

RESOLUTION NO. 07-126

**A RESOLUTION APPROVING THE PAYMENT OF INTEREST ONLY BY ABRAHAM MANUFACTURING TO THE CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION FOR THE MONTHS OF FEBRUARY, MARCH AND APRIL, 2007, AND EXTENDING THE TERM OF THE LOAN**

**WHEREAS**, on February 7, 2006, the City Council approved an incentive agreement between the EDC and Abraham Manufacturing as to provide a conditional grant of \$251,410 and a loan of \$299,610.76; and

**WHEREAS**, this project pertained to an expansion of the company's facility at 1520 Woodworth; and

**WHEREAS**, Abraham manufactures Church pews; and

**WHEREAS**, Abraham Manufacturing promised to employ 50 full time employees within 5 years, and 100 employees within 10 years; and

**WHEREAS**, the loan monies that EDC was to make to Abraham Manufacturing was also to be utilized to pay off the existing mortgages and grant PAEDC a priority Deed of Trust; and

**WHEREAS**, the actual note that was entered into was for \$289,915.40, and that the actual amount required by the PAEDC to become the senior lien holder was \$189,915.40;

**WHEREAS**, on January 20, 2007, there was an auto accident in the 2000 block of Hwy. 87 (Gulfway Drive) that caused several electrical transformers to be destroyed in the area; and

**WHEREAS** as a result of the auto accident, Abraham Manufacturing suffered several power outages and surges that damaged vital computerized equipment that had to be replaced or repaired; and

**WHEREAS**, due to the above events, at the March 7, 2007 the City of Port Arthur Section 4A Economic Development Board meeting, a motion was made and passed, granting Abraham Manufacturing's request to pay only the interest portion of his loan for three (3) months, starting in February 2007 and ending in April 2007; and

**WHEREAS**, in May 2007, Abraham Manufacturing will resume paying the full amount of his loan payment (principal and interest), and extending the term of the loan.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ARTHUR:**

**Section 1.** That the facts and opinions in the preamble are true and correct.

**Section 2.** That the modified commercial promissory note and the first amendment to the incentive agreement, is hereby approved in substantially the same form as attached hereto as Exhibit "A".

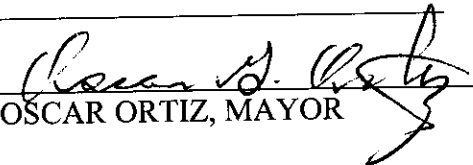
**Section 3.** That a copy of the caption of the Resolution be spread upon the Minutes of the City Council.

**READ, ADOPTED AND APPROVED** ON THE 20<sup>th</sup> day of March  
A.D. 2007, at a Meeting of the City Council of the City of Port Arthur, Texas by the following vote:

AYES: Mayor Ortiz

City Council: Lewis, Henderson, Beard,  
Williamson and Sinesal.

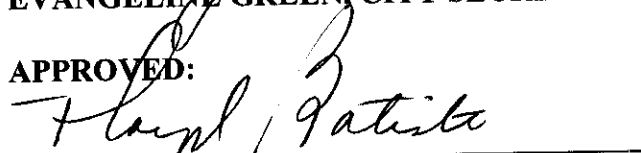
NOES: None.

  
OSCAR ORTIZ, MAYOR

ATTEST:

  
EVANGELINE GREEN, CITY SECRETARY

APPROVED:

  
FLOYD BATISTE, EDC CEO

APPROVED AS TO FORM:

SEE CONFIDENTIAL MEMO DATED MARCH 16, 2007  
MARK T. SOKOLOW, CITY ATTORNEY

## **EXHIBIT “A”**

**FIRST AMENDMENT  
TO ECONOMIC INCENTIVE CONTRACT AND LOAN AGREEMENT  
BETWEEN  
THE CITY OF PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION  
AND  
ABRAHAM MFG., INC.**

Section 5(a)(1): PAEDC shall loan Abraham the amount of \$289,915.40 to pay off existing liens on Abraham's property at 1520 Woodworth Blvd., Port Arthur, Texas, and provide \$100,000.00 in working capital according to the terms in the Amended Commercial Promissory Note contained in **Amended Exhibit "A1"** providing for interest to accrue at four percent (4%) per annum for the eight-seven (87) months of the loan term.

Section 7: Abraham's performance milestones are contained in the table beginning page five (5) of the Original Incentive Agreement and remain unchanged.

See attached **Amended Exhibit "A1" Modified Commercial Promissory Note** which provides a modification to the previously executed Commercial Promissory Note to provide for a loan extension of three (3) months and to provide for interest only payments on the first day of the months of February 2007, March 2007 and April 2007.

**ATTORNEY APPROVALS**

APPROVED AS TO FORM:

\_\_\_\_\_  
Guy Goodson  
General Counsel for PAEDC

VERIFIED AS CONSISTANT  
WITH CITY COUNCIL RESOLUTION:

Resolution Number: \_\_\_\_\_

\_\_\_\_\_  
Mark T. Sokolow, City Attorney

**AMENDMENT EXECUTION**

**CITY OF PORT ARTHUR SECTION 4A  
ECONOMIC DEVELOPMENT CORPORATION**

**SIGNED AND AGREED TO** on the \_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
President, Richard Wycoff

\_\_\_\_\_  
Secretary, Keith Daws, Sr.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

**ABRAHAM MFG., INC.**

**SIGNED AND AGREED TO** on the \_\_\_\_ day of \_\_\_\_\_, 2007.

**ABRAHAM MFG, INC., a Texas Corp.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print

\_\_\_\_\_  
Position

\_\_\_\_\_  
Witness

**AMENDED EXHIBIT "A1"**  
**MODIFIED COMMERCIAL PROMISSORY NOTE**

Port Arthur, Texas

**Effective Date:** the 28<sup>th</sup> day of March, 2006.

**Principal Amount:** TWO HUNDRED EIGHTY-NINE THOUSAND NINE HUNDRED FIFTEEN AND 40/100 DOLLARS (\$289,915.40).

**Term of the Loan:** The term of the loan shall be eight-seven (87) months from effective date set forth above.

**Payment Schedule:** Beginning on the 1<sup>st</sup> day of October, 2006, and continuing regularly and monthly thereafter through January 31, 2007, monthly payments of principal and accrued interest shall be paid to Lender. Payments due and owing on February 1, 2007, March 1, 2007 and April 1, 2007, Maker shall pay to Lender interest only payments at the four percent (4%) per annum rate specified herein. Beginning May 1, 2007, through January 1, 2014, monthly payments of principal and accrued interest shall be paid in full.

FOR VALUE RECEIVED, the undersigned "Maker", promises to pay to Lender, at its office at P.O. Box 1089, Port Arthur, Texas, 77640-1089, or such other place or places as the holder hereof shall from time to time designate in written notice to Maker, the principal amount, in legal and lawful money of the United States of America, together with interest thereon from the date hereof until maturity at the rate of four percent (4%) per annum as detailed herein.

All past due principal and interest shall bear interest from date of maturity until paid at the rate of fifteen percent (15%) per annum, or to the maximum extent allowed by law (whichever is less) as may hereafter be in effect, payable on demand after maturity.

This note is due and payable in eighty-seven (87) monthly installments consisting of principal and accrued interest due and payable on the first date of each and every month beginning October 1, 2006 through January 31, 2007, interest only payments on the first day of each month from February 1, 2007, through April 1, 2007, and installments of principal and accrued interest due and payable on May 1, 2007, through January 1, 2014.

Any notices required or permitted to be given by the holder hereof to Maker pursuant to the provisions of this note shall be in writing and shall be either personally delivered or transmitted by first class United States mail, addressed to Maker at the address designated below for receipt of notice (or at such other address as Maker may, from time to time, designate in writing to the holder hereof for receipt of notices hereunder). Any such notice personally delivered shall be effective as of the date of delivery, and any notice transmitted by mail, in accordance with the foregoing provisions, shall be deemed to have been given to and received by Maker as of the date on which such notice was deposited with the United States Postal Service, properly addressed and with postage prepaid.

This note is also secured by and entitled to the benefits of all other security agreements, pledges, collateral assignments, deeds of trust, guaranties, mortgages, assignments, and lien instruments, if any, of any kind executed by Maker or by any other party as security for any loans owing by Maker to the Lender. Such lien instruments shall include those executed simultaneously herewith, those heretofore executed, and those hereafter executed.

If any installment or payment of principal or interest of this note is not paid when due or any drawer, acceptor, endorser, guarantor, surety, accommodation party or other person now or hereafter primarily or secondarily liable upon or for payment of all or any part of this note (each hereinafter called an "other liable party") shall die, or become insolvent (however such insolvency may be evidenced); or if any proceeding, procedure or remedy supplementary to or in enforcement of judgment shall be resorted to or commenced against Maker or any other liable party, or with respect to any property of any of them; or if any governmental authority or any court at the instance thereof shall take possession of any substantial part of the property of or assume control over the affairs or operations of, or a receiver shall be appointed for or take possession of the property of, or a writ or order of attachment or garnishment shall be issued or made against any of the property of Maker or any other liable party; or if any indebtedness for which Maker or any other liable party is primarily or secondarily liable shall not be paid when due or shall become due and payable by acceleration of maturity thereof, or if any event or condition shall occur which shall permit the holder of any such indebtedness to declare it due and payable upon the lapse of time, giving of notice or otherwise; or if Maker or any other liable party (if other than a natural person) shall be dissolved, wound up, liquidated or otherwise terminated, or a party to any merger or consolidation without the written consent of Lender; or if Maker or any other liable party shall sell substantially all or an integral portion of its assets without the written consent of Lender; or if Maker or any other liable party fails to furnish financial information requested by Lender; or if Maker or any other liable party furnishes or has furnished any financial or other information or statements which are misleading in any respect; or if a default occurs under any instrument now or hereafter executed in connection with or as security for this note; or any event occurs or condition exists which causes Lender to in good faith deem itself insecure or in good faith believe the prospect of payment or performance by Maker or any other liable party under this note, under any instrument or agreement executed in connection with or as security for this note, or under any other indebtedness of Maker or any other liable party to Lender is impaired; thereupon, at the option of Lender, the principal balance and accrued interest of this note and any and all other indebtedness of Maker to Lender shall become and be due and payable forthwith without demand, notice of default, notice of acceleration, notice of intent to accelerate the maturity hereof, notice of nonpayment, presentment, protest or notice of dishonor, all of which are hereby expressly waived by Maker and each other liable party. Lender may waive any default without waiving any prior or subsequent default.

If this note is not paid at maturity whether by acceleration or otherwise, and is placed in the hands of any attorney for collection, or suit is filed hereon, or proceedings are had in probate, bankruptcy, receivership, reorganization, arrangement or other legal proceedings for collection hereof, Maker and each other liable party agree to pay Lender its collection costs, including court costs and a reasonable amount for attorney's fees.

It is the intention of Maker and Lender to conform strictly to applicable usury laws. Accordingly, if the transaction contemplated hereby would be usurious under applicable law, then, in that event, notwithstanding anything to the contrary herein or in any agreement entered into in connection with or as security for this note, it is agreed as follows: (i) the aggregate of all consideration which constitutes interest under applicable law that is taken, reserved, contracted for, charged or received under this note or under any of the other aforesaid agreements or otherwise in connection with this note shall under no circumstances exceed the maximum amount of interest allowed by applicable law, and any excess shall be credited on this note by the holder hereof (or, if this note shall have been paid in full, refunded to Maker); (ii) in the event that maturity of this note is accelerated by reason of an election by the holder hereof resulting from any default hereunder or otherwise, or in the event of any required or permitted prepayment, then such consideration that constitutes interest may never include more than the maximum amount allowed by applicable law, and excess interest, if any, provided for in this note or otherwise shall be canceled automatically as of the date of such acceleration or prepayment and, if theretofore prepaid, shall be credited on this note (or if this note shall have been paid in full, refunded to Maker); and (iii) all calculations of the rate of interest taken, reserved, contracted for, charged or



received under this note or under any of the other aforesaid agreements or otherwise in connection with this note, that are made for the purpose of determining whether such rate exceeds the maximum lawful rate shall be made, to the extent permitted by applicable law, by amortizing, prorating, allocating, and spreading such interest over the entire term of the loan evidenced by this note(including all renewal and extended terms).

Maker may prepay all or any part of the principal of this note before maturity without penalty. No partial prepayment shall reduce, postpone or delay the obligation of Maker to continue paying the installments herein provided on their respective due dates following any such partial prepayment until this note is fully paid.

The Maker shall be directly and primarily liable for the payment of all sums called for hereunder; and, except for notices specifically required to be given by the holder hereof to Maker pursuant to the earlier provisions of this note, Maker and each other liable party hereby expressly waive demand, presentment for payment, notice of nonpayment, protest, notice of protest, notice of intention to accelerate maturity, notice of acceleration of maturity, and all other notice, filing of suit and diligence in collecting this note or enforcing or handling any of the security therefor, and do hereby agree to any substitution, exchange or release, in whole or in part, of any security herefor or the release of any other liable party, and do hereby consent to any and all renewals or extensions from time to time, of this note, or any part hereof, either before or after maturity, all without any notice thereof to any of them and without affecting or releasing the liability of any of them. Each holder hereof, in order to enforce payment of this note by any other liable party, shall be required to first institute suit or exhaust its remedies against Maker and to enforce its rights against any security therefor prior to enforcing payment of this Note by any other liable party.

SIGNED AND AGREED TO on the \_\_\_\_ day of \_\_\_\_\_, 2007.

<b>ABRAHAM MFG., INC.,</b> a Texas corporation	
By: _____ Signature	
Its: _____ Position	

THE STATE OF TEXAS  
COUNTY OF JEFFERSON

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§  
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ACKNOWLEDGEMENT

BEFORE ME, THE UNDERSIGNED Notary Public, on this day personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same as the act and deed of ABRAHAM MANUFACTURING, INC., a Texas corporation, for the purposes and consideration therein expressed, and the Capacities therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the \_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

MAKERS' ADDRESS FOR RECEIPT OