

AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY (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 Tiger Hill Plaza, LLC, an Oklahoma limited liability company (together with its successors and assigns, "Buyer"). The effective date of this Agreement is August 7, 2018 (the "Effective Date").

RECITALS

WHEREAS, on July 10, 1992, long-time Broken Arrow residents Scott L. and Anne Graham (the "Grahams") provided to the City an L-shaped tract of land located at the southwest corner of Lynn Lane (9th Street) and East Kenosha Street (71st Street), in an area which is part of an approximate 37-acre area commonly referred to as Tiger Hill ("Tiger Hill"); and

WHEREAS, this tract was donated to the City of Broken Arrow without cost or restriction pursuant to a General Warranty Deed recorded in Tulsa County Land Records in Book 5506, Page 0515; and

WHEREAS, the Grahams also provided a second tract located on the south side of Tiger Hill pursuant to a General Warranty Deed recorded in Tulsa County Land Records, Book 6320, Page 0220; and

WHEREAS, on January 5, 2010, the Broken Arrow City Council approved Resolution Number 638 which declared its intent to develop, approve, and adopt a project plan for the creation of a Tax Increment Financing District (the "District") for the square mile between East Kenosha Street (71st Street), East Houston Street (81st Street), Lynn Lane (9th Street) and Elm Place, and encompassing Tiger Hill, among other areas of the City; and

WHEREAS, on May 26, 2010, the City, the Authority and FlightSafety International, Inc. ("FlightSafety"), entered into an Economic Development Agreement (the "2010 FSI Agreement") providing for the use of 17.88 acres of Tiger Hill ("South Tiger Hill") by FlightSafety for construction of a new manufacturing and headquarters complex; and

WHEREAS, pursuant to the 2010 FSI Agreement and a lease thereof from the City, the Authority subleased South Tiger Hill to FlightSafety for the aforesaid purposes; and

WHEREAS, the 2010 FSI Agreement also provided for the Authority's payment of certain job retention benefits to FlightSafety, said payment being made with revenues of the District and thereafter FlightSafety's manufacturing and headquarters complex was completed and has remained in continuous operation since; and

WHEREAS, in connection with the foregoing, certain other revenues of the District were earmarked for use to prepare and provide necessary utility connections for certain building and related use sites on the north side of Tiger Hill deemed necessary for the construction of restau-

rant, retail and other commercial business operations in the interest of increasing the City's sales tax base; and thereafter, on March 3, 2012, the City Council approved the use of such revenues for, and authorized, the partial and preliminary development of a certain 6.84 acres located on the north side of Tiger Hill (the "Option Area"), for lease to such entities for such purposes; and

WHEREAS, in March, 2012, and thereafter it was contemplated that the Option Area would continue to be owned by the City and leased for such uses and for such purposes; and

WHEREAS, prior to and following the February, 2013 completion of the Option Area development activities authorized in March, 2012, City staff, together with representatives of the Broken Arrow Economic Development Corporation ("BAEDC") have actively marketed the same as intended under the City's structure, without success to date; and

WHEREAS, in the Fall of 2013, the City's Economic Development Coordinator ("E.D. Coordinator") was approached by representatives of a company owning in excess of 2,000,000 square feet of commercial properties in the Tulsa metropolitan area and the developer of "Hillside Development" located at Hillside Drive and Lynn Lane and real property in Jenks, Oklahoma, regarding the Option Area; and

WHEREAS, by Resolution dated December 2, 2014, the Broken Arrow City Council declared the 6.84 acres of the Option Area surplus and authorized its transfer to the Authority for good and valuable consideration and specifically for the purpose of furthering the City's economic development goals; and

WHEREAS, by Resolutions dated December 2, 2014, the Authority accepted the Deed for the 6.84 acres of the Option Area and approved and authorized execution of an Option to Purchase (the "Option"); and

WHEREAS, following approval of the Resolutions by the City Council and the Authority, it was subsequently discovered through the due diligence process that the developable acreage of the Option Area was smaller than expected, thereby resulting in a lack of interest by the original company and the Authority's repeal of the previous Resolution approving and authorizing the Option; and

WHEREAS, the City's E.D. Coordinator continued to market this area when problems with the retaining wall located south of the Option Area surfaced; and

WHEREAS, design of proposed remediation to the retaining wall resulted in further reduction of the Option Area and a revised approach to furthering economic development in this area; and

WHEREAS, on November 3, 2017, the Broken Arrow Planning Commission approved a lot split of the platted subdivision known as Tiger Hill Plaza, thereby formally identifying the developable area sufficient for sale and for the purpose of advancing the public purpose of furthering the City's economic development goals, consisting of 5.2225 acres and identified as Tracts 1A, 1B and 2B of Lot 2 Combined, Block 1, Tiger Hill Plaza ("North Tiger Hill"); and

WHEREAS, in 2015, the E.D. Coordinator was approached by representatives of Buyer who expressed an interest in purchasing the developable portion of the original Option Area; and

WHEREAS, on July 5, 2016, the City Council considered the above recited series of events in connection with the proposed acquisition by Buyer and a proposed economic development agreement with Buyer in Executive Session; and

WHEREAS, thereafter and in open public session the City Council directed City Staff to move forward with formal negotiations with Buyer with the goal of developing a mutually satisfactory structure through which Buyer could acquire North Tiger Hill and develop it in a manner meeting the City's sales tax generation and economic development objectives therefor (such undertakings, the "Tiger Hill Project"); and

WHEREAS, in recognition of both the City's and BAEDC's unsuccessful marketing efforts under the City's structure for the development and use of this area by lease, City staff thereafter requested the City Council for and received direction to enter into formal negotiations for an acquisition agreement of the character proposed by Buyer and further requested the City to take all actions necessary, including declaring North Tiger Hill surplus property, for a potential transfer of title to North Tiger Hill to the Authority and the Authority's entry into a comprehensive Agreement for the Purchase and Sale of Real Property with Buyer for Buyer's acquisition and development and implementation of the Tiger Hill Project and such other actions as reasonably may otherwise be required of the City in connection therewith; and

WHEREAS, Buyer has agreed to purchase North Tiger Hill under the terms set forth in this Agreement; and

WHEREAS, Buyer has formally expressed its interest in acquiring North Tiger Hill for the aggregate sum of \$2,616,158.00 and proposed a structure for its acquisition; and

WHEREAS, upon the terms and conditions set forth herein, Authority desires to sell and Buyer desires to purchase North Tiger Hill, consisting of 5.2225 acres of real property and legally described as follows:

Lot 2, Block 1, Tracts 1A, 1B & 2B Combined of Tiger Hill Plaza, a platted subdivision within the City of Broken Arrow, Tulsa County, State of Oklahoma; and

WHEREAS, following the Buyer's offer to purchase North Tiger Hill, City Staff and the City's contract Engineering firm recommended construction of a modified soldier wall in front of the original retaining wall; and

WHEREAS, after further due diligence, it was discovered that ingress and egress to Tiger Hill would be difficult due to the existing elevations; and

WHEREAS, it is estimated that removal of an estimated 23,000 cubic yards of on-site material will be required to provide access at suitable grades; and

WHEREAS, Buyer has agreed to acquire North Tiger Hill for the aggregate sum of \$2,616,158.00 (which amount the Authority contends is in excess of the appraised fair market value thereof earlier obtained by the Authority), and has proposed a structure for its acquisition, development, and marketing to quality users; and

WHEREAS, the City has appropriated and is prepared to encumber the sum of up to \$1,800,000.00 for engineering and construction of a modified soldier wall in front of the existing retaining wall; and

WHEREAS, the Authority recognizes that the development and realization of the Tiger Hill 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 Tiger Hill 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 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 stated purposes of the Authority's Trust Indenture 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 deter-

mined 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 North Tiger Hill will generate \$2,616,158.00 in revenues that 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 Tiger Hill 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 Buyer hereby covenant and agree as follows:

AGREEMENT

1. **Purchase and Sale:** Authority agrees to sell and convey by General Warranty Deed and Buyer agrees to accept such General Warranty Deed and buy North Tiger Hill as described above on the terms and conditions contained in this Agreement. Such General Warranty Deed shall convey North Tiger Hill free and clear of all liens, claims, interests and encumbrances. Notwithstanding anything herein to the contrary, the Authority may terminate this Agreement by providing Buyer notice of termination within seventy-five (75) days after the Effective Date and such termination shall be without cost or penalty (the "Termination Notice"). In the event that Authority does not timely provide the Termination Notice or provides a written waiver of its right to provide the Termination Notice, either referred to as the "Triggering Event", Buyer's right to conduct the inspections and due diligence provided for in Section 3 hereof shall commence for the 120-day period set forth in Section 3. During the period prior to the Triggering Event, the Authority shall design or cause to be designed a modified soldier wall for North Tiger Hill. Buyer hereby understands that the maximum development incentive for the engineering and construction of the modified soldier wall will not exceed \$1,800,000.00. After the Buyer's due diligence period expires the Authority shall commence construction of such modified soldier wall within 10 days and pursue completion of such soldier wall in a timely manner. The location, design and engineering of the modified soldier wall will be at the sole discretion of the Authority.

2. **Purchase Price and Earnest Money:** The purchase price for North Tiger Hill is \$2,616,158.00 (the "Purchase Price"). Buyer shall deposit an earnest money deposit in the amount of \$100,000.00 (the "Down Payment") within five (5) business days after notice of the Triggering event into an account maintained by the Broken Arrow Economic Development Authority, 220 South First Street, Broken Arrow, Oklahoma 74012. 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 Buyer fails to timely deposit the Down Payment with the Closing Company, this Agreement shall be of no further force and effect.

3. **Inspections in General:** (a) So long as this Agreement remains in force, Buyer and its agents and employees, shall have the right to enter upon North Tiger Hill to conduct such studies, investigations, environmental reports, surveys, soil tests and inspections deemed necessary by Buyer in order to determine the condition and suitability of North Tiger Hill for Buyer's intended use; provided Buyer shall not be entitled to conduct any soil tests or other intrusive tests on North Tiger Hill without the prior written consent of Authority. Each entry upon North Tiger Hill shall be during normal business hours, in the company of a representative of Authority if requested by Authority, and on mutually acceptable dates and times. Any entry upon North Tiger Hill and any investigations of North Tiger Hill shall be at the sole risk and expense of Buyer and its representatives and shall not interfere with business activities at North Tiger Hill. Buyer shall keep North Tiger Hill free and clear of any liens, claims or judgments in connection therewith and shall indemnify, defend, and hold the Authority harmless from all claims, liabilities, and costs (including, without limitation, attorney's fees and disbursements) asserted against or suffered by the Authority as a result of any such entry by Buyer, its agents, employees, or representatives, which indemnification obligation shall survive any termination of this Agreement. If any inspection or test disturbs North Tiger Hill, Buyer will restore North Tiger Hill to the same condition as existed prior to any such inspection or test as quickly as reasonably possible. All inspection fees, appraisal fees, engineering fees and other costs and expenses of any kind incurred by Buyer relating to such inspections and its other due diligence shall be at its sole cost and expense.

(b) If Buyer determines that North Tiger Hill is not suitable to Buyer or otherwise determines not to purchase North Tiger Hill in Buyer's sole discretion, Buyer may elect to terminate this Agreement by providing written notice to the Authority delivered to the Authority on or before 5:00 p.m. (CDT) on the day that is one hundred and twenty (120) days (Due Diligence Period) after the Triggering Event (the "Termination Date"). In the event of such timely termination and Buyer's return delivery of all third-party reports and other due diligence materials provided by the Authority to Buyer, the Authority shall promptly deliver the Down Payment to Buyer, and the parties shall have no further obligations hereunder. If Buyer does not timely elect to terminate this Agreement as aforesaid, then the Parties shall proceed to Closing and the Down Payment shall be non-refundable unless the Agreement fails to close due to the Authority's breach thereof.

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

4.1 **Delivery of Title/Survey:** Authority shall deliver to Buyer no later than thirty 30 days after the Triggering Event, 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 North Tiger Hill. Authority shall obtain a current ALTA survey of North Tiger Hill and any offsite easements (if any) providing access to North Tiger Hill addressed to Buyer and as it directs ("Survey") and deliver same to Buyer no later

than thirty (30) days after the Triggering Event. Buyer 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.

4.2 Title/Survey Review and Cure: Buyer shall review title to North Tiger Hill as disclosed by the Title Report and Survey upon receipt of same. Buyer shall notify Authority in writing of any title/survey objections no later than twenty (20) business days after Buyer'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 North Tiger Hill, Buyer may object to such matter by notice to Authority within ten (10) business days after such revised Title Report is delivered to Buyer. 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 Buyer's notice of objections, it shall so notify Buyer in writing and then Buyer may either terminate this Agreement by written notice to Authority given on or before five (5) business days after receipt of such notice or Buyer may waive such objections, in which event the Closing shall occur as contemplated herein and Buyer shall accept North Tiger Hill subject to such conditions as agreed by the parties.

4.3 Title/Policy: At Closing, as a condition to Buyer's obligation to close, the Title Company shall deliver to Buyer an Owner's Title Insurance Policy (or marked commitment therefore) (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 Buyer as owner of fee simple title to North Tiger Hill subject to only (a) the standard printed exceptions that shall be set forth in the Title Report; (b) the Permitted Exceptions; and (c) such exceptions to title that Buyer shall be willing to accept. As used herein, the term "Permitted Exceptions" shall mean easements, rights-of-way and building restrictions of record, if any, which do not adversely affect, impair or impede Buyer's development of North Tiger Hill for its intended use.

5. Closing: Closing shall take place on or before the date one hundred and fifty days after the Triggering Event unless extended in writing by Authority and Buyer (the "Closing Date"). At Closing, Buyer shall pay the balance of the Purchase Price as set forth in Section 2 of this Agreement and Authority shall convey North Tiger Hill to Buyer by good and sufficient General Warranty Deed subject only to matters approved by Buyer pursuant to Section 4 of this Agreement. At the Closing, both parties shall duly execute and deliver all other documents reasonably necessary to consummate the transaction described in this Agreement, including a closing statement setting forth the changes, adjustments and credits to each party.

6. Breach or Failure to Close: If Authority has performed the obligations of the Authority in this Agreement and Buyer fails to proceed to Closing in accordance with this Agreement, Authority may declare a breach and that this Agreement is of no further force and effect and retain the Down Payment as liquidated damages for Buyer's breach. Authority shall be entitled to no

other damages or remedies from Buyer other than retention of the Down Payment. If Buyer has performed the objections of Buyer under this Agreement and Authority fails to proceed to Closing in accordance with this Agreement, Buyer may declare a breach and may terminate this Agreement and receive a return of the Down Payment and may seek any other remedy at law or in equity, including the remedy of specific performance.

7. **Buyer's Representations and Warranties:** Buyer hereby represents and warrants to the Authority that:

- (i) **Organization; Standing; and Authority:** Buyer is an Oklahoma limited liability company in good standing and has the requisite power and authority to enter into this Agreement and consummate the transactions contemplated hereunder.
- (ii) **Authorization:** The execution, delivery and performance of this Agreement and related documents, and the consummation by Buyer of the transactions contemplated hereby, have been duly and validly authorized by all necessary corporate action, and upon the closing of the transactions contemplated under this Agreement, it agrees to provide to the Authority appropriate evidence thereof.
- (iii) **Compliance with Laws.** Buyer is in material compliance with all applicable laws, ordinances, statutes, rules, regulations and orders promulgated by any federal, state or local governmental body or agency having jurisdiction thereover and relating to its business.
- (iv) **Litigation.** There is no suit, action or any arbitration, administrative, legal or other proceeding of any kind or character, or any governmental investigation pending or threatened against it.
- (v) **Taxes.** Buyer has duly filed all tax returns required to be filed and has duly paid all taxes (including, but not limited to, *ad valorem*, franchise, income, property, sales, social security, use, value added and withholding taxes) relating to its business operations which are due or claimed to be due by federal, state, or local taxing authorities.

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 Buyer's purchase of North Tiger Hill. In addition, Buyer shall furnish to the Authority on the Closing Date a certificate of its appropriate officer providing evidence of corporate good standing, due authorization of all actions then being taken, and enforceability of the action then being taken.

8. **Authority's Representations and Warranties:** Authority hereby represents and warrants to the Buyer that:

- (i) **Organization Standing Authority:** Authority is an Oklahoma Public Trust and has the requisite power and authority to enter into this Agreement and consummate the transactions contemplated hereunder.
- (ii) **Authorization:** The execution, delivery and performance of this Agreement and related documents, and the consummation by Authority of the transactions contemplated hereby, have been duly and validly authorized by all necessary action, and upon the closing of the transactions contemplated under this Agreement, it agrees to provide to the Buyer appropriate evidence thereof. Authority has the full right, power and authority to sell and convey North Tiger Hill to Buyer as provided in this Agreement and to carry out its obligations hereunder. All requisite governmental or other actions necessary to authorize Authority to enter into this Agreement and to perform its obligations hereunder have been taken by Authority. The execution, delivery and performance by Authority of this Agreement will not conflict with or cause a default under any other agreement to which Authority is a party.
- (iii) **Compliance with Laws.** Authority is in material compliance with all applicable laws, ordinances, statutes, rules, regulations and orders promulgated by any federal, state or local governmental body or agency having jurisdiction thereover and relating to its business.
- (iv) **Litigation.** There is no suit, action or any arbitration, administrative, legal or other proceeding of any kind or character, or any governmental investigation pending or threatened against it.
- (v) **No Encumbrances.** North Tiger Hill will be conveyed by Authority to Purchaser free and clear of all liens, claims, interests and encumbrances.

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 Buyer's purchase of North Tiger Hill. In addition, Authority shall furnish to the Buyer on the Closing Date a certificate of its appropriate officer providing evidence of corporate good standing, due authorization of all actions then being taken, and enforceability of the action then being taken.

9. **North Tiger Hill Development:** Buyer will use its best efforts to ensure that all development of North Tiger Hill will:

- (i) provide direct economic benefits within and near the City by substantially increasing both City sales tax receipts and *ad valorem* tax revenues attributable to North Tiger Hill to be used by or allocated to the City, Tulsa County, Independent School District No. 3 of Tulsa County, and other local and area governmental entities from time to time benefiting therefrom;
- (ii) comply with all applicable zoning and municipal ordinances; and

- (iii) will not allow a tattoo parlor or business whose primary purpose is providing sexually explicit or oriented entertainment or the sale, renting, or exhibition of sexually explicit or oriented materials.

10. **On-Site Material.** Buyer agrees to construct the site in accordance with the final grading plan to be approved by the City. In addition to the site drop achieved by the new soldier wall, the site will drop on average an additional three (3) feet with an approximate six (6) horizontal to one (1) vertical graded slope.

11. **Waivers:** No act, delay or omission or course of dealing between the parties hereto will constitute a waiver of their respective rights or remedies under this Agreement. No waiver, change, modification or discharge of any of the rights and duties of the parties under this Agreement shall be effective unless contained in a written instrument signed by the party sought to be bound.

12. **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 North Tiger Hill and all buildings, fixtures and appurtenances thereon; Authority covenants and agrees at all times after the execution of this Agreement to: (i) refrain from further alienating or encumbering North Tiger Hill, buildings, fixtures and appurtenances; (ii) maintain and ensure that North Tiger Hill and, if any, all buildings and fixtures thereon and 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.

13. **Notices:** All notices and other communications required or permitted hereunder shall be in writing and shall be mailed by first class mail, postage prepaid; addressed:
to the Authority:

City Manager
City of Broken Arrow
P. O. Box 610
Broken Arrow, Oklahoma 74013
with copies to:

City Attorney
City of Broken Arrow, Oklahoma
P. O. Box 610
Broken Arrow, Oklahoma 74013

to the Buyer:

Steve Walman
Walman Commercial Real Estate Services LLC
7060 S. Yale, Suite 900

Tulsa, OK 74136

With copies to:

Neal Tomlins
Tomlins & Peters, PLLC
Southern Hills Tower Suite 305
2431 East 61st Street
Tulsa, OK 74136

Written notices, given under this Agreement shall be deemed effective as of the earlier of the acknowledged receipt thereof or the 6th business day following their due deposit into the U.S. Mails as provided hereinabove.

14. **Assignment:** This Agreement shall be binding upon the parties hereto, their respective heirs, successors and assigns, but shall not be assigned by any party hereto without the written consent of the other parties. The parties agree that written consent shall not be unreasonably withheld.

15. **Headings:** The headings contained in this Agreement are for reference only and will not affect in any way the meaning or interpretation of this Agreement.

16. **Choice of Law:** This Option shall be governed, construed and interpreted in accordance with the laws of the State of Oklahoma. Tulsa County shall serve as exclusive venue as it is the situs of North Tiger Hill.

17. **Covenants and Conditions:** The obligations, duties, covenants, conditions, representations and warranties contained in this Agreement shall survive the execution hereof.

18. **Conflicts:** This Agreement is a final expression of the intent of the Parties and shall be modified only by and written instrument to duly executed by both parties hereto.

19. **Binding Effect and Special Conditions:** This Agreement and the terms, covenants and provisions hereof shall insure to the benefit of and be binding upon the successors and permitted assigns of both parties hereto.

20. **Counterparts:** This Agreement may be executed in counterparts, each of which will be deemed an original and all of which together will constitute one instrument.

21. **Severability:** If any one or more of the provisions of this Agreement shall, for any reason, be held to be invalid, illegal and unenforceable under applicable law, this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. The remaining provisions of this Agreement shall be given effect to the maximum extent then permitted by law.

22. **Signage.** Upon execution of this Agreement, Buyer may place signage on North Tiger Hill marketing the project to the public.

23. **Forbearance and Waiver:** Failure to pursue any legal or equitable remedy or right available to a party hereto shall not constitute a waiver of such right, nor shall any such forbearance, failure or actual waiver imply or constitute waiver of subsequent default or breach. No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision of this Agreement or any succeeding breach of the same provision. No delay in acting with regard to any breach of any provision of this Agreement shall be construed to be a waiver of such provisions.

24. **Time of the Essence.** The parties hereto expressly agree that time is of the essence with respect to this Agreement.

25. **Environmental Disclosures and Condition.** (a) The Authority represents, to the best of its knowledge, that the Authority has disclosed to Buyer all information that the Authority may have relative to the violations of any laws in connection with the use, storage or disposal of any hazardous substance or chemical or hydrocarbon product in connection with North Tiger Hill. The Authority shall provide to Buyer copies of any and all reports, studies, investigations, or other documents relating to the environmental or geologic condition of North Tiger Hill within Seller's possession or control, within ten (10) days after the Triggering Event.

(b) In the event underground storage tanks, hazardous substances or hazardous waste, as defined by any federal, state or local statute, law, ordinance, or regulation are discovered on North Tiger Hill, whether installed, placed or disposed of by the Authority or a previous owner, and Buyer notifies the Authority of such discovery before Closing, then Buyer may elect to terminate this Agreement and the Down Payment shall be promptly refunded to Buyer by the Escrow Agent.

(c) Authority represents and warrants to Buyer that North Tiger Hill does not contain any Hazardous Materials in violation of any state or federal rule, regulation or statute. For purposes hereof, "Hazardous Materials" shall mean all hazardous or toxic materials or substances that have been determined to be hazardous to health or the environment under any applicable city, county, state or Federal law, rule, regulation, including, but not limited to, hazardous waste as defined in the Resource Conservation and Recovery Act; hazardous substances as defined in the Comprehensive Emergency Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act; gasoline or any other petroleum product or by-product or other hydrocarbon derivative; toxic substances regulated by the Toxic Substances Control Act; insecticides, fungicides, or rodenticides regulated by the Federal Insecticide, Fungicide, and Rodenticide Act; asbestos, radon and other toxic or hazardous air pollutants regulated by the Clean Air Act, as amended; substances determined to be hazardous or toxic water pollutants regulated by the Clean Air Act, as amended; and toxic or hazardous chemicals regulated by the Occupational Safety and Health Act, as amended. References to any statute, act, regulation or rule shall include amendments as they are made from time to time.

26. **Prorations and Adjustments at Closing.** Ad valorem and similar taxes assessed against North Tiger Hill shall be prorated between the Authority and Buyer at the time of Closing on the

basis of a 365-day year. Prorations shall be based upon current year's taxes and assessments, if available, or upon figures for the last preceding year, in which event Buyer and the Authority shall readjust the prorations when the current year's taxes and assessments become available. Any then due but unpaid special assessments, special improvement district or taxing district levies, shall be prorated in the same manner as ad valorem taxes. The foregoing obligations shall survive the Closing. The Authority shall be responsible for all costs of utilities provided to North Tiger Hill occurring prior to the Closing.

27. **Survival.** The representations and warranties set forth herein shall be continuing, shall survive the Closing, and shall remain in full force and effect thereafter for a period of one (1) year.

APPROVED AS TO FORM:

BROKEN ARROW ECONOMIC
DEVELOPMENT AUTHORITY

Kim Slinkard
Acting Deputy City Attorney

Craig Thurmond, Chairman

ATTEST:

Secretary

TIGER HILL PLAZA, LLC, a Limited Liability Company

By: _____

Name:

Title:

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 _____, the _____ of TIGER HILL PLAZA, LLC, a Limited Liability Company, 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.

(S E A L)

Notary Public

My commission expires:

My number is: