



Tax Credit Allocation Agreement
Ohio Historic Preservation Tax Credit Program

Table with 4 columns and multiple rows containing details for Allocatee (OTR ADOPT), Address (1311 Vine Street), Notice Contact (Daniel G. Klingler), Credit Allocation (FY21030, \$152,622.00), and Project Information (1648 Vine Street, 1 building, \$1,107,355.00 investment).

This Tax Credit Allocation Agreement (the “Agreement”) is made and entered into between the State of Ohio, Development Services Agency (“Development”) and Allocatee identified above to set forth the terms and conditions upon which Allocatee may use the allocation of Ohio Historic Preservation Tax Credits (the “Allocation”) up to the amount set forth in the table above in order to complete the Project as outlined in Allocatee’s Application.

Article 1. Incorporation by Reference

1.1 Statute and Administrative Rules. The Allocation is made pursuant to the authority of Section 149.311 of the Ohio Revised Code (“ORC”) and Chapter 122:19 of the Ohio Administrative Code (“OAC”). The applicable provisions of the ORC and OAC are incorporated by reference as if restated in this Agreement. In the event of any inconsistency between this Agreement and the ORC or OAC, the ORC or OAC shall govern.

1.2 Program Policies. Development has created program policies (“Program Policies”) to guide the application process, application scoring, selection of approved applications, amendments, tax credit

certification, fee schedule and monitoring and reporting within the Ohio Historic Preservation Tax Credit Program (the “**Program**”). Program Policies are reviewed and approved by Development for each Program application round. Program Policies approved for the OHPTC Round identified in the table above will apply to this Agreement.

1.3 Application. The Allocation is based on the review of Allocatee’s Application through a competitive evaluation process. Accordingly, Allocatee shall use the Allocation to complete the Project in the manner proposed in the Application, including any attachments, exhibits, appendices and supplements to the Application, which is incorporated into this Agreement by reference as if restated in this Agreement (the “**Project**”).

Article 2. Scope of Project and Execution of Agreement

2.1 Scope of Project. Allocatee must complete the Project as set forth in the Application, including physical work description, investment and Qualified Rehabilitation Expenses (“**QRE**”) commitments. The Project shall be completed by the Project End Date identified in the table on page 1 of this Agreement.

2.2 Reduction to Scope of Project. If Allocatee requests an amendment to the scope of the Project that materially reduces the physical work description, investment or QRE commitments, Development may, in its sole discretion, reduce the approved Allocation amount.

2.3 Failure to Complete Project. If Allocatee fails to complete the Project (i) by the Project End Date or (ii) as outlined in the Application, Allocatee shall be in default of this Agreement and Development may exercise any of the remedies outlined in Section 7.2 of this Agreement.

2.4 Execution of Agreement. This Agreement shall be executed by Allocatee and returned to Development no later than ninety (90) days after the Notice of Allocation Date identified in the table on page 1 of this Agreement. Failure to comply with this provision may result in the rescission of the Allocation by Development.

Article 3. Tax Credit Certification

3.1 Request for Tax Credit Certificate. Within 90 days of completion of the Project, Allocatee shall notify Development of the completion of the Project and request a Tax Credit Certificate (“**Certificate**”). Allocatee shall make this request utilizing a form prescribed by Development. Submitted information must meet the requirements outlined in Section 122:19-1-06 of the OAC and the applicable Program Policies.

3.2 Tax Credit Certificate. Development shall review the request and, if Development finds such amounts to be supported by the request and the cost certification report completed by the third-party certified public accountant (if necessary), Development shall issue a Certificate to Allocatee. No Certificate shall be issued until all outstanding tax liabilities with the State of Ohio (“**State**”) have been resolved and Allocatee receives a tax clearance from the Ohio Department of Taxation (“**Taxation**”). The obligation of Development to provide a Certificate is subject to the satisfaction, as determined by Development, in its sole discretion, of the following conditions:

- (a) Performance. Allocatee shall have performed and complied with this Agreement and all applicable Program Policies required to be performed or complied with by it before or on the completion of the Project, including, but not limited to, payment of any fee as provided in Article 6 of this Agreement.
- (b) Representations and Warranties. The representations and warranties set forth in this Agreement and remain true and correct in all material respects.

- (c) Historical Approval of the Project. The Project must submit rehabilitation information to the State Historic Preservation Office (“SHPO”) on the required form and Development must receive a positive recommendation for the Project from SHPO prior to Allocatee receiving a Certificate. For all projects, “historical approval” is defined as meeting the Secretary of Interior’s Standards for Rehabilitation for historic tax credit projects.

3.3 Qualified Rehabilitation Expenditures Certification. Issuance of a Certificate does not represent a verification or certification by Development of the amount of QRE for which a tax credit may be claimed. The amount of QRE is subject to inspection and examination by Taxation under ORC Section 5703.19 and any other applicable law.

Article 4. Reporting and Records

4.1 Reports. Allocatee shall report on its compliance with the requirements of the Program Policies and this Agreement. Unless otherwise instructed by Development, Allocatee shall submit its reports in the manner determined by Development. Failure of Allocatee to timely submit any of the reports described below shall be a default under this Agreement and shall permit Development to exercise any available remedies under this Agreement, including but not limited to rescinding the Allocation.

- (a) 12-month Reviewable Progress Report. Allocatee, within 12 months after the Notice of Allocation Date, shall submit to Development a 12-month Reviewable Progress Report. This report shall include a viable financial plan, copies of final construction drawings, evidence that Allocatee has obtained all historical approvals and other information Development deems appropriate, as set forth in Section 149.311(D)(5) of the ORC.
- (b) 18-month Reviewable Progress Report. If Allocatee did not meet the requirements of the 12-month Reviewable Progress Report as indicated above, Allocatee must submit an 18-Month Reviewable Progress Report to Development within 18 months after the Notice of Allocation Date. This report must evidence Allocatee has closed on financing to cover the remaining investment to complete the Project, as set forth in Section 149.311(D)(5) of the ORC
- (c) Status Report. Development may, upon notice of not less than 30 days, request a Status Report of the Project from Allocatee. The Status Report will be in a format established by Development and will request information and updates to the Project. Development may request a Status Report from Allocatee up to twice a calendar year during the Project. After Allocatee receives its Certificate, Development may request an annual Status Report for up to four years after the effective date of the Certificate.

4.2 Inspection of Books and Records. Allocatee shall submit such financial and activity reports, records, statements, documents, and other information as may be requested by Development, SHPO and Taxation to ensure compliance with this Agreement, the provisions of the ORC and OAC, and Program Policies applicable to the Program. At any time during normal business hours and upon not less than twenty-four (24) hours prior notice, Allocatee shall make available to Development and Taxation, and any employees or agents thereof, all books, documents, records and financial statements relevant to the Allocation provided under this Agreement. Allocatee shall permit any of these authorities to copy such documents and make excerpts or transcripts from such documents as they deem appropriate. The purposes of such inspections will include, but not be limited to, ensuring that representations, warranties, covenants, and/or certifications provided by Allocatee are accurate.

4.3 Site Visits. At any time during normal business hours and upon not less than seventy-two (72) hours prior notice, Allocatee shall provide Development, or its employees or agents, access to any location or facility at which work or activities related to the Project are performed. During such site visits,

Development shall have the right to review and inspect the Project facilities to review the status of the Project.

4.4 Maintenance of Records. In accordance with OAC Rule 122:19-1-07, Allocatee shall establish and maintain for at least four (4) years from Allocatee's certification of project completion, or such earlier termination of this Agreement, such records evidencing and supporting this Project, including records documenting Project expenditures and evidence of compliance with historic approvals of the Project, and all relevant supporting documentation. The parties further agree that records required by Development with respect to any questioned costs, audit disallowances, litigation or dispute between Development and Allocatee shall be maintained for the time needed for the resolution of such issue and that in the event of early termination of this Agreement, or if for any other reason Development shall require a review of the records related to the Project, Allocatee shall, at its own cost and expense, segregate all such records related to the Project from its other records of operation. Allocatee shall maintain and organize its records in such form so that, in case of a review of its records or an audit, Allocatee is able to verify and document the information it provides in the reports.

4.5 Public Records. Allocatee acknowledges that this Agreement and other records in the possession or control of Development regarding the Project are public records under Section 149.43 of the O.R.C. and are open to public inspection unless a legal exemption, such as trade secret exception, applies. Financial statements and other financial information submitted by Allocatee to Development and Director are not public records subject to Section 149.43 of the O.R.C. However, Development may use such information in issuing public reports, in connection with court proceedings, and to provide information to the Tax Commissioner or Superintendent of Insurance in connection with the tax credit.

Article 5. Representations and Warranties

As of the date of this Agreement, Allocatee hereby represents and warrants to Development as follows:

5.1 Qualification. Allocatee is duly qualified, in good standing (if applicable) and authorized to transact business in the State of Ohio and in each other jurisdiction where the conduct of Allocatee's business, the carrying out of the authorized use(s) of the Allocation to be provided under this Agreement or, if not so qualified, Allocatee's failure so to qualify shall not reasonably be expected to: (a) have a material adverse effect on the financial condition or business operations of Allocatee; (b) impair Allocatee's ability to carry out the authorized use(s) of the Allocation to be provided hereunder; or (c) impair Allocatee's right to enforce any material agreement to which it is a party.

5.2 Authorization; Consents. The execution, delivery and performance by Allocatee of this Agreement and the carrying out of the authorized use(s) of the Allocation provided under this Agreement are within Allocatee's powers and have been duly authorized by all necessary corporate, partnership or limited liability company action, and no consent, approval, authorization or order of, notice to, and filing with, any third party including, without limitation, any governmental entity which has not been previously obtained, is required in connection with such execution, delivery, and performance. Allocatee will make all such notices or filings that may be required after the Notice of Allocation Date in accordance with the applicable time periods for such notices or filings.

5.3 Proceedings and Documents. All corporate and other proceedings in connection with the transactions contemplated by this Agreement, and all documents and instruments incident to such transactions which are necessary for Allocatee's execution and delivery of this Agreement, shall be satisfactory in substance and form to Development, and Development shall have received from Allocatee all such counterpart originals or certified or other documents as Development may reasonably request.

5.4 Sufficient Funding to Complete Project. Allocatee has obtained or will obtain sufficient funding, in addition to the financial benefit of the Allocation, to complete the Project.

5.5 Taxes; Debts; Bankruptcy. Allocatee is not delinquent on any debts owed to federal, State or local governments including, but not limited to, amounts due to the State of Ohio or under the Internal Revenue Code. Without limiting the foregoing, Allocatee does not owe: (1) any delinquent taxes to the State of Ohio or a political subdivision of the State of Ohio; (2) any amounts to the State of Ohio or a state agency for the administration or enforcement of any environmental laws of the State of Ohio; or (3) any other amounts to the State of Ohio, a state agency or a political subdivision of the State of Ohio that are past due, whether or not the amounts owed are being contested in a court of law. Allocatee has never filed for bankruptcy and has neither actual nor constructive knowledge of any pending or anticipated bankruptcy filings on its behalf.

Article 6. Fees

6.1 Total Fees. The total fees charged to any approved application shall not exceed 1.5 percent of the total Allocation. If the Allocation is reduced pursuant to Section 2.2 of this Agreement or a reduction in the project's QRE, the 1.5 percent will be applied to the reduced amount. However, Allocatee shall not be entitled to a refund of fees previously paid if the Allocation is reduced.

6.2 Servicing Fee. Allocatee shall pay the State of Ohio a servicing fee in the amount of 0.5 percent of the Allocation. The servicing fee is due and payable upon the execution and delivery of this Agreement by Allocatee to Development in accordance with Section 2.4 of this Agreement. The Allocation made to Allocatee under this Agreement shall not be effective until receipt of the servicing fee by Development.

6.3 Certification Fee. The certification fee will equal 1.5 percent of the approved tax credit less the sum of the application fee and the servicing fee previously paid by Allocatee. The certification fee is due and payable prior to Development's issuance of the Project's Certificate. If the Allocation has been reduced such that 1.5 percent of the tax credit is less than the sum of the application fee and servicing fee, no certification fee will be required.

Article 7. Events of Default and Remedies

- 7.1 Events of Default. Allocatee shall be in default if any one or more of the following events occur:
- (a) Any representation, warranty, certification, assurance or any other statement of fact set forth in Allocatee's Application, this Agreement or any document, report, or certificate is found by Development to be inaccurate, false, or incomplete when made, in any material respect.
 - (b) Allocatee fails to observe, comply with, or perform any term, covenant, agreement or other provision contained in Section 149.311 of the ORC, Chapter 122:19 of the OAC, Program Policies or this Agreement.
 - (c) Allocatee fails to provide the Director sufficient evidence of reviewable progress within twelve months after the Notice of Allocation Date and also fails to provide evidence to the Director that financing for the rehabilitation has been secured and closed within eighteen months after the Notice of Allocation Date as described in Ohio Revised Code Section 149.311(D)(5) and Ohio Administrative Code 122:19-1-07.
 - (d) The project's final QRE, as certified by a third-party certified public accountant (if required), are reduced by more than 25 percent from the QRE amount identified in the Agreement.

- (e) Allocatee fails to obtain historic approvals for the Project after its completion as outlined in Section 3.2(c). For all projects, “historic approvals” of the Project includes written confirmation from SHPO that the work to the Project meets the Secretary of Interior’s Standards for Rehabilitation.
- (f) For Staged projects, Allocatee fails to obtain historic approvals for all stages of rehabilitation as required under Section 149.311(D)(4) of the ORC.

7.2 Remedies. Following a default by Allocatee, Development may exercise one or more of the following remedies:

- (a) Reduce Allocation. Development may reduce the approved Allocation.
- (b) Termination. Development may terminate this Agreement and rescind the Allocation.
- (c) Other Legal Remedies. Development may pursue any other legal or equitable remedies Development may have under this Agreement or applicable law.

7.3 No Waiver. No course of dealing on the part of Development or any delay or failure on the part of Development to exercise any right set forth in this Agreement will operate as a waiver of the right or otherwise prejudice the State’s rights, powers and remedies under this Agreement or any other applicable law or regulation.

7.4 Notice to Allocatee. Prior to exercising or imposing any remedy contained in Section 7.2, Development will provide Allocatee with written notice of the incident(s) giving rise to the default and the proposed remedy (or remedies) (“**Default Notice**”). Development shall allow Allocatee thirty (30) days from the date of the Default Notice to respond to and cure the incident(s) giving rise to the default. If Allocatee fails to respond and correct the incident(s) giving rise to the default within the time period provided in the Default Notice, Development may impose or exercise the remedy (or remedies) set forth under this Agreement. Nothing in this Agreement, however, will provide Allocatee with any right to any formal or informal hearing or comparable proceeding not otherwise required by law.

7.5 Early Termination. Development may also terminate this Agreement and rescind the Allocation if Allocatee (i) defaults of any other agreement between the Development Services Agency or the Ohio Tax Credit Authority and Allocatee, (ii) admits Allocatee’s inability to pay its debts as such debts become due, (iii) commences a voluntary bankruptcy, (iv) is subject to an involuntary bankruptcy action which remains undismissed or unstayed for 60 days, (v) fails to meet the minimum funding requirements under the Employee Retirement Income Security Act or other such employee benefits plan, or (vi) has ceased operations at the Project based on the reasonable belief of Development. The events permitting early termination by Development shall be considered a default by Allocatee and subject to the remedies available under Section 7.2 of this Agreement.

Article 8. Notices

8.1 Procedure for Delivering Notice. Any notice or report required or permitted to be given under this Agreement shall be deemed to have been sufficiently given for all purposes if delivered by hand, mailed by first class certified or registered mail, sent by commercial delivery to the following addresses of the parties or to such other address as either party may hereafter furnish by written notice to the other party, or conducted by electronic mail.

If to Development:

If to Allocatee:

Ohio Development Services Agency
Office of Strategic Business Investments

To the Notice Contact set forth on the first page
of this Agreement

77 South High Street, 28th Floor
Columbus, Ohio 43215
Attn: Ohio Historic Preservation Tax Credit Program

With a copy to Chief Legal Counsel

8.2 Allocatee Contact. If Allocatee Contact set forth on the first page of this agreement should change, it is the responsibility of Allocatee to notify Development of the change. This notification can be made in the manner set forth above in Section 8.1.

Article 9. Compliance with Law

9.1 Adherence to State and Federal Laws, Regulations.

- (a) General. Allocatee agrees to comply with all applicable federal, state, and local laws related to the Project and the operations of Allocatee's business in the State in all material aspects. Allocatee accepts full responsibility for payment of all unemployment compensation, insurance premiums, worker's compensation premiums, all income tax withholdings, social security withholdings, and any and all other taxes or payroll withholdings required for all employees engaged by Allocatee on the performance of the Project.
- (b) Outstanding Liabilities. Allocatee represents and warrants to Development that Allocatee does not owe: (1) any delinquent taxes to the State or a political subdivision of the State; (2) any moneys to the State or a State agency for the administration or enforcement of any environmental laws of the State; or (3) any other moneys to the State, a State agency or a political subdivision of the State that are past due, whether the amounts owed are being contested in a court of law or not.
- (c) Falsification of Information. Allocatee represents and warrants to Development that Allocatee and any party acting on behalf of Allocatee have made no false statements to Development in the process of obtaining this award. If Allocatee or any party acting on behalf of Allocatee have knowingly made a false statement to Development to obtain this award, Allocatee shall be required to immediately pay to Development an amount equal to the aggregate of all any Certificates issued under this Agreement and shall be ineligible for any future economic development assistance from the State, any State agency or a political subdivision pursuant to Section 9.66(C)(1) of the ORC. Any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to Section 2921.13(F)(1) of the ORC, which is punishable by a fine of not more than \$1,000.00 and/or a term of imprisonment of not more than six months.

9.2 Conflict of Interest and Ethics. Allocatee, by its signature on this document, certifies that it: (1) has reviewed and understands the Ohio ethics and conflict of interest laws including, without limitation, ORC Sections 102.01 *et seq.*, Sections 2921.01, 2921.42, 2921.421 and 2921.43, and Sections 3517.13(I) and (J), and (2) will take no action inconsistent with those laws, as any of them may be amended or supplemented from time to time. Allocatee understands that failure to comply with the Ohio ethics and conflict of interest laws is, in itself, grounds for termination of this Agreement and the grant made pursuant to this Agreement and may result in the loss of other contracts or grants with the State.

9.3 Equal Employment Opportunity. Allocatee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, ancestry, veteran status, disability or age. Allocatee shall ensure that applicants for employment are considered for employment, and that

employees are treated during employment, without regard to their race, religion, color, sex, national origin, ancestry, veteran status, disability or age.

Article 10. Waiver of Claims and Indemnification

10.1. Waiver of past or present claims. As a specific inducement to Development to enter into the Agreement and agree to the transactions contemplated by the Agreement, and in consideration of the benefits provided by the Development to Allocatee pursuant to the Agreement, Allocatee, for itself and its officers, directors, owners, employees, representatives and agents, hereby knowingly, voluntarily, and intelligently waives and releases Development, the State and their officials, employees and agents, from any and all claims or causes of actions which Allocatee now has or may have against Development, the State and their officials, employees and agents related to the performance of the Agreement which may arise under either the Constitution of the State of Ohio or the Constitution of the United States of America, including but not limited to claims under the dormant commerce clause or equal protection, on or before the date of the Agreement and arising out of the past and/or present business relationship between Development and Allocatee with respect to the Agreement and the transactions contemplated thereby.

10.2. Indemnification. Allocatee agrees to hold Development harmless from any and all liabilities or claims caused by or resulting from Allocatee's performance of the obligations or activities in furtherance of the Project and activities set forth under this Agreement. Allocatee will reimburse Development for any judgments arising from Allocatee's performance hereunder which may be obtained against Development, including, but not limited to, judgments for infringements of patents or copyrights. Allocatee agrees to reimburse Development for all costs incurred by Development in defending against any such claims or legal actions if called upon by Development to do so.

Article 11. Miscellaneous

11.1 Governing Law. This Agreement shall be governed by Section 149.311 of the ORC and all other laws of the State as to all matters, including but not limited to matters of validity, construction, effect and performance.

11.2 Forum and Venue. Allocatee irrevocably submits to the non-exclusive jurisdiction of any federal or state court sitting in Columbus, Ohio, in any action or proceeding arising out of or related to this Agreement, Allocatee agrees that all claims in respect of such action or proceeding may be heard and determined in any such court, and Allocatee irrevocably waives any objection it may now or hereafter have as to the venue of any such action or proceeding brought in such court or that such court is an inconvenient forum. Nothing in this Agreement shall limit the right of Development to bring any action or proceedings against Allocatee in the courts of any other jurisdiction. Any actions or proceedings by Allocatee against Development or the State of Ohio involving, directly or indirectly, any matter in any way arising out of or related to this Agreement shall be brought only in a court in Columbus, Ohio.

11.3 Entire Agreement. This Agreement, including its exhibits and documents incorporated into it by reference, constitutes the entire agreement and understanding of the parties with respect to its subject matter. Any prior written or verbal agreement, understanding or representation between the parties or any of their respective officers, agents, or employees is superseded and no such prior agreement, understanding or representation shall be deemed to affect or modify any of the terms or conditions of this Agreement.

11.4 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this Agreement.

11.5 Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same agreement.

11.6 Amendments or Modifications.

- (a) Either party may at any time during the Term of this Agreement request amendments or modifications to the Agreement. Any amendment or modification must follow the program policies as written, be agreed upon by both parties and reflected in a written amendment. An amendment may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Copies of signatures sent by facsimile transmission or provided electronically in portable document format (“PDF”) shall be deemed to be originals for purposes of execution and proof of amendment.
- (b) If a proposed amendment includes changes in the historic rehabilitation, including but not limited to the historic designation status, detailed description of rehabilitation work or other historic information; the proposal must first be submitted to and approved by SHPO prior to any action taken by Development.

11.7 Forbearance Not a Waiver. No act of forbearance or failure to insist on the prompt performance by Allocatee of its obligations under this Agreement, either express or implied, shall be construed as a waiver by Development of any of its rights hereunder.

11.8 Pronouns. The use of any gender pronoun shall be deemed to include all the other genders, and the use of any singular noun or verb shall be deemed to include the plural, and vice versa, whenever the context so requires.

11.9 Headings. Section headings contained in this Agreement are inserted for convenience only and shall not be deemed to be a part of this Agreement.

11.10 Assignment. Neither this Agreement, nor any rights, duties, nor obligations described herein, shall be assigned or subcontracted by Allocatee without the prior express written consent of Development.

11.11 Survival. Any provision of this Agreement which, by its nature, is intended to survive the expiration or other termination of this Agreement, including, without limitation, any indemnification obligation, shall so survive and shall benefit the parties and their respective successors and permitted assigns.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed by its authorized representative as of the dates set forth below their respective signatures.

ALLOCATEE: |

DEVELOPMENT:

OTR ADOPT

State of Ohio, Development Services Agency
Lydia L. Mihalik, Director

By: Danny Klingler

By: _____

Name: Daniel Klingler

Name: _____

Title: President

Title: _____

Date: 6.10.2021

Date: _____

