

ECONOMIC DEVELOPMENT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT (the “Agreement”) is dated as of the _____ day of July, 2015, by and between **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 **RDS Properties II, LLC** (a limited liability corporation together with its successors and assigns, “RDS”).

WITNESSETH:

WHEREAS, RDS owns the property located at 207 South Main Street, Broken Arrow, Oklahoma, which is currently being operated as a cocktail and cigar bar known as “Stogies;” and

WHEREAS, RDS desires economic assistance for the purpose of installing an above-ground wet pipe fire sprinkler system for 207 South Main Street, Broken Arrow, Oklahoma; and

WHEREAS, City reasonably expects that the development of RDS in the City will increase overall sales tax and property tax revenues of the City; and

WHEREAS, a declared goal of the City is to encourage and facilitate economic development within and near the City by attracting new industry and commercial businesses to the Broken Arrow area, and to promote the economic health and expansion of existing industry and commercial businesses within the City; and

WHEREAS, the City recognizes that the full development of RDS will have both direct and indirect economic benefits for the City and through such development reasonably expects (i) to realize increased sales tax revenues from project-based sales in the City; (ii) to realize increases in ad valorem revenues to be derived therefrom by the City, Tulsa County, Oklahoma (“Tulsa County”), Independent School District No. 3 of Tulsa County, Oklahoma, and other local and area governmental entities from time to time benefiting therefrom; (iii) that the development of RDS will generally enhance property values, both residential and commercial, within the City; and (iv) that the development of RDS will otherwise contribute significantly to the economic wellbeing of the citizens of, and residents within and near, the City, and those in Tulsa County and the State of Oklahoma (the “State”) generally; and

WHEREAS, the City also recognizes that the development of RDS and its operations will have additional direct and indirect economic benefits within and near the City, in Tulsa County and in the State through, including without limitation, providing economic stimulus for additional employment and other development, and providing training and employment opportunities in services, sales and management skills; and

WHEREAS, the location of RDS’s development in this area in the City is reasonably expected to attract organizations, individuals and customers from without the City’s territorial limits with the reasonably expected result of encouraging and facilitating additional economic development

within and near the City, and downtown in particular, and promoting the expansion of existing industry, commercial and retail enterprises within the City; and

WHEREAS, in connection with such reasonable expectations and following negotiations with RDS, the City has determined that it is necessary and appropriate for the City to provide RDS with development incentives in an aggregate amount of not to exceed \$25,000.00; and

WHEREAS, implementation of this Agreement, which is reasonably expected to facilitate the realization of the aforesaid economic benefits to the City, downtown and general area, would otherwise be difficult or impractical without certain development incentives, and apportionments and appropriations for such purposes of certain City sales tax revenues, other forms of public assistance; and

WHEREAS, the City is implementing the economic development and redevelopment objectives of the City in accordance with the approved Broken Arrow FlightSafety and Downtown Economic Development Project Plan (hereinafter referred to as the "Project Plan") and Increment District No. 1 City of Broken Arrow; 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 downtown Broken Arrow, expand economic development, and attract new businesses and cultural arts; 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 RDS 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
OBLIGATIONS OF TAVERN**

1.1 Development of Premises. RDS shall diligently undertake the development of RDS's facility and shall install an above-ground wet pipe fire sprinkler system for 207 South Main Street, Broken Arrow, Oklahoma.

**ARTICLE II
OBLIGATIONS TO THE CITY**

2.1 Financial Assistance to RDS: The City agrees to provide an amount not to exceed \$25,000.00 to RDS as economic incentive to develop the RDS facility.

**ARTICLE III
GENERAL PROVISIONS**

3.1 Nondiscrimination. RDS 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.

3.2 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 RDS in the event of any default or breach by the City or for any amount to become due to RDS under this Agreement.

3.3 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 RDS 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.

3.4 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.

3.5 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.

3.6 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.

3.7 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 the City:

City Manager
The City of Broken Arrow
P. O. Box 610
220 South First
Broken Arrow, Oklahoma 74012

With copies to:

Beth Anne Wilkening, City Attorney
City of Broken Arrow, Oklahoma
P. O. Box 610
Broken Arrow, Oklahoma 74012

To RDS:

Roy D. Sturgeon
4217 West Seattle Street
Broken Arrow, Oklahoma 74012

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.

3.8 Assignment. RDS shall not have the right to assign its rights or obligations under this Agreement without the prior written consent of the City.

3.9 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.

3.10 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.

3.11 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 parties 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.

3.12 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.

3.13 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.

3.14 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.

3.15 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.

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

RDS PROPERTIES, II, a limited liability corporation

By: _____
Roy D. Sturgeon, President

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 _____ day of July, 2015.

Municipal Counselor

