

RESOLUTION NO. 1114

A RESOLUTION OF THE BROKEN ARROW ECONOMIC DEVELOPMENT AUTHORITY, AN OKLAHOMA PUBLIC TRUST OF WHICH THE CITY OF BROKEN ARROW IS THE SOLE BENEFICIARY (THE “AUTHORITY”) ACCEPTING A GENERAL WARRANTY DEED FROM THE CITY OF BROKEN ARROW CONVEYING ALL RIGHT, TITLE AND INTEREST IN THE APPROXIMATE 5.2225 ACRES OF CITY-OWNED PROPERTY IDENTIFIED AS TRACTS 1A, 1B AND 2B OF LOT 2 COMBINED OF LOT 2, BLOCK 1, TIGER HILL PLAZA, A PLATTED SUBDIVISION WITHIN THE CITY OF BROKEN ARROW, TULSA COUNTY, STATE OF OKLAHOMA, AND GENERALLY LOCATED ON THE SOUTHWEST CORNER OF LYNN LANE (9TH STREET) AND KENOSHA STREET (71ST STREET); REPEALING RESOLUTION NUMBER 865, A RESOLUTION OF THE BROKEN ARROW ECONOMIC DEVELOPMENT AUTHORITY ACCEPTING A DEED FROM THE CITY OF BROKEN ARROW CONVEYING ALL RIGHT, TITLE AND INTEREST IN 6.84 ACRES OF LAND LOCATED AT THE SOUTHWEST CORNER OF LYNN LANE (9TH STREET) AND KENOSHA STREET (71ST STREET); APPROVING AND AUTHORIZING EXECUTION OF A CERTAIN AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY BY AND AMONG THE BROKEN ARROW ECONOMIC DEVELOPMENT AUTHORITY AND TIGER HILL PLAZA, LLC, DESIGNATING REPRESENTATIVES OF THE BROKEN ARROW ECONOMIC DEVELOPMENT AUTHORITY FOR PURPOSES OF GRANTING CERTAIN APPROVALS AND EXECUTING CERTAIN INSTRUMENTS AS REQUIRED UNDER AND IN CONNECTION WITH SAID LEASE AGREEMENT AND SAID ECONOMIC DEVELOPMENT AGREEMENT; AND CONTAINING OTHER PROVISIONS RELATING THERETO

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 restaurant, 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, ("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 Number 866 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 Broken Arrow Economic Development Authority (the "Authority") for good and valuable consideration and specifically for the purpose of furthering the City's economic development goals; and

WHEREAS, by Resolution Number 865 dated December 2, 2014, the Authority accepted the Deed for the Option Area and by Resolution Number 864 dated December 2, 2014, the Authority 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 Resolution Number 864 approving and authorizing the Option through Resolution Number 871 approved by the Authority on March 3, 2015; 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 Combined of Lot 2, Block 1, Tiger Hill Plaza ("North Tiger Hill"); and

WHEREAS, in 2015, the E.D. Coordinator was approached by representatives of Tiger Hill Plaza, LLC ("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, it is recommended that the Authority take all actions necessary, including acceptance of title to North Tiger Hill (as defined by Resolution), 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 Authority in connection therewith; 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 North Tiger Hill would be difficult due to the existing elevations; and

WHEREAS, it is estimated that removal of an estimated 25,000 cubic yards of on-site material will be required to provide access at suitable grades; and

WHEREAS, removal of the on-site material remaining after the City's utilization is estimated to cost in excess of \$400,000.00; 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, 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 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 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 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, in part by reason of North Tiger Hill so being made available to Buyer, it has agreed to construct a commercial development consisting of, restaurant, retail and other commercial business operations consisting of an aggregate of approximately 31,830 square feet; and

WHEREAS, the Broken Arrow Economic Development Authority is a Title 60 Public Trust legally authorized to own and transfer ownership in real property; 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 BE IT RESOLVED BY THE TRUSTEES OF THE BROKEN ARROW ECONOMIC DEVELOPMENT AUTHORITY, THAT:

1. The Broken Arrow Economic Development Authority hereby accepts all right, title and interest in the 5.2225 acres of real property legally described as 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 according to the recorded Plat thereof, and any and all Deeds necessary to complete this transaction.
2. The Chairman is hereby authorized to approve and accept the General Warranty Deed or other document conveying the real property legally described above.
3. Resolution Number 865 is hereby repealed in its entirety.
4. The Agreement for the Purchase and Sale of Real Property is hereby approved and the Agreement for the Purchase and Sale of Real Property shall be executed substantially in the form thereof submitted at the meeting at which this Resolution was approved and as finally approved by the Chairman or the Vice-Chairman, as the case may be, and shall be executed for and on behalf of the Authority by its Chairman or Vice-Chairman, as the case may be, and attested by the Secretary, and on behalf of the other parties thereto by their respective authorized officers. Agreement for the Purchase and Sale of Real Property in the form to be so approved is hereby authorized for execution and delivery, subject to such minor changes, insertions, and omissions and such filling of blanks therein as may be approved and made in the form thereof by the officer of the Authority executing the same pursuant to this Section. The execution of the Agreement for the Purchase and Sale of Real Property for and on behalf of the other parties thereto by their respective authorized officers and for and on behalf of the Authority by its Chairman or Vice-Chairman as the case may be, with the official seal affixed and attested by the signature of the Secretary, shall be conclusive evidence of the approval of any changes, insertions, omissions and filling of blanks.
5. All prior transfers made in connection with preparations for and the preparation of the Agreement for the Purchase and Sale of Real Property, including, without limitation, those made for the payment of legal services, engineering fees and costs, surveys, appraisals, and inspection payments are hereby approved and ratified.

6. It is the intention of the Trustees that the officers of the City and the Authority shall, and they are hereby ex officio authorized and directed to do any and all lawful acts and deeds to effectuate and carry out the provisions and the purposes of this Resolution, including acceptance of the General Warranty Deed, and approval and execution of the Agreement for the Purchase and Sale of Real Property, and such other instruments and documents as are related thereto.

Approved and adopted by the Broken Arrow Economic Development Authority, at a regular meeting thereof, advance public notice of which was duly given and at which a majority of said Trustees were present, this 7th day of August, 2018.

BROKEN ARROW ECONOMIC
DEVELOPMENT AUTHORITY

ATTEST: (SEAL)

Chairman

Secretary

APPROVED AS TO FORM AND LEGALITY:

Acting Deputy City Attorney