

## COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 170192

Approving an Industrial Development Plan for Opus Development Company, LLC for the purpose of the acquisition and construction of a commercial multifamily apartment complex and a related parking garage, located at 1923 Broadway Boulevard, Kansas City, Missouri; authorizing and approving various agreements for the purpose of setting forth covenants, agreements and obligations of the City and Opus Development Company, LLC or its affiliate or designee; authorizing the issuance of taxable industrial development revenue bonds in a maximum aggregate principal amount not to exceed \$40,000,000; authorizing and approving certain other documents; and authorizing certain other actions in connection with the issuance of said bonds.

WHEREAS, the City of Kansas City, Missouri, a constitutional charter city and municipal corporation of the State of Missouri (the “City”) is authorized pursuant to the provisions of Article VI, Section 27(b) of the Missouri Constitution, as amended (the “Constitutional Provisions”) and the City of Kansas City Charter to issue its revenue bonds for the purpose of paying all or a part of the cost of purchasing, constructing, extending or improving any facility to be leased or otherwise disposed of pursuant to law to private persons or corporations for manufacturing, commercial, warehousing and industrial development purposes, including the real estate, buildings, fixtures and machinery, such revenue bonds to be paid solely from revenue received from such project; and

WHEREAS, inasmuch as the Constitutional Provisions provide authority to issue industrial development revenue bonds for commercial projects but do not contain provisions, processes and procedures relating to such bonds and such projects, while Sections 100.010 to 100.200, inclusive, of the Revised Statutes of Missouri, as amended (“Chapter 100”) provide authority to issue industrial development revenue bonds for a variety of purposes not including commercial projects but do contain provisions, processes and procedures relating to the bonds and projects authorized thereunder, the City hereby directs that the Chapter 100 provisions, processes and procedures be utilized for industrial development revenue bonds issued under the Constitutional Provisions for commercial projects, including the herein-defined Bonds and Project (the Constitutional Provisions, Chapter 100 and City of Kansas City Charter are referred to collectively herein as the “Act”); and

WHEREAS, the City has heretofore prepared and approved plans for the industrial development of the City and desires to approve an Industrial Development Plan (the “Plan”) for the purpose of carrying out a development project (the “Project”) for Opus Development Company, LLC or an affiliate or other designee thereof (the “Company”); and

WHEREAS, the City intends to issue its Taxable Industrial Development Revenue Bonds (Opus Crossroads Apartments Project) (the “Bonds”) in one or more series for the purpose of furthering the Project located at 1923 Broadway Boulevard, Kansas City, Missouri (the “Project Site”); and

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WHEREAS, pursuant to the City's direction to utilize Chapter 100 procedures for the Bonds and the Project, notice of the Project was given to the taxing jurisdictions in accordance with the procedures set forth in Section 100.059.1 of the Revised Statutes of Missouri; and

WHEREAS, the Council has heretofore and does hereby find and determine that it is desirable for the economic development of the City and within the public purposes of the Act that the Council approve an Industrial Development Plan as proposed by the Company; and that the City issue the Bonds, as more fully described in the Indenture and in the Lease, as hereinafter defined and authorized, proceeds of which shall be used for the purchase and construction of certain real property associated with the Project and which shall be located at the Project Site and leased by the City to the Company, with an option to purchase; and

WHEREAS, the principal amount of the Bonds will be issued in taxable industrial development bonds over a period of time not to exceed two years, with not to exceed twenty-two years of abatement, and payments-in-lieu-of-taxes (PILOTS) at levels established in the Plan and expected to be approximately 100% of the amount the property would have paid if it had been fully taxed based on an assumed equalized assessed value after completion, to the affected taxing jurisdictions during the term of the Bonds, which Bonds will be repaid solely by the Company under the terms of the Lease; and

WHEREAS, for a Chapter 100 bond issuance, the City Council has previously established a policy (Ordinance No. 041033) for the review and approval of such projects, which policy the City hereby directs also be applied to bonds issued under the Constitutional Provisions, one component of which suggests a maximum bond term of 10 years; and

WHEREAS, the Council wishes in this instance to waive its Chapter 100 policy suggesting the maximum abatement period on behalf of the Project, and

WHEREAS, the principal amount of the Bonds will be advanced over a period of not to exceed two years, commensurate with the City's initial acquisition and subsequent construction of the property comprising the Project, and such property will be leased by the City to the Company for a period of not to exceed twenty-two years (subject to earlier termination as provided in the Lease); and

WHEREAS, the City further finds and determines that it is necessary and desirable in connection with the Project and the issuance of the Bonds that the City enter into certain documents, and that the City take certain other actions and approve the execution of certain other documents as herein provided; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

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Section 1. Approval of Plan. The City Council hereby finds and determines that the Project will promote the economic well-being and industrial development of the City and the Project will be in furtherance of the public purposes set forth in the Act. The City Council hereby approves the Plan for the Project, which includes the following provisions:

(a) Acquisition and construction of a 226 unit commercial multifamily apartment complex (plus 2 additional guest suites), and construction of a 209 stall underground parking garage, including real property acquisition and improvements, located at the Project Site in the City of Kansas City, Missouri; and

(b) A total estimated project cost of approximately \$51,720,626 to fund acquisition and construction and related building costs; and

(c) The costs for the real property will be funded from proceeds of the sale of up to \$40,000,000 maximum principal amount of Taxable Industrial Development Revenue Bonds to be issued by the City and purchased by the Company or other purchaser named in the herein-defined Purchase Agreement.

Section 2. Authorization of Documents. The City is hereby authorized to enter into the following documents (the "City Documents"), in such form as shall be approved by the officials of the City executing such documents, such officials' signatures thereon being conclusive evidence of their approval thereof:

(a) One or more Trust Indentures (collectively, the "Indenture"), between the City and the trustee named therein (the "Trustee"), pursuant to which the Bonds shall be issued and the City shall pledge the Project and assign certain of the payments, revenues and receipts received pursuant to the Lease 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.

(b) One or more Lease Agreements (collectively, the "Lease"), between the City and the Company, under which the City will acquire the Project and lease the Project to the Company pursuant to the terms and conditions in said Lease, in consideration of rental payments by the Company which will be sufficient to pay the principal of, premium, if any, and interest on the Bonds.

(c) Purchase Agreements, as defined below, under which the purchaser named therein agrees to purchase the Bonds.

Section 3. Authorization of the Bonds. The City is hereby authorized to issue and sell its Taxable Industrial Development Revenue Bonds (Opus Crossroads Apartments Project), in a maximum aggregate principal amount not to exceed \$40,000,000, for the purpose of providing funds for certain real property associated with the Project. The Bonds shall be issued and secured pursuant to the herein authorized

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Indenture and shall bear such date, shall mature at such time, shall be in such denominations, shall bear interest at such rates, shall be in such form, shall be subject to redemption and other terms and conditions, and shall be issued in such manner, subject to such provisions, covenants and agreements, as are set forth in the Indenture.

Section 4. Sale and Terms of Bonds; Authorization and Execution of Bond Purchase Agreement. The Bonds will be sold to the Company or other purchaser under the terms of one or more Bond Purchase Agreements between the City and the Company or other purchaser (collectively, the "Purchase Agreement"). The maximum aggregate principal amount of the Bonds shall be \$40,000,000; the interest rate on the Bonds shall not exceed 5.00%; principal shall be payable at maturity; the maturity date shall be no later than December 1, 2039; the Bonds shall be purchased at 100% of the principal amount thereof; and the Bonds may be redeemed at any time at a redemption price equal to the principal amount thereof plus accrued interest. The Director of Finance or the City Treasurer is each authorized to execute the Purchase Agreement for and on behalf of and as the act and deed of the City.

Section 5. 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 described herein, and such payments, revenues and receipts shall be pledged and assigned to 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 or the State of Missouri. The Bonds shall not constitute indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and are not payable in any manner by taxation.

Section 6. Creation of Bond Fund. The City is hereby authorized to establish with the Trustee pursuant to the Indenture, a special trust fund in the name of the City to be designated the "City of Kansas City, Missouri, Bond Fund – Opus Crossroads Apartments Project" and the City shall cause all sums required by the Indenture to be deposited therein and shall create all accounts therein required by the Indenture.

Section 7. Execution of Documents. The Mayor is hereby authorized and directed 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 Director of Finance is hereby authorized and directed 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 or a deputy City Clerk, of the City is hereby authorized and directed 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 8. Further Authority. The Mayor, Director of Finance and other officials, agents and employees of the City as required, are hereby authorized and directed to take such further action, and execute such other documents, certificates and instruments as

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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, the City Documents, and tax redirection.

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Approved as to form and legality:

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Brian T. Rabineau  
Assistant City Attorney