

**CITY OF MIDDLEBURG HEIGHTS, OHIO**

Ordinance No. 2024-**81**

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

**AN ORDINANCE**

**PROVIDING FOR THE ISSUANCE AND SALE OF NOT TO EXCEED \$3,600,000 OF ECONOMIC DEVELOPMENT NONTAX REVENUE BOND ANTICIPATION NOTES, IN ANTICIPATION OF THE ISSUANCE OF BONDS, FOR THE PURPOSE OF PAYING COSTS OF ACQUIRING LOTS AND LANDS IN THE CITY IDENTIFIED IN THE RECORDS OF THE CUYAHOGA COUNTY FISCAL OFFICER AS (i) PERMANENT PARCEL NO. 372-31-006, APPROXIMATELY 14.93 ACRES, (ii) PERMANENT PARCEL NO. 372-31-009, APPROXIMATELY 3.86 ACRES, AND (iii) PERMANENT PARCEL NO. 372-30-019, APPROXIMATELY 7.275 ACRES, EACH FOR SALE OR LEASE FOR PRIVATE REDEVELOPMENT, 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, pursuant to Ordinance No. 2023-94, passed on November 14, 2023 (the Original Series 2023A Notes Ordinance), the City issued its \$2,100,000 Economic Development Nontax Revenue Notes, Series 2023A (Federally Taxable) (Southland Area Redevelopment Project) (the Outstanding Series 2023A Notes), for the purpose of paying costs of acquiring lots and lands identified in the records of the Cuyahoga County Fiscal Officer as Permanent Parcel No. 372-31-006, being approximately 14.93 acres of real property formerly owned by Seritage SRC Finance LLC; 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, pursuant to Ordinance No. 2023-93, passed on November 14, 2023 (the Original Series 2023B Notes Ordinance and, together with the Original Series 2023A Notes Ordinance, the Original Note Ordinances), the City issued its \$450,000 Economic Development Nontax Revenue Notes, Series 2023B (Federally Taxable) (Southland Area Redevelopment Project) (the Outstanding Series 2023B Notes and, together with the Outstanding Series 2023A Notes, the Outstanding Notes), for the purpose of paying 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; 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 economic development nontax revenue bond anticipation notes authorized herein, in anticipation of the issuance of bonds described in Section 3, 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. 372-30-019, being approximately 7.275 acres of real property formerly owned by Brixmore GA Southland Shopping Center LLC; and

WHEREAS, this Council finds and determines that the City should (i) retire the Outstanding Notes and (ii) provide an additional \$900,000 for the purpose described in clause (iii) of Section 3 with the proceeds of the Notes described in Section 5;

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.

“Book entry form” or “book entry system” means a form or system under which (i) the ownership of beneficial interests in the Notes and the principal of, and interest on, the Notes may be transferred only through a book entry, and (ii) a single physical Note certificate is issued by the City and payable only to a Depository or its nominee, with such Notes deposited and maintained in the custody of the Depository or its agent for that purpose. The book entry maintained by others than the City is the record that identifies the owners of beneficial interests in the Notes and that principal and interest.

“Certificate of Award” means the certificate signed by the Director of Finance pursuant to Sections 5 and 8 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.

“Depository” means any securities depository that is a clearing agency under federal law operating and maintaining, with its Participants or otherwise, a book entry system to record ownership

of beneficial interests in the Notes or the principal of, and interest on, the Notes and to effect transfers of the Notes, in book entry form, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

“Director of Finance” 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.

“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.

“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 Fund” means the Note Fund described in Section 9 of each of the Original Note Ordinances.

“Note Purchase Agreement” means the Note Purchase Agreement between the City and the Original Purchaser, as it may be modified from the form on file with the Clerk of Council and signed in accordance with Section 8(b).

“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 2024 (Federally Taxable) (Southland Area Redevelopment Project), of the City authorized in Section 5.

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

“Original Purchaser” means, unless otherwise determined by the Director of Finance in the Certificate of Award, Stifel, Nicolaus & Company, Incorporated.

“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.

“Participant” means any participant contracting with a Depository under a book entry system and includes security brokers and dealers, banks and trust companies, and clearing corporations.

“Paying Agent” means, unless otherwise determined by the Director of Finance in the Certificate of Award, Zions Bancorporation, National Association.

“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 of each of the Original Note Ordinances.

“Project Site” means, collectively, (i) the lots and lands identified in the records of the Cuyahoga County Fiscal Officer as Permanent Parcel No. 372-31-006, being approximately 14.93 acres of real property formerly owned by Seritage SRC Finance LLC, (ii) 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, and (iii) the lots and lands identified in the records of the Cuyahoga County Fiscal Officer as Permanent Parcel No. 372-30-019, being approximately 7.275 acres of real property formerly owned by Brixmore GA Southland Shopping Center LLC, all 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. Authorized Principal Amount of Bonds and Purpose. It is necessary to issue Bonds of the City in an aggregate principal amount not to exceed \$3,600,000 for the purpose of paying costs of acquiring lots and lands in the City identified in the records of the Cuyahoga County Fiscal Officer as (i) Permanent Parcel No. 372-31-006, approximately 14.93 acres, (ii) Permanent Parcel No. 372-31-009, approximately 3.86 acres and (iii) Permanent Parcel No. 372-30-019, approximately 7.275 acres, all in the City and in support of economic development and job creation within the City.

Section 4. Estimated Bond Terms. The Bonds shall be dated approximately November 1, 2025, 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, 2026, 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. Authorized Principal Amount of Notes; Dating; Interest Rate; 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 the Bonds, in an aggregate principal amount not to exceed \$3,600,000 to retire the Outstanding Notes and to pay costs of the Project. The Notes shall be designated “Economic Development Nontax Revenue Notes, Series 2024 (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 Director of Finance, to distinguish the Notes from other City notes.

The Notes shall be dated the date of issuance and shall mature one year from the date of issuance; provided that the Director of Finance may, if it is determined to be necessary or advisable to the sale of the Notes, establish a maturity date that is any date not later than one year from the date of issuance by setting forth that maturity date in the certificate awarding the Notes and signed in accordance with the Certificate of Award. The Notes shall bear interest 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 and until the principal amount is paid or payment is provided for. The aggregate principal amount of and rate of interest on the Notes shall be determined by the Director of Finance in the Certificate of Award.

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 Director of Finance

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 6. Payment of Note Service Charges; Paying Agent. Note service charges shall be payable in lawful money of the United States of America or in Federal Reserve funds of the United States of America, as determined by the Director of Finance in the Certificate of Award, and shall be payable, without deduction for services of the City's paying agent, at the designated corporate trust office of the Paying Agent, or at the designated corporate trust office or other office of a bank or trust company designated by the Director of Finance in the Certificate of Award, after determining that the payment at that bank or trust company will not endanger the funds or securities of the City and that proper procedures and safeguards are available for that purpose, or at the office of the Director of Finance if agreed to by the Director of Finance and the Original Purchaser.

Section 7. Execution of Notes; Book Entry System. The Notes shall be signed by the Mayor and the Director of Finance, in the name of the City and in their official capacities, provided that one of those signatures may be a facsimile. The Notes shall be issued in the denominations and numbers as requested by the Original Purchaser and approved by the Director of Finance, provided that no Note shall be issued in a denomination less than \$100,000. The entire principal amount may be represented by a single note and may be issued as fully registered securities (for which the Director of Finance will serve as note registrar) and in book entry or other uncertificated form in accordance with Section 9.96 and Chapter 133 of the Revised Code if it is determined by the Director of Finance that issuance of fully registered securities in that form will facilitate the sale and delivery of the Notes. The Notes shall not have coupons attached, shall be numbered as determined by the Director of Finance and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to this Ordinance.

The Notes may be issued to a Depository for use in a book entry system and, if and as long as a book entry system is utilized, (i) the Notes may be issued in the form of a single Note made payable to the Depository or its nominee and deposited and maintained in the custody of the Depository or its agent for that purpose; (ii) the beneficial owners in book entry form shall have no right to receive the Notes in the form of physical securities or certificates; (iii) ownership of beneficial interests in book entry form shall be shown by book entry on the system maintained and operated by the Depository and its Participants, and transfers of the ownership of beneficial interests shall be made only by book entry by the Depository and its Participants; and (iv) the Notes as such shall not be transferable or exchangeable, except for transfer to another Depository or to another nominee of a Depository, without further action by the City.

If any Depository determines not to continue to act as a Depository for the Notes for use in a book entry system, the Director of Finance may attempt to establish a securities depository/book entry relationship with another qualified Depository. If the Director of Finance does not or is unable to do so, the Director of Finance, after making provision for notification of the beneficial owners by the then Depository and any other arrangements deemed necessary, shall permit withdrawal of the Notes from the Depository, and shall cause the Notes in bearer or payable to order form to be signed by the officers authorized to sign the Notes and delivered to the assigns of the Depository or its nominee, all

at the cost and expense (including any costs of printing), if the event is not the result of City action or inaction, of those persons requesting such issuance.

The Director of Finance is also hereby authorized and directed, to the extent necessary or required, to enter into any agreements determined necessary in connection with the book entry system for the Notes, after determining that the signing thereof will not endanger the funds or securities of the City.

Section 8.     Sale of the Notes.

