

**THE AMENDED AND RESTATED
NOVA PROJECT
ECONOMIC DEVELOPMENT AGREEMENT**

between

The Oklahoma City Economic Development Trust, a public trust,

and

LIBERTYBELLOK LLC, an Oklahoma limited liability company.

**AMENDED AND RESTATED
NOVA PROJECT
ECONOMIC DEVELOPMENT AGREEMENT**

THIS AGREEMENT is entered into by the Oklahoma City Economic Development Trust, an Oklahoma public trust (the “Trust” or “OCEDT”) and LIBERTYBELLOK LLC, an Oklahoma limited liability company (the “Developer”).

WITNESSETH:

WHEREAS, the City has adopted and approved the Amended and Restated Downtown/MAPS Economic Development Project Plan 2023 (“Project Plan”), pursuant to the Oklahoma Local Development Act and in support of said Project Plan, has established ad valorem Tax Increment District 2, Oklahoma City (“TIF” 2), for support of approved economic development projects in the designated Project Area; and

WHEREAS, the City Council, as authorized by the Act, has delegated authority and has designated the Trust to manage and administer the Project Plan; and

WHEREAS, the proposed Nova Project (“Project”), a full-service downtown grocery store, 24 urban-loft apartments, a parking garage and pickleball courts, will be located within TIF2 and the Project Plan Area; and

WHEREAS, the Project Plan Area has previously been declared to be an area where investment, development and economic growth is difficult, but possible by assisting in development financing to bridge a gap in private financing; and

WHEREAS, the Developer estimates that construction of the Project will cost \$24,000,000, and in order to make the project economically feasible, the Developer has requested assistance in development financing from the Trust in an amount not-to-exceed \$765,000 (“Incentive”); and

WHEREAS, the Developer proposes that the Incentive is necessary to make the Project feasible; and

WHEREAS, pursuant to its contract with the City and Trust, the Alliance for Economic Development, after analyzing the financial feasibility and estimated return on the investment for

the Project, and after reviewing the current market demand for a project like the Nova, recommends the public Incentive; and

WHEREAS, on August 18, 2022, the TIF 2 Review Committee recommended approval of the Incentive; and

WHEREAS, on August 30, 2022 and September 13, 2022, the Trust and City respectively approved a total allocation not to exceed \$765,000 to be provided to the Developer, in recognition of the significant community and economic development benefits the Project will bring to the City and its citizens (*See* “Exhibit A,” Joint Resolution of the City and Trust Approving Allocation, attached hereto). Pursuant to that allocation, the Trust negotiated and approved an Economic Development Agreement with the Developer (1 NW 6th, LLC) on August 30, 2022. Due to financial constraints, the Developer has been unable to secure the necessary funding to begin the Project. For this reason, the Developer has formed a new limited liability company with new members to assist with the Project. The new Developer is LIBERTYBELLOK LLC; and

WHEREAS, the allocation not to exceed \$765,000 will be provided over the remaining life of TIF 2 by paying Developer 100% of the real property ad valorem tax increment collected and generated by the Project and paid by the Developer; and

WHEREAS, the City and Trust find that development and operation of the Project by the Developer will greatly benefit Oklahoma City by increasing property tax; promoting further development of unproductive and deteriorated property in the downtown area; reversing economic stagnation and decline; and expanding employment opportunities in the Project Area; and

WHEREAS, the Trust believes that approval of the Project is in the best interest of the health, safety, and welfare of the State, the City, and their residents and is in accordance with the public purposes of the Local Development Act and within the objectives of the Amended and Restated Downtown/MAPS Project Plan 2023.

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 herein, or the context otherwise requires, when used in this Agreement the following terms shall have the corresponding definitions:

1.1 *Affiliate.* An entity that is related to another entity by common ownership or other means of control; and an entity that controls, is controlled by, or is under common control, including, without limitation, a subsidiary, parent or sibling company.

1.2 *Agreement.* This Nova Project Economic Development Agreement, as the same may be amended, modified and in effect from time to time, pursuant to the terms hereof.

1.3 *Base Assessed Value.* The value of the Property prior to the Project being completed. According to the Oklahoma County Assessor, the Base Assessed Value of the Property is \$6,006,436.

1.4 *City.* The City of Oklahoma City, Oklahoma, a municipal corporation.

1.5 *Developer.* LIBERTYBELLOK LLC, an Oklahoma limited liability company.

1.6 *Incentive.* The assistance in development financing not to exceed \$765,000, which is required by the Developer in order to make the Project financially viable. The Incentive will be provided to the Developer by the Trust pursuant to the terms of this Agreement. The source of funding for the Incentive is the real property ad valorem tax Increment, directly generated by the Project, paid by the Developer and received by the City and/or Trust during the remaining life of TIF 2.

1.7 *Increment.* The difference between the Base Assessed Value and the annual real property ad valorem tax assessment generated by a completed Project.

1.8 *Indemnified Parties.* (1) The City of Oklahoma City; (2) the Oklahoma City Economic Development Trust; (3) the respective beneficiaries and affiliates of (1) and (2); (4) the successors and assigns of (1) and (2); and (5) the officers, directors, employees, agents, contractors, consultants, vendors, and insurers of (1) and (2) (excluding members of Developer).

1.9 *Project Area.* The area in which projects may be developed as designated in the Amended and Restated Downtown/MAPS Economic Development Project Plan 2023.

1.10 *Project.* The Nova Project, as generally described in Section 2 of this Agreement, and more particularly described in the preliminary plans and conceptual drawings attached hereto as “Exhibit B.”

1.11 *Project Manager.* Unless otherwise indicated, means the City’s Economic Development Project Manager as designated by the Trust’s General Manager. The

Trust's General Manager shall inform the Developer of any change in the Project Manager by correspondence. The Trust or the Trust's General Manager may change said designation from time to time in their sole discretion.

1.12 ***Property.*** The real property located at 9 NW 6th St and 2 NW 7th St and more particularly described by the map and legal description on "Exhibit C," attached hereto.

1.13 ***Reasonable Efforts.*** With respect to a given goal, the efforts that a reasonable person in the position of the promisor would use so as to achieve that goal as expeditiously as possible. The exercise of reasonable efforts does not include taking any actions that would, individually or in the aggregate, cause the promisor to incur costs, or suffer some other detriment, out of reasonable proportion to the benefits to the promisor under this Agreement or making any expenditure that is disproportionate or unduly burdensome or that would cause a material adverse change in the financial condition of the promisor. Reasonable efforts do not include the initiation of any litigation or arbitration.

1.14 ***Target Substantial Completion Date.*** The date on which construction of the Project should be complete and ready for occupancy, which shall be December 31, 2024.

1.15 ***Trust.*** The Oklahoma City Economic Development Trust, an Oklahoma public trust, whose sole beneficiary is the City of Oklahoma City.

SECTION 2. SCOPE OF PROJECT

The parties acknowledge and agree that the "Whereas" recitals set forth above are a material part of this Agreement and are incorporated herein by reference.

The Project will consist of a full-service downtown grocery store, 24 urban-industrial apartments with parking garage and pickleball courts that is estimated to result in a \$24,000,000 capital investment in downtown Oklahoma City at 9 NW 6th St and 2 NW 7th St.

One of the primary purposes of this Agreement is to ensure that the Project will maintain consistency with the purposes and goals of the Amended and Restated Downtown/MAPS Project Plan 2023, by further stimulating economic development in an area near downtown Oklahoma City that has become stagnant, deteriorated and underutilized. To achieve this goal, the Trust will provide assistance in development financing, an economic development tool available under the Local Development Act, necessary to close a gap in funding needed by the Developer to make this Project financially viable.

The Project will create economic and public benefits for Oklahoma City. These benefits include: (1) providing increased employment opportunities in the Project Plan Area; (2) increasing the taxable market value of the Property; and stimulating further development in the downtown area.

The Developer will develop the Project in accordance with the Project Plan, the Developer's conceptual drawings and preliminary plans attached hereto as "Exhibit B," the City's ordinances and policies, and all applicable legal requirements.

SECTION 3. REQUIREMENTS AND OBLIGATIONS OF THE PARTIES

3.1 THE DEVELOPER.

(a) The Developer shall use Reasonable Efforts to diligently proceed and maintain timely and progressive work on the Project until completion. The Developer is expected to use Reasonable Efforts to complete the Project by December 31, 2024, from the commencement of construction, which date shall be agreed upon in writing by the Project Manager and Developer. Although it is not anticipated, and is discouraged by the Trust, Developer may request an extension of the Target Substantial Completion Date, on a one-time basis only, from the Project Manager, for a period of time not to exceed six (6) months. The request shall be in writing and shall explain the need for the extension and shall be submitted to the Project Manager not less than ninety (90) days prior to the Target Substantial Completion Date. If the Project Manager, in consultation with the Trust's General Manager, believes sufficient reason has been presented to justify an extension of the Target Substantial Completion Date, the Project Manager may grant an extension of up to six (6) months. This extension will also extend the date by which the Property will go on the ad valorem tax rolls as a completed project by the same amount of time and therefore, could result in a reduction in the amount of the Incentive available for the Project. Any other or further extension may be granted only by the express written consent of the Trust, which the Trust may grant or withhold in its reasonable discretion. Nothing herein shall be construed to mean the Developer has failed to perform its duty to use Reasonable Efforts to complete the Project by the Target Substantial Completion Date solely due to the fact Developer does not complete the Project by the Target Substantial Completion Date.

(b) In the event that timely performance by the Trust of any of its obligations set forth in this Agreement, delays performance of construction and development, the time for

completion of the Project will be extended for the period of the delay caused by the Trust; provided, that the Developer shall notify the Trust in writing, within ten (10) days after the beginning of any such delay. Said notice shall describe the problem and its causes and claim an extension for the period such delay continues.

(c) Developer is responsible for all design expenses and the remaining capital over and above the Incentive that are necessary to complete construction of the Project. Developer will be solely responsible for cost overruns.

(d) Developer agrees to design, purchase, and attach a plaque or monument to the Project, in a location that is viewable by the general public, that acknowledges the construction of the Project was made possible in part by the assistance in development financing provided by the Trust, with support from The City. The proposed design and location of the plaque will be presented to the Project Manager who may offer comments. The Developer agrees to consider the comments submitted by the Project Manager, if any, and implement them if reasonable.

(e) Developer agrees to construct the Project in a manner consistent with the preliminary plans and conceptual drawings attached hereto as "Exhibit B." Except as otherwise expressly provided for in this Agreement, the Trust will not be responsible for any development work or construction with respect to the Project or any part of it. The Developer is solely responsible for all construction methods, techniques, and procedures employed by Developer, its agents, contractors, and subcontractors in connection with the Project. Developer shall promptly notify the Project Manager in writing if there is a material change in the Project which does not conform to those documents. Developer agrees that if the Project Manager believes that there has been a material change to the Project, the Project Manager will inform the Trust and seek guidance as to whether the Agreement will be either amended or terminated pursuant to Section 6.3 herein. For purposes of this Section 3.1(e), "material change" means (i) a significant and substantial change in the overall character, quality or appearance of the Project; or (ii) changes that would result in an overall decrease of more than ten percent (10%) of the construction costs of the Project, which construction cost is estimated to be \$24,000,000. Until construction of the Project has been completed, the Developer agrees to make reports in such detail and at such times as may reasonably be requested by the Trust or Project Manager as to the actual progress of the Project. While the parties mutually recognize that the \$24,000,000 capital investment is only an estimate, the parties recognize that a substantial factor in determining the maximum amount of Incentive available

under this Agreement is based on that estimate. The parties agree that in the event the actual investment made or caused by Developer is more than 10 percent less than the minimum investment of \$24,000,000, the maximum Incentive amount will be reduced proportionately. By way of example, if the actual capital expenditure is 11% less than \$24,000,000, then the maximum amount of Incentive available will be reduced by 1%. In the event the actual capital expenditure is 15% less than \$24,000,000, the Maximum Total Incentive allowed under this Agreement will be reduced by 5%. There will be no increase in the maximum Incentive allowed in the event capital investment costs exceed \$24,000,000.

(f) Promptly after the Target Substantial Completion Date, Developer shall provide the Trust with an AIA Form Certificate of Substantial Completion for the Project, certified by the architect for the Project that the Project substantially conforms to the plans. Such certification by the architect-of-record will be a conclusive determination of satisfaction and termination of Developer's construction obligations under this Agreement. In no case shall the Trust be obligated to pay the Developer an Incentive until after ad valorem taxes have been generated by the Project, paid by the Developer and received by the City.

(g) Promptly after the Target Substantial Completion Date, the Developer shall take any necessary actions to ensure that the Property, as described in "Exhibit C," will be subject to reassessment by the Oklahoma County Assessor. The Developer acknowledges that funds for the Incentive will come directly from the annual real property ad valorem tax Increment collected and generated from the Project and received by the City, after the Property goes onto the tax rolls as a completed Project. In order for Developer to receive the maximum annual Incentive payment, all such ad valorem taxes on the Property shall be paid when due and not be in arrears.

3.2 REQUIREMENTS AND OBLIGATIONS OF TRUST.

Upon completion of the Project, the Property and the Project will be reassessed and subject to an annual real property ad valorem tax assessment. The current total Base Assessed Value of the Property is \$6,006,436. The Incentive shall be 100% of the real property ad valorem tax Increment generated by the completed Project and paid by the Developer to the City annually beginning the first year after completion of the Project and continuing for the duration of TIF 2. Developer shall invoice the Trust annually in August for payment of the Incentive. The total Incentive payments over the life of TIF 2 shall not exceed \$765,000. In no event shall the Developer be entitled to receive an Incentive in excess of that amount of real property ad valorem

tax revenue received by the City for the Increment associated with the Property and the Project during the life of TIF 2. Upon receipt of the annual invoice from Developer in August, the Project Manager will review invoices for payment. Should the Project Manager question or request additional documentation or disapprove all or a portion of any invoice, Developer will be notified so that it may provide additional documentation sufficient to demonstrate the invoice should be paid, in whole or in part. Invoices will be paid no later than thirty (30) calendar days after approval of an invoice by the Project Manager.

3.3. CONCURRENCE OF THE CITY.

The effective date of the Agreement shall be the date approved by the Trust. If the Trust approves the Agreement, the Agreement shall be submitted to the City Council for its “advisory concurrence” in accordance with Article IX of the OCEDT Trust Indenture. In the event that the City should not provide its “advisory concurrence,” the Trust and Developer will attempt to resolve any substantive issues raised by the City, and the Trust and Developer will determine whether any amendment to the Agreement is necessary.

However, it should be noted that some of the funding provided by or received from the City may be subject to annual appropriation and encumbrances of revenues by the City Council of The City, as mandated by Okla. Const. Art. 10, § 26 and by the Oklahoma Municipal Budget Act, 11 O.S. § 17-201, et seq. However, under no circumstances does or shall the City incur any financial obligation to Developer under this Agreement. Under no circumstances does or shall the City incur any financial obligation to Developer under this Agreement or the concurrence thereof. The City is simply a beneficiary of the Trust, and the Trust remains solely responsible for all financial obligations hereunder.

SECTION 4. NOTICES AND DEMANDS

NOTICES. All notices and other communications required, permitted, or contemplated by this Agreement must be in writing, signed by the Party giving the Notice, and sent using the contact information below. "Notify" and "Notifying" means to give Notice as required by this Section. Notices must be sent by: (1) hand-delivery in return for a receipt; (2) United States mail with postage prepaid; (3) nationally recognized overnight courier service; or (4) email, so long as the intended recipient acknowledges by email or other writing as having received the Notice (with an automatic "read receipt" not constituting acknowledgment). A Notice

is effective on the earlier of: (1) the date of actual delivery; or (2) for mailed Notices (without a return receipt), three Business Days after the date of mailing. However, if the receipt of Notice is refused, the Notice is effective upon attempted delivery. Either Party may change its contact information by Notifying the other Party as required by this Section. Notwithstanding the foregoing, Notices advising the other Party of a breach of this Agreement must be sent by: (1) hand-delivery in return for a receipt; (2) certified United States mail, return receipt requested with postage prepaid; or (3) nationally recognized overnight courier service. Such Notices are effective on the date of actual delivery. However, if receipt of the Notice is refused, the Notice is effective upon attempted delivery.

Notices to the Developer will be addressed as follows:

LIBERTYBELLOK LLC
Jonathan Dodson, Manager
c/o PIVOT
301 NW 13th St, Suite 202
Oklahoma City, OK 73103
Email Address: jonathan@pivotproject.com

with a copy to its attorney:
Matt Jones, Managing Attorney
3838 Oak Lawn Ave, Suite 1000
Dallas, TX 75219
Email Address: mjones@vergelaw.com

Notices to the Trust will be addressed as follows:

Oklahoma City Economic Development Trust
Attn: Craig Freeman, General Manager
200 North Walker Avenue, 3rd Floor
Oklahoma City, OK 73102
Phone Number: 405-297-2345
Email Address: citymanager@okc.gov

with a copy to:
Oklahoma City Economic Development Trust
Attn: Secretary
200 North Walker Avenue, 2nd Floor
Oklahoma City, OK 73102
Phone Number: 405-297-2391
Email Address: cityclerk@okc.gov

with a copy to its attorney:
Amy Douglas
Assistant Municipal Counselor
200 North Walker Avenue, 4th Floor
Oklahoma City, Oklahoma 73102
Phone Number: 405-297-3793
Email Address: amy.douglas@okc.gov

SECTION 5: RESTRICTIONS ON ASSIGNMENT AND TRANSFER

5.1. REPRESENTATIONS AS TO DEVELOPMENT.

(a) The Developer represents and agrees that its undertakings pursuant to this Agreement, are, and will be used, for the purpose of constructing, and operating the Project at the Property, and not for speculation in land holding. The parties recognize that:

- the development of the Property is important in rehabilitating and revitalizing the central downtown area, which also advances the general welfare of the community; and
- substantial funding and other public assistance have been made available by law and by the local governments to the Developer for the purpose of making the Project possible; and
- a transfer of the equity interest in Developer (or of a substantial part of it), or any other act or transaction involving or resulting in a significant change in the ownership or distribution of such equity interest or with respect to the identity of the parties in control of Developer or the degree of that control, is of particular concern to the Trust; and
- the qualifications and identity of the Developer are a reason that the Trust is entering into this Agreement, as opposed to any other entity, and, in so doing, is further willing to accept and rely on the obligations and commitments of the Developer for the faithful performance of all undertakings and covenants hereby required by it.

(b) For the foregoing reasons, Developer represents and agrees for itself, its successors and assigns, that a sale, assignment or conveyance of the Property and/or Project to a party that is not an Affiliate of the Developer, within five (5) years of the date of the Certificate of

Completion of the Project as described in Section 3.1(f), is not allowed without the express written consent of the Trust, except in the following cases:

- for the purpose of providing security to a lender for the purposes of obtaining financing necessary to enable Developer, or any successor in interest to the Property, or any part thereof, to perform its obligations with respect to construction of the Project under this Agreement, and any other purpose authorized by this Agreement; or
- as to any individual parts or parcels of the Property on which the Project to be constructed thereon have been completed, and which, by the terms of this Agreement, Developer is authorized to lease, including, without limitation, any leases or subleases by Developer or an Affiliate of Developer, of portions of the Project to a third party tenant.

(c) Notwithstanding the foregoing, the parties agree that the Developer shall be entitled to assign the Incentives it is to receive under this Agreement without the consent of the Trust either (1) to any party for Project financing purposes both during Project construction and operation of the Project, or (2) to an Affiliate of the Developer. The Developer agrees that in the event it sells, transfers, or otherwise disposes of the Property, or any part thereof, within five (5) years of the date of the Certificate of Substantial Completion in violation of this Agreement, then (1) neither the Developer, a subsequent purchaser nor any entity/person to which Developer has assigned its incentives, shall be entitled to any further Incentive payments under this Agreement, and (2) Developer shall be obligated to pay back the amount of Incentive payments previously received by it.

(d) Should the Developer sell, convey or assign the Property to an entity, whether an Affiliate or not, that is a tax-exempt entity, and as a result, the City does not continue to receive ad valorem or sales tax from the Project, the Trust will have no further obligation pursuant to this Agreement to pay the Developer or the tax-exempt entity any further Incentives.

5.2. ASSIGNMENT BY TRUST.

The Trust may not sell, convey, transfer, pledge, encumber, and/or assign all or any portion of its interest in this Agreement, in whole or in part, by assignment or operation of law, and may not assign any of its rights or delegate any of its obligations under this Agreement at any time without Developer's prior written consent. However, the Trust may pledge, encumber, or collaterally assign all or any portion of its interest in this Agreement, in whole or in part, by assignment or operation of law, and may assign any of its rights or delegate any of its obligations

under this Agreement at any time without Developer's prior written consent for the purposes of financing or to a public entity or public entities. Developer will accept and attorn to such a permitted transferee of the Trust's interest under this Agreement as if such transferee had been the party originally named in this Agreement. Any assignment by the Trust shall not relieve the Trust from liability for its obligations under this Agreement, unless otherwise expressly approved by the Developer in writing.

5.3. BINDING EFFECT.

To the extent that there are successors or assigns permitted under this Section, this Agreement will be binding on and benefit the Parties and their respective successors and assigns. All persons, to whom any interest in this Agreement, the Property, or the Project might be transferred in accordance with the terms of this Agreement will, by accepting such transfer, be bound by all terms of this Agreement, including the indemnity provisions, to the same extent as if such transferee had been an original party to it.

5.4. INDEMNITY.

Developer will fully defend, indemnify, release, and completely hold harmless each Indemnified Party from and against any and all claims, losses, damages, demands, causes of action, suits, judgments, and liabilities of every kind and character, litigation, court costs, expert fees, reasonable attorneys' fees, and any other associated costs of defense or resolution incurred by or asserted against such Indemnified Party that arise by reason of: (1) any injury to or death of any person or any damage to property located in or on the Property; (2) any use, condition, or state of repair of all or any part of the Property; (3) any failure by the Developer to perform the Developer's obligations under this Agreement; or (4) any other occurrence on the Property, unless caused by the Trust's sole negligence or willful misconduct. If any action, suit, or proceeding is brought against any Indemnified Party by reason of any such occurrence, Developer will promptly, after the Indemnified Party's written request, defend such action, suit, or proceeding at Developer's expense with legal counsel reasonably acceptable to the Indemnified Party.

SECTION 6. DEFAULT, REMEDIES, TERMINATION

6.1. 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 any party hereto, or any successor to such party, such party (or successor) shall, upon written notice proceed immediately to cure or remedy such default or breach within thirty (30) days after receipt of such notice. However, if any such default or breach is one not reasonably susceptible of being cured within thirty (30) days, and the breaching party is diligently pursuing a cure of such default or breach, the time for curing may be extended accordingly. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within thirty (30) days of notice of the default or breach (as may be extended as set forth in the prior sentence), the aggrieved party or parties may terminate this Agreement and/or institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations.

6.2. TERMINATION BY DEVELOPER.

In the event that:

- (a) the Developer shall furnish evidence satisfactory to the Trust that it has been unable, after and despite diligent efforts to obtain any financing that it determines is necessary for the construction of the Project on terms that are satisfactory to it, or the Developer determines the Project is not economically feasible, or
- (b) the Trust 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 the Developer,

then this Agreement may, at the option of the Developer, be terminated by written notice thereof to the Trust. Thereafter the Parties will not have any further rights against or liability to the other under this Agreement except those rights and obligations that by their nature are intended to survive termination of it.

6.3. TERMINATION BY TRUST.

Should the Developer:

- (a) assign or attempt to assign this Agreement in a manner that is violative of this Agreement, or sell, assign, or transfer ownership of the Property in a manner that is violative of this Agreement; or
- (b) change ownership of the equity interests of Developer in a manner not permitted by this Agreement; or
- (c) fail to perform any of its covenants or obligations to be performed hereunder, including but not limited to, making a material change in the Project, not completing the Project by the Target Substantial Completion Date, etc.;

then this Agreement may, at the option of the Trust, be terminated by written Notice thereof to the Developer providing for a 30-day opportunity to cure. However, if any such default or failure is one not reasonably susceptible of being cured within 30 days, and the Developer is diligently pursuing a cure of such default or failure, the time for curing may be extended accordingly in the sole discretion of the Trust. Thereafter the parties will not have any further rights against or liability to the other under this Agreement except those rights and obligations that by their nature are intended to survive termination of it.

6.4 FORCED DELAY IN PERFORMANCE FOR CAUSES BEYOND CONTROL OF PARTY.

For the purpose of any of the provisions of the Agreement, neither the Trust, nor the Developer, 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 preparation of the Property for development, or the beginning and completion of construction of the Project, 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 terrorism, acts of the federal government, acts of any of the other parties, fires, floods, tornadoes, epidemics, quarantine restrictions, strikes, freight, embargoes, and unusually severe weather or delays of contractors or 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 Trust with respect to providing the assistance in development financing or of the Developer with respect to construction of the Project, as the case may be, shall

be extended for the period of the forced delay as reasonably determined by the Trust; 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.

6.5. 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.

6.6. PARTY IN POSITION OF SURETY WITH RESPECT TO OBLIGATIONS.

The Developer for itself and its successors and assigns, and for all other persons who are or who shall become, whether by express or implied assumption or otherwise, liable upon or subject to any obligation or burden under this Agreement, hereby waives, to the fullest extent permitted by law and equity, any and all claims or defenses otherwise available on the ground of its (or their) being or having become a person in the position of a surety, whether real, personal, or otherwise or whether by agreement or operation of law, including, without limitation on the generality of the foregoing, any and all claims and defenses based upon extension of time, indulgence, or modification of terms of contract.

**SECTION 7.
GENERAL AND MISCELLANEOUS PROVISIONS**

**7.1. CONFLICT OF INTERESTS; PUBLIC REPRESENTATIVES NOT
INDIVIDUALLY LIABLE.**

No member, official, or employee of the Trust or The City will have any personal interest, direct or indirect, in this Agreement, nor will any such member, official, or employee participate in any decision relating to this Agreement that affects his or her personal interests or the interests

of any corporation, partnership, or association in which he or she is interested, directly or indirectly. No member, official, or employee of the Trust or the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Trust or The City for any amount which may become due to the Developer or successor on any obligations under this Agreement.

7.2. EQUAL EMPLOYMENT OPPORTUNITY.

Developer, for itself and its successors and assigns, agrees that during the construction and operation of the Project:

(a) Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability or national origin. Developer agrees to take action as may be necessary to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, disability or national origin. Such action will include 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. Developer agrees to post federally required notices setting forth the provisions of this nondiscrimination clause in conspicuous places available to employees and applicants for employment. Such notices will be provided by the Trust or The City upon request.

(b) In all solicitations or advertisements for employees placed by or on behalf of Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, disability or national origin.

(c) Developer will send to each labor union or representative of workers with which Developer has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers' representative of Developer's commitments under Section 202 of Executive Order 11246 of September 24, 1965. Developer will post copies of such notice in conspicuous places available to employees and applicants for employment.

(d) Developer will comply with all provisions of Executive Order 11246 of September 24, 1965 and the Secretary of Labor's rules, regulations, and relevant orders.

(e) In the event of Developer's noncompliance with the nondiscrimination clauses set forth in subparagraph (a) and (b) above, this Agreement may be suspended, canceled or terminated by the Trust; *provided* that the Trust shall not be entitled to suspend, cancel or

terminate this Agreement pursuant to this Section unless and until it provides written notice of such alleged default or failure to the Developer and the Developer fails to cure such default or failure within sixty (60) days following receipt of such written notice. The Trust may declare Developer ineligible for further contracts or agreements until compliance, and/or satisfactory proof of intent to comply shall be made by Developer.

(f) Developer will include the provisions of this Subsection in every contract or purchase order dealing with the construction of the Project and will require the inclusion of these provisions in every subcontract entered into by any of its contractors so that such provisions will be binding upon each such contractor, subcontractor, or vendor, as the case may be, unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965.

7.3 OTHER FEDERAL REQUIREMENTS.

With respect to any development and construction obligation imposed on the Developer by this Agreement and to the extent funds or resources are provided for the Project utilizing federal programs, the Parties agree that they will comply with all of the requirements applicable to such programs.

7.4 INTERPRETATION.

The Parties intend for this Agreement to be read as a whole such that the requirements in one part and not mentioned in another will be executed to the same extent and purpose as though required by all. The misplacement, addition, or omission of a word or character will not change the intent of any part from that set out in this Agreement as a whole. The titles and headings in this Agreement are for convenience of reference only and do not constitute a part of it or affect its interpretation. The Exhibits attached to this Agreement will be construed with and as an integral part of this Agreement to the same extent as if they had been set out in this Agreement. The use of the words "including," "include," and "included" is intended to imply that the list or words following it are illustrative and not exclusive.

7.5. INDEPENDENT CONTRACTOR.

Developer is and will remain an independent contractor in all respects and not an agent, representative, or employee of the City or the Trust. Developer has the exclusive authority and right to direct, supervise, and control performance of the work contemplated by this Agreement

and is solely responsible for the acts and omissions of Developer. Developer acknowledges that the doctrine of *respondeat superior* will not apply as between The City, the Trust, and Developer.

7.6. 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.

7.7. CHOICE OF LAW; JURISDICTION AND VENUE.

The laws of the State of Oklahoma (excluding its conflict of laws rules that would apply the laws of another jurisdiction) exclusively apply to this Agreement. Any claim arising directly or indirectly from or relating to this Agreement must be filed and maintained exclusively in a court of competent jurisdiction in the state or federal courts located in Oklahoma County, Oklahoma. The Parties submit to that jurisdiction and venue for all purposes.

7.8. ENTIRE AGREEMENT; AMENDMENTS TO AGREEMENT.

This Agreement, including its Exhibits and documents delivered by its terms and incorporated in it, constitutes the entire agreement between the Parties pertaining to its subject matter. All prior and contemporaneous written or oral agreements and communications between the Parties are superseded by this Agreement. This Agreement may not be supplemented or modified except in a written agreement properly executed by the Parties. All Exhibits and documents referenced in this Agreement are incorporated into this Agreement by reference and are an integral part of this Agreement.

**7.9. RELATIONSHIP OF THE PARTIES; THIRD-PARTY BENEFICIARIES;
RIGHTS OF THE PUBLIC ENTITIES.**

This Agreement does not create and will not be construed as creating an agency, partnership, joint venture, or employment relationship between the Parties. This Agreement is for the benefit only of the Parties and their respective successors and permitted assigns. No other Person is entitled to rely on this Agreement, receive any benefit from it, or enforce any provision of it against any Party to it. Rights accruing to the Trust or The City may be exercised and enforced jointly or severally.

7.10. WAIVER.

The terms of this Agreement may be waived only by a written document executed and delivered by the waiving Party to the other Party. No course of dealing between the Parties, delay in the exercise of any rights under this Agreement, or failure to object to any action or omission

constitutes a waiver of any terms of this Agreement. A waiver of any term of this Agreement will not constitute a continuing waiver of that term.

7.11. SEVERABILITY.

If any provision of this Agreement is determined to be to any extent invalid, illegal, or unenforceable, it will be deemed stricken from this Agreement. All other provisions of this Agreement will remain in full force and effect. The stricken provision will then be deemed replaced with one that is valid and enforceable and that comes closest to expressing the Parties' original intent.

7.12 NO BROKERS

Developer will be responsible for and will fully defend, indemnify, release, and completely hold harmless The City and the Trust with respect to the payment of any commission claimed by or owed to any real estate broker or other person retained by Developer and who is entitled to a commission as a result of the execution and delivery of this Agreement.

7.13. NO PRESUMPTION AS TO DRAFTER.

In the construction and interpretation of this Agreement, the rule that a document is to be construed most strictly against the Party who prepared it does not apply because both Parties participated in its preparation.

7.14. ATTORNEY'S FEES.

In the event either Party to this Agreement is compelled to file suit to enforce the terms of this Agreement, the Party prevailing in such litigation, in addition to all other relief granted by the court, will be entitled to the payment by the losing Party of all expenses, court costs, and reasonable attorneys' fees incurred by the prevailing Party in such litigation.

7.15. FURTHER ASSURANCES.

The Parties agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Agreement and their intentions.

7.16. SURVIVAL.

The following Sections of this Agreement will survive termination of it: Section titled *Indemnity*; Section *Independent Contractor*, and any other Section that by its nature is intended to survive termination.

7.17. AUTHORITY.

Each Party represents and warrants to the other that: (1) it has full authority and power to enter into and perform its obligations under this Agreement; (2) the person executing this Agreement is fully empowered to do so; and (3) no consent or authorization is necessary from any third party.

7.18. TIMING; IMPACT OF WEEKENDS AND HOLIDAYS.

If the last day of any time period falls on a Saturday, Sunday, or legal holiday, then the duration of the time period shall be extended to the next succeeding day that is not a Saturday, Sunday, or legal holiday.

7.19. COUNTERPARTS.

This Agreement is executed in multiple counterparts, each of which shall constitute an original of this instrument. It shall not be necessary for the signature of more than one party to appear on any single counterpart. The exchange of executed counterparts of this Agreement or of signature pages by facsimile or other electronic transmission shall constitute effective execution and delivery of this Agreement, and such counterparts may be used in lieu of the original for all purposes.

7.20. EXHIBITS.

The following listed Exhibits are attached to and hereby made a part of this Agreement:

- Exhibit A - Joint Resolution of the City and Trust Approving Incentive Allocation Amount
- Exhibit B - Preliminary Plan and Conceptual Drawing
- Exhibit C - Map and Legal Description of the Property

[Remainder of page is intended to be blank. Signature pages are to follow.]

EXHIBIT A
JOINT RESOLUTION OF THE CITY AND TRUST APPROVING INCENTIVE
ALLOCATION AMOUNT

JOINT RESOLUTION

JOINT RESOLUTION OF THE CITY OF OKLAHOMA CITY ("CITY") AND OKLAHOMA CITY ECONOMIC DEVELOPMENT TRUST ("TRUST"), APPROVING AN ALLOCATION NOT TO EXCEED \$765,000, FROM INCREMENT DISTRICT NO. 2, CITY OF OKLAHOMA CITY, COMMERCIAL/HOTEL BUDGET CATEGORY IN THE AMENDED AND RESTATED DOWNTOWN/MAPS ECONOMIC DEVELOPMENT PROJECT PLAN ("PROJECT PLAN"), IN SUPPORT OF THE NOVA PROJECT LOCATED JUST WEST OF THE BNSF RAILROAD BETWEEN NW 6TH STREET AND NW 7TH STREET, WHICH PROJECT CONSISTS OF THE INVESTMENT OF APPROXIMATELY \$24,000,000 TOWARD THE CONSTRUCTION OF A FULL-SERVICE DOWNTOWN GROCERY STORE, 20 URBAN-INDUSTRIAL APARTMENTS WITH PARKING GARAGE AND ROOFTOP GREENHOUSE, BY 1 NW 6TH ST., LLC ("DEVELOPER"); AND AUTHORIZING THE TRUST GENERAL MANAGER OR DESIGNEE TO NEGOTIATE AN ECONOMIC DEVELOPMENT AGREEMENT.

WHEREAS, on March 7, 2000, The City of Oklahoma City ("City") adopted Ordinance No. 21,431, approving the Downtown/MAPS Economic Development Project Plan, which has been amended from time to time, most recently on September 14, 2021, by Ordinance 26,851 (the "Project Plan"); and

WHEREAS, the Project Plan established several Increment Districts including Increment District Number 2, City of Oklahoma City, and a Project Area, wherein increment generated in the established Increment District can be spent per the applicable provisions of the Local Development Act; and

WHEREAS, the Project Plan, as required by the Local Development Act, provides for and establishes the Downtown/MAPS Tax Increment Review Committee ("Review Committee") comprised of representatives of each of the taxing jurisdictions located within the boundaries of the Increment District(s) as well as the required representatives of the public at large; and

WHEREAS, the Project Plan requires that the Review Committee review any proposed economic development projects and budgetary allocations in light of the Project Plan's stated objectives, feasibility, priorities, and funding availability and submit its recommendation to the City and Trust prior to approve an incentive for a proposed economic development project; and

WHEREAS, the Review Committee has received information regarding: (1) the proposed development of the Nova Project by 1 NW 6th St., LLC, the Developer, which includes the construction of a full-service downtown grocery store, 20 urban-loft apartments, a parking garage and rooftop greenhouse; and (2) the Developer's request for assistance in development financing in the amount of \$765,000; and

WHEREAS, the allocation will be provided over the remaining life of Increment District No. 2 by reimbursing the Developer 100% of the ad valorem tax increment paid by the Developer in an estimated not-to-exceed amount of \$765,000; and

WHEREAS, the primary purpose of the Project Plan is to support public and private development of the downtown business area of Oklahoma City, to include commercial and service-oriented retail development and to support and stimulate the development of vacant, abandoned, dilapidated, underutilized, and blighted properties in the Project Area; and

WHEREAS, it is believed that the Nova Project will serve many of the objectives of the Project Plan including attracting major investment in the area, enhancing the tax base, reversing economic decline and stagnation, redeveloping blighted areas, and making development and economic growth possible that would not have been without development incentives; and

WHEREAS, the Developer's request for assistance in development financing was first reviewed by the City/General Manager and the TIF Funding Advisory Panel, a panel consisting of designated personnel as set forth in the Project Plan, who recommended approval of an allocation not to exceed \$765,000; and

WHEREAS, on August 18, 2022, the Review Committee approved a resolution recommending approval of the proposed budgetary allocation of \$765,000 for the Nova Project, finding that the Project meets the goals and objectives of the Project Plan; and

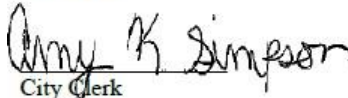
WHEREAS, the City and OCEDT, the City's designated administrator of the Project Plan, desire to promote and assist economic and community development projects which involve substantial investments in the Project Area.

NOW, THEREFORE, BE IT RESOLVED, by the City and Trust that they approve the requested budgetary allocation to the Nova Project in the total not-to-exceed amount of \$765,000 from the Commercial/Hotel budget category of the Project Plan, finding said allocation necessary for the Nova Project and finding that the Project is consistent with the Project Plan's stated objectives, feasibility, priorities, and funding availability.


NOW, THEREFORE, BE IT FURTHER RESOLVED by the City and Trust that the total allocation of not-to-exceed \$765,000, is to be provided to the Developer, 1 NW 6th St., LLC, over the remaining life of Tax Increment District No. 2 by reimbursing Developer 100% of the ad valorem tax increment paid by Developer on the Property each year beginning the first year after completion of the Project; and authorizing the Trust General Manager to negotiate an economic development agreement with Developer.

APPROVED by the Council and signed by the Mayor of the City of Oklahoma City, Oklahoma, this 27th day of September, 2022.

ATTEST:


City Clerk




Mayor

APPROVED by the Trustees and signed by the Chairman of the Oklahoma City Economic Development Trust, Oklahoma, this 30th day of August, 2022.

ATTEST:

Amy K Simpson
City Clerk



John B. ...
Chairman

REVIEWED for form and legality.

Amy Douglas
Assistant Municipal Counselor

EXHIBIT B
PRELIMINARY PLAN AND CONCEPT DOCUMENTS



EXHIBIT B
PRELIMINARY PLAN AND CONCEPT DOCUMENTS

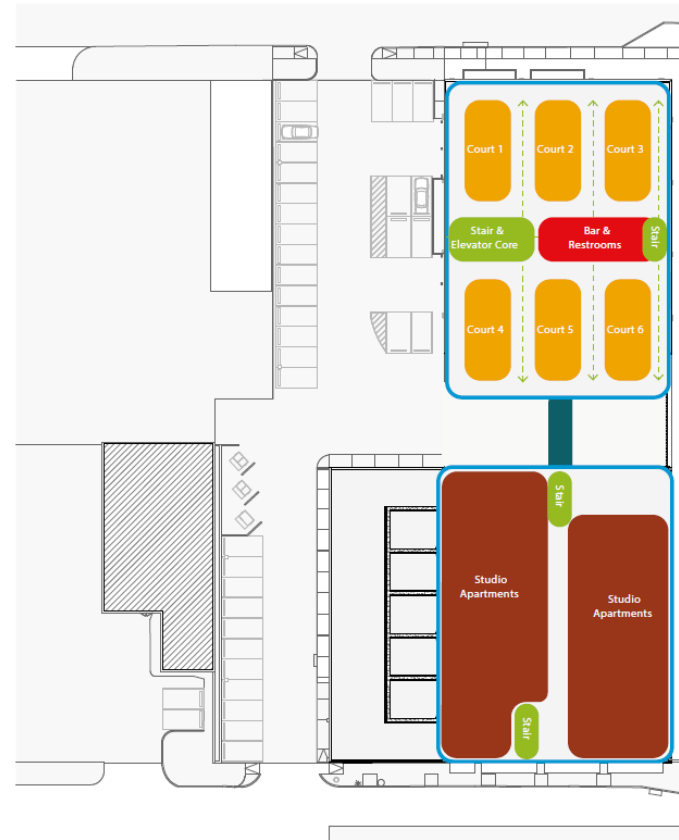
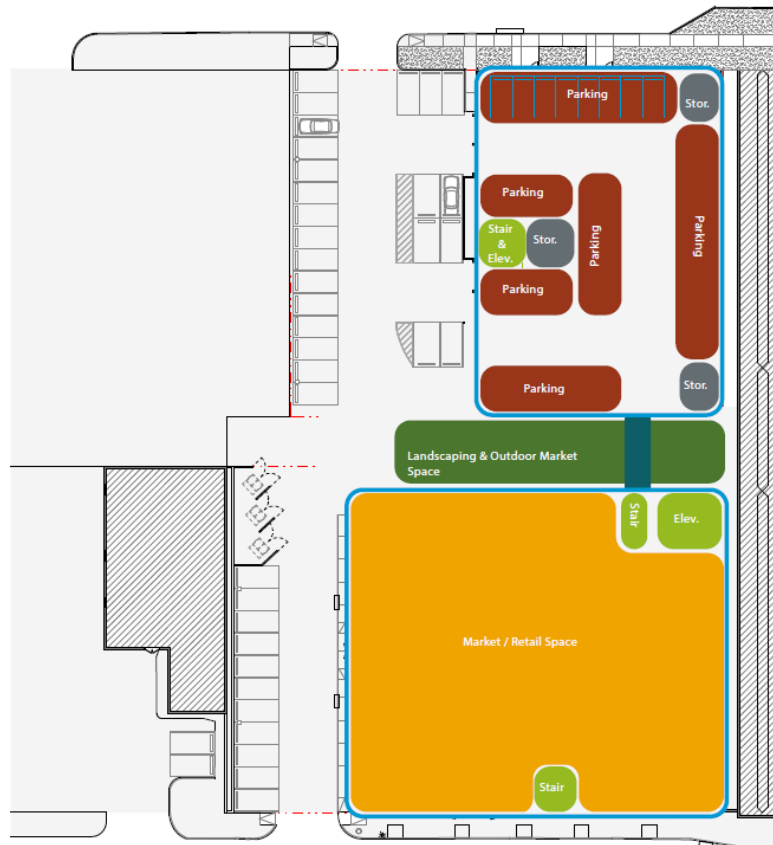
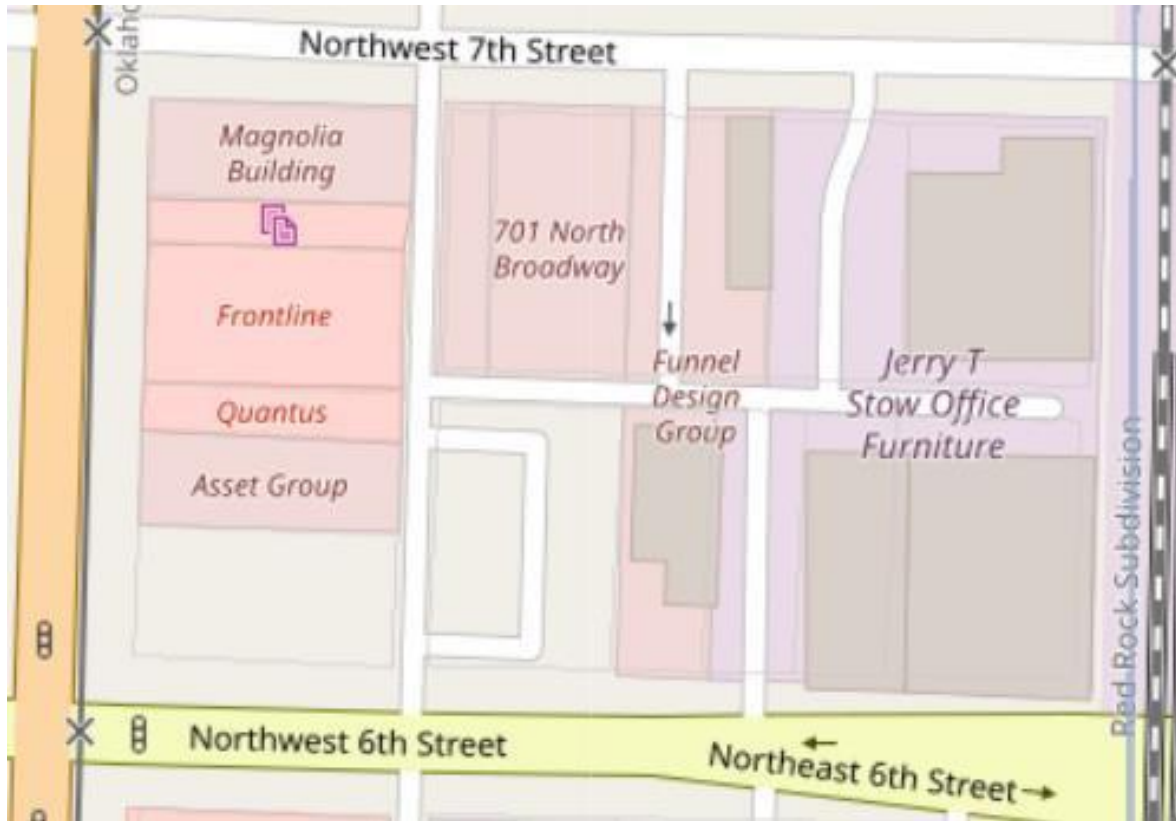


EXHIBIT C
MAP AND LEGAL DESCRIPTION



Lots Twenty (20) through Twenty-Six (26), both inclusive, and Lots Thirty-Three (33) through Forty (40), both inclusive, in Block Thirteen (13), of the SUPPLEMENTAL PLAT OF OKLAHOMA CITY, Oklahoma County, Oklahoma, according to the recorded plat thereof.

[Signature Page for The Developer]

"DEVELOPER"
LIBERTYBELLOK, LLC

By: _____

Jonathan Dodson, Manger

ACKNOWLEDGEMENT

STATE OF Oklahoma)
) ss.
COUNTY OF Oklahoma)

Before me, the undersigned, a Notary Public in and for said County and State, on the 11th day of December, 2023, appeared Jonathan Dodson of Libertybellok, llc, to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of said corporation for the uses and purposes therein set forth.

Given under my hand and seal of office the day and year last above written.

Jamie Ratchford
NOTARY PUBLIC (SEAL OF OKLAHOMA)



My Commission Number: 21001373

My Commission Expires: 01/29/25

[Signature Page for the Oklahoma City Economic Development Trust]

APPROVED by the Trustees and **SIGNED** by the Chairman of the Oklahoma City
Economic Development Trust this 5TH day of JANUARY, ~~2023~~ 2024.

“TRUST”

ATTEST:

**OKLAHOMA CITY ECONOMIC
DEVELOPMENT TRUST**, a public trust

Amy K. Simpson
Secretary



Ted B. [Signature]
Chairman

REVIEWED for form and legality.

Amy Douglas
Assistant Municipal Counselor

[Signature Page for The City of Oklahoma City]

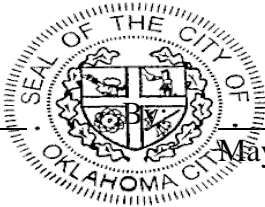
CONCURRENCE by the Council and **SIGNED** by the Mayor of The City
of Oklahoma City this 16TH day of JANUARY, ~~2023~~ ²⁰²⁴

“CITY”

ATTEST:

THE CITY OF OKLAHOMA CITY,
a municipal corporation

Amy K. Simpson
City Clerk



David Holt
Mayor