

CITY OF MIDDLEBURG HEIGHTS, OHIO

Ordinance No. 2025- 8

Introduced By: Mayor Matthew Castelli

**AN ORDINANCE
AUTHORIZING THE MAYOR AND FINANCE DIRECTOR TO ENTER INTO AN
AGREEMENT OF SALE FOR CERTAIN REAL ESTATE IN THE CITY OF
MIDDLEBURG HEIGHTS AS PART OF THE MIDDLEBURG HEIGHTS
COMMUNITY MASTER PLAN AND REVITALIZATION OF
SOUTHLAND SHOPPING CENTER
AND DECLARING AN EMERGENCY**

WHEREAS, the Middleburg Heights Community Master Plan was adopted by City Council by Ordinance #2022-77 on September 13, 2022, to develop a community vision for the city's future; and

WHEREAS, the Southland Planning Study was incorporated into the Middleburg Heights Master Plan to describe the community vision for the redevelopment of the Southland area; and

WHEREAS, the sale of this approximately 7.275-acre parcel is part of the City's redevelopment of the Southland area pursuant to the Middleburg Heights Community Master Plan and Southland Planning Study.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIDDLEBURG HEIGHTS, STATE OF OHIO, AS FOLLOWS:

Section 1: That the Mayor and Finance Director are hereby authorized to enter into an agreement of sale, a copy of which is attached hereto and marked "Exhibit A", and with any changes or revisions as are approved by the Law Director which are in substantially the same form as the agreement marked as "Exhibit A", for the sale of approximately 7.275 acres along Smith Road in the City of Middleburg Heights.

Section 2: It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Chapter 107 of the Middleburg Heights Code and Section 121.22 of the Ohio Revised Code.

Section 3: That this Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety, and welfare of said City. Wherefore, provided this Ordinance receives the affirmative vote of at least two-thirds (2/3) of the members of Council it shall take effect and be in force immediately upon its passage and approval by the Mayor.

Passed: 2/11/25

David Bortolotto
President of Council

Attest: M. Meola
Clerk of Council

Approved On: 2-12-25

Presented to Mayor: 2/12/25

Matthew Gash
Mayor

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

I, Mary Ann Meola Clerk of the Council of the City of Middleburg Hts., Ohio, hereby certify that Ord 2025-8 adopted by the Council of the City of Middleburg Hts., on 2/11/25 was posted for a period of fifteen days, beginning 2/12/25 and remained so posted for fifteen days at the two posting places as designated by Charter.

Mary Ann Meola
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. 2025-8 passed on the 11th day of February 20 25 by said Council.

Mary Ann Meola
Clerk of Council

AGREEMENT OF SALE

This Agreement of Sale (“**Agreement**”) is made this ___ day of _____, 2025 by the City of Middleburg Heights, Ohio (“**Seller**”), and TDR Management LLC, an Ohio limited liability company (“**Buyer**”).

RECITALS:

- (A) Seller is the owner, in fee simple, of certain parcels of real property with a commercial building (the “**Building**”) and other improvements thereon, consisting of approximately 7.275 acres of land situated in the City of Middleburg Heights, County of Cuyahoga, State of Ohio, with a street address of 6875-79 Smith Road, Middleburg Heights, Ohio, known as Permanent Parcel Number 372-30-019, and as more fully described on Exhibit A attached hereto and made a part hereof (“**Property**”);
- (B) The Property is outlined on Exhibit B attached hereto and made a part hereof;
- (C) Upon the terms and conditions set forth below, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller the Property.

NOW THEREFORE, in consideration of the mutual covenants and agreements of each party to the other and other valuable consideration, the receipt, adequacy and sufficiency of which are acknowledged, the parties, intending to be bound by this Agreement, do mutually covenant and agree as follows:

ARTICLE 1 INCORPORATION BY REFERENCE

Section 1.1. Incorporation by Reference. The Preamble and the Recitals set forth above and the Exhibits referred to in this Agreement are incorporated into this Agreement as though the same were fully set forth in this Agreement.

ARTICLE 2 PURCHASE AND SALE

Section 2.1. Purchase and Sale; Effective Date. Seller agrees to sell, grant, convey, transfer and assign the Property to Buyer, and Buyer agrees to purchase and receive the Property from Seller, including the hereditaments and appurtenances thereto, subject to and pursuant to the provisions set forth in this Agreement. The “**Effective Date**” is defined as the date on which the Council of the City of Middleburg Heights formally approves by ordinance this Agreement. This Agreement is contingent upon the approval and passage of an ordinance by Middleburg Heights City Council on or before [_____, 2025]. If an ordinance approving this Agreement is not passed by the foregoing date, then each of Seller and Buyer may terminate this Agreement upon written notice to the other delivered at any time prior to the passage of an ordinance approving this Agreement.

Section 2.2. Quit Claim Deed. The Property shall be sold, granted, conveyed, transferred and assigned by Seller to Buyer by a Quit Claim Deed (“**Deed**”). The Deed shall convey title to the Property, free and clear of all liens, adverse claims, encumbrances, reservations, restrictions, charges, equities, rights-of-way and exceptions, except for the Permitted Encumbrances (as defined in **Section 4.2**).

ARTICLE 3 PURCHASE PRICE

Section 3.1. Purchase Price. The purchase price for the Property to be sold by Seller and purchased by Buyer under this Agreement shall be One Million Two Hundred Thousand and 00/100 Dollars (\$1,200,000.00) (“**Purchase Price**”).

Section 3.2. Payment of Purchase Price. The Purchase Price shall be payable by Buyer to Seller as follows:

- (A) Within five (5) days of full execution of this Agreement, Buyer shall deliver to Affiliates Title Group, LLC, attn. John Ross, 2211 Medina Rd Suite 150, Medina, OH 44256 (“**Title Company**”), a deposit in the amount of \$20,000.00 (“**Escrow Funds**”). The Escrow Funds shall be made via check payable to Title Company or shall be made via wire transfer. The Escrow Funds shall be placed in an escrow account and shall be released by Title Company as provided in this Agreement.
- (B) The remaining balance of the Purchase Price shall be payable by Buyer to Title Company by wire transfer on the Closing Date (as defined in **Section 9.1**). At Closing, Title Company shall disburse to Seller, by wire transfer, the balance of the Purchase Price and any and all other funds due Seller.

ARTICLE 4 DUE DILIGENCE PERIOD

Section 4.1. Due Diligence Period. Buyer shall have until 6:00PM Eastern Time on the day that is one hundred twenty (120) days after the last to occur of (i) the Effective Date, or (ii) Seller’s completion of Seller’s Work pursuant to Section 7.2 below (“**Due Diligence Period**”) to conduct, at Buyer’s sole cost and expense, any and all due diligence regarding the Property. Buyer shall have the right, in its sole and absolute discretion, to extend the Due Diligence Period for a period of sixty (60) days by delivering written notice of such extension to Seller on or prior to the expiration of the then-current Due Diligence Period (the “**First Diligence Extension**”). With the consent of Seller, or, if the Buyer Contingencies are not yet satisfied, then in Buyer’s sole and absolute discretion, Buyer may extend the First Diligence Extension for an additional sixty (60) days by delivering written notice of such extension to Seller on or prior to the expiration of the then-current Due Diligence Period (the “**Second Diligence Extension**”), then in connection with the Second Diligence Extension exercised by Buyer a portion of the Escrow Funds in the amount of \$10,000.00 shall become non-refundable to Buyer other than in the event of a Seller default.

In the event Buyer is not satisfied with the results of its due diligence, Buyer shall have the right to terminate this Agreement prior to the expiration of the Due Diligence Period, as the same may be extended, and to receive a refund of the Escrow Funds (excluding any portion that is non-refundable due to exercise of a Diligence Extension) only by giving written notice to Seller and Title Company of Buyer's decision to terminate this Agreement prior to the expiration of the Due Diligence Period ("**Due Diligence Termination Notice**").

In the event Buyer does not timely deliver the Due Diligence Termination Notice to Seller and Title Company, provided that Seller does not default under this Agreement, the Escrow Funds will be unconditionally non-refundable to Buyer and Seller will be entitled upon the scheduled Closing Date or upon Buyer's default under this Agreement to instruct Title Company to then release the Escrow Funds to Seller and Title Company will be authorized to release the Escrow Funds to Seller. In the event Buyer (i) does not timely deliver the Due Diligence Termination Notice, and (ii) thereafter, does not complete its purchase as provided in this Agreement for any reason whatsoever, then the Escrow Funds shall be paid by the Title Company to Seller as liquidated damages and Seller's sole and exclusive remedy for Buyer's default. In the event the sale described in this Agreement is consummated, the Escrow Funds shall be applied towards the Purchase Price.

Seller shall permit Buyer and Buyer's agents, employees, contractors, and consultants (collectively, "**Consultants**") the right, upon not less than 48 hours prior notice to Seller, to access to the Property for the purpose of inspecting the Property and conducting all of Buyer's desired due diligence, subject to the following: (i) Buyer and its Consultants shall promptly pay when due the costs of all tests, investigations, studies and examinations done with regard to the Property and shall not permit any liens to attach to the Property by reason of the exercise of its rights hereunder; and (ii) Buyer and its Consultants shall fully restore the Property to the condition that existed before any such inspections, tests or studies were undertaken, reasonable wear and tear excepted. Buyer hereby agrees to defend, indemnify and hold harmless Seller and its members, employees, agents, successors and assigns from and against any and all claims, expenses, costs, damages, losses and liabilities (including reasonable attorneys' fees and consulting fees) which may at any time be asserted against or suffered by Seller arising from or related to any or all of Buyer's inspections and/or testing of the Property or other access to the Property prior to Closing. Without limiting the foregoing, Buyer shall promptly repair any damage to the Property arising from or related to any or all of Buyer's inspections and/or testing of the Property or other access to the Property prior to Closing. The obligations pursuant to this paragraph shall survive termination of this Agreement.

Section 4.2. Title Matters. Upon the parties' execution of this Agreement, Seller shall immediately order a commitment ("**Title Commitment**") to issue an owner's title insurance policy for the Property from Title Company. Title Company shall simultaneously deliver copies of the Title Commitment, the vesting deed(s), and all documents referenced therein, to Seller and Buyer. In addition, during the Due Diligence Period, Buyer shall, at its sole expense, have the right to obtain an ALTA survey ("**Survey**") of the Property in form and substance satisfactory to Buyer and prepared by a surveyor acceptable to Buyer. The Title Commitment and the Survey are subject to review and approval by Buyer prior to the expiration of the Due Diligence Period, as the same

may be extended. If Buyer objects to any such title exceptions or survey matters (“**Unpermitted Encumbrances**”), Buyer must deliver written notice of any such objection to Seller within such period (“**Objection Notice**”). Any and each such title exception or survey matter to which Buyer does not object in writing to Seller within such period shall thereafter constitute a “**Permitted Encumbrance**”. Upon Seller’s receipt of the Objection Notice, Seller shall then have a 15-day period in which to cause the removal or correction of the Unpermitted Encumbrances (it being understood that Seller may, but shall not be required to, remove any Unpermitted Encumbrance). If Seller fails to cause the removal or correction of the Unpermitted Encumbrances within said 15-day period, Buyer may elect, upon written notice to Seller to be received by Seller within fifteen (15) days after the expiration of such 15-day period, to either (i) terminate this Agreement, in which event Buyer shall receive a refund of the Earnest Money Deposit (less any portion that has become non-refundable due to the exercise of a Diligence Extension), or (ii) accept title as it then is, in which event all exceptions in Schedule B of the Title Commitment, including without limitation, the Unpermitted Encumbrances set forth in the Objection Notice and not removed or corrected by Seller, shall become Permitted Encumbrances. If Buyer does not elect within such 15-day period to terminate this Agreement, then Buyer shall be deemed to accept all such Unpermitted Encumbrances in accordance with the foregoing provisions.

Section 4.3. Additional Contingencies. This Agreement is contingent upon the Buyer's ability to satisfy, in Buyer’s sole discretion, the following Buyer Contingencies (defined below) prior to the expiration of the Due Diligence Period or any extension thereof, as applicable (the “**Satisfaction Date**”). In the event that the following Buyer Contingencies are not satisfied by the Satisfaction Date, in Buyer’s sole discretion, Buyer shall on or prior to the Satisfaction Date, give Seller written notice that such Buyer Contingencies have not been satisfied and shall either (i) waive any unsatisfied Buyer Contingencies and proceed with the Closing, or (ii) notify Seller that Buyer will not complete the purchase, in which case the Escrow Funds shall be returned to Buyer and neither party shall have any further liability hereunder, except for those obligations that expressly survive said termination. The “**Buyer Contingencies**” are as follows:

(a) Zoning and Governmental Approval. Buyer’s obligation to proceed to Closing hereunder is contingent upon Buyer’s receipt of all final, non-appealable plats, lot splits, variances, permits, agreements, licenses, consents and approvals (including, without limitation, any subdivision, rezoning, site approval, or otherwise) which are required in Buyer’s reasonable judgment for development and use of the Property for Buyer’s intended use (collectively, the “**Approvals**”). Buyer, at Buyer’s expense, may file applications to have the Property replatted and/or rezoned, as necessary, and all such other applications as may be required or desired in Buyer’s reasonable judgment. Applications shall be in the name of either Seller or Buyer as may be required under the applicable governmental provisions. Seller agrees to reasonably cooperate in connection with Buyer in processing all applications and obtaining all Approvals including, without limitation, executing all necessary or appropriate instruments, however Seller shall process such applications in the ordinary course and without any representations as to the outcome of an application seeking an Approval for Buyer’s intended use. In the event Buyer terminates this Agreement as provided for herein, with applications for Approvals pending, Purchaser shall immediately withdraw such applications from consideration, which obligation shall survive the termination of this Agreement.

(b) Development Agreement; Tax Increment Financing. Buyer's obligation to proceed to Closing hereunder is contingent upon Buyer and Seller entering into a mutually acceptable Development Agreement and Tax Increment Financing ("TIF") arrangement, or other such development related incentives or benefits as may determined by Buyer to be necessary for the development of the Property within one hundred twenty (120) days after the Effective Date (the "DA/TIF Agreement Date"). Seller agrees to work with the Buyer in good faith to secure development incentives and a TIF upon terms mutually acceptable to the parties.

ARTICLE 5 DOCUMENTS TO BE MADE AVAILABLE BY SELLER

Section 5.1. Property Documents. Within fifteen (15) days from the date of this Agreement, Seller shall provide, or make available, to Buyer for review in connection with Buyer's due diligence pursuant to **Article 4**, to the extent in Seller's possession or control, (i) any existing title commitment, title policy and/or survey of the Property, (ii) copies of all service contracts in place at the Property, (iii) any environmental reports and/or historical appraisals for the Property, (iv) the Grant Agreement (hereinafter defined), and (v) a list of capital improvements (collectively "Property Information"). No representation or warranty, express or implied, is or will be made with respect to the fairness, accuracy or completeness of any of the Property Information or any other information provided by Seller to Buyer in connection with the sale of the Property. Any use of or reliance upon the Property Information by Buyer is made at Buyer's sole risk and Seller shall have no liability in connection therewith.

ARTICLE 6 COSTS

Section 6.1. Seller's Costs. Seller shall bear the following fees and expenses incurred in connection with the Closing: (i) preparation and recording of the deed, (ii) the cost of issuance of the title commitment, (iii) one-half (½) of the cost of issuance of the owner's title policy, (iv) any conveyance fees if necessary, documentary stamps or transfer taxes, and (v) one-half (½) of the escrow fee. Subject to the provisions of **Section 4.2**, Seller shall be responsible for all matters of Seller's title clearance including Seller's investigation and payment of delinquent taxes, special assessments and the clearance of tax or other liens of record.

Section 6.2. Buyer's Costs. Buyer shall bear the following fees and expenses incurred in connection with the Closing: (i) one-half (½) of the cost of issuance of the owner's policy, (ii) the cost of any special endorsements to or removal of any standard exceptions to the owner's policy required by Buyer or Buyer's lender, (iii) the costs of recording any mortgage granted by Buyer, and (iv) one-half (½) of the escrow fee. The cost of the Survey shall be paid by Buyer.

**ARTICLE 7
POSSESSION; SELLER'S WORK**

Section 7.1. Possession. Seller shall deliver exclusive possession of the Property to Buyer immediately after Closing on the Closing Date, which possession shall be subject only to any Permitted Encumbrances. The Property shall be delivered free and clear of all personal property on the Closing Date, with all removal and/or disposal costs at Seller's sole cost and expense.

Section 7.2. Seller's Work. Following the Effective Date, Seller shall demolish all existing buildings, infrastructure, and other improvements on the Property ("**Seller's Work**") as contemplated and funded pursuant to the Ohio Department of Development Brownfield Remediation Program Grant Agreement, dated as of March 23, 2023, as amended (the "**Grant Agreement**"). Seller's Work shall be completed at Seller's cost and expense, subject to reimbursement pursuant to the Grant Agreement, in a lien-free, good and workmanlike manner. Seller shall pay for all costs of Seller's Work prior to Closing and shall provide lien waivers from all contractors and subcontractors performing work or providing supplies in connection with the completion of Seller's Work. Seller shall complete Seller's Work on or before the first to occur of: (i) any completion deadline included within the Grant Agreement, and (ii) the date that is two hundred forty (240) days after the Effective Date.

**ARTICLE 8
REPRESENTATIONS,
WARRANTIES AND COVENANTS OF SELLER AND BUYER**

Section 8.1. Seller's Representations and Warranties. Seller hereby represents, warrants and covenants to Buyer that, as of the date of the Effective Date and as of the Closing Date:

- (A) Seller has all requisite power and authority to own and sell the Property.
- (B) The execution and delivery and performance of this Agreement by Seller have been duly and validly authorized and this Agreement is a valid and binding obligation of Seller, enforceable according to its terms.
- (C) Seller shall maintain the Property in its present condition until the Closing Date (ordinary wear and tear excepted).

Section 8.2. Buyer's Representations and Warranties. Buyer hereby represents and warrants to Seller that, as of the date of this Agreement and as of the Closing Date:

- (A) Buyer is an Ohio limited liability company duly formed, validly existing, and in good standing under the laws of the State of Ohio, and has all requisite power and authority to own its property and to carry on its business as they are now being conducted.
- (B) The execution, delivery and performance of this Agreement by Buyer have been duly and validly authorized in the manner required by its organizational

documents, and this Agreement is a valid and binding obligation of Buyer, enforceable according to its terms.

Section 8.3. "As-Is" Condition. Buyer acknowledges and agrees that, except for the completion of Seller's Work prior to the Closing Date and as otherwise expressly stated in this Agreement, (a) Seller has not made any warranty, guaranty or representation relating to the Property, (b) Buyer is relying solely on its own investigation of the Property and not on any information provided or to be provided by Seller, and (c) Buyer agrees to accept the Property and acknowledges that the sale thereof as provided for in this Agreement is made by Seller on an "As-Is, Where-Is and with all faults" basis.

ARTICLE 9 CLOSING AND PRORATION

Section 9.1. Closing. As used in this Agreement, the "**Closing Date**" shall be within sixty (60) days after the end of the Due Diligence Period, as the same may be extended, or Purchaser's earlier waiver thereof, on a date designated by Buyer to Seller. The closing ("**Closing**") of this Agreement shall take place at the offices of Title Company as an escrow closing upon Title Company's receipt from both parties of authorization to close the transaction.

Section 9.2. Proration Date. As used in this Agreement, the "**Proration Date**" shall be 12:01 a.m. on the Closing Date.

Section 9.3. Closing Deliveries. All matters to be performed under this Agreement shall be performed concurrently on the Closing Date and shall consist of the following transactions, all of which shall be deemed as having taken place simultaneously and none of which shall be deemed to occur until all have been completed:

- (A) Seller will at Closing deliver or effect the following:
 - (i) Delivery to Buyer of the Deed to the Property; and
 - (ii) Such other and further documents and/or deliveries as may reasonably be required by Buyer and Title Company to enable Seller to perform its obligations hereunder.

- (B) Buyer will at Closing deliver or effect the following:
 - (i) Delivery to Seller of the Purchase Price; and
 - (ii) Such other and further documents and/or deliveries as may reasonably be requested by Seller or Title Company to enable Buyer to perform its obligations under this Agreement.

- (C) At the Closing, real estate taxes and assessments will be prorated as of the Proration Date, using the most recently available tax duplicate, which proration shall be final.

All real estate tax prorations shall be based on the real estate taxes and assessments levied by each taxing body. Seller shall be responsible for the cost and expense of water and sewer, municipal garbage, rubbish removal and other utilities serving the Property through and including the date immediately preceding the Closing Date. Buyer shall be responsible for the cost and expense of water and sewer, municipal garbage, rubbish removal and other utilities serving the Property for the period commencing on the Closing Date.

ARTICLE 10 CONDEMNATION AND DAMAGE BY CASUALTY

Section 10.1. Condemnation. If all of the Property is or is proposed to be taken or condemned by any public authority between the Effective Date and the Closing Date, Seller shall give Buyer written notice thereof, and this Agreement shall terminate and be null and void and thereafter neither party shall have any liability or obligation to the other except that the Escrow Funds shall be refunded or returned to Buyer. Should less than all of the Property be or is proposed to be taken or condemned by any public authority between the date of execution of this Agreement and the Closing Date, Seller shall give Buyer written notice thereof, and Buyer shall have the option:

- (A) To terminate this Agreement by written notice to Seller within ten (10) days after Buyer's receipt of Seller's notice, in which event this Agreement shall become null and void and thereafter neither party shall have any liability or obligation to the other except that the Escrow Funds shall be refunded or returned to Buyer; or
- (B) To take title to the remaining portion of the Property without abatement of Purchase Price, in which event the proceeds of any condemnation award collected by Seller prior to the Closing Date will be paid or credited to Buyer at Closing, and Seller shall assign to Buyer all of Seller's right, title and interest in and to such award resulting from such taking or condemnation.

In the event that Buyer fails to provide Seller with its termination notice within the 10-day period set forth in subpart 10.1(A) above, then Buyer shall be deemed to have elected to take title to the Property pursuant to 10.1(B) above.

Section 10.2 Casualty. If the Property suffers damage as a result of any casualty prior to the Closing Date in excess of \$100,000.00 then Seller shall give Buyer written notice thereof, and Buyer may elect, by written notice delivered to Seller within ten (10) days after Buyer's receipt of Seller's notice:

- (A) To terminate this Agreement by written notice to Seller, in which event this Agreement shall become null and void and thereafter neither party shall have any liability or obligation to the other except that the Escrow Funds shall be refunded or returned to Buyer; or

- (B) To take title to the remaining portion of the Property without abatement of Purchase Price, in which event the Buyer shall receive all insurance proceeds resulting from such casualty and Seller shall pay to Buyer the amount of any deductible.

In the event that Buyer fails to provide Seller with its termination notice within the 10-day period set forth in this Section 10.2, then Buyer shall be deemed to have elected to take title to the Property pursuant to 10.2(B) above. All risks of loss are borne by Seller prior to Closing.

ARTICLE 11 MISCELLANEOUS

Section 11.1. Notices. All notices required or permitted hereunder shall be in writing and deemed given if sent by: (i) certified or registered mail, return receipt requested; (ii) by a nationally recognized overnight courier service (provided that a receipt is given); or (iii) by email, and confirmed by delivering a copy of email notice by another permitted means, provided that such notice shall be deemed effective upon transmittal (not upon dispatch or receipt of a copy). All notices required or permitted hereunder shall be addressed as follows:

To Seller: The City of Middleburg Heights
 15700 Bagley Road
 Middleburg Heights, Ohio 44130
 Attn: Santo T. Incorvaia, Law Director
 Email: sincorvaia@middleburgheights.com

With copy to: Squire Patton Boggs
 1000 Key Tower
 127 Public Square
 Cleveland, Ohio 44114
 Attn: Russ Balthis
 Email: russell.balthis@squirepb.com

To Buyer: 3900 Key Center
 127 Public Square
 Cleveland, Ohio 44114-1291
 Attn: Ryan Sommers
 Email: RyanSommers@aboutpmc.com

With copy to: Joshua E. Hurtuk
 Walter Haverfield
 1500 W. 3rd Street, Suite 300
 Cleveland, OH 44113
 E-mail: jhurtuk@walterhav.com

Section 11.2. Entire Agreement. This Agreement, including the attached Exhibits, shall constitute the entire agreement between the parties with respect to the subject matter of this

Agreement and shall supersede all previous negotiations, commitments, writings or agreements of sale.

Section 11.3. Amendment. This Agreement may not be amended, changed or modified in any manner except by an instrument in writing signed by each of the parties hereto or their duly appointed officers or representatives. The failure of any party to enforce at any time any of the provisions of this Agreement shall in no way be a waiver of such provision or in any way affect the validity of this Agreement or any part of this Agreement or the right of any party thereafter to enforce each and any such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other breach of this Agreement.

Section 11.4. Headings. The captions appearing in this Agreement are inserted only as a matter of convenience and as a reference and in no way define, limit or describe the scope or intent of this Agreement or any of the provisions hereof.

Section 11.5. Brokers. Each party represents and warrants to the other party that neither party, nor anyone acting on the behalf of either party, has incurred any liability to any broker or finder in connection with the transaction contemplated by this Agreement. The representations and warranties set forth in this Section 11.5 shall survive Closing and/or termination of this Agreement for any reason.

Section 11.6. Computation of Time Period. Wherever this Agreement requires that something be done within a specified period of days, the period shall (a) not include the day from which the period commences, (b) include the day upon which the period expires, (c) expire at 5:00 p.m. local time on the day upon which the period expires and (d) unless otherwise specified in this Agreement shall be construed to mean calendar days, provided, that if the final day of the period falls on a Saturday or Sunday or legal holiday (limited to the day set aside by statute for observing New Year's Day, Martin Luther King Jr.'s Birthday, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day), it shall be extended to first business day thereafter.

Section 11.7. Counterparts. This Agreement may be executed in multiple counterparts, in original or by fax or email and, when taken together, shall be considered an original.

Section 11.8. Binding. This Agreement shall be binding upon the parties, and their respective successors and permitted assigns. Seller agrees that Buyer may assign this Agreement and its rights under this Agreement to a newly formed entity controlled by Buyer (provided, however, that Buyer shall not be released from liability as a result of such assignment) and Seller will simultaneously with the payment in full of the consideration, sell, convey, assign and transfer the Property, as provided in this Agreement, to such nominee, assignee or designee.

Section 11.9. Exchange of Property. Each party agrees, if requested by the other, to cooperate with Seller to permit Seller to consummate an exchange of property pursuant to IRC Section 1031, including but not limited to the execution of those documents necessary to effectuate such exchange. The cooperating party shall not be responsible for any tax or economic consequences associated with any IRC Section 1031 exchange by the other hereunder. Further,

the requesting agrees to pay all cost relative to the preparation of documents and expenses related to the closing of said exchange.

Section 11.10. Severability. If any term or provision of this Agreement or the application thereof to any person, property or circumstance shall to any extent be invalid or unenforceable the remainder of this Agreement, or the application of such term or provision to persons, properties and circumstances other than those as to which it is invalid or enforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 11.11. Governing Law. This Agreement shall be construed in accordance with the internal laws of the State of Ohio.

Section 11.12. Failure to Comply. In the event of a material breach or default by Seller of this Agreement, Buyer shall be entitled, as its sole remedies, to the return of the Escrow Funds. In the event of a material breach or default by Buyer of this Agreement, Seller shall be entitled to the Escrow Funds as liquidated damages, which liquidated damages shall be Seller's sole and exclusive remedy.

[Signatures are on the following page.]

The parties have executed this Agreement as of the day and in the year above written.

Seller:

CITY OF MIDDLEBURG HEIGHTS, OHIO

By: Matthew Castelli
Name: Matthew Castelli
Title: Mayor

Approved as to form:

Janet Owen
City Law Director

Buyer:

TDR Management LLC,
an Ohio limited liability company

By: _____
Name: _____
Title: _____

FISCAL OFFICER'S CERTIFICATE

As fiscal officer of the City of Middleburg Heights, Ohio, I certify that the amount required to meet the obligations of the City under the attached Agreement has been lawfully appropriated for such purpose, and is in the treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. The Certificate is given in compliance with Sections 5705.41 and 5705.44 of the Ohio Revised Code.

Dated: 2/12, 2025



Director of Finance

EXHIBIT A

Legal Description of Property

EXHIBIT B

Depiction of Property

