

**FIRST AMENDMENT TO TRUST INDENTURE  
OF  
BROKEN ARROW INDUSTRIAL TRUST**

WHEREAS, the Broken Arrow Industrial Trust, was created as a public trust pursuant to the provisions of Title 60, Oklahoma Statutes Sections 176 to 180, inclusive, as amended and supplemented, the Oklahoma Trust Act, and in accordance with the provisions of Title 62, Oklahoma Statutes Sections 651 to 664, inclusive, as amended and supplemented, the Local Industrial Development Act, and other applicable statutes and laws of the State of Oklahoma, by a Trust Indenture dated November 1, 1962, and the sole and exclusive beneficial interest thereof accepted by the City of Broken Arrow, Oklahoma on November 1, 1962, under Resolution of equal date.

WHEREAS, the Broken Arrow Industrial Trust was formed for the purpose of permitting the City of Broken Arrow, Oklahoma, as beneficiary thereof, to own, acquire, construct, reconstruct, extend, equip, improve, maintain, sell, lease, contract concerning or otherwise deal in or dispose of any lands, buildings or facilities of any and every nature whatsoever that can be used in acquiring or developing industry within or near the City of Broken Arrow in accordance with the Local Industrial Development Act; and

WHEREAS, the Broken Arrow Industrial Trust is a developing and productive economic force in the City of Broken Arrow, Oklahoma, and desires for the Trustees to more efficiently operate and pursue the purposes of said Trust; and

WHEREAS, the undersigned Trustees of the Broken Arrow Industrial Trust desire to amend the Trust Indenture to clarify the language describing the Trust Estate; and

WHEREAS, the undersigned Trustees of the Broken Arrow Industrial Trust further desire to amend the Trust Indenture to provide that the Trustees shall be the City Council of the City of Broken Arrow, as said Council is from time to time constituted, and to provide that the Mayor of the City of Broken Arrow shall be the Chairman of said Trust, and that the Vice-Mayor shall be the Vice-Chairman of said Trust and shall also act in the place of the Chairman during his absence; and

WHEREAS, the undersigned Trustees of the Broken Arrow Industrial Trust further desire to amend the Trust Indenture to clarify and expand the powers and duties of the Trustees in accordance with the purposes set forth in said Trust Indenture; and

WHEREAS, the undersigned Trustees of the Broken Arrow Industrial Trust further desire to amend the Trust Indenture by adding a new section providing for a Secretary, Treasurer, and Manager of the Trust in accordance with the purposes set forth in said Trust Indenture; and

NOW, THEREFORE, the undersigned Trustees of the Broken Arrow Industrial Trust, by and with the express consent and agreement of the Beneficiary, the City of

Broken Arrow, Oklahoma, as evidenced by the Acceptance of the terms and conditions of the Trust Indenture of said public trust, as amended through the date hereof do hereby approve this First Amendment to Trust Indenture and the sole and exclusive beneficial interest therein and thereof, and do contract, agree and, covenant between themselves and with the City of Broken Arrow, Oklahoma, that they will execute the trust declared in the aforesaid Trust Indenture as hereinafter amended as Trustees for the Broken Arrow Industrial Trust, and that they do and will hold, receive, and administer the Trust Estate therein described IN TRUST solely for the use and benefit of said Beneficiary in the manner provided in said Trust Indenture as heretofore existing and as hereinafter amended:

### **FIRST AMENDMENT**

Article V of said Trust Indenture is hereby amended to read as follows:

The Trust Estate shall consist of: (1) the funds presently in the hands of the Trustees, donated for the Trust purposes by the Trustor; and (2) All money, property (real, personal and/or mixed), rights, contracts, leases, privileges, franchises, licenses, benefits and all other things of value (whether or not above described) coming into the hands, or under the control of the Trustees pursuant to the provisions of this instrument or by virtue of their trusteeship hereunder.

Article VI of said Trust Indenture is hereby amended to read as follows:

The Trustees shall be the City Council of the City of Broken Arrow as said Council is from time to time is constituted. Each successor in the office on the City Council shall without any further act, deed or conveyance, automatically become a Trustee of this Trust, and become fully vested with all the estate, properties, rights, powers, duties and obligations of his or her predecessor hereunder with like effect as if originally named as a Trustee herein. The Trustees shall be paid no compensation of any kind for their services as Trustees of the Trust.

