



**ALLEY'S END AFFORDABLE HOUSING DEVELOPMENT PROJECT
ECONOMIC DEVELOPMENT AGREEMENT**

between the

OKLAHOMA CITY ECONOMIC DEVELOPMENT TRUST,
a public trust,

and

ALLEY'S END, LP, an Oklahoma limited partnership

and

CHPALLY LLC

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**ALLEY'S END AFFORDABLE HOUSING DEVELOPMENT PROJECT
ECONOMIC DEVELOPMENT AGREEMENT**

THIS AGREEMENT by and between the Oklahoma City Economic Development Trust (“OCEDT” or “Trust”; Alley’s End, LP (“Developer”); and CHPALLY LLC (“Conduit Financier”), is made effective on the date approved by the Trust.

WITNESS:

WHEREAS, The City of Oklahoma City (“The 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 pursuant to 60 O.S. §176 *et seq.*, in part for the purpose of promoting and assisting The City with economic and community development projects and for economic development programs; 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 economic development programs; and

WHEREAS, The City and OCEDT currently wish to support development and investment in the urban core of the City by providing assistance in the form of affordable housing incentives to make possible the development of housing for a segment of the Oklahoma City work force that finds it difficult to locate and obtain adequate and affordable housing for jobs that pay at or below median income levels; and

WHEREAS, on September 12, 2017, the citizens of Oklahoma City approved Proposition No. 4 which authorized and provided for the issuance of \$60,000,000 in General Obligation-Limited Tax (“GOLT”) Bonds for the purpose of funding qualified economic and community development projects and economic development programs in accordance with and pursuant to the authority of Article X, Section 35 of the Oklahoma Constitution and 62 O.S. §800 *et seq.*; and

WHEREAS, approximately \$10,000,000 of the \$60,000,000 that was authorized by Oklahoma City voters on September 12, 2017, was designated by the City Council’s General Obligation – Limited Tax Bond Affordable Housing Program – Eligibility Criteria and Guidelines (“AFH Program”), for the support of affordable housing in Oklahoma City. Studies and evidence provided to the City and Trust establish the fact that the lack of affordable housing negatively impacts our local economy and is a problem for a wide range of workers; and

WHEREAS, City staff received a request from the Developer seeking assistance in the amount of \$2,000,000 to support the construction of a two hundred and fourteen (214) unit affordable housing apartment complex to be located at NW 4th and E.K. Gaylord Boulevard (the “Project”), that will target workforce households making no more than eighty percent (80%) of the Area Median Income, and which Project involves a Minimum Capital Investment by the Developer of approximately \$52,086,982; and

WHEREAS, effective on April 9, 2024, The City and OCEDT, by Joint Resolution, approved an allocation in the amount of \$2,000,000 from the 2017 General Obligation-Limited Tax Bonds proceeds and/or investment income for the Project and directed staff to negotiate an Economic Development Agreement in accordance with the AFH Program; and

WHEREAS, the \$2,000,000 is provided as a low-interest loan with a 20-year maturity date, subject to the terms of the Incentive Loan Agreement; and

WHEREAS, the Trust deems it appropriate to approve the execution of this Economic Development Agreement because it is in the best interest of The City and will result in a benefit to the health, safety, and welfare of its citizens and to the State of Oklahoma through the creation and establishment of 214 new and affordable workforce housing units in downtown Oklahoma City.

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

SECTION 1. DEFINED TERMS

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

- 1.1 Affiliate. “Affiliate” means an entity that directly or indirectly controls, is controlled by, or is under common control with Developer. The term “control” shall mean the ability to vote more than 50% of the voting securities of any entity or otherwise having the ability to direct the management and policies of any entity.
- 1.2 Agreement. “Agreement” means this Alley’s End Affordable Housing Development Project Economic Development Agreement with Exhibits A, B, C-1, C-2, D, E, F, G, and H as the same may be amended, modified and in effect from time to time, pursuant to the terms of this Agreement.
- 1.3 Area Median Income. “Area Median Income” means the midpoint of the region’s income distribution as established by the United States Department of Housing and Urban Development (“HUD”) for the Oklahoma City Metro FMR Area for purposes of setting income limits that determine eligibility for assisted/affordable housing programs.
- 1.4 City. “The City” means The City of Oklahoma City, Oklahoma, a municipal corporation.
- 1.5 Collateral Assignment of Loan Document. “Collateral Assignment of Loan Document” means the document executed between the Conduit Financier and the OCEDT which allows OCEDT to step into the shoes of the Conduit Financier upon

a default by the Developer of any of its repayment obligations pursuant to this Agreement and its Exhibits.

- 1.6 Conduit Financier. “Conduit Financier” shall mean CHPALLY LLC, an Oklahoma limited liability company wholly owned by Community Housing Partners of Oklahoma, Inc., an Oklahoma non-profit corporation.
- 1.7 Developer. “Developer” means Alley’s End, LP, an Oklahoma limited partnership.
- 1.8 General Manager. “General Manager” means the General Manager of the Trust.
- 1.9 Incentive Loan. “Incentive Loan” means the 20-year loan provided by OCEDT as an economic development program incentive for economic and community development purposes pursuant to the provisions 62 O.S. § 800, *et seq.* in the amount not to exceed \$2,000,000, as further defined and set forth in this Agreement.
- 1.10 Incentive Loan Agreement. “Incentive Loan Agreement” means that certain Loan Agreement to be entered into by OCEDT, Developer and the Conduit Financier in the form attached hereto as **Exhibit A**.
- 1.11 Incentive Loan Leasehold Mortgage. “Incentive Loan Leasehold Mortgage” means that certain Mortgage, Security Agreement, Assignment of Rents and Leases, and Fixture Filing to be made by Developer in favor of the Conduit Financier in the form attached as **Exhibit B** and provided as security for the Incentive Loan.
- 1.12 Incentive Loan Conduit Promissory Note. “Incentive Loan Conduit Promissory Note” means that certain Promissory Note to be made by Conduit Financier in favor of OCEDT in the form attached as **Exhibit C-1**.
- 1.13 1.11 Incentive Loan Developer Promissory Note. “Incentive Loan Developer Promissory Note” means that certain Promissory Note to be made by Developer in favor of Conduit Financier in the form attached as Exhibit C-2.
- 1.14 Indemnified Party. “Indemnified Party” means (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).
- 1.15 Maximum Total Incentive. “Maximum Total Incentive” means the Incentive Loan to be advanced to the Conduit Financier, and subsequently advanced to the Developer by the Conduit Financier pursuant to the Incentive Loan Agreement, upon completion of the Project pursuant to the terms of the Agreement, which amount shall not exceed \$2,000,000.

- 1.16 Minimum Capital Investment. “Minimum Capital Investment” means the \$52,086,982 in Developer’s costs associated with the Project to be constructed at NW 4th and E.K. Gaylord Boulevard, and constructing the Project including but not limited to documented: construction costs, architectural and engineering fees, equipment, fixtures, furniture and other reasonable hard and soft costs as approved by the Project Manager. The Project Manager shall determine the amount of Minimum Capital Investment made by the Developer on the Project, in accordance with Section 3.
- 1.17 Project. “Project” means the Alley’s End Affordable Housing Project, as generally described in the Concept Drawings attached hereto as **Exhibit D**. The Project includes the obligation by the Developer to construct 214 affordable housing residential apartments and other amenities on the Property, subject to the terms set forth in Section 8 of **Exhibit A** to this Agreement.
- 1.18 Project Completion Deadline. “Project Completion Deadline” is December 31, 2026 subject to Sections 3.1(a) and 10.4, below.
- 1.19 Project Manager. “Project Manager,” unless otherwise indicated, means the City’s Economic Development Project Manager. The City shall inform Developer of any change in the designee by correspondence and may change said designee from time to time, but the current Project Manager is Joanna McSpadden.
- 1.20 Property. “Property” means the real property owned by third parties not parties to this Agreement, which will be leased by Developer and upon which Developer will construct the Project. The Property is located NW 4th and E.K. Gaylord Boulevard in Oklahoma City, Oklahoma. The Property is legally described in **Exhibit E** attached hereto
- 1.21 Reasonable efforts. “Reasonable efforts” means, with respect to a particular goal, the efforts that a reasonable person in the position of the promisor or obligor would use to achieve that goal in a timely manner. Exercising Reasonable Efforts does not include taking any actions that would, individually or in the aggregate, cause the person making the promise or obligation to incur costs, or suffer some other detriment, out of reasonable proportion to the benefits to the person making the promise or obligation under this Agreement or making any expenditure that is disproportionate or unduly burdensome or that would cause a material adverse change to the person making the promise or obligation. Reasonable efforts do not include the initiation of litigation or arbitration.
- 1.22 Trust. “Trust” means the Oklahoma City Economic Development Trust (“OCEDT”), an Oklahoma public trust whose sole beneficiary is the City of Oklahoma City.

**SECTION 2.
TERM OF AGREEMENT
AND OTHER GENERAL TERMS**

The purpose of this Agreement is to set forth the terms and conditions under which the Project will be developed and for which public assistance will be provided. The term of this Agreement shall be for a period of twenty (20) years and may not be extended, unless earlier terminated pursuant to the terms set forth in this Agreement. Should the Developer not complete the Project by the Project Completion Deadline and no extensions have been granted by the Project Manager or Trust pursuant to Sections 3.1(a) and/or 10.4 herein, the Trust in its sole discretion may terminate this Agreement with no further obligation due to the Developer or Conduit Financier.

The parties recognize that this termination provision is critical to the Trust because the Trust has limited resources to promote economic and community development and to stimulate the construction of affordable housing for the growing workforce that the City and State of Oklahoma have encouraged, though a variety of economic development incentives. These incentives have made continued growth within the community possible and attractive to employers looking to expand or relocate to The City. Because affordable housing funds are limited, it is necessary to consider other qualifying projects should the Developer not be able to complete the Project by the Project Completion Deadline.

The above Whereas recitals are hereby incorporated into this Agreement and are binding upon the parties.

**SECTION 3.
OBLIGATIONS OF DEVELOPER**

3.1 Obligations of Developer – Construct the Project and Provide the Required Affordable Housing Units.

As consideration for OCEDT to advance the Incentive Loan to the Conduit Financier, Developer agrees to the following obligations and conditions:

- a. Developer shall make or cause to be made a Minimum Capital Investment of approximately \$52,086,982 related to construction of the Project by the Project Completion Date. In the event that the Developer is unable 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, explain the need for the extension, and be submitted to the Project Manager not less than 30 days prior to the Project Completion Date. Any further extensions shall only be allowed as approved in writing by the Trust in accordance with this Section 3.1(a) and/or Section 10.4 herein.

In order to qualify for the Maximum Total Incentive, Developer must document to the Project Manager that:

1. Developer has made a Minimum Capital Investment in the Project of at least \$52,086,982. Developer may include in the required documentation all expenses paid toward construction of the 214-unit multi-family affordable housing complex, including, but not limited to, reasonable construction costs, engineering and architecture costs, equipment, fixtures and furniture employed in the construction and furnishing of the affordable housing units, and other closing and hard and soft costs made in connection with the Project.

While the parties mutually recognize that the Minimum Capital Investment of at least \$52,086,982 is only an estimate, the parties recognize that a substantial factor in determining the Maximum Total Incentive amount potentially available under this Agreement is based on this amount. The parties agree that, in the event the actual investment made or caused by Developer is more than 10% less than the Minimum Capital Investment of \$52,086,982, the Maximum Total Incentive provided under this Agreement will be reduced on a proportional basis. By way of example, if the actual capital investment expenditure is 11% less than \$52,086,982, then the Maximum Total Incentive allowed under this Agreement will be reduced by 1%. In the event the actual Minimum Capital Investment is 15% less than \$52,086,982, 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 capital investment costs exceed \$52,086,982. The Developer shall be responsible for any cost overruns.

During the public approval process, the Developer presented updated sources and uses, as depicted below. Upon completion of the Project and before any funds from the Incentive Loan are advanced, the Developer agrees to provide a full accounting of the sources and uses. Based on the updated projections shown below, the Developer Fee in total is \$8,900,000, with the amount net of the Deferred Developer Fee totaling \$3,942,407. If the amount net of the Deferred Developer Fee increases, then the Incentive Loan shall be reduced by the same amount.

Development Funding (Sources)		Development Costs (Uses)	
LIHTC Equity	\$30,828,675	Construction Cost	\$39,075,000
OCEDT GOLT	\$2,000,000	Design	\$1,508,000
OCHFA ARPA	\$1,000,000	Financing	\$5,143,000
Permanent Mortgage	\$18,000,000	Soft Costs, Legal, Reserve	\$2,160,268
Deferred Developer Fee	\$4,957,593	Developer Cost	\$8,900,000
Total Sources	\$56,786,268	Total Uses	\$56,786,268

2. Developer shall support its claim for the Incentive Loan by submitting records, invoices and documentation, supporting the Minimum Capital Investment, to the Project Manager in accordance with this Agreement and the Incentive Loan Agreement. All Incentive Loan payments will be made to the Conduit Financier under its tax EIN. All Incentive Loan payments will then be advanced to the Developer by the Conduit Financier pursuant to the Incentive Loan Agreement. The Conduit Financier shall submit a completed W-9 to the Project Manager.
3. Developer shall meet the affordable housing conditions and loan terms set forth in **Exhibit A**. Developer shall provide supporting documentation to the Project Manager that the conditions set forth in Section 8 of **Exhibit A** have been attained and met.
4. Upon inspection by the Project Manager at any time during the term of this Agreement, the Property shall appear to be kept in a reasonably clean, safe and well-maintained manner.
5. The Developer shall provide to the Project Manager the Documents required in Section 5 below.
6. Developer shall design, purchase, and attach a plaque or monument to the Project in a location viewable by the general public. The plaque or monument shall acknowledge the Development Incentive provided by the City and the Trust. The proposed design and location of the plaque will be presented to the Project Manager who may offer timely comments about the design and location. The Developer agrees to consider the comments, if any, and implement them if reasonable.

SECTION 4.
CONDITIONS AND PROCESS FOR PAYMENT OF AFFORDABLE HOUSING
INCENTIVE

4.1 Conditions and Process for Payment of Incentive.

In consideration of the obligations of Developer, as set forth in Section 3 above, the Trust, consistent with its commitment to the City, its sole beneficiary, agrees to advance to the Conduit Financier an Incentive Loan from General Obligation-Limited Tax Bond revenue and investment income in an amount not to exceed \$2,000,000 for the Project in accordance with the terms set forth herein and as permitted pursuant to 62 O.S. § 802(5)(j). The Conduit Financier shall forward the Total Maximum Incentive to the Developer upon the terms set forth in the Incentive Loan Agreement. Neither the Trust nor the City shall have any obligation to pay the Total Maximum Incentive to any party other than the Conduit Financier. Should the Conduit Financier fail to forward the Total Maximum Incentive to the Developer, the Trust and/or City have no further

obligations to the Developer under this Agreement. The Incentive Loan will be provided and advanced upon certification by the Project Manager that the following conditions have been met.

- a. Documentation acceptable to the Project Manager that Developer has satisfied the Project Completion and Occupancy Requirement Condition. The “Project Completion and Occupancy Requirement Condition” means that (i) the Project has been completed (a Certificate of Occupancy has been issued by the City), and (ii) 25% of the Residential Units of the Project are occupied (*i.e.*, 54 of the 214 Residential Units of the Project are occupied).
- b. Upon inspection by the Program Manager, the Property shall appear to be kept in a reasonably clean, safe and well-maintained manner.
- c. Provide documentation as set forth in Section 5.1.

SECTION 5. SUBMITTAL OF VERIFICATION DOCUMENTS

5.1 Documentation for Verification of Expenditures Related to the Developer and the Project.

Prior to requesting the advance of the Incentive Loan, Developer is obligated to provide the Project Manager with documentation supporting the Minimum Capital Investment of \$52,086,982 and its sources and uses including the Developer Fee and Deferred Developer Fee, subject to the reductions in the Maximum Total Incentive as set forth in Section 3.1(a)(1) of this Agreement.

5.2 Documentation for Verification of Developer Meeting the Affordable Housing Requirements.

At all times while the Incentive Loan is outstanding, Developer shall provide the documentation required in the Incentive Loan Agreement.

SECTION 6. MAXIMUM TOTAL INCENTIVE AND TERMS OF LOAN

6.1 The total amount of the Incentive Loan to be advanced to the Developer, through the Conduit Financier, for the Project under this Agreement shall not exceed \$2,000,000.

6.2 The Trust agrees to provide the Incentive Loan to Conduit Financier, in an amount not to exceed \$2,000,000. The proceeds of the Incentive Loan will be advanced to the Conduit Financier upon meeting the conditions and criteria set forth in Sections 4.1 and 5.1. Before Developer, through the Conduit Financier, receives any funds from the Trust, it and/or the Conduit Financier must execute Exhibits A, B, C-1, C-2, and H. (the “Incentive Loan Documents”). The Incentive Loan Documents shall be executed at a closing which shall be at a time and place mutually agreed upon by the Project Manager, Developer and Conduit Financier, upon satisfaction of the conditions and criteria set forth in Sections 4.1

and 5.1 of this Agreement. A copy of the executed Incentive Loan Documents shall be filed in the office of the City Clerk as soon as practical after closing.

- 6.3 The Chairman of the Trust and Secretary are authorized and shall execute said Incentive Loan Documents upon approval and review by the Municipal Counselor's Office. Authorization for execution is provided in the attached **Exhibit G**.

SECTION 7. CONCURRENCE AND APPROPRIATION REQUIREMENTS

- 7.1 Financial Responsibility for Development Incentive and City's Concurrence.

Developer and Conduit Financier acknowledge that all of the funding for the Development Incentive arises solely from the sale of taxable bonds approved by the voters of Oklahoma City, issued by The City, and apportioned and appropriated to the Trust by The City. However, under no circumstances shall the City incur any financial obligation to Developer or Conduit Financier under this Agreement or its concurrence thereof. The City is simply a beneficiary of the Trust, and the Trust remains solely responsible for all financial obligations hereunder.

- 7.2 The Agreement is effective the date signed by the Trust. However, the Agreement is subject to the advisory concurrence of the City Council. Should the City Council have any concerns or request any amendments to the Agreement, the Trust, Developer and Conduit Financier shall meet and make any such reasonable requests of the City Council. If the Trust, Developer and Conduit Financier agree to the changes, they shall execute a written amendment to the Agreement.

SECTION 8. NOTICES AND DEMANDS

Any notice, request, demand, instruction, or other document to be given under this Agreement shall be in writing and shall either be: delivered in person; sent by FedEx or a similar overnight courier; sent by United States certified mail, return receipt requested, with postage prepaid, and addressed to the parties at the respective addresses below; or sent via 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 an acknowledgement). Delivery shall be effective (i) upon receipt if delivered in person prior to 5:00 p.m. local time at the address of the addressee, or on the next business day if delivered after 5:00 p.m. local time or on a Saturday, Sunday or legal holiday, (ii) one business day after having been delivered to FedEx or a similar courier for next-day delivery, (iii) five business days after mailing if mailed; or (iv) if emailed, upon recipient's written acknowledgement. A party may change its address by service of a notice of such change in accordance with this section.

For notices that are addressed or delivered personally to the Developer:

Alley's End, LP
Attention: Shawn Smith

222 E. Main St., First Floor
Oklahoma City, Oklahoma 73104
Email: ssmith@belmontdev.com

With copies to (attorney for Developer):

Polsinelli
Attention: Shawn Whitney
201 E. Las Olas Blvd, Suite 2250B
Fort Lauderdale, FL 33301
Email: Swhitney@polsinelli.com

WNC Holding, LLC
WNC Housing, L.P.
c/o WNC & Associates, Inc.
17782 Sky Park Circle
Irvine, CA 92614
Attention: Melanie Wenk

Holland & Knight LLP
10 St. James Avenue, 12th Floor
Boston, Massachusetts 02116
Attn: Jonathan Sirois, Esq.

ATEP ALLEY'S END-OK, LLC
c/o Advantage Capital
7733 Forsyth Blvd, Suite 1400
St. Louis, MO 63105
Attn: LIHTC Syndication Asset Management

For notices that are addressed or delivered personally to the Conduit Financier:

CHPALLY LLC
Attention: Roland J Chupik
7601 Tangle Vine Dr.
Edmond, OK 73034

With a copy to (attorney for Conduit Financier):

Donald B. Nevard
4800 North Lincoln Boulevard
Oklahoma City, Oklahoma 73105
Email: dnevard@derryberrylaw.com

For notices that are addressed or delivered personally to the Trust:

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

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

Craig Freeman, City 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
200 N. Walker, 2nd Floor
Oklahoma City, OK 73102
Email: cityclerk@okc.gov

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 9. PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER

9.1 Representations as to Project.

Developer and Conduit Financier represent and agree that their undertakings pursuant to the Agreement, are, and will be used, for the purpose of providing affordable housing at the Project location in accord with the terms of **Exhibit A**. Developer and Conduit Financier further recognize that the Trust believes in the:

- a. importance of the development of affordable housing to the general welfare of the community, including having affordable housing available to the general workforce near and around the Project;
- b. fact that a transfer of the majority ownership or stock in Developer to a third party that is not related to Developer or its subsidiaries, affiliates, parent companies,

members or owners, or any other act or transaction involving a third party that is not related to Developer or its subsidiaries, affiliates, parent companies, members or owners resulting in a change in the majority ownership of such stock, is for practical purposes a transfer or disposition of the property then owned or leased by Developer;

- c. 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 the faithful performance of all undertakings and covenants hereby by it to be performed without requiring in addition a surety bond or similar undertaking for such performance of all undertakings and covenants in this Agreement.

9.2 Transfer of Property and Assignment of Agreement.

For the foregoing reasons, Developer represents and agrees for itself and its successors, heirs and assigns that upon, any sale, assignment, or conveyance of the Property without the consent of the Trust to a party that is not related to Developer or its affiliates, subsidiaries, parent companies, members or owners, except in the case of a Purchaser Loan Assumption (as defined in **Exhibit A** to this Agreement), is not allowed. Should such an unauthorized transfer, sale, assignment or conveyance occur, the Incentive Loan will become due and penalties will apply in accordance with the terms and conditions set forth in **Exhibit A** to this Agreement and in the Incentive Loan Agreement.

SECTION 10. REMEDIES AND TERMINATION

10.1 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 within sixty (60) days after receipt of such notice. Developer's limited partners shall have the right, but not the obligation, to cure defaults on behalf of Developer.

10.2 Termination by Developer and/or Conduit Financier.

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

- a. Developer and/or Conduit Financier, prior to advancement of the Incentive Loan, shall furnish evidence satisfactory to the Trust that it has been unable, after and despite diligent efforts, to complete the construction of the Project; or

- b. The Trust or its Designee shall fail to perform any of its covenants or obligations to be performed hereunder, and any such failure shall not be cured within sixty (60) days after the date of written demand by Developer and/or Conduit Financier; or
- c. Developer and/or Conduit Financier determine, after advancement of the Incentive Loan, they are unable or unwilling to meet their obligations under this Agreement by sending written notice to the Project Manager. In such case the Trust shall be entitled to enforce its rights to enforce the terms of the Incentive Loan Documents;

then this Agreement, or the relevant portion thereof, may, at the option of Developer and/or Conduit Financier be terminated by written notice thereof to the Trust. In such case the Developer and/or Conduit Financier shall not have any further rights against the Trust under this Agreement with respect to the terminated portion thereof.

10.3 Termination by Trust.

The Trust may terminate this Agreement in the event that:

- a. Developer and/or Conduit Financier are in breach of this Agreement, including the terms of any of the Exhibits attached hereto, and fail to cure such breach within sixty (60) days after the date of written demand by the Trust; or
- b. Developer fails to meet the Project Completion and Occupancy Requirement by the Project Completion Date and no extensions pursuant to Sections 3.1(a) or 10.4 have been granted;
- c. Developer materially fails to comply with the Developer Compliance requirements set forth in Section 8 of the Incentive Loan Agreement, which agreement is attached hereto as **Exhibit A**.

10.4 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, nor Conduit Financier, 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, pandemics, epidemics, quarantine restrictions, strikes, freight, embargoes, labor or material shortages, supply chain disruptions, 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 such determination shall be subject to a commercially reasonable standard and shall not be unreasonably withheld, conditioned

or delayed; 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.

10.5 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 11. GENERAL

11.1 Trust Representatives not Individually Liable.

No individual member, official, or employee of the Trust or the City shall be personally liable to Developer and Conduit Financier, 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 Conduit Financier or successor on any obligations under the terms of the Agreement.

11.2 Equal Employment Opportunity.

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

- a. They will not discriminate against any employee or applicant for employment because of age, disability, race, color, religion, sex, gender, sexual orientation, or national origin. They 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. They agree to post in conspicuous places, available to employees and applicants for employment, notices required by law relating to such anti-discriminatory practices.

- b. They will, in all solicitations or advertisements for employees placed by or on behalf of Developer and Conduit Financier, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, or national origin.

The Trustees of OCEDT agree and consent that administration and compliance enforcement of this provision is hereby delegated to the Project Manager.

11.3 Titles of Articles and Sections.

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

11.4 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, and the exhibits attached thereto, set 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.

11.5 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.

11.6 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.

11.7 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.

11.8 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.

11.9 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.

11.10 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.

11.11 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.

11.12 Representation of Developer.

Developer represents and warrants to the OCEDT and The City that Developer is a duly organized and validly existing limited partnership, 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.

11.13 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.

11.14 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.

11.15 Indemnity.

Developer and Conduit Financier 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 ("Claims" and each a "Claim") 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 and/or Conduit Financier to perform the Developer's and/or Conduit Financier's obligations under this Agreement; or (4) any other occurrence on the Property, unless caused by the Trust's sole negligence or willful misconduct. In the event of concurrent negligence of any member of Developer, Conduit Financier and the Trust, such negligence will be apportioned comparatively in accordance with applicable law. If any action, suit, or proceeding is brought against any Indemnified Party by reason of any such occurrence, Developer and/or Conduit Financier will promptly, after the Indemnified Party's written request, defend such action, suit, or proceeding at Developer's and/or Conduit Financier's expense with legal counsel reasonably acceptable to the Indemnified Party.

11.16. Anti-Energy Discrimination.

As required by Oklahoma law effective November 1, 2022:

If (a) Developer has ten (10) or more full-time employees; and (b) this contract has a value of \$100,000 or more that is to be paid wholly or partly from public funds, Developer hereby certifies and verifies that its company does not boycott energy companies and will not boycott energy companies during the term of this Agreement.

For purposes of this Agreement, the term "company" shall mean a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit. The term "boycott energy company" shall mean "without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company (a) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil-fuel-based energy and does

not commit or pledge to meet environmental standards beyond applicable federal and state law, or (b) does business with a company described by subparagraph a of this paragraph”. See Title 74, Oklahoma Statutes Section 12002(A).

11.17. Prohibition Against Collusion.

The Developer and Conduit Financier hereby warrant that they, nor any of their agents, employees, partners, or contractors, have paid or agreed to pay the City of Oklahoma City, the Oklahoma City Economic Development Trust, or the Alliance for Economic Development of Oklahoma City, or any of those three entities’ employees, officers, trustees, board members and/or agents, any fee, commission, percentage, gift, or any other consideration in exchange for the award or making of this Agreement.

[Signature Page for Conduit Financier]

CHPALLY LLC

R. Chupik
By: Roland J. Chupik, Manager

ACKNOWLEDGEMENTS

STATE OF OKLAHOMA)
) ss.
COUNTY OF OKLAHOMA)

Before me, the undersigned, a Notary Public in and for said County and State, on the 17th day of AUGUST, 2024, personally appeared Roland J. Chupik, the Manager of CHPALLY LLC, 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.

Jenna Miller
Notary Public

Notary Public # 20011527

My Commission Expires: 9/20/24



[Signature Page for the Oklahoma City Economic Development Trust]

APPROVED by the Chairman and Trustees of the Oklahoma City Economic Development Trust.

“TRUST”

ATTEST:

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


ASST. SECRETARY




CHAIRMAN

Date Approved: 8-27-2024

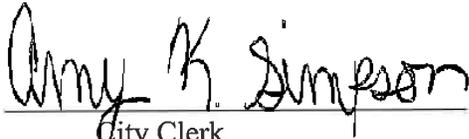
[Signature Page for The City of Oklahoma City]

ADVISORY CONCURRENCE by the Mayor and Council of The City of Oklahoma City.

“CITY”

ATTEST:

THE CITY OF OKLAHOMA CITY,
a municipal corporation



City Clerk





MAYOR

Reviewed for form and legality.



Assistant Municipal Counselor