



City of Broken Arrow

Request for Action

File #: 17-1911, Version: 1

**Broken Arrow City Council
Meeting of: 03-07-2017**

**To: Mayor and City Council
From: Office of the City Attorney
Title:**

Consideration, discussion, and possible approval of Resolution No. 994, a Resolution authorizing the City Attorney to file a Petition against Nikel Investment, LLC for Nikel Investment, LLC's violation of a July 15, 2008 Development and License Agreement and authorization to draft and file all necessary accompanying legal documents to effectuate suit against Nikel Investment, LLC

Background:

On July 15, 2008, the City of Broken Arrow and Nikel Investment, LLC entered into a Development and License Agreement as part of Nikel's platting of its car dealership located on the north side of the Broken Arrow Expressway, approximately ¼ mile west of Aspen Avenue and ½ north of Albany Street, Tulsa County, State of Oklahoma. The Development and License Agreement required Nikel Investment, LLC to dedicate to the City right-of-way for the extension of West Fargo Street, a frontage road to the Broken Arrow Expressway, construct, repair and maintain a 36-foot wide paved street to serve as an extension to West Fargo Street and required Nikel Investment, LLC to remove three (3) billboards located within the West Fargo Street right-of-way dedicated to the City for the extension of West Fargo Street. Nikel Investment, LLC breached the Development and License Agreement by failing to remove the billboards by July 29, 2015, as required by the Development and License Agreement and failed to perform its obligations under the Development and License Agreement by constructing the northerly curve and landscaping to the immediate north of the Fargo Street extension according to City standards.

On July 27, 2016, the City of Broken Arrow provided notice to Nikel Investment, LLC that Nikel Investment, LLC was in breach of the Development and License Agreement. Nikel Investment, LLC failed to cure or remedy its breach of the Development and License Agreement within 30 days after receipt of the City's notice and the breach has not been cured or remedied within a reasonable time.

Nikel has failed to remove the three billboards or complete the curb and landscaping work required by the Agreement and as outlined in the July 27, 2016 demand letter. The City met its obligations under the 2008 Agreement. In addition, the City placed Nikel on notice of the breach and provided ample time for Nikel to remedy the breach.

The attached Resolution authorizes the City Attorney to file a Petition against Nikel Investment, LLC and draft and file all necessary accompanying legal documents to effectuate suit against Nikel Investment, LLC. This matter is also placed on Executive Session should the Council wish to discuss it prior to taking a motion on this

item.

Cost: **Litigation expenses**

Prepared By: **Trevor A. Dennis, Deputy City Attorney**

Reviewed By: **Development Services Department**
 Assistant City Manager-Operations

Approved By: **Michael L. Spurgeon, City Manager**

Attachments: **Resolution No. 994**

Recommendation:
Approve Resolution No. 994 and its execution