

**ECONOMIC DEVELOPMENT AGREEMENT**

**BY AND AMONG**

**B-Z PROPERTIES, LLC**

**and**

**BROKEN ARROW ECONOMIC DEVELOPMENT AUTHORITY**

**and**

**BROKEN ARROW MUNICIPAL AUTHORITY**

**Dated as of this \_\_\_\_ day of \_\_\_\_\_, 2021**

## **ECONOMIC DEVELOPMENT AGREEMENT**

**THIS ECONOMIC DEVELOPMENT AGREEMENT** (the "Agreement") is dated as of the \_\_\_\_ day of \_\_\_\_\_, 2021, by and among B-Z PROPERTIES, LLC, an Oklahoma Limited Liability Company (the "Company") and BROKEN ARROW ECONOMIC DEVELOPMENT AUTHORITY, a municipal public trust (BAEDA) and BROKEN ARROW MUNICIPAL AUTHORITY, a municipal public trust.

### **WITNESSETH:**

WHEREAS, the Company is a limited liability company organized under the laws of the State of Oklahoma; and

WHEREAS, the Company is interested in developing land located on the NE corner of Section 7, Township 18N, Range 15E (hereinafter "Project"); and

WHEREAS, this Project will allow for two sewer extensions to be installed upon said property as exhibited in Exhibits A1 and A2; and

WHEREAS, the Project will include approximately installation of one 10" sewer line extension and one 12" sewer line extension; and

WHEREAS, it is agreed between the parties that B-Z Properties, LLC will donate certain agreed upon right of way and a utility easement. The cost to BAEDA for the sewer extension has been estimated to be approximately \$23,700.00. The estimated cost of acquiring the utility easement from B-Z Properties, LLC is approximately \$27,000.00.

WHEREAS, BAEDA shall fund the sewer line extension in an amount not to exceed \$23,700.00 and the Broken Arrow Municipal Authority (BAMA) shall provide all manpower to install the sewer line extension; and

WHEREAS, Company, in consideration of the above, shall donate agreed upon right of way and a utility easement to the City of Broken Arrow;

WHEREAS, the BAEDA reasonably expects that the establishment of the Project in the City of Broken Arrow will increase overall sales tax and property tax revenues of the City; and

WHEREAS, a declared goal of the BAEDA is to encourage and facilitate economic development within and near the City of Broken Arrow by attracting and expanding new industry and commercial businesses to the Broken Arrow area, and to promote the economic health and expansion of existing industry and commercial businesses within the City; and

WHEREAS, the BAEDA seeks to promote development in this area in order to retain and expand employment, enhance the tax base, stimulate economic growth, improve the quality of life in the

City of Broken Arrow, and strengthen the community; and

WHEREAS, the BAEDA also recognizes that the Project and its operations will have additional direct and indirect economic benefits within and near the City, in Tulsa County and in the State of Oklahoma through, including without limitation, diversifying the local economy, providing economic stimulus for additional employment and other development, and predicated and/or providing training and employment opportunities in manufacturing, sales and management skills; and

WHEREAS, the BAEDA also recognizes it would be beneficial to the public and would help facilitate the construction of additional facilities if the BAMA were to construct a sewer extension to the Site in the approximate area identified on **Exhibit A1 and A2** attached hereto; and

WHEREAS, the BAEDA has appropriated and is prepared to encumber the sum not to exceed \$23,700.00 for construction of infrastructure relating to a sewer extension on the Southwest corner of Kenosha and 37<sup>th</sup> Street; and

WHEREAS, implementation of this Agreement, which is reasonably expected to facilitate the realization of the aforesaid economic benefits to the City and general area, would otherwise be difficult or impractical without certain development incentives, and apportionments and appropriations for such purposes of certain City sales tax revenues, other forms of public assistance and the involvement the City; and

WHEREAS, the BAEDA deems it appropriate to approve the execution and delivery of this Agreement in the interest of providing for the implementation of the Project and have determined such actions are in the best interests of the BAEDA and the health, safety, and welfare of the City and residents within and near the City of Broken Arrow;

NOW, THEREFORE, in consideration of the covenants and mutual obligations herein set forth and other consideration, the sufficiency of which the parties hereby acknowledge, the parties hereto hereby covenant and agree as follows:

## **ARTICLE I DEFINITIONS**

"Agreement" and such terms as "herein," "hereof," "hereto," "hereby," "hereunder," and the like shall mean and refer to this Agreement, and any and all permitted supplements, modifications and/or amendments hereto.

"Company" shall mean B-Z Properties, LLC, an Oklahoma Limited Liability Company.

"BAEDA" shall mean the BAEDA of Broken Arrow, Oklahoma, an Oklahoma municipal corporation, and, as the case may be, shall mean and refer to such agency, department or instrumentality of the BAEDA as may have, or shall have been charged with, primary responsibility for any given Agreement-subject activity.

“BAEDA” shall mean the Broken Arrow Economic Development Authority, an Oklahoma municipal trust.

“BAMA” shall mean the Broken Arrow Municipal Authority, an Oklahoma municipal trust.

"Construction Plans" shall mean such architectural and engineering drawings, plans, specifications, and other documentation as may be reasonably necessary to describe the nature, scope, materials, quality, quantity, and other information requisite for the construction and fitting of improvements and/or structures included, or to be included, within the Project, which shall be subject to the BAEDA's normal and customary review and approval as part of the BAEDA's permitting process.

“Completion Date” shall mean date determined solely by the BAEDA for beginning/end of construction.

"Project" shall mean development of the Site and the construction of a sewer extension.

“Project Site” shall mean an tract of land generally located at 37<sup>th</sup> Street and East Kenosha, within the City as shown on ***Exhibit A1 and A2***, which is attached hereto and incorporated by reference and generally described as the NE corner of the NE/4 of Section 7, Township 18 North, Range 15 East, Wagoner County, State of Oklahoma.

"State Competitive Contracting Requirements" shall mean the Public Competitive Bidding Act, Title 61, O.S.A., sections 101, *et seq.*, together with all other applicable statutory requirements pertaining to the advertising, selection and award of contracts pursuant thereto and including all contractual, bonding and insurance requirements pertaining to such contracts.

“Sewer Extension” shall mean, sewer improvements along the eastern side of the property along 37<sup>th</sup> street to accommodate future development and/or marketability of the site. The sewer extension improvements shall consist of installation of approximately 720’ of 10” pipe with three new manholes and approximately 350’ of 12” pipe with 2 new manholes designed, constructed and installed at the sole discretion of the BAMA.

## **ARTICLE II NATURE OF THIS AGREEMENT**

**2.1 Scope of the Project.** The project constructed at and on the Site shall be developed, constructed and landscaped in conformity with the City's Zoning Ordinances and Building and Land Subdivision Codes, and the Engineering Design Criteria Manual.

The parties understand, acknowledge and agree that the Company shall be solely responsible for constructing and completing or causing the construction or completion of any and all improvements to the Project Site, except as specifically provided herein.

2.2 Relationship of the Parties. The undertakings of the parties under this Agreement require the mutual cooperation of the parties and their timely actions on matters appropriate and/or necessary to fully implement the provisions hereof. The parties agree to exercise diligent, best and good faith efforts in performing and assisting one another, and requisite third parties, in performing their respective obligations under and/or relating to this Agreement, specifically including, without limitation, the performance obligations hereinafter set forth in **Articles III** and **IV** hereof.

### **ARTICLE III OBLIGATIONS OF THE BAEDA AND BAMA**

3.1 Infrastructure Improvements. At its sole cost, except as otherwise provided herein, the BAMA shall install sewer extensions across 37<sup>th</sup> Street. The design, construction and installation of the sewer extensions will be at the sole discretion of the BAMA. Construction start and stop times shall be determined exclusively by the BAMA or its/representatives.

To the extent that any Infrastructure Improvements are made on or in public rights of way or any other lands owned by the City of Broken Arrow, title to the same, upon the completion thereof, shall vest in the City of Broken Arrow, and The Company shall furnish to the City all requested instruments of release or conveyance necessary to perfect the City's title thereto, provided such instruments are in a form reasonably acceptable to The Company.

3.2 Cost of improvements. That the cost of materials for the sewer extension shall be borne exclusively by BAMA. Should any party to this agreement fail to complete their obligations, BAMA shall be refunded all monies paid out for the project within 30 days of demand.

### **ARTICLE IV OBLIGATIONS OF B-Z PROPERTIES, LLC**

4.1 Property to the City. The Company agrees as follows:

- (a) Donate a 35' utility easement as listed on "Exhibit B" and generally described as 2.0306 Acres and .0574 Acres situated in the NE/4 of Section 7, Township 18N, Range 15E, Wagoner County, Oklahoma.

4.2 Easements. At its sole cost, The Company shall dedicate utility easements and other necessary easements within the Site shown on and in accordance with Exhibits A1 and A2 and in accordance with all applicable City policies and codes.

4.3 Performance. In the event the Company fails to meet the Company's obligations outlined in paragraph 4.1, the BAEDA may terminate this Agreement and all of the terms and conditions hereof upon written notice to the Company, and, in such case, this Agreement would no longer be of any force and effect as between the parties. Furthermore, the Company shall repay to the BAMA

any and all costs incurred by the BAMA for infrastructure improvements on Company property. All amounts owed herein shall be paid by Company to BAMA within 30 days of demand.

4.4 Site Acquisition. The Company has acquired or will acquire fee simple title to the Site.

## **ARTICLE V CONSTRUCTION AND INDEMNIFICATION PROVISIONS**

5.1 Construction Plans and Contracts. The parties agree to cooperate and to use their respective best efforts to secure whatever assistance and approvals may be required from third parties in order to facilitate the preparation for and the course of such construction.

5.2 Indemnification. It is understood and agreed between the parties that the Company is performing its obligations hereunder independently, and the BAEDA/BAMA assumes no responsibility or liability in connection therewith to third parties, and the Company agrees to indemnify and hold harmless the BAEDA/BAMA, and its respective officers, agents and employees, from and against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage, or other harm for which recovery of damages is sought, suffered by any person or persons that may arise out of or be occasioned by any of the terms or provisions of this Agreement, or by any negligent act or omissions of the Company or its officers, agents, associates, employees, or contractors, in the performance of the Company's obligations under this Agreement. The provisions of this Section 5.2 are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

## **ARTICLE VI GENERAL PROVISIONS**

6.1 Nondiscrimination. The Company agrees not to discriminate on the basis of race, color, religion, gender, or national origin in the sale, lease, or rental or in the use or occupancy of the Site, the Project or any related facilities in violation of applicable law or regulation.

6.2 Conflict of Interest; Representatives not individually Liable. No official or employee of the BAMA/BAEDA/CITY shall have any personal interest in or under this Agreement, nor shall any person voluntarily acquire any ownership interest, direct or indirect, in any legal entity which is a party to this Agreement. No official or employee of the BAEDA/BAMA/CITY shall be personally liable to The Company in the event of any default or breach by or the BAEDA/BAMA.

6.3 Applicable Law, Severability and Entire Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma governing agreements

made and fully performed in Oklahoma. If any provisions of this Agreement or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, then the remainder of this Agreement or surviving portion(s) of such provision, and each other provision of this Agreement, shall be valid and enforceable to the fullest extent permitted by law. This Agreement sets forth the entire understanding between the BAEDA, BAMA and the Company with respect to the subject matters of this Agreement, there being no terms, conditions, warranties or representations with respect to the subject matter other than as contained herein.

6.4 Third Parties. Except as expressly provided otherwise in this Agreement, the provisions of this Agreement are for the exclusive benefit of the parties hereto and not for the benefit of any other persons, as third-party beneficiaries or otherwise, and this Agreement shall not be deemed to have conferred any rights express or implied, upon any other person.

6.5 No Partnership Created. This Agreement specifically does not create any partnership or joint venture between the parties hereto, or render any party liable for any of the debts or obligations of any other party.

6.6 Formalities and Authority. The parties hereto represent and warrant that they are validly existing and lawful entities with the power and authorization to execute and perform this Agreement. The headings set forth in this Agreement are for convenience and reference only, and in no way define or limit the scope or content of this Agreement or in any way affect its provisions.

6.7 Notices and Demands. Any notice, demand, or other communication under this Agreement shall be sufficiently given or delivered when it is deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested, or delivered personally, as follows:

To the Company:

B-Z Properties, LLC  
Roger Broach, Managing Member  
7667 East 46<sup>th</sup> Place  
Tulsa, OK 74145

To the BAEDA/BAMA:

City Manager  
The City of Broken Arrow  
P. O. Box 610  
220 South First  
Broken Arrow, Oklahoma 74012

With copies to:

City Attorney

City of Broken Arrow, Oklahoma  
P. O. Box 610  
Broken Arrow, Oklahoma 74012

or to such other address, within the United States, with respect to a party as that party may from time to time designate in writing and forward to the others as provided in this Section. A copy of any notice, demand or other communication under this Agreement given by a party under this Agreement to any other party under this Section shall be given to each other party to this Agreement.

6.8 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.

6.9 Modifications. This Agreement cannot be changed orally, and no executory agreement shall be effective to waive, change, modify or discharge it in whole or in part unless such executory agreement is in writing and is signed by the parties against whom enforcement of any waiver, change, modification or discharge is sought.

6.10 Unavoidable Delays. The time for performance of any term, covenant, condition, or provision of this Agreement shall be extended by any period of unavoidable delays. In this Agreement, "unavoidable delays" shall mean any delay beyond the reasonable direct or indirect control of the party obligated to perform the applicable term, covenant, condition, or provision under this Agreement and shall include, without limiting the generality of the foregoing, delays attributable to acts of God, strikes, labor disputes, governmental restrictions, court injunctions, riot, civil commotion, acts of public enemy, and casualty, and shall not include any delays attributable to financial difficulties; *provided*, the assertion of any unavoidable delay shall be subject to the asserting party first giving written notice to the other parties of its claim thereof and thereupon and forthwith diligently and in good faith undertaking all reasonable efforts to overcome the conditions leading to or causing such delay.

6.11 Further Assurances. Each party agrees that it will, without further consideration, execute and deliver such other documents and take such other action, whether prior or subsequent to the consummation of the matters or completion of the undertakings set forth herein, as may be reasonably requested by any other party to consummate more effectively the purposes or subject matter of this Agreement.

6.12 Attorneys' Fees. In the event of any controversy, claim or dispute between the parties affecting or relating to the subject matter or performance of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all of its reasonable expenses, including reasonable attorneys' fees as determined by Oklahoma law.

6.13 Counterparts. This Agreement may be executed in several counterparts, and all such executed counterparts shall constitute the same agreement. It shall be necessary to account for only one such counterpart in proving this Agreement.

Before me, the undersigned, a Notary Public in and for said County and State on the \_\_\_\_ day of \_\_\_\_\_, 202\_\_, personally appeared Roger Broach, member manager of B-Z Properties,

LLC, a Oklahoma Company, to me known to be the identical persons who executed the within and foregoing instrument and acknowledged to me that they executed the same as their free and voluntary act and deed, and as the free and voluntary act and deed of said corporation for the uses and purposes therein set forth.

Given under my hand and seal the day and year above written.

(S E A L)

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Notary Public  
My commission expires:  
My number is: