

Ordinance No. 2323

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SALISBURY AUTHORIZING AND EMPOWERING CITY OF SALISBURY TO EXECUTE AND DELIVER, IN EXCHANGE FOR THE OUTSTANDING CITY OF SALISBURY SPECIAL OBLIGATION BONDS (THE VILLAGES AT AYDELOTTE FARM PROJECT), SERIES 2007 (THE "ORIGINAL BONDS"), THE PROCEEDS OF WHICH WERE APPLIED TO FINANCE OR REIMBURSE THE COSTS OF CERTAIN INFRASTRUCTURE IMPROVEMENTS IN ACCORDANCE WITH THE TAX INCREMENT FINANCING ACT AND THE SPECIAL TAXING DISTRICT ACT IDENTIFIED HEREIN, RESERVES, AND OTHER COSTS PERMITTED BY SUCH ACTS, SUCH AMENDED AND RESTATED BONDS TO BE EXECUTED AND DELIVERED IN AN INITIAL AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$9,775,000 AND TO BE STRUCTURED AS CAPITAL APPRECIATION BONDS WITH AN ACCRETION VALUE NOT EXCEEDING 5.25% (THE "AMENDED AND RESTATED BONDS") IN CONNECTION WITH A RESTRUCTURING OF THE ORIGINAL BONDS; PROVIDING THAT SUCH AMENDED AND RESTATED BONDS SHALL NEVER CONSTITUTE A GENERAL OBLIGATION DEBT OF OR A PLEDGE OF THE CITY'S FULL FAITH AND CREDIT OR TAXING POWERS; PROVIDING FOR THE FURTHER SPECIFICATION, PRESCRIPTION, DETERMINATION, PROVISION FOR OR APPROVAL OF VARIOUS OTHER MATTERS, DETAILS, DOCUMENTS AND PROCEDURES IN CONNECTION WITH THE AUTHORIZATION, SECURITY, EXECUTION, DELIVERY, EXCHANGE AND PAYMENT FOR ANY SUCH AMENDED AND RESTATED BONDS; MAKING CERTAIN LEGISLATIVE FINDINGS; PROVIDING THAT THIS ORDINANCE SHALL BE DEEMED TO SUPPLEMENT AND AMEND ORDINANCE NO. 2019, PASSED BY THE COUNCIL ON NOVEMBER 27, 2006, APPROVED BY THE MAYOR ON NOVEMBER 28, 2006 AND EFFECTIVE ON NOVEMBER 28, 2006; AND GENERALLY PROVIDING FOR THE AMENDED AND RESTATED BONDS.

RECITALS

WHEREAS, pursuant to the authority of Sections 14-201 to 14-214, inclusive, of Article 41 of the Annotated Code of Maryland (now codified as Sections 12-201 to 12-213, inclusive, of the Economic Development Article of the Annotated Code of Maryland, and as the same may be further amended, supplemented or replaced, the "Tax Increment Financing Act"), Section 44A of Article 23A of the Annotated Code of Maryland (now codified as Sections 21-407 to 21-422, inclusive, of the Local Government Article of the Annotated Code of Maryland, and as the same may be further amended, supplemented or replaced, the "Special Taxing District Act" and, together with the Tax Increment Financing Act, the "Acts" or, individually, an "Act"), Resolution No. 1369, adopted by the Council of the City (the "Council") on March 13, 2006, approved by the Mayor of the City (the "Mayor") on March 15, 2006 and effective on March 15, 2006 (the "Designation Resolution"), City of Salisbury, a Maryland municipal corporation (the "City"), designated a contiguous area in the City as described in the Designation Resolution as both (i) the "Northeast Collector Phase III Development District", a "development district" within the

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meaning of the Tax Increment Financing Act (the “Development District”), and (ii) the “Northeast Collector Phase III Special Taxing District”, a “special taxing district” within the meaning of the Special Taxing District Act (the “Special Taxing District” and, together with the Development District, the “District”); and

WHEREAS, pursuant to the Designation Resolution, the City also created the “special funds” required by the respective Acts, which special funds are respectively designated as the “Northeast Collector Phase III Tax Increment Fund” (the “Tax Increment Fund”) and the “Northeast Collector Phase III Special Taxes Fund” (the “Special Taxes Fund”); and

WHEREAS, pursuant to the authority of the Acts and Ordinance No. 2019, passed by the Council on November 27, 2006, approved by the Mayor on November 28, 2006 and effective on November 28, 2006 (the “Bond Ordinance”), the City authorized the issuance of special obligation bonds in one or more series from time to time in an aggregate principal amount not to exceed \$10,900,000 (the “Authorized Bonds”) in order to initially finance or reimburse the cost (within the meaning of the Acts) of certain public improvements benefitting the District and related financing costs and costs of issuance, as permitted by the Acts, such Authorized Bonds to be payable from amounts on deposit in the Tax Increment Fund and to the extent such amounts are insufficient for such purpose, the Special Taxes Fund; and

WHEREAS, in accordance with the Special Taxing District Act and the Bond Ordinance, the City provided for the levy, imposition and collection pursuant to the Special Taxing District Act of non-ad valorem special taxes (the “Special Taxes”) upon all real and personal property within the Special Taxing District, unless exempted by law or the provisions of the “Rate and Method of Apportionment of Special Taxes of the City of Salisbury Northeast Collector Phase III Special Taxing District” that was attached to the Bond Ordinance as Exhibit A and approved and adopted pursuant to the Bond Ordinance (the “Rate and Method”); and

WHEREAS, as permitted by the Acts, pursuant to the Bond Ordinance, the Council delegated the authority to the Mayor by executive order to determine and approve certain details of and documents relating to the Authorized Bonds, within the limitations stated in the Bond Ordinance; and

WHEREAS, on April 16, 2007, pursuant to the authority of the Acts, the Designation Resolution, the Bond Ordinance and an executive order of the Mayor dated April 16, 2007, the City issued the City of Salisbury Special Obligation Bonds (The Villages at Aydelotte Farm Project), Series 2007 in the original aggregate principal amount of \$9,775,000 (the “Original Series 2007 Bonds”); and

WHEREAS, the Original Series 2007 Bonds were issued pursuant to an Indenture of Trust dated as of April 1, 2007 (as the same may have been supplemented to date, the “Existing Indenture”) between the City and Wells Fargo, N.A., as trustee (which was subsequently replaced by UMB Bank, n.a., as a successor trustee in accordance with the Existing Indenture) (the “Trustee”); and

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WHEREAS, in accordance with the Tax Increment Financing Act and the Designation Resolution, certain incremental tax revenues derived from regular ad valorem taxes levied on and collected from properties located within the Development District and attributed to an increase in the assessed value of such properties over a stated base value (the "Tax Increment Revenues") are required to be deposited to the Tax Increment Fund and applied in accordance with the provisions of the Tax Increment Financing Act, the Designation Resolution and the Existing Indenture; and

WHEREAS, in accordance with the Special Taxing District Act, the Designation Resolution, the Bond Ordinance and the Existing Indenture, the Special Taxes imposed and collected in accordance with the Rate and Method are required to be deposited in the Special Taxes Fund and applied in accordance with the provisions of the Special Taxing District Act, the Designation Resolution, the Bond Ordinance and the Existing Indenture; and

WHEREAS, as provided in the Tax Increment Financing Act, the Special Taxing District Act, the Bond Ordinance and the Existing Indenture, the Original Series 2007 Bonds are special obligations of the City payable from amounts on deposit in the Tax Increment Fund and the Special Taxes Fund and may not constitute a general obligation debt of the City or a pledge of the City's full faith and credit or taxing power; and

WHEREAS, the developer that originally requested the creation of the Special Taxing District and the authorization of the Authorized Bonds intended to develop the District with approximately 76 single-family homes, 453 townhouses and 144 condominium units, as well as two commercial lots for retail and convenience store purposes (the "Development"); and

WHEREAS, it was projected that at some point the increase in assessed value of properties in the Development would generate Tax Increment Revenues sufficient to pay debt service on the Original Series 2007 Bonds, replenish (as necessary) a debt service reserve fund established therefor and cover ongoing administrative costs with respect to the District, and the Special Taxes were imposed in order to cover any shortfall in Tax Increment Revenues for such purpose, subject to the limitations provided for in the Rate and Method with regard to the amount of Special Taxes that could be imposed on any particular tax parcel in the Development, based on its use; and

WHEREAS, due to the economic downturn, the Development was not developed as planned and, therefore, the assessed value of properties located in the District has not increased as originally projected; and

WHEREAS, the failure of certain owners of property within the District to pay the regular ad valorem taxes from which Tax Increment Revenues are derived and/or the Special Taxes imposed on their properties, when coupled with the fact that assessed values of property within the District have not increased as originally projected, has resulted in the collection of Tax Increment Revenues and Special Taxes insufficient to pay debt service on the Original Series 2007 Bonds; and

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WHEREAS, because amounts collected in accordance with the Acts and deposited in Tax Increment Fund and the Special Taxes Fund have been insufficient to pay debt service on the Original Series 2007 Bonds, the Original Series 2007 Bonds are in default under the Existing Indenture; and

WHEREAS, when the owners of certain properties located in the District failed to pay the taxes from which the Tax Increment Revenues and/or the Special Tax Revenues are derived, their properties were offered for tax sale in June 2012, in accordance with the applicable Act or Acts and applicable law; and

WHEREAS, the Trustee purchased certain of the properties offered for tax sale in June 2012 (the "Tax Sale Properties"); and

WHEREAS, the Trustee subsequently transferred the certificates of sale for the Tax Sale Properties to a special purpose entity known as Villages at Aydelotte Farms Holdings, Inc. ("Holdings"); and

WHEREAS, it is the City's understanding that Holdings has entered into an agreement (as amended to date, the "Sales Agreement") with Skymark Real Estate Investors, LLC ("Skymark") under which Skymark has agreed to purchase and develop the Tax Sale Properties provided the Original Series 2007 Bonds are restructured; and

WHEREAS, the Trustee has advised that the existing holders of the Original Series 2007 Bonds (the "Bondholders") have agreed to the restructuring proposed by Skymark and provided for in the Sales Agreement; and

WHEREAS, the proposed restructuring involves (i) the exchange of outstanding Original Series 2007 Bonds for amended and restated bonds that will be structured as capital appreciation bonds with an accretion value of 5.25%, and (ii) an extension of the first optional redemption date from January 1, 2017 to January 1, 2025, provided that the maturity date of the amended and restated bonds will not be extended beyond the original maturity date of the Original Series 2007 Bonds; and

WHEREAS, as of the date of introduction of this Ordinance, the Original Series 2007 Bonds were outstanding in the aggregate principal amount of \$9,775,000; and

WHEREAS, any restructuring of the Original Series 2007 Bonds as contemplated by the Trustee and the Bondholders (as the terms thereof may be further refined by such parties and Skymark) will constitute a current refunding and a reissuance of such Original Series 2007 Bonds for purposes of the Internal Revenue Code of 1986, as amended, and the Income Tax Regulations promulgated thereunder (collectively, the "Code"), and, accordingly, bond counsel to the City has advised that the Council needs to grant certain authorizations regarding any such restructuring by ordinance; and

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WHEREAS, bond counsel to the City has advised that the contemplated restructuring of the Original Series 2007 Bonds, while constituting a technical refunding and reissuance for purposes of the Code, does not involve the issuance of Additional Bonds for refunding purposes under the Existing Indenture or the Acts; and

WHEREAS, the Council is willing to authorize a restructuring of the outstanding Original Series 2007 Bonds within the limitations provided for in this Ordinance in an effort to stimulate development in the District and hopefully facilitate the future generation of Tax Increment Revenues sufficient to provide for the payment of debt service on the Original Series 2007 Bonds, as restructured, recognizing that the Special Taxes, to the extent collected, remain a secondary source for payment of such debt service; and

WHEREAS, prior to enacting this Ordinance, the Mayor and Council held a public hearing after giving not less than ten (10) days' notice in a newspaper of general circulation in the City of Salisbury in accordance with Section 21-411 of the Special Taxing District Act.

SECTION 1. FINDINGS AND DETERMINATIONS. NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SALISBURY, MARYLAND that:

(a) The Recitals to this Ordinance (the "Recitals") are deemed a substantive part of this Ordinance and are incorporated by reference herein, and capitalized terms defined in the Recitals and used herein shall have the meanings given to such terms in the Recitals.

