

**ORDINANCE
OF THE CITY OF WHEELING**

AN ORDINANCE AUTHORIZING AND APPROVING THE DEMOLITION, DESIGN, ACQUISITION, CONSTRUCTION, IMPROVEMENT, FURNISHING AND EQUIPPING OF REAL PROPERTY TO BE ACQUIRED FROM OHIO VALLEY ADC, INC. BY THE CITY OF WHEELING MUNICIPAL BUILDING COMMISSION (THE "BUILDING COMMISSION") LOCATED AT 1104 AND 1114 MARKET STREET, WHEELING, WEST VIRGINIA, FOR USE AS A PARKING GARAGE (THE "MARKET STREET PARKING GARAGE PROJECT") BY THE CITY AND THE ISSUANCE BY THE BUILDING COMMISSION OF ITS LEASE REVENUE BONDS, IN ONE OR MORE SERIES, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$19,500,000 (THE "BONDS"), TO FINANCE THE COSTS THEREOF, THE FUNDING OF A DEBT SERVICE RESERVE FUND FOR THE BONDS, IF REQUIRED, AND THE PAYMENT OF COSTS OF ISSUANCE OF THE BONDS AND RELATED COSTS; AUTHORIZING THE LEASING OF THE PROPERTY OF THE PROPOSED PARKING GARAGE TOGETHER WITH ALL BUILDINGS, IMPROVEMENTS, FIXTURES, EQUIPMENT, RIGHTS OF WAY AND APPURTENANCES ASSOCIATED THEREWITH BY THE CITY FROM THE BUILDING COMMISSION PURSUANT TO A LEASE AGREEMENT TO BE EXECUTED AND DELIVERED BY THE MAYOR OF THE CITY; AUTHORIZING THE EXECUTION AND DELIVERY BY THE MAYOR OF THE CITY OF A BOND PURCHASE AGREEMENT AMONG THE CITY, THE BUILDING COMMISSION AND THE PURCHASER OF THE BONDS; AND AUTHORIZING OTHER NECESSARY ACTIONS IN CONNECTION WITH THE FOREGOING.

WHEREAS, The City of Wheeling, West Virginia (the "City"), desires to authorize the acquisition of certain parcels of real property located at 1104 and 1114 Market Street, Wheeling, West Virginia (the "Property") from Ohio Valley ADC, Inc., and the demolition, design, acquisition, construction, improvement, furnishing and equipping of improvements thereon, to serve as a parking garage (collectively, the "Market Street Parking Garage Project"), by the Building Commission (as hereinafter defined) prior to the issuance of the hereinafter described Bonds and which Property is to be leased by the Building Commission to and used by the City as a public parking garage;

WHEREAS, the Wheeling Municipal Building Commission, a public corporation and municipal building commission of the State of West Virginia which has been created by the City (the "Building Commission"), desires to issue and the City desires to request and authorize the issuance by the Building Commission of its Lease Revenue Bonds, Series 2021 C, in one or more series, in an aggregate principal amount not to exceed \$19,500,000 (the "Bonds") for the purpose of financing costs of the Market Street Parking Garage Project, funding a Debt Service Reserve Fund for the Bonds, if required, and paying costs of issuance of the Bonds and related costs;

WHEREAS, the City desires to lease the Property from the Building Commission in accordance with the terms and provisions of a Lease Agreement between the Building Commission, as Lessor, and the City, as Lessee (the “Lease”), to be dated as of or prior to the date of issuance of the Bonds (the “Closing”) or such other date as may be set forth in one or more supplemental resolutions to be adopted by the City (the “Supplemental Resolution” whether one or more), as further described herein (the Lease and any other lease of any or all of the Property permitted by the Bond Purchase Agreement, as hereinafter defined, are collectively referred to herein as the “Leases”);

WHEREAS, the City also desires to enter into a Bond Purchase Agreement among the Building Commission, the City and the purchaser of the bonds as determined in the Supplemental Resolution (the “Purchaser”) relating to the purchase of the Bonds, the proposed form of which shall be as approved by the Supplemental Resolution (the “Bond Purchase Agreement”);

WHEREAS, the principal of and the premium, if any, and interest on the Bonds will be secured by, among other things, a Credit Line Deed of Trust, Fixture Filing and Security Agreement (the “Deed of Trust”), to be dated on or prior to the date of the Closing, to be executed and delivered by the Building Commission in favor of the Purchaser granting a first priority lien on the Property;

WHEREAS, the proceeds of the Bonds will be used to finance costs of the Market Street Parking Garage Project, the funding of a Debt Service Reserve Fund for the Bonds, if required, and the costs of issuing the Bonds and related costs, and the balance of such costs of the Market Street Parking Garage Project and of issuing the Bonds not paid with proceeds of the Bonds will be paid with other funds of the City lawfully available for such purpose; and

WHEREAS, the City has determined that (i) there is a need by the City for the Market Street Parking Garage Project to be financed in whole or in part with the proceeds of the Bonds and to be leased to the City as described herein, and (ii) that the financing structure described herein is the most efficient method to finance the proposed Market Street Parking Garage Project.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF WHEELING, WEST VIRGINIA THAT:

1. The Building Commission is authorized to grant a lien and security interest in and to the Property pursuant to the Deed of Trust, the Bond Purchase Agreement and other appropriate documents as may be determined by Steptoe & Johnson PLLC, as bond counsel to the Building Commission for the issuance of the Bonds (“Bond Counsel”), and the Purchaser.

2. The Building Commission is authorized and requested to issue the Bonds, in one or more series, in an aggregate principal amount not to exceed \$19,500,000 pursuant to the terms to be set forth in the Bond Purchase Agreement, for the purposes of financing costs of the Market Street Parking Garage Project, funding a Debt Service Reserve Fund for the Bonds, if required, and paying costs of issuance of the Bonds and related costs.

3. The City is authorized to undertake all activities in connection with the Market Street Parking Garage Project, including but not limited to, engaging such architects, engineers and other design, construction and site consultants as may be necessary and paying the fees and costs thereof, acquiring all necessary real and personal property including but not limited to the Property, undertaking all demolition, site remediation and site preparation that may be necessary in connection with the Property, entering into all construction contracts that may be necessary in connection therewith and performing under such construction contracts, requisitioning the proceeds of the Bonds for the purpose of paying costs of the Market Street Parking Garage Project and costs of issuance of the Bonds and disbursing proceeds of the Bonds and other funds of the City for the purpose of paying costs necessary in connection with the acquisition of the Property, all demolition, site remediation and site preparation necessary in connection with the Property, the undertaking of the Market Street Parking Garage Project, costs of issuance of the Bonds, funding a Debt Service Reserve Fund for the Bonds, if required, and related costs and otherwise undertaking all activities that may be necessary in connection with the foregoing.

4. The City shall be authorized to enter into the Lease with the Building Commission to lease the Property, as designed, acquired, constructed, improved, furnished and equipped pursuant to the Market Street Parking Garage Project, from the Building Commission for an amount of rent equal to the scheduled payments of principal of, premium, if any, interest on and other costs associated with the Bonds which shall be payable by the Building Commission with respect to the Bonds and which Lease with the Building Commission will require the City to perform certain other duties and obligations and to pay certain costs and expenses related to such Property and the financing thereof as to be more specifically set out in said Lease as additional consideration for said Lease.

5. The City shall be authorized to enter into the Bond Purchase Agreement.

6. The form of the Lease for the Bonds shall be as approved by the Supplemental Resolution. The Mayor, the City Manager and the City Clerk of the City are hereby authorized and directed to execute and deliver the Lease for the Bonds with such changes, insertions and omissions as may be required to reflect the terms of sale of the Bonds and as may be approved by the Mayor, the City Manager and the City Clerk executing the Lease. The execution of the Lease by the Mayor, the City Manager and the City Clerk shall be conclusive evidence of such approval.

7. The form of the Bond Purchase Agreement for the Bonds shall be as approved by the Supplemental Resolution. The Mayor and the City Manager of the City are hereby authorized and directed to execute and deliver the Bond Purchase Agreement for the Bonds with such changes, insertions and omissions as may be required to reflect the terms of sale of the Bonds and as may be approved by the Mayor and the City Manager executing the Bond Purchase Agreement. The execution of the Bond Purchase Agreement by the Mayor and the City Manager shall be conclusive evidence of such approval.

8. The Mayor, the City Manager, and the City Clerk and other officers of the City are hereby authorized and directed to execute and deliver on behalf of the City such agreements, certificates and other documents, including without limitation, a Tax Certificate in connection with the issuance of the Bonds in such forms as may be approved by the Mayor and

the City Manager of the City, the execution of the subject documents by the Mayor and the City Manager of the City to be conclusive evidence of such approval. The City Clerk of the City is hereby authorized and directed to attest any documents relating to the Bonds that the City Clerk reasonably determines should be so attested and to affix the seal of the City thereon. All prior acts taken by the Mayor, the City Manager and the City Clerk and other officers, employees, and agents of the City in connection therewith are hereby ratified and affirmed in every respect.

9. The Mayor, the City Manager and the City Clerk and other officers of the City are hereby authorized and directed to take such other actions as may be reasonably necessary to consummate the foregoing transactions.

10. All ordinances, orders, resolutions, or parts thereof in conflict with the provisions of this Ordinance, are, to the extent of such conflict, hereby repealed.

11. This Ordinance shall become effective following the public hearing hereon.

12. Upon adoption hereof, an abstract of this Ordinance, determined by the City to contain sufficient information as to give notice of the contents hereof, shall be published once a week for two successive weeks within a period of fourteen consecutive days, with at least six full days intervening between each publication, in The Intelligencer, a newspaper published and of general circulation in the City, together with a notice stating that this Ordinance has been adopted on first reading, and that the City contemplates the leasing of the Property from the Building Commission and the issuance of the Bonds by the Building Commission, and that any person interested may appear before the City upon a date certain, not less than ten days subsequent to the date of the first publication of the said abstract and notice, and present protests, and that a certified copy of the Ordinance is on file in the office of the City Clerk of the City for review by interested parties during regular office hours. At such hearing, all objections and suggestions shall be heard, and the Council of the City shall take such action as it shall deem proper in the premises.

Adopted on First Reading: October 19, 2021

Placed Into Effect on Second
Reading Following Public Hearing: November 2, 2021

2021. Ordained by The City of Wheeling, West Virginia, on this the 2nd day of November

CITY OF WHEELING

By: Its Mayor

By: Its City Manager

APPROVED AS TO FORM:

By: _____
City Attorney

CERTIFICATION

The undersigned, being the duly appointed and qualified City Clerk of The City of Wheeling does hereby certify that the foregoing Ordinance was duly enacted by the City of Wheeling at regular or special meetings duly held, pursuant to proper notice thereof, on October 19, 2021, and November 2, 2021, quorums being present and acting throughout, and which Ordinance has not been amended, modified, rescinded, repealed, annulled, revoked or otherwise altered as witness my hand and the seal of The City of Wheeling this ___ day of _____, 2021.

THE CITY OF WHEELING

By: Its City Clerk