

**ECONOMIC DEVELOPMENT AND PERFORMANCE AGREEMENT
BY AND BETWEEN THE
KENNEDALE ECONOMIC DEVELOPMENT CORPORATION
AND
GBOH, INC.**

This Economic Development and Performance Agreement (“**Agreement**”) is made and entered into by and between the KENNEDALE ECONOMIC DEVELOPMENT CORPORATION (“**Corporation**”), a nonprofit corporation organized under Title 12, Subtitle C1, of the Texas Local Government Code (“**Act**”), and GBOH, Inc., a Texas corporation (“**Company**”). Company and the Corporation may sometimes hereafter be referred to individually as a “party” or collectively as the “parties.”

RECITALS:

WHEREAS, Corporation owns a tract of real property situated in the City of Kennedale, Texas, being approximately 2 acres of land more or less, known as Block 1, Lot 8 of the Woodlea Acres Addition (“**Property**”); and

WHEREAS, Company is a residential real estate developer and home builder that plans to develop a housing subdivision on the Property; and

WHEREAS, the new subdivision will be a great asset to City by providing unique and upscale modern housing to its citizens; and

WHEREAS, City desires to stimulate commercial and economic growth in City, and particularly along Kennedale Parkway; and

WHEREAS, the City Council finds and determines that it is necessary to increase the number and quality of the housing stock in City to stimulate business and commercial activity in City; and

WHEREAS, Company and Corporation desire to enter into a contract of sale whereby Corporation will convey the Property to Company for less than fair market value as an incentive; and

WHEREAS, the City Council finds and determines that by providing the incentive, this Agreement will aid in the development of a more desirous residential housing market, and encourage commercial businesses to locate to City; and

WHEREAS, in consideration of Corporation conveying the Property to Company, Company agrees to make certain improvements, achieve a defined capital investment, and create jobs as further described in this Agreement; and

WHEREAS, the sale of the property is a “project” under the Act and the Board of Directors of Corporation finds that the conveyance of land will promote new or expanded business development within the City.

NOW THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1 DEFINITIONS

For the purposes of this Agreement, the following words and phrases shall have the following meanings unless the context clearly indicates a different meaning:

“Act,” “Agreement,” “Corporation,” “Company,” and “Property” have the meanings set forth above.

“Capital Investment” means the actual cost incurred related to the construction of the Development, including the actual construction costs of all buildings, renovations, site preparation, structures, infrastructure, offsite improvements (if any), utilities, landscaping and onsite improvements, including labor and materials. It does not include cost of land, insurance costs, legal fees and expenses, marketing costs or any interest paid to finance the cost of Capital Investment.

“Certificate of Occupancy” means the document issued by the City to Company certifying that a home is in compliance with applicable building codes and other laws, and indicating it to be in a condition suitable for occupancy.

“City” means the City of Kennedale, Texas.

“Contract of Sale” means the contract between Corporation and Company attached hereto as Exhibit A.

“Commence Construction” means that: (i) the plans have been prepared and all approvals thereof and permits with respect thereto required by applicable governmental authorities have been obtained for construction of the Development; (ii) all necessary permits for the construction of the Development on the Property pursuant to the respective plans therefore having been issued by all governmental authorities; and (iii) slab foundations for all 16 homes in the Development have been poured in accordance with City regulations and verified as complete by City inspectors.

“Deed of Trust” means the deed of trust which secures Company’s repayment obligations of this Agreement and which is attached to the Contract of Sale.

“Development” means a residential subdivision on the Property consisting of 16 detached, modern, urban style homes, a pocket park, and a signage feature displaying “Welcome

to Kennedale”, as well as the infrastructure, driveways, parking, landscaping and other improvements required to be constructed on the Property, all as depicted on the attached Exhibit A.

“Director” means the Executive Director of Corporation.

“Effective Date” means the date this Agreement is fully executed by both the Corporation and Company.

“Expiration Date” shall mean the date all parties have met their obligations under this Agreement, unless terminated sooner in accordance with Section 4.01 of this Agreement.

“Term” means the term of this Agreement as described in Article 2 of this Agreement.

“Title Company” means Reunion Title, 1000 N. Walnut Creek Drive, Mansfield, Texas 76063, or another title Company at Corporation’s discretion.

ARTICLE 2 TERM

The Term of this Agreement will begin on the Effective Date and continue thereafter until the Expiration Date, unless terminated earlier in accordance with the terms of this Agreement.

ARTICLE 3 COVENANTS OF COMPANY

3.01 Company Obligations. In consideration of Corporation agreeing to sell the Property to Company in accordance with the terms and conditions of this Agreement and the Contract of Sale, Company, agrees to:

- (a) Execute the Contract of Sale and Deed of Trust within (thirty) 30 days of the Effective Date;
- (b) Commence Construction of the Development no later than March 1, 2021;
- (c) No later than April 30, 2022, receive a final approval inspection for every home within the Development, complete construction of the pocket park in compliance with the attached Exhibit B, complete construction of the “Welcome to Kennedale” signage or public art element to be developed in collaboration with the Corporation and its representatives;
- (d) Create 30 jobs throughout the construction process of the Development; and
- (e) Make a Capital Investment of no less than \$3,204,400.00 and provide documentation of the expenditure of the Capital Investment in a manner and form reasonably acceptable to the Director no later than December 31, 2020.

**ARTICLE 4
TERMINATION AND REMEDIES**

4.01 Termination. This Agreement may be terminated upon any one or more of the following:

- (a) by mutual written agreement of the parties; or
- (b) upon written notice by Corporation, if:
 - (i) Company fails to execute the Contract of Sale and Deed of Trust in accordance with Section 3.01(a);
 - (ii) the Contract of Sale is terminated or the sale of the Property to Company otherwise fails to close; or
- (c) upon written notice by Corporation, if Company defaults or breaches any of the other terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof.

4.02 Remedies.

(a) In the event this Agreement is terminated by Corporation under Section 4.01(c), and provided the Property has been conveyed to Company pursuant to the Contract of Sale, Company will be obligated to pay the Corporation an amount of \$111,915, which is the difference between the Contract of Sale purchase price of \$5,000 and the 2020 Tarrant Appraisal District appraised value of \$116,915.

(b) The parties acknowledge that the Deed of Trust secures Company's repayment obligations in Section 4.02(a). In the event this Agreement is terminated under Section 4.01(c), Corporation, and its successors and assigns, will be entitled to foreclose on the Deed of Trust and pursue all other remedies at law. If Company has satisfied its obligations in Article 3 of this Agreement, Corporation will promptly file a release of the Deed of Trust in the Tarrant County Real Property Records.

(c) Corporation's remedies under this section 4.02 will survive the termination of this Agreement.

**ARTICLE 5
INDEMNIFICATION**

COMPANY, IN PERFORMING THE OBLIGATIONS UNDER THIS AGREEMENT, IS ACTING INDEPENDENTLY, AND THE CORPORATION ASSUMES NO RESPONSIBILITIES OR LIABILITIES TO THIRD PARTIES IN CONNECTION WITH THE DEVELOPMENT. COMPANY AGREES TO INDEMNIFY,

AND HOLD HARMLESS THE CORPORATION, ITS DIRECTORS, OFFICERS, AGENTS, EMPLOYEES, AND VOLUNTEERS IN BOTH THEIR OFFICIAL AND INDIVIDUAL CAPACITIES, FROM AND AGAINST CLAIMS, SUITS, DEMANDS, LOSSES, DAMAGES, CAUSES OF ACTION, AND LIABILITY OF EVERY KIND, INCLUDING, BUT NOT LIMITED TO, EXPENSES OF LITIGATION OR SETTLEMENT, COURT COSTS, AND ATTORNEYS FEES WHICH MAY ARISE DUE TO ANY DEATH OR INJURY TO A PERSON OR THE LOSS OF USE, OR DAMAGE TO PROPERTY, ARISING OUT OF OR OCCURRING AS A CONSEQUENCE OF THE PERFORMANCE BY COMPANY OF THE OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING ANY ERRORS OR OMISSIONS, OR NEGLIGENT ACT OR OMISSION OF COMPANY, OR ITS OFFICERS, AGENTS, EMPLOYEES, OR CONTRACTORS.

**ARTICLE 6
ACCESS TO INFORMATION**

Upon the Corporation's request, Company agrees to provide the Corporation reasonable access to contract documents, invoices, receipts and reports related to the Development to verify Company's compliance with this Agreement.

**ARTICLE 7
GENERAL PROVISIONS**

7.01 Mutual Assistance. Company and the Corporation shall do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.

7.02 Representations and Warranties. Company represents and warrants to the Corporation that it has the requisite authority to enter into this Agreement. Company represents and warrants to the Corporation that it will not violate any federal, state or local laws in constructing the Development, and that the Development shall conform to the applicable building codes, zoning ordinances and all other ordinances and regulations.

7.03 Section or Other Headings. Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

7.04 Entire Agreement. This Agreement, the Contract of Sale, the Deed of Trust, and their exhibits contain the entire agreement between the parties with respect to the transaction contemplated herein.

7.05 Amendment. This Agreement may only be amended, altered, or revoked by written instrument signed by Company and the Corporation.

7.06 Assignment. This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns. Company may not assign any portion of this Agreement without the prior written approval of Corporation.

7.07 Notice. Any notice required or permitted to be delivered by this Agreement shall be deemed delivered by depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses, or at such other addresses provided by the parties in writing:

| | |
|-----------------|--|
| COMPANY: | GBOH, Inc. Post Office Box 122346 Arlington TX 76012 ATTN: Joel Beal |
| CORPORATION: | Kennedale Economic Development Corporation 405 Municipal Dr. Kennedale, TX 76060 Attn: Executive Director |
| With a copy to: | Kennedale Economic Development Corporation Attorney Taylor, Olson, Adkins, Sralla & Elam, LLP 6000 Western Place, Suite 200 Fort Worth, Texas 76107 |

7.08 Interpretation. Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any party.

7.09 Choice of Law/Venue/Attorney Fees. The substantive laws of the State of Texas (and not its conflicts of law principles) govern all matters arising out of, or relating to, this Agreement and all of the transactions it contemplates, including without limitation its validity, interpretation, construction, performance and enforcement. Each party hereby irrevocably and unconditionally consents, accepts, and agrees to submit to the exclusive jurisdiction of any state or federal court in Tarrant County, Texas with respect to any dispute, action, suit or proceeding arising out of, based upon, or relating to, this Agreement. If either party employs an attorney or attorneys to enforce any of the provisions hereof, or to recover damages for the breach of this Agreement, the non-prevailing party in any final judgment or award agrees to pay the other party all reasonable costs, charges and expenses, including reasonable attorneys' fees, expended or incurred in connection therewith.

7.10 Severability. In the event any provision of this Agreement is ruled illegal, invalid, or unenforceable by any court of proper jurisdiction, under present or future laws, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be

affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement, upon which the parties must agree, and which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

7.11 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

7.12 No Joint Venture. Nothing contained in this Agreement is intended by the parties to create a Company or joint venture between the parties.

7.13 Limitation of Liability. The parties further agree that neither party will be liable to the other under this Agreement for indirect, special, consequential (including lost profits), or exemplary damages.

7.14 Governmental Function. The parties agree that this Agreement serves the public purpose of assisting in the development and diversification of the economy of City and the State of Texas, eliminating unemployment or underemployment of the State, and developing and expanding commerce in the State, and is for all purposes a governmental function of City and Corporation for the benefit of the citizens of City and the State of Texas. The parties further agree that this Agreement is entered into for the purpose of carrying out governmental functions which are enjoined on Corporation, by virtue of its relationship with its authorizing unit, the City of Kennedale, by law, and given to it by the State of Texas as part of the State's sovereignty.

7.15 City Council Approval. This Agreement, and any subsequent amendment to this Agreement, is not valid unless first approved by the City Council of the City of Kennedale.

7.16 Full Execution Required. This Agreement will not be binding on either party unless fully executed by both parties.

7.17 Recording. The parties agree that Corporation may record this Agreement and its exhibits in the Real Property Records of Tarrant County, Texas.

[Signatures on following page]

**KENNEDALE ECONOMIC
DEVELOPMENT CORPORATION**

By: _____
Mark Yeary, Board President

Date: _____

ATTEST:

Board Secretary

GBOH, Inc.,
a Texas corporation

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT "A"
The Contract of Sale

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