
(The above space is reserved for Recorder's Certification.)

TITLE OF DOCUMENT: BASE LEASE

DOCUMENT DATED AS OF: [*Date*], ~~2021~~2023

GRANTOR: ~~[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]~~OLIVETTE ODC BREP I, L.L.C., a Delaware limited liability company

GRANTOR'S MAILING ADDRESS: ~~c/o Opus Development Company, L.L.C.~~
~~112 S. Hanley Road, Suite 100~~
~~St. Louis, Missouri 63105~~
~~Attn: Manager, Real Estate Development~~

GRANTEE: CITY OF OLIVETTE, MISSOURI

GRANTEE'S MAILING ADDRESS: 1140 Dielman Road
Olivette, Missouri 63132

RETURN DOCUMENTS TO: Mark A. Spykerman, Esq.
Gilmore & Bell, P.C.
211 North Broadway, Suite 2000
St. Louis, Missouri 63102

LEGAL DESCRIPTION: See **Exhibit A**

BASE LEASE

THIS BASE LEASE (this “Base Lease”) is made and entered into as of [*Date*], ~~2021~~2023 (the “Effective Date”), by and between ~~[OPUS DEVELOPMENT COMPANY~~OLIVETTE ODC BREP I, 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~~its affiliate or ~~indirectly]~~assignee (the “Developer”), and the **CITY OF OLIVETTE, MISSOURI**, a home-rule city organized and existing under its charter and the laws of the State of Missouri (the “City”).

RECITALS:

A. 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 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, warehousing, office industry and industrial development purposes upon such terms and conditions as the City deems advisable.

B. The Developer owns certain real property located in the City and described on **Exhibit A**, attached hereto and incorporated herein by reference (the “Project Site”), which is the subject of an industrial development plan approved in accordance with the Act by the City on _____, 2021 by passage of Ordinance No. _____.

C. Pursuant to the Act and Ordinance No. _____, the City is authorized to (1) issue its Taxable Industrial Revenue Bonds (~~Opus Development Company~~Olivette ODC BREP I, L.L.C. Project), Series ~~2021~~2023, in the maximum principal amount of \$55,000,000 (the “Bonds”), for the purpose of acquiring certain real property located on Irvington Court and Reyem Court in the City (the “Project Site,” as more fully described on **Exhibit A**, attached hereto and incorporated herein by ~~reference~~reference) and constructing a development containing approximately 207 residential apartments thereon (the “Project Improvements,” and together with the acquisition of a leasehold interest in the Project Site, the “Project”), (2) enter into this Base Lease for the purpose of acquiring a leasehold interest in the Project and (3) enter a Lease Agreement with the Developer of even date herewith (the “Lease”) for the purpose leasing the Project Improvements back to the Developer for rent sufficient to pay debt service on the Bonds.

D. In connection with the issuance of the Bonds and the execution of the Lease, the City has agreed to cooperate with the Developer and the contractors for the Project Improvements in acquiring the benefits of sales tax exemption for purchases of materials used to construct the Project Improvements.

E. The Developer desires to lease the Project to the City and the City desires to lease the Project from the Developer, and to acquire and hold a leasehold interest for the term of this Base Lease as more fully described in this Base Lease.

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the City and the Developer do hereby represent, covenant and agree as follows:

Section 1. Definitions. In addition to any words and terms defined elsewhere in this Base Lease, capitalized words and terms used in this Base Lease shall have the meanings given to such terms in the Lease.

Section 2. Representations by the City. The City makes the following representations as the basis for the undertakings on its part herein contained:

- (a) The City is a home-rule city and political subdivision of the State of Missouri.
- (b) Under the provisions of the Act and the City Charter, the City has lawful power and authority to enter into the transactions contemplated by this Base Lease and to carry out its obligations hereunder.
- (c) By proper action of its governing body, the City has been duly authorized to execute and deliver this Base Lease, acting by and through its duly authorized officers.

Section 3. Representations by the Developer. The Developer makes the following representations as the basis for the undertakings on its part herein contained:

- (a) The Developer is a limited liability company validly existing and in good standing under the laws of the State of Delaware and authorized to transact business in the State of Missouri.
- (b) The Developer has lawful power and authority to enter into this Base Lease and to carry out its obligations hereunder and the Developer has been duly authorized to execute and deliver this Base Lease, acting by and through its duly authorized officers and representatives.
- (c) The Developer is the owner of the Project Site and is permitted to lease the Project located thereon to the City pursuant to this Base Lease.

Section 4. Lease Term. This Base Lease shall become effective upon execution and delivery, and subject to earlier termination pursuant to the provisions of this Base Lease, shall have a term commencing as of the date of this Base Lease and terminating simultaneously with the termination of the Lease.

Section 5. Granting of Leasehold Estate. The Developer hereby rents, leases and lets the Project to the City, and the City hereby rents, leases and hires the Project from the Developer, subject to Permitted Encumbrances existing as of the date of the execution and delivery hereof, for the rentals and upon and subject to the terms and conditions herein contained.

Section 6. Rent. In addition to the City's obligations under the Lease and the Development and Performance Agreement, the City hereby agrees to pay to the Developer annual rent under this Base Lease (the "Rent") equal to One Dollar and no/100 (\$1.00), which shall be due on the date of this Base Lease and on each January 1 thereafter during the term of this Base Lease. The Developer hereby acknowledges that it has received the Rent due on the date of this Base Lease.

Section 7. Use and Possession of the Project. The City will have the rights of use and possession of the Project only to the extent permitted by the Lease.

Section 8. Assignability. The City will not assign, sublease, mortgage or otherwise transfer or encumber its interest in this Base Lease except to the Developer pursuant to the Lease.

Section 9. Repairs and Maintenance. The Developer shall, at its sole cost and expense, maintain and repair the Project, and all portions thereof and improvements thereto, to the extent required by the Lease. In no event shall the City be required to make any repairs, improvements, additions, replacements, reconstructions or other changes to the Project or perform any maintenance thereon.

Section 10. Taxes. Pursuant to **Section 6.2** of the Lease, the Developer shall promptly pay all taxes or other governmental charges, that if unpaid, would encumber the City's leasehold interest in the Project.

Section 11. Insurance. The Developer shall maintain the insurance policies required by **Article VII** of the Lease.

Section 12. Condemnation. If, at any time during the term of this Base Lease, there shall be a total or partial taking of the Project in condemnation proceedings or by any right of eminent domain or by sale in lieu thereof, the parties shall have the rights and obligations provided in the Lease, and this Base Lease shall terminate only to the extent and in the manner provided in the Lease.

Section 13. Surrender of the Project. Except as otherwise expressly provided in this Base Lease, the City shall surrender and deliver up the Project and all associated improvements to the Developer at the expiration or other termination of this Base Lease, to the limited extent that the City may have any rights to possession thereof as expressly provided herein, without fraud or delay.

Section 14. Notices. Any and all notices, demands, requests, submissions, approvals, consents, disapprovals, objections, offers, or other communications or documents required to be given, delivered or served or which may be given, delivered or served under or by the terms and provisions of this Base Lease or pursuant to law or otherwise, shall be made in the form and manner provided in the Lease.

Section 15. Developer's Right to Terminate. The Developer may terminate this Base Lease at any time by exercising its option to purchase the City's interest in the Project pursuant to **Article XI** of the Lease.

Section 16. Conflict with the Lease. In the event of any conflict between the terms hereof and the terms of the Lease, the terms of the Lease shall control.

Section 17. Limitation on Liability of City. No provision, covenant or agreement contained in this Base Lease or any obligation herein imposed upon the City, or the breach thereof, shall constitute or give rise to or impose upon the City a pecuniary liability or a charge upon the general credit or taxing powers of the City or the State of Missouri.

Section 18. Governing Law. This Base Lease shall be construed in accordance with and governed by the laws of the State of Missouri.

Section 19. Binding Effect. This Base Lease shall be binding upon and shall inure to the benefit of the City and the Developer and their respective successors and assigns.

Section 20. Severability. If for any reason any provision of this Base Lease is determined to be invalid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected thereby.

Section 21. Execution in Counterparts. This Base Lease may be executed in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

Section 22. Electronic Storage. The parties agree that the transaction described herein may be conducted and related documents may be sent, received or stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 23. Subordination of Base Lease. By its execution hereof, each of the Developer and the City hereby agree that this Base Lease shall be, is and shall continue to be, subordinate and inferior to that certain Deed of Trust dated _____, 20___, executed by the Developer for the benefit of [*Lender*] (the “Fee Deed of Trust”) until all [*Obligations*] (as such term is defined in the Fee Deed of Trust) have been indefeasibly paid and performed in full, including but not limited to, all future advances and future obligations secured by the Fee Deed of Trust. Such subordination shall be self-operative and shall be irrespective of the time, manner, order of recording or perfection or any other priority that ordinarily would result under the Uniform Commercial Code as enacted in each and every applicable jurisdiction, and as amended from time to time, and other applicable law for the order of granting or perfecting any security interests referred to herein. [NOTE – will need to incorporate info]

Section 24. Anti-Discrimination Against Israel Act. Pursuant to Section 34.600 of the Revised Statutes of Missouri, the Developer certifies it is not currently engaged in and shall not, for the duration of this Base Lease, 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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IN WITNESS WHEREOF, the parties hereto have executed this Base Lease as of the Effective Date.

~~{OPUS DEVELOPMENT COMPANY}~~ OLIVETTE ODC BREPI, 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}~~

By: _____
Name: _____
Title: _____

STATE OF MISSOURI)
) SS.
COUNTY OF ST. LOUIS)

On this ____ day of _____, ~~2021~~ 2023, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ to me personally known, who, being by me duly sworn, did say that he is the _____ of ~~{OPUS DEVELOPMENT COMPANY}~~ OLIVETTE ODC BREPI, 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}~~ and that said instrument was signed on behalf of said company by authority of its governing body, and said officer acknowledged said instrument to be the free act and deed of said company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Name: _____
Notary Public - State of Missouri
Commissioned in _____ County

My Commission Expires: _____

EXHIBIT A
DESCRIPTION OF PROJECT SITE

Document comparison by Workshare Compare on Tuesday, January 31, 2023
12:35:46 PM

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Document 2 ID	iManage://work.polsinelli.law/active/87942917/2
Description	#87942917v2<work.polsinelli.law> - Base Lease (Olivette)
Rendering set	Standard

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
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Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

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Deletions	19
Moved from	0
Moved to	0
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Format changes	0
Total changes	43