

**CRESTON PARK AFFORDABLE HOUSING PROJECT  
ECONOMIC DEVELOPMENT AGREEMENT  
PHASE ONE**

**between**

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

**and**

**COMMUNITY ENHANCEMENT CORPORATION,  
an instrumentality of the Oklahoma City Housing Authority**

## **Economic Development Agreement**

THIS AGREEMENT between the Oklahoma City Economic Development Trust (“OCEDT” or “Trust”) and Community Enhancement Corporation (“Developer”), an instrumentality of the Oklahoma City Housing Authority and a 501(c)(3) nonprofit corporation, is made effective as of the date of approval by the Trust pursuant to Section 5.2 herein.

### **WITNESSETH:**

**WHEREAS**, the City of Oklahoma City (“City”) is an Oklahoma municipal corporation operating under a City Charter and the laws of the State of Oklahoma; and

**WHEREAS**, OCEDT, a public trust whose sole beneficiary is the City, was created in part to assist the City with the promotion of economic and community development and redevelopment projects, in particular those projects which involve substantial capital investments and the creation and retainage of jobs and employment opportunities within Oklahoma City; and

**WHEREAS**, the City and OCEDT have determined that it is in the best interest of the City and its citizens to promote, and when deemed appropriate, incentivize economic and community development and redevelopment; and

**WHEREAS**, the City and OCEDT wish to support redevelopment and investment in the urban core of the City by providing affordable housing incentives which provide housing for a segment of the Oklahoma City workforce for which it is difficult to find affordable housing; and

**WHEREAS**, on September 12, 2017, the citizens of Oklahoma City voted in favor of the City issuing General Obligation Limited Tax Bonds (“GOLT Bonds”) for economic and community development purposes. In compliance therewith, the City has adopted a Strategic Investment Program providing for a portion of those bond funds to be used specifically for creation or expansion of affordable housing projects; and

**WHEREAS**, City staff received an application from the Developer seeking assistance in the amount of \$1,250,000 to support the construction of Phase I (of three phases) of the Creston Park Neighborhood Affordable Housing Project (“Project”) which will provide 170 newly constructed Affordable Housing Units in a new urban neighborhood built to replace the existing Northeast Duplexes located at NE 28<sup>th</sup> Street and Martin Luther King Avenue; and

**WHEREAS**, all three phases of the Project are estimated to cost more than \$130,000,000 and will consist of the demolition of 159 existing structures in poor condition; the construction of approximately 588 Affordable Housing Units including 370 new family homes consisting of a mix of townhomes, flats, and four-plex cottages; construction of a senior healthcare campus with 95 affordable assisted living units and 64 memory care beds; construction of a 10,000 square foot commercial space that will be built out as a retail incubator and workforce development program; a central hub consisting of a property community center; a nationally-designated family resource

center; an education center for distance and online learning for both children and adults; and construction of a 60-unit senior independent living facility; and

**WHEREAS**, after reviewing the financial information provided by the Developer, staff from the City and the Alliance for Economic Development of Oklahoma City as well as the Affordable Housing Review Committee, believe the Project would not be possible without public assistance due to the significant cost of the development and the revenue constraints of the Developer; and

**WHEREAS**, the City and OCEDT have approved an allocation in the amount of \$1,250,000 from the GOLT Bond proceeds and/or investment income for a proposed Economic Development Agreement with the Developer in accordance with the GOLT Bond Affordable Housing Program adopted by OCEDT and the City Council and the laws of the State of Oklahoma; and

**WHEREAS**, the Trust deems it appropriate, subject to concurrence by the City Council, to approve the execution of this Economic Development Agreement which provides for implementation of the Project because approval of the Agreement is in the best interest of the City and will benefit the health, safety, and welfare of the citizens of both the City and the State of Oklahoma through the creation and establishment of more than 170 new affordable housing units in an opportunity area of Oklahoma City.

**NOW, THEREFORE**, in consideration of the promises and mutual obligations herein set forth, the parties hereby covenant and agree 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 Economic Development Agreement as may be amended and in effect from time to time.
- 1.2 “Affordable Housing Units” for purposes of this agreement means housing units targeting households making 60% or less of the Area Median Income (“AMI”).
- 1.3 “Area Median Income” means the midpoint of the region’s income distribution as established by the U.S. Department of Housing and Urban Development (“HUD”) for Oklahoma City for purposes of setting income limits that determine eligibility for assisted housing programs.
- 1.4 “Developer” means the Community Enhancement Corporation, an instrumentality of the Oklahoma City Housing Authority. Developer is a 501(c)(3) nonprofit corporation engaged in public housing support services whose mission is to provide decent, safe and sanitary housing to persons of lower income.

- 1.5 “The City” means the City of Oklahoma City, Oklahoma, a municipal corporation.
- 1.6 “General Manager” means the General Manager of the Oklahoma City Economic Development Trust.
- 1.7 “Maximum Total Incentive” means the affordable housing incentive to be paid to Developer under this Agreement, which amount shall not exceed \$1,250,000.
- 1.8 “Project” is Phase I of the three-phase Creston Park Neighborhood Affordable Housing Project, which consists of the construction of 170 Affordable Housing Units at the Property, as generally described in Section 3.1.
- 1.9 Project Completion Date. Date by which all construction shall be complete and a Certificate of Occupancy has been issued by the City of Oklahoma City. That date shall be December 31, 2025.
- 1.10 “Project Manager,” unless otherwise indicated, means the City’s Economic Development Project Manager, Joanna McSpadden. The City shall inform Developer of any change in the designee by correspondence and may change said designation from time to time.
- 1.11 “The Property” is the land and improvements located at NE 28<sup>th</sup> and Martin Luther King Avenue which will be developed into the Creston Park Neighborhood Affordable Housing Project.
- 1.12 “Trust” or “OCEDT” means the Oklahoma City Economic Development Trust, an Oklahoma public trust.

## **SECTION 2. EFFECTIVE DATE AND TERM OF AGREEMENT**

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.

This Agreement shall become effective on the date approved by the Trust. The term of this Agreement shall be for a period of twenty (20) years following payment of the Maximum Total Incentive and may not be extended.

The Agreement will be deemed terminated by OCEDT in the event that the Developer, prior to payment of the affordable housing incentive in whole or in part, delivers written notice to the General Manager that it wishes to terminate the Agreement. The parties recognize that the deemed termination provision is critical to the Trust because this Agreement obligates very limited affordable housing monies that could be used for other eligible projects. In the event Developer is not able to reach its goal to complete the Project as set forth in this Agreement, the Trust desires to redirect its limited resources committed by this Agreement to another viable project.

### **SECTION 3. OBLIGATIONS OF THE DEVELOPER**

#### **3.1 Obligations of Developer – Construct 170 Affordable Housing Units.**

As consideration for the \$1,250,000 Maximum Total Incentive to be provided under this Agreement, Developer agrees to the following obligations and conditions:

(a) As required by the Joint Resolution, dated April 26, 2022 and August 30, 2022, Developer will comply with the following requirements:

1. Developer shall comply with all applicable federal regulations relating to Housing and Urban Development. Specifically, Developer shall comply with those regulations regarding the relocation of residents displaced by demolition or disposition, by a public housing authority, found at 24 CFR Sections 970.21(e)(1)(2) & (4).
2. Additionally, Developer shall submit monthly reports, due on the first calendar day of each month, to the Economic Development Project Manager with the information listed below:
  - i. Construction status of the Project
  - ii. Construction timeline and explanation of any delays
  - iii. Construction budget compared to actual expenditures
  - iv. Current occupancy status of Creston Park tenants
  - v. Number of tenant contacts for preceding month
  - vi. Number of households eligible for relocation benefits
  - vii. Number of households by choice of relocation method (TPV, Public Housing, etc.)
  - viii. Number of households moving back into the new property
  - ix. Number of households not moving back into the property

(b) Developer agrees that for Phase I of the Project, Developer will make or cause to be made a minimum capital investment of approximately \$40,000,000 related to construction of 170 Affordable Housing Units by no later than the Project Completion Date. In order to qualify for the Maximum Total Incentive, Developer must document to the Project Manager that:

1. It has expended or caused to be expended at least \$40,000,000 on the Project. Developer may include all expenses for Phase I of the Project which were paid toward construction of the 170 Affordable Housing Units which may include its related costs for engineering and architecture, land acquisition, construction, equipment, fixtures and furniture.

While the parties mutually recognize that the \$40,000,000 investment amount is only an estimate, the parties agree that a substantial factor in determining the Maximum Total Incentive amount available under this Agreement is based on this investment cost. The parties agree that in the event the actual investment made by Developer is more than 10 percent less than the minimum investment of \$40,000,000, the Maximum Total

Incentive provided under this Agreement shall be reduced on a proportional basis. By way of example, if the actual capital investment expenditure is 11% less than \$40,000,000 then the Maximum Total Incentive allowed under this Agreement will be reduced by 1%. In the event the actual capital investment expenditure is 15% less than \$40,000,000, the Maximum Total Incentive allowed under this Agreement will be reduced by 5%. There will be no increase in the Maximum Total Incentive allowed in the event Developer's costs exceed \$40,000,000.

Prior to requesting the affordable housing incentive, Developer is obligated to provide the Project Manager with documentation supporting a minimum capital expenditure of \$40,000,000 in qualifying expenses as set forth in Section 3.1(b)(1) herein, for the 170 Affordable Housing Units in the Project. Within thirty (30) calendar days after the Trust, by and through the Project Manager (who may present such evidence to the trustees of the Trust for approval), has been provided with satisfactory evidence that Developer has completed the construction of 170 Affordable Housing Units (as evidenced by the issuance of a final certificate(s) of occupancy by the City) and that Developer has complied with the requirements set forth herein, the Trust, or the Project Manager on behalf of the Trust, will furnish to Developer a Certificate of Completion certifying that Developer has met the construction and development requirements for the Project.

Developer shall complete the Project by the Project Completion Date. In the event that the Developer is not able to complete the Project by the Project Completion Date, the Developer may request an extension on a one-time basis from the Project Manager, for a period of time not to exceed six (6) months. The request shall be in writing, shall explain the need for the extension, and shall be submitted to the Project Manager not less than 90 days prior to the Project Completion Date. Any further extensions shall only be allowed as approved in writing by the Trust, except pursuant to Section 8.4 herein.

2. Developer agrees that it will support its claim for the Maximum Total Incentive by submitting supporting records and documentation of its expenditures to the Project Manager.
- (c) Upon inspection by the Project Manager, the property shall appear to be kept in a reasonably clean, safe and well-maintained manner, with at least 75% of the units available for lease.
- (d) Additionally, Developer agrees to design, purchase and attach a plaque or monument to the Project in a location viewable by the general public which acknowledges the Incentive provided by the City and OCEDT. The proposed design and location shall be submitted to the Project Manager for approval, which approval shall not be unreasonably withheld.
- (e) All incentive payments will be made to Developer under its tax EIN. Developer must submit a completed W-9 to the Project Manager.

- (f) Developer agrees to commit the Property for use as Affordable Housing Units in accordance with the requirements contained in the Policy Regarding Affordability set forth in “Exhibit A.”
1. Developer agrees that during the term of this Agreement the rental rates for the Property shall not exceed the low-income housing tax credit (LIHTC) rent limits calculated for the Oklahoma City Metropolitan Statistical Area (OKCMSA) as annually determined by IRC Section 42(i)(3)(A) and published annually by Oklahoma Housing Finance Agency (OHFA).
  2. During the term of this Agreement, Developer shall annually, no later than January 1<sup>st</sup> of the following year, supply the Project Manager with compliance reports (“Annual Compliance Reports”) documenting that the Property is being operated in a manner consistent with the requirements set forth in “Exhibit A.” The Annual Compliance Reports shall include the number of units rented, the price of the unit, the number of occupants, and documentation of the incomes of the tenants in each unit. The documentation required herein shall contain information allowing a reasonable person to ascertain with reasonable certainty the household income of the tenants occupying the units at the Property. The Trust, by and through the Project Manager, reserves the right to request additional information that may be necessary for the Project Manager to reasonably ascertain income of the tenants and that the requirements contained in “Exhibit A” are being met. Such documentation may include the rental agreements executed by the tenants. Additional documentation may include any reports filed by Developer with the Oklahoma City Housing Authority (redacted to delete social security numbers and/or other personally identifiable information).
  3. In addition to the Annual Compliance Reports, beginning when construction starts and until 100% of the units are occupied, Developer shall be required to submit monthly reports to the Project Manager by the 15<sup>th</sup> of each month, with the following information to be provided: construction status of the Project; construction timeline and explanation of any delays; construction budget compared to actual expenditures; current occupancy status of Creston Park tenants; number of tenant contacts made in the preceding month by Developer; number of households eligible for relocation benefits; number of households by choice of relocation method (TPV, public housing, etc.); number of households moving back to Creston Park; and number of households not moving back to Creston Park.
  4. Developer agrees that the Maximum Total Incentive shall be subject to a claw back and/or liquidated damages for non-compliance with the provisions of “Exhibit A” under the following terms: Based on the Annual Compliance Reports submitted to the Project Manager, in the event Developer is out of compliance for any two years in a row, Developer agrees to repay to OCEDT an amount equal to 1/10<sup>th</sup> of the Maximum Total Incentive previously paid to Developer. This compliance requirement will be tested on an annual basis during the term of the Agreement. Within 30 days of the annual testing, the Project Manager, based on the previous year’s reports, shall submit a billing statement to Developer for the amount of the claw back/liquidated damages

claimed by OCEDT. Developer agrees to pay said claw back/liquidated damages within 30 days of receipt of said billing statement. This requirement shall be in effect during the entire term of this Agreement.

- (g) The Developer agrees and consents to make all of its “records”, as that term is defined in the Oklahoma Open Records Act, and related to the Project, available for examination and audit by the City Auditor for the City of Oklahoma City or such third-party auditor as hired at the sole expense of the City or Trust. Such “records” may include, but shall not be limited to, construction-related designs, plans, invoices, receipts; financial information verifying the amount of total capital expenditures made by Developer in relation to the Project; any information regarding the expenditure of the Maximum Total Incentive; records regarding Developer’s compliance with Section 3.1(a)(1) and (2).

#### **SECTION 4. OBLIGATIONS OF OCEDT**

##### **4.1 Obligation to pay Maximum Total Incentive.**

In consideration of the obligations of Developer, as set forth in Section 3.1 above, the Trust, consistent with its commitment to the City, agrees to pay Developer the Maximum Total Incentive from the 2017 General Obligation Limited Tax Bonds revenue and/or investment income an amount not to exceed \$1,250,000, subject to reduction through payment of claw back/liquidated damages as provided in in this Agreement. The incentive payment will be made upon certification by the Project Manager that the conditions set forth in Section 3.1 have been met.

##### **4.2 Certification of Completion**

Within thirty (30) calendar days after the Trust, by and through the Project Manager (who may present such evidence to the trustees of the Trust for approval), has been provided with satisfactory evidence that Developer has completed construction of 170 new units of affordable housing (as evidenced by the issuance of a final certificate(s) of occupancy by the City) near NE 28<sup>th</sup> St and Martin Luther King Ave. and that Developer has complied with the requirements set forth in this Agreement, the Trust, or the Project Manager on behalf of the Trust, will furnish to Developer a Certificate of Completion certifying that Developer has met the construction and development requirements for the Project.

#### **SECTION 5. CITY APPROPRIATION AND CONCURRENCE**

##### **5.1 Appropriation Requirement for funding received from the City.**

Developer acknowledges that all funding for the affordable housing incentive payment to Developer promised hereunder by OCEDT arises solely from the sale of taxable bonds approved by the voters of Oklahoma City, issued by The City, and apportioned and appropriated to OCEDT by The City.



All or a portion of the payments promised hereunder by the Trust will be financed or funded by monies received from The City, a municipal corporation. Financing or funding provided by or received from the City is 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.

The City acknowledges that OCEDT and Developer are relying on the City's continued commitment under the City's Affordable Housing Policy to apportion tax proceeds from the 2017 GOLT Bonds for the funding of the Affordable Housing component of the City's adopted Strategic Investment Policy. The City has not, and does not, make any commitment to appropriate funding, other than the GOLT bond funds already apportioned to the Affordable Housing component of the Strategic Investment Policy, from any other funds that might be available to the City to aid OCEDT to meet obligations under this Agreement. Under no circumstances does or shall the City incur any financial obligation to Developer under this Agreement. The City is simply a beneficiary of the Trust, and the Trust remains solely responsible for all financial obligations hereunder.

#### 5.2 City's Right to Advisory Concurrence with this Agreement – Effective Date.

As required by policy of the Council, the City is entitled to, and the parties hereby acknowledge the right of the City to concur, or not concur, with OCEDT in OCEDT's entering into this Agreement.

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.

### **SECTION 6. NOTICES AND DEMANDS**

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. 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.

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

Community Enhancement Corporation  
Attention: Mark Gillett  
1700 N.E. 4<sup>th</sup> Street  
Oklahoma City, Oklahoma 73117  
Email: mgillett@ochanet.org

with a copy to:

Vickie Buchanan  
McAfee & Taft  
8th Floor, Two Leadership Square  
211 N Robinson Ave  
Oklahoma City, OK 73102  
Email: Vickie.Buchanan@mcafeetaft.com

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

Craig Freeman, General Manager  
200 North Walker, 3rd Floor  
Oklahoma City, OK 73102  
Email: citymanager@okc.gov

with copy to:

City Clerk for the City of Oklahoma City (Trust Secretary)  
200 N. Walker, 2nd Floor  
Oklahoma City, OK 73102  
Email: cityclerk@okc.gov

AND

Amy Douglas  
Assistant Municipal Counselor  
200 North Walker Avenue, 4<sup>th</sup> Floor  
Oklahoma City, Oklahoma 73102  
Phone Number: 405-297-3793  
Email Address: amy.douglas@okc.gov

Or 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 7**

### **PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER**

#### **7.1     Representations as to Project.**

Developer represents and agrees that its undertakings pursuant to the Agreement are, and will be used, for the purpose of providing affordable housing at the Property in accord with “Exhibit A.” Developer further recognizes that the City believes in the:

- a) importance of the development of affordable housing at the Property to the general welfare of the community, including having affordable housing available to the general workforce near and around the Property; and
- b) the fact that 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 City.

The qualifications and identity of Developer, and its stockholders, or partners, whether general or limited, are of particular concern to the community and the Trust. Developer further recognizes that it is because of such qualifications and identity that the Trust is entering into this Agreement with Developer, and, in so doing, is further willing to accept and rely on the obligations of Developer for its faithful performance of all undertakings and covenants herein without requiring in addition a surety bond or similar instrument.

#### **7.2     Prohibition Against Transfer of Property and Assignment of Agreement.**

For the foregoing reasons, Developer represents and agrees for itself and its successors and assigns that:

- a) Except by way of security for, and only for (i) the purpose of obtaining financing necessary to enable Developer, an affiliate or subsidiary of Developer, or any successor in interest to the Property, or any part thereof, to perform its obligations under this Agreement, and (ii) any other purpose authorized by this Agreement (including but not limited to the leases to tenants contemplated by this Agreement);

For the term of the Agreement, Developer has not made and will not make or create, prior to the proper completion of its obligations under this Agreement or the termination of this Agreement, any total or partial sale, assignment, conveyance, or lease, of this Agreement or the Property, except to an affiliate or subsidiary of Developer or its parent company, without the prior written approval of the Trust, which approval shall not be unreasonably withheld, conditioned or delayed.

- b) The Trust shall be entitled to require, except as otherwise provided in the Agreement and as related to an affiliate or subsidiary of Developer or its parent company, as conditions to any such approval that:
- 1) Any proposed transferee/assignee shall have the qualifications and financial capability, as determined by the Trust, necessary and adequate to fulfill the obligations undertaken in this Agreement by Developer.
  - 2) Any proposed transferee/assignee, by instrument in writing satisfactory to the Trust and in form recordable among the land records, shall, for itself and its successors and assigns, and expressly for the benefit of the Trust, have expressly assumed all of the obligations of Developer under this Agreement and agreed to be subject to all the conditions and restrictions to which Developer 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 Trust) relieve or exempt such transferee, assignee or successor of, from such obligations, conditions, or restrictions, or deprive or limit the Trust of or with respect to 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 the Agreement or the Property, 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 Trust of or with respect to any rights or remedies or controls provided in or resulting from this Agreement that the Trust would have had, had there been no such transfer or change.
  - 3) There shall be submitted to the Trust for review all instruments and other legal documents directly regarding effecting transfer of this Agreement; and, if approved by the Trust, its approval shall be indicated to Developer in writing.
  - 4) Provided, that in the absence of specific written agreement by the Trust to the contrary, no such transfer or approval by the Trust thereof shall be deemed to relieve Developer, or any other party bound in any way by this Agreement from any of its obligations with respect thereto.

Notwithstanding anything to the contrary contained herein, it is expressly agreed upon by the parties that Developer may transfer or assign the Property and any interest therein or related thereto to an affiliate or subsidiary of Developer or its parent company.

## **SECTION 8 REMEDIES AND TERMINATION**

### **8.1     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 from the other, proceed immediately to cure or remedy such default or breach, and, in any event, within sixty (60) days 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 60 days of receipt of notice from the other party, the parties shall meet and confer in an attempt to amicably resolve that matter. In the event an amicable resolution is not achieved, the aggrieved party retains all rights and remedies as related to the uncured breach.

### **8.2     Termination by Developer.**

Without limitation to any other termination rights afforded to Developer pursuant to this Agreement, in the event that:

- a)     Developer shall furnish evidence satisfactory to the Trust that it has been unable, after and despite diligent efforts, to complete the construction of the Project;
- b)     The Trust or its Designee shall fail to perform any of its covenants or obligations to be performed hereunder or in any way breaches this Agreement, and any such failure shall not be cured within sixty (60) days after the date of written demand by Developer; or
- c)     Developer determines it is unable or unwilling to meet its obligations under this Agreement by sending written notice to the General Manager. (In such case the Trust obligation to further incentivize the affordable housing units created by Developer shall terminate on the date the notice is received.)

then this Agreement, or the relevant portion thereof, may, at the option of Developer be terminated by written notice thereof to the Trust. Except for any right of payments to Developer for incentives earned under this Agreement, neither the Trust, nor Developer shall have any further rights against or liability to the other under this Agreement with respect to the terminated portion thereof.

### **8.3     Termination by Trust.**

The Trust may terminate this Agreement in the event that:

- a)     The Developer shall fail to perform any of its covenants or obligations to be performed hereunder or in any way breaches this Agreement, and any such failure shall not be cured within sixty (60) days after the date of written demand by the Trust; or

- b) There is any change in the controlling interest to a third party not related to Developer or its subsidiaries, affiliates, parent companies, members or owners and with respect to the identity of the parties in control of Developer, which has not been approved by the Trust, if required.
- c) Any default or failure referred to in this Agreement shall not be cured within sixty (60) days after the date of written demand by the Trust; then this Agreement, and any future rights of Developer, or any assignee or transferee, in this Agreement, or arising therefrom with respect to the Trust, may, at the option of the Trust, be terminated by the Trust, in which event neither Developer (or assignee or transferee) nor the Trust shall have any further rights against or liability to the other under this Agreement.
- d) The City, for any reason, fails or refuses to appropriate and budget, on a fiscal year basis, sufficient funds from available funding sources to cover the financial obligations of the Trust under this Agreement.
- e) In the event that Developer fails to substantially create the required number of affordable housing units by the Project Completion Date plus any agreed upon extensions as set forth herein December 31, 2025.
- f) For any of the reasons set forth in Section 2 of this Agreement.

#### 8.4 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 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 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 reasonable 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, tornados, 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 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 party thereof in writing, and of the cause or causes thereof, and requested an extension for the period of the forced delay.

#### 8.5 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 9 GENERAL**

### **9.1 Trust Representatives not Individually Liable.**

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

### **9.2 Equal Employment Opportunity.**

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

(a) Developer will not discriminate against any employee or applicant for employment because of age, disability, race, color, religion, sex, gender, sexual orientation, or national origin. Developer will take appropriate legal action to ensure that applicants are employed, and that employees are treated during employment, without regard to their age, disability, race, color, religion, sex, gender, sexual orientation, 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. Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices required by law relating to such anti-discriminatory practices.

(b) Developer will, 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 age, disability, race, color, religion, sex, or national origin.

(c) The City and Trust agree and consent that administration and compliance enforcement of this provision is hereby delegated to the Project Manager.

### **9.3 Fair Housing Requirements.**

Developer, for itself and its successors and assigns, agrees that during this Agreement to comply with the Fair Housing Act (Title VIII of the Civil Rights Act of 1968) which prohibits discrimination on the basis of race, color, religion, sex or national origin in housing sales, rentals or financing.

#### 9.4 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 and expressly incorporated herein.

#### 9.5 Applicable Law, Severability and Entire Agreement.

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.

#### 9.6 Amendments to Agreement.

This Agreement may be changed 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.

#### 9.7 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.

#### 9.8 No Partnership Created.

Developer and Trust 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, nor does the relationship render any party liable for any of the debts or obligations of any other party.

#### 9.9 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.



9.10 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.

9.11 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. 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. “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.

9.12 Governing Laws, Construction and Enforcement.

This Agreement shall be construed and enforced in accordance with the laws and regulations of the State of Oklahoma, exclusive of its choice of law rules. Any litigation brought under this Agreement shall be conducted in the State of Oklahoma in State District Court in Oklahoma County or the Federal District Court for the Western District of Oklahoma.

9.13 Representation of Developer.

Developer represents and warrants to the OCEDT and the City that Developer is a duly organized and validly existing corporation, in good standing under the laws of the State of Oklahoma and that the undersigned representative has all requisite power and authority to execute and deliver this Agreement.

9.14 Compliance with Laws, Ordinances and Regulations.

Developer and Trust 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.

9.15 Counterparts.

This Agreement is executed in multiple counterparts, each of which shall constitute an original of this Agreement. Electronic pdf signatures shall be considered original signatures.

9.16 Conflicts of Interest.

The Developer warrants that neither it nor any of its agents, employees, and/or representatives has paid or given any money or other form of consideration to any agent, employee, or officer of the City of Oklahoma City or OCEDT in exchange for obtaining this Agreement and/or the incentive provided herein.

[Signatures follow]

[Signature Page for DEVELOPER]

COMMUNITY ENHANCEMENT CORPORATION,  
an instrumentality of the Oklahoma City Housing Authority

By: Mark W. Gillett  
Authorized Agent

ACKNOWLEDGEMENTS

STATE OF Oklahoma )  
 ) ss.  
COUNTY OF Oklahoma )

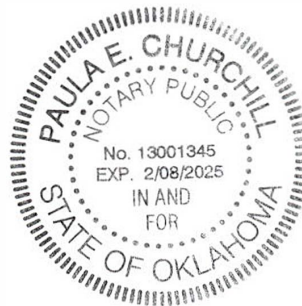
Before me, the undersigned, a Notary Public in and for said County and State, on the 25 day of January, 2024, personally appeared Mark W. Gillett, the President of Community Enhancement Corporation, to me known to be the identical person who executed the foregoing instrument and acknowledged to me that he or she executed the same as his or her free and voluntary act and deed, and as the free and voluntary act and deed of said corporation or entity for the uses and purposes therein set forth.

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

Paula E. Churchill  
Notary Public

Notary Public # 13001345

My Commission Expires: 2/8/2025



[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 \_\_\_\_\_ day of \_\_\_\_\_, 2024.

“TRUST”

**ATTEST:**

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

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
Chairman

**REVIEWED** for form and legality.

  
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 \_\_\_\_\_ day of \_\_\_\_\_, 2024.

“CITY”

ATTEST:

**THE CITY OF OKLAHOMA CITY,**  
a municipal corporation

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Mayor

## EXHIBIT A

### **AFFORDABILITY POLICY**

To comply with its charitable purpose of providing relief of the poor and distressed, the Developer shall commit this Property for use as housing meeting each of the following requirements:

- (1) At least 75% of the units shall be occupied by low-income residents, defined as persons earning less than 60% of the area median income ("AMI"), as established by the U.S. Department of Housing and Urban Development ("HUD").
- (2) Tenants shall be determined to be eligible using procedures consistent with the requirements established by HUD and similar to those used by the Oklahoma City Housing Authority ("OCHA") under its Admissions and Continued Occupancy Policy.
- (3) The Property must be kept occupied insofar as reasonably possible, allowing for necessary vacancies due to construction and/or renovation, but in no event to exceed a one-year period.
- (4) An increase in a Tenant's income shall not be grounds for lease termination. However, if a Tenant's income exceeds 140% of the applicable income limit, the next comparable unit that becomes available must be leased to someone under the income limits.

EXHIBIT B

**CHECKLIST**

This checklist is a summary of the required procedures and/or documents for the company submitting an incentive request to be considered valid. In order to expedite the review and payment process, it is recommended that the company requesting an incentive payment submit all required documents on this list. This sheet is for your convenience and is intended to assist in processing an incentive payment.

***Required Procedures/Documents***

Annual Submission deadline -60 days following end of Calendar Year (Section 3.1)		
<b>Capital Investment Documents</b>		<b>Attached?</b>
Contractor's Certification or other third-party documentation verifying total investment		
Documentation that the equity funds and all funds from the bridge loan have been used to pay for the rehabilitation of the Creston Park Neighborhood Affordable Housing Project		
<b>Annual Affordable Housing Documentation</b>		
Property Inspection by Project Manager		
Documentation that at least 75% of the available housing units at Creston Park Neighborhood Affordable Housing Project are occupied with qualified tenants as defined in Exhibit A		
<b>City Financial System Documents</b>		
Vendor registration form, ACH direct deposit form, invoice summarizing data for payment		