(b) References in this Ordinance to any official by title shall be deemed to refer (i) to any official authorized under the Charter or other applicable law to act in such titled official's stead during the absence or disability of such titled official, (ii) to any person who has been elected, appointed or designated to fill such position in an acting capacity under the Charter, the code of City ordinances (the "City Code") or other applicable law, (iii) to any person who serves in a "Deputy" or "Assistant" capacity as such an official, provided that the applicable responsibilities, rights or duties referred to herein have been delegated to such deputy or assistant in accordance with applicable law or authority, and/or (iv) to the extent an identified official commonly uses another title not provided for in the Charter or the City Code, the official, however known, who is charged under the Charter, the City Code or other applicable law or authority with the applicable responsibilities, rights or duties referred to herein; and

(c) By the adoption of the Designation Resolution and the Bond Ordinance, the Council complied with the provisions of (i) Sections 12-203 and 12-208(c) and (d) of the Tax Increment Financing Act (as required by Section 12-204(b)(2)(i) of such Act) and (ii) Sections 21-412 and 21-414 of the Special Taxing District Act (as required by Section 21-417(b)(2)(i) of such Act), inasmuch as the corresponding provisions of the Designation Resolution and the Bond Ordinance are not intended to be modified by the provisions of this Ordinance; and

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(d) Pursuant to Section 2 of the Bond Ordinance and the Rate and Method, which is incorporated by reference in the Bond Ordinance, the Council met the requirements of Section 21-417(b)(3) of the Special Taxing District Act.

(e) The Application dated February 24, 2006 submitted to the City prior to the adoption of the Designation Resolution constitutes the request contemplated by Section 21-409(c) of the Special Taxing District Act with respect to the transactions contemplated by this Ordinance.

SECTION 2. AUTHORIZED AMOUNT AND NATURE OF AMENDED AND RESTATED SERIES 2007 BONDS. BE IT FURTHER ORDAINED that:

(a) The execution and delivery by the City of amended and restated bonds in exchange for the Original Series 2007 Bonds (the "Amended and Restated Series 2007 Bonds"), in an initial aggregate principal amount (expressed as a par amount) not to exceed Nine Million Seven Hundred Seventy-five Thousand Dollars (\$9,775,000) and structured as capital appreciation bonds with an accretion value not exceeding 5.25%, and as may be determined pursuant to the further provisions of this Ordinance, is hereby authorized and approved. References in this Ordinance to the Amended and Restated Series 2007 Bonds having an accretion value not exceeding 5.25% shall be construed to satisfy the requirement of the Acts that this Ordinance specify the maximum rate of interest to be borne by the Amended and Restated Series 2007 Bonds. The City hereby expressly recognizes that the accreted value of any such capital appreciation bonds, when compounded interest is added thereto, will exceed Nine Million Seven Hundred Seventy-five Thousand Dollars (\$9,775,000), and such increase pursuant to the calculation of accreted value is hereby expressly authorized and approved and shall not be construed to violate the maximum initial aggregate principal amount (expressed as a par amount) of the Amended and Restated Series 2007 Bonds provided for in this Section 2.

(b) The Amended and Restated Series 2007 Bonds are hereby authorized to be executed by the manual or facsimile signature of the Mayor. The seal of the City shall be affixed to the Amended and Restated Series 2007 Bonds and attested by the City Clerk or other similar administrative officer of the City. The Amended and Restated Series 2007 Bonds shall mature not later than January 1, 2037, the date of maturity of the Original Series 2007 Bonds.

**(c) THE AMENDED AND RESTATED SERIES 2007 BONDS SHALL NOT BE AN INDEBTEDNESS OF THE CITY FOR WHICH THE CITY IS OBLIGATED TO LEVY OR PLEDGE, OR HAS LEVIED OR PLEDGED, AD VALOREM TAXES OR SPECIAL TAXES OF THE CITY OTHER THAN THE REAL PROPERTY TAXES REPRESENTING THE LEVY ON THE TAX INCREMENT (WITHIN THE MEANING OF THE TAX INCREMENT FINANCING ACT) OF PROPERTIES LOCATED IN THE DEVELOPMENT DISTRICT OR THE SPECIAL TAXES CONTEMPLATED BY THE BOND ORDINANCE, AS SUPPLEMENTED AND AMENDED BY THIS ORDINANCE. THE AMENDED AND RESTATED SERIES 2007 BONDS SHALL BE A SPECIAL OBLIGATION OF THE CITY AND WILL NOT CONSTITUTE A GENERAL**

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OBLIGATION DEBT OF THE CITY OR A PLEDGE OF THE CITY'S FULL FAITH AND CREDIT OR TAXING POWER. THE ONLY FUNDS THE CITY WILL BE OBLIGATED TO USE TO MAKE PAYMENT ON THE AMENDED AND RESTATED SERIES 2007 BONDS WILL BE THOSE THAT RESULT FROM REAL PROPERTY TAXES LEVIED BY THE CITY ON THE TAX INCREMENT OF PROPERTIES LOCATED IN THE DEVELOPMENT DISTRICT AND, IF SUCH REVENUES ARE OR WILL BE INSUFFICIENT, THE SPECIAL TAXES LEVIED ON AND COLLECTED FROM PROPERTY LOCATED IN THE SPECIAL TAXING DISTRICT IN ACCORDANCE WITH THE RATE AND METHOD AND THE BOND ORDINANCE, AS SUPPLEMENTED AND AMENDED BY THIS ORDINANCE.

SECTION 3. AUTHORITY OF MAYOR TO DETERMINE CERTAIN MATTERS RELATING TO THE AMENDED AND RESTATED SERIES 2007 BONDS. BE IT FURTHER ORDAINED that, subject to the provisions of Section 2 of this Ordinance, prior to the execution and delivery of the Amended and Restated Series 2007 Bonds in exchange for Original Series 2007 Bonds, the Mayor, by executive order, is hereby authorized, empowered and directed to specify, prescribe, determine, provide for, or approve, for the purposes and within the limitations of the Acts and this Ordinance, all matters, details, forms, documents, and procedures pertaining to the delivery and payment of or for such Amended and Restated Series 2007 Bonds, including, without limitation, the following:

(a) The actual principal amount of the Amended and Restated Series 2007 Bonds (specified as an initial par amount) to be executed and delivered in exchange for the outstanding Original Series 2007 Bonds;

(b) The accretion value of and the method of calculating accreted value for the Amended and Restated Series 2007 Bonds;

(c) The time or times that the Amended and Restated Series 2007 Bonds may be executed and delivered;

(d) The form, purpose and tenor of the Amended and Restated Series 2007 Bonds and the denominations in which the Amended and Restated Series 2007 Bonds shall be executed and delivered;

(e) The manner in which and the times and places that the principal of and interest on the Amended and Restated Series 2007 Bonds is to be paid, within the limitations set forth in the Acts and this Ordinance;

(f) Conditions for the payment of principal of and interest on the Amended and Restated Series 2007 Bonds before maturity;

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(g) The form and contents of, and provisions for the execution and delivery of, any amendment of, amendment and restatement of, or supplement to, the Existing Indenture and any of the other documents originally executed and delivered in connection with the issuance of the Original Series 2007 Bonds, as the same may have been supplemented to date, and such additional financing or other documents that are not otherwise specifically identified in this Ordinance, and any amendments, modifications or supplements thereto, as the Mayor shall deem necessary or desirable to evidence, secure or effectuate the execution and delivery of the Amended and Restated Series 2007 Bonds in exchange for Original Series 2007 Bonds, including, without limitation, any agreements with, or amendments and restatements of or modifications to existing agreements with, consultants to or agents of the City with respect to the District or the Amended and Restated Series 2007 Bonds, fee agreements, funding agreements, investment agreements, security agreements, assignments, guarantees, financing agreements or escrow agreements;

(h) The creation of additional security for the Amended and Restated Series 2007 Bonds and provision for the administration of the Amended and Restated Series 2007 Bonds including, without limitation, the appointment of such trustees, escrow agents, fiscal agents, administrators of the District, paying agents, registrars, rebate monitors or other agents as the Mayor shall deem necessary or desirable to effectuate the transactions authorized hereby, including, without limitation, any amendments to, amendments and restatements of, or supplements to existing agreements or arrangements with any such counterparties that are in effect with respect to the Original Series 2007 Bonds prior to the exchange therefor for Amended and Restated Series 2007 Bonds;

(i) Provisions for the preparation and distribution of any preliminary or final placement memorandum, offering circular or other disclosure document in connection with the exchange of the Amended and Restated Series 2007 Bonds for Original Series 2007 Bonds, if such placement memorandum, offering circular or other disclosure document is determined to be necessary or desirable in connection therewith;

(j) The form and contents of, and provisions for the execution and delivery of, any contract or contracts for the exchange of the Amended and Restated Series 2007 Bonds for Original Series 2007 Bonds (or any portion thereof);

(k) To the extent that other obligated persons with respect to the Amended and Restated Series 2007 Bonds have not assured compliance with, or to the extent that the offering of the Amended and Restated Series 2007 Bonds is not exempt from the requirements of, Rule 15c2-12 of the United States Securities and Exchange Commission, the determination of the form and contents of any written agreement or contract required by law or to the extent the same is determined to be necessary or desirable even if not required by law, for the benefit of the holders of the Amended and Restated Series 2007 Bonds under which agreement or contract the City will undertake to provide annual financial information, audited financial statements, material events notices, and other information to the extent required by such Rule or such agreement or contract;

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(l) The negotiation, preparation, execution and delivery of any development agreements or use agreements with the owners of any portion of the property located within the District and/or their developers, contractors or agents regarding the use or ownership of properties located within the District or outside the District if benefited by the Improvements (as defined in the Bond Ordinance) already funded from proceeds of the Original Series 2007 Bonds, and any amendments of, amendments and restatements of, or supplements to any such existing agreements;

(m) Any matters deemed necessary or desirable relating to application of any proceeds of the Original Series 2007 Bonds still held by the Trustee, if any, or any other moneys to be received in connection with the restructuring contemplated hereby, if any, including, without limitation, to redeem Original Series 2007 Bonds or Amended and Restated Series 2007 Bonds, as applicable, to fund reserves, to pay administrative expenses, to fund interest, to pay costs of issuance relating to the Amended and Restated Series 2007 Bonds, or to be applied to any other purpose permitted by the Acts; provided that, the reference to any other moneys received in connection with the restructuring contemplated in this subsection (m) shall not be construed as requiring the City to provide any other such moneys;

(n) The approval of any amendments to, or the determination of any reduction in the Maximum Special Tax provided for in the Rate and Method, in accordance with the provisions of the Rate and Method, to the extent not otherwise prohibited by the Special Taxing District Act; and

(o) The determination of, or the provision for, such other matters in connection with the authorization, execution, delivery, exchange and payment of the Amended and Restated Series 2007 Bonds, the security for the Amended and Restated Series 2007 Bonds, and the consummation of the transactions contemplated by this Ordinance as may be deemed appropriate by the Mayor, including, without limitation, establishing procedures for the execution, acknowledgement, sealing and delivery of such other and further agreements, documents and instruments, and the authorization of appropriate officials of the City to take any and all actions, as are or may be necessary or appropriate to consummate the transactions contemplated by this Ordinance in accordance with the Acts and this Ordinance.

The Mayor's execution and delivery of any such executive order shall constitute conclusive evidence of the Mayor's approval of the subject matter thereof.

SECTION 4. FURTHER AUTHORITY OF MAYOR. BE IT FURTHER ORDAINED that the Mayor, on behalf of the City, by an executive order contemplated in Section 3 hereof, is hereby authorized to condition the execution and delivery of the Amended and Restated Series 2007 Bonds upon the execution, delivery and recording, as applicable, by the City, any of then-current owners of property located in the District, the developers of property within the District or other appropriate parties of any declaration of covenants, any notice to property owners within the District (including subsequent property owners), or any other similar documents, instruments or certificates reasonably related to the transactions contemplated by this Ordinance. The Mayor, on

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behalf of the City, is hereby authorized and empowered to prepare or cause to be prepared, negotiate or cause to be negotiated and execute and deliver any such declarations, notices, documents, instruments or certificates to which the City is a party, and the same shall contain such terms, agreements and conditions and be in such form as the Mayor may approve, and the execution and delivery of the same by the Mayor shall constitute conclusive evidence of the Mayor's approval thereof.

SECTION 5. CERTIFICATIONS AS TO TAX MATTERS. BE IT FURTHER ORDAINED that:

(a) Any two of the Mayor, the City Administrator and the Director of Internal Services (or any two other City officials designated by the Mayor pursuant to an executive order contemplated in Section 3 above), acting in concert on behalf of the City, and provided that such actions are within the bounds of their authority, are hereby authorized to prepare or cause to be prepared, negotiate or cause to be negotiated, execute and deliver any supplement or amendment to, or any amendment and restatement of, the Tax and Section 148 Certificate delivered by the City on April 16, 2007 in connection with the original issuance of the Original Series 2007 Bonds or any similar certificate or agreement as to tax and arbitrage matters with respect to the Amended and Restated Series 2007 Bonds (in any such case, the "Tax Certificate"). The Tax Certificate shall contain such terms, agreements and conditions (and reflect, if applicable, any determinations provided for in any executive order executed and delivered pursuant to Section 3 above) and be in such form as such officials shall approve after consultation with bond counsel to the City, and the execution of the Tax Certificate by such officials shall constitute conclusive evidence of their approval with respect thereto.

(b) The City shall set forth in the Tax Certificate its reasonable expectations as to relevant facts, estimates and circumstances relating to the use of the proceeds of the Amended and Restated Series 2007 Bonds (for purposes of the Code) or of any monies, securities or other obligations to the credit of any account of the City which may be deemed to be proceeds of the Amended and Restated Series 2007 Bonds pursuant to the Code (collectively, the "Bond Proceeds"). The City covenants with the registered owners of the Amended and Restated Series 2007 Bonds that the facts, estimates and circumstances set forth in the Tax Certificate will be based on the City's reasonable expectations on the date of execution and delivery of the Amended and Restated Series 2007 Bonds and will be, to the best of the certifying officials' knowledge, true and correct as of that date.

(c) The City covenants with the registered owners of any of the Amended and Restated Series 2007 Bonds that it will not make, or (to the extent that it exercises control or direction) permit to be made, any use of the Bond Proceeds that would cause the Amended and Restated Series 2007 Bonds to be "arbitrage bonds" within the meaning of the Code, and that it will comply with those provisions of the Code as may be applicable to the Amended and Restated Series 2007 Bonds on their date of execution and delivery and which may subsequently lawfully be made applicable to the Amended and Restated Series 2007 Bonds as long as any Amended and Restated Series 2007 Bond remains outstanding and unpaid.

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(d) The City specifically covenants that it will comply with all provisions of the Code applicable to the Amended and Restated Series 2007 Bonds, including, without limitation, compliance with provisions regarding the expenditure of the Bond Proceeds, the use of the Bond Proceeds and the facilities financed or refinanced therewith, the restriction of investment yields, the filing of information with the Internal Revenue Service, and the rebate of certain earnings resulting from the investment of the Bond Proceeds or payments in lieu thereof. The City further covenants that it shall make such use of the Bond Proceeds, regulate the investment of thereof and take such other and further actions as may be required to maintain the exclusion from gross income for federal income tax purposes of interest on the Amended and Restated Series 2007 Bonds. All officials, officers, employees and agents of the City are hereby authorized and directed to provide such certifications of facts and estimates regarding the amount and use of the Bond Proceeds and other matters relating to the Amended and Restated Series 2007 Bonds as may be necessary or appropriate.

(e) In connection with their execution and delivery of the Tax Certificate, the authorized officials identified in this Section 5 are hereby authorized and empowered, on behalf of the City, to make any designations, elections, determinations or filings on behalf of the City provided for in or permitted by the Code and to reflect the same in the Tax Certificate and/or any form filed with the Internal Revenue Service or any other documentation deemed appropriate by bond counsel to the City. The Council hereby recognizes that any such form filed with the Internal Revenue Service will be signed by only one such official.

SECTION 6. ADDITIONAL AUTHORIZED DOCUMENTATION AND ACTIONS.

BE IT FURTHER ORDAINED that the following officials of the City: the Mayor, the Vice President of the Council, the City Administrator, the Director of Internal Services, any Assistant Director of Internal Services and the City Clerk, acting individually or in concert as appropriate, and provided that such actions are within the bounds of authority, are authorized and directed to take any and all actions and to execute, attest, affix the City's seal to and deliver, and to file and record in any appropriate public offices (if applicable) all documents, instruments, certifications, forms (including but not limited to, appropriate Internal Revenue Service forms in respect to the Amended and Restated Series 2007 Bonds), financing statements or amendments thereto, letters of instructions, written requests, contracts, agreements and other papers customarily delivered in connection with the execution and delivery of obligations in the nature of the Amended and Restated Series 2007 Bonds, whether or not herein mentioned and not otherwise provided for herein, as may be necessary or convenient to evidence the approvals of the City provided for in this Ordinance, to invest moneys held under the Existing Indenture, as the same may be amended, modified, supplemented or restated as provided herein, or moneys on deposit in the Tax Increment Fund or the Special Taxes Fund (in all such cases, in accordance with the provisions of applicable Maryland and federal law), to facilitate the execution and delivery of the Amended and Restated Series 2007 Bonds and to consummate the transactions contemplated in this Ordinance or in any of the documents herein authorized and approved.

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SECTION 7. IMPACT ON BOND ORDINANCE. BE IT FURTHER ORDAINED that this Ordinance shall be construed to supplement and amend the Bond Ordinance, and the provisions of the Bond Ordinance shall remain in full force and effect except to the extent supplemented, amended or contradicted hereby.

SECTION 8. LIBERAL CONSTRUCTION OF ORDINANCE. BE IT FURTHER ORDAINED that the provisions of this Ordinance shall be liberally construed in order to effectuate and carry out the purposes of and the activities authorized by the Acts and the matters contemplated by this Ordinance.

SECTION 9. SEVERABILITY PROVISIONS. BE IT FURTHER ORDAINED that the provisions of this Ordinance are severable, and if any provision, sentence, clause, section or part hereof is held or determined to be illegal, invalid, unconstitutional or inapplicable to any person or circumstance, such illegality, invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Ordinance or their application to other persons or circumstances. It is hereby declared to be the intent of the City that this Ordinance would have been adopted if such illegal, invalid, unconstitutional or inapplicable provision, sentence, clause, section or part had not been included herein, and if the person or circumstances to which this Ordinance or any part hereof are inapplicable had been specifically exempted herefrom.

SECTION 10. EFFECTIVENESS OF ORDINANCE. BE IT FURTHER ORDAINED that this Ordinance shall become effective following approval by the Mayor or subsequent passage by the Council in accordance with the provision of Section SC2-12 of the Charter. Pursuant to the Acts and Section SC2-16 of the Charter, this Ordinance shall not be subject to petition to referendum.

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THIS ORDINANCE was introduced and read at a meeting of the Council of the City of Salisbury held on the 13<sup>th</sup> day of April, 2015, and thereafter, a statement of the substance of this Ordinance having been posted or published as required by law, was finally passed by the Council ✓ [as introduced] \_\_\_\_\_ [as amended] [CHECK APPLICABLE LINE] on the 27<sup>th</sup> day of April, 2015.

ATTEST:

Kimberly R. Nichols  
Kimberly R. Nichols, City Clerk

Jacob R. Day  
Jacob R. Day, City Council President

APPROVED BY ME THIS 13<sup>th</sup> DAY OF May, 2015:

James Ireton, Jr.  
James Ireton, Jr., Mayor

#171195:58111.027

Underlining : Indicates material added by amendment after introduction  
~~Strike through~~ : Indicates material deleted by amendment after introduction

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INTER

OFFICE

# MEMO

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*OFFICE OF THE MAYOR*

**To:** City Council  
**From:** Tom Stevenson  
**Subject:** 2015 North East Collector Supplemental Ordinance (Aydelotte TIF)  
**Date:** April 7, 2015

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Attached please find an ordinance that will have the effect of restructuring the Aydelotte property TIF bonds.

Sykmak Real Estate Investors, LLC has agreed to develop the Tax Sale Properties if the original Series 2007 Bonds can be restructured.

Council was briefed and reached unanimous consensus to advance this legislation during its March 16, 2015 work session.

Please let me know if you have any questions or require additional information.