

**THIRD AMENDMENT TO THE ECONOMIC
DEVELOPMENT AGREEMENT BY AND
AMONG OAKTRUST DEVELOPMENT, LLC
AND BROKEN ARROW ECONOMIC
DEVELOPMENT AUTHORITY AND CITY
OF BROKEN ARROW, OKLAHOMA**

Dated July 31, 2023

**THIRD AMENDMENT TO THE ECONOMIC DEVELOPMENT AGREEMENT BY
AND AMONG OAKTRUST DEVELOPMENT, LLC AND BROKEN ARROW
ECONOMIC DEVELOPMENT AUTHORITY AND CITY OF BROKEN ARROW,
OKLAHOMA**

This Third Amendment to the Agreement is made and entered into this 31st day of July, 2023, by and between OAKTRUST DEVELOPMENT, LLC, an Oklahoma Limited Liability Company (the “Developer”), BROKEN ARROW ECONOMIC DEVELOPMENT AUTHORITY, a municipal public trust (the “Authority”) and the City of Broken Arrow, Oklahoma, a municipal corporation (hereinafter called “City”), as beneficiary of the Authority.

WHEREAS, on June 29, 2021, the Developer, Authority and City entered into an Economic Development Agreement (hereinafter “Agreement”) for the OakTrust Project located near 5601 South Aspen Avenue;

WHEREAS, on June, 2022 and October 2022, the Developer, Authority and City amended said Agreement in order to incorporate additional Project Site Improvement projects identified by the Developer and BAEDA that were necessary for the full development of the Project, including the design, construction and maintenance of a stormwater and sewer system and open drainage ditches for the stormwater extensions;

WHEREAS, the Developer, Authority and City desire to clarify agreed upon scope of the project and expand said scope of the project to include stormwater work;

WHEREAS, Section 6.13 Modifications of the Agreement provides for the Agreement to be modified if it is in writing and signed by the party or parties against whom enforcement of any waiver, change, modification or discharge is sought;

WHEREAS, any and all terms and conditions of the previous Economic Development Agreement and its Amendments not modified herein shall remain in full force and effect.

NOW, THEREFORE, in consideration of the covenants and mutual obligations set out herein and, in the Agreement, as amended, and other consideration, the sufficiency of which the parties hereby acknowledge, the parties hereto covenant and agree to the following Amendments:

I. AMENDMENT TO AGREEMENT

ARTICLE IV. COVENANTS AND OBLIGATIONS OF THE DEVELOPER

4.1. DEVELOPMENT OF PROJECT SITE. In accordance with the provisions of this Agreement, the Developer shall develop the Project Site. The Project Site shall be amended to add the property legally described in “Exhibit A” and shown in “Exhibit B” provided, that nothing in this sentence shall require or be construed to require the Developer to waive rights that are, or accept agreements or provisions that are not, customary or commercially reasonable for any future tenants or residents. The Developer shall provide to

the City periodic updates to the Site Plan and Design Documents for the development of the Project Site, which said documents shall be consistent in all respects with any applicable provisions of the City's Zoning Ordinances and Building and Land Subdivision Codes, and the Engineering Design Criteria Manual. The Site Plan shall consist of conceptual drawings depicting the preliminary scale, placements, and design of the Development. The Design Documents shall consist of drawings and other documents to fix and describe the size and character of the Project as to structural, mechanical, and electrical systems, materials, components, and other such essentials as the City may reasonably request to review and approve the nature, quality, and appearance of the Project. The Developer and any Participant shall construct and maintain the Property in accordance with standards applicable to a first-class mixed-use commercial development. 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.

4.2. DEVELOPMENT OF THE PROJECT. The Developer shall use its best efforts to commence and complete construction in the most expeditious manner that will allow for the maximum development of the Project Site, and consequentially the maximization of potential Tax Increment revenue. The Developer agrees to construct and equip or cause to be constructed and equipped, the Project in accordance with the Construction Plans, and in a manner consistent with the Development Timeline and Obligations of the Company contained in paragraph 4.3, as follows:

A. The Developer shall construct or cause to be constructed and operated within the Project Site, a Reasor's Grocery Store consisting of a minimum of 60,000 square feet and with a minimum investment of \$7,200,000.00, after completion of construction, stocking and opening. In connection therewith, the Developer shall be authorized to convey approximately 6.5 acres to Associated Wholesale Grocers, Inc. consistent with the provisions of that certain non-binding letter of intent for fee purchase entered into between the Developer and Associated Wholesale Grocers, Inc;

B. The Developer shall, at its sole cost, develop, construct or cause to be constructed within the Project Site, a 168-unit multi-family apartment complex;

C. The Developer shall, at its sole cost, develop, construct or cause to be constructed within the Project Site, a total of an additional 200,000 square feet of commercial and retail space;

D. The Developer shall pay all costs of the Project Site Improvements described in Section 2.1 herein in excess of \$5,530,000.00; and

E. The Developer shall, at its sole cost, develop, construct, or cause to be constructed within the Project Site an open drainage ditch of an undetermined length for the stormwater run-off from the end of the enclosed storm sewer system to be designed and constructed by the Developer pursuant to Section 2.1(G). The design and length of the drainage ditch shall be subject to review and approval of the City of Broken Arrow, whose approval shall not be unreasonably withheld. The Developer shall obtain all easements necessary for the construction of the open drainage ditch for the stormwater extension. The

Developer shall dedicate right-of-way, utility easements, or other necessary easements acquired for the construction of the open drainage ditch to the City by Deeds drafted by the City Engineer for the pertinent right-of-way and easements. The Developer shall be responsible for all on-site development fees and stormwater detention and is responsible to meet all City development standards and fees, save and except, for the enclosed storm sewer system described in Section 2.1(G).

4.3. DEVELOPMENT TIMELINE AND OBLIGATIONS OF THE COMPANY.

The Developer agrees to complete construction of the Project on the following timeline:

A. Developer agrees to construct or cause to be constructed and operated within the Project Site, a Reasor's Grocery Store by June 30, 2024;

B. Developer agrees to develop, construct or cause to be constructed within the Project Site a 168-unit multi-family apartment complex by April 30, 2025;

C. Developer shall develop, construct or cause to be constructed a total of an additional 200,000 square feet of commercial and retail space by December 31, 2024;

D. As required under the Economic Development Agreement, the Developer has paid the required sum of \$1,000,000.00 to BAEDA and both BAEDA and the City of Broken Arrow hereby acknowledges the same.

II. CONTINUING TERMS OF AGREEMENT

Except as amended hereby, all terms of the Agreement and subsequent Amendments, shall remain in full force and effect unless specifically modified herein. The Agreement, as amended by this amendment, is in all respects ratified and confirmed, and the Agreement, as so amended by the Amendment shall be read, taken, and construed as one and the same instrument. No other term contained therein may be modified without the express written consent of the parties hereto.

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.