(a)     To the Original Purchaser. The Notes shall be sold at not less than par to the Original Purchaser in accordance with law and the provisions of this Ordinance, the Note Purchase Agreement and the Certificate of Award. The Director of Finance shall sign the Certificate of Award evidencing that sale to the Original Purchaser, cause the Notes to be prepared, and have the Notes signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Notes if requested by the Original Purchaser, to the Original Purchaser upon payment of the purchase price. The Mayor, the Director of Finance, the Director of Law, the Clerk of Council and other City officials, as appropriate, are each authorized and directed to sign any transcript certificates, paying agent agreement, financial statements, and other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Ordinance.

(b)     Note Purchase Agreement. The Mayor and the Director of Finance shall sign and deliver, in the name and on behalf of the City, the Note Purchase Agreement between the City and the Original Purchaser, in substantially the form as is now on file with the Clerk of Council, providing for the sale to, and the purchase by, the Original Purchaser of the Notes. The Note Purchase Agreement is approved, together with any changes or amendments that are not inconsistent with this Ordinance and not substantially adverse to the City and that are approved by the Director of Finance on behalf of the City, all of which shall be conclusively evidenced by the signing of the Note Purchase Agreement or amendments thereto.

(c)     Application for Rating; Financing Costs. The Director of Finance is authorized to request a rating for the Notes from one or more nationally-recognized rating agencies in connection with the sale and issuance of the Notes. The expenditure of the amounts necessary to secure those rating(s) and to pay the other financing costs (as defined in Section 133.01 of the Revised Code) in connection with the Notes is authorized and approved, and the Director of Finance is authorized to provide for the payment of such costs from the proceeds of the Notes to the extent available and otherwise from any other funds lawfully available that are appropriated or shall be appropriated for that purpose.

Section 9.     Application of Note Proceeds. The proceeds from the sale of the Notes related to the purpose described in clause (iii) of Section 3 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.

All other proceeds from the sale of the Notes received by the City (or withheld by the Original Purchaser or deposited with the Paying Agent, in each case on behalf of the City) shall be paid into the proper fund or funds, and those proceeds are appropriated and shall be used for the purpose for which the Notes are being issued. The Note Purchase Agreement and Certificate of Award may authorize the Original Purchaser to (i) withhold certain proceeds from the sale of the Notes or (b) remit certain proceeds from the sale of the Notes to the Paying Agent, in each case to provide for the payment of certain financing costs on behalf of the City. If proceeds are remitted to the Paying Agent in accordance with this Section, the Paying Agent shall be authorized to create a fund for that purpose. Any portion of those proceeds received by the City (after payment of those financing costs) representing premium or accrued interest shall be paid into the Note Fund.

Section 10. Application and Pledge of Bond or Renewal Note Proceeds or Excess Funds. 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 at maturity and are pledged for that purpose.

Section 11. 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 Original Bond Ordinances created 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 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.

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 12. 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 13. Federal 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 14. 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 15. Notification of Note Issuance. The Director of Finance is directed to deliver or cause to be delivered the notification required by Section 165.03(D) of the Revised Code to the Director of the Ohio Development Services Agency.

Section 16. 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 17. 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 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 18. 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 19. 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 20. 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 21. 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 22. 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 (i) retire the Outstanding Notes and (ii) pay the costs of, or reimburse moneys advanced pursuant to the agreement between the City and Brixmore GA Southland Shopping Center LLC for the purchase of the portion of the Project Site described in clause (iii) of Section 3, 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.

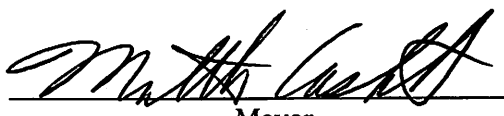
Passed: 10/8/24

  
 \_\_\_\_\_  
 President of Council

Attest: M. Meola  
 Clerk of Council

Approved On: 10-9-24

Presented to Mayor: 10/9/24

  
 \_\_\_\_\_  
 Mayor

	Yea	Nay
Bortolotto	X	_____
Ali	X	_____
Sage	X	_____
Meany	X	_____
McGregor	X	_____
Ference	X	_____
Zakel	X	_____

**CERTIFICATE**  
 I, Mary Ann Meola, Clerk of Council of the City of Middleburg Heights, Oh  
 hereby certify that the foregoing is a true and accurate copy of Ord. 2024-81  
 passed on the 8<sup>th</sup> day of October 2024 by said Cou

Mary Ann Meola  
 Clerk of Council

I, Mary Ann Meola Clerk of  
 the Council of the City of Middleburg Hts., Ohio,  
 hereby certify that Ord. 2024-81  
 adopted by the Council of the City of Middleburg  
 Hts., on 10/8/24 was posted for a period  
 of fifteen days, beginning 10/10/24  
 and remained so posted for fifteen days at the two  
 posting places as designated by Charter.

Mary Ann Meola  
 Clerk