Neither the Trustees nor the City of Broken Arrow, nor any successor beneficiary of this Trust shall be charged personally with any liability whatsoever by reason of any act or omission committed or suffered in good faith or in the exercise of the honest discretion of the Trustees in the performance of this Trust or in the operation of the Trust property.

The person who shall be Mayor (or other chief executive should the office of Mayor be superseded) of the City of Broken Arrow shall be Chairman of the Trustees and shall preside at all meetings and perform other duties designated by the Trustees. The Trustees shall designate the time and place of all regular meetings. All actions by the Trustees pursuant to the provisions of this Trust Indenture shall be approved by the affirmative vote of at least a majority of the Trustees qualified to act as such under the provisions of this Trust Indenture. The

person who shall be Vice-Mayor of the City of Broken Arrow shall be the Vice-Chairman of the Trustees and shall act in the place of the Chairman during the latters' absence or incapacity to act.

Article VII of said Trust Indenture is hereby amended to read as follows:

The powers and duties of the Trustees shall be those as set out relative to the powers and duties of such Trustees with respect to the creation and operation of Trusts for the Furtherance of Public Functions in 60 Oklahoma Statutes, Sections 176 to 180.4, inclusive, and any laws amendatory or supplementary thereto which shall hereafter be enacted and those set out in the Local Industrial Development Act contained in 62 Oklahoma Statutes, Sections 651 to 664, inclusive, and any laws amendatory or supplementary thereto which shall be hereafter enacted. Without in anywise limiting the above, the Trustees shall have the following rights, powers, duties, authority, discretion and privileges, all of which may be exercised by them without any order or authority from any court or legislative body:

- (1) To finance, acquire, establish, develop, construct, enlarge, improve, extend, maintain, install, equip, operate, lease, sublease, furnish, provide, supply, regulate, hold, store, alienate, abandon, transfer, encumber, loan, use and/or administer any of the facilities, property, buildings and improvements, designated pursuant to or under the provisions of, or reasonably required for or functionally related or incident to the pursuit, execution, and/or fulfillment of the Trust purposes as the Trustees shall deem necessary.
- (2) To enter into contracts for the acquisition and construction of works and facilities authorized to be acquired and constructed pursuant to the terms of the Trust Indenture.
- (3) To employ such architectural and engineering firm or firms as the Trustees deem necessary to prepare such preliminary and detailed studies, plans, specifications, cost estimates and feasibility reports as are required in the opinion of the Trustees. The cost of such engineering and architectural work shall be paid out of the proceeds of the sale of bonds or from such other funds as may be available therefor.
- (4) To enter into contracts for the sale of bonds, notes or other indebtedness or obligations of the Trust for the purpose of acquiring and constructing works and facilities authorized to be acquired and constructed pursuant to the terms of this Trust Indenture, or for the purpose of offering services and for any other purpose necessary or attendant of the performance of the purposes outlined herein. And further to sell all bonds, notes or other evidences of indebtedness or obligations of the Trust in whole or in installments or series and on such terms and conditions and in such manner as the Trustees shall deem to be in the best interest of the Trust Estate.

- (5) To enter into all contracts necessary for the purchase of revenue bonds or other evidences of indebtedness issued by any municipality, county, state agency, political subdivision or any combination or combinations thereof, to supply funds for the purposes set forth herein.
- (6) To enter into and execute, purchase, lease, sublease, or otherwise acquire property, real, personal or mixed, contracts, leases, subleases, rights, privileges, benefits, promissory notes, or other things of value and to pay for the same in cash, with bonds or other evidences of indebtedness or otherwise.
- (7) To make and change investments, to convert real into personal property and vice versa, to lease, sublease, improve, exchange or sell, at public or private sale, upon such terms as they deem proper, and to resell, at any time and as often as they deem advisable, any or all of the property in the Trust, real or personal; to borrow money, or renew loans to the Trust, to refund outstanding bonded indebtedness, and to secure the same by mortgage, lien, pledge or otherwise; to purchase property free from any person, and lease and sublease land and other property to and from the Beneficiary and construct, improve, repair, extend, remodel, and equip utilities or buildings and facilities thereon and to operate or lease or sublease or rent the same to individuals, partnerships, associations, corporations and others to be used for industrial or manufacturing or other purposes, and procure funds necessary for such purposes by the sale of bonds or other evidences of indebtedness, to secure the payment of such bonds or other evidences of indebtedness by a mortgage, lien, pledge or other encumbrance of such real and personal property, buildings and facilities owned or otherwise acquired, leased, subleased, or controlled by the Authority, and by rentals, income, receipts and profits therefrom, or from any other revenues associated with the ownership, operation or control of the property of the Trust; and to lease or sublease any property of the Trust or of which its Trustees may become the owners, lessees or sub-lessees.
- (8) To make and perform contracts of every kind, including management contracts, with any person, firm, corporation, association, trusteeship, municipality, government or sovereignty, and without limit as to amount to draw, make, accept, endorse, assume, guarantee, account, execute and issue promissory notes, drafts, bills of exchange, acceptances, warranties, bonds, debentures, and other negotiable or non-negotiable instruments, obligations and evidences of unsecured indebtedness, or of indebtedness secured by mortgage, deeds of trust or otherwise, upon any or all property or income of the Trust, in the same manner and to the same extent as a natural person might or could do. To collect and receive any property, money, rents, or income of any sort and distribute the same or any portion thereof for the furtherance of the authorized Trust purposes set out herein.

- (9) To do all other acts in their judgment necessary or desirable for the proper and advantageous management, investment and distribution of the Trust Estate and income therefrom.
- (10) The whole title, legal and equitable, to the properties of the Trust is and shall be vested in the Trustees, as such title in the Trustees is necessary for the due execution of this Trust. Said Trustees shall have and exercise exclusive management and control of the properties of the Trust estate for the use and benefit of the Beneficiary.
- (11) The Trustees may contract for the furnishing of any services or the performance of any duties that they may deem necessary, or proper, and pay for the same as they see fit.

Article X, SECRETARY, TREASURER, AND MANAGER OF TRUST, shall be added to said Trust Indenture and shall read as follows:

The person who shall be the Clerk of the City of Broken Arrow shall act as Secretary of the Trustees. The Secretary shall keep minutes of all meetings of the Trustees and shall maintain complete and accurate records of all their financial transactions, all such minutes, books and records to be on file in the office of the Trust. All meetings of the Trustees shall be open to the public, and the books, records, and minutes of the Trustees shall be considered public records and available for inspection at all times by any interested party. The person who shall be the Treasurer of the City of Broken Arrow shall act as Treasurer of the Trustees.

The City Manager of the City of Broken Arrow shall be the general manager for the Trust Estate. The Trustees and the general manager, for the Trust Estate may employ such other clerical, professional, legal and technical assistance as may be deemed necessary in the discretion of the Trustees to properly operate the business of the Trust Estate, and may fix their duties, terms of employment and compensation. Any such employee may be a person who shall be an officer or employee of the City of Broken Arrow, in which event such officer or employee may not receive compensation, but shall be reimbursed for actual expenses incurred in the performance of their duties hereunder. The general manager shall administer the business of the Trust Estate as directed from time to time by the Trustees.

IN WITNESS WHEREOF, we have hereunto set out hands as of the 25<sup>th</sup> day of July, 2017.

\_\_\_\_\_  
Michael Spurgeon, Trustee

\_\_\_\_\_  
Ted Cundiff, Trustee

\_\_\_\_\_  
Wes Smithwick, Trustee

STATE OF OKLAHOMA    )  
  )       ss:  
COUNTY OF TULSA        )

Before me, the undersigned, a Notary Public in and for said County and State, on this 25<sup>th</sup> day of July, 2017, personally appeared Michael Spurgeon, Ted Cundiff, and Wes Smithwick, to me known to be the identical persons who executed the within and foregoing instrument and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal as of the day and year last above written.

\_\_\_\_\_  
Notary Public

My Commission Expires:

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**ACCEPTANCE**

KNOW ALL MEN BY THESE PRESENTS:

That the City Council of the City of Broken Arrow, Oklahoma, hereby expressly consents and agrees to the foregoing First Amendment to Trust Indenture of the Broken Arrow Industrial Trust, and hereby accepts the sole and exclusive beneficial interest created by the Trust Indenture of the Broken Arrow Industrial Trust, dated November 1, 1962, in all respects and in accordance with the terms of said instruments, for and on behalf of the Beneficiary, the City of Broken Arrow, Oklahoma.

WITNESSETH my hand as Mayor of the City of Broken Arrow, Oklahoma, attested by the City Clerk of the City of Broken Arrow, Oklahoma, pursuant to the direction of said City Council this 1<sup>st</sup> day of August, 2017.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED:

\_\_\_\_\_  
City Attorney