

**FIFTH AMENDMENT TO THE ECONOMIC DEVELOPMENT AGREEMENT BY AND
AMONG SUNSET AT BROKEN ARROW, LLC AND BROKEN ARROW ECONOMIC
DEVELOPMENT AUTHORITY AND CITY OF BROKEN ARROW, OKLAHOMA**

This FIFTH AMENDMENT is made and entered into this ____ day of December, 2025, by and between SUNSET AT BROKEN ARROW, LLC, a Colorado 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 October 3, 2023, the Developer, Authority and City entered into an Economic Development Agreement (hereinafter "Agreement") for the Sunset Amphitheater Economic Development Project located on 13 acres of property from the Authority within the Increment District immediately north of the Broken Arrow Events Park located at 21101 E 101st Street South, just east of the Creek Turnpike;

WHEREAS, the Developer, the Authority, and the City entered into a First Amendment dated January 31, 2024;

WHEREAS, the Developer, the Authority, and the City entered into a Second Amendment dated February 20, 2024;

WHEREAS, the Developer, the Authority, and the City entered into a Third Amendment dated March 5, 2024;

WHEREAS, the Developer, the Authority, and the City entered into a Fourth Amendment dated April 16, 2024;

WHEREAS, significant project revisions have been made by the Developer to enhance the attendees experience including the roof re-design, improved structural wind walls, and other elements and;

WHEREAS, Section 7.13 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, Except as amended hereby, all terms of the Agreement, as amended, remain in full force and effect without modification or change. The 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. No other term contained therein may be modified without the express written consent of the parties hereto.

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

each of which shall be, and is hereby, substituted in lieu of the corresponding provision in the original Agreement.

I. AMENDMENT TO AGREEMENT

ARTICLE III. NATURE OF THE AGREEMENT

3.1. **SCOPE OF THE PROJECT.** The City desires to encourage economic development in the City by facilitating the payment of the costs of essential infrastructure improvements and remedial costs necessary to make certain property viable for development, all in a manner that encourages commerce, increases entertainment and retail opportunities, and generates a corresponding growth in the local tax base. The Developer proposes to acquire and develop approximately 13 acres of property from the Authority within the Increment District immediately north of the Broken Arrow Events Park located at 21101 E 101st Street South, just east of the Creek Turnpike. The subject property is currently undeveloped land. The Developer's initial commitment includes the construction of a 12,500 seat outdoor entertainment venue with a dedicated stage for a diverse array of performances and outdoor live music concerts. The Sunset Amphitheater is projected to be open by November 15, 2026. The total capital investment in the Sunset Amphitheater is projected to be approximately \$71.5 million, plus \$17.81 million cost of Project Site Improvements (described below) to be funded through the Increment District.

The Authority shall cause to be installed the following infrastructure improvements supporting the Project Site detailed below (collectively, the "Project Site Improvements") on a schedule to be mutually agreed upon with the Developer (the "Project Site Improvements Schedule"). The City and the Authority acknowledge and agree that certain of the Project Site Improvements must be installed before the Developer can begin construction of the Project. The design, construction start dates and completion dates of the Project Site Improvements shall be at the sole discretion of the Authority provided, however, that the Project Site Improvements are completed in accordance with the Project Site Improvements Schedule and that any delay in the completion of the Project Site Improvements shall also result in the Developer being allowed an additional number of days equal to such delay for the Developer to fully perform its obligations set forth in Article IV. The Project Site Improvements include the following (including preliminary estimated project budgets):

- A. On-site surface parking improvements providing a minimum 2,360 spaces, at an estimated cost of \$7,184,834;
- B. Stormwater detention facilities at an estimated cost of \$2,273,400;
- C. Road improvements within the Events Park at an estimated cost of \$2,485,187;
- D. Subject to acquisition of the 41 acres, roadway extension to north end of Project Site at an estimated cost of \$2,120,616;

E. Roadway extension providing connecting access to State Highway 51 at East Washington Street, including railroad crossing improvements, subject to the approval of Union Pacific Railroad, at an estimated cost of \$3,500,000;

F. Construct third access point across creek to connect Project Site with Challenger Sports Complex at an estimated cost of \$250,000.

Notwithstanding the foregoing list, the Project Site Improvements do not include the provision of internet, electric, public utilities or natural gas services to the Project Site. Any necessary costs of those specific utility services shall be borne by the Developer.

The Project Site Improvements are proposed for inclusion as authorized project costs pursuant to the Project Plan. The City and the Authority may utilize Tax Increment revenues derived from the Increment District to offset the costs of the Project Site Improvements provided, however, that the availability or non-availability of such funds shall not relieve the Authority of the obligation to timely construct the Project Site Improvements. The Project Plan may authorize additional costs and/or infrastructure improvements payable from the Tax Increment revenues. The Authority and/or the City has contracted or shall contract for or otherwise cause to be completed, and shall bear the cost, if any, of the Project Site Improvements. Notwithstanding the foregoing, additional project costs may be incurred by agreement of the parties as may be specifically authorized under the Project Plan. Nothing herein shall prohibit the Developer, the Authority, and/or the City from seeking, obtaining, and applying available state, federal, or other funding to the payment of certain Project Site Improvements in lieu of including said Project Site Improvements as project costs under the Project Plan.

The Project will be financed from a combination of public and private sources, including apportionment of sales and use tax increments, hotel tax increments, and other incremental revenues generated within or sourced to the Increment District established in connection with the Project. It will require a combination of public and private actions for implementation.

ARTICLE V. COVENANTS AND OBLIGATIONS OF THE DEVELOPER

5.2 DEVELOPMENT TIMELINE AND OBLIGATIONS OF THE DEVELOPER.

The Developer agrees to complete construction of the Project by November 15, 2026. The Developer's obligation to honor such completion date is specifically conditioned upon timely completion by the City and the Authority of all of their respective obligations hereunder and subject to any delays in full completion of any of the conditions precedent set forth in Articles II and III above, any delays in completion of the Project Site Improvements, or anything beyond the reasonable control of the Developer including but not limited to acts of God, tornado or severe weather event, flood, strikes, shortages of materials or pandemic.

5.7. TRAFFIC CONTROL AND PARKING DESIGN AND OPERATION REQUIREMENTS. It is contemplated that the Developer, or a contract vendor, will operate the parking facilities serving the Project during scheduled events. The City or the Authority may enter into one or more Parking Space Use Agreement(s) with the Developer and/or its contract vendors, which shall provide for the following consideration:

A. The Developer, or a contract vendor, shall provide law enforcement personnel to handle all traffic control on City streets, as approved by the Police Chief.

5.8 PERFORMANCE AND TERMINATION; OTHER REPRESENTATIONS. The Developer shall meet all of the following commitments, or will be subject to liquidated damages in accordance with this Agreement. The commitments are as follows:

A. 13+ Acre Tract. In consideration for conveyance of the 13 acre tract of real property from the Authority to the Developer, the Developer agrees to timely complete the Project as set forth in Section 5.2. In the event that the Developer has not completed construction of the Project prior to November 15, 2026, the Developer will pay to the Authority the sum of TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) per month for each month in which the Developer has not completed the Project by the first day of said month. The Developer's obligation to honor such completion date is specifically conditioned upon timely completion by the City and the Authority of all of their respective obligations hereunder and subject to any delays in full completion of any of the conditions precedent set forth in Articles II and II above, any delays in completion of the Project Site Improvements, or anything beyond the reasonable control of the Developer including but not limited to acts of God, tornado or severe weather event, flood, strikes, shortages of materials or pandemic. The rights, duties and obligations set forth in this Section 5.8A shall terminate and be of no effect upon the twenty-fifth (25th) anniversary of the date of completion of the Project by the Developer.

B. Performance and Termination. In the event the Developer fails to meet the Developer's obligations outlined in Section 5.1, the Authority shall provide notice to the Developer of such breach and the Developer shall have one (1) year from the date of the Developer's receipt of such notice to cure such breach. In the event that the Developer fails to cure such failure to meet its obligations in Section 5.1 within such time period, the Developer will pay to the Authority the sum of TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) per month for each month in which the Developer has not completed the Project by the first day of said month. The Developer's timely performance of its obligations set forth in Section 5.1 is conditioned upon timely completion by the City and the Authority of all of their respective obligations hereunder and subject to any delays in full completion of any of the conditions precedent set forth in Article II above, any delays in completion of the Project Site Improvements, or anything beyond the reasonable control of the Developer including but not limited to acts of God, tornado or severe weather event, flood, strikes, shortages of materials or pandemic. The rights, duties and obligations set forth in this Section 5.8B

shall terminate and be of no effect upon the twenty-fifth (25th) anniversary of the date of completion of the Project by the Developer.

C. The parties acknowledge that time is of the essence for purposes of this Agreement.

D. The Developer will use reasonable efforts to use qualified City labor and suppliers under this Agreement, provided however, the Developer may in its sole discretion select suppliers and contractors based on program needs, criteria, and standards.

E. By execution of this Agreement, the Developer certifies that it is a company in good standing under the laws of the State in which it was formed or organized and has provided the Authority sufficient evidence of such. In addition, the Developer certifies that it owes no delinquent taxes to any taxing unit of this City or County at the time of execution of this Agreement.

F. The Developer will furnish to the Authority and City timely updates throughout the term of the Agreement or as requested by the Authority or City, regarding the general project status, market and general summary financial updates regarding the Developer related to the Sunset Amphitheater contained herein.

G. The parties' or their representatives will meet as needed to implement the terms of this Agreement and will make a good faith attempt to informally resolve any disputes or issues related to this venture.

H. The Developer agrees not to seek any incentives for the Project pursuant to the Oklahoma Tourism Development Act, Title 68, Oklahoma Statutes Section 2391 et seq.

I. The Developer will make any repairs to the curb, gutters, and road surface that has been damaged and/or is in disrepair on or about Gary Street between 38th Street and Rosewood Elementary School upon completion of the Project or November 15, 2026, whichever is sooner. This may include a combination of concrete repairs and asphalt mill and overlay or both. Furthermore, the greenspace used by the Developer south of Gary Street will also be repaired and restored. Both Gary Street and the greenspace south of Gary Street will be restored to a satisfactory level as determined by the City.

J. Per the October 3, 2023, original agreement section 5.7, E, and regardless of the revised Project completion date or any extensions provided herein, the Developer, or a contract vendor, shall be responsible for mowing, edging, and maintaining the landscaping on the venue grounds and parking areas effective March 15, 2026.

K. The Developer or the contract vendor shall provide the City, through its Police Department, established by a future agreement, access to live video feeds from designated cameras on the Project's property for the purpose of monitoring and real-time incident response.

II. CONTINUING TERMS OF THE AGREEMENT

Except as amended hereby, all terms of the Agreement 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 constructed as one and the same instrument. No other term contained herein may be modified without the express written consent of the parties hereto.

[SIGNATURES APPEAR ON FOLLOWING PAGE(S)]

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first above written.

BROKEN ARROW ECONOMIC
DEVELOPMENT AUTHORITY:

By: _____
Debra Wimpee, Chairperson

Date: _____

Attest:

Secretary

CITY OF BROKEN ARROW:

By: _____
Debra Wimpee, Mayor

Date: _____

Attest:

City Clerk

Approved as to Form:



Assistant City Attorney

SUNSET AT BROKEN ARROW, LLC:

By: [Signature]
Name, Title Jw Roth, manager
Date: 11-25-25

ACKNOWLEDGMENT

State of Colorado)
County of El Paso) ss.

Subscribed and sworn to and acknowledged before me on this 11 day of November, 2025, by Jw Roth, who acknowledged that he/she is the manager (title/office) of SUNSET AT BROKEN ARROW, LLC, a Colorado limited liability company, and that he/she executed the foregoing instrument on behalf of the limited liability company for the purposes therein stated.

[Signature]
Notary Public

My Commission Expires: 6-20-27

Commission Number: 20234023023

