price of not less than the par value thereof. The Fiscal Officer is authorized and directed to sign and deliver the Certificate of Award to evidence each such sale and to establish, consistent with the provisions, and subject to the limitations set forth herein, certain final terms of the Notes. It is hereby determined that the price for and the terms of the Notes, and the sale thereof, all as provided in this Ordinance and in the Certificate of Award are in the best interest of the City and in compliance with all legal requirements.

The Fiscal Officer and other City officials are authorized and directed to make the necessary arrangements with the Original Purchaser to establish the date, location, procedure and conditions for the delivery of the Notes to the Original Purchaser, and to take all steps necessary to effect due execution and delivery of the Notes, together with a true transcript of proceedings with reference to the issuance of the Notes, to the Original Purchaser upon payment of the purchase price under the terms of this Ordinance. The Mayor, the Fiscal Officer, the Director of Law, the Clerk of Council and other City officials, as appropriate, are each authorized and directed to sign any transcript certificates, financial statements, security agreements with respect to the liens referred to in this Ordinance, and other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Ordinance.

Section 8. Appropriation and Expenditure of Proceeds of Notes; Project Fund. The proceeds from the sale of the Notes shall be deposited and credited to a separate account or fund (the Project Fund). Moneys in the Project Fund shall be invested in accordance with the provisions of the City's Charter, Codified Ordinances and investment policy. Those proceeds are hereby appropriated and shall be used to pay costs of the Project, including, without limitation, financing costs in connection with the issuance of the Notes and reimbursement of any funds advanced to pay costs of the Project by the City, and are hereby appropriated for that purpose. The expenditure of funds for the foregoing purpose is hereby authorized.

Section 9. Payment and Security of the Notes. The Notes and the Bonds shall be special obligations of the City, and the Note service charges on the Notes and the debt charges on the Bonds shall be payable solely from the Nontax Revenues, and the payment of Note service charges is secured by a pledge of and lien on the Nontax Revenues on deposit in the Note Fund, as described below. The Notes and the Bonds are not and shall not be secured by an obligation or pledge of any money raised by taxation. The Notes and the Bonds do not and shall not represent or constitute a debt or pledge of the faith and credit or taxing power of the City, and the holders thereof have and shall have no right to have taxes levied by the City for the payment of Note service charges on the Notes or debt charges on the Bonds.

There is hereby created a separate account or fund designated as the "Southland Area Redevelopment Project Retirement Fund" (the Note Fund) into which Nontax Revenues shall be deposited on or prior to the date of maturity of the Notes in an amount sufficient to pay Note service charges on the Notes. The City covenants and agrees that while the Notes are outstanding, it will appropriate and maintain Nontax Revenues at such times and in such amounts as will be sufficient, together with the proceeds of the Bonds or renewal notes issued in anticipation of the Bonds available for the purpose, to pay the Note service charges on the Notes and required payments on Parity Obligations when due and will so restrict the issuance of future Parity Obligations as will ensure the continuing availability for appropriation of sufficient Nontax Revenues to pay Note service charges and required payments on outstanding Parity Obligations when due, which Nontax Revenues are hereby selected by the City pursuant to Section 165.12 of the Revised Code as moneys that are not raised by taxation.

The par value to be received from the sale of the Bonds or of any renewal notes and any excess funds resulting from the issuance of the Notes shall, to the extent necessary, be used to pay the Note service charges on the Notes at maturity and are pledged for that purpose.

Nothing herein shall be construed as requiring the City to use or apply to the payment of Note service charges on the Notes any funds or revenues from any source other than Nontax Revenues. Nothing herein, however, shall be deemed to prohibit the City, of its own volition, from using, to the extent that it is authorized by law to do so, any other resources for the fulfillment of any of the terms, conditions or obligations of this Ordinance or of the Notes.

Section 10. Covenants and Representations of City. In addition to other representations and warranties of the City contained in this Ordinance, the City covenants and agrees that:

(a) Payment of Note Service Charges. Except to the extent paid from the proceeds of refunding bond anticipation notes or the Bonds, the City will, solely from the Nontax Revenues, pay or cause to be paid the Note service charges on the dates, at the places and in the manner provided herein and in the Notes. For that purpose, in each year while the Notes are outstanding, this Council, after providing for the payment of debt charges payable on the City's general obligation securities in that year from sources available for that purpose, will appropriate Nontax Revenues required to pay, and for the purpose of paying, the Note service charges and required payments on Parity Obligations due in that year. Further, this Council will give effect to such appropriations in all ordinances it passes thereafter in that year appropriating money for expenditure and encumbrance and limit the other appropriations of Nontax Revenues in that year to the amount available after deducting the amount required for the payment of debt charges payable on the City's general obligation securities and to pay those Note service charges and required payments on Parity Obligations.

(b) Performance of Covenants and City Actions. The City will at all times faithfully observe and perform all agreements, covenants, undertakings, stipulations and provisions to be performed on its part under this Ordinance and the Notes and under all proceedings of this Council pertaining thereto. The City represents that (i) it is, and upon delivery of the Notes covenants that it will be, duly authorized by the Constitution and laws of the State including particularly and without limitation the Act, and its Charter, to issue the Notes and the Bonds and to provide the security for payment of the Note service charges in the manner and to the extent set forth herein and in the Notes, (ii) all actions on its part for the issuance of the Notes have been or will be taken duly and effectively and (iii) the Notes will be valid and enforceable special obligations of the City according to their terms. Each obligation of the City required to be undertaken pursuant to the Ordinance and the Notes is binding upon the City, and upon each officer or employee of the City as may from time to time have the authority under law to take any action on behalf of the City as may be necessary to perform all or any part of such obligation, as a duty of the City and of each of those officers and employees resulting from an office, trust or station within the meaning of Section 2731.01 of the Revised Code, providing for enforcement by writ of mandamus.

(c) Inspection of Project Books. All books and documents in the City's possession relating to the Project and the Nontax Revenues shall be open at all times during the City's regular business hours to inspection by such accountants or other agents of the holder as the holder of the Notes may from time to time designate.

(d) Transcript of Proceedings. The Clerk of Council, or another appropriate officer of the City, shall furnish to the Original Purchaser a true transcript of proceedings, certified by that officer, of all proceedings had with reference to the issuance of the Notes along with such information from the records as is necessary to determine the regularity and validity of the issuance of the Notes.

Section 11. Tax Matters. The City does not intend or represent that the interest on the Notes will be excluded from gross income for federal income tax purposes under Section 103(a) of the Internal Revenue Code of 1986, as amended, and the City is not and shall not be obligated to take any action to attempt to secure or maintain any such exclusion.

Section 12. Payment and Discharge. If the City shall pay or cause to be paid and discharged the Note, the covenants, agreements and other obligations of the City hereunder and in the Notes shall be discharged and satisfied.

Section 13. Satisfaction of Conditions to Issue Notes. This Council determines that all acts and conditions necessary to be done or performed by the City or to have been met precedent to and in the issuing of the Notes in order to make them legal, valid and binding special obligations of the City have been performed and have been met, or will at the time of delivery of the Notes have been performed and have been met, in regular and due form as required by law; and that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Notes.

Section 14. Retention of Bond Counsel. The legal services of Squire Patton Boggs (US) LLP, as bond counsel, be and are hereby retained. The legal services shall be in the nature of legal advice and recommendations as to the documents and the proceedings in connection with the issuance and sale of the Notes and the rendering of the necessary legal opinion upon the delivery of the Notes. In rendering those legal services, as an independent contractor and in an attorney-client relationship, that firm shall not exercise any administrative discretion on behalf of the City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, the City or any other political subdivision, or the execution of public trusts. That firm shall be paid just and reasonable compensation for those legal services and shall be reimbursed for the actual out-of-pocket expenses it incurs in rendering those legal services. The Fiscal Officer is authorized to provide for the payment of those fees and any reimbursements from the proceeds of the Notes to the extent available and otherwise is authorized and directed to make appropriate certification as to the availability of funds for those fees and any reimbursement and to issue an appropriate order for their timely payment as written statements are submitted by that firm.

Section 15. Retention of Municipal Advisor. The services of MAS Financial Advisory Services LLC, as municipal advisor, be and are hereby retained. The municipal advisory services shall be in the nature of financial advice and recommendations in connection with the issuance and sale of the Notes. In rendering those municipal advisory services, as an independent contractor, that firm shall not exercise any administrative discretion on behalf of the City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, the City or any other political subdivision, or the execution of public trusts. That firm shall be paid just and reasonable compensation for those municipal advisory services and shall be reimbursed for the actual out-of-pocket expenses it incurs in rendering those municipal advisory services. The Director of Finance is authorized to provide for the payment of those fees and any reimbursements from the proceeds of the Notes to the extent available and otherwise is authorized and directed to make appropriate certification as to the availability of funds for those fees and any reimbursement and to issue an appropriate order for their timely payment as written statements are submitted by that firm.

Section 16. Severability. Each section of this Ordinance and each subdivision of any section thereof is hereby declared to be independent, and the finding or holding of any section or

subdivision of any section thereof to be invalid or void shall not be deemed nor held to affect the validity of any other section or subdivision of this Ordinance.

Section 17. Ratification. Each action taken by the City and any officer of the City in connection with the Project and the Notes is hereby ratified and confirmed and shall be given full force and effect as of the time such action was taken.

Section 18. Compliance with Open Meeting Requirements. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council or its committees, and that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law, including Chapter 107 of the City's Codified Ordinances and Section 121.22 of the Revised Code.

Section 19. Declaration of Emergency; Effective Date. This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the City and for the further reason that this Ordinance is required to be immediately effective in order to sell the Notes at the earliest possible date, which is necessary to enable the City to reimburse moneys advanced pursuant to the agreement for the purchase of the Project Site between the City and Seritage SRC Finance LLC, such purchase thereby creating jobs and employment opportunities and improving the economic welfare of the City residents; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

Passed: 11/14/23

[Signature]
President of Council

Attest: M. Meola
Clerk of Council

Approved On: 11-20-23

Presented to Mayor: 11/15/23

[Signature]
Mayor

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

I, Mary Ann Meola Clerk of the Council of the City of Middleburg Hts., Ohio, hereby certify that ORD 2023-93 adopted by the Council of the City of Middleburg Hts., on 11-14-23 was posted for a period of fifteen days; beginning 11-20-23 and remained so posted for fifteen days at the two posting places as designated by Charter.

[Signature]
Clerk

CERTIFICATE

I, Mary Ann Meola Clerk of Council of the City of Middleburg Heights, Ohio, do hereby certify that the foregoing is a true and accurate copy of ORD 2023-93 passed on the 14 day of November 2023 by said Council.

[Signature]
Clerk of Council

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CERTIFICATE

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