

October 27, 2021

WHEREAS, the City of Dallas (“City”) recognizes the importance of its role in local economic development; and

WHEREAS, many municipalities within the Dallas-Fort Worth region have economic development programs to compete with the City for new economic development projects; and

WHEREAS, investment decisions made by businesses, developers, and property owners are often significantly influenced by a municipality’s ability to provide an economic development incentive; and

WHEREAS, it is in the interest of the City to provide an incentive to support and secure the provision of affordable housing and an increase in economic development; and

WHEREAS, on June 9, 2021, City Council authorized the City: (1) elected to continue its participation in economic development incentives and approved an extension of its Public/Private Partnership Program (“P/PPP”) - Guidelines and Criteria, which established certain guidelines and criteria for the use of City incentive programs for private development projects, (2) established programs for making loans and grants of public money to promote local economic development and to stimulate business and commercial activity in the City pursuant to the Economic Development Programs provisions under Chapter 380 of the Texas Local Government Code, and (3) established appropriate guidelines and criteria governing tax abatement agreements to be entered into by City as required by the Property Redevelopment and Tax Abatement Act, as amended, (Texas Tax Code, Chapter 312) by Resolution No. 21-1052; and

WHEREAS, the City desires to support the development of new mixed-income and mixed-use project (the “One City View Project” or “Project”) which includes an approximately 80,000 square foot Kroger grocery store and 375 apartments located at 1823 North Hall Street (the “Property”), in accordance with the City’s P/PPP; and

WHEREAS, pursuant to the City’s P/PPP, the Project is located in a non-target area; and

WHEREAS, pursuant to the City’s P/PPP, the Project meets the minimum eligibility criteria for a mixed-use or residential project in a non-target area; and

WHEREAS, pursuant to the City’s P/PPP, a real property tax abatement higher than 50% may be offered to a project that significantly advances the public purpose of economic development; and

WHEREAS, the City finds that the Project will significantly advance the public purpose of economic development; and

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WHEREAS, Title 12 of the Texas Local Government Code, Section 378.002 requires that the designation of City of Dallas Neighborhood Empowerment Zone No. 19 (“City of Dallas NEZ No. 19”) promote: (1) the creation or rehabilitation of affordable housing in the zone, or (2) an increase in economic development in the zone, or (3) an increase in the quality of social services, education, or public safety provided to the residents of the zone; and

WHEREAS, the City finds that the creation of City of Dallas NEZ No. 19 will promote the creation of affordable housing and an increase in economic development in the zone, on approximately 5.4 acres of property located at 1823 North Hall Street in Dallas, Texas as further depicted on the map attached as **Exhibit A (Map)** and described in the metes and bounds legal description attached as **Exhibit B (Metes and Bounds - Legal Description)**; and

WHEREAS, the City finds that the designation of City of Dallas NEZ No. 19 benefits the public and is for the public purpose of increasing the public health, safety, and welfare of persons in the city of Dallas; and

WHEREAS, the City finds that the designation of City of Dallas NEZ No. 19 satisfies the requirements of the Property Redevelopment and Tax Abatement Act Section 312.202 in that the designation of the zone is reasonably likely to attract major investment in the zone that would be a benefit to the Property and that would contribute to the economic development of the city of Dallas; and

WHEREAS, Texas Local Government Code Chapter 378 empowers municipalities to enter into agreements abating municipal property taxes on property in the zone subject to the duration limits of the Property Redevelopment and Tax Abatement Act Section 312.204; and

WHEREAS, the City desires to enter into a real property tax abatement agreement for added value to real property located within an approximately 5.4 acre area within the proposed City of Dallas NEZ No. 19 as further described by the map attached as **Exhibit C (Map)** and by the metes and bounds legal description attached as **Exhibit D (Metes and Bounds - Legal Description)**; and

WHEREAS, in the context of the City’s Market Value Analysis, the Project is located within market type C (market type C reflects a relatively strong residential real estate market) and abuts market type G (market type G reflects a relatively weak residential real estate market in Dallas); and

WHEREAS, according to the United States Department of Agriculture Food Access Research Atlas, the Project is also located in an area characterized as a food desert (i.e. low-income census tract where more than 100 housing units do not have a vehicle and are more than ½ mile from the nearest supermarket); and

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WHEREAS, the Project is also located at the edge of a high opportunity area (i.e. census tract with a poverty rate of 20% or below). High opportunity areas are characterized as neighborhoods with strong economic, environmental, and educational outcomes, and recent research suggests that locating affordable housing in high opportunity areas appears to have a positive effect on the economic mobility of the residents; and

WHEREAS, the Economic Development Committee was briefed regarding this Project on September 21, 2021; and

WHEREAS, SEK Hall Street, LLC is a joint venture between the Property owner Kroger Texas L.P. (“Owner”) and the Property developer SE Hall Street Partners, LLC (Southeastern or SEDA) (“Developer”), collectively referred to as “Owner/Developer.”

Now, Therefore

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That the facts and recitations contained in the preamble of this Resolution are hereby found and declared to be true and correct.

SECTION 2. That the City designates approximately 5.4 acres of property located at 1823 North Hall Street in Dallas, Texas as further depicted on the map attached as **Exhibit A (Map)** and described in the metes and bounds legal description attached as **Exhibit B (Metes and Bounds - Legal Description)** as a neighborhood empowerment zone pursuant to Chapter 378 of the Texas Local Government Code to be known as City of Dallas NEZ No. 19 to promote the creation of affordable housing and an increase in economic development in the zone, establish the boundaries of the zone, and provide for an effective date.

SECTION 3. That the City Manager, approved as to form by the City Attorney, is hereby authorized to execute a real property tax abatement agreement with SEK Hall Street, LLC or an affiliate thereof (“SEK Hall Street”) for a period of ten years in an amount equal to the City’s taxes assessed on 90 percent of the increased taxable value of real property in conjunction with a new mixed-income and mixed-use development project (the “One City View Project”) to be situated on approximately 5.4 acres at 1823 North Hall Street (the “Property”) in City of Dallas NEZ No. 19, in accordance with the City’s Public/Private Partnership Program.

SECTION 4. That the approval and execution of the real property tax abatement agreement by the City is not conditional upon approval and execution of any other tax abatement agreement by any other taxing entity.

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SECTION 5. That the real property subject to the proposed tax abatement agreement shall be located entirely within City of Dallas NEZ No. 19 as depicted on the attached site map **Exhibit C (Map)** and as legally described in **Exhibit D (Metes and Bounds - Legal Description)**.

SECTION 6. That the tax abatement agreement shall include the following terms and conditions:

- (a) None of the property subject to either the real property tax abatement agreement is owned or leased by a member of the City Council of the City of Dallas or by a member of the City Plan Commission.
- (b) Development of the property shall conform to all requirements of the City's zoning ordinance and that the use of the property is consistent with the general purpose of encouraging development or redevelopment in the City of Dallas NEZ No. 19 during the period when the real property tax abatement is in effect.
- (d) **Minimum Private Investment.** Owner/Developer shall incur (or cause to be incurred) and provide documentation evidencing a minimum of \$80,000,000.00 in Private Investment Expenditures (**Exhibit E**) (which may also be referred to as building improvements and related hard and soft costs) for the Project, including off-site infrastructure, on-site preparation, building construction/finish-out/furnishings, site amenities, and professional fees (e.g. architecture, engineering, landscape architecture, testing and permit fees). The 2015 Property acquisition shall not be included as a Private Investment Expenditure for this purpose. Construction management costs may be considered a Private Investment Expenditure if services are directly related to ensuring the quality of the construction of the Project and are performed by an independent and unaffiliated third-party. Construction management costs must be evidenced by invoices with detailed descriptions of services performed. Developer fees, legal fees, marketing fees, financing fees, leasing commissions, carrying costs, reserves, operating deficits through stabilization and other similar costs shall not be considered a Private Investment Expenditure. With the exception of professional fees, environmental assessments, sitework (including, but not limited to, grading and utilities), and foundation work, no expenditures made prior to City Council approval may count towards minimum private investment.
- (e) **Minimum Project Requirements.** The Project shall include, at minimum, the following:
 - i. 375 multi-family units of which 20% (75) of the units shall be set aside and leased solely to those households earning a maximum of 60% of the Dallas Area Median Family Income for the Affordability Period as defined herein, and

SECTION 6. (continued)

- ii. 434,000 square foot building of which a minimum of 75,000 square feet shall be the grocery store as described herein.

- (f) Affordability. The Project shall include a minimum of 375 residential units of which 20% (75) of the units shall be set aside and leased solely to those households earning a maximum of 60% of the AMFI, as determined by the U.S. Department of Housing and Urban Development (“HUD”), for fifteen years from the date of the initial issuance of the residential component certificate of occupancy (the “Affordability Period” which shall also be the “Compliance Period”) for the purpose of this City Subsidy (the existing restrictive covenant requires that the affordability set-aside be in perpetuity), in accordance with the attached rent schedule (**Exhibit F**). The affordable units shall be identical finish-out and materials as market rate units, shall be dispersed pro-rata among unit type as defined by the number of bedrooms in the unit, shall not be fixed to specific unit numbers and shall not be segregated or concentrated in any one floor or area of the Project, but shall be dispersed throughout all of the residential portions of the Project.

Households that qualify at the beginning of a lease will be assumed to qualify for the entirety of the term of that lease. Recertification is, therefore, only necessary during lease renewal. If, at the end of the lease, the household no longer qualifies for the affordable unit, the lease may be renewed at market rate and another comparable unit is to be made available for another qualifying household in order to maintain the affordability requirement.

By right, Owner/Developer may decrease the size of any unit as shown in Exhibit F by up to 10%. Prior to the Project’s completion as defined in Section 6(i) herein, the affordability requirement shall be impressed upon the property by deed restriction for the Affordability Period.

After the Project’s completion as defined in Section 6(i) herein and throughout the Affordability Period, Owner/Developer shall monitor and submit bi-annual reports to the Director of the Office of Economic Development (“Director”) on the status of its compliance with the requirements of the Project’s Affordability. Owner/Developer shall submit written certification and documentation of compliance on the form attached as **Exhibit G**.

Owner/Developer completed the Affirmative Fair Housing Marketing Plan and submitted the plan to the City’s Office of Equity and Inclusion for approval. On October 21, 2020, Fair Housing staff within the Office of Equity and Inclusion provided notice of a stance of no opposition to the Project.

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- (g) Vouchers. Owner/Developer shall abide by Ordinance 30246, approved by Resolution 16-1760, which requires that “multifamily housing accommodations that benefit from a financial award approved by the City Council on or after the effective date of this ordinance [October 26, 2016] shall set aside at least 10 percent of the dwelling units and solely lease those dwelling units to holders of housing vouchers, including vouchers directly or indirectly funded by the federal government, for a minimum of 15 years from the date of the initial issuance of the housing accommodation’s certificate of occupancy”. If such flexibility is allowed by Ordinance, should Ordinance 30246 and Chapter 20A of the Dallas City Code be amended prior to the Project’s certificate of occupancy date, Owner/Developer may abide by such amended requirements. If applicable, prior to the Project’s completion as defined in Section 6(i) herein, this requirement shall be impressed upon the property by deed restriction.
- (h) Building Permit Deadline. Owner/Developer shall submit to the City for a building permit by May 31, 2022 and shall obtain the building permit by August 31, 2022. A foundation permit may constitute meeting the obligation of this requirement. Note that the Project may commence site preparation prior to this deadline date, but a grading permit does not constitute meeting the obligation of this requirement.
- (i) Project Completion and Deadline. Construction of the Project, including associated Project-related public improvements/streetscape improvements, will be complete, and all portions of the building, both commercial and residential, will be occupiable by September 30, 2025 (Completion Date), as evidenced by certificate of occupancy, letter of acceptance, certificate of completion, and/or similar documentation from the City (Project Completion).
- (j) Property Management. The proposed management group for the residential portion of the Project must be submitted at least three months prior to Project Completion for review by the Director to consider acceptance based on the management entity’s comparable experience managing other multi-family properties, such approval not being unreasonably conditioned, delayed or withheld. The City shall respond to a request for approval within 21 business days.
- (k) Operating and Maintenance Agreement. Prior to the Project Completion, Owner shall execute an Operating and Maintenance Agreement (defined below) for any Non-Standard Public Improvements (defined below) associated with the Project (the “Operating and Maintenance Agreement”), and if necessary, obtain a license from City for the purpose of maintaining any improvements in the public right-of-way. “Non-Standard Public Improvements” shall be defined as those public infrastructure improvements which exceed the City’s standard design requirements, as determined by the City, and shall include specially designed street/pedestrian lighting, brick pavers, bollards, sidewalks, public art, fountains, landscaping and

SECTION 6. (continued)

irrigation. With the exception of specially designed street/pedestrian lighting, public art work and fountains, City shall retain ownership of such public improvements and may at its sole option, if Owner fails to maintain such public improvements after notice from City, perform such maintenance and invoice Owner for the costs, which costs Owner shall pay within thirty (30) days of notice. Owner shall submit documentation evidencing that an executed Notice of Operating and Maintenance Agreement specifying the existence of an executed Operating and Maintenance Agreement for the Non-Standard Public Improvements was recorded with the Dallas County Clerk's Office. The term for the Operating and Maintenance Agreement shall be twenty (20) years. The terms and conditions of the Operating and Maintenance Agreement are binding upon the successors and assigns of all parties hereto and may be assignable, subject to Director approval, in whole or in part, to a new owner of all or a portion of the Project. Owner shall remain responsible for the maintenance of the Non-Standard Public Improvements for a term of 20 years even if Owner chooses to forgo the City Subsidy or does not earn the City Subsidy as a result of default.

- (l) **Business Inclusion.** Owner/Developer shall make a good faith effort to comply with the City's Business Inclusion and Development ("BID") goal of 32% participation by certified Minority/Women-owned Business Enterprises ("M/WBE") for all hard construction expenditures on the Project and meet all reporting requirements. See **Exhibit H**. Soft expenditures such as architectural, engineering and professional services as well as goods, services and furniture, fixtures and equipment (FF&E) are not included in the Project's good faith effort requirement.
- (m) **Quarterly Reporting.** Until the Project has passed final building inspection and all required paperwork documenting Project Completion has been submitted to the Office of Economic Development, Owner/Developer shall submit to the Office of Economic Development quarterly status reports (see **Exhibit I**) for ongoing work on the Project (including any public improvements). Such status reports shall be due within 30 calendar days following the end of each calendar quarter.
- (n) **Design.** The Urban Design Peer Review Panel ("UDPRP") is an independent group of professional designers selected by the City Manager with expertise in architecture, landscape architecture, engineering, and urban planning. Review by the UDPRP is required for all projects requesting Economic Development subsidies. Following a formal review of the Project's preliminary conceptual drawings and renderings on May 29, 2020, the UDPRP provided advice (see **Exhibit J**). On July 24, 2020, Developer submitted a response to the City's Planning and Urban Design Department ("PUD") staff with updated conceptual drawings and renderings (see **Exhibit J-1**). On July 27, 2020, the PUD staff indicated that the updated conceptual drawings and renderings provided by Developer on July 24,

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2020 satisfied the UDPRP's advice. Prior to building permit submittal to the City's Sustainable Development and Construction Department, Owner/Developer shall submit a set of permit drawings to PUD for a final staff review to ensure that the Project (i.e. public and private improvements) will be constructed in substantial conformance with the updated conceptual drawings and renderings submitted by Developer as shown in Exhibit J-1. Allowable minor modifications may include those required for compliance with development regulations administered by the City's Sustainable Development and Construction Department or other City departments. PUD staff shall complete the final staff review of permit drawings within 10 business days of submission by Owner/Developer.

- (o) Property Maintenance and Inspection during City's Compliance Period. Owner/Developer shall ensure that the Project is maintained in accordance with all applicable HUD property standards for the duration of the City's Compliance Period, which at a minimum shall be those property standards required in 24 CFR Part 92. City will verify maintenance of the Project to these standards through on-site inspections at a minimum of every 2 years. City reserves the right to inspect more frequently if City deems it necessary, in its sole discretion.
- (p) Local Hiring. For all permanent employment opportunities created by the Project, Owner/Developer shall submit to the City a written plan describing how Owner/Developer or property management group shall use and document best efforts to recruit and hire residents of the city of Dallas. At a minimum, the written plan shall describe how Owner/Developer or property management group will target local recruitment through local advertisement, community outreach, local engagement, participation in local job fairs, and/or coordination with local hiring sources. The plan shall be subject to approval by the Director to ensure that employment opportunities are targeted to Dallas residents and that reasonable efforts are made to promote the hiring of neighborhood residents for any new jobs created, which approval will not be unreasonably withheld, conditioned or delayed. The Local Hiring plan may include different details for the Kroger component of the Project and the residential component of the Project.
- (q) Minimum Occupancy and Occupancy Requirement. The Tax Abatement described herein shall not be available until the Kroger store is open to the public and a minimum of 60% of the residential units are leased and occupied. These obligations, collectively constitute the "Occupancy Requirement". The availability of the Tax Abatement in any given year shall depend on the commercial component of the Project continuously operating as a grocery store and the residential component maintaining a minimum occupancy of 60% throughout the Compliance Period.

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- (r) Annual Application/Certification for Tax Exemption. It shall be the responsibility of Owner/Developer, pursuant to V.T.C.A., Tax Code, §11.43, to file an annual exemption application form with the chief appraiser of the Dallas Central Appraisal District in which the Property is sited. In addition, pursuant to Section 312.205(a)(6) of the Property Redevelopment and Tax Abatement Act, as amended, (V.T.C.A. Tax Code, Chapter 312) Owner/Developer shall certify in a written report to the City by April 15 of each year throughout the Compliance Period that Owner/Developer is in compliance with each applicable term set forth in any future Tax Abatement Agreement executed by the City and Owner/Developer, and the payment of ad valorem taxes and tangible personal property taxes owed the City by Owner/Developer. The exemption application and certification report shall be submitted to the City for review and approval prior to submission of the exemption application to the appraisal district. Failure of Owner/Developer to obtain City approval for the exemption application may result in the loss of the tax exemption for the year.
- (s) A description of the kind, number, location, and costs of all proposed improvements to the Property shall be provided to the Office of Economic Development by Owner/Developer and shall be attached as exhibits to the tax abatement agreement.
- (t) Access to the Property shall be provided to allow for inspection by City inspectors and officials to ensure that the improvements are made and occupancy is achieved according to the specification and terms of the tax abatement agreement.
- (u) Owner/Developer shall certify annually to the City that they are compliant with each applicable term of the real property tax abatement agreement.
- (v) The Dallas City Council may terminate or modify the tax abatement agreement if Owner/Developer fails to comply with the terms therein.
- (w) In the event of default (which is not cured within a 90-day cure period) for a) failure to complete the Project improvements in accordance with the Tax Abatement Agreement or b) the conviction for a violation under 8 U.S.C. Section 1324a(f), all taxes which otherwise would have been paid to the City without the benefit of the Tax Abatement (but were in fact not paid by reason of the Tax Abatement), including statutory interest and statutory penalties thereon (collectively with such taxes, "Recapture Liability"), will become a debt to the City from Owner or Developer and shall be due, owing and paid to the City by Owner or Developer within 60 days of the expiration of the cure period. Such Recapture Liability shall be equal to all taxes which would otherwise have been paid to the City from the beginning of the tax abatement period to the

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date of termination (interest and penalties will be charged at the statutory rate for delinquent taxes as determined by Section 33.01 of the Property Tax Code of the State of Texas).

Owner or Developer shall pay liquidated damages to the City in the event of default (which is not cured within a 90-day cure period) for any of the following occurrences: c) Owner/Developer allows its ad valorem taxes and/or tangible personal property taxes owed the City to become delinquent, d) Owner/Developer fails to certify in a written report to the City by April 15 of each year throughout the term of the Tax Abatement Agreement that Owner/Developer is in compliance with each applicable term of the Tax Abatement Agreement, e) Developer fails to obtain Director approval for Owner/Developer's assignment of all or a portion of the Property to a new owner, or f) Owner/Developer breaches any of the terms or conditions of the Tax Abatement Agreement. Such liquidated damages shall be in an amount equal to all taxes for the year (or years) in which such default occurs, which otherwise would have been paid to the City without the benefit of the Tax Abatement (but were in fact not paid by reason of the Tax Abatement), including interest and penalties thereon charged at the statutory rate for delinquent taxes as determined by Section 33.01 of the Property Tax Code of the State of Texas). The eligibility of the Owner to obtain the benefit of the Tax Abatement shall resume in the subsequent years after the event of default is cured.

- (x) Minor Modifications. The Director may authorize minor modifications to the Project, including, but not limited to, adjustment in unit type, unit mix, set-aside duration, and/or qualifying Area Median Family Income and may authorize an extension of the Project deadlines, for reasons including, but not limited to, delays in Hall Street Improvement Project completion, up to 18 months. Said authorization and/or approvals shall not be unreasonably withheld, conditioned or delayed.

SECTION 7. That the real property tax abatement agreement is identified by the City as Contract No. ECO-2021-00017594.

SECTION 8. That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.