

Introduced by: Mayor Babatunde Deinbo

AN ORDINANCE AUTHORIZING THE CITY OF BERKELEY, MISSOURI, TO ISSUE ITS TAXABLE INDUSTRIAL REVENUE BONDS (8640 EVANS, LLC PROJECT) FOR THE PURPOSE OF PROVIDING FUNDS TO PAY THE COSTS OF 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 Berkeley, 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”) to purchase, construct, extend, equip and improve certain projects (as defined in the Act), 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,** the Act requires the City to prepare a plan in connection with any industrial development project undertaken pursuant to the Act; and
- WHEREAS,** a Plan for an Industrial Development Project and Cost/Benefit Analysis (the “Plan”) has been prepared and is attached as Exhibit A; 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 Plan contemplates that 8640 Evans, LLC, a Missouri limited liability company (the “Company”), will acquire approximately 18.88 acres of real property located at 8640 Evans Avenue in the City (the “Project Site”) and renovate the approximately 233,745 square foot facility located thereon for use by Clayco, Inc., a Missouri corporation, and other potential tenants (the “Project Improvements” and, together with the Project Site, the “Project”); and
- WHEREAS,** the Plan further contemplates that, at the request of the Company, the City will issue its Taxable Industrial Revenue Bonds (8640 Evans, LLC Project), Series 2023, in the maximum principal amount of \$50,000,000 for the purpose of acquiring and constructing the Project (the “Bonds”); and
- WHEREAS,** in compliance with the City’s Charter, the Bonds have been offered for sale at a public sale after proper notice and that in accordance with the Notice of Bond Sale, sealed bids have been received for the purchase of the Bonds; 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) approve the Plan pursuant to the Act; (2) issue the Bonds to finance the costs of acquiring and constructing the Project and accept the bid of the purchaser named in the Real Property Indenture hereinafter authorized and defined; (3) lease the Project to the Company; and (4) enter into the Real Property Performance Agreement (as defined herein) with the Company, under which the Company will make certain payments in lieu of taxes for the benefit of the City and all other taxing districts, as described therein; 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 CITY COUNCIL OF THE CITY OF BERKELEY, MISSOURI, AS FOLLOWS:

Section 1. Approval of the Plan. The City Council hereby approves the Plan.

Section 2. Authorization for the Project. The City is hereby authorized to provide for the acquisition and construction of the Project in the manner and as more particularly described in the Real Property Indenture and the Real Property Lease hereinafter authorized and defined.

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 acquiring and constructing the Project. The Bonds shall be issued and secured pursuant to the Real Property Indenture and shall have such terms, provisions, covenants and agreements as are set forth in the Real Property 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 Real Property Lease. Such payments, revenues and receipts shall be pledged and assigned to the bond trustee named in the Real Property Indenture (the "Trustee") as security for the payment of the Bonds as provided in the Real Property 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 or statutory 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 "Project 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) Real Property Trust Indenture (the "Real Property Indenture") between the City and the Trustee, in substantially the form attached as **Exhibit B**, pursuant to which the Bonds will be issued.
- (b) Base Lease between the Company and the City, in substantially the form attached as **Exhibit C**, pursuant to which the Company will lease the Project Site to the City while the Project Improvements are under construction.
- (c) Special Warranty Deed from the Company, as grantor, to the City, as grantee, in substantially the form attached as **Exhibit D**, pursuant to which the Company will transfer fee title of the Project to the City.
- (d) Real Property Lease Agreement (the "Real Property Lease") between the City and the Company, in substantially the form attached as **Exhibit E**, pursuant to which the City will lease the Project to the Company.
- (e) Real Property Performance Agreement (the "Real Property Performance Agreement") between the City and the Company, in substantially the form attached as **Exhibit F**, pursuant to which the Company will agree to make certain payments in lieu of taxes with respect to the Project.

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 Real Property Indenture. The City Manager is hereby authorized to execute the Project 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 Project 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. Ratification and Further Authority. All actions heretofore taken by the officers, agents and employees of the City in connection with the transaction contemplated by this Ordinance are hereby ratified and confirmed including, but not limited to, the mailing and publication of the Notice of Bond Sale in connection with the solicitation of proposals for the purchase of the Bonds. 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 Project Documents. The City Manager is hereby authorized, through the term of the Real Property Lease, to execute all documents on behalf of the City (including documents pertaining to the transfer of property, the financing or refinancing of any portion of the Project, easements, licenses, rights-of-way, plats and similar documents) as may be required to carry out and comply with the intent of this Ordinance and the Project Documents. The City Manager is further authorized, on behalf of the City, to grant such consents, estoppels and waivers relating to the Bonds and any of the Project Documents 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 Real Property Lease or the tax exemption as provided for therein, waive an event of default or materially change the nature of the transaction unless approved by the City Council. The City Clerk is authorized to attest to and affix the seal of the City to any document authorized by this Section.

Section 8. Savings. Except as expressly set forth herein, nothing contained in this Ordinance shall in any manner be deemed or construed to alter, modify, supersede, supplant or otherwise nullify any other Ordinance of the City or the requirements thereof whether or not relating to or in any manner connected with the subject matter hereof.

Section 9. Severability. If any term, condition or provision of this Ordinance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective and each and every remaining provision hereof shall be valid and shall be enforced to the fullest extent permitted by law, it being the intent of the City Council that it would have enacted this Ordinance without the invalid or unenforceable provision. If, due to a subsequent change in applicable law, the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding.

Section 10. Effective Date. This Ordinance shall become effective immediately from and after its passage and adoption into law.

1st Reading this _____ day of _____ 2023

2nd Reading this _____ day of _____ 2023

3rd Reading, PASSED and APPROVED, this _____ day of _____ 2023

Babatunde Deinbo, Mayor

ATTEST:

Deanna L. Jones, City Clerk

Approved as to Form:
Donnell Smith, City Attorney

Final Roll Call:

Councilwoman Verges	Aye	___	Nay	___	Absent	___	Abstain	___
Councilwoman Williams	Aye	___	Nay	___	Absent	___	Abstain	___
Councilman Hoskins	Aye	___	Nay	___	Absent	___	Abstain	___
Councilwoman Anthony	Aye	___	Nay	___	Absent	___	Abstain	___
Councilman Hindeleh	Aye	___	Nay	___	Absent	___	Abstain	___
Councilwoman-at-Large Crawford-Graham	Aye	___	Nay	___	Absent	___	Abstain	___
Mayor Deinbo	Aye	___	Nay	___	Absent	___	Abstain	___

EXHIBIT A

**PLAN FOR AN INDUSTRIAL DEVELOPMENT PROJECT
AND
COST / BENEFIT ANALYSIS**

[On file in the office of the City Clerk]

EXHIBIT B

REAL PROPERTY TRUST INDENTURE

[On file in the office of the City Clerk]

EXHIBIT C
BASE LEASE

[On file with the City Clerk]

EXHIBIT D
SPECIAL WARRANTY DEED

[On file with the City Clerk]

EXHIBIT E

REAL PROPERTY LEASE AGREEMENT

[On file with the City Clerk]

EXHIBIT F

REAL PROPERTY PERFORMANCE AGREEMENT

[On file with the City Clerk]