

**ECONOMIC DEVELOPMENT AGREEMENT**

**BY AND AMONG**

**CREEK 51 BUSINESS PARK, LLC**

**and**

**BROKEN ARROW ECONOMIC DEVELOPMENT AUTHORITY**

**and**

**CITY OF BROKEN ARROW, OKLAHOMA**

**Dated as of September 13, 2019**

## **ECONOMIC DEVELOPMENT AGREEMENT**

This ECONOMIC DEVELOPMENT AGREEMENT dated as of September 13, 2019 (the “Agreement”), by and among CREEK 51 BUSINESS PARK, LLC, a Texas limited liability company (the “Company”), the BROKEN ARROW ECONOMIC DEVELOPMENT AUTHORITY (the “Authority”), and the CITY OF BROKEN ARROW, OKLAHOMA, a municipal corporation (hereinafter called “City”), as beneficiary of the Authority.

### **WITNESSETH:**

WHEREAS, the City has adopted and approved the Creek 51 Business Park Economic Development Project Plan dated June 26, 2019 (the “Project Plan”) by Ordinance No. 3597 dated August 6, 2019 (the “Local Act”), pursuant to the Oklahoma Local Development Act, Title 62, Oklahoma Statutes, Section 850, *et seq.* as amended (the “Local Development Act”); and

WHEREAS, the City, by virtue of the Local Act, has heretofore created Increment District No. 2, City of Broken Arrow (as more specifically described herein, the “Increment District”), pursuant to the Local Development Act; and

WHEREAS, the Project Plan supports the achievement of the economic development objectives of the City in accordance with previously approved strategies and plans to incentivize capital investment in facilities to serve as a catalyst for expanding employment in the area, attract major investment in the area, preserve and enhance the tax base and make possible investment, development, and economic growth that would be difficult or impossible without the project and the apportionment of ad valorem taxes from within the Increment District; and

WHEREAS, the Company proposes to invest or cause to be invested in the construction of an approximately 97.2 acre business park supporting a variety of industrial and office commercial developments, which will encourage commerce and generate a corresponding growth in the local tax base (collectively, the “Project”); and

WHEREAS, the proposed Project is located west of the interchange of the Creek Turnpike and State Highway 51, contiguous with the boundaries of Parcel ID #251184-000001-000000 and Parcel ID #251172-000001-0000001 (said property collectively referred to as the “Project Site”); and

WHEREAS, the Authority and the City desire to assist, encourage and support the Project by (i) completing certain Traffic Improvements (as defined herein), and (ii) providing assistance in development financing (as authorized under the Local Development Act, as defined herein) to the Company in the form of Investment Incentives (as defined herein) to maximize the amount of capital investment in Broken Arrow in order to maximize tax receipts; all in order to provide opportunities for full time employment for the residents in and around the geographical area of the City and the consequent benefits to the local economy that will derive therefrom; and

WHEREAS, the Authority and the City deem the execution of this Agreement providing for the implementation of the Project to be vital and in the best interests of the City, and the health, safety, and welfare of the State of Oklahoma and its residents in accordance with the public purposes of the Project and the Project Plan.

NOW, THEREFORE, in consideration of the promises and mutual obligations herein set forth and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereby covenant and agree with each other as follows:

## ARTICLE I. DEFINITIONS

In each and every place in and throughout this Agreement, whenever the following terms are used, unless the context shall clearly indicate another or different meaning or intent, they shall have the following meanings:

“Agreement” shall mean this Economic Development Agreement dated as of September 13, 2019, entered into by and among the Company, the City, and the Authority.

“Apportionment Fund” shall mean the Increment District No. 2, City of Broken Arrow, Tax Apportionment Fund created pursuant to the Local Act and as further defined in the Security Agreement.

“Authority” shall mean the Broken Arrow Economic Development Authority, a public trust having the City as beneficiary thereof.

“City” shall mean the City of Broken Arrow, Oklahoma.

“Company” shall mean Creek 51 Business Park, LLC, a Texas corporation.

“Development Agreements” or “development agreements” shall collectively refer to all such Development Agreements pertaining to the Increment District, including this Agreement.

“Increment District” shall mean Increment District No. 2, City of Broken Arrow, Oklahoma, as established by the Local Act, generally described as an area located off the west side of State Highway 51, and bordered on the east by State Highway 51 and the interchange with the Creek Turnpike, on the southwest by the M.K. & T Railroad tracks, and on the north by the Oak Tree South Extended subdivision, contiguous with the boundaries of Parcel ID #251184-000001-000000 and Parcel ID #251172-000001-0000001. See Exhibit A for a map showing the Increment District. See Exhibit B for a legal description of the area of the Increment District.

“Investment Incentives” shall mean the economic incentives in the form of assistance in development financing representing 50% of the total ad valorem taxes generated by long-term capital investment at the Project Site within the Increment District, all as more specifically described in Article II herein.

“Local Act” shall collectively mean Ordinance No. 3597 adopted and approved by the City on August 6, 2019, all pursuant to the Local Development Act.

“Local Development Act” shall mean the Oklahoma Local Development Act, Title 62, Oklahoma Statutes, Section 850, *et seq.* as amended.

“Project” shall mean the construction and development of a business park supporting a variety of industrial and office commercial developments, all as more specifically described in Article II herein.

“Project Costs” shall collectively mean those costs as authorized and further defined in the Project Plan.

“Project Plan” shall mean the Creek 51 Business Park Economic Development Project Plan dated June 26, 2019, adopted and approved by the City pursuant to the Local Act and the Local Development Act.

“Project Site” shall mean the parcel(s) of property presently owned or hereafter acquired by the Company for purposes of developing the Project within the Increment District. See Exhibit A for a map showing the Increment District. See Exhibit B for a legal description of the area of the Increment District. See Exhibit C for an initial Project Site Development Plan.

“Traffic Improvements” shall mean the traffic control improvements along State Highway 51 appropriate to accommodate the projected traffic at the entrance to Creek 51 Business Park. The scope of the Traffic Improvements will be to coordinate with the Oklahoma Department of Transportation to install a new traffic signal at the entrance to Creek 51 Business Park.

“Security Agreement” shall mean the Security Agreement dated as of September 13, 2019, by and between the City and the Authority.

“Tax Increment” shall mean the incremental portion of ad valorem tax revenue generated by or sourced to the Increment District.

“Transaction Agreements” shall mean this Agreement and the Security Agreement.

## **ARTICLE II. NATURE OF THE AGREEMENT**

2.1. **SCOPE OF THE PROJECT.** The goal of the City in connection with the development of the Increment District is to encourage capital investments that provide opportunities for full-time employment for the residents in and around the geographical area of the City and the consequent benefits to the local economy that will derive therefrom. The Authority and the City believe the Project will help maximize the amount of capital investment at the Creek 51 Business Park facilities in order to provide a significant enhancement to the tax base long term, and will also encourage the expansion of full-time employment opportunities within the City.

The Company has proposed to invest or cause to be invested in excess of \$73.1 million to construct an estimated 812,700 square feet of business and industrial space for lease and/or sale to interested business concerns (collectively, the “Project”). The preliminary development plan calls for the creation of eight (8) lots comprising approximately 90.39 acres total, ranging in size from 2.35 acres to 37.29 acres. The Company has expended and/or expects to expend approximately \$2.37 million for initial acquisition costs, and expects to expend an additional \$3.2 million for site development costs including general site grading, construction of an industrial boulevard serving

the Creek 51 Business Park, water, sewer, and drainage utility improvements, erosion control, and construction of an emergency fire access road.

The City proposes to encourage the magnitude of the capital investment by providing a mechanism to offset a portion of the costs associated with the Project. The City has identified specific infrastructure improvements to publicly owned traffic facilities and infrastructure, and certain Project Costs have been identified, including installation of a new traffic signal at the entrance to Creek 51 Business Park that will provide safer egress and ingress to the Creek 51 Business Park (referred to herein as the “Traffic Improvements”), and these improvements are estimated to cost approximately \$300,000, and will be funded initially from available capital funds of the City, to be reimbursed from a portion of the incremental revenues described herein. The City may seek other funding sources for all or a part of the signalization costs, which funds may supplement and/or offset a portion of the Traffic Improvement Costs to be funded through the Increment District. The City has also incurred or will incur Organizational Costs in the approximate amount of \$55,000, to be reimbursed from a portion of the incremental revenues described herein. The ad valorem taxes generated by the taxable capital investment of the Company will be the primary source of the incremental revenues utilized to pay and/or reimburse the portion of the costs of the Traffic Improvements and Organizational Costs designated pursuant to the Project Plan.

Additionally, economic incentives are proposed in the amount of 50% of the total annual ad valorem taxes generated by the capital investment, up to a maximum aggregate incentive of \$5,000,000 (referred to herein as the “Investment Incentives”). The goal of the Investment Incentives is to maximize the amount of capital investment within the Creek 51 Business Park in order to provide a significant enhancement to the tax base long term. In order to incentivize the Company to maximize the capital investment at the Project Site, the Authority and the City will utilize Tax Increment revenues derived from the annual ad valorem tax payments to pay an amount equal to 50% of such ad valorem payments to the Company. The greater the aggregate taxable amount of investment, the larger the resulting annual Investment Incentive. There will be a \$5 million limit on the aggregate total amount of Investment Incentives that may be paid over the duration of the Increment District. The Company will have sole discretion as to how it utilizes any amounts received as the Investment Incentives. The 50% of the total ad valorem taxes generated by capital investment not utilized for incentives will directly benefit the affected taxing jurisdictions and pay and/or reimburse any remaining costs of the Traffic Improvements and Organizational Costs.

The Authority and the City shall contract (or cause to be contracted) for the completion of the Traffic Improvements. The Authority and the City shall provide monetary assistance in development financing (as authorized by Section 853(14)(o) of the Local Development Act) to the Company pursuant to the terms of this Agreement in connection with the Investment Incentives.

## **2.2. RELATIONSHIP OF THE AUTHORITY, CITY, AND COMPANY.**

A. The undertaking of this Project is a complex process which will require the mutual agreement of the Authority, the City, and the Company and their timely actions on matters appropriate or necessary to Project implementation. Each of the parties hereto shall use commercially reasonable efforts in good faith to perform and to assist the other parties in

performing their respective obligations under this Agreement, including specifically the performance of obligations hereinafter set forth in Article III and Article IV; provided, that nothing in this Section 2.2 shall obligate or be deemed to obligate the Company to incur, expend, or enter into any material cost, expense, liability or obligation except as may be otherwise set forth herein.

B. The parties understand, acknowledge and agree that the Company shall be solely responsible for constructing and completing, or causing the construction and completion of, any and all improvements to the Project Site, in a manner that will result in ad valorem taxes that qualify for payment as an Investment Incentive. Accordingly, and notwithstanding anything to the contrary in this Agreement, nothing herein or any of the other Transaction Agreements shall be deemed to impose any obligations on the Company for the construction or completion of any and all improvements to the Project Site or for any activities or obligations related to such construction or reasonably expected to be within the control of the Authority or the City.

2.3. OTHER GOVERNMENTAL APPROVALS. The implementation of this Project may require approvals by other governmental entities and the City in accordance with applicable laws, ordinances, and regulations. The Authority and the City will in good faith use their best efforts to obtain and expedite the necessary approvals for undertaking and implementing the Traffic Improvements and, to the extent applicable, the construction of the Project. The Authority and the City, with the commercially reasonable cooperation of the Company, shall be responsible for assisting the Company in complying with applicable requirements, filing appropriate applications, and taking other steps necessary or desirable to expedite and obtain the approvals necessary for undertaking and implementing improvements to the Project Site and, to the extent applicable, the construction of the Project; provided, that nothing in this Section 2.3 shall obligate or be deemed to obligate the Company to incur, expend, or enter into any material cost, expense, liability or obligation; provided further, any normal and customary expenses related to said approvals shall be the responsibility of the Company.

### **ARTICLE III. COVENANTS AND OBLIGATIONS OF THE AUTHORITY AND CITY**

3.1. COLLECTION OF APPORTIONED TAX INCREMENTS. The Authority and or the City shall promptly collect the Tax Increment as generated pursuant to the Local Act and the Project Plan, and shall maintain such funds in the Apportionment Fund for the purposes set forth in the Local Act and the Project Plan.

3.2. COSTS OF TRAFFIC IMPROVEMENTS, INVESTMENT INCENTIVES, AND USE OF REMAINING TAX INCREMENT REVENUES.

A. The Authority and the City agree to construct, or cause to be constructed, the Traffic Improvements. The Authority and the City agree to pay the costs of the Traffic Improvements from funds available to the City. Additionally, the City and the Authority agree to pay all Organizational Costs (as described in the Project Plan) of the Increment District in an amount estimated at \$55,000. The City and the Authority may seek reimbursement for payment of the Traffic Improvements and the Organizational Costs from available Tax Increment revenues in an amount not to exceed \$355,000 (plus any interest and/or other financing costs incurred by the City

or a public trust issuing TIF Bonds on its behalf), to be payable in an amount not to exceed \$60,000 from the annual Tax Increment revenues derived from real and personal property ad valorem taxes generated within the Increment District until the full \$355,000.00 has been reimbursed to the City and/or the Authority. In the event the costs of the Traffic Improvements exceed the anticipated project budget of \$300,000.00, the City shall bear the responsibility to obtain and/or provide additional funding sources as appropriate. Nothing herein shall be construed to require or prohibit the City from directing a public trust on its behalf to issue debt obligations to pay the costs of the Traffic Improvements or the Organizational Costs.

B. The City and the Authority hereby agree to pay to the Company an amount annually equal to 50% of the annual Tax Increment revenues derived from real and personal property ad valorem taxes generated within the Increment District, up to a maximum aggregate incentive of \$5,000,000 over the duration of the Increment District. Said Investment Incentive shall be payable within thirty (30) days of receipt of funds from the Wagoner County Treasurer for deposit in the Apportionment Fund, and shall continue for the duration of the Increment District (expiring for the period ending December 31, 2030, as provided in the Local Act). The Authority and the City shall have no responsibility for determination of the amounts of ad valorem taxes due on real and personal property within the Increment District, and the Wagoner County Assessor shall have the sole authority to determine the assessed value thereof.

C. The City and the Authority hereby agree to apportion on an annual basis to the affected taxing entities all Tax Increment revenues remaining after payment and/or reimbursement of the costs of the Traffic Improvements, the costs of the Investment Incentives, and the Organizational Costs. Said amounts shall be apportioned in the manner provided in the Project Plan and the Local Act.

3.3. **PLEDGE OF APPORTIONED TAX INCREMENTS.** The Authority shall pledge, and agrees to take any other actions as shall be necessary to confirm or perfect such pledge, one-hundred percent (100%) of the apportioned Tax Increment pertaining to the Increment District (as said Tax Increment is described in the Security Agreement), at such times and in such amounts as the Tax Increment may be received, to the payment of the obligations set forth in Section 3.2 herein. This Agreement is intended to constitute a “security agreement” under the Uniform Commercial Code of the State of Oklahoma, and the City and the Authority acknowledge that the Company may make a UCC filing to perfect its security interest in the Tax Increment revenues. Tax Increment revenues in excess of that needed for payment of said obligations shall be applied as set forth in the Project Plan.

#### 3.4. **ALLOCATION OF TAX INCREMENT TO COSTS OF PROJECT SITE IMPROVEMENTS.**

A. Pursuant to this Agreement, the total costs pertaining to the Traffic Improvements and Organizational Costs that may be paid from apportioned Tax Increment revenues are estimated to be and shall not exceed \$355,000, plus any interest and/or other financing costs incurred by the City or a public trust issuing TIF Bonds on its behalf.

B. Pursuant to this Agreement, the amount of Investment Incentives paid to the Company shall not exceed \$5,000,000, provided however, all Investment Incentives shall be

payable exclusively from the Tax Increment revenues derived from real and personal property ad valorem taxes generated within the Increment District.

3.5. **TERM OF DISTRICT.** The Authority and the City agree not to take or omit to take any action that would in any way contribute to or cause the elimination of any portion of the area or duration of the Increment District or that would in any way reduce or otherwise jeopardize the Tax Increment to be apportioned to the Increment District; provided however, this provision shall not be construed to prohibit the City, from time to time in the normal course of its legislative powers, from proposing changes in taxing measures that may impact the applicable levies and resulting Tax Increment.

3.6. **OTHER ACTIONS.** The City and the Authority agree to take such other actions as may be appropriate or desirable to support the implementation of the Project including, by way of example, assistance in qualifying for tax incentives and exemptions, and other appropriate assistance to facilitate the Project.

3.7. **OBSERVANCE OF THE SECURITY AGREEMENT.** The Authority hereby agrees to keep, perform, and observe faithfully all of the covenants, conditions, and requirements imposed upon it in the Security Agreement. The Authority agrees that any material breach by the Authority or the City shall constitute a material breach by the Authority and the City of this Agreement.

#### **ARTICLE IV. COVENANTS AND OBLIGATIONS OF THE COMPANY**

4.1. **DEVELOPMENT OF PROJECT SITE.** In accordance with the provisions of this Agreement, the Company shall construct and operate the Project by making or causing to be made capital investments and entering into contractual agreements appurtenant to the standard operation of an industrial/commercial business park; provided, that nothing in this sentence shall require, or be construed to require, the Company to waive rights that are, or accept agreements or provisions that are not, customary or commercially reasonable for any present or future tenants/owners within the business park. The Company shall provide to the City periodic updates to the Site Plan for the development of the Project Site, which said documents shall be consistent in all respects with any applicable provisions of the City Code. The Company shall maintain the Project in accordance with applicable laws and commercially reasonable standards.

4.2. [Left Blank Intentionally]

4.3. [Left Blank Intentionally]

4.4. **AD VALOREM TAX PAYMENTS.** The Company agrees and understands that the payment and/or reimbursement of the Traffic Improvements, the Organizational Costs, and the Investment Incentives are directly dependent upon the Company's success with respect to the Project in a manner that will generate sufficient Tax Increment revenue to pay said Project Costs. The Company agrees to remit all ad valorem taxes for which it is legally obligated to remit in a timely manner. All payments of ad valorem taxes shall be made to the Wagoner County Treasurer at the times and in the amounts ordinarily required by law. The Company also agrees to provide

supporting information to the City and to the Wagoner County Assessor in a reasonable and timely manner to facilitate the proper determination of Tax Increment revenue attributable to the Project Site.

4.5. **PROJECT FINANCING.** The Company shall provide all financing for the development of the Project Site.

4.6. [Left Blank Intentionally]

4.7. **DEDICATION OF RIGHTS-OF-WAY AND EASEMENTS.** The Company shall dedicate any reasonably necessary or appropriate easements for drainage, access, construction, rights-of-way, and public utilities within the Project Site to the City in support of the implementation of the Project Plan and development of the Project Site pursuant to this Agreement.

4.8. [Left Blank Intentionally]

4.9. **OTHER ACTIONS.** The Company agrees to take such other commercially reasonable actions as may be reasonably necessary or appropriate to support the implementation of the Project including, by way of example, furnishing information reasonably requested by the Authority or the City for reporting purposes under the Local Development Act, preparation and execution of supporting Project documentation, cooperation in construction activities, preparation of Project activities reports, preparation of information relating to employment figures, and assistance in other matters that may be of benefit to the Project; provided, that nothing in this Section 4.9 shall obligate or be deemed to obligate the Company to (i) incur, expend or enter into any cost, expense, liability or obligation, (ii) disclose any confidential information, or (iii) undertake any action for which the Authority and/or the City are responsible for undertaking.

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

5.1. **COMPETITIVE BIDDING ACT.** To the extent required by law, any and all public construction contracts, or portions thereof, made by the Authority or the City pursuant to Section 3.2 of this Agreement, shall be made in compliance with the Oklahoma Public Competitive Bidding Act of 1974, Title 61, Oklahoma Statutes, Section 101, *et seq.*, as amended (the “Bidding Act”). The Company agrees the City and the Authority shall have the exclusive right to make determinations pursuant to the Bidding Act.

5.2. **CONSTRUCTION PLANS AND CONTRACTS.** The Authority and the City shall use their respective best efforts to obtain whatever assistance and approvals may be required from third parties in order to facilitate construction of Traffic Improvements.

5.3. [Left Blank Intentionally]

5.4. **PERFORMANCE AND COMPLETION BONDS.** Any and all contracts, or portions thereof, made by the Authority or the City pursuant to Section 3.2 of this Agreement shall, to the extent applicable, comply with the bonding requirements of the Bidding Act.

## 5.5. INDEMNIFICATION.

A. The Company shall indemnify and hold harmless the Authority and the City for any liability for breach of the Company's obligations under this Agreement, in each case subject to Section 6.18; provided, that the Company shall have no obligation to indemnify the Authority or the City for any such injury or damages to the extent arising out of or from (i) any breach of this Agreement or any other Transaction Agreement by the City or the Authority, (ii) any matter for which the Authority or the City are responsible or liable pursuant to any other contract with the Company, (iii) any matter for which any other Person or entity is liable to the Authority or the City, or (iv) any matter caused by willful misconduct or gross negligence of the City or the Authority. The Company shall have the right to control the defense of any third-party claims for which the Authority or the City seek indemnification hereunder. The Authority or the City shall promptly notify the Company in writing of any claim subject to this Section 5.5, but in any event shall provide such notification within thirty (30) days of receipt of any such claim in writing.

B. To the fullest extent allowable by law, the Authority and the City shall indemnify and hold harmless the Company for (i) any liability to third parties for personal injury or property damage for construction and operation activities of the Authority or the City arising out of or related to this Agreement, the subject matter thereof and/or (ii) breach of the Authority's or the City's obligations stated herein or in any other Transaction Agreement, to the extent not caused by willful misconduct or gross negligence of the Company, provided that, said indemnification, if lawful, is not intended to be a waiver of tort claims liability limits, and any claims against the Authority and the City shall be limited to the amounts specified in the Governmental Tort Claims Act, Title 51, Oklahoma Statutes, Section 151, *et seq.*, as amended.

## 5.6. [Left Blank Intentionally]

# ARTICLE VI. GENERAL PROVISIONS

6.1. **NONDISCRIMINATION.** The Company agrees, in its capacity as the developer of the Project Site, not to discriminate on the basis of race, color, religion, gender, or national origin in the use or occupancy of the any of the buildings and facilities constructed on the Project Site, in violation of any applicable law or regulation.

## 6.2. RIGHTS OF ACCESS.

A. **Authority and City Access to Project Site.** The Company shall permit representatives of the Authority and the City to have reasonable access to the Project Site during normal business hours, for the purposes of this Agreement, including, but not limited to, construction by the Authority and the City, as the case may be, and inspection of all work being performed in connection with construction. As the Project Site is an active construction and industrial/commercial site, the Authority and City will provide advance notice of at least 24 hours prior to proposed entry onto the Project Site.

B. **No Charge.** No compensation shall be payable nor shall any charge be made in any form by any party for the access provided in this Section.

6.3. [Left Blank Intentionally]

6.4. CONFLICT OF INTEREST; AUTHORITY'S AND CITY'S REPRESENTATIVES NOT INDIVIDUALLY LIABLE. No official or employee of the Authority or the City shall have any personal interest in this Agreement, nor shall the City or the Authority permit any such person voluntarily to acquire any ownership interest, direct or indirect, in the legal entities which are parties to this Agreement. No official or employee of the Authority or the City shall be personally liable to the Company or any successor in interest, in the event of any default or breach by the Authority of this Agreement or for any amount which becomes due to the Company or its successors under this Agreement.

6.5. COMPANY'S REPRESENTATIVES NOT INDIVIDUALLY LIABLE. No manager, officer, director, advisory board member, unit holder or employee of the Company shall be personally liable to the Authority or the City or any successor in interest, in the event of any default or breach by the Company of this Agreement or for any amount which becomes due to the Authority, the City or their successors under this Agreement.

6.6. APPLICABLE LAW, SEVERABILITY AND ENTIRE AGREEMENT.

A. 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. Any action or proceeding arising out of or relating to this Agreement or any transaction contemplated hereby may be brought in the United States District Court for the Eastern District of Oklahoma, if it has or can acquire jurisdiction, or if not, in courts of the State of Oklahoma, and each of the parties irrevocably submits to the exclusive jurisdiction of each such court in any such action or proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the action or proceeding shall be heard and determined only in any such court and agrees not to bring any action or proceeding arising out of or relating to this Agreement or any transaction contemplated hereby in any other court. The parties agree that either party may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and bargained agreement among the parties irrevocably to waive any objections to venue or to convenience of forum. Process in any action or proceeding referred to in this Section 6.6(A) may be served on either party anywhere in the world by the methods set forth in Section 6.11.

B. [Left Blank Intentionally]

C. If any provisions of this Agreement or the application thereof to any persons or circumstances shall, to any extent, be invalid, illegal, or unenforceable, then the remainder of this Agreement, or the application of such provision, or portion thereof, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law, and the parties shall negotiate in good faith to enter into a provision that effectuates, as closely as possible, the intent of the parties with respect to the invalid, illegal, or unenforceable provision. Furthermore, this Agreement shall be construed in a manner that allows for the effective implementation of the Project Plan pursuant to the Local Act, including specifically the payment of the Investment Incentives to the Company from available Tax Increment revenues.

D. This Agreement sets forth the entire understanding among the Authority, the City (as applicable), and Company, with respect to its subject matter, there being no terms, conditions, warranties or representations with respect to its subject matter other than as contained herein.

6.7. **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.

6.8. **NO PARTNERSHIP OR JOINT VENTURE CREATED.** This Agreement specifically does not create any partnership or joint venture between or among the Authority, the City and the Company, or render any of them liable for any of the debts or obligations of any or the others.

6.9. **TIME IS OF THE ESSENCE.** The Authority, the City and the Company understand and agree that time is of the essence with regard to all the terms and provisions of this Agreement.

6.10. **REPRESENTATIONS AND WARRANTIES; FORMALITIES AND AUTHORITY.** Each party represents and warrants to the other parties that, as of the date hereof and at all times during the term of this Agreement:

A. Such party validly exists and has all necessary power and authority to execute, deliver and perform its obligations under the Transaction Agreements to which it is party and to carry out the transactions contemplated hereby and thereby.

B. The execution and delivery by such party of the Transaction Agreements to which it is party, the performance by such party of the Transaction Agreements to which it is party and the performance by such party of the Transaction Agreements to which it is party, have been duly authorized by all necessary proceedings with respect to such party, and no other proceedings with respect to such party are necessary to authorize the Transaction Agreements to which such party is party and the transactions contemplated hereby and thereby.

C. Each of the Transaction Agreements to which such party is party have been duly executed and delivered by such party and, assuming due authorization, execution and delivery thereof by the other parties thereto, constitutes a valid and binding obligation of such party, enforceable against such party in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity.

D. The performance by such party of its obligations under the Transaction Agreements and the transactions contemplated thereby do not: (i) violate, conflict with or constitute a default (with or without the giving of notice, lapse of time or both) under, accelerate any obligations under, terminate or give rise to a right of termination of, any contract or agreement to which such party is a party or by which any property or asset of such party is bound; (ii) violate, conflict with or constitute a default (with or without the giving of notice, lapse of time or both) under the constitutive documents of such party; (iii) cause the creation of any lien or encumbrance upon any of the properties or assets of such party; (iv) violate, conflict with or constitute a default (with or without the giving of notice, lapse of time or both) under any provision of applicable law with

respect to such party; (v) require such party to make or provide any notice to, declaration or filing with, or obtain any consent, authorization, permit or approval from, any governmental entity or other person or legal entity or (vi) give any governmental entity the right to revoke, withdraw, suspend, cancel, terminate or modify any permit, license or approval held by such party.

E. There is no proceeding, claim or litigation pending or, to the knowledge of such party, threatened, against such party with respect to the transactions contemplated by the Transaction Agreements.

F. The Authority hereby represents and warrants to Company that the lien in and to the Tax Increment revenues granted to the Company for the payment of the Investment Incentives under the Security Agreement constitutes a valid, perfected and first priority lien in and to said Tax Increment revenues.

G. The City has validly adopted the Local Act, and the period for invoking a referendum with respect to the Local Act (as provided in Section 868 of the Local Development Act) has expired without action.

6.11. 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 to:

A. In the Case of the Company:

Creek 51 Business Park, LLC  
Attn: Rex F. Robertson  
16400 Dallas Parkway, Suite 140  
Dallas, TX 75248

B. In the case of the Authority:

Broken Arrow Economic Development Authority  
Attn: City Manager  
P.O. Box 610  
Broken Arrow, OK 74013-0610

C. In the case of the City:

City of Broken Arrow, Oklahoma  
Attn: City Manager  
P.O. Box 610  
Broken Arrow, OK 74013-0610

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.

6.12. **BINDING EFFECT.** This Agreement shall be binding upon and inure to the benefit of the Authority, the City and the Company and their respective legal representatives, successors and assigns.

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

6.14. **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” means beyond the reasonable 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, any other party to this Agreement, strikes, labor disputes, governmental restrictions, delays in any governmental permitting process that are outside of the Company’s control, court injunctions, riot, civil commotion, acts of public enemy and casualty, but shall not include delays attributable to financial difficulties of such party. In the event of an unavoidable delay the affected party shall promptly notify the other parties in writing and use its reasonable best efforts to mitigate and resolve the unavoidable delay as promptly as possible (keeping the other parties informed of the efforts being made to mitigate and resolve the unavoidable delay). Provided however, it is understood and agreed by the parties that under no circumstances shall an unavoidable delay operate to extend the duration of the Increment District or in any way alter the provisions of the Local Act.

6.15. **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 closing, as may be reasonably requested by the other party to consummate more effectively the purposes or subject matter of this Agreement.

6.16. **ATTORNEYS’ FEES.** In the event of any controversy, claim or dispute between the Authority, the City and the Company 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.

6.17. **COUNTERPARTS; HEADINGS.**

A. 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.

B. 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.

6.18. **LIMITED LIABILITY.** The liability of the Authority and the City to the Company arising by virtue of this Agreement shall be limited to the Investment Incentives, i.e. 50% of the Tax Increment revenues derived from real and personal property ad valorem taxes generated within

the Increment District in each calendar year, and resort shall not be had to the Authority or the City for any additional amounts.

6.19. **ASSIGNMENT.** This Agreement and the rights and obligations of the Company may be assigned or transferred at any time by any party upon written notice to the other parties hereto. This Agreement will apply to, be binding in all respects upon, and inure to the benefit of the permitted assigns of the parties.

6.20. **NO USE OF NAMES.** Neither the entry into or consummation of this Agreement, or the transactions contemplated hereby, shall give the City or the Authority, any right to use any name, trademark, servicemark, logo or other intellectual property of the Company or its affiliates.

6.21. **EXHIBITS AND SCHEDULES.** The following schedules or exhibits attached hereto shall be deemed to be an integral part of this Agreement:

- A. Exhibit A – Map of Increment District No. 2
- B. Exhibit B –Increment District Legal Description
- C. Exhibit C – Preliminary Project Site Development Plan

6.22. **CONSTRUCTION OF THIS AGREEMENT.** The Authority, the City, and the Company acknowledge that they and their counsel have reviewed and 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.

6.23. **SURVIVAL.** The representations, warranties, covenants and undertakings of the parties set forth in this Agreement shall survive the execution and delivery of this Agreement, and continue in full force until this Agreement has been fully performed in accordance with its terms and the Authority has fully paid the Investment Incentives in accordance with the terms herein. Notwithstanding the foregoing, the provisions of Section 6.6 shall continue following the payment of the Investment Incentives with respect to matters, events or circumstances occurring or arising prior to such time.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Company, the City, and the Authority have caused this Agreement to be duly executed and delivered as of the date first above written.

**CREEK 51 BUSINESS PARK, LLC  
("COMPANY")**

By: \_\_\_\_\_  
Name: Rex F. Robertson  
Title: Manager

STATE OF \_\_\_\_\_ )  
 )SS  
COUNTY OF \_\_\_\_\_ )

BEFORE ME, the undersigned, a Notary Public in and for said State on the \_\_\_\_ day of September, 2019, personally appeared Rex F. Robertson, to me known to be Manager of Creek 51 Business Park, LLC, a Texas limited liability company, on behalf of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year first above written.

(SEAL)

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## Notary Public

My commission expires \_\_\_\_\_.  
My commission number \_\_\_\_\_:

**BROKEN ARROW ECONOMIC  
DEVELOPMENT AUTHORITY  
("AUTHORITY")**

(SEAL)

ATTEST:

By: \_\_\_\_\_  
Name: Craig Thurmond  
Title: Chairman

By: \_\_\_\_\_  
Name: Curtis Green  
Title: Secretary

STATE OF OKLAHOMA        )  
                                  )  
                                  )SS  
COUNTY OF TULSA        )

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of September, 2019, by Craig Thurmond, Chairman of the Broken Arrow Economic Development Authority, a public trust, on behalf of the trust.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year first above written.

(SEAL)

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

My commission expires 08/26/2020.  
My commission number 04007771.

**CITY OF BROKEN ARROW,  
OKLAHOMA (“CITY”)**

(SEAL)

ATTEST:

By: \_\_\_\_\_

Name: Craig Thurmond

Title: Mayor

By: \_\_\_\_\_

Name: Curtis Green

Title: City Clerk

STATE OF OKLAHOMA                    )  
    )  
    )SS  
COUNTY OF TULSA                        )

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of September, 2019, by Craig Thurmond, Mayor of the City of Broken Arrow, Oklahoma, a municipality, on behalf of the City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year first above written.

(SEAL)

\_\_\_\_\_

Notary Public

My commission expires 08/26/2020.

My commission number 04007771.

**EXHIBIT A**  
**MAP OF INCREMENT DISTRICT NO. 2**

The boundaries of Increment District No. 2, City of Broken Arrow are contiguous with Parcel ID #251184-000001-000000 and Parcel ID #251172-000001-0000001. The subject parcels are located off the west side of State Highway 51, and bordered on the east by State Highway 51 and the interchange with the Creek Turnpike, on the southwest by the M.K. &T Railroad tracks, and on the north by the Oak Tree South Extended subdivision. The approximate Increment District boundaries are shown in red below. Please see Exhibit B for a legal boundary description of Increment District No. 2.



**EXHIBIT B**

**INCREMENT DISTRICT LEGAL DESCRIPTION**

**INCREMENT DISTRICT NO. 2, CITY OF BROKEN ARROW**

An area located entirely in Wagoner County, Oklahoma, more particularly described as follows:

PARCEL 1: ID #251184-000001-000000

18-18-15 THE PART OF THIS LEGAL THAT IS IN SECT 18, FULL LEGAL DESC AS COMM AT THE NE CORN OF THE SE OF SECT 18, THENCE S88D 51'46"W AND ALONG THE N LINE OF SD SE A DIST OF 140.68' TO POB, THENCE ALONG THE ROW OF U.S. HWY 51 FOR THE FOLLOWING 3 COURSES: S43D 41'37"E 138.88', THENCE S48D 16'03"E 125.4', THENCE S43D 41'38"E 285.79' TO A PT ON THE NWSTRLY LINE OF THE ROW OF THE OKLA TURNPIKE AUTH, CREEK TP, THENCE ALONG SD ROW LINE FOR THE FOLLOWING 4 COURSES: S45D 51'22"W 648.11', THENCE S45D 50'53"W 208.93', THENCE S29D 12'19"W 510.38', THENCE S15D 57'48"E 132.66', THENCE S46D 12'46"W 255.26', THENCE S43D 51'25"W 489.58', THENCE N71D 23'26"W 37.10', THENCE ALONG A 360' RADIUS CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 35D 00'27" A CHORD BEARING AND DIST OF N53D 53'12"W 216.55' FOR AN ARC DIST OF 219.96', THENCE S48D 43'23"W 480.7' TO A PT ON THE MK&T RR ROW, THENCE ALONG SD ROW LINE AND ALONG A 5500.00 RADIUS NON-TANGENTIAL CURVE TO THE RIGHT, HAVING AN INITIAL TANGENT BEARING OF N62D 59'22"W A CENTRAL ANGLE OF 11D 21'01" A CHORD BEARING AND DIST OF N57D 18'51"W 1097.65' FOR AN ARC DISTANCE OF 1099.45', THENCE N01D 26'45"W 1425.92' TO A PT BEING THE SW CORN OF OAK CREEK SOUTH EXT SUBDIVISION, THENCE ALONG THE S SUBDIVISION LINE FOR THE FOLLOWING 2 COURSES: N88D 51'46"E 1465.46', THENCE N50D 55'02"E 325.25', THENCE N88D 51'46"E 777.77' TO POB (BK 2476/87)

PARCEL 2: ID #251172-000001-000001

17-18-15 THE PART OF THIS LEGAL THAT IS IN SECT 17 OF LEGAL DESC DESCRIBED AS COMM AT THE NE CORN OF THE SE OF SECT 18, THENCE S88D 51'46"W AND ALONG THE N LINE OF SD SE A DIST OF 140.68' TO POB, THENCE ALONG THE ROW OF U.S. HWY 51 FOR THE FOLLOWING 3 COURSES: S43D 41'37"E 138.88', THENCE S48D 16'03"E 125.4' THENCE S43D 41'38"E 285.79' TO A PT ON THE NWSTRLY LINE OF THE ROW OF THE OKLA TURNPIKE AUTH, CREEK TP, THENCE ALONG SD ROW LINE FOR THE FOLLOWING 4 COURSES: S45D 51'22"W 648.11', THENCE S45D 50'53"W 208.93', THENCE S29D 12'19"W 510.38', THENCE S15D 57'48"E 132.66', THENCE S46D 12'46"W 255.26', THENCE S43D 51'25"W 489.58', THENCE N71D 23'26"W 37.10', THENCE ALONG A 360' RADIUS CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 35D 00'27" A CHORD BEARING AND DIST OF N53D 53'12"W 216.55' FOR AN ARC DIST OF 219.96', THENCE S48D 43'23"W 480.7' TO A PT ON THE MK&T RR ROW, THENCE ALONG SD ROW LINE AND ALONG A 5500.00 RADIUS NON-TANGENTIAL CURVE TO THE RIGHT, HAVING AN INITIAL TANGENT BEARING OF N62D 59'22"W A CENTRAL ANGLE OF 11D 21'01" A CHORD BEARING AND DIST OF N57D 18'51"W 1097.65' FOR AN ARC DISTANCE OF 1099.45', THENCE N01D 26'45"W 1425.92' TO A PT BEING THE SW CORN OF OAK CREEK SOUTH EXT SUBDIVISION, THENCE ALONG THE S SUBDIVISION LINE FOR THE

FOLLOWING 2 COURSES: N88D 51'46"E 1465.46', THENCE N50D 55'02"E 325.25', THENCE N88D 51'46"E 777.77' TO POB (BK 2476/87)

Said composite tract of land being more accurately described as:

A TRACT OF LAND THAT IS A PART OF THE SOUTHEAST QUARTER (SE/4) OF SECTION EIGHTEEN (18), AND A PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION SEVENTEEN (17), ALL LYING WITHIN TOWNSHIP EIGHTEEN (18) NORTH, RANGE FIFTEEN (15) EAST OF THE INDIAN BASE AND MERIDIAN, WAGONER COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE U.S. GOVERNMENT SURVEY THEREOF, SAID TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NE CORNER OF THE SE/4 OF SECTION 18; THENCE S 88°51'46" W AND ALONG THE NORTH LINE OF SAID SE/4 A DISTANCE OF 140.68 FEET TO THE POINT OF BEGINNING;

THENCE ALONG THE RIGHT-OF-WAY OF U.S. HIGHWAY 51 AS IS IT CURRENTLY LOCATED FOR THE FOLLOWING 3 COURSES: SOUTH 43°41'37" EAST FOR A DISTANCE OF 138.88 FEET; THENCE SOUTH 48°16'03" EAST FOR A DISTANCE OF 125.40 FEET; THENCE SOUTH 43°41'38" EAST FOR A DISTANCE OF 285.79 FEET TO A POINT ON THE NORTHWESTERLY LINE OF THE RIGHT-OF-WAY OF THE OKLAHOMA TURNPIKE AUTHORITY, CREEK TURNPIKE; THENCE ALONG SAID RIGHT-OF-WAY LINE FOR THE FOLLOWING 4 COURSES: SOUTH 45°51'22" WEST FOR A DISTANCE OF 648.11 FEET; THENCE SOUTH 45°50'53" WEST FOR A DISTANCE OF 208.93 FEET; THENCE SOUTH 29°12'19" WEST FOR A DISTANCE OF 510.38 FEET; THENCE SOUTH 15°57'48" EAST FOR A DISTANCE OF 132.66 FEET; THENCE SOUTH 46°12'46" WEST FOR A DISTANCE OF 255.26 FEET; THENCE SOUTH 43°51'25" WEST FOR A DISTANCE OF 489.58 FEET; THENCE NORTH 71°23'26" WEST FOR A DISTANCE OF 37.10 FEET; THENCE ALONG A 360.00 FOOT RADIUS CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 35°00'27" A CHORD BEARING AND DISTANCE OF NORTH 53°53'12" WEST FOR 216.55 FEET, FOR AN ARC DISTANCE OF 219.96 FEET; THENCE SOUTH 48°43'23" WEST FOR A DISTANCE OF 480.70 FEET TO A POINT ON THE M.K. & T. RAILROAD RIGHT-OF-WAY; THENCE ALONG SAID RIGHT-OF-WAY LINE AND ALONG A 5550.00 RADIUS NON-TANGENTIAL CURVE TO THE RIGHT, HAVING AN INITIAL TANGENT BEARING OF NORTH 62°59'22" WEST A CENTRAL ANGLE OF 11°21'01" A CHORD BEARING AND DISTANCE OF NORTH 57°18'51" WEST FOR 1097.65 FEET FOR AN ARC DISTANCE OF 1099.45 FEET; THENCE NORTH 01°26'45" WEST FOR A DISTANCE OF 1425.92 FEET TO A POINT BEING THE SOUTHWEST CORNER OF OAK CREEK SOUTH EXTENDED, A SUBDIVISION IN BROKEN ARROW, WAGONER COUNTY, STATE OF OKLAHOMA, RECORDED IN BOOK 2059, PAGE 671; THENCE ALONG SAID SOUTH SUBDIVISION LINE FOR THE FOLLOWING 2 COURSES: NORTH 88°51'46" EAST FOR A DISTANCE OF 1465.46 FEET; THENCE NORTH 50°55'02" EAST FOR A DISTANCE OF 325.25 FEET; THENCE NORTH 88°51'46" EAST FOR A DISTANCE OF 777.77 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS 4,234,399 SQUARE FEET OR 97.208 ACRES.

## EXHIBIT C

### PRELIMINARY PROJECT SITE DEVELOPMENT PLAN\* CREEK 51 BUSINESS PARK PROJECT



\* Preliminary; Subject to Change