

RESOLUTION

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OKLAHOMA CITY RENEWING THE OKC OUTLETS ECONOMIC DEVELOPMENT AGREEMENT DATED SEPTEMBER 14, 2021, FOR ITS SECOND ANNUAL RENEWAL PERIOD RETROACTIVE TO AUGUST 1, 2023.

WHEREAS, The City of Oklahoma City (“The City”) desires to promote and encourage economic and community development and redevelopment projects benefiting the citizens of Oklahoma City; and

WHEREAS, The City has determined that it is in the best interest of The City and its citizens to promote, and when deemed appropriate, fund economic development and redevelopment; and

WHEREAS, The City desires to encourage and assist economic development and redevelopment projects, in particular those projects that involve substantial investments, increase the local tax base, and the create and retain jobs and employment opportunities; and

WHEREAS, The City finds that the development of retail business, including a destination-based regional outlet center, is a critical and unique ingredient to the community’s economic and social health by providing residents and other businesses with more options and services and by enhancing the vitality and activity of neighborhoods in stagnant and underserved areas of The City; and

WHEREAS, there is demonstrative evidence that retail businesses support the local economy through job creation and by retail sales tax base enhancement, and

WHEREAS, there is evidence that a destination-based shopping facility promotes regional tourism and brings visitors into The City that further stimulate other tourism-based development and growth; and

WHEREAS, The City has determined that it is beneficial to support redevelopment and investment in lesser developed urban areas of The City by providing economic development assistance, through means of job creation incentive grants to economic development projects that can demonstrate the creation and retainage of new jobs, and by providing conditional economic support of projects, which upon completion, will increase the local tax base and/or provide substantial investment in property and construction, all which make possible investment, development, redevelopment, and economic growth within The City; and

WHEREAS, on May 6, 2008 (Council Item No. VIII.F.), The City and the Oklahoma City Economic Development Trust (“Trust”) entered into an Economic Development Agreement with Horizon Group Properties, L.P. (“Horizon Group”) for the construction of a regional outlet mall (“Regional Outlet Mall”) initially named The Outlet Shoppes in Oklahoma City near the intersection of West Reno Avenue and North Council Road in Oklahoma City; and

WHEREAS, on June 29, 2010 (Council Item No. VI.BB.), The City and Trust entered into a new, replacement Economic Development Agreement (the “2010 Economic Development Agreement”) with Horizon Group to allow for an assignment of the Agreement from Horizon Group to OK City Outlets, LLC, on November 30, 2010, which was necessary to secure financing from U.S. Bank National Association; and

WHEREAS, the 2010 Economic Development Agreement provided for the reimbursement of the Regional Outlet Mall’s regional marketing and advertising expenses for an eleven (11) year period beginning on the date six months after the grand opening of the Regional Outlet Mall, which grand opening occurred on August 5th, 2011; and

WHEREAS, in 2017, OK City Outlets, LLC, sold the Regional Outlet Mall to OKC Outlets I, LLC, a Delaware limited liability company whose membership is comprised of Chicago-based Singerman Real Estate (SRE) and The Outlet Resource Group (TORG); and

WHEREAS, on May 30, 2017 (Council Item No. VII.AY.), The City and Trust adopted a Joint Resolution consenting to an assignment of the 2010 Economic Development Agreement from OK City Outlets, LLC, to OKC Outlets I, LLC, a Delaware limited liability company (“Company”); and

WHEREAS, the Regional Outlet Mall, now named OKC Outlets, currently consists of approximately 400,000 square feet of retail space, and Company and its tenants currently employ approximately 1,200 employees; and

WHEREAS, the Regional Outlet Mall has generated approximately \$30 million in local sales tax, of which fifty percent (50%), or \$15 million, is assumed to be new sales tax revenues for Oklahoma City since Company took over in 2017; and

WHEREAS, Company remains committed to promoting the Regional Outlet Mall as a destination-based shopping and entertainment attraction by engaging in regional marketing and advertising designed to attract shoppers and visitors into Oklahoma City; and

WHEREAS, Company desires to promote economic development in the area of Oklahoma City surrounding the Regional Outlet Mall, and Company actively supports efforts to construct traffic and roadway improvements in Oklahoma City’s western gateway, as well as efforts to create a safe and secure environment for visitors to the Regional Outlet Mall and surrounding areas; and

WHEREAS, on September 14, 2021 (Council Item No. IX.BS.), The City and Company entered into the Economic Development Agreement (“Agreement”) attached hereto as Attachment A and incorporated herein by reference; and

WHEREAS, said Agreement is subject to annual renewal by the City Council; and

WHEREAS, § 6 of said Agreement provides, “[t]he annual renewal may be done by resolution of the City Council or by the City procurement renewal procedures”; and

WHEREAS, The City desires to renew said Agreement for its second renewal term retroactive to August 1, 2023 for an amount not to exceed \$250,000.

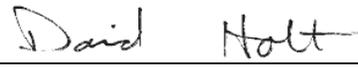
NOW, THEREFORE, BE IT RESOLVED by the City Council of The City of Oklahoma City that the OKC Outlets Economic Development Agreement dated September 14, 2021, is hereby renewed for its second annual renewal period retroactive to August 1, 2023. All terms and conditions of said Agreement shall remain in full force and effect through the duration of its first annual renewal period.

ADOPTED by the City Council and signed by the Mayor of The City of Oklahoma City this 26TH day of SEPTEMBER, 2023.

ATTEST:


CITY CLERK




MAYOR

REVIEWED for form and legality.


Assistant Municipal Counselor

Attachment A

[The OKC Outlets Economic Development Agreement dated September 14, 2021, follows this cover page.]

**OKC OUTLETS
ECONOMIC DEVELOPMENT AGREEMENT**

by and between

The City of Oklahoma City, a municipal corporation,

and

OKC Outlets I, LLC, a Delaware limited liability company

OKC OUTLETS Economic Development Agreement

THIS ECONOMIC DEVELOPMENT AGREEMENT (“Agreement”) made and entered into as of this 14th day of September, 2021, to be effective retroactively to August 1, 2021 between The City of Oklahoma City (“The City”), and OKC Outlets I, LLC, a Delaware limited liability company (“Company”).

WITNESSETH:

WHEREAS, The City of Oklahoma City desires to promote and encourage economic and community development and redevelopment projects benefiting the citizens of Oklahoma City; and

WHEREAS, The City has determined that it is in the best interest of The City and its citizens to promote, and when deemed appropriate, fund economic development and redevelopment; and

WHEREAS, The City desires to encourage and assist economic development and redevelopment projects, in particular those projects which involve substantial investments, increase the local tax base, and the create and retain jobs and employment opportunities; and

WHEREAS, The City finds that the development of retail business, including a destination-based regional outlet center, is a critical and unique ingredient to the community’s economic and social health by providing residents and other businesses with more options and services and by enhancing the vitality and activity of neighborhoods in stagnant and underserved areas of The City; and

WHEREAS, there is demonstrative evidence that retail businesses support the local economy through job creation and by retail sales tax base enhancement, and

WHEREAS, there is evidence that a destination-based shopping facility promotes regional tourism and brings visitors into The City that further stimulate other tourism-based development and growth; and

WHEREAS, The City has determined that it is beneficial to support redevelopment and investment in lesser developed urban areas of The City by providing economic development assistance, through means of job creation incentive grants to economic development projects that can demonstrate the creation and retainage of new jobs, and by providing conditional economic support of projects, which upon completion, will increase the local tax base and/or provide substantial investment in property and construction, all which make possible investment, development, redevelopment, and economic growth within The City; and

WHEREAS, on May 6, 2008 (Council Item No. VIII.F.), The City and the Oklahoma City Economic Development Trust (“Trust”) entered into an Economic Development Agreement

with Horizon Group Properties, L.P. (“Horizon Group”) for the construction of a regional outlet mall (“Regional Outlet Mall”) initially named The Outlet Shoppes in Oklahoma City near the intersection of West Reno Avenue and North Council Road in Oklahoma City; and

WHEREAS, on June 29, 2010 (Council Item No. VI.BB.), The City and Trust entered into a new, replacement Economic Development Agreement (the “2010 Economic Development Agreement”) with Horizon Group to allow for an assignment of the Agreement from Horizon Group to OK City Outlets, LLC, on November 30, 2010, which was necessary to secure financing from U.S. Bank National Association; and

WHEREAS, the 2010 Economic Development Agreement provided for the reimbursement of the Regional Outlet Mall’s regional marketing and advertising expenses for an eleven (11) year period beginning on the date six months after the grand opening of the Regional Outlet Mall, which grand opening occurred on August 5th, 2011; and

WHEREAS, in 2017, OK City Outlets, LLC, sold the Regional Outlet Mall to OKC Outlets I, LLC, a Delaware limited liability company whose membership is comprised of Chicago-based Singerman Real Estate (SRE) and The Outlet Resource Group (TORG); and

WHEREAS, on May 30, 2017 (Council Item No. VII.AY.), The City and Trust adopted a Joint Resolution consenting to an assignment of the 2010 Economic Development Agreement from OK City Outlets, LLC, to OKC Outlets I, LLC; and

WHEREAS, the Regional Outlet Mall, now named OKC Outlets, currently consists of approximately 400,000 square feet of retail space and the Company and its tenants currently employ approximately 1,200 employees; and

WHEREAS, the Regional Outlet Mall has generated approximately \$22 million in local sales tax, of which 50%, or \$11 Million, is assumed to be new sales tax revenues for Oklahoma City since OKC Outlets I, LLC took over in 2017; and

WHEREAS, OKC Outlets I, LLC (“Company”) remains committed to promoting the Regional Outlet Mall as a destination-based shopping and entertainment attraction by engaging in regional marketing and advertising designed to attract shoppers and visitors into Oklahoma City; and

WHEREAS, Company desires to promote economic development in the area of Oklahoma City surrounding the Regional Outlet Mall, and Company actively supports efforts to construct traffic and roadway improvements in Oklahoma City’s western gateway, as well as efforts to create a safe and secure environment for visitors to the Regional Outlet Mall and surrounding areas; and

WHEREAS, The City and Trust desire to facilitate the Regional Outlet Mall’s recovery from the COVID-19 pandemic; and

WHEREAS, City staff have prepared this Agreement under terms that are acceptable to Company and which will enable The City to meet economic development goals that are in the best interest of The City, and the health, safety, and welfare of its citizens; and

WHEREAS, this Agreement incorporates certain terms and conditions and the mutual covenants of the parties as set forth herein; and

WHEREAS, The City Council deems it appropriate to approve the execution of this Agreement; and

NOW, THEREFORE, in consideration of the promises and mutual obligations herein set forth, the parties hereby covenant and agree with each other as follows:

SECTION 1.
DEFINED TERMS

Unless specifically provided otherwise or the context otherwise requires, when used in this Agreement:

- 1.1 “Agreement” means this Agreement, as the same may be amended, modified and in effect from time to time, pursuant to the terms of this Agreement.
- 1.2 “Regional Outlet Mall” means the OKC Outlets at the Regional Outlet Mall Location.
- 1.3 “Approved Outparcels” means Jimmy’s Egg located at 201 Outlet Shoppes Drive, The Garage located at 209 Outlet Shoppes Drive, and Ted’s Café Escondido located at 300 Outlet Shoppes Drive and any other outparcels hereinafter mutually designated by The City and The Company as Approved Outparcels
- 1.4 “City” means The City of Oklahoma City, Oklahoma, a municipal corporation.
- 1.5 “Regional Outlet Mall Location” means the area of land which is generally located at or near the intersection of W. Reno Avenue and N. Council Road as shown on the map attached hereto as Exhibit No. 1.
- 1.6 “Project Manager” unless otherwise indicated, means the Economic Development Program Manager, or his or her designee. The City shall inform Company of the designate by correspondence and may change said designation from time to time.
- 1.7 “Regional Marketing” means advertising and marketing targeted to attract shoppers from areas outside the Oklahoma City municipal limits. Regional Marketing expenses include but are not limited to (i) interstate billboards located outside of Oklahoma City in areas ranging from Amarillo, Texas to Western Arkansas; Wichita Falls, Texas and Gainesville, Texas to Wichita, Kansas; and Tulsa, Oklahoma; (ii) zoned newspaper and magazine advertising; (iii) electronic

media broadcast or displayed outside Oklahoma City; (iv) solicitation of bus tour and other transportation groups; (v) regionally targeted internet, email, and social media advertising; (vi) search engine optimization; and (vii) other expenditures targeted to attract and compliment regional tourism. Company's advertising and marketing efforts would be performed in conjunction with the OKC Chamber of Commerce & Convention and Visitors Bureau.

SECTION 2. COMPANY'S OBLIGATIONS

2.1 Regional Marketing.

- a) Throughout the term of this Agreement, Company shall conduct Regional Marketing activities to market the OKC Outlets as a destination-based Regional Outlet Mall shopping attraction. Company will provide to the Project Manager, in a format reasonably acceptable to the Project Manager, evidence of paid Regional Marketing expenses for the prior quarter, the first of which is due on or after November 1, 2021.

- b) To the extent available, Company will provide a gross sales report generated and furnished by each tenant of the Regional Outlet Mall, which will be used by the Project Manager to determine and verify sales taxes remitted by such tenants to the Oklahoma Tax Commission. Company agrees to submit the reports monthly, or on other terms made in agreement with the Project Manager. Company agrees to use its best efforts to obtain such information and data from the Regional Outlet Mall tenants to assist Company and the Project Manager in determining the amount of sales tax revenue generated by each tenant of the Regional Outlet Mall. Any individualized sales tax information will be subject to confidentiality as required and/or permitted by law.

Company acknowledges that the economic incentive to be paid by the City is based on the ability of the Project Manager to document the amount of sales tax remitted to The City through the Oklahoma Tax Commission, as generated by the retail, entertainment and restaurant businesses that comprise the Regional Outlet Mall and any Approved Outparcels. Company agrees to work with its tenants, lessees, site owners and other users to obtain sufficient information and documentation necessary to enable the Project Manager to determine, with a reasonable amount of certainty, either the amount of gross sales generated by each tenant that were subject to Oklahoma sales taxes, or the amount of sales taxes remitted to the Oklahoma Tax Commission by each tenant generated from gross sales occurring at the Regional Outlet Mall. Company agrees that it will work with the Project Manager to determine the most reliable, efficient, and lawful manner to collect and account for such information. Documented gross sales from the Approved Outparcels may be included in the determination of sales taxes generated by the Company or its tenants. For the Approved Outparcels, Company may request once per year before the incentive amount for any given fiscal year is finalized, to add the sales produced from the Approved Outparcels as defined in Section 1.2. provided the Approved Outparcels

individually report sales tax to the Oklahoma Tax Commission. If at any point during the agreement the Approved Outparcels cease reporting sales tax individually to the Oklahoma Tax Commission, they shall not be included in the list of Approved Outparcels.

SECTION 3.

CITY OBLIGATION FOR REIMBURSEMENT OF REGIONAL MARKETING EXPENSES

3.1 Obligation of The City.

Assuming the Agreement is renewed on an annual basis for years 2 through 5, The City agrees to reimburse Company, on a quarterly basis, (subject to annual appropriation and encumbrance by The City and transfer of funds to the Trust) for documented Regional Marketing expenses incurred by Company for the previous quarter, up to an annual amount which is the lesser of: (i) the maximum incentive for each year listed below, or (ii) one percent (1%) of gross sales of the previous year over the annual established sales thresholds, as follows:

Year 1 (August 1, 2021 – July 31, 2022)	Maximum Incentive = \$350,000
	Sales Threshold = \$100,000,000
Year 2 (August 1, 2022 – July 31, 2023)	Maximum Incentive = \$250,000
	Sales Threshold = \$105,000,000
Year 3 (August 1, 2023 – July 31, 2024)	Maximum Incentive = \$250,000
	Sales Threshold = \$110,250,000
Year 4 (August 1, 2024 – July 31, 2025)	Maximum Incentive = \$250,000
	Sales Threshold = \$113,557,000
Year 5 (August 1, 2025 – July 31, 2026)	Maximum Incentive = \$250,000
	Sales Threshold = \$116,946,225

Assuming the Agreement is renewed on annual basis for years 2 through 5, the aggregate amount of reimbursement shall not exceed \$1,350,000 over the term of this Agreement. The annual established sales threshold will be based on the previous year for budgeting purposes. For example, if gross sales from the Regional Outlet Mall are \$115,000,000 from August 1, 2020, through July 31, 2021, then the incentive for Year 1 is (\$115,000,000 minus \$100,000,000) multiplied by one percent (1%), and the total amount that could be reimbursed for Year 1 is \$150,000.

3.2 Reimbursement Process.

Company will be responsible for providing documentation to the Project Manager necessary to assist the Project Manager in verifying the amount of sales tax remitted by the Oklahoma Tax Commission to The City that is directly attributable to sales tax generated by the

stores, vendors, restaurants, etc., that are tenants in the Regional Outlet Mall or Approved Outparcels. The reimbursement process will begin during the first quarter of Year 1, and reimbursement will be based upon documented evidence of paid Regional Marketing expenses.

- a) As a condition precedent to the obligation to pay for Regional Marketing expenses as set forth in this section, Company will submit quarterly documentation acceptable to the Project Manager, whose requirements shall be reasonable, verifying the Regional Marketing expenses made by Company for the previous quarter.
- b) Within 60 days after receipt of the quarterly documentation for the claimed Regional Marketing expenses, the Project Manager will cause to be paid by the City, up to the amount of allowable Regional Marketing expenses documented, the lesser amount of: (i) the maximum incentive for each Agreement year as listed in Section 3.1 herein, or (ii) one percent (1%) of gross sales of the previous year over the annual established sales thresholds as set forth in Section 3.1 herein.
- c) If there is a disagreement over the amount of Regional Marketing expenses claimed by Company in the submitted documentation and the determination made by the Project Manager, the Project Manager shall meet and confer with Company's designated agent or agents and attempt to resolve the disagreement. However, the Project Manager shall have the final authority as to the amount of quarterly Regional Marketing expenses to be reimbursed. The Project Manager shall not be unreasonable in making said determination and shall base said determination upon the documents required or requested under this Agreement.

SECTION 4. MAXIMUM LOCAL INCENTIVE

The total amount of all economic development incentives (Regional Marketing expense reimbursement) to be paid to Company by The City shall not exceed \$1,350,000, over a five (5) year period. Except for the first fiscal year of this Agreement, the amount will not exceed \$250,000 per fiscal year. The amount for the first fiscal year (2021- 2022) shall not exceed \$350,000. The local sales taxes from the Approved Outparcels shall be included in the determination of the gross sales for the applicable years.

SECTION 5. RENEWAL AND APPROPRIATION REQUIREMENTS

All reimbursements required by The City under Section 4.1 above for expenses incurred by Company for Regional Marketing will be funded from general fund monies received by The City, a municipal corporation. The parties recognize that all such funds to be paid by The City are subject to annual appropriation and encumbrances of revenues by the City Council of The

City, as mandated by Okla. Const. Art. 10, § 26, and the Oklahoma Municipal Budget Act, 11 O.S. §§ 17-201, *et seq.* Therefore, this agreement will be subject to annual renewal by resolution of the City Council on or before August 1, of each subsequent year. However, under no circumstances does or shall The City incur any financial obligation to Company under this Agreement. The City is simply a beneficiary of the Trust, and it is the Trust which remains solely responsible for all financial obligations required by Section 3.1 above.

To the extent permitted under law, The City confirms a commitment to consider, on an annual basis and in the Council's discretion, approving sufficient appropriation and encumbrance of revenues for this Agreement, from the increase to the City's general fund sales tax revenues generated by the merchants and tenants of the Regional Outlet Mall. The City Manager is hereby directed to cause such commitment to be reflected in each fiscal year's annual budget presented to the City Council for consideration during the term of this Agreement. In the event that the Mayor and Council are unable or unwilling to provide sufficient funds, during any fiscal year through the term of this Agreement, this Agreement shall be terminated at the end of the then current fiscal year.

SECTION 6. DURATION AND TERM OF AGREEMENT

This Agreement shall commence on August 1, 2021 and shall have a term of five (5) years, each of the four (4) renewal years being subject to annual renewal by the City Council as required by law. The annual renewal may be done by resolution of the City Council or by the City procurement renewal procedures. The Program Manager shall prepare the appropriate renewal process documentation and present the renewal to the City Council on or before June 15 of each subsequent fiscal year. OKC Outlets I, LLC shall receive at least 10 days written notice from the Program Manager of any City Council meeting where there is an agenda item to consider renewal or termination of this Agreement.

SECTION 7. NOTICES AND DEMANDS

A notice, demand or other communication under this Agreement by either party to the other will be sufficiently given or delivered if dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and:

in the case of Company, is addressed (or delivered personally) to:

OKC Outlets I, LLC
Attention: Adam Greenbaum
980 N. Michigan Ave, Suite 1700
Chicago, IL 60611

and

Myrna Latham, Esq.
McAfee & Taft, a Professional Corporation
10th Floor, Two Leadership Square
211 North Robinson
Oklahoma City, OK 73102-7103

in the case of The City, is addressed (or delivered personally) to:

Craig Freeman
City Manager
The City of Oklahoma City
200 North Walker Avenue, 3rd Floor
Oklahoma City, OK 73102

with copies to:

City Clerk
The City of Oklahoma City
200 North Walker, 2nd Floor
Oklahoma City, OK 73102

and at such other address with respect to either such party as that party may from time to time designate in writing and forward to the other as provided in this Section.

SECTION 8. PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER

8.1 Representations as to the Project.

Company represents and agrees that its undertakings pursuant to the Agreement, are, and will be used, for the purposes of marketing and advertising the Regional Outlet Mall. Company recognizes that a transfer of the controlling interest in Company or its General Partner, or any other act or transaction involving or resulting in a significant change in the controlling interest of Company, is for practical purposes a transfer or disposition of the property then owned by Company; and that the qualifications and identity of Company, and its stockholders, or partners, whether general or limited, are of particular concern to the community and The City. Company further recognizes that it is because of such qualifications and identity that The City is entering into this Agreement with Company, and, in so doing, are further willing to accept and rely on the obligations of Company for the faithful performance of all undertakings and covenants hereby to be performed by Company without requiring in addition a surety bond or similar undertaking for such performance of all undertakings and covenants in this Agreement.

8.2 Prohibition Against Transfer of Property and Assignment of Agreement.

Company (except as so authorized) represents that it has not made or created, and that it will not, prior to the proper completion of its obligations under this Agreement, as certified by The City, make or create, or suffer to be made or created, any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer in any other mode or form of or with respect to this Agreement, or any part thereof, or any interest therein, or any contract or agreement to do any of the same, without the prior written approval of The City, which approval shall not be unreasonably withheld or delayed. Company will provide The City not less than thirty (30) days prior written notice of any assignment.

Nothing in this section is intended to prohibit Company from selling certain out parcels located within the Regional Outlet Mall Location as necessary for certain retail, restaurant, and entertainment development.

8.3 Permitted Transfers or Assignments.

The following represents permitted Transfers or Assignments of the Agreement. Assignments or Transfers under subsections (a) and (b) shall be permitted without the consent of The City, notwithstanding the prohibitions on Assignments set forth in this Section or any other provision of this Agreement; provided, however, that Assignments or Transfers under subsection (c) require the prior written consent of The City, which shall not be unreasonably withheld or delayed:

- a) Company may freely transfer, in whole or in part, any or all of its rights and obligations under this Agreement to one or more Affiliates or to a parent corporation of which Company is a subsidiary, provided that any such Assignment shall not change, limit, release or otherwise affect the rights, obligations and liabilities of Company to The City and provided such affiliate, subsidiary, or parent corporation shall agree to be bound by all of the terms and conditions of such agreements in writing.
- b) Company may pledge, mortgage, grant a security interest in or encumber its interest in this Agreement to secure credit or other financial obligation necessary to perform its obligations under this Agreement.
- c) Any transfer of a controlling interest in Company so long as the entity or person acquiring the controlling interest also contemporaneously provides to The City adequate, sufficient and acceptable security in favor of The City for the obligations of Company under this Agreement.

8.4 Transfers or Assignments Subject to Approval by The City.

In regard to Transfers or Assignments subject to approval by The City, Company represents and agrees for itself and its successors and assigns that:

The City shall be entitled to require, except as otherwise provided in the Agreement, as conditions to any such approval that:

- a) Any third-party proposed transferee shall have the qualifications and financial responsibility that are substantially similar to Company at the time of the transfer.
- b) Any proposed transferee, by instrument in writing satisfactory to The City, and in form recordable among the land records, shall, for itself and its successors and assigns, and expressly for the benefit of The City, have expressly assumed all of the obligations of Company under this Agreement and agreed to be subject to all the conditions and restrictions to which Company is subject; provided, that the fact that any transferee of, or any other successor in interest whatsoever, shall, whatever the reason, not have assumed such obligations or so agreed, shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by The City) relieve or except such transferee or successor from such obligations, conditions, or restrictions, or deprive or limit The City of any rights or remedies or controls with respect to this Agreement; it being the intent of this provision, together with other provisions of the Agreement, that (to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in the Agreement) no transfer of, or change with respect to, ownership in Company or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit The City of any rights or remedies or controls provided in or resulting from this Agreement that The City would have had, had there been no such transfer or change.
- c) To enable The City to protect their interest in this Agreement and to assist The City in determining the economic viability of any successor to the Project, Company will submit to The City for review all instruments and other legal documents integral to effecting transfer.
- d) Provided, that in the absence of specific written agreement by The City to the contrary, no such transfer or approval by The City thereof shall be deemed to relieve Company, or any other party bound in any way by this Agreement from any of its obligations with respect thereto.

Notwithstanding any other provision contained herein, Company shall be free to transfer all or any portion of the Regional Outlet Mall or its interest under this Agreement, without the prior written consent of The City, if the transferee (i) expressly assumes any outstanding obligations of Company under this Agreement, and (ii) is reasonably qualified to operate and manage the Regional Outlet Mall. Subject to documentation and notification of such transfer to The City, if Company transfers its entire interest in the Regional Outlet Mall to a permitted

transferee or assigns its entire interest under this Agreement to a permitted assignee, Company shall be released from its obligations under this Agreement.

SECTION 9. REMEDIES AND TERMINATION

9.1 In General.

Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, or any of its terms or conditions, by either party hereto, or any successor to such party, such party (or successor) shall, upon written notice from the other, proceed promptly and diligently to cure or remedy such default or breach, and, in any event, within the applicable cure period after receipt of such notice. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within the applicable cure period, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, immediate termination of this Agreement.

9.2 Termination by Company.

Company shall have the right to terminate this Agreement in the event that:

- a) Company shall furnish evidence satisfactory to The City that it has been unable, after and despite diligent efforts, to continue the operation and marketing of the Regional Outlet Mall on a basis and on terms that would generally be considered satisfactory within the industry, and Company, after having submitted such evidence and if so requested by The City, continues to make diligent efforts for a period of sixty (60) days after such request, but without success, or
- b) The City, or its designee shall fail to perform any of its covenants or obligations to be performed hereunder, and any such failure shall not be cured within thirty (30) days after the date of written demand by Company; then this Agreement, or the relevant portion thereof, may, at the option of Company, be terminated by written notice thereof to The City. Except for any right of reimbursement owed under this Agreement on the effective date of termination, neither The City, nor Company, shall have any further rights against or liability to the other in the event of termination.

9.3 Termination by The City.

The City shall have the right to terminate this Agreement in the event that:

- a) Company, in violation of this Agreement, which requires, among other things, the consent of The City to certain transfers or assignments:

- 1) Company (or any successor in interest) assigns or attempts to assign this Agreement or any rights therein, without the approval of The City; or
- 2) There is any change in the controlling interest in Company, or with respect to the identity of the parties in control of Company or the degree thereof, which has not been approved by The City,

and, if any default or failure referred to in this Agreement shall not be cured within ninety (90) days after the date of written demand by The City; then this Agreement, and any rights of Company, or any assignee or transferee, in this Agreement, or arising therefrom with respect to The City, may, at the option of The City, be terminated, in which event, no party shall have any further rights against or liability to the other under this Agreement.

- b) The City, for any reason, fails or refuses to appropriate and budget, on a fiscal year basis, sufficient funds from its general fund operating budget to cover the financial obligations of The City under this agreement.

9.4 Forced Delay in Performance for Causes Beyond Control of Party.

For the purpose of any of the provisions of the Agreement, neither The City, nor Company, as the case may be, nor any successor in interest, shall be considered in breach of, or default in, its obligations with respect to the obligations hereunder, or progress in respect thereto, in the event of forced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not restricted to, acts of God, acts of the public enemy, acts of the federal government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight, embargoes, and unusually severe weather or delays of subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such forced delay, the time or times for performance of the obligations of the parties hereunder, as the case may be, shall be extended for the period of the forced delay as reasonably determined by The City; provided, that the party seeking the benefit of the provisions of this Section shall, within thirty (30) days after the beginning of any such forced delay, have first notified the other parties thereof in writing, and of the cause or causes thereof, and requested an extension for the period of the forced delay.

9.5 Rights and Remedies Cumulative.

The rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other party. No waiver made by either such party with respect to the performance, or manner or time thereof, or any obligation of the other party or any condition to its own obligations under this Agreement shall be considered a waiver of any rights of the party making

the waiver with respect to the particular obligation of the other party or condition to its own obligations beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of the party.

SECTION 10.
GENERAL

10.1 City Representatives not Individually Liable.

No member, official, or employee of The City shall be personally liable to Company, or any successor in interest, in the event of any default or breach by The City, or for any amount which may become due to Company or successor on any obligations under the terms of the Agreement.

10.2 Equal Employment Opportunity.

Company, for itself and its successors and assigns, agrees that during this Agreement:

- a) Company will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Company will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Company agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by The City setting forth the provisions of this nondiscrimination clause.
- b) Company will, in all solicitations or advertisements for employees placed by or on behalf of Company, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- c) In the event of Company's noncompliance with the nondiscrimination clauses of this Section, or with any of the said rules, regulations, or orders, this Agreement may be cancelled, terminated, or suspended in whole or in part, however, prior to any such termination, Company will be given notice and opportunity to explain or cure the non-compliance.

10.3 Titles of Articles and Sections.

Any titles of the several parts and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions. The descriptive headings of the sections and subsections of this Agreement are inserted or annexed for convenience of reference only and shall not affect the meaning, construction, interpretation or effect of this Agreement. The preamble “Whereas” clauses to this Agreement are essential elements of this Agreement.

10.4 Amendments to Agreement.

This Agreement may not be changed orally, but only by an agreement in writing and signed by the parties hereto. Changes in statutes and regulations relevant to the subject matter of this Agreement shall become part of the Agreement subject to the parties’ right to terminate the Agreement if said statutes or regulation materially affect the responsibilities of the parties under this Agreement.

10.5 Third Parties.

Except as expressly provided otherwise in this Agreement, the provisions of this Agreement are for the exclusive benefit of the parties hereto and not for the benefit of any other persons, as third party beneficiaries or otherwise, and this Agreement shall not be deemed to have conferred any rights express or implied, upon any other person.

10.6 No Partnership Created.

The parties expressly agree that the relationship hereby created is that of independent contractors and no other relationship is created or deemed to be created between the parties. This Agreement specifically does not create any partnership or joint venture between the parties hereto, or render any party liable for any of the debts or obligations of any other party.

10.7 Time Is of the Essence.

The parties understand and agree that time is of the essence with regard to all the terms and provisions of this Agreement.

10.8 Formalities and Authority.

The parties hereto represent and warrant that they are validly existing and lawful entities with the power and authorization to execute and perform this Agreement.

10.9 Construction.

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements or understandings concerning the

subject matter of this Agreement that are not contained in this document. The rule of construction that a document is to be construed most strictly against the party who drafted the document shall not be applicable to this Agreement because all parties participated in the preparation of this Agreement. “Includes” and “including” are not limiting. References to articles, sections, and exhibits shall be to articles, sections, and exhibits of this Agreement unless otherwise indicated. The headings set forth in this Agreement are for convenience and reference only, and in no way define or limit the scope or content of this Agreement or in any way affect its provisions.

10.10 Governing Laws, Construction and Enforcement, Severability, Entire Agreement.

This Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma governing agreements made and fully performed in Oklahoma, exclusive of its choice of law rules. Any litigation brought under this Agreement shall be conducted in the State of Oklahoma in District Court of Oklahoma County or the United States District Court for the Western District of Oklahoma. If any provisions of this Agreement or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, then the remainder of this Agreement, or the application of such provision, or portion thereof, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

This Agreement sets forth the entire understanding between the parties with respect to its subject matter, there being no terms, conditions, warranties or representations with respect to its subject matter other than that contained herein. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors and assigns. In the event of ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party on the basis that such party did or did not author the same.

10.11 Compliance with Laws, Ordinances and Regulations.

The parties shall comply with all applicable existing federal, state and local laws, standards, codes, ordinances, administrative regulations and all amendments and additions thereto, pertaining in any manner to the work and/or services provided by this Agreement.

10.12 Supersedes All Prior Agreements.

Except for the obligations currently owed under the 2010 Economic Development Agreement, the parties agree that this Agreement supersedes and replaces all other agreement(s) made between the parties related to the development and construction of the Regional Outlet Mall and that any such prior Agreement(s) are hereby revoked and declared null and void.

The parties further agree that confirm and agree that all prior obligations with respect to the construction and development of the Regional Outlet Mall and the construction of traffic and roadway improvements supporting the Regional Outlet Mall under the 2010 Economic Development Agreement and related documents have been fully performed.

Provided however and notwithstanding the foregoing, the applicable provisions of the 2010 Economic Development Agreement shall continue to govern the rights and obligations of the parties with respect to (a) sales made through July 31, 2021 by retailers from locations within the Regional Outlet Mall, and (b) reimbursement by the Trust of documented Regional Marketing costs incurred by the Company through July 31, 2021. In the event that the City terminates this Agreement before the year ending July 31, 2022, or any subsequently approved annual renewal, the accounting principles and reimbursement obligations hereinabove set forth shall govern the rights and obligations of the parties.

10.13 Costs and Expenses.

Each party shall be solely responsible for all fees and expenses incurred by, or on behalf of, such party in the negotiation of this Agreement.

10.14 Counterparts.

This Agreement is executed in multiple counterparts, each of which shall constitute an original of this Agreement.

[Signatures follow on separate pages.]

[Signature Page for The City of Oklahoma City]

THE CITY OF OKLAHOMA CITY,
a municipal corporation

ATTEST:

Amy K Simpson
City Clerk



David Holt

REVIEWED for form and legality.

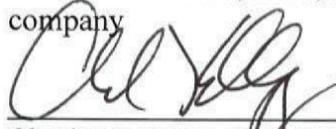
Wiley L Williams
Deputy Municipal Counselor

[Signature Page for OKC Outlets I, LLC]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this 24 day of August, 2021.

OKC OUTLETS, LLC, a Delaware limited liability company

By:



Charles Kellogg, Vice President

ACKNOWLEDGMENT

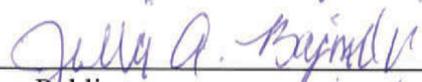
STATE OF Illinois)
COUNTY OF Cook) ss.

On this 24th day of August in the year 2021, before me personally appeared Charles Kellogg, Vice President of OKC OUTLETS, LLC, a Delaware limited liability company, known to me to be the person who executed this Agreement on behalf of said limited liability company and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 24th day of August, 2021.

(Seal)





Notary Public
My Commission Expires: 3/23/23
Commission # 817013