

Gilmore & Bell, P.C.
Draft – July 22, 2021

\$55,000,000
(AGGREGATE MAXIMUM PRINCIPAL AMOUNT)
CITY OF OLIVETTE, MISSOURI
TAXABLE INDUSTRIAL REVENUE BONDS
([*OPUS ENTITY PROJECT*])
SERIES 2021

Dated as of [*Date*], 2021

BOND PURCHASE AGREEMENT

Honorable Mayor and City Council
City of Olivette, Missouri

On the basis of the representations and covenants and upon the terms and conditions contained in this Bond Purchase Agreement, [Opus Development Company, L.L.C., a Delaware limited liability company or any affiliated entity (including any joint venture) in which Opus Development Company, L.L.C. has an ownership interest, directly or indirectly] (the “Purchaser”), offers to purchase from the City of Olivette, Missouri (the “City”), the above-referenced bonds (the “Bonds”), to be issued by the City under and pursuant to Ordinance No. ____ adopted by the City Council of the City on _____, 2021 (the “Ordinance”), and a Trust Indenture dated as of [*Date*], 2021 (the “Indenture”) by and between the City and [*TRUSTEE*], as trustee (the “Trustee”). *Capitalized terms not otherwise defined herein shall have the meanings set forth in the Indenture.*

SECTION 1. REPRESENTATIONS AND AGREEMENTS

(a) By the City’s acceptance hereof, the City hereby represents to the Purchaser that:

(1) The City is a home-rule city duly organized and validly existing under its charter and the laws of the State of Missouri. The City is authorized pursuant to the Constitution, the laws of the State of Missouri, and the charter, ordinances, orders and resolutions of the City, and all necessary action has been taken to authorize, issue and deliver the Bonds and to consummate all transactions contemplated by the Ordinance, this Bond Purchase Agreement, the Indenture, the Base Lease dated as of [*Date*], 2021 (the “Base Lease”) by and between the City and the Purchaser, the Lease Agreement dated as of [*Date*], 2021 (the “Lease”) by and between the City and the Purchaser, the Development and Performance Agreement dated as of [*Date*], 2021 (the “Development and Performance Agreement”) by and between the City and the Purchaser, and any and all other agreements relating thereto. The proceeds of the Bonds shall be used for the purpose of acquiring the Project Site, constructing the Project Improvements and paying the costs incurred in connection with the issuance of the Bonds.

(2) There is no controversy, suit or other proceeding of any kind pending or, to the City's actual knowledge, threatened wherein or whereby any question is raised or may be raised, questioning, disputing or affecting in any way the legal organization of the City or its boundaries, or the right or title of any of its officers to their respective offices, or the legality of any official act leading up to the issuance of the Bonds or the constitutionality or validity of the obligations represented by the Bonds or the validity of the Bonds, the Ordinance, the Base Lease, the Lease, the Indenture, the Development and Performance Agreement or this Bond Purchase Agreement.

(b) The Purchaser represents as follows:

(1) *Organization.* The Purchaser is a [limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and authorized to transact business in the State of Missouri.]

(2) *No Conflict or Breach.* The execution, delivery and performance of this Bond Purchase Agreement by the Purchaser has been duly authorized by all necessary action of the Purchaser and does not and will not conflict with or result in the breach of any of the terms, conditions or provisions of, or constitute a default under, its organizational documents, any law, court or administrative regulation, decree or order applicable to or binding upon the Purchaser, or, to the best of its knowledge, any agreement, indenture, mortgage, lease or instrument to which the Purchaser is a party or by which it is bound.

(3) *Documents Legal, Valid and Binding.* When executed and delivered by the Purchaser, this Bond Purchase Agreement will be, and is, a legal, valid and binding obligation, enforceable in accordance with its terms, subject, as to enforcement, to any applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally and further subject to the availability of equitable remedies. The party executing this Bond Purchase Agreement on behalf of the Purchaser has been duly authorized to execute this Bond Purchase Agreement.

(4) *Purchaser's Certificates.* Any certificate signed by an authorized officer or agent of the Purchaser and delivered to the City shall be deemed a representation and warranty by the Purchaser to such parties as to the statements made therein.

SECTION 2. PURCHASE, SALE AND DELIVERY OF THE BONDS

On the basis of the representations and covenants contained herein and in the other agreements referred to herein, and subject to the terms and conditions set forth herein and in the Indenture, the Purchaser agrees to purchase from the City and the City agrees to sell to the Purchaser the Bonds on the terms and conditions set forth herein.

The Bonds shall be sold to the Purchaser by the City on the Closing Date (hereinafter defined) upon payment of an amount equal to the Closing Price (hereinafter defined), which amount shall be applied as provided in the Indenture and the Lease. From time to time after the Closing Date, the Purchaser shall make additional payments with respect to the Bonds ("Additional Payments") to the Trustee under the Indenture, which Additional Payments shall be applied to the payment or reimbursement of Project Costs or as provided in the Indenture and the Lease; provided that the sum of the Closing Price and all such Additional Payments shall not, in the aggregate, exceed \$55,000,000 plus the costs of issuance of the Bonds (if such costs of issuance are not paid with Bond proceeds).

As used herein, the term "Closing Date" shall mean _____, 2021, or such other date as shall be mutually agreed upon by the City and the Purchaser; the term "Closing Price" shall mean the amount specified in writing by the Purchaser and agreed to by the City as the amount required to pay for the initial issuance of the Bonds on the Closing Date, which amount shall be equal to (1) any Project Costs spent by the Purchaser from its own funds on or before the Closing Date, or (2) the aggregate principal amount of the Bonds, if all of the proceeds of the Bonds are being transferred to the Trustee on the Closing Date.

The Bonds shall be issued under and secured as provided in the Ordinance, the Indenture and the Lease authorized thereby and the Bonds shall have the maturity, interest rate and shall be subject to redemption as set forth therein. The delivery of the Bonds shall be made in definitive form as a fully-registered bond in the maximum aggregate principal denomination of \$55,000,000; provided, that the principal amount of the Bonds outstanding at any time shall be that amount recorded in the records of the Trustee, absent manifest error, and further provided that interest shall be payable on the Bonds only on the outstanding principal amount of the Bonds, as more fully provided in the Indenture.

SECTION 3. CONDITIONS TO THE OBLIGATIONS

The obligations hereunder shall be subject to the due performance by the parties of the obligations and agreements to be performed hereunder on or prior to the Closing Date and to the accuracy of and compliance with the representations contained herein, as of the date hereof and as of the Closing Date, and are also subject to the following conditions:

(a) There shall be delivered to the Purchaser on or prior to the Closing Date a duly certified copy of the Ordinance, the Indenture, the Base Lease, the Lease, the Development and Performance Agreement, this Bond Purchase Agreement and any other instrument contemplated thereby, and such documents shall be in full force and effect and shall not have been modified or changed except as may have been agreed to in writing by the Purchaser.

(b) The City shall confirm on the Closing Date by a certificate that at and as of the Closing Date the City has taken all action necessary to issue the Bonds and that there is no controversy, suit or other proceeding of any kind pending or, to its knowledge, threatened against the City wherein any question is raised affecting in any way the legal organization of the City or the legality of any official act shown to have been done in the transcript of proceedings leading up to the issuance of the Bonds, or the constitutionality or validity of the obligations represented by the Bonds or the validity of the Bonds or any proceedings in relation to the issuance or sale thereof.

(c) The Purchaser shall execute a certificate, dated the Closing Date, to the effect that (1) no litigation, proceeding or investigation is pending against the Purchaser or its affiliates or, to the knowledge of the Purchaser, threatened which would (A) contest, affect, restrain or enjoin the issuance, validity, execution, delivery or performance of the Bonds, or (B) in any way contest the corporate existence or powers of the Purchaser, (2) no litigation, proceeding or investigation is pending or, to the knowledge of the Purchaser, threatened against the Purchaser that could reasonably be expected to adversely affect its ability to perform its obligations hereunder or under the Base Lease, the Lease or the Development and Performance Agreement, (3) the representations and warranties of the Purchaser herein were and are true and correct in all material respects and not misleading as of the date made and as of the Closing Date, and (4) such other matters as are reasonably requested by the other parties in connection with the issuance of the Bonds.

SECTION 4. THE PURCHASER'S RIGHT TO CANCEL

The Purchaser may cancel its obligation hereunder to purchase the Bonds by notifying the City in writing at or before the Closing Date.

SECTION 5. REPRESENTATIONS AND AGREEMENTS TO SURVIVE DELIVERY

All of the representations and agreements by either party shall remain operative and in full force and effect, and shall survive delivery of the Bonds to the Purchaser.

SECTION 6. NOTICE

Any notice or other communication to be given under this Agreement may be given in writing by mailing or delivering the same as follows:

(a) To the City:

City of Olivette, Missouri
1140 Dielman Road
Olivette, Missouri 63132
Attn: City Manager

with copies to:

Paul Martin, P.C.
1406 N. Broadway
St. Louis, Missouri 63102

and:

Gilmore & Bell, P.C.
One Metropolitan Square
211 N. Broadway, Suite 2000
St. Louis, Missouri 63102
Attn: Shannon Creighton, Esq. and Mark A. Spykerman, Esq.

(b) To the Trustee:

[*TRUSTEE*]

Attn: Corporate Trust Department

(c) To the Purchaser:

[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]
c/o Opus Development Company, L.L.C.
112 S. Hanley Road, Suite 100
St. Louis, Missouri 63105
Attn: Manager, Real Estate Development

with a copy to:

c/o Opus Development Company, L.L.C.
10350 Bren Road West
Minnetonka, Minnesota 55343
Attn.: Legal Department

And a copy to:

Daspin & Aument, LLP
300 South Wacker Drive, Suite 2200
Chicago, Illinois 60606
Attn.: James H. Marshall

SECTION 7. APPLICABLE LAW; ASSIGNABILITY

This Bond Purchase Agreement shall be governed by the laws of the State of Missouri. This Bond Purchase Agreement may be assigned by the Purchaser to any Person that expressly assumes in writing all of the obligations of the Developer contained in the Base Lease and the Lease; provided that the consent of the City for the assignment of this Bond Purchase Agreement shall not be required if the consent of the City is not required for such Person's assumption of the Lease under the provisions of **Article XIII** thereof. Any such assignee shall agree to be bound by the terms of this Bond Purchase Agreement. This Bond Purchase Agreement may be assigned, without approval of, but with notice to the City, by Purchaser to any lender of Purchaser or the Developer as collateral for a loan secured by a deed of trust or mortgage of the Project (as defined in the Lease) and the Bond may be pledged, without approval of the City, by Purchaser to any lender of Purchaser as collateral for a loan secured by a deed of trust or mortgage of the Project (as defined in the Lease).

SECTION 8. EXECUTION OF COUNTERPARTS

This Bond Purchase Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document.

SECTION 9. ANTI-DISCRIMINATION AGAINST ISRAEL ACT

Pursuant to Section 34.600 of the Revised Statutes of Missouri, the Purchaser certifies it is not currently engaged in and shall not, for the duration of this Bond Purchase Agreement, engage in a boycott of goods or services from (a) the State of Israel, (b) companies doing business in or with the State of

Israel or authorized by, licensed by or organized under the laws of the State of Israel or (c) persons or entities doing business in the State of Israel.

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Very truly yours,

**OPUS DEVELOPMENT COMPANY,
L.L.C.**, a Delaware limited liability company

By: _____

Name: _____

Title: _____

DATE OF EXECUTION: _____, 2021.

Accepted and Agreed to this _____ day of _____, 2021.

CITY OF OLIVETTE, MISSOURI

By: _____
City Manager

[SEAL]

ATTEST:

By: _____
City Clerk

[Bond Purchase Agreement]