

ECONOMIC DEVELOPMENT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT (the "Agreement") is dated as of the 21st day of March, 2017, by and between THE CITY OF BROKEN ARROW, OKLAHOMA, an Oklahoma municipal corporation (together with its successors and assigns, the "City", which term, when used in such context, shall also mean and refer to the area within the territorial limits of the City), and B.A. Vesper, L.L.C., an Oklahoma Limited Liability Company, (together with its successors and assigns, the "Developer").

WITNESSETH:

WHEREAS, Developer is interested in constructing, developing and operating a commercial development in downtown Broken Arrow consisting of approximately 14,000 square feet, the "Project" and generally located at 121 West College Street, Broken Arrow, Oklahoma, the "Site;" and

WHEREAS, it is anticipated the Project will consist of office space and other commercial development, with potential businesses in the areas of technology, legal, accounting, engineering, consulting, software, retail trade, communications, financial, real estate and restaurant; and

WHEREAS, it is anticipated that the Project will create approximately 50 full time jobs to the City's downtown area; and

WHEREAS, the Developer's estimated total investment, not including the land purchase, for the Project is \$ 1,000,000.00; and

WHEREAS, a declared goal of the City is to encourage and facilitate economic development within and near the City by attracting commercial developments to the Broken Arrow area; and

WHEREAS, the City recognizes that the full development of the Project will have both direct and indirect economic benefits for the City and through such development reasonably expects (i) to realize increases in *ad valorem* revenues to be derived therefrom by the City, Tulsa County, Oklahoma ("Tulsa County"), Independent School District No. 3 of Tulsa County, Oklahoma, and other local and area governmental entities from time to time benefiting therefrom; (ii) that the development of the Project will generally enhance property values within the City; and (iii) that the development of the Project will otherwise contribute significantly to the economic wellbeing of the citizens of, and residents within and near, the City, and those in Tulsa County and the State of Oklahoma (the "State") generally; and

WHEREAS, the City also recognizes that the development of 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 through, including without limitation, providing economic stimulus for additional commercial and retail development in this area; and

WHEREAS, the City recognizes it would be beneficial to the public for the City to provide for the parking improvements on College Street and extend the existing water line located on College

Street from Ash to Main Street in the amount not to exceed \$170,337.50 for the design and construction of the parking improvements and water line extension (the "Development Incentive"), subject to the Developers satisfaction of certain requirements; and

WHEREAS, implementation of this Agreement, which is reasonably expected to facilitate the realization of the aforesaid economic benefits to the City, downtown and general area, would otherwise be difficult or impractical without certain development incentives; and

WHEREAS, the City is implementing the economic development and redevelopment objectives of the City in accordance with the approved Broken Arrow FlightSafety and Downtown Economic Development Project Plan and Increment District No. 1 City of Broken Arrow; and

WHEREAS, the City desires to utilize these economic development incentives for this project in order to reverse the condition of arrested economic development and to bring about new activity in downtown Broken Arrow; and

WHEREAS, the City deems it appropriate to approve the execution and delivery of this Agreement in the interest of providing for the implementation of the development of The Project and has determined such actions are in the best interests of the City and the health, safety, and welfare of the City and residents within and near the City.

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.

"City" shall mean The City 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 City as may have, or shall have been charged with, primary responsibility for any given Agreement-subject activity.

"Construction Completion Date" shall mean the day the construction of The Project is substantially completed by Developer.

"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, *subject to* the same having first been agreed to and approved by the parties to this Agreement.

“Developer” shall mean B.A. Vesper, L.L.C.

"Full-time Employee" shall mean an individual employed and who works and is compensated for working not less than thirty-two (32) hours per week.

“Infrastructure Improvements” shall mean an 8” water line extension located along College Street, from Ash Street to Main Street; parallel parking improvements serving the Project on College Street; angled parking improvements serving the Project on Ash Street; and Two – ¾” water taps, more accurately set forth in Section 5.1 of the Agreement.

"Project" shall mean development of the Site and the construction, equipping and furnishing of the office and commercial facilities.

“Site” shall mean the tract of land generally located at 121 West College Street, City of Broken Arrow, Oklahoma.

ARTICLE II NATURE OF THIS AGREEMENT

2.1 Scope of the Project. The Project, consisting of office and commercial development, 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.

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 V hereof.

ARTICLE III OBLIGATIONS OF THE DEVELOPER

3.1 Development of Project. Developer shall diligently undertake the development of the Project, including the following:

- i. at its sole cost, develop, construct and operate an office and commercial development consisting of approximately 14,000 square feet potentially consisting of uses for technology, legal, accounting, engineering, consulting, software, retail trade, communications, financial, real estate and restaurant in accordance with the following schedule; and
 - a. construction start date: June 1, 2017
 - b. construction completion date: December 31, 2018

3.2 Site Acquisition. Developer shall demonstrate acquisition of fee simple title to the Site on or before May 1, 2017.

3.3 Site Improvements. At its sole cost, design and construct, or cause to be designed or constructed, all necessary on-Site infrastructure for the Project with the exception of the infrastructure improvements specifically set forth in Article V of this Agreement.

3.4 Approval of Architectural Layout and Exterior Design. Developer shall allow the City to approve the architectural layout and exterior design of the development prior to construction;

3.5 Dedication of Right-of-Way and Easements. Developer shall dedicate all right-of-way, utility and other easements, in accordance with the City's Zoning and Building Codes, and the City's Land Subdivision Code.

ARTICLE IV CONTINGENT PAYMENT OBLIGATIONS OF THE DEVELOPER

4.1 Contingent Payment Obligations of Developer. In the event Developer fails to undertake the Project or at any time from and after the Construction Completion Date and in accordance with good commercial center practices, fails to continuously manage and operate the project at any time prior to the fifth (5th) anniversary of the Construction Completion Date, Developer shall repay to the City an amount not to exceed \$170,337.50 for the Infrastructure Improvements as set forth in section 5.1, which said amount shall be due and payable within one-hundred eighty (180) days next following the first day of the month next following the month in which such cessation shall have occurred.

ARTICLE V OBLIGATIONS TO THE CITY

5.1 Infrastructure Improvements. The City agrees to construct or cause to be constructed the following Infrastructure Improvements:

- a. 8" water line extension located along College Street, from Ash Street to Main Street serving the Project, to include, connection to the 4" water line at Ash and College, connection to 12" water line at Main Street, fire hydrant assembly.
- b. Parallel parking improvements serving the Project on College Street, to include demolition, concrete curb and gutter, asphalt parking, aggregate base.
- c. Angled parking improvements serving the Project on Ash Street, to include demolition, concrete curb and gutter, concrete sidewalk, stamped concrete, asphalt parking.
- d. Two - ¾" water taps

The City agrees to construct in accordance with the following schedule:

- a. construction start date: June 1, 2017
- b. construction completion date: December 31, 2018

ARTICLE VI TERMINATION CLAUSE

Notwithstanding any provision of this Agreement to the contrary, in the event the Project shall fail to occur, or having occurred, if construction of the project is not timely commenced and completed for any reason, this Agreement, and all and several of the terms and conditions hereof, shall forthwith terminate and be of no force and effect as between the parties or any thereof.

ARTICLE VII GENERAL PROVISIONS

7.1 Nondiscrimination. Developer 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.

7.2 Conflict of Interest; Representatives not Individually Liable. No official or employee of the 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 City shall be personally liable to Developer in the event of any default or breach by the City or for any amount to become due to Developer under this Agreement.

7.3 Applicable Law, Severability and Entire Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State 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 City and Developer 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.

7.4 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.

7.5 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.

7.6 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.

7.7 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 B.A. Vesper, L.L.C.:

Stan Synar, Manager
B.A. Vesper L.L.C.
P. O. Box 1160
Tulsa, Oklahoma 74101-1160

To the City:

City Manager
The City of Broken Arrow
P. O. Box 610
220 South First
Broken Arrow, Oklahoma 74013

With copies to:

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

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.

7.8 Assignment. Developer shall not have the right to assign its rights or obligations under this Agreement without the prior written consent of the City.

7.9 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.

7.10 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.

7.11 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 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 party 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.

7.12 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.

7.13 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.

7.14 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.

7.15 Construction of this Agreement. Each party hereby acknowledges that it and its legal counsel have reviewed and, as the case may be, revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

7.16 City's Limited Liability. The obligations of the City arising under or by virtue of this Agreement shall be limited to \$170,337.50.

STATE OF Oklahoma)

) SS:

COUNTY OF Tulsa)

Before me, the undersigned, a Notary Public in and for said County and State on the 16th day of March, 2017, personally appeared Stan Sycar, Owner/Manager of BA Vesper LLC, to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of said limited partnership for the uses and purposes therein set forth.

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

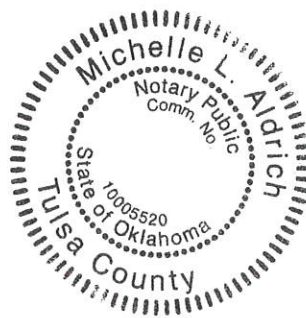
(SEAL)

Michelle L Aldrich

Notary Public

My commission expires: 7-9-18

My number is: 10005520



STATE OF Oklahoma)

) SS:

COUNTY OF Tulsa)

Before me, the undersigned, a Notary Public in and for said County and State on the 16th day of March, 2017, personally appeared Lynn Palmer, Owner/Manager of Bravesper LLC, to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of said limited partnership for the uses and purposes therein set forth.

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

(SEAL)

Michelle L. Aldrich

Notary Public

My commission expires: 7-9-18

My number is: 10005520

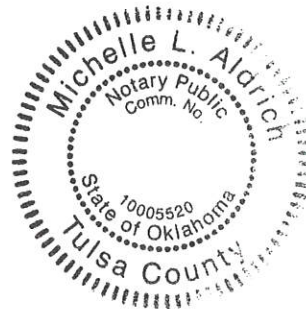


EXHIBIT A