

## **FIRST AMENDMENT TO ECONOMIC DEVELOPMENT AGREEMENT**

**THIS FIRST AMENDMENT TO ECONOMIC DEVELOPMENT AGREEMENT** (the "First Amendment") made effective as of this 20th day of October, 2015, by and between **BROKEN ARROW ECONOMIC DEVELOPMENT AUTHORITY**, an Oklahoma public trust (together with its successors and assigns, "BAEDA"), **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 **STONE CREEK HOSPITALITY CORPORATION**, an Iowa Corporation (together with its successors and assigns, "Developer"). Terms used and not otherwise defined in this First Amendment shall be defined in the 2014 Agreement.

### **WITNESSETH:**

**WHEREAS**, on November 4, 2014, BAEDA, the City and the Developer entered into an Economic Development Agreement ("2014 Agreement") whereby the Developer proposed a Phased Community Convention Center Complex Development to be undertaken by the Developer at its cost (except as provided in the 2014 Agreement, referred to as the Project's First Phase in the 2014 Agreement). The second phase called for the City and the Developer to establish an adjacent exposition center and additional parking and related facilities approximately three (3) years after completion of the Project's First Phase, known as the Project's Second Phase under the 2014 Agreement, all on lands to be owned by the City and leased to Developer; and

**WHEREAS**, advancement of the Project has resulted in the need to amend the 2014 Agreement in order to more fully document the intent of the parties and to resolve issues necessitated by construction of the Project (as defined in Article I of the 2014 Agreement); and

**WHEREAS**, several exhibits to the 2014 Agreement were not completed approved at the time of execution or have been modified to more accurately represent the intent of the parties, and as such, as addressed by this First Amendment and incorporated into the 2014 Agreement (as amended by this First Amendment, the "Agreement"), i.e., (x) the Legal Description of the Land, attached as **Exhibit 1** hereto, to be made a part of the 2014 Agreement as Exhibit A thereto; (y) the fully executed 2014 Ground Lease (as defined in the 2014 Agreement) and its amendments, identified as **Exhibit 2** hereto, to be substituted in whole for Exhibit C to the 2014 Agreement; and (z) the Master Site Plan, attached as **Exhibit 3** hereto, to be made a part of the 2014 Agreement as Exhibit D thereto; and

**WHEREAS**, certain development incentives contained within Article III, Section 3.3, Development Incentives, were obligations of BAEDA, specifically, that BAEDA agreed to fund economic development incentives for the project in the agreed amount of \$5,550,000.00 to be disbursed as specifically outlined in the 2014 Agreement; and

**WHEREAS**, the development incentives outlined in 3.3 of the 2014 Agreement were subject to the availability of annual appropriations by and/or from other funds of the City as and when available to the City, which the City was required to promptly advance to BAEDA to fulfill its objections under Section 3.3 of the 2014 Agreement; and

**WHEREAS**, due to the availability of funding from proceeds of the Tulsa County Vision 2025 sales tax, the City, as recipient of the funding, should undertake the specific development incentives previously agreed to by BAEDA; and

**WHEREAS**, following execution of the 2014 Agreement, it was determined that construction of Mutual Access Drive from Albany Street to the western boundary of the Land would be mutually beneficial to all parties to the 2014 Agreement; and

**WHEREAS**, amendment of the 2014 Agreement will advance the goals of the City and BAEDA to retain and expand employment, attract private investment, enhance the tax base of the City, stimulate economic growth and improve the quality of life in the City, strengthen the community and permit the City to expand the type and scope of its services, including enhancing public improvements, and expanding the provision of police and fire protection therein; and

**WHEREAS**, both the City and BAEDA deem it appropriate to approve the execution and delivery of this First Amendment in the interest of providing for the implementation of the Project and have determined such actions are in the best interest of the City and the health, safety, and welfare of the City and residents within and near the City; and

**NOW, THEREFORE**, in consideration of the covenants and mutual obligations set out herein and in the 2014 Agreement, and other consideration, the sufficiency of which the parties hereby acknowledge, the parties hereto hereby covenant and agree to the following Amendments:

## **ARTICLE A EXHIBITS AND SCHEDULES**

- A.1 **Legal Description of the Land:** Following the execution and delivery of the 2014 Agreement, it was necessary to refine and revise the Legal Description of the Land, and the parties agree that **Exhibit 1**, as attached hereto and made a part hereof, shall become and be Exhibit A to the 2014 Agreement.
  
- A.2 **Lease Agreement:** Contemporaneous with the execution and delivery of the 2014 Agreement, the Lease was approved by both the City and the Developer and the parties agree that **Exhibit 2**, to include the original Lease and any amendments thereto, as attached hereto and made a part hereof, shall become and be Exhibit C to the 2014 Agreement.
  
- A.3 **Master Site Plan:** Following the execution and delivery of the 2014 Agreement, the Master Site Plan for the Project was completed and the parties agree that **Exhibit 3**, as attached hereto and made a part hereof, shall become and be Exhibit D to the 2014 Agreement.

**ARTICLE B**  
**AMENDMENTS TO 2014 AGREEMENT**

- B.1 **Amendment to Section 3.3 of the Agreement:** Section 3.3, Development Incentives, is hereby deleted in its entirety.
- B.2 **Amendment to Section 3.4 of the Agreement:** Section 3.4, Zoning, is hereby deleted in its entirety.
- B.3 **Amendment to Section 5.1 of the 2014 Agreement:** Section 5.1, Grant Eligibility, is hereby amended to read in its entirety as follows:

5.1 **Development Incentives.** In consideration of the Developer's agreement to locate, and cause and effect the development of the Hotel and such other development as is included or becomes included in the Master Site Plan, the City agrees to fund economic development incentives (the "Development Incentives") for the Project in the aggregate amount of \$5,550,000.00, to be disbursed in installments as follows:

- (i) A portion of the Development Incentives shall be reserved for payment of the costs of title insurance, environmental and soil studies, surveying, engineering and architecture design of the Hotel, the Improvements and the Infrastructure, which Development Incentives shall be disbursed as follows:
- (a) no disbursement of Development Incentives for payment of the costs of such items shall be made to Developer until the City shall have approved of the Developer's consultants, engineers and architects, said approval to not be unreasonably withheld, conditioned or delayed;
- (b) from time to time as Project engineering and architecture design progresses, such consultants, engineers or architects collectively, and together with such other professional service providers as may be engaged by the Developer for purposes of work on the Project as hereinafter and in this **Section 5.1**, provided the Contractors, having performed such work shall submit progress payment requests accompanied by customary affidavits of payment to Developer for payment and following its approval of each such Contractor's request for payment, the Developer shall provide a copy of the approved payment request to the City and, the City shall disburse the requested payment amount to the Developer for payment to such applicable Contractor within thirty (30) days after its receipt of the approved payment request; and
- (c) it is expressly understood and agreed that the portion of the Development Incentives funded to the Developer shall be deemed fungible with the payment of the costs of the above items to be made by the Developer and, shall be deemed paid, whether in whole or in part through, as the case may be, the City's reimbursement of the Developer's payment of the cost thereof and/or the City's prompt direct payment of all or a portion of such costs if requested by the Developer to make direct payments.

- (ii) A portion of the Development Incentives shall also be reserved for the payment of the costs of testing, inspection and preparation of a grading plan which shall be disbursed as follows:
  - (a) no disbursement of Development Incentives for payment of the costs of the testing, inspection and preparation of a grading plan shall be made to the Developer until the City shall have approved of the Developer's contractor(s) for the testing, inspection and the grading plan, said approval not to be unreasonably withheld, conditioned or delayed;
  - (b) from time to time as the testing, inspection and preparation of a grading plan for the Land progresses, the Developer's contractor(s), having performed such work, shall submit progress payment requests accompanied by appropriate documentation and, as appropriate, customary affidavits of payment to their subcontractors, and as appropriate, materialmen, to the Developer for payment and following its approval of each such contractor's request for payment, the Developer shall provide a copy of the approved payment, the City shall disburse the requested payment amount to the Developer for payment to such contractor within thirty (30) days after its receipt of the approved payment request;
  - (c) it is expressly understood and agreed that the portion of the Development Incentives funded to the Developer shall be deemed fungible with the payment of the costs of the testing, inspection and preparation of a grading plan for the above item to be made by the Developer and, shall be deemed paid, whether in whole or in part through, as the case may be, the City's reimbursement of the Developer's payment of the cost thereof and/or the City's prompt direct payment of all or a portion of such costs if requested by the Developer to make direct payments.
- (iii) A portion of the Development Incentives shall also be reserved for the payment of the costs of grading the Land, and construction of all public water, stormwater, and sanitary sewer systems necessary to serve the Land, the preparation for and the construction of which said systems shall be undertaken by the Developer in strict compliance with the provisions of **Sections 7.1** through **7.3** hereof. Upon its/their award, a copy of the contract(s) shall be provided to the City. The Development Incentives for grading the Land and construction of all public water, stormwater, and sanitary sewer systems necessary to serve the Land shall be disbursed as follows:
  - (a) no disbursement of Development Incentives for payment of the costs of grading the Land and construction of public water, storm water and sanitary sewer systems shall be made to the Developer until the City shall have approved the Developer's contractor(s) for such grading and construction, said approvals not to be unreasonably withheld, conditioned or delayed;

- (b) from time to time as grading of the Land and construction of all public water, stormwater, and sanitary sewer systems necessary to serve the Land, Developer's contractor(s) shall submit progress payment requests accompanied by Developer's appropriate documentation and, as appropriate, customary affidavits of payment to the Developer for payment, and following its approval of each such Developer's contractor(s) request for payment the Developer shall provide a copy of the approved payment request to the City, and, the City shall disburse the requested payment amount to the Developer for payment to such contractor(s) within thirty (30) days after its receipt of such approved payment request. Each such request for payment approved by the Developer shall provide for the withholding of retainage as required by applicable laws, and with the request(s) for payment of such retainage to be processed upon the completion of such work;
- (c) it is expressly understood and agreed that the portion of the Development Incentives funded to the Developer shall be deemed fungible with the payment of the costs of grading the Land and construction of all public water, stormwater, and sanitary sewer systems necessary to serve the Land to be made by the Developer and, shall be deemed paid, whether in whole or in part through, as the case may be, the City's reimbursement of the Developer's payment of the cost of discrete portions of grading the Land and construction of all public water, stormwater, and sanitary sewer systems necessary to serve the Land and/or the City's prompt direct payment of all or a portion of such costs if requested by Developer to make direct payments, in each case *provided* the Developer has fully complied with the provisions of **Sections 7.1** through **7.3** hereof.
- (iv) A portion of the Development Incentives shall also be reserved for the payment, of the costs of construction of paved ingress and egress, parking, sidewalks, and landscaping on the Land, the preparations for and the construction of which systems shall be undertaken by the Developer in strict compliance with the provisions of **Sections 7.1** through **7.3** hereof. Upon its/their award, a copy of the contract(s) shall be provided to the City. The Development Incentives for paved ingress and egress, parking, sidewalks, and landscaping shall be disbursed as follows:
  - (a) no disbursement of Development Incentives for payment of the costs of construction of paved ingress and egress, parking, sidewalks, and landscaping on the Land, shall be made to the Developer until the City shall have approved the Developer's contractor(s) for the items set forth above, said approval not to be unreasonably withheld, conditioned or delayed;
  - (b) from time to time as construction of the paved ingress and egress, parking, sidewalks, and landscaping on the Land, the applicable contractor shall submit progress payment requests accompanied by customary affidavits of payment and lien waivers to the Developer for payment. After approval of each contractor request for payment by the Developer, the Developer shall provide

a copy of the approved payment request to the City and, the City shall disburse the requested payment amount to the Developer for payment to the applicable contractor within thirty (30) days after its receipt of the approved payment request, provided, each request for payment approved by the Developer shall provide for the withholding of retainage as required by applicable laws, said approvals not to be unreasonably withheld, conditioned or delayed;

- (c) it is expressly understood and agreed that the portion of the Development Incentives funded to the Developer shall be deemed fungible with the payment of the above costs to be made by the Developer and, shall be deemed paid, whether in whole or in part through, as the case may be, the City's reimbursement of the Developer's payment of the cost of discrete portions of the paved ingress and egress, parking, sidewalks, and landscaping on the Land and/or the City's prompt direct payment of all or a portion of such costs if requested by the Developer to make direct payments, in each case *provided* the Developer has fully complied with the provisions of **Sections 7.1** through **7.3** hereof.
- (v) In the event the Infrastructure paid directly or reimbursed to the Developer by the City and identified in the previous **Sections 5.1(i)** through **5.1(iv)** is less than \$5,550,000, in the same manner and subject to the same conditions as otherwise provided above, the City shall pay directly to or reimburse Developer promptly for any other Infrastructure identified in **Exhibit B** up to and including an aggregate of \$5,550,000. The parties specifically agree that the Developer will fully comply with all provisions of **Sections 7.1** through **7.3** hereof with respect to the preparations, installation and the construction of any such other Infrastructure, the cost of which may be paid for or reimbursed under this **Section 5.1(v)**.
- (vi) The parties expressly acknowledge and agree that the City's obligations under this **Section 5.1**, will be funded from proceeds of the Tulsa County Vision 2025 Sales Tax as approved by the Tulsa County Vision Authority on January 7, 2015.

B.4 **Amendment to Section 5.5 of the 2014 Agreement:** Section 5.5, Financial and Other Assistance to BAEDA, is hereby amended to read in its entirety as follows:

5.5 **Construction of a Mutual Access Drive.** The City shall pay the sum of \$206,473.33 for construction of a Mutual Access Drive from West Albany Street, south of the area identified on the Conditional Final Plat of Lot 1, Block 1, Hilton Garden Inn of the Village at Stone Wood Hills, to the western boundary of the Land as shown on the Master Site Plan. The cost of construction paid by the City shall be in addition to the Development Incentives as set forth in **Section 5.1** hereof.

B.5 **Amendment to Section 5.9 of the Agreement:** Section 5.9, City Development Fees, is hereby amended to read in its entirety as follows:

5.9 **Traffic Impact Analysis, Traffic Signalization, and Development Fees:** At its sole cost, the City shall be responsible for obtaining a Traffic Impact Analysis for West Albany Street from North Elm Place to North 9<sup>th</sup> Street. If the Traffic Impact Analysis requires traffic signalization for the Project's First Phase, the parties shall meet and confer to determine what amount shall be paid from the Development Incentives as set forth in **Section 5.1** hereof. All City Development Fees for the Project's First Phase under the 2014 Agreement shall be waived.

B.6 **Addition of Section 5.10 to the Agreement:** Section 5.10, Zoning, shall read in its entirety as follows:

5.10 **Zoning:** The City and BAEDA represent and warrant to the Developer that the Project is and will be in full compliance with the City zoning and use requirements.

**ARTICLE C  
CONTINUING TERMS OF AGREEMENT**

C.1 Except as amended hereby, all terms of the 2014 Agreement remain in full force and effect without modification or change. The 2014 Agreement, as amended by this Amendment, is in all respects ratified and confirmed, and the Agreement, as so amended by this Amendment, shall be read, taken and construed as one and the same instrument.

**IN WITNESS WHEREOF**, each of the parties has caused this Agreement to be executed by its duly authorized officials and its official seal to be impressed hereon, as of the date first above written.

THE CITY OF BROKEN ARROW,  
a municipal corporation

ATTEST: (S E A L)

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

By: \_\_\_\_\_  
City Clerk

Reviewed as to form and legality this 20<sup>th</sup> day of October, 2015.

\_\_\_\_\_  
Municipal Counselor

BROKEN ARROW ECONOMIC  
DEVELOPMENT AUTHORITY,  
an Oklahoma public trust

ATTEST:

(S E A L)

By \_\_\_\_\_  
Chairman

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

STONEY CREEK HOSPITALITY CORPORATION

By: \_\_\_\_\_  
James H. Thompson, Chairman and CEO



STATE OF OKLAHOMA            )  
  ) ss.  
COUNTY OF TULSA            )

Before me, the undersigned, a Notary Public in and for said County and State, on the \_\_\_\_\_ day of \_\_\_\_\_, 2015, personally appeared Craig Thurmond, Mayor of THE CITY OF BROKEN ARROW, a municipal corporation, 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 corporation for the uses and purposes therein set forth.

Given under my hand and seal the day and year above written.  
(S E A L)

\_\_\_\_\_  
Notary Public  
My commission expires:  
My number is:

STATE OF OKLAHOMA,            )  
  ) ss.  
COUNTY OF TULSA            )

Before me, the undersigned, a Notary Public in and for said County and State, on the \_\_\_\_\_ day of \_\_\_\_\_, 2015, personally appeared Craig Thurmond, the Chairman, and Liza Bryce, the Secretary of BROKEN ARROW ECONOMIC DEVELOPMENT AUTHORITY, a public trust, to me known to be the identical persons who executed the within and foregoing instrument for and on behalf of said public trust and acknowledged to me that they executed the same as their free and voluntary acts and deeds, and as the free and voluntary act and deed of said public trust 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:

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

Before me, the undersigned, a Notary Public in and for said County and State, on the \_\_\_\_\_ day of \_\_\_\_\_, 2015, personally appeared Jim Thompson the Chairman and CEO of Stoney Creek Hospitality Corporation, 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 corporation for the uses and purposes therein set forth.

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

(S E A L)

\_\_\_\_\_  
Notary Public  
My commission expires:  
My number is: