

SECURITY AGREEMENT

THIS SECURITY AGREEMENT dated as of the 13th day of September, 2019, is entered into by and between the Broken Arrow Economic Development Authority (the “Authority”) and the City of Broken Arrow, Oklahoma (the “City”).

W I T N E S S E T H :

WHEREAS, the Authority has been created by a Trust Indenture dated November 19, 1973, as supplemented and amended by an Amendment to Trust Indenture dated March 11, 1982, as supplemented and amended by a Second Amendment to Trust Indenture dated August 4, 1983, and as further supplemented and amended by a Third Amendment to Trust Indenture dated March 18, 2014, for the use and benefit of the City under authority of and pursuant to the provisions of Title 60, Oklahoma Statutes 2011, Sections 176 to 180.4, inclusive, as amended and supplemented, the Oklahoma Trust Act and other applicable statutes of the State of Oklahoma; and

WHEREAS, the City has adopted and approved the Creek 51 Business Park Economic Development Project Plan dated June 26, 2019 (the “Project Plan”) by Ordinance No. 3597 dated August 6, 2019 (the “Local Act”), pursuant to the Oklahoma Local Development Act, Title 62, Oklahoma Statutes, Section 850, *et seq.* as amended (the “Local Development Act”); and

WHEREAS, the City, by virtue of the Local Act, has heretofore created Increment District No. 2, City of Broken Arrow (as more specifically described herein, the “Increment District”), pursuant to the Local Development Act; and

WHEREAS, the City, the Authority, and Creek 51 Business Park, LLC (including its successors and assigns, the “Company”) have heretofore entered into an Economic Development Agreement dated as of September 13, 2019 (the “Economic Development Agreement”), for the purpose of providing a framework for the implementation of the Project Plan, including specifically the apportionment of certain TIF Revenues for the payment of the costs of Traffic Improvements, Organizational Costs, and Investment Incentives (each as described in the Project Plan and the Economic Development Agreement); and

WHEREAS, the obligations to pay and/or reimburse certain costs incurred by the City or the Authority for payment of the costs of the Traffic Improvements and the Organizational Costs, as set forth in the Economic Development Agreement, shall be referred to herein as the “Reimbursement Obligations”; and

WHEREAS, the Authority may issue one or more series of its Tax Increment Revenue Bonds (if issued, referred to herein as the “TIF Bonds”) for the purpose of financing the costs of the Traffic Improvements and the Organizational Costs, pursuant to a General Bond Indenture (if entered into, and as may be supplemented and amended, referred to herein as the “Indenture”); and

WHEREAS, the obligation to pay to the Company the Inventory Incentives, as set forth in the Economic Development Agreement, shall be referred to herein as the “Incentive Obligations”; and

WHEREAS, the terms used herein shall have the meanings given to them in the TIF Ordinance, the Project Plan, and the Economic Development Agreement, unless otherwise defined herein; and

WHEREAS, various ad valorem taxing entities having jurisdiction within the Increment District levy ad valorem tax, from time to time and in amounts as determined by law and by approval of a majority of the qualified voters of the respective ad valorem taxing entities voting at elections held for such purpose; and

WHEREAS, the ad valorem tax revenue generated from within the Increment District, in excess of the ad valorem tax revenue generated from within the Increment District on the Base Assessed Value (as defined by Section 862 of the Local Development Act), shall be referred to herein as the “Ad Valorem Tax Increment”; and

WHEREAS, the Project Plan provides for the apportionment of one hundred percent (100%) of the Ad Valorem Tax Increment on an annual basis to the payment of Project Costs; and

WHEREAS, the “TIF Revenues” shall, on an annual basis, consist of one hundred percent (100%) of the Ad Valorem Tax Increment; and

WHEREAS, in order to secure the payment of the Reimbursement Obligations and the Incentive Obligations, and define how the TIF Revenues are to be received by the City and paid over to the Authority, it is necessary that this Security Agreement be entered into; and

WHEREAS, all things necessary and appropriate to make this Security Agreement a valid and binding agreement by and between the Authority and the City have been done, happened and performed.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants expressed herein and the creation of the Reimbursement Obligations and the Incentive Obligations by the Authority by and on behalf of the City and other good and valuable consideration, receipt of which is hereby acknowledged by and between the parties hereto, the Authority and the City agree as follows:

Section 1. The revenues representing the TIF Revenues received from the Wagoner County Treasurer by the City from time to time shall be deposited in a special account (the “Apportionment Fund”) established separate and apart from the General Fund of the City. The TIF Revenues shall constitute special funds of the City and shall not be subject to annual appropriation as part of the General Fund of the City. The City agrees and hereby directs that all amounts of money representing any and all TIF Revenues, i.e. all of the Ad Valorem Tax Increment, shall be paid over to the Authority as received by the City for immediate deposit in an account to be established and maintained by the Authority entitled “Broken Arrow Economic Development Authority Tax Increment Revenue Fund” (the “Tax Increment Revenue Fund”). The parties to this Security Agreement hereby acknowledge and the Authority does hereby pledge the TIF Revenues, for the benefit of any bondholders, for the purpose of paying debt service on the TIF Bonds and any other payments required by the Indenture; and further, the parties to this Security Agreement hereby acknowledge and the Authority does hereby pledge the TIF Revenues to the payment of the costs of the Reimbursement Obligations (to the extent not funded from proceeds of TIF Bonds), and to the payment of the Incentive Obligations. The TIF Revenues are to be utilized in the manner and for the purposes set out in the Economic Development

Agreement and the Indenture (if applicable), which purposes it is hereby acknowledged are consistent with the authorized uses of said TIF Revenues as set out in the TIF Ordinance and the Project Plan.

The Tax Increment Revenue Fund shall be chargeable with the following payments in the following order of priority:

- FIRST: To pay debt service on the TIF Bonds, if any, issued pursuant to the Indenture.
- SECOND: To make payments, if required, to satisfy any Reserve Requirement and/or replenish the Reserve Account of the Bond Fund established by the Indenture with respect to the TIF Bonds issued pursuant to the Indenture.
- THIRD: An amount equal to 50% annually of the TIF Revenues shall be paid to the Company pursuant to the terms of the Economic Development Agreement (i.e., the Incentive Obligations).
- FOURTH: With respect to the remaining 50% of TIF Revenues, an annual amount equal to \$60,000 shall be paid to the City as reimbursement for the costs of the Traffic Improvements and the Organizational Costs (i.e., the Reimbursement Obligations), until an aggregate total amount of not-to-exceed \$355,000 has been reimbursed; provided however, such amount shall be reduced by a commensurate amount of proceeds of TIF Bonds, if any, provided to the City in satisfaction of the Reimbursement Obligations.
- FIFTH: With respect to all remaining TIF Revenues, such amount shall be paid to the affecting taxing jurisdictions in proportion to the allocation that the taxing jurisdictions would ordinarily receive from the increased assessed values, in the absence of the Increment District, excluding sinking fund levies (as set forth in Sections 853(9), 853(14)(i) and 854(4) of the Local Development Act; provided that any portion of the TIF Revenues allocated to the School District shall be for the purpose of providing a specific revenue source for capital expenditures (and any related financing costs) for the benefit of the School District

Section 2. In consideration of the potential issuance of TIF Bonds by the Authority on behalf of the City, the Authority has pledged the TIF Revenues to the Authority and does hereby create a security interest in said revenues in favor of the holders of the TIF Bonds issued pursuant to the Indenture, the City (with respect to the Reimbursement Obligations), and the Company (with respect to the Incentive Obligations). The parties hereto agree that the Tax Increment Revenue Fund shall be a special trust fund for the benefit of the holders of the TIF Bonds issued pursuant to the Indenture, the City (with respect to the Reimbursement Obligations), and the Company (with respect to the Incentive Obligations).

Section 3. Monies contained in the Tax Increment Revenue Fund shall be continuously invested and reinvested, as directed by the Authority, in Authorized Investments, as may be defined in the Indenture, that shall mature not later than the respective dates, as estimated, when the monies in said fund shall be required for the purposes intended. In the absence of such definition, said monies shall be invested in a manner consistent with the investment policies of the City.

Section 4. The Authority and the City agree to continually ensure that the TIF Revenues are utilized for one or more of the authorized purposes as set out in the TIF Ordinance, the Project Plan, and in the manner set out in Section 1 hereof.

Section 5. This Security Agreement shall remain in full force and effect until any TIF Bonds issued pursuant to the Indenture are no longer outstanding and the Reimbursement Obligations and the Incentive Obligations have been paid in full pursuant to the terms of the Economic Development Agreement. It is hereby acknowledged that pursuant to Section 6C of Article X of the Constitution of the State of Oklahoma and the Local Development Act, the direction of apportionment of the TIF Revenues shall continue beyond the current Fiscal Year for the duration of the Increment District, or the period required for the discharge of indebtedness that may be incurred by the public entities authorized by the Project Plan, whichever is less; provided however, that since the levy, collection and use of ad valorem taxes (as may be applicable to the Increment District) were approved by a majority of the voters voting at elections held for such purpose, the voters have the power to revoke or modify the same. The TIF Bonds, if issued by the Authority pursuant to the Indenture, shall in no way be or become an obligation of the City.

Section 6. It is understood and agreed that this Security Agreement is a third party beneficiary contract for the benefit of the holders of the TIF Bonds issued pursuant to the Indenture, the City (with respect to the Reimbursement Obligations), and the Company (with respect to the Incentive Obligations). The parties hereto agree that the Tax Increment Revenue Fund shall be a special trust fund for the benefit of the holders of the TIF Bonds issued pursuant to the Indenture, the City (with respect to the Reimbursement Obligations), and the Company (with respect to the Incentive Obligations), and may be pledged and assigned by the Authority as security for of the holders of the TIF Bonds issued pursuant to the Indenture, the City (with respect to the Reimbursement Obligations), and the Company (with respect to the Incentive Obligations).

Section 7. For so long as this Security Agreement remains in effect, the City shall not assign, transfer, pledge or grant a security interest or other lien against the TIF Revenues, or any rights or interests therein, to any person other than the Authority pursuant to or in furtherance of this Security Agreement or the Indenture. Notwithstanding the foregoing, this Section 7 shall not apply to any amounts paid to the affected taxing jurisdictions pursuant to priority "FIFTH" under Section 1 above.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Broken Arrow Economic Development Authority has caused this Security Agreement to be signed by its Chairperson, attested by its Secretary, and has caused the seal of the Authority to be impressed hereon and the City of Broken Arrow, Oklahoma, acting by and through its City Council, has caused this Security Agreement to be signed by its Mayor, attested by its City Clerk, and has caused the seal of the City to be impressed hereon, all as of the date above set out.

BROKEN ARROW ECONOMIC
DEVELOPMENT AUTHORITY

(SEAL)

Chairperson

ATTEST:

Secretary

CITY OF BROKEN ARROW, OKLAHOMA

(SEAL)

Mayor

ATTEST:

City Clerk

ACKNOWLEDGEMENTS

STATE OF OKLAHOMA)
)SS
COUNTY OF TULSA)

The foregoing instrument was acknowledged before me this 3rd day of September, 2019, by Craig Thurmond, Chairperson of the Broken Arrow Economic Development Authority, a public trust, on behalf of the trust.

Notary Public

(SEAL)

My commission expires 08/26/2020.
My commission number 04007771.

STATE OF OKLAHOMA)
)SS
COUNTY OF TULSA)

The foregoing instrument was acknowledged before me this 3rd day of September, 2019, by Craig Thurmond, Mayor of the City of Broken Arrow, Oklahoma, on behalf of the City.

Notary Public

(SEAL)

My commission expires 08/26/2020.
My commission number 04007771.