

ORDINANCE NO. 2022- 004

AN ORDINANCE OF CITY OF SMITHS GROVE, KENTUCKY, AUTHORIZING THE ISSUANCE OF INDUSTRIAL REVENUE BONDS IN ONE SERIES HAVING AN AGGREGATE PRINCIPAL AMOUNT OF UP TO \$65,000,000 AND DESIGNATED THE CITY OF SMITHS GROVE, KENTUCKY, TAXABLE INDUSTRIAL BUILDING REVENUE BONDS, SERIES 2022 (BUC-EE'S SMITHS GROVE PROJECT), FOR THE PURPOSE OF FINANCING AN INDUSTRIAL BUILDING PROJECT; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF (A) A LEASE AGREEMENT BETWEEN THE CITY, AS LESSOR, AND BUC-EE'S SMITHS GROVE, LLC, AS LESSEE, (B) A BOND PURCHASE AGREEMENT PROVIDING FOR THE ISSUANCE, SALE, AND DELIVERY OF THE BONDS AND PROVIDING FOR THEIR NEGOTIATED SALE, AND (C) OTHER RELATED DOCUMENTS; AND TAKING OTHER RELATED ACTIONS

WHEREAS, City of Smiths Grove, Kentucky ("*Issuer*") pursuant to the provisions of Sections 103.200 to 103.285, inclusive, of the Kentucky Revised Statutes, as amended (the "*Act*"), is authorized to issue its revenue bonds and to make the proceeds from the sale thereof available to a corporation to finance industrial building facilities as defined in the Act, such bonds being payable from rental payments made by such corporation; and, under the Act, the financing of industrial buildings constitutes a valid public purpose; and

WHEREAS, Buc-ee's Smiths Grove, LLC, is a Delaware limited liability company qualified to conduct business within the Commonwealth ("*Buc-ee's*"); and

WHEREAS, Buc-ee's and/or any affiliated or related entity thereof qualified to conduct business within the Commonwealth (collectively, the "*Company*"), proposes that the Issuer, pursuant to the Act, assist the Company in financing the acquisition of new industrial building facilities to be acquired, constructed, installed, and equipped by the Company within the City of Smiths Grove, Kentucky, such facilities to be utilized in a downtown development district, including without limitation approximately thirty-two acres of land, more or less, an approximately 54,000 square foot convenience store and travel center and fixtures, equipment, and other personal property (collectively, the "*Project*" (which is more particularly described in the Lease Agreement hereinafter identified and approved)); and the Project qualifies for financing as an "industrial building" within the meaning of the Act; and

WHEREAS, the acquisition, construction, installation, and equipping of the Project is expected to promote economic development and the creation of new job opportunities within the environs of the Issuer and the Commonwealth of Kentucky; and

WHEREAS, on April 25, 2022, the Board of Commissioners of the Issuer adopted a resolution (the "*Inducement Resolution*") approving the industrial revenue bond financing for the Company's benefit, reaffirming the Issuer's agreement in prior correspondence and discussions to undertake such financing at the appropriate time; and

WHEREAS, at the Company's request the Issuer is prepared, pursuant to the Act, to issue its industrial revenue bonds in one series for the purposes of financing the acquisition, construction, installation, and equipping of the Project and paying costs of issuance of the industrial revenue bonds, upon terms that are to be set forth in the Lease Agreement hereinafter identified and approved; and

WHEREAS, pursuant to the provisions of Section 103.220 of the Act, the Company has made a request in writing, that the sale of the industrial revenue bonds hereinafter identified and authorized, bearing interest as set out in the Bond Purchase Agreement hereinafter identified and approved, shall be made upon a negotiated basis; and

WHEREAS, it is necessary and proper in the interests of the health, safety, convenience, and general welfare of the citizens, residents, and inhabitants of the Issuer and its environs that the Issuer (a) authorize the issuance of one series of industrial revenue bonds in order to finance, for the Company's benefit, the acquisition, construction, installation, and equipping of the Project and to pay certain costs of issuance of the industrial revenue bonds; (b) authorize the execution of the Lease Agreement between the Issuer, as lessor, and the Company, as lessee; (c) authorize the execution of the Bond Purchase Agreement among the Issuer, the Company, the Purchaser (hereinafter defined), and the Servicing Agent (hereinafter defined) providing for the issuance, sale, and delivery of the industrial revenue bonds by the Issuer to the Purchaser identified below; and (d) authorize the execution of other necessary or related documents and actions.

NOW, THEREFORE, CITY OF SMITHS GROVE, KENTUCKY, ACTING BY AND THROUGH ITS BOARD OF COMMISSIONERS, DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. For the purposes set forth in the preamble, which is incorporated as a part hereof, the Issuer, acting by and through its Board of Commissioners, hereby:

(a) Confirms and ratifies the Inducement Resolution and the prior discussions, correspondence, and agreements, whereby the Issuer agreed to authorize and issue bonds for the Company in order to finance the Project;

(b) Accepts from the Company the conveyance of the Project, including the associated land, subject to the terms and conditions contained in the instruments of conveyance and Lease Agreement hereinafter identified and approved;

(c) Authorizes the execution and delivery of the Pledge Agreement hereinafter identified and approved;

(d) Authorizes the sale, issuance, execution, and delivery of the City of Smiths Grove, Kentucky, Taxable Industrial Building Revenue Bonds, Series 2022 (Buc-ee's Smiths Grove Project) (the "*Bonds*"), which shall be issued in the form and subject to the terms and specifications set forth in the Bond Purchase Agreement identified below governing the issuance and delivery of the Bonds;

(e) Authorizes the issuance of the Bonds in an aggregate maximum principal amount of up to \$65,000,000; and

(f) Authorizes the use of the proceeds of the Bonds, as provided in the Bond Purchase Agreement and the Lease Agreement, to pay a portion of the costs of acquisition, construction, installation, and equipping of the Project and to pay certain costs of issuance of the Bonds.

Section 2. The Mayor of the Issuer is hereby authorized, empowered, and directed to execute, acknowledge, and deliver on behalf of the Issuer a certain Lease Agreement between the Issuer, as lessor of the Project, and the Company, as lessee (the "*Lease Agreement*"), which Lease Agreement is hereby approved, authorized, and adopted in substantially the form submitted herewith, with such changes therein as the official executing the same may require or approve on behalf of the Issuer, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 3. To provide for the authorization of the Bonds and to prescribe the terms and conditions upon which the Bonds are to be issued, outstanding, secured, executed, accepted, and held, the Mayor is hereby authorized, empowered, and directed to execute and acknowledge on behalf of the Issuer a certain Bond Purchase Agreement (the "*Bond Purchase Agreement*") among the Issuer, the Company, _____, LLC, a Kentucky limited liability company, as Servicing Agent (the "*Servicing Agent*"), and _____, LLC, a Kentucky limited liability company, as the Purchaser of the Bonds (the "*Purchaser*"), and the Mayor is hereby authorized, empowered, and directed to cause the Bond Purchase Agreement to be accepted and executed by the Servicing Agent, hereby so appointed. The Bond Purchase Agreement is hereby approved, authorized, and adopted in substantially the form submitted herewith, with such changes as the officer executing the same may require or approve on behalf of the Issuer, such approval to be conclusively evidenced by the execution and delivery thereof. Upon the conveyance of title to the Project to the Issuer, the Bonds will be secured by a nonforecloseable statutory mortgage lien on the Project as provided by Section 103.250 of the Act. The Bonds will mature as to principal no later than forty years after their date of issuance, will be subject to optional redemption, extraordinary mandatory redemption and termination, will bear interest payable periodically at a fixed rate, all as provided in the Bond Purchase Agreements, reference to which is hereby made. The interest rate on the Bonds shall in no event exceed 5.0% per annum. The sale of the Bonds pursuant to the terms of the Bond Purchase Agreements is hereby authorized, approved, and directed.

Section 4. The Mayor of the Issuer is hereby authorized, empowered, and directed to execute, acknowledge, and deliver on behalf of the Issuer a certain Pledge, Assignment and recognition and Subordination Agreement among the Issuer, the Company, Buc-ee's, Ltd., a Texas limited partnership, the Servicing Agent, Truist Bank, and the Purchaser (the "*Pledge Agreement*"), which Pledge Agreement is hereby approved, authorized, and adopted in substantially the form submitted herewith, with such changes therein as the official executing the same may require or approve on behalf of the Issuer, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 5. With respect to the sale of the Bonds, and upon the recommendation of the Company, the Issuer further approves, and the Mayor is authorized and directed to execute and deliver on behalf of the Issuer, a certain Assignment of Lease Agreement between the Issuer and the Purchaser (the "*Assignment*"), being in substantially the form submitted herewith, with such changes as the officer executing the same may require or approve on the Issuer's behalf, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 6. The Mayor, the City Clerk, the City Attorney, and other appropriate officials of the Issuer, and each of them, for and on behalf of the Issuer, are hereby authorized, empowered, and directed to do and perform any and all things necessary to effect the execution and delivery of the Bond Purchase Agreement, the Pledge Agreement, the Lease Agreement, the Assignment, and all documents, instruments, and certificates related thereto, the performance of all obligations and the preservation of all rights of the Issuer thereunder, the execution and delivery of the Bonds and the performance from time to time of all other actions of whatever nature necessary to carry out the authority conferred or contemplated by and the purposes of this Ordinance, the Bond Purchase Agreement, the Pledge Agreement, the Lease Agreement, the Assignment, and related documents, and further to approve and to execute all papers, documents, certificates, or other instruments that may be required for the carrying out and effectuation from time to time of the authority conferred by and the purpose of this Ordinance, the Bond Purchase Agreement, the Lease Agreement, the Pledge Agreement, the Assignment, the Bonds, and all related documents, or to evidence said authority and purposes. It is acknowledged that the Issuer and the Company will execute the Payment In Lieu of Taxes Agreement previously approved in the Inducement Resolution (the "*PILOT Agreement*") and the PILOT Agreement contains conditions satisfactory to the Issuer requiring the Company to make certain annual payments in lieu of property taxes on the Project so long as the Bonds are outstanding.

Section 7. For the acquisition, construction, installation, improvement, commissioning and equipping of the Project, and the financing or future refinancing thereof, the Issuer at Company's request shall execute, acknowledge, and deliver on behalf of Issuer any mortgage(s) or other financing statements or agreements authorized and approved by the Company and the Purchaser, including any collateral sharing or subordination agreements, as may be required by the Company and the Purchaser, without further action of the Board of Commissioners, provided that the terms of such mortgage(s), financing statements or agreements, or collateral sharing or subordination agreements are not inconsistent with the provisions of the Act or this Ordinance and do not create a liability of the City. The approval of

such mortgage(s), financing statements or agreements, or collateral sharing or subordination agreements shall be conclusively evidenced by their execution by the Mayor of the Issuer, which execution and approval are hereby authorized without further action of the Board of Commissioners.

Section 8. The Issuer shall never be required to pay from its own funds any obligations deriving from the issuance of the Bonds, and the Bonds are declared to be special and limited obligations payable solely and only from the receipts derived under the Lease Agreement and the "*Pledged Receipts*" pledged under and defined by the Bond Purchase Agreement, as provided in the documents herein approved.

Section 9. The Issuer hereby finds and affirms that the Project, as proposed by the Company, is within an Issuer-designed downtown development district pursuant to KRS 103.200(n). The issuance of the Bonds is conditioned upon the approval of the State Local Debt Officer ("*SLDO*") pursuant to KRS 103.2101. The Mayor of the Issuer is hereby authorized, empowered, and directed to execute, acknowledge, and deliver on behalf of the Issuer a Notification of Intent to Finance with the Department of Local Government for the Bonds, and the Company, on behalf of the Issuer, is authorized, empowered, and directed to seek the approval of the SLDO.

Section 10. The provisions of this Ordinance may be supplemented from time to time by resolution of the Board of Commissioners.

Section 11. The provisions of this Ordinance are hereby declared to be severable and, if any section or provision shall, for any reason, be declared invalid, such declaration of invalidity shall not affect the validity of the remainder of this Ordinance.

Section 12. Upon any conflict between the provisions of this Ordinance and of any prior ordinance, resolution, or parts thereof, the provisions of this Ordinance shall prevail.

Section 13. This Ordinance shall be in full force and effect from and after its adoption as provided by law. The summary of this Ordinance read at the meetings of the Board of Commissioners described below is approved for such purposes and for the purpose of publication as provided by law, and the accuracy of such summary is hereby certified.

[*Signature Page Follows*]

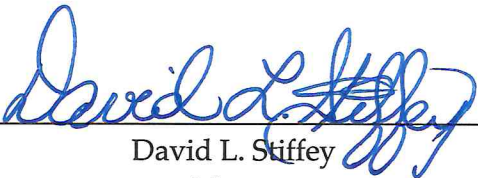
[SIGNATURE PAGE TO SERIES 2022 BOND ORDINANCE]

INTRODUCED, SECONDED, AND GIVEN FIRST READING at a duly convened meeting of the Board of Commissioners of the City of Smiths Grove, Kentucky, held on June 27, 2022.

GIVEN SECOND READING AND ADOPTED at a duly convened meeting of the Board of Commissioners of the City of Smiths Grove, Kentucky, held on _____, 2022, signed by the Mayor, ordered published in summary form, and duly enrolled as required by law.

[Seal]

Attest:



David L. Stiffey
Mayor



Nancy Howard
City Clerk

CERTIFICATION

I, the undersigned, do hereby certify that I am the duly qualified and acting Clerk of the City of Smiths Grove, Kentucky (the "Issuer"), and as such Clerk I further certify that the foregoing is a true, correct, and complete copy of an Ordinance duly adopted by the Board of Commissioners of the Issuer upon second reading at a duly convened meeting held on 7/25, 2022, signed by the Mayor and now in full force and effect, all as appears from the official records of said Issuer in my possession and under my control.

IN WITNESS WHEREOF, I have hereunto set my hand this 7/25, 2022.



Nancy Howard
City Clerk