

ECONOMIC DEVELOPMENT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT (the “Agreement”) is dated as of the 18th day of November, 2019, by and between THE BROKEN ARROW ECONOMIC DEVELOPMENT AUTHORITY, an Oklahoma public trust (together with its successors and assigns, “BAEDA”) Broken Arrow Municipal Authority (together with its successors and assigns, “BAMA”), Collectively the “City”, and DHTC Development, LLC (“DHTC”), a Missouri Limited Liability Company, authorized to do business in Oklahoma (together with its successors and assigns, the “Developer”).

WITNESSETH:

WHEREAS, the City has a need for multi-family housing; specifically new construction, affordable senior housing; and

WHEREAS, the Developer is interested in developing an affordable senior housing project located approximately south of 37th and Kenosha Street in Broken Arrow, Oklahoma for seniors aged 62 and older; and

WHEREAS, the proposed project includes 14 buildings containing a total of 74 housing units. The “Project” will specifically include the construction of a four (4) story apartment building, containing 28 units and an additional 46 units designed as 4-plex and duplex units with garages; and

WHEREAS, the land proposed is suitable to allow for use as multi-family housing; and

WHEREAS, the Developer is a private for-profit developer whose specialty is in the development of affordable housing for low income seniors; and

WHEREAS, the Developer has applied for and has been awarded allocation of housing tax credits by the Oklahoma Housing Finance Agency; and

WHEREAS, the Developer’s estimated total investment, including the land purchase, for the Project is \$11,785,544; 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, Wagoner County, Oklahoma (“Wagoner County”), Independent School District No. 3 of Wagoner 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 Wagoner 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 Wagoner 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 labor to construct approximately 1,500 linear foot of sanitary sewer line extension to the site located at 37th Street, approximately 1,300 linear foot sanitary sewer main line through the site, but not to include lateral lines to individual units, and approximately 1,620 linear feet of 26 foot wide street extension with curb and gutter per site plan approved by Council (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, which would otherwise be difficult or impractical without certain development incentives; 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 East 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 DHTC Development, LLC ("DHTC"), a Missouri Limited Liability Company, authorized to do business in Oklahoma,

"Project" shall mean development of the Site and the construction of the 14 buildings with 74 housing units.

"Site" shall mean the tract of land generally located at 37th and Kenosha Street, in Broken Arrow, City of Broken Arrow, Wagoner County, Oklahoma.

ARTICLE II NATURE OF THIS AGREEMENT

2.1 Scope of the Project. The Project, consisting of an office and a housing 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 14 buildings containing a total of 74 housing units. The project will specifically include a four (4) story apartment building containing 28 units, and an additional 46 units designed as 4-plex and duplex units with garages. Such development shall be in accordance with the following schedule; and
 - a. construction start date: December 15, 2019
 - b. construction completion date: June 15, 2019

3.2 Site Acquisition. Developer owns fee simple title to the Site.

3.3 Site Improvements. At its sole cost, Developer shall 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 to the City, in accordance with the City's Zoning and Building Codes, and the City's Land Subdivision Code. Developer will specifically dedicate all necessary right of way for the asphalt road to be constructed within the project area. The Developer shall obtain all necessary variances from the City Council prior to dedicating the right of way to the City for the construction of the asphalt road.

3.6 Contingent Payment Obligations of Developer. In the event Developer fails to undertake the Project or fails to complete the Project by the Construction Completion Date, Developer shall repay to the City an amount not to exceed \$86,000.00 for the Infrastructure Improvements as set forth in section 5.1 and reimburse the City for all actual costs for the construction materials and equipment rentals, which said amount shall be due and payable within thirty (30) days following the required construction completion date outlined in section 3.1. The City Manager may grant an extension to the Project Completion Date if requested by the Developer and the City Manager finds such extension reasonable.

3.7 Material Costs for Infrastructure Improvements. The City at its sole discretion will purchase the construction materials and equipment rentals for the following Infrastructure Improvements and the Developer agrees to reimburse the City for all actual costs for the construction materials and equipment rentals and shall remit such payments within thirty (30) of the invoice being submitted by the City and Developer will be responsible for all design costs for the following Infrastructure Improvements:

- a. Approximately 1,500 linear foot sanitary sewer, including manholes and appurtenances, to construct said line to the site located at 37th Street as shown on the attached preliminary site plan ("See Exhibit A"). The City will not provide the labor for any boring work that is needed under Kenosha Street for this infrastructure improvement. Developer agrees to be responsible for all boring costs that is needed under Kenosha Street.
- c. Approximately 1,300 linear feet of a sanitary sewer main line through the site including manholes and appurtenances necessarily to construct said line, as shown on the attached preliminary site plan but not to include lateral lines to individual units (See "Exhibit B").
- d. Approximately 1700 linear feet of asphalt road with concrete curb and gutter, 7.5" thick and 8" compacted or modified subgrade as shown on the attached "Exhibit C".

3.8 Labor Costs of the City for Infrastructure Improvements: The Developer agrees to reimburse the City for all labor costs for the construction of the asphalt road as described in Section 5.1(d), not to exceed \$86,000.00.

3.9 Developer shall be responsible for the construction and costs of the sidewalks for the project in accordance with the City's Zoning and Building Codes, and the City's Land Subdivision Code.

4.0 Developer shall provide the City, at no costs to the City, all necessary Rights of Ways and Easements needed for the infrastructure improvements.

ARTICLE V OBLIGATIONS OF THE CITY

5.1 Infrastructure Improvements. The City agrees to provide labor for the following Infrastructure Improvements:

- a. Approximately 1,500 linear foot sanitary sewer, including manholes and appurtenances, to construct said line to the site located at 37th Street as shown on the attached preliminary site plan. The City will not provide the labor for any boring work that is needed under Kenosha Street. Developer agrees to be responsible for all boring costs that is needed under Kenosha Street. ("See Exhibit A").
- b. Approximately 1,300 linear feet of a sanitary sewer main line through the site including manholes and appurtenances necessarily to construct said line, as shown on the attached preliminary site plan but not to include lateral lines to individual units. (See "Exhibit B").
- c. Approximately 1700 linear feet of asphalt road with concrete curb and gutter, 7.5" thick and 8" compacted or modified subgrade as shown on the attached "Exhibit C". The parties acknowledge that the construction timeline for the asphalt road is unknown as the parties will coordinate the schedule

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 DHTC Development, LLC:

Debra Hart
1520 E. Meadowmere
Springfield, MO 65804

With copies to:

Richard Walters
Spencer Fane
2144 E. Republic Rd. Ste. B300
Springfield, MO 658-04

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 Venue. The Parties agree that all disputes, legal actions, suits and proceedings arising out of or relating to this Agreement, or any Ancillary Agreement must be brought exclusively in Tulsa County District in Oklahoma.

IN WITNESS WHEREOF, the each of the parties has caused this Agreement to be executed by its duly authorized official(s), as of the date first above written

THE CITY OF BROKEN ARROW,
a municipal corporation

ATTEST: (S E A L)

By: _____
City Manager

By: _____
City Clerk

Approved as to Form:

Deputy City Attorney

DHTC Development, LLC

STATE OF _____)
) SS:
COUNTY OF _____)

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STATE OF _____)
) ss:
COUNTY OF _____)

Before me, the undersigned, a Notary Public in and for said County and State on the ____ day of _____, 2019, personally appeared _____, Owner/Manager of _____, 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.

(S E A L)

Notary Public

My commission expires:

My number is: