

**AGREEMENT REGARDING RIGHT-OF-WAY ACQUISITION
AND SETTLEMENT OF CIVIL LITIGATION**

THIS AGREEMENT is made and entered into this ____ day of March, 2024, by and between the City of Norman, a municipal corporation (hereinafter “**City**”), and The Uplands Development Co., L.L.C., a limited liability company (hereinafter “**Owner**”) with reference to the following:

WHEREAS, the City is pursuing its construction of a project known as the 36th Avenue NW Bond Project (“**Project**”), which was approved as a bond project by Norman voters in August of 2012; and

WHEREAS, in connection with the Project, it is necessary for the City to acquire certain property owned by Owner, which property is described in the attached **Exhibit A** to this Agreement; and

WHEREAS, the parties to this Agreement were unable to reach an agreement for the City’s purchase of the Property and the City filed an eminent domain litigation in the District Court for Cleveland County on March 9, 2021, which case is styled as follows: *City of Norman v. The Uplands Development Co., L.L.C. et al.*, Case No. CJ-2021-227 (“**Litigation**”); and

WHEREAS, the Litigation produced a July 22 Commissioners’ Report of just compensation (“**Report**”) that was filed in the land records for Cleveland County, State of Oklahoma, while the City proceeded in its preparations for the Project; and

WHEREAS, the Owner sought a jury trial on the issues of damages and the parties voluntarily participated in mediation, which has resulted in this Agreement to fully and finally resolve all claims between the Parties regarding the City’s acquisition of the Property for the Project; and

WHEREAS, this Agreement sets forth the terms for the City’s acquisition of, and provision of consideration for, this acquisition of property, as well as the terms of Owner’s conveyance of the property, and all other alleged damages or claims related thereto; and

WHEREAS, the parties acknowledge that the matter of liability on all claims is a subject of dispute, and both enter into this Agreement as a means of potential resolution while reserving each party’s respective disputes.

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, and as reflected in the attached exhibits, the parties hereby agree as follows:

1. **Final Acquisition of the Property.** Owner has agreed to donate 50% of the Property to the City.¹ The parties have reached an agreed price per square foot for the City's paid acquisition of the remaining 50% of the Property. In order to facilitate the donation and acquisition as agreed, the following has and must further occur, as outlined:
 - a. **Survey of Property by Owner.** Owner has had performed a survey of the Property that has resulted in the legally sufficient identification of two separate portions of the Property, each comprising 50% of the total area demonstrated in **Exhibit A**; and
 - b. **Easement for Acquired Property.** For the 50% portion that will be acquired by the City at the agreed consideration set forth herein ("**Acquired Property**"), Owner has executed the Easement and exhibit(s) attached collectively hereto as **Exhibit B**. Owner's conveyance of this easement is expressly conditioned upon City Council's acceptance and the City's execution of this Agreement. At the time this Agreement is considered and/or approved by the City, the City shall also consider acceptance of this easement as a companion item, with acceptance and filing thereof conditioned upon the Court's approval of the parties' jointly-submitted Agreed Journal Entry which will finalize the disposition of the Property and the parties' claims in the Lawsuit ("**Final JE**"), which is attached hereto in substantially final form as **Exhibit C**; and
 - c. **Easement for Donated Property.** For the 50% portion that will be donated by the Owner ("**Donated Property**"), Owner has executed the Easement and exhibit(s) attached collectively hereto as **Exhibit D**. Owner's conveyance of this easement is expressly conditioned upon City Council's acceptance and the City's execution of this Agreement. At the time this Agreement is considered and/or approved by the City, the City shall also consider acceptance of this easement as a companion item, with acceptance and filing thereof conditioned upon the Court's approval of the parties' Final JE; and
 - d. **Temporary Driveway Easement.** Owner has executed the Temporary Driveway Easement and exhibit(s) attached collectively hereto as **Exhibit E**. Owner's conveyance of this easement is expressly conditioned upon City Council's acceptance and the City's execution of this Agreement. At the time this Agreement is considered and/or approved by the City, the City shall also consider acceptance of this easement as a companion item, with acceptance thereof conditioned upon the Court's approval of the parties' Final JE; and
 - e. **Release of Report.** Upon the Court's approval of the parties Final JE, and prior to filing the easements for the Acquired Property and Donated Property, attached hereto as Exhibits B and D, the City shall file a Release of Report of Commissioners, attached hereto in substantially final form as **Exhibit F** ("**Release**"). Approval of this Agreement shall constitute the City's approval and

¹ Any discrepancy resulting in less than a precise 50/50 split of the Property being purchased versus donated does not alter the amounts and values otherwise agreed to within this document.

direction to file the Release of record, expressly conditioned upon the Court's prior approval of the parties' Final JE.

2. **Consideration for Acquired Property.** The City shall, upon approval of this Agreement, acceptance and approval of the Easements attached as Exhibits B and D and/or any other companion items, and approval of the Final JE by the Court, deliver the following consideration to Owner as further set forth:
 - a. **Monetary Consideration.** In the context of this compromise settlement, the City hereby agrees to pay Sixteen Dollars and Twelve Cents (\$16.12) per square foot for the "value of the property taken," and no portion of this payment is attributable to damage or "injury to any part of the property not taken." *See Okla. Const. Art. 2 § 24 (see also, "in condemnation proceedings, the sole issue is fair market value of the property taken and damage to the remainder of the property, if any." State ex rel. Dept. of Transp. v. Lamar Advert. Of Okla., Inc., 2014 OK 47).* The City further acknowledges that, in the context of this compromise settlement, the Owner is also making a property donation of the Donated Property. Accordingly, City shall agree to entry of final judgment in the Litigation in Owner's favor in the amount of **ONE HUNDRED NINETY-NINE THOUSAND SEVEN HUNDRED SEVENTY-ONE AND 31/100 DOLLARS (\$199,771.31)**. Of this Amount, ONE HUNDRED FORTY-FIVE THOUSAND TWENTY-SEVEN AND 98/100 DOLLARS (\$145,027.98) is attributable to acquisition costs after deducting the \$185,000.00 Commissioners' Award previously paid into Court and disbursed to the Owner. The remaining FIFTY-FOUR THOUSAND SEVEN HUNDRED FORTY-THREE AND 33/100 DOLLARS (\$54,743.33) is attributable to Owners' claim for costs and attorney fees relating to the Litigation. No separate monetary compensation is attributable to the Temporary Driveway Easement attached as Exhibit E, and Owner acknowledges the receipt of other good and valuable consideration for the same; and
 - b. **Other Consideration.** Additionally, the City agrees that it will seek no recoupment based on the Donated Property, or of the total consideration paid for the Acquired Property, which is **THREE HUNDRED THIRTY THOUSAND TWENTY-SEVEN AND 98/100 DOLLARS (\$330,027.98)**, in the event of a purchase/taking of the subject properties from the City by any third party. The City further agrees that \$330,027.98 is its total acquisition costs for the Property in the event City seeks recoupment in the future, and that the City will not claim, nor attribute, any recoupment costs to the City's acquisition of the Donated Property now or in the future.
3. **Covenant by Owner.** Owner hereby represents, promises, and covenants that it is vested with the entirety of the legal ownership interest in the Property, subject to encumbrances or reservations of record and zoning requirements, and is legally capable of carrying out the obligations of, and has a legal right to the benefits flowing from, the terms of this Agreement.

4. **Release by Owner.** In further exchange for the Consideration by the City as set forth herein, and with the exception of any action to enforce the terms of this Agreement, Owner hereby agrees to fully and finally release City from any and all damages relating to any claims, in law or equity, known or unknown, they could have stated with respect to the matters resolved by this Agreement. Provided that it is understood and agreed that this release does not include any damages to the Acquired Property, Donated Property, or Owner which have not yet accrued and may accrue, occur or arise as a result of the actions or inactions of or on behalf of the City on or about the Acquired Property or Donated Property.
5. **Release by City.** In further exchange for the Consideration by the Owner as set forth herein, and with the exception of any action to enforce the terms of this Agreement, City hereby agrees to fully and finally release Owner from any and all damages relating to any claims, in law or equity, known or unknown, they could have stated with respect to the matters resolved by this Agreement, provided that it is understood and agreed that this release does not include any damages or claims which have not yet accrued and may accrue, occur or arise as a result of actions or inactions of or on behalf of Owner on or about the Acquired Property or Donated Property.
6. **Recoupment Acknowledgement.** The parties agree that any recoupment issue as to the Acquired Property, except as agreed herein, shall be reserved for further consideration or dispute should the Acquired Party become subject to recoupment by the City.
7. **Further Actions.** The parties agree to prepare, execute and deliver all documents, including unknown documents, as reasonably needed, and to perform all such further actions, as may be reasonably necessary, to effectuate the provisions of this Agreement and to complete the transaction contemplated herein and provided hereby.
8. **Advice of Counsel.** The parties represent that they have or could have been fully advised by independent legal counsel with respect to the legal effect of the terms of this Agreement and hereby execute the same with full legal knowledge of the terms, conditions, and covenants herein.
9. **Capacity for Agreement.** The parties hereby covenant and represent that its signatory party(ies) are vested with the authority to legally bind each party to the terms of this Agreement.
10. **Entire Agreement.** This document represents the entire agreement between the parties with respect to the matters addressed herein. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties concerning the subject matter of this Agreement are now merged herein. Except as may otherwise be provided herein, the terms of this Agreement are independent and severable. In the event any term or provision is determined to be unenforceable by a court of competent jurisdiction, the remaining terms and provisions shall continue to be of full force and binding effect. This Agreement shall not be amended expect through a written instrument signed by the parties.

11. **Assignability.** This agreement shall not be assigned, except by written agreement of the other party.
12. **Attorney Fees and Costs.** Except as specifically stated in Paragraph 2(a) of this Agreement, each party agrees that it is otherwise responsible for its own attorney fees and costs relating in any way to the Property, the Project, the easements described herein, and this Agreement. In any action filed to enforce the terms of this Agreement, the prevailing party shall be entitled to recovery of all attorneys' fees, costs, and expenses incurred in such action.
13. **Survival of Terms.** The terms and conditions of this Agreement will survive the execution and delivery of the conveyances or other rights and interests created by this Agreement.
14. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original for the purposes of this Agreement.

THIS AGREEMENT is effective the date and time first above written.

CITY OF NORMAN, OKLAHOMA,
A municipal corporation

Mayor Larry Heikkila

ATTEST:

City Clerk

APPROVED as to form and legality this _____ day of _____, 2024.

Office of the City Attorney

**THE UPLANDS DEVELOPMENT CO.,
L.L.C.**

By: _____
Russell Leon “Trey” Bates,
Managing Member

STATE OF _____, COUNTY OF _____, SS:

Before me, the undersigned, a Notary Public in and for said **Russell Leon “Trey” Bates** of **The Uplands Development Co., L.L.C.**, its **Managing Member**, to me known to be the identical person(s) who executed the foregoing **Agreement Regarding Right-of-Way Acquisition and Settlement of Litigation** and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

WITNESS my hand and seal this _____ day of _____, 20_____.

My Commission Expires: _____

Notary Public: _____