

**AN ORDINANCE AUTHORIZING THE CITY OF OLIVETTE, MISSOURI TO ISSUE ITS TAXABLE INDUSTRIAL REVENUE BONDS (OPUS DEVELOPMENT COMPANY, L.L.C. PROJECT), SERIES 2021, IN A PRINCIPAL AMOUNT NOT TO EXCEED \$55,000,000, FOR THE PURPOSE OF PROVIDING FUNDS TO PAY THE COSTS OF ACQUIRING, CONSTRUCTING AND IMPROVING A FACILITY FOR AN INDUSTRIAL DEVELOPMENT PROJECT IN THE CITY; APPROVING A PLAN FOR THE PROJECT; AND AUTHORIZING THE CITY TO ENTER INTO CERTAIN AGREEMENTS AND TAKE CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH.**

**WHEREAS**, the City of Olivette, Missouri, a home-rule city and political subdivision of the State of Missouri (the “City”), is authorized and empowered pursuant to the provisions of Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200, inclusive, of the Revised Statutes of Missouri (collectively, the “Act”), and the City Charter to purchase, construct, extend and improve certain projects (as defined in the Act) and to issue industrial development revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or corporations for manufacturing, commercial, office industry, warehousing and industrial development purposes upon such terms and conditions as the City deems advisable; and

**WHEREAS**, a Plan for an Industrial Development Project (the “Plan”) has been prepared in the form of **Exhibit A**, attached hereto and incorporated herein by reference; and

**WHEREAS**, notice of the City’s consideration of the Plan has been given in the manner required by the Act, and the City Council has fairly and duly considered all comments submitted to the City Council regarding the proposed Plan; and

**WHEREAS**, the City Council hereby finds and determines that it is desirable for the improvement of the economic welfare and development of the City and within the public purposes of the Act that the City: (1) issue its Taxable Industrial Revenue Bonds (Opus Development Company, L.L.C. Project), Series 2021, in the maximum principal amount of \$55,000,000 (the “Bonds”), for the purpose of acquiring a leasehold interest in certain real property along Irvington Court and Reyem Court in the City (the “Project Site,” as more fully described in the below-defined Indenture) and constructing a development containing approximately 207 residential apartments thereon (the “Project Improvements,” as more fully described in the Indenture, and together with acquisition of a leasehold interest in the Project Site, the “Project”), (3) lease the Project to Opus Development Company, L.L.C. or any affiliated entity (including any joint venture) in which Opus Development Company, L.L.C. has an ownership interest, directly or indirectly (the “Developer”); and (4) enter into a Development and Performance Agreement with the Developer, under which the Developer will agree to certain additional development terms and conditions in consideration of the City issuing the Bonds; and

**WHEREAS**, the City Council further finds and determines that it is necessary and desirable in connection with the implementation of the Plan and the issuance of the Bonds that the City enter into certain documents and take certain other actions as herein provided.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF OLIVETTE, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:**

**Section 1. Approval of the Plan.** The City Council hereby approves the Plan set forth as **Exhibit A**, attached hereto and incorporated herein by reference.

**Section 2. Authorization for the Project.** The City is hereby authorized to provide for the purchase and construction of the Project, in the manner and as more particularly described in the Indenture and the Lease Agreement hereinafter authorized.

**Section 3. Authorization of the Bonds.** The City is hereby authorized to issue and sell the Bonds as described in the recitals hereto for the purpose of providing funds to pay the costs of the Project. The Bonds shall be issued and secured pursuant to the Indenture described below and shall have such terms, provisions, covenants and agreements as are set forth in the Indenture.

**Section 4. Limitation on Liability.** The Bonds and the interest thereon shall be limited obligations of the City, payable solely out of certain payments, revenues and receipts derived by the City from the Lease Agreement described below. Such payments, revenues and receipts shall be pledged and assigned to the bond trustee named in the Indenture (the “Trustee”), as security for the payment of the Bonds as provided in the Indenture. The Bonds and the interest thereon shall not constitute general obligations of the City, the State of Missouri (the “State”) or any political subdivision thereof, and neither the City nor the State shall be liable thereon. The Bonds shall not constitute an indebtedness within the meaning of any constitutional, statutory or charter debt limitation or restriction, and are not payable in any manner by taxation.

**Section 5. Authorization of Documents.** The City is hereby authorized to enter into the following documents (collectively, the “City Documents”), in substantially the forms presented to and approved by the City Council and attached to this Ordinance, with such changes therein as shall be approved by the officials of the City executing the documents, such officials’ signatures thereon being conclusive evidence of their approval thereof:

- (a) Base Lease between the City and the Developer, in substantially the form of **Exhibit B**, attached hereto and incorporated herein by reference, pursuant to which the Developer will lease the Project to the City pursuant to the terms and conditions contained therein.
- (b) Lease Agreement (the “Lease Agreement”) between the City and the Developer, in substantially the form of **Exhibit C**, attached hereto and incorporated herein by reference, pursuant to which the City will lease the Project to the Developer pursuant to the terms and conditions therein, in consideration of rental payments by the Developer that will be sufficient to pay the principal of and interest on the Bonds.
- (c) Trust Indenture (the “Indenture”) between the City and the Trustee, in substantially the form of **Exhibit D**, attached hereto and incorporated herein by reference, pursuant to which the Bonds will be issued and the City will pledge the Project and assign certain of the payments, revenues and receipts received pursuant to the Lease Agreement to the Trustee for the benefit and security of the owners of the Bonds upon the terms and conditions as set forth in the Indenture.
- (d) Bond Purchase Agreement between the City and the Developer, in substantially the form of **Exhibit E**, attached hereto and incorporated herein by reference, pursuant to which the Developer will purchase the Bonds.
- (e) Development and Performance Agreement between the City and the Developer, in substantially the form of **Exhibit F**, attached hereto and incorporated herein by reference, containing certain additional terms and conditions associated with the Project and a sales and use tax exemption in connection therewith.

- (f) Price Road Access Agreement in a form acceptable to the City Attorney and contemplated by Section 4.1 of the aforementioned Development and Performance Agreement.

**Section 6. Execution of Documents.** The City Manager is hereby authorized to execute the Bonds and to deliver the Bonds to the Trustee for authentication for and on behalf of and as the act and deed of the City in the manner provided in the Indenture. The City Manager is hereby authorized to execute the City Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance, for and on behalf of and as the act and deed of the City. The City Clerk is hereby authorized to attest to and affix the seal of the City to the Bonds and the City Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

**Section 7. Developer Substitution.** Notwithstanding the forms of documents approved in substantially final form pursuant to **Section 5**, Opus Development Company, L.L.C. may be substituted for another entity prior to execution so long as the substituted party is an entity controlled by or under common control with or controlling Opus Development Company, L.L.C. In case of such substitution, the name of the Bonds may also be changed to reflect the applicable entity name.

**Section 8. Further Authority.** The City shall, and the officials, agents and employees of the City are hereby authorized to, take such further action, and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and to carry out, comply with and perform the duties of the City with respect to the Bonds and the City Documents. The Mayor and the City Manager are hereby authorized, through the term of the Lease Agreement, to execute all documents on behalf of the City (including documents pertaining to the financing or refinancing of the Project by the Developer) as may be required to carry out and comply with the intent of this Ordinance, the Indenture and the Lease Agreement. The Mayor and the City Manager are further authorized, on behalf of the City, to grant such consents, estoppels and waivers relating to the Bonds, the Indenture, the Lease Agreement or the Development and Performance Agreement as may be requested during the term thereof; provided, such consents, estoppels and/or waivers shall not increase the principal amount of the Bonds, increase the term of the Lease Agreement or the economic incentives as provided for therein, waive an event of default or materially change the nature of the transaction. The City Clerk is authorized to attest to and affix the seal of the City to any document authorized by this Section.

**Section 9. Effective Date.** This Ordinance shall be in full force and effect from and after its passage and approval.

Passed and approved this 27 day of July, 2021.

(Seal)

\_\_\_\_\_  
Sidney Clark, Mayor

ATTEST:

\_\_\_\_\_  
Denise Mandel, City Clerk

**EXHIBIT A**

**PLAN FOR AN INDUSTRIAL DEVELOPMENT PROJECT**

(On file in the office of the City Clerk)

**EXHIBIT B**

**BASE LEASE**

(On file in the office of the City Clerk)

**EXHIBIT C**

**LEASE AGREEMENT**

(On file in the office of the City Clerk)

**EXHIBIT D**

**TRUST INDENTURE**

(On file in the office of the City Clerk)

**EXHIBIT E**

**BOND PURCHASE AGREEMENT**

(On file in the office of the City Clerk)

**EXHIBIT F**

**DEVELOPMENT AND PERFORMANCE AGREEMENT**

(On file in the office of the City Clerk)