

ECONOMIC DEVELOPMENT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT (the “Agreement”) is entered by and between the Broken Arrow Economic Development Authority, an Oklahoma Public Trust (together with its successors and assigns, the “Authority”) the sole beneficiary of which is The City of Broken Arrow, Oklahoma (the “City”), and SoundMind Behavioral Health Hospital, LLC, an Oklahoma limited liability company (together with its successors and assigns, “SoundMind”). The effective date of this Contract is January 2, 2018 (the “Effective Date”).

RECITALS

WHEREAS, SoundMind is an Oklahoma limited liability company whose founding mission is to provide accessible and affordable comprehensive inpatient psychiatric care for adults and seniors in crises; and

WHEREAS, SoundMind intends to utilize innovative, outcome based treatment modalities, and trailblazing community discharge strategies in the provision of its services; and

WHEREAS, the proposed Chief Executive Officer of SoundMind (the “CEO”) is an experienced health care administrator with over forty (40) years of experience, including behavioral health services; and

WHEREAS, the CEO is in the process of recruiting a multidisciplinary team of recognized clinical and research behavioral health professionals, including psychiatrists specializing in geriatrics, , psychologists specializing in geriatrics and behavioral health diagnostics tool applications and analysis, family and internal medicine physicians, occupational therapists, specialty social workers, therapists, nurses, mental health technicians, community educators, dietitians, and various administrative support staff; and

WHEREAS, SoundMind intends to utilize a whole person, outcome driven conceptual framework with success driven therapeutic modalities and services designed to make a measurable difference in the lives of people it serves by using validated clinical instruments and individualized therapeutic modalities that produce meaningful outcomes; and

WHEREAS, population needs studies support the need for additional beds in specialty hospitals like SoundMind in the service areas; and

WHEREAS, reductions in financial reimbursements and firmer regulatory standards resulted in the closure of many hospital inpatient psychiatric units; in fact, since 2000, there has been a decline of 386 inpatient psychiatric and chemical dependency beds throughout Tulsa County; and

WHEREAS, recent changes in the way behavioral health care is paid for by insurers should mark a reversal from recent years in which hospitals had no interest in providing inpatient psychiatric beds, and under the new payment models new freestanding specialty psychiatric hospi-

tals are opening rapidly throughout the United States, but due to the inconvenience, cost and relevant laws, in Oklahoma, new psychiatric hospitals are developing at a much slower rate in Oklahoma; and

WHEREAS, SoundMind presented evidence to the Oklahoma State Department of Health demonstrating the need for a freestanding psychiatric and chemical dependency hospital in Tulsa County; and

WHEREAS, community providers backed the project through letters of support sent to the Commissioner of Mental Health, mental health agencies, including the Tulsa/Arkansas Alzheimer's Association and the National Alliance on Mental Illness, and Tulsa hospitals, including local nursing homes, psychiatrists, family practice and internal medicine physicians; and

WHEREAS, an overwhelming demand for adult inpatient psychiatric beds was validated through independent market studies which was conducted through surveys, industry research, and statistical analysis of the Tulsa County service area; and

WHEREAS, construction and operation of SoundMind's Specialty Hospital will increase the number of available adult/geriatric psychiatric beds and improve access for an underserved population; and

WHEREAS, in addition to core inpatient behavioral health services, SoundMind will be licensed as a specialty psychiatric hospital with an acute evaluation center (emergency room) and an area for intensive outpatient services; and

WHEREAS, as part of its long-term strategy, SoundMind will consider implementation at a future date of emergency services complying with the Oklahoma Administrative Code in the form of an urgent care, including diagnostic x-ray services with radiology technologists and clinical laboratory services, as well as a certified reference laboratory; and

WHEREAS, SoundMind will also provide a continuum of follow-up services such as partial hospital and intensive outpatient, individual outpatient, utilizing a similar conceptual framework for analyzing factors that influence therapy effectiveness, monitored and measured for outcomes; and

WHEREAS, SoundMind's strategic service development will include the development of clinics that focus and market SoundMind as clinically proficient and/or experts in Alzheimer's and dementia clinic/research, and Neurological disease clinic/research; and

WHEREAS, SoundMind will also focus on contracted behavioral health services to provide inpatient crises treatment for mentally ill individuals requiring hospitalization; and

WHEREAS, operation of SoundMind will provided crises treatment for mentally ill individuals, as well as assisting the Broken Arrow Police Department in responding to individuals suffering from mental health crises; and

WHEREAS, SoundMind has further expressed its intent to create a nonprofit foundation to provide resources for indigent individuals by seeking funding through individual and corporate donations, grants, and research, alliances with local organizations to develop a cohesive continuum of mental health services, and collaborating with community agencies, mental health advocacy groups, schools and universities to meet the needs of the underserved adults; and

WHEREAS, SoundMind has received a Certificate of Need (the “CON”) from the Oklahoma State Department of Health to establish a seventy-two (72) bed freestanding adult and geriatric psychiatric hospital designed to serve those fifty-five (55) and older, to include an acute evaluation center (emergency room) and an area for intensive outpatient services (the “Facility”), as fully set out and evaluated in CN #17-069, attached hereto and incorporated herein as Exhibit “A”; and

WHEREAS, SoundMind estimates that the average patient stay will be between seven (7) and twelve (12) days; and

WHEREAS, it is estimated that SoundMind will employ no fewer than 150 skilled individuals with an annual payroll of \$5.4 million in 2019, increasing to \$8.1 million in 2021; and

WHEREAS, in the fall of 2017, the City of Broken Arrow’s Economic Development Coordinator, (the “E.D. Coordinator”) was approached by representatives of SoundMind who expressed an interest in purchasing property located north of the Creek Turnpike around Aspen Avenue for construction of the Facility and related appurtenances; and

WHEREAS, the Authority owns unencumbered fee title to certain lands within the City, portions of which are suitable for construction of the Facility and located north of the Creek Turnpike and west of Aspen Avenue (the “Aspen Property”), said lands being acquired in 2009, consisting of 25.48 acres of real property, and purchased for the sum of \$1,390,609.35; and

WHEREAS, on several occasions in the late fall of 2017, the Authority considered the above recited series of events, with regard to SoundMind, the appraisal of various tracts of lands owned by the Authority, and a proposed economic development agreement with SoundMind in Executive Session, said sessions necessary to protect the confidentiality of the business and otherwise in full compliance with the Oklahoma Open Meeting Act; and

WHEREAS, thereafter, on December 5, 2017, and in open public session the Authority directed the City Manager to move forward with formal negotiations with SoundMind for a comprehensive Economic Development Agreement, including the sale of a portion of the Aspen Property and development in a manner meeting the City’s sales tax generation and economic development objectives therefor ; and

WHEREAS, specifically, upon the terms and conditions set forth herein, the Authority desires to sell and SoundMind desires to purchase approximately 14.1569 acres located north of the Creek Turnpike and West of Aspen Avenue (the “Real Property,” as defined herein) for the sum of \$1,200,000.00, said purchase price being supported by an updated appraisal dated October 28, 2017, and as prepared by John Story III, an Oklahoma State Certified General Appraiser; and

WHEREAS, as further consideration for the Authority's sale of the Real Property to SoundMind, SoundMind has further agreed to the following:

- i. To obtain approval for a Planned Unit Development (the "PUD," as defined herein) in accordance with the provisions of this Agreement, the CON, and specifically prohibiting the exclusive treatment of drug and alcohol rehabilitation, said PUD being approved prior to closure on the Real Property; and
- ii. To a deed restriction in accordance with the provisions of this Agreement, the CON, and specifically prohibiting the exclusive treatment of drug and alcohol rehabilitation, and as substantially set out in the General Warranty Deed; and
- iii. To construct an extension of Norfolk Road through the Project area in accordance with City Standards and Applicable Codes, as approved through the platting process; and
- iv. To dedicate through the platting process right-of-way for continuation of Norfolk Road from the southern-most point of the Real Property as shown on Exhibit "B" westerly to the west property line, to be constructed at the expense of the Authority and in the Authority's sole discretion; and
- v. To use commercially reasonable efforts to obtain necessary approvals and construct the Facility in strict accordance with all Applicable Codes, containing appropriate security measures, and in substantial compliance with the project parameters attached hereto as Exhibit "C;" and
- vi. To provide the Broken Arrow Police Department training and assistance in responding to individuals suffering from mental health crises; and
- vii.
- viii. To create a nonprofit foundation to provide resources for indigent individuals to develop a cohesive continuum of mental health services; and To collaborate with community agencies, mental health advocacy groups, schools and universities to meet the needs of underserved adults.

WHEREAS, the Authority recognizes that the development and realization of the Project are reasonably expected to provide direct economic benefits within and near the City in retaining and likely increasing City sales tax receipts, increasing ad valorem tax revenues to be derived by the City, Tulsa County, Oklahoma, Independent School District No. 3 of Tulsa County, Oklahoma, and other local and area governmental entities from time to time benefiting therefrom; generally enhancing property values, both residential and commercial, within the City; and otherwise contributing significantly to the economic well-being of the citizens and residents within and near the City, and those of Tulsa County and the State of Oklahoma (the "State"); and

WHEREAS, the Authority also recognizes that the Project is reasonably expected to provide additional and indirect economic benefits within and near the City, in Tulsa County and in the State through, including without limitation, diversifying the local economy, providing economic stimulus for additional employment and other development, providing economic benefits to low and moderate income individuals, and providing training opportunities in the medical field, services, sales, and management skills; and

WHEREAS, the Authority was created under a certain Trust Indenture dated November 19, 1973, as amended March 11, 1982, August 4, 1983, and March 18, 2014 (the “Authority Trust Indenture”), as a public trust for the use and benefit of its sole beneficiary, the City, under authority of and pursuant to Title 60, Oklahoma Statutes, §§176, *et seq.*; and

WHEREAS, among the Authority Trust Indenture’s stated purposes are those of promoting and encouraging the development of industry and commerce within and without the territorial limits of the City by instituting, furnishing, providing and supplying property, improvements and services for the City and for the inhabitants, owners and occupants of property, and governmental, industrial, commercial and mercantile entities, establishments and enterprises within and without the City; promoting the general convenience, general welfare and public safety of the residents of the City; acquiring by purchase real property useful in instituting, furnishing, providing, or supplying any of the aforementioned property, improvements and services; complying with the terms and conditions of contracts made in connection with or for the acquisition of any of said properties; receiving funds, property and other things of value from, among others, the City; and participating in programs of the State and others which are to the advantage of the City and the Authority’s undertakings, and the Authority has determined that its undertakings and the performance of its obligations under this Agreement are authorized and proper functions under the Authority’s Trust Indenture; and

WHEREAS, the Authority also recognizes that the sale of the Real Property will generate \$1,200,000.00 in revenues which can be used to promote economic development within the City and in accordance with the Authority’s stated purposes; and

WHEREAS, the Authority deems it appropriate to approve the execution and delivery of this Agreement and in providing for the implementation of the Project and the sale and development of the property and determines that 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 promises and the mutual terms, covenants and conditions contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Authority and SoundMind 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 exhibits, supplements, modifications and/or amendments hereto.

“Applicable Codes” means uniform building, fire, electrical, plumbing, or mechanical codes adopted by the City of Broken Arrow, a recognized national code organization, or local amendments to those codes, as well as the Broken Arrow Code of Ordinances and all other codes and regulations of the City of Broken Arrow.

“Authority” shall mean the Broken Arrow Economic Development Authority, an Oklahoma public trust of which the City is sole beneficiary.

“Authority Trust Indenture” shall mean the Trust Indenture dated November 19, 1973, as amended March 11, 1982, August 4, 1983, and March 18, 2014.

“Certificate of Need” and “CON” shall mean the certification issued by the Oklahoma State Department of Health to establish a seventy-two bed freestanding adult and geriatric psychiatric hospital designed to serve those fifty-five (55) and older.

“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 subject activity.

“Commencement Date” shall have the meaning set forth in Section 5.3(a) hereof.

“Construction Commencement Date” shall have the meaning set forth in Section 5.3(b) hereof.

“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 proposed 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.

“Effective Date” shall mean January 2, 2018.

“Facilities” shall mean a seventy-two (72) bed freestanding adult and geriatric psychiatric hospital designated to serve those fifty-five (55) years of age and older and its related improvements, including an acute evaluation center (emergency room) and an area for intensive outpatient services, as well as all necessary infrastructure in the manner of water, sewer, and other utilities and connections, stormwater and stormwater detention facilities and parking facilities, to be constructed, and from time to time constructed, on or near the Real Property, including all fixtures which are an integral part thereof.

“Lender” shall mean one or more parties providing funds to SoundMind to construct the Facilities and/or to fulfill its other obligations hereunder.

“Master Site Plan” shall mean SoundMind's conceptual plan for the construction site, public roads, infrastructure improvements, public utility improvements and other improvements on the subject property.

“Planned Unit Development” and “PUD” shall mean the overlay zoning district intended as an alternative to conventional development completed in accordance with the City of Broken Arrow Zoning Ordinance and other Applicable Codes.

“Project” shall mean the Authority’s conveyance of the Real Property to SoundMind, the design and construction and fitting of the Facilities, including without limitation, the design and construction of the infrastructure, all in accordance with, as the case may be, this Agreement, Applicable Codes, the Master Site Plan and/or the Construction Plans.

“Real Property” shall mean the real property legally described as:

A tract of land that is a part of the Northeast Quarter of the Southeast Quarter (NE/4 SE/4) of Section Thirty-three (33), Township Eighteen (18) North, Range Fourteen (14) East of the Indian Base and Meridian, Tulsa County, State of Oklahoma, according to the United States Government Survey thereof, being more particularly described as follows: Commencing at the Southeast Corner of Southeast Quarter of said Section Thirty-three (33); Thence along the East line of said Southeast Quarter, N01°18'33"W a distance of 2574.83 feet; Thence S88°41'27"W a distance of 42.72 feet to a point on the right of way for the Oklahoma Turnpike Authority as recorded in Book 6305, Page 1920 at the Office of the Tulsa County Clerk being the Point of Beginning; Thence along the Southerly right of way of West Norfolk Drive, dedicated by "ASPEN CREEK TOWNE CENTRE I", Plat #6475 as filed at the Office of the Tulsa County Clerk, S88°34'50"W a distance of 17.29 feet; Thence continuing along said Southerly right of way, N46°21'44"W a distance of 35.32 feet; Thence continuing along said Southerly right of way, S88°34'50"W a distance of 166.32 feet; Thence continuing along said Southerly right of way on a tangent curve to the left, having a radius of 310.00 feet, an arc length of 263.77 feet, a central angle of 48°45'02", a chord bearing of S64°12'19"W, and a chord length of 255.88 feet; Thence along the Southwesterly boundary of said "ASPEN CREEK TOWNE CENTRE I", N50°10'12"W a distance of 234.77 feet to the Northwest Corner of the Northeast Quarter of the Northeast Quarter of the Southeast Quarter (NE/4 NE/4 SE/4) of said Section Thirty-three (33); Thence along the North line of the Northeast Quarter of the Southeast Quarter (NE/4 SE/4) of said Section Thirty-three (33), S88°36'00"W a distance of 48.45 feet; Thence S51°56'46"W a distance of 337.17 feet; Thence S16°07'11"W a distance of 528.32 feet; Thence S78°45'41"W a distance of 178.59 feet; Thence N88°49'30"W a distance of 8.61 feet to a point on the West line of the Northeast Quarter of the Southeast Quarter (NE/4 SE/4) of said Section Thirty-three (33); Thence along said West line, S01°16'42"E a distance of 80.07 feet to a point on the Northerly right of way of said Oklahoma Turnpike Authority; Thence continuing along said right of way, S88°49'30"E a distance of 13.89 feet; Thence continuing along said right of way, N78°45'41"E a distance of 860.65 feet; Thence continuing along said right of way, N82°52'35"E a distance of 350.14 feet; Thence continuing along said right of way, N05°47'20"E a distance of 564.41 feet to the Point of Beginning.

Having an area of 616676 square feet, 14.1569 acres

Bearings based on the Oklahoma State Plane North Zone Grid.

Said tract wholly contained within a tract of land described in Correction General Warranty Deed, Document # 2009066088 recorded 06/29/2009, Tulsa County.

“RFR Property” shall mean Lot 1, Block 1, Aspen Creek Towne Center I, a platted subdivision in the City of Broken Arrow, Tulsa County, State of Oklahoma.

“RFR Period” shall mean the period from the effective date of this Agreement until January 2, 2028.

“State” shall mean the State of Oklahoma.

“SoundMind” shall mean SoundMind Behavioral Health Hospital, LLC, an Oklahoma limited liability company.

“Substantial Completion” shall mean the substantial completion of construction of the Facilities in accordance with the approved Construction Plans with the exception of minor details of construction, installation, decoration, or mechanical adjustments and other such punch list items that can reasonably expected to be completed within thirty (30) days, such that a final certificate of occupancy with respect to the Facilities can be issued by the Building Inspections Division of the City.

“Substantial Completion Date” shall have the meaning set forth in Section 5.3(c) hereof.

“Uncured Material Default” shall have the meaning set forth in Section 5.8.

ARTICLE II. NATURE OF THIS AGREEMENT

2.1 **Scope of the Project.** The Project will include a seventy-two (72) bed freestanding adult and geriatric psychiatric hospital designated to serve those fifty-five (55) years of age and older and its related improvements, including an acute evaluation center (emergency room) and an area for intensive outpatient services, as well as all necessary infrastructure in the manner of water, sewer, and other utilities and connections, stormwater and stormwater detention facilities parking facilities, and related appurtenances. The Project will be constructed and landscaped in accordance with Applicable Codes.

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 full implementation. The parties shall be diligent in using commercially reasonable efforts in performing and assisting one another and requisite third parties in performing their respective obligations under and relating to this Agreement, specifically including, without limitation, the performance obligations hereinafter set forth.

2.3 **Preparation and Approval of Master Site Plan.** SoundMind shall prepare a Master Site Plan for the Project. The Master Site Plan shall be in accordance with the terms of this Agreement and Applicable Codes. The Master Site Plan shall be approved by the City Council and the Authority prior to the issuance of any building permits, which approvals shall not be unreasonably withheld, conditioned or delayed.

ARTICLE III. REPRESENTATIONS AND WARRANTIES

3.1 **Representations, Warranties and Covenants of SoundMind.** SoundMind hereby represents, warrants and covenants to the Authority that:

- (a) SoundMind is a limited liability company duly organized and validly existing under the laws of Oklahoma.
- (b) SoundMind has full power, authority, and legal right to execute, perform, and timely observe all of the provisions of this Agreement and SoundMind's execution, delivery, and performance of this Agreement have been duly authorized.
- (c) this Agreement constitutes a valid and binding obligation of SoundMind and does not and will not constitute a breach of or default under the formation or internal governing documents of SoundMind or the terms, conditions, or provisions of any law, order, rule, regulation, judgment, decree, agreement, or instrument to which SoundMind is a party or by which it or any of its assets is bound or affected.
- (d) SoundMind shall, at its own expense, keep in full force and effect its legal existence and the permits and the rights required for it timely to observe all of the terms and conditions of this Agreement.
- (e) there is no litigation or proceeding pending or threatened against SoundMind or its affiliates that could adversely affect the validity of this Agreement or the ability of SoundMind to comply with its obligations under this Agreement.
- (f) SoundMind is not currently in breach of any of its covenants set forth in this Agreement.
- (g) the execution and delivery of this Agreement, the consummation of the transactions contemplated thereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any conditions of any corporate or organizational restriction or of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.
- (h) there has been no material adverse change in the business, financial position, prospects or results of operations of SoundMind which could affect SoundMind's ability to perform its obligations pursuant to this Agreement.

- (i) no consent or approval is required to be obtained from, and no action need to be taken by, or document filed with, any governmental body or corporate entity in connection with the execution, delivery and performance by SoundMind of this Agreement, except that it is understood that SoundMind will require applicable building permits, zoning approvals and other approvals set forth herein.
- (j) SoundMind has no reason to believe that all governmental permits and licenses required by applicable law to construct, occupy and operate the Facilities will not be issued in a timely manner in order to permit the Facilities to be constructed pursuant to this Agreement.

3.2 **Representations, Warranties and Covenants of the Authority.** The Authority hereby represents, warrants and covenants to SoundMind that:

- (a) the Authority is an Oklahoma public trust.
- (b) the Authority has full power, authority, and legal right to execute, perform, and timely observe all of the provisions of this Agreement and the Authority's execution, delivery, and performance of this Agreement have been duly authorized.
- (c) this Agreement constitutes a valid and binding obligation of the Authority and does not constitute a breach of or default under the formation or internal governing documents of the Authority or the terms, conditions, or provisions of any law, order, rule, regulation, judgment, decree, agreement, or instrument to which the Authority is a party or by which it or any of its assets is bound or affected.
- (d) the Authority shall, at its own expense, keep in full force and effect its legal existence and the permits and rights required for it timely to observe all of the terms and conditions of this Agreement.
- (e) there is no litigation or proceeding pending or threatened against the Authority that could adversely affect the validity of this Agreement or the ability of the Authority to comply with its obligations under this Agreement.
- (f) the Authority is not currently in breach of any of its covenants set forth in this Agreement.
- (g) the execution and delivery of this Agreement, the consummation of the transactions contemplated thereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any organizational restriction, agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

- (h) there has been no material adverse change in the business, financial position, prospects or results of operations of the Authority which could affect the Authority's ability to perform its obligations pursuant to this Agreement.
- (i) no consent or approval is required to be obtained from, and no action need to be taken by, or document filed with, any body or entity in connection with the execution, delivery and performance by the Authority of this Agreement.
- (j) the Authority has no reason to believe that all governmental permits and licenses, if any, required by the Developer pursuant to applicable law to construct, occupy and operate the Facilities will not be issued in a timely manner in order to permit the Facilities to be constructed pursuant to this Agreement.
- (k) the Authority is the owner in fee simple of the Real Property, free and clear of: (i) any liens, claims, encumbrances; and (ii) any matter which would interfere with the development of the Project as contemplated hereby.

ARTICLE IV OBLIGATIONS OF THE AUTHORITY

4.1 **City as Beneficiary of Authority.** The City is the sole beneficiary of the Authority. By mutual understanding between the City and the Authority and in accordance with the laws of the State of Oklahoma, the Authority agrees to perform to its obligations and those of the City set forth in this Agreement, excepting only those obligations and responsibilities specifically reserved by the City pursuant to law.

4.2 **Authority Approvals.** The Authority agrees that any approvals it is required to make under this Agreement, whether with respect to the Master Site Plan, the Construction Documents, or any other matter, shall not be unreasonably withheld, conditioned or delayed. In connection herewith the Authority agrees that the City's approval of the Construction Plans shall also constitute the Authority's approval thereof, and the Authority agrees to coordinate its approvals of the Master Site Plan with those of the City.

4.3 **Sale of the Real Property.** Authority agrees to sell the Real Property in accordance with the terms of this Agreement, and in particular Article VI contained herein.

4.4 **Right of First Refusal to Purchase Lot 1, Block 1, Aspen Creek Towne Center I.** The Authority hereby grants SoundMind a right of first refusal to purchase Lot 1, Block 1, Aspen Creek Towne Center I (the "RFR Property") for a period of ten (10) years from the Effective Date of this Agreement (the "RFR Period").

ARTICLE V. OBLIGATIONS OF SOUNDMIND

5.1 **Purchase of the Real Property.** SoundMind agrees to purchase the Real Property in accordance with the terms of this Agreement, and in particular Article VI contained herein.

5.2 **Development of Real Property.** SoundMind shall diligently undertake the preparation of a Master Site Plan and a Planned Unit Development (the “PUD”) for submission to the City and the Authority for approval. The PUD shall provide for a freestanding adult and geriatric psychiatric hospital designated to serve those fifty-five (55) years of age and older and its related improvements, including an acute evaluation center (emergency room) and an area for intensive outpatient services, on the Real Property in accordance with Exhibits “B” and “C” attached hereto. The PUD shall specifically prohibit the exclusive treatment of drug and alcohol rehabilitation. In the event the PUD is not approved by the City Council, or is approved with conditions not acceptable to SoundMind, this Agreement shall be of no further force and effect, the Earnest Money shall be returned to SoundMind and SoundMind shall not be in default under any of the provisions of this Agreement.

Following approval of the Master Site Plan and the PUD by the City and the Authority and acquisition of the Real Property, SoundMind shall use commercially reasonable efforts to build, or cause to be built, a seventy-two (72) bed freestanding adult and geriatric psychiatric hospital designated to serve those fifty-five (55) years of age and older and its related improvements, including an acute evaluation center (emergency room) and an area for intensive outpatient services, including appropriate security measures in accordance with the Master Site Plan, the PUD, the CON, the Construction Plans, and Applicable Codes. SoundMind shall have the ability to seek an amendment to the PUD in strict accordance with the City of Broken Arrow Zoning Ordinance and Applicable Codes, said approval of any amendment not to be unreasonably withheld, conditioned or delayed.

5.3 **Performance of Facilities Covenants.** SoundMind shall use commercially reasonable efforts to construct the Facilities and such other Improvements as provided for in this Agreement. The construction of the Facilities will be commenced and completed in accordance with the following schedule:

- (a) Commencement Date: Within sixty (60) days of SoundMind’s acquisition of the Real Property; provided, however, that in any event the Commencement Date shall be not less than six (6) months from the effective date of this Agreement.
- (b) Construction Commencement Date: Not later than six (6) months after the Commencement Date.
- (c) Substantial Completion Date: Not later than twenty-four (24) months after the Construction Commencement Date, subject to extension by virtue of Section 8.10 relating to unavoidable delays.

5.4 **Facilities Restrictions.** Without the express consent of the Authority, SoundMind shall not construct, operate, or allow to be constructed or operated anything other than a freestanding adult and geriatric psychiatric hospital and its related improvements, including an acute evaluation center (emergency room) and an area for intensive outpatient services in accordance with the Master Site Plan, the Construction Plans, the CON, the PUD and Applicable Codes. Provided that, SoundMind shall have the ability to revise the project parameters through an amend-

ment to the PUD in strict accordance with the City of Broken Arrow Zoning Ordinance and Applicable Codes, said approval of any amendment not to be unreasonably withheld, conditioned or delayed.

5.5 **Minimum Investment.** It is currently estimated that SoundMind will invest in excess of Eighteen Million Dollars (\$18,000,000.00) in the development of the Real Property.

5.6 **Infrastructure to be Constructed by SoundMind and dedication of right-of-way.** SoundMind shall use commercially reasonable efforts to construct or cause to be constructed such infrastructure as is required by the Master Site Plan, including construction of an extension to Norfolk Road through the Project area in accordance with Applicable Codes, as approved through the platting process. SoundMind shall further dedicate through the platting process right-of-way for continuation of Norfolk Road from the southern-most point of the Real Property as shown on Exhibit “B” westerly to the property line located to the west property line of the Real Property (the “Norfolk Road Extension”), but shall have no obligation to construct the Norfolk Road extension.

5.7 **Financing.** SoundMind shall have obtained external financing from one or more third parties for the purposes of financing the construction of the Facilities and its other obligations hereunder.

5.8 **Material Default by SoundMind.** The Authority may, after giving SoundMind thirty (30) days written notice and an opportunity to commence and continue to cure the alleged cause, terminate the Agreement if SoundMind (i) fails to use commercially reasonable efforts to complete the Project in accordance with the terms of this Agreement, (ii) publicly announce or inform the City or the Authority in writing that it abandons the Project at any time, or (iii) ceases to operate the Project without reasonable cause, including without limitation lack of financial feasibility (each a “Material Default”). In the event that SoundMind does not reasonably attempt and continue to prosecute the cure of a Material Default for thirty (30) days or such longer time as may reasonably be required to cure such Material Default, then the Material Default shall become an “Uncured Material Default,” at which time this Agreement shall immediately terminate.

5.9 **Development Fees.** SoundMind shall pay all Development Fees required by the City in its design, development and construction of the Project.

5.10 **Sales and Use Taxes.** SoundMind shall require vendors providing materials used for construction of the project to remit sales and use taxes to the Oklahoma Tax Commission with the City of Broken Arrow as the point of delivery.

5.11 **Additional Requirements of SoundMind:** SoundMind further agrees to provide the Broken Arrow Police Department training and assistance in responding to individuals suffering from mental health crises, create a nonprofit foundation to provide resources for indigent individuals to develop a cohesive continuum of mental health services, and collaborate with community agencies, mental health advocacy groups, schools and universities to meet the needs of underserved adults.

ARTICLE VI.
AUTHORITY'S SALE AND SOUNDMIND'S PURCHASE OF THE REAL PROPERTY

6.1 **Purchase, Sale and Conveyance:** Authority agrees to sell and convey by General Warranty Deed and SoundMind agrees to accept such General Warranty Deed and buy the Real Property on the terms and conditions contained in this Agreement. The General Warranty Deed shall contain a deed restriction ("the Deed Restriction") prohibiting the exclusive treatment of drug and alcohol rehabilitation.

6.2 **Purchase Price and Earnest Money:** The purchase price for the Real Property is \$1,200,000.00 (the "Purchase Price"). SoundMind shall deposit partial payment of the Purchase Price in the amount of \$50,000.00 (the "Earnest Money") into an escrow account maintained by Commercial Title and Escrow Services, 4739 East 91st Street, Suite 200, Tulsa, Oklahoma 74137 (the "Closing Company") within thirty (30) days of the Effective Date of this Agreement. The balance of the Purchase Price will be paid at the closing of this Agreement (the "Closing") and Authority will pay Authority's closing costs, subject to adjustments and credits in accordance with this Agreement. In the event that SoundMind fails to timely deposit the Earnest Money with the Closing Company, this Agreement shall be of no further force and effect and SoundMind shall not be in default under any provision of this Agreement.

6.3 **Inspections in General:** So long as this Agreement remains in force, SoundMind and its agents and employees, shall have the right to enter upon the Real Property for the purpose of making inspections. All of such entries upon the Real Property shall be at reasonable times during normal business hours. All inspection fees, appraisal fees, engineering fees and other costs and expenses of any kind incurred by SoundMind relating to such inspections and their other due diligence shall be at its sole cost and expense. If any inspection or test disturbs the Real Property, SoundMind will restore the real property to the same condition as existed before the inspection or test. If: (i) the results of such inspections are not acceptable to SoundMind, in its sole and absolute discretion; (ii) SoundMind is unable to obtain a commitment for financing for the purchase and development of the Real Property on terms satisfactory to SoundMind in its sole discretion; (iii) SoundMind is unable to obtain any approvals, consents or permits (including without limitation governmental and regulatory approvals) SoundMind may deem necessary or appropriate in connection with SoundMind's intended development and use of the Real Property; or (iv) the Real Property otherwise is not suitable for SoundMind's intended development and use in SoundMind's sole discretion, then SoundMind may terminate this Agreement by written notice given to Authority no later than ten (10) days before Closing. In the event of such termination, the Earnest Money shall be released to SoundMind and neither party shall have any further obligation under this Agreement.

6.4 **Title/Survey Review:** Title and Survey Delivery, Review and Cure and Title Insurance shall be addressed as follows:

- (a) **Delivery of Title/Survey:** Authority shall deliver to SoundMind no later than sixty (60) days after the Date of this Agreement, a current ALTA owner's title commitment from the Title Company and copies of all exceptions to title shown

thereon ("Title Report") which shall include each easement or private road (if any) providing access to the Real Property. Authority shall obtain a current ALTA survey of the Real Property and any offsite easements (if any) providing access to the Real Property addressed to SoundMind and as it directs ("Survey") and deliver same to SoundMind no later than sixty (60) days after the Date of this Agreement. SoundMind may elect to pay the expense for an upgrade to the Survey showing topography at a minimum 1' contours. The Survey shall be prepared by a surveyor licensed to do business in the State of Oklahoma.

- (b) Title/Survey Review and Cure: SoundMind shall review title to the Real Property as disclosed by the Title Report and Survey upon receipt of same. SoundMind shall notify Authority in writing of any title/survey objections no later than ten (10) business days after SoundMind's receipt of the last of the Title Report and Survey. If the Title Company revises any Title Report to add or modify exceptions or requirements that affect title to the Real Property, SoundMind may object to such matter by notice to Authority within ten (10) business days after such revised Title Report is delivered to SoundMind. Authority shall cure all title objections by the Closing Date. If Authority cannot cure any of the title or Survey objections by the Closing Date, or fails to cure any such objection within fifteen (15) days following SoundMind's notice of objections, it shall so notify SoundMind in writing and then SoundMind may either terminate this Agreement by written notice to Authority given on or before five (5) business days after receipt of such notice in which case the Earnest Money shall be refunded immediately to SoundMind. SoundMind may waive such objections, in which event the Closing shall occur as contemplated herein and SoundMind shall accept the Real Property subject to such conditions as agreed by the parties.
- (c) Title/Policy: At Closing, as a condition to SoundMind's obligation to close, the Title Company shall deliver to SoundMind an Owner's Title Insurance Policy (or marked commitment therefor) (the "Title Policy"), issued by the Title Company dated the date and time of recording of the Deed in the amount of the Purchase Price, insuring SoundMind as owner of fee simple title to the Real Property subject to only (a) the standard printed exceptions which shall be set forth in the Title Report; (b) the Permitted Exceptions, and (c) such exceptions to title which SoundMind shall be willing to accept. As used herein, the term "Permitted Exceptions" shall mean matters as to which SoundMind did not object as provided in Section 6.4(b) above.

6.5. **Closing:** Closing shall take place within sixty (60) days of the Broken Arrow City Council's approval of the PUD, unless extended in writing by Authority and SoundMind (the "Closing Date"). At Closing, SoundMind shall pay the balance of the Purchase Price as set forth in Section 6.2 of this Agreement and Authority shall convey the Real Property to SoundMind by a good and sufficient General Warranty Deed, said General Warranty Deed to be in strict compliance with the provisions of Section 6.1 of this Agreement. At the Closing, both parties shall duly execute and deliver all other documents reasonably necessary to consummate the transac-

tion described in this Agreement, including a closing statement setting forth the changes, adjustments and credits to each party. Should the Broken Arrow City Council fail to approve the PUD within six (6) months of the effective date of this Agreement, then this Agreement shall terminate, the Earnest Money shall be returned to SoundMind and neither party shall have any further obligations hereunder.

6.6. **Failure to Close:** If Authority has performed its obligations pursuant to the terms of this Agreement and SoundMind fails to proceed to Closing in accordance with this Agreement, Authority may declare a breach and retain the Earnest Money as liquidated damages for SoundMind's breach. If SoundMind has performed the obligations of SoundMind under this Agreement and Authority fails to proceed to Closing in accordance with this Agreement, SoundMind may declare a breach and may either (i) terminate this Agreement and receive a return of the Earnest Money; or (ii) seek specific performance of this Agreement.

6.7 **Title to Real Property and Appurtenances; Covenants to Maintain Status:** Authority has good and marketable title (as defined in the OBA Title Examination Standards which are hereby incorporated by reference) to the Real Property and all appurtenances thereon; Authority covenants and agrees at all times after the execution of this Agreement to: (i) refrain from further alienating or encumbering the Real Property and appurtenances; (ii) maintain and ensure that the Real Property and all appurtenances thereto are not subject to any mortgage, pledge, line, security interest, encumbrance, restriction, lease or adverse claim or any of the Authority's rights under this Agreement.

The above and foregoing representations and warranties shall also be deemed in full force and effect from the effective date of this Agreement through and including the Closing Date of SoundMind's purchase of the Real Property. In addition, SoundMind shall furnish to the Authority on its execution and delivery of this Agreement and on the Closing Date appropriate evidence of corporate good standing, due authorization of all actions then being taken and an opinion of its legal counsel (the form and substance of which shall be reasonably acceptable to the City Attorney), as to the validity, binding effect and enforceability of the action then being taken. Likewise, the Authority shall furnish to SoundMind on its execution and delivery of this Agreement and on the Closing Date appropriate evidence of due authorization of all actions then being taken and an opinion of its City Attorney (the form and substance of which shall be reasonably acceptable to SoundMind), as to the validity, binding effect and enforceability of the action then being taken.

ARTICLE VII. CONSTRUCTION AND INDEMNIFICATION PROVISIONS

7.1 **Construction Plans and Contracts.** Prior to commencement of construction of any portion of the development of the Real Property by SoundMind, SoundMind shall furnish to the Authority, for the Authority's prior approval, copies of all Construction Plans necessary for construction of the Facilities to be commenced; provided, however, that such approval shall not be unreasonably withheld, conditioned or delayed. The parties hereto shall use their commercially reasonable best efforts to obtain whatever assistance and approvals may be required from third

parties in order to facilitate preparation for and the course of such construction. The Construction Plans may be modified by mutual agreement of SoundMind and the Authority.

7.2 **Indemnification and Insurance.** SoundMind shall indemnify and hold harmless the Authority and the City to the full extent of any liability arising out of or related to this Agreement, the subject matter thereof and/or the obligations stated herein, not caused by willful misconduct or gross negligence of the City or the Authority. Following acquisition of the Real Property, SoundMind shall obtain and maintain, or shall cause its contractor to obtain and maintain, in full force and effect one or more policies of insurance, equal to the total amount of all construction contracts for improvements being constructed on the Real Property, and comprehensive liability insurance with personal injury coverage in the amount of Five Million Dollars (\$5,000,000.00) and property damage coverage sufficient to cover the cost of re-placement of the Facilities and other improvements. Such policy or policies of insurance shall be written by insurance companies authorized to do business in the State of Oklahoma.

7.3 **Certificates of Completion.** Upon completion of all obligations relating to the construction of the Facilities by SoundMind as set forth in this Agreement, the Authority shall provide SoundMind with the certification of a duly authorized representative that in such party's judgment, the Facilities have been completed.

ARTICLE VIII **GENERAL PROVISIONS**

8.1 **Nondiscrimination.** SoundMind agrees, as a covenant running with the land 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 Real Property in violation of any applicable law or regulation; *provided, however*, that a violation of said covenant will not result in a termination of this Agreement, but will entitle the Authority, the City and/or such other governmental entity having jurisdiction in the subject matter to such injunctive relief or other remedies as may be available at law.

8.2 **Conflict of Interest; Representatives not Individually Liable.** No official or employee of the Authority shall have any personal interest in this Agreement, nor shall any such person voluntarily acquire any ownership interest, direct or indirect, in the legal entities which are parties to this Agreement. No official or employee of the Authority shall be personally liable to SoundMind or any successor in interest in the event of any default or breach by the Authority or for any amount which becomes due to SoundMind or its successors under this Agreement.

8.3 **Applicable Law, Severability and Entire Agreement.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma 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, provided however, if a court holds that any term, the duration of any term, any restrictions, the

breadth or the scope of any provisions contained herein are overly broad or unreasonable under the circumstances then existing and thus invalid or unenforceable, the Parties irrevocably agree and request that the court modify such term, duration, restrictions, breadth or scope of such provisions as may be appropriate for enforcement, and the Parties agree that the maximum term, duration, restrictions, breadth or scope contained herein as determined to be reasonable under the circumstances by such court, shall be substituted for the relevant term, duration, restrictions, breadth or scope set forth herein. This Agreement, and the Exhibits attached hereto, set forth the entire understanding between the Authority and SoundMind, with respect to the subject matters referenced herein, there being no terms, conditions, warranties or representations with respect to its subject matter other than as contained herein.

8.4 **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.

8.5 **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.

8.6 **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.

8.7 **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 SoundMind:

Iftikhar Hussain, M.D.
7307 South Yale Avenue
Tulsa, Oklahoma 74136

with copies to:

Malcolm E. Rosser IV
Crowe & Dunlevy
321 S. Boston Avenue, Suite 500
Tulsa, Oklahoma 74103

To the Authority:

Broken Arrow Economic Development Authority
P. O. Box 610
Broken Arrow, Oklahoma 74012

with copies to:

City Attorney
City of Broken Arrow, Oklahoma
P. O. Box 610
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.

8.8 **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.

8.9 **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.

8.10 **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 any delay of performance or obligations of a party hereunder which are beyond the reasonable 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 (including "weather days" on which work cannot occur, natural disasters and fires), inability to procure materials, failure of power, governmental restrictions, strikes, labor disputes, lockouts, governmental restrictions, court injunctions, riots, civil commotion, acts of public enemy and casualty, or reasons of a like nature not the fault of the party delayed in performing such obligation and shall not include any delays attributable to financial difficulties; *provided*, the assertion of any unavoidable delay shall be subject to the asserting party diligently and in good faith undertaking all reasonable efforts to overcome the conditions leading to or causing such delay.

8.11 **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.

8.12 **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.

8.13 **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.

8.14 **Exhibits and Schedules.** The following schedules or exhibits attached hereto shall be deemed to be integral parts of this Agreement:

Exhibit A – Certificate of Need Issued by the Oklahoma State Department of Health

Exhibit B – Diagram of Facilities

Exhibit C – Detail of Project Parameters

8.15 **Construction of this Agreement.** Each party 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 officials and its official seal to be impressed hereon, as of the date first above written

**BROKEN ARROW ECONOMIC
DEVELOPMENT AUTHORITY,**
an Oklahoma public trust

ATTEST:

(S E A L)

By: _____
Craig Thurmond, Chairman

By: _____
Secretary

Reviewed as to form and legality this 2nd day of January , 2018.

Assistant Municipal Counselor

SOUNDMIND BEHAVIORAL HEALTH HOSPITAL, LLC

By: _____

Name: Iftikhar Hussain, M.D.

Title: Manager

DRAFT

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 _____, 2018, personally appeared Iftikhar Hussain, M.D., the manager of SOUNDMIND BEHAVIORAL HEALTH HOSPITAL, LLC, 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.

_____ (SEAL)

Notary Public
My commission expires:
My number is:

EXHIBIT A
Certificate of Need Issued by the Oklahoma State Department of Health

EXHIBIT B
Diagram of Facilities.

DRAFT

EXHIBIT C
Project Parameters

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