

INTERCREDITOR, SERVICING AND SUBORDINATION AGREEMENT

This Agreement is executed by and between BANCFIRST (the "Bank") and THE CITY OF OKLAHOMA CITY (The "City"), a municipal corporation, existing under the laws of the State of Oklahoma.

WHEREAS, the Bank and The City have agreed to separately fund a loan (collectively, the "Loan") to JRB CITIZEN LLC, (the "Borrower") in the aggregate amount of Forty Three Million, Five Hundred Thousand Dollars (\$43,500,000), using private Bank loan funds in the amount of Forty Two Million, Seven Hundred Fifty Thousand Dollars (\$42,750,000), and funds from The City in the amount of Seven Hundred Fifty Thousand Dollars (\$750,000), from a Supplemental Community Development Block Grant (CDBG) awarded by the U.S. Department of Housing and Urban Development (HUD); said funds were provided by HUD to assist The City in economic recovery from the bombing of the Alfred P. Murrah Building; and

WHEREAS, The City's share of the aggregate Loans to the Borrower shall not exceed Seven Hundred Fifty Thousand Dollars (\$750,000), and The City and Bank shall each separately document their respective Loans to the Borrower; and

WHEREAS, The City's Loan, and the repayment thereof, shall at all times be subordinated in all respects to the Bank's Loan, and repayment thereof; and

WHEREAS, The City shall pay a loan servicing fee to the Bank from The City's interest earned on the Loan, pursuant to the terms herein.

NOW THEREFORE, the Bank and The City agree as follows:

1. The City shall provide funds from its Supplemental CDBG Economic Development Program and from no other funds for its Loan in the amount of Seven Hundred Fifty Thousand Dollars (\$750,000). Borrower shall have the right to receive such funds only pursuant to the terms and conditions of that certain Loan Agreement of even date herewith, by and between The City and the Borrower (the "Loan Agreement"), and in accordance with the Act (as defined in the Loan Agreement), and then, only to the extent supplemental Community Development Block Grant Funds (the "Funds") are made available to The City by HUD. Should anticipated sources of Funds become unavailable to The City, The City shall, within a reasonable time not to exceed ten (10) business days, notify Borrower in writing of such unavailability of funds, and The City shall be released from all contractual liability for that portion of the Funds to be advanced to Borrower by The City under the Loan Agreement (and Promissory Note executed in connection therewith) which have not been received by The City. Borrower understands and acknowledges that if The City is unable to advance the Funds to the Bank on behalf of the Borrower for its share of the Loan, the Bank will be under no obligation to advance its portion of the Loan to the Borrower.
2. Funds advanced by The City under the terms of the Loan Agreement will be evidenced by

a Promissory Note effective of even date therewith (the "Note"), and may be secured by a Mortgage (the "Mortgage") covering certain property located in Oklahoma City, Oklahoma County, Oklahoma, as more particularly described in the Mortgage, as well as other security documents (the Loan Agreement, Promissory Note, Mortgage, Personal Guaranty and all documents executed in connection therewith shall hereinafter be referred to collectively as the "Loan Documents"). Loan proceeds from the City in the amount of \$750,000 will be deposited with the Bank at closing. The Bank will disburse the City's Loan funds to Borrower within five (5) business days after Bank's receipt of such funds from Lender, and prior to advancing the construction loan financing. The total aggregate financing is \$43.5 million, with BancFirst providing 98.28% of the total financing and the City providing 1.72% .

3. The interest rate specified for The City's Loan shall be three-eighths of one percent (.375%) per annum, and the term thereof shall be for a period of fifteen (15) years. All payments of The City's Loan shall be paid by the Borrower directly to the Bank. Payments of accrued and unpaid interest shall begin on the 1st day of the month following the first full month after the first advance of Loan proceeds is made to Borrower, and shall be made on the 1st day of each month thereafter for a period of twelve (12) months. Fully amortized payments of principal and interest shall begin on the 1st day of the thirteenth month following the first full month after the first advance of Loan proceeds is made to Borrower, with equal monthly payments of *Four Thousand Five Hundred Eighty-Three and 20/100 Dollars (\$4,583.20)* due on the 1st day of each month thereafter for *fourteen (14) years* until paid in full, or not later than December 31, 2038, whichever shall sooner occur. All payments shall be applied first to payment of accrued interest and the remainder to the reduction of principal.

4. The Three-eighths of one percent (.375%) interest rate charged to the Borrower for The City's Loan shall be retained by the Bank as a Loan Servicing Fee (the "Servicing Fee"), and shall be collected by the Bank from each monthly loan payment made by or on behalf of the Borrower.

5. The Bank shall remit The City's monthly Loan payments (less the Servicing Fee) when such payments accumulate to One Thousand Dollars or more, or monthly if such payments exceed One Thousand Dollars.

6. The Bank shall exercise the same care with respect to the Loan Documents as it exercises with respect to collateral and Loan Documents relating to the Loan made for its own account. No implied covenants or obligations shall be read into this Agreement against the Bank, but the duties and obligations of the Bank shall be determined solely by the express provisions of this Agreement. The relationship of the Bank, on the one hand, and The City, on the other hand, shall be that of agent and principal respectively. The Bank shall be obligated to perform express duties, covenants, and obligations as agent hereunder in good faith in accordance with the terms set forth herein, but shall not be deemed to have any other fiduciary duty. Neither the Bank nor any of its respective directors, officers, attorneys, agents or employees shall be liable for any action taken or omitted to be taken by it or them hereunder, or in connection herewith or in connection with the Loan Documents, except for its or their own gross negligence, willful misconduct or bad faith.

7. The City, as lender under the Mortgage and other Loan Documents, hereby acknowledges

and agrees that the Mortgage and other Loan Documents are and shall be subject and inferior in priority to any mortgage, security interest or other collateral held by the Bank in respect to the Loan. This Agreement shall be binding upon The City and its successors and assigns, and shall operate to the benefit of the Bank, and Bank's successors and assigns and any purchaser at any foreclosure sale instituted pursuant to any mortgage held by the Bank. The City agrees to execute such other reasonable documentation as may be required by legal counsel for Bank to evidence the agreement of the parties; subject to legal review and consent of The City

8. Upon becoming aware of any event of default under the Loan Agreement, the Bank shall promptly notify The City, in writing, of any action that the Bank intends to take to foreclose its Loan, or of any action proposed to mitigate the Loan default. The Bank hereby agrees to take any and all action requested by The City; provided, however, that in no event shall the Bank be required to take any action where, in its opinion, such action will be likely to involve it in expense or liability (the "Bank's Expenses"), unless tendered security and indemnification satisfactory to the Bank against any and all costs, expenses and liability by The City, and provided further, that in no event shall the Bank be required to take any action which, in its opinion, may be contrary to applicable law or regulation. "Bank's Expenses" shall mean all the out-of-pocket costs and expenses (including, but not limited to, all attorneys' fees) incurred by the Bank in connection with (a) preparing, filing and recording this Agreement and the Loan Documents; (b) enforcing or attempting to enforce collection of any of the indebtedness evidenced by the Loan Documents (the "Indebtedness"); and (c) curing any default, or any event which with notice or the passage of time would become a default, under the terms of any of the Loan Documents; and all interest accrued with respect to the foregoing.

9. Any notice, demand or request required under this Agreement shall be given in writing at the addresses set forth below by personal service or registered or certified mail, return receipt requested. The addresses may be changed by notice to the other party given in the same manner as provided above. If notice is given by mail, it shall be deemed received on the earlier of: (a) receipt as shown on the return receipt, or (b) three (3) days after its deposit in the U.S. mail.

To Bank:	BANCFIRST Attn: Brian Blundell 100 North Broadway, Fourth Floor Oklahoma City, OK 73102
To The City:	THE CITY OF OKLAHOMA CITY Planning Department Attn: Community Development Director 420 West Main, Suite 920 Oklahoma City, OK 73102
And To:	THE CITY OF OKLAHOMA CITY Office of the City Clerk 200 N. Walker Avenue, 2 nd Floor

10. The Bank shall not be bound to ascertain or inquire as to the performance or observance by any party of any of the terms of any of the Loan Documents. The Bank shall not be responsible to The City for the value, legality, validity, sufficiency, priority, perfection, enforceability or effectiveness of the Loan Documents or of any collateral, security interest, or pledge, given to or held by the Bank thereunder or hereunder, or for the performance or observance by any other party of any of the terms of any of the Loan Documents or this Agreement. The Bank in its capacity as an agent hereunder, and under the Loan Documents, shall have the same rights and powers hereunder as The City. The Bank may accept deposits from, lend money to and generally engage in any kind of banking, trust or other business with the Borrower as if it were not acting as the agent for The City.

11. Notwithstanding anything contained herein to the contrary, all funds received by the Bank, including, without limitation, any of the following fund sources:

- A. Revenues from any of the collateral received by the Bank for application to the Indebtedness;
- B. All proceeds of the sale (whether voluntary by the Borrower or not) or foreclosure of any of the collateral (including proceeds with respect hereto received by either the Bank or The City, in reorganization or bankruptcy proceedings);
- C. All insurance proceeds or proceeds from condemnation with respect to the collateral; or
- D. All proceeds of or revenues from the collateral in the possession or control of either the Bank or The City which are offset against any portion of the Indebtedness.

shall be distributed first to payment of the Servicing Fee, then to the repayment of all indebtedness owed to the Bank by the Borrower, and lastly to the indebtedness owed by the Borrower to The City.

12. The City represents, warrants and covenants to the Bank that:

- A. In making its decision to enter into this Agreement and to make The City's Loan,
 - (1) It has independently taken whatever steps it considers necessary to evaluate the financial condition and affairs of the Borrower,
 - (2) It has made an independent credit judgment to enter into the Loan and accept the Loan Documents,
 - (3) It has not relied upon any representations or warranties, whether expressed or

implied, by the Bank, with respect to the legality, execution, validity, sufficiency, enforcement or collectability of the Loan, and

(4) The Bank shall not be responsible for any statements and/or omissions from any documents received by the Bank or The City from the Borrower or concerning the Borrower which the Bank has distributed or shall distribute to The City pursuant to this Agreement, nor shall The City be responsible for any statements and/or omissions from any documents received by the Bank or The City from the Borrower or concerning the Borrower which the Bank has distributed or shall distribute to the Bank pursuant to this Agreement.

B. So long as any portion of The City's Loan remains outstanding, The City shall continue to make its own independent evaluation of the financial conditions and affairs of the Borrower.

13. The City hereby acknowledges that the Bank owns its own loan documents in connection with the Bank's Loan, as a separate independent creditor of the Borrower. In the event of bankruptcy, reorganization or insolvency proceedings with respect to the Borrower, the Bank (a) shall pursue its own separate claims; (b) may serve on creditors' committees; and (c) except as otherwise prohibited hereby, may join with other creditors (including The City) in filing claims and petitions against the Borrower; provided, however, that the proceeds of any such claims in any such proceeding shall be distributed in accordance with this Agreement.

14. This Agreement shall be a contract made under and governed by the laws of the State of Oklahoma and the United States of America. This Agreement may be amended only in writing, and signed by the Bank and The City. This Agreement shall inure to the benefit of, and shall be binding on, the parties hereto and their respective successors and assigns. The Loan Documents may not be assigned by The City or the Bank without the prior written consent of the other party.

This Agreement is executed this 23RD day of MAY, 2023.

BANCFIRST

By: 

Brian Blundell, Senior Vice President

ATTEST:
Amy K. Simpson
City Clerk



Tom Stone
Vice-Mayor

APPROVED as to form and legality.

Peta G. Douglas-Gally
Assistant Municipal Counselor