

**AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY**

**THIS AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY** (the "Agreement") is entered by and between the Broken Arrow Economic Development Authority, Broken Arrow, Oklahoma ("BAEDA" or "Seller"), and Peak Development Services, LLC, a Texas limited liability company (together with its successors and assigns, "Buyer"). The effective date of this Agreement is \_\_\_\_\_ (the "Effective Date").

**RECITALS**

**WHEREAS**, Buyer approached the Seller with a proposal to purchase an approximate 14.16 acres of real property and improvements owned by the Seller, located on Aspen Ave. in Broken Arrow, OK and described on "Exhibit A" attached hereto (collectively with (i) all right, title and interest of Seller, if any, in and to all easements, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, appurtenant to and used in connection with or pertaining to such real property or improvements; (ii) any strips or gores of real property between such real property and abutting or adjacent properties; (iii) all minerals, royalties, gas rights, water, water rights, timber and crops pertaining to such real property; and (iv) Seller's right, title and interest, if any, in and to all appurtenances and all reversions and remainders in or to such real property, the "Real Property") for purposes of constructing a Texas Roadhouse and 3 other restaurant and/or retail sites, subject to the terms and conditions of the EDA (as defined below); and

**WHEREAS**, the Real Property consists of 14.16 acres. (Assessor's Account Number R98433843361570); and

**WHEREAS**, the Seller has agreed to sell the Real Property identified; and

**WHEREAS**, both the BAEDA and the Buyer have determined that the \$2,000,000.00 purchase price is reasonable, and represents the fair market value of the Real Property; and

**WHEREAS**, upon the terms and conditions set forth herein, along with an Economic Development Agreement executed contemporaneously herewith and incorporated by reference (the "EDA"), Seller desires to sell and the Buyer agrees to purchase the Real Property; and

**WHEREAS**, BAEDA deems it appropriate to approve the execution and delivery of this Agreement and determine such actions are in the best interests of the City of Broken Arrow, Oklahoma (the "City") and the health, safety and welfare of the City and residents within and near the City; and

**NOW, THEREFORE**, in consideration of the promises and the mutual terms, covenants and conditions contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Seller and the City hereby covenant and agree as follows:

**AGREEMENT**

1. **Purchase and Sale:** Seller agrees to sell and convey by the General Warranty Deed attached hereto as "Exhibit B" (the "Deed") and the Buyer agrees to accept the Deed and purchase the Real Property on the terms and conditions contained in this Agreement.

2. **Purchase Price and Earnest Money:** The purchase price for the Real Property is \$2,000,000.00 (the "Purchase Price"). The Buyer shall deposit partial payment of the Purchase Price in the amount of \$50,000.00 (together with interest thereon, the "Earnest Money"), into the escrow account maintained by **First American Title Insurance Company** (the "Closing Company") within five (5) days of the Effective Date of this Agreement. The balance of the Purchase Price will be paid at the closing of this Agreement (the "Closing"), adjusted as provided in this Agreement. The Earnest Money will be credited to the Purchase Price at Closing. The Earnest Money shall be fully refundable in the event Buyer terminates this Agreement prior to the expiration of the Inspection Period and as otherwise provided herein. If the Agreement is not cancelled (or Purchaser has waived all conditions to purchase) prior to the expiration of the Inspection Period, then the Earnest Money will become non-refundable in accordance with the terms thereof (except as otherwise provided herein). A portion of the Earnest Money in the amount of \$100.00 shall be independent consideration (the "Independent Consideration") for Seller's execution and delivery of this Agreement. The Independent Consideration is independent of any other consideration or payment provided in this Agreement, is non-refundable and shall be retained by Seller, notwithstanding any other provision of this Agreement.

3. **Due Diligence/ Inspections in General:**

3.1 The Seller shall grant the Buyer and its agents, consultants, and employees until 7:00 p.m., Broken Arrow, Oklahoma time, on the day that is **120 days** from the Effective Date of this Agreement (as may be extended pursuant to this Section 3.1, the "Inspection Period"), the right to enter upon the Real Property for the purpose of making inspections as to title and any physical, environmental or governmental conditions, soil testing, engineering or geological reporting necessary for the Buyer's intent to use the Real Property. All of such entries upon the Real Property shall be at reasonable times during normal business hours. All inspection fees, appraisal fees, engineering fees and other costs and expenses of any kind incurred by the Buyer relating to such inspections and their other due diligence shall be at its sole cost and expense. If any inspection or test disturbs the Real Property, the Buyer will restore the Real Property to substantially the same condition as existed before the inspection or test. If, prior to the expiration of the Inspection Period, Buyer determines that the Real Property is not satisfactory for any reason whatsoever, in the Buyers sole discretion, and Buyer notifies the Seller prior to the end of the Inspection Period, all Earnest Money shall be refunded to Buyer, except for the Independent Consideration. Buyer may extend the Inspection Period twice, for an additional thirty (30) days each by delivering written notice to Seller at the address for Seller in Section 11 below. Within three (3) business days after Buyer delivers each such written notice, Buyer shall deposit with the Closing Company the sum of \$5,000.00 for each extension, which shall be non-refundable, but shall be credited to the Purchase Price. In the event the Closing does not occur, all sums paid for the extensions shall be retained by the Seller.

- 3.2 Seller shall deliver to Buyer those items more particularly described on "Exhibit C" hereto, but only to the extent any of such items are in Seller's actual possession or control and pertain to the Property (collectively, the "Seller Documents"), no later than five business days after the Effective Date. Seller shall reasonably cooperate with Buyer and provide any other materials Buyer might reasonably request that is available at no additional cost to Seller, which such additional materials, if delivered, will be deemed a part of the Seller Documents.
- 3.3 If Buyer, in Buyer's sole discretion, determines during the Inspection Period that it will be required to obtain a change in the zoning of the Real Property, or a variance or special permit, to allow for Buyer's development of the Real Property for Buyer's intended use (the "Zoning Approvals"), then Seller shall, at Buyer's sole cost, fee and expense, cooperate with Buyer throughout the process of obtaining the Zoning Approvals, provided the Zoning Approvals shall not bind the Real Property if the Closing does not occur.
- 3.4 If Buyer, in Buyer's sole discretion, determines during the Inspection Period that, in connection with Buyer's intended use of the Real Property, it will be required (or should desire) to obtain (i) any permits, approvals, or other entitlements necessary or required for Buyer's development of the Real Property for Buyer's intended use, (ii) platting approvals required for Buyer's development of the Real Property for Buyer's intended use, (iii) will-serve letters for utilities sufficient for Buyer's development of the Real Property for Buyer's intended use, or (iv) any other approvals required for Buyer's development of the Real Property for Buyer's intended use (the foregoing (i) through (iv) collectively, the "Governmental Approvals"), then Seller shall, at Buyer's sole cost, fee and expense, cooperate with Buyer throughout the process of obtaining the Governmental Approvals, provided the Governmental Approvals shall not bind the Real Property if the Closing does not occur.

4. **Title/Survey Review:** Title and Survey Delivery, Review and Cure and Title Insurance shall be addressed as follows:

- 4.1 **Delivery of Title/Survey:** Seller shall deliver to the Buyer no later than twenty (20) days after the Effective Date of this Agreement, a current ALTA owner's title commitment from the Closing Company and copies of all exceptions to title shown thereon ("Title Report") which shall include each easement or private road (if any) providing access to the Real Property. Seller shall obtain, from a licensed surveyor reasonably acceptable to Buyer, a current ALTA survey of the Real Property and any offsite easements (if any) providing access to the Real Property addressed to the Buyer and as it directs ("Survey") and deliver same to the Buyer no later than sixty (60) days after the Effective Date of this Agreement. The Buyer shall reimburse the Seller for Seller's out-of-pocket cost of the Survey. The legal description as shown on the final Survey that is approved by Seller, Buyer and the Closing Company shall be the legal description of the Real Property for all purposes related to this Agreement.

4.2 Title/Survey Review and Cure: The Buyer shall review title to the Real Property as disclosed by the Title Report and Survey following receipt of same. The Buyer shall notify Seller in writing of any title/survey objections no later than fifteen (15) business days after the Buyer's receipt of the last of the Title Report and Survey. If the Closing Company revises any Title Report to add or modify exceptions or requirements that affect title to the Real Property or if the surveyor revises the Survey, the Buyer may object to such matter by notice to Seller within ten (10) business days after such revised Title Report or Survey is delivered to the Buyer. If Seller cannot cure or is unwilling to cure any of the title or Survey objections by the Closing Date, or fails to cure any such objection within fifteen (15) days following the Buyer's notice of objections, it shall so notify the Buyer in writing within such 15-day period and then the Buyer may either terminate this Agreement by written notice to Seller given on or before five (5) business days after receipt of such notice in which case the Earnest Money shall be refunded immediately to the Buyer. The Buyer may waive such objections, in which event the Closing shall occur as contemplated herein and the Buyer shall accept the Real Property subject to such conditions as agreed by the parties. Seller shall cure all title objections to which is agrees to cure (or is deemed to agree to cure) by the Closing Date. Notwithstanding anything to the contrary contained herein, Seller, at its sole cost and expense, shall be obligated to cure, remove or insure around by Closing all mortgages, deeds of trust, judgment liens, mechanic's and materialmen's liens, and other monetary liens and similar encumbrances against the Real Property (other than liens for ad valorem taxes, which are not delinquent) entered into or caused by Seller and listed in the Title Report which either secure indebtedness or can be removed by payment of a liquidated sum of money (collectively, the "Mandatory Removal Items"), whether or not Buyer objects thereto pursuant to this Section 4.2, and all such matters shall be deemed Non-Permitted Exceptions.

4.3 Title/Policy: At Closing, as a condition to the Buyer's obligation to close, the Closing Company shall deliver to the Buyer an Owner's Title Insurance Policy (or marked commitment therefore) (the "Title Policy"), issued by the Closing Company dated the date and time of recording of the Deed in the amount of the Purchase Price, insuring the Buyer as owner of fee simple title to the Real Property subject to only (a) the standard printed exceptions which shall be set forth in the Title Report; (b) the Permitted Exceptions, and (c) such exceptions to title which the Buyer shall be willing to accept, as indicated by Buyer in writing. As used herein, the term "Permitted Exceptions" shall mean any items that are (i) not objected to by Buyer pursuant to Section 4.2 above other than the Mandatory Removal Items, or (ii) items that Buyer has waived its objections to such items pursuant to Section 4.2 above.

5. **Closing:**

5.1 Closing shall take within thirty (30) days of the expiration of the Inspection Period, unless extended in writing or shortened by Seller and the Buyer (the "Closing Date"). At Closing, the Buyer shall pay the balance of the Purchase Price as set forth in Section 2 of this Agreement and Seller shall convey the Real Property to the Buyer by the Deed subject only to matters approved by the Buyer pursuant to

Section 4 of this Agreement. At the Closing, both parties shall duly execute and deliver all other documents reasonably necessary to consummate the transaction described in this Agreement, including separate closing statements setting forth the changes, adjustments and credits to each party.

5.2 Buyer's obligation to consummate this Agreement is subject to the following:

- (a) As of the Closing, Seller has timely performed all of the material obligations required by the terms of this Agreement to be performed by Seller.
- (b) As of the Closing, all representations and warranties made by Seller to Buyer in this Agreement shall be true and correct in all material respects.
- (c) Buyer shall have secured all final, unappealable approvals in form and content acceptable to Buyer, in Buyer's sole and absolute discretion, needed for Buyer to develop the Real Property for Buyer's intended use, including, but not limited to, the Zoning Approvals and the Governmental Approvals.
- (d) Buyer shall have determined, in Buyer's sole and absolute discretion, that all offsite infrastructure required to be constructed to serve the Real Property with suitable roadway access and utilities for the development of the Real Property for Buyer's intended use can be constructed at a cost and in a timeframe that accomplishes Buyer's development objectives for the Real Property.
- (e) Buyer shall have received obtain written approval from the Oklahoma Turnpike Authority for appropriate ingress and egress for emergency services, including fire department access, to the Real Property
- (f) On the Closing Date, Title Company shall irrevocably commit to deliver to Buyer the Title Policy as required by this Agreement, reflecting only the Permitted Exceptions.

If any of the conditions specified in above are not satisfied on or before the Closing Date, Buyer may, at its option, and in its sole and absolute discretion, (a) extend the Closing Date to allow sufficient time (but not to exceed 90 days) within which to cure or satisfy such condition, (b) waive any such condition either at the time originally established for Closing or any time on or before the 90th day thereafter and proceed to Closing without adjustment or abatement of the Purchase Price, or (c) terminate this Agreement by written notice to Seller, whereupon the Earnest Money shall be returned to Buyer and no party shall have any further obligation to the other hereunder, except as otherwise herein provided. In addition to (and notwithstanding) the foregoing, if the failure of the condition is due to a breach by Seller hereunder (and if such Seller breach is not due to a Buyer breach hereunder), Buyer also shall be entitled to any other remedies to which Buyer would be entitled under Section 6 of this Agreement.

6. **Breach or Failure to Perform:**

- 6.1 If Seller has performed its obligations as set forth in this Agreement and the Buyer fails to proceed to Closing in accordance with this Agreement, Seller may declare a breach and, as its sole and exclusive remedy therefor, retain the Earnest Money as liquidated damages for the Buyer's breach. If the Seller fails to proceed to Closing in accordance with this Agreement, the Buyer may declare a breach and may terminate this Agreement and receive a return of the Earnest Money or may seek any other remedy at law or in equity, including the remedy of specific performance. Additionally, in connection with any such breach by Seller, Seller shall reimburse Buyer for up to \$150,000 of Buyer's actual out-of-pocket pursuit costs incurred in connection with the transaction contemplated by this Agreement (as reflected by invoices or other satisfactory evidence delivered by Buyer to Seller).
- 6.2 Notwithstanding anything to the contrary herein, Buyer and Seller each hereby waives any and all rights to sue the other party for consequential, punitive, exemplary, speculative and/or indirect damages of any kind whatsoever, and this sentence shall survive Closing or any termination of this Agreement. If either party retains an attorney to enforce this Agreement, the party prevailing in litigation is entitled to recover reasonable attorney and paraprofessional fees and court and other legal costs. This Section 6.2 shall survive Closing or any termination of this Agreement.

7. **The Buyers' Representations and Warranties:** The Buyer hereby represents and warrants to the Seller that:

- (i) **Organization Standing:** That the Buyer is a Limited Liability Company incorporated under the laws of the State of Texas and is in good standing and has the requisite power to enter into this Agreement and consummate the transactions contemplated hereunder.
- (ii) **Authorization:** That the execution, delivery and performance of this Agreement and related documents, and the consummation by the Buyer of the transactions contemplated hereby, have been duly and validly authorized by all necessary corporate action.
- (iii) **Compliance with Laws.** That the Buyer is in material compliance with all applicable laws, ordinances, statutes, rules, regulations and orders promulgated by any federal, state or local governmental body or agency having jurisdiction thereover and relating to its business.
- (iv) **Litigation.** There is no suit, action or any arbitration, administrative, legal or other proceeding of any kind or character, or any governmental investigation pending or threatened against it that would or could affect title to the Real Property or that could encumber the Real Property with involuntary liens.
- (v) **Costs.** Buyer shall be responsible for payment of the following:
  1. All due diligence costs incurred by the Buyer.
  2. One-half of any Closing fees charged by the Closing Company.

3. Recording fees.
4. Buyer's attorney fees.
5. All out-of-pocket costs incurred by Seller for the Survey.

The above and foregoing representations and warranties shall also be deemed in full force and effect from the effective date of this Agreement through and including the Closing Date of the Buyer's purchase of the Real Property. In addition, the Seller shall furnish to the Buyer on its execution and delivery of this Agreement and on the Closing Date appropriate evidence of corporate good standing, due authorization of all actions then being taken and an opinion of its legal counsel (the form and substance of which shall be reasonably acceptable to the Buyer), to the effects set forth in clauses (i) through (iv) next above and as to the validity, binding effect and enforceability of the action then being taken.

**8. Seller's Representations and Warranties:** Seller hereby represents and warrants to the Buyer that:

- (i) **Organization Standing:** That Seller is an Oklahoma Municipal Corporation and has the requisite power to enter into this Agreement and consummate the transactions contemplated hereunder.
- (ii) **Authorization:** That the execution, delivery and performance of this Agreement and related documents, and the consummation by Seller of the transactions contemplated hereby, have been duly and validly authorized by all necessary action, and upon the closing of the transactions contemplated under this Agreement, it agrees to provide to the City appropriate evidence thereof.
- (iii) **Litigation.** There is no suit, action or any arbitration, administrative, legal or other proceeding of any kind or character, or any governmental investigation pending or threatened against it that would affect title to the Real Property.
- (iv) **Hazardous Materials.** Seller has no actual knowledge of any hazardous materials in, on or under the Real Property or of any on-site environmental contamination resulting from activities or operations on the Real Property during Seller's ownership of the Real Property.
- (v) **No Violations.** To Seller's actual knowledge, neither the execution and delivery of this Agreement by Seller nor the consummation of the transactions contemplated hereby will result in any breach or violation of or default under any judgment, decree, order, mortgage, lease, agreement, indenture or other instrument to which Seller is a party.
- (vi) **No Tenants.** To Seller's actual knowledge, there will be no tenants or other parties in possession with a right to use or occupy Real Property after the Closing (except for any tenants under leases executed by Buyer).
- (vii) **No Violations of Laws.** Seller has not received any written notice of any presently-uncorrected violation of any applicable law with respect to the Real Property.

- (viii) **No Rezoning.** Except as permitted under this Agreement, to Seller's actual knowledge, there are no petitions, actions or hearings, currently planned or contemplated, relating to or affecting the zoning or use of the Real Property.
- (ix) **No Rollback Taxes.** The Real Property is not subject to any taxes, assessments, penalties and/or interest which apply to or are based, calculated, or assessed in some manner on periods prior to the Closing, such as so-called "rollback taxes."
- (x) **Costs.** Seller shall be responsible for payment of the following:
  1. Seller's attorney fees.
  2. One-half closing fees charged by the Closing Company.
  3. Any state, county or local transfer or documentary stamp taxes for the Real Property.
  4. Any costs to remedy title defects.
  5. All title insurance premiums for the Title Policy.
  6. 3% commission to Steve Walman of Walman Commercial Real Estate to be paid at Closing.

The above and foregoing representations and warranties shall also be deemed in full force and effect from the effective date of this Agreement through and including the Closing Date of the Buyer's purchase of the Real Property, and shall survive the Closing for a period of twelve (12) months. In the event that Buyer is aware before the Closing Date that any of Seller's representations or warranties set forth in this Section are not true in any material respect, then Buyer shall promptly notify Seller of the same and Seller shall have the opportunity to render any such representation or warranty materially true as of the Closing Date. In the event that Buyer is aware as of the Closing Date that any of Seller's representations or warranties set forth in this Section are not true in any material respect, then Buyer shall, as its sole remedy, elect one of the following: (i) terminate this Agreement by written notice thereof to Seller prior to Closing, in which event the Earnest Money will be returned to Buyer, and Seller and Buyer will be relieved of all obligations under this Agreement except for those matters set forth herein that expressly survive the termination hereof, or (ii) elect to close under this Agreement notwithstanding such failure of such representation or warranty, in which event the Closing will be deemed a waiver by Buyer of such failure of such representation or warranty. For purposes of this Agreement, "Seller's actual knowledge" or words of similar meaning shall be defined as the current actual knowledge of \_\_\_\_\_, as \_\_\_\_\_ of Seller, with no inquiry or investigation (or duty of inquiry or investigation) necessary, and shall not be construed to refer to the knowledge of any other employee, officer, director, shareholder, partner, member, manager or agent of Seller or any affiliate of Seller, and shall in no event be deemed to include imputed or constructive knowledge. The reference herein to \_\_\_\_\_ is used solely as a basis to define the scope and limit of Seller's knowledge and shall not cause such person to incur any personal liability for anything in connection with this Agreement, or the transactions contemplated hereunder, including, without limitation, any breach of Seller's representations or warranties made herein. The preceding sentence shall survive Closing or any termination of this Agreement.

9. **Waivers:** No act, delay or omission or course of dealing between the parties hereto will constitute a waiver of their respective rights or remedies under this Agreement. No waiver, change, modification or discharge of any of the rights and duties of the parties under this Agree-

ment shall be effective unless contained in a written instrument signed by the party sought to be bound.

10. **Title to Real Property and Appurtenances; Covenants to Maintain Status:** Seller has good and marketable title (as defined in the OBA Title Examination Standards which are hereby incorporated by reference) to the Real Property and all buildings, fixtures and appurtenances thereon; Seller covenants and agrees at all times after the execution of this Agreement to: (i) refrain from further alienating or encumbering the Real Property, buildings, fixtures and appurtenances; (ii) maintain and ensure that the Real Property and, if any, all buildings and fixtures thereon and appurtenances thereto are not subject to any mortgage, pledge, line, security interest, encumbrance, restriction, lease or adverse claim or any of the Seller's rights under this Agreement; (iii) refrain from performing any grading or excavation, construction or removal of any improvement or make any other change or improvement upon or within the Real Property; (iv) refrain from committing any waste or nuisance upon the Real Property; (v) refrain from imposing any easements, covenants, conditions or restrictions on the Real Property or institute any annexation, zoning, dedication or other governmental action regarding the Real Property (except as otherwise expressly permitted in this Agreement); (vi) refrain from entering into any sale agreement, easements, leases, license agreements, services agreements or other agreement affecting the Real Property; (vii) not cause any action to be taken which would cause any of the representations or warranties made by Seller in Section 8 of this Agreement to be false in any material respect on or as of the Closing Date (upon Seller having obtained actual knowledge thereof, Seller shall promptly notify Buyer of the occurrence of any event that would constitute a material change in any of Seller's representations in Section 8 of this Agreement or a breach of any of Seller's covenants under this Section); and (viii) promptly furnish Buyer with any and all notices concerning the Real Property that Seller receives from any and all appraisal districts, taxing authorities or any other governmental entities, or of any litigation, arbitration or administrative hearing concerning the Real Property, and any other material changes in any representation or warranties made by Seller in Section 8 above.

11. **Notices:** All notices and other communications required or permitted hereunder shall be in writing and shall be (a) mailed by first class mail, postage prepaid, (b) sent via nationally-recognized overnight-courier service, or (c) sent via email, with a confirming copy sent within one (1) business day after the email transmission by one of the means specific in subsections (a) or (b) above, addressed:

to the Seller:

City Manager  
City of Broken Arrow  
P. O. Box 610  
Broken Arrow, Oklahoma 74013

with copies to:

City Attorney  
City of Broken Arrow, Oklahoma  
P. O. Box 610  
Broken Arrow, Oklahoma 74013

to Buyer:

Peak Development Services, LLC  
14841 Dallas Pkwy, suite 735  
Dallas, Texas 75254  
Attn: Garrett Johnson & Christine Gould  
Email: [gjohnson@peak-dp.com](mailto:gjohnson@peak-dp.com)  
[cgould@peak-dp.com](mailto:cgould@peak-dp.com)

With copies to:

Munsch Hardt Kopf & Harr, P.C.  
500 N. Akard Street, Suite 4000  
Dallas, Texas 75201  
Attn: Ian M. Fairchild  
Email: [ifairchild@munsch.com](mailto:ifairchild@munsch.com)  
Attn: Scott B. Smith  
Email: [ssmith@munch.com](mailto:ssmith@munch.com)

Written notices given under this Agreement shall be deemed effective as of the earlier of the date deposited or delivered.

12. **Assignment:** This Agreement shall be binding upon the parties hereto, their respective heirs, successors and assigns, but shall not be assigned by any party hereto without the written consent of the other party; provided, however, Buyer may assign this Agreement without Seller's consent to an entity controlled by or under common control with Buyer. The parties agree that written consent shall not be unreasonably withheld.

13. **Headings:** The headings contained in this Agreement are for reference only and will not affect in any way the meaning or interpretation of this Agreement.

14. **Choice of Law:** This Agreement shall be governed, construed and interpreted in accordance with the laws of the State of Oklahoma. Tulsa County shall serve as exclusive venue as it is the situs of the Real Property.

15. **Covenants and Conditions:** The obligations, duties, covenants, conditions, representations and warranties contained in this Agreement shall survive the execution hereof.

16. **Conflicts:** This Agreement is a final expression of the intent of the parties and shall be modified only by a written instrument to duly executed by both parties hereto.

17. **Binding Effect and Special Conditions:** This Agreement and the terms, covenants and provisions hereof shall insure to the benefit of and be binding upon the successors and permitted assigns of both parties hereto. This Agreement may only be modified by a written document signed by both parties.

18. **Counterparts:** This Agreement may be executed in counterparts, each of which will be deemed an original and all of which together will constitute one instrument. Signatures delivered by facsimile transmission or email transmission in portable document format or other electronic imaging is binding.

19. **Severability:** If any one or more of the provisions of this Agreement shall, for any reason, be held to be invalid, illegal and unenforceable under applicable law, this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. The remaining provisions of this Agreement shall be given effect to the maximum extent then permitted by law.

20. **Forbearance and Waiver:** Failure to pursue any legal or equitable remedy or right available to a party hereto shall not constitute a waiver of such right, nor shall any such forbearance, failure or actual waiver imply or constitute waiver of subsequent default or breach. No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision of this Agreement or any succeeding breach of the same provision. No delay in acting with regard to any breach of any provision of this Agreement shall be construed to be a waiver of such provisions.

21. **Ad Valorem Taxes:** Ad valorem taxes on the Real Property shall be prorated as of the Closing Date, Seller being charged for them through the date immediately prior to the Closing Date and Buyer being responsible thereafter. If any of the Real Property is assessed and taxed as a part of a larger parcel of real estate, then, for purposes of computing tax prorations hereunder, a proportionate part of the real estate taxes attributable to such larger parcel shall be allocated to the Real Property on the basis of the ratio between the number of gross square feet comprising the Real Property and the total number of gross square feet comprising such larger parcel of real estate.

22. **Section 1031 Tax-Deferred Exchanges:** Upon either party's request, the other party shall cooperate and reasonably assist the requesting party in structuring the purchase and sale contemplated by this Agreement as part of a tax deferred, like-kind exchange under Section 1031 of the Internal Revenue Code of 1986, as amended; provided, however, that in connection therewith, the non-requesting party shall not be required to: (i) incur any additional costs or expenses; (ii) take legal title to additional real property (i.e., the requesting parties' "replacement property" or "relinquished property"); or (iii) agree to delay the Closing. However, should both parties wish to complete a tax-deferred exchange, the parties will each incur their own additional expenses related to their exchange.

23. **No Marketing:** Seller agrees not to market any portion of the Real Property for sale from the expiration of the Inspection Period until the earlier of the Closing or a termination of this Agreement.

24. **Non-Business Day; Time:** If the final date of any period provided herein for the performance of an obligation or for the taking of any action falls on a Saturday, Sunday, or legal holiday for national banks in the location where the Real Property is located, then the end of such period shall be extended to the next business day. The term "business day" means any day of the week that is not a Saturday, Sunday, or legal holiday for national banks in the location where the Real Property is located. Time is of the essence in the performance of this Agreement.

25. **Marketing of Property:** Buyer shall have the right to enter into one or more listing agreements with real estate brokers to market the Real Property for lease to potential tenants. In connection with Buyer's effort to lease the Real Property, Buyer may list the Real Property for lease and install a "For Lease" sign on the Real Property advertising the availability of space for lease and the contact information of Buyer, any of its affiliates, or its leasing broker. Additionally, Buyer may negotiate letters of intent and lease agreements with potential tenants interested in leasing the Real Property. Buyer shall remove any "For Lease" signs following any termination of this Agreement and restore any damage to the Real Property caused by the installation and subsequent removal of such "For Lease" signs.

26. **No Assumption of Liabilities:** Notwithstanding any provision contained in this Agreement to the contrary, this Agreement is intended as and shall be deemed to be an agreement for the sale of assets and none of the provisions hereof shall be deemed to create any obligation or liability of any party to any person or entity that is not a party to this Agreement, whether under a third-party beneficiary theory, laws relating to transferee liabilities or otherwise.

27. **Risk of Loss.** In the event of a taking by condemnation or similar proceedings or actions of all, or any portion of the Real Property, Buyer shall have the option to terminate this Agreement upon written notice to Seller within ten (10) days of Buyer's notice of such condemnation, in which event the Earnest Money shall be promptly refunded by the Closing Company to Buyer, and neither Buyer nor Seller shall have any further rights or obligations hereunder. If Buyer does not timely exercise its option to so terminate this Agreement, then this Agreement shall remain in full force and effect and Seller shall assign to Buyer at Closing Seller's interest in and to any and all condemnation awards or proceeds from any such proceedings or actions in lieu thereof.

*[Signatures follow below.]*

Approved:

BROKEN ARROW ECONOMIC DEVELOPMENT AUTHORITY

---

CHAIRPERSON

APPROVED AS TO FORM:

---

CITY ATTORNEY'S OFFICE

ATTEST:

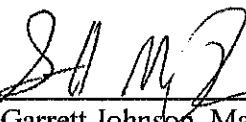
---

Secretary

APPROVED:

PEAK DEVELOPMENT SERVICES, LLC, a Texas limited liability company

---



By: Garrett Johnson, Managing Member

EXHIBIT A

LEGAL DESCRIPTION

EXHIBIT B

FORM OF GENERAL WARRANTY DEED

This instrument prepared by:

---

---

---

When recorded, return to:

---

---

---

---

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**GENERAL WARRANTY DEED**

KNOW ALL MEN BY THESE PRESENTS:

THIS GENERAL WARRANTY DEED is made as of the \_\_\_\_\_ day of \_\_\_\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ ("Grantor"), whose address is \_\_\_\_\_, and \_\_\_\_\_ ("Grantee"), whose address is \_\_\_\_\_.

WITNESSETH, that Grantor, for and in consideration of the sum of Ten Dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby give, grant, bargain, sell and convey to GRANTEE, its successors and assigns, all of the real property situated in the County of Tulsa and State of Oklahoma, which is more particularly described on the attached Exhibit A (the "Land"), and all buildings, structures, and fixtures presently situated on the Land, if any (collectively, the "Improvements"), together with (a) all right, title and interest of Grantor, if any, in and to all easements, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, appurtenant to and used in connection with or pertaining to the Improvements and Land; (b) any strips or gores of real property between the Land and abutting or adjacent properties; (c) all minerals, royalties, gas rights, water, water rights, timber and crops pertaining to the Land; and (d) Grantor's right, title and interest, if any, in and to all appurtenances and all reversions and remainders in or to the Land (the Land, the Improvements, and the foregoing subsections (a) through (d) are collectively referred to herein as the "Property").

TO HAVE AND TO HOLD the Property with all and singular the tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining, unto Grantee and Grantee's successors and assigns, forever; Grantor hereby covenanting that (i) the Property is free and clear from any encumbrance done or suffered by Grantor, except for the matters and items herein stated and set forth on **Exhibit B** attached hereto ("Permitted Exceptions"), and (ii) Grantor will warrant and defend the title to the Property unto Grantee and Grantee's successors and assigns forever against the lawful claims and demands of all persons claiming or to claim the same, except for the Permitted Encumbrances.

Grantor grants and transfers to Grantee, and its successors and assigns, to the extent granted above and which are so transferable, the benefits of the right to enforce the covenants and warranties, if any, which Grantor is entitled to enforce with respect to Grantor's predecessors in title to the conveyed Property.

*[Signature Page Follows]*

Witness my/our hand(s) this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

GRANTOR:

\_\_\_\_\_  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

State of Oklahoma      )  
                            ) ss.  
County of \_\_\_\_\_      )

This instrument was acknowledged before me on \_\_\_\_\_, 202\_\_, by  
\_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, a  
\_\_\_\_\_, on behalf thereof.

\_\_\_\_\_  
Notary Public

Exhibit A – Legal Description of Land  
Exhibit B – Permitted Exceptions

EXHIBIT C

SELLER'S DELIVERABLES

Existing Title Policy  
CC&R's/REA's if applicable  
Existing ALTA Survey

Engineering/Property Condition Reports  
Geotechnical/Soils Report  
Seismic Report, if applicable  
Existing Environmental Report(s) - Phase I, Phase II, etc.  
Governmental Permits, Notices, Reports, Citations, Compliance / Non-Compliance & Correspondence  
Documents from any Governmental authority pertaining to the Property

Current Year Tax Valuation  
Tax Bills (previous two years)  
History of Tax Protests, if any (including original and final valuations)  
Pending Tax Protests, if any

Seller's Issuance of Insurance Claims or Letter Stating None

Approvals, Site Plan, Zoning, Development and Other Agency (Historical, Traffic, etc.)  
Permits (grading, foundation, building, wetlands, etc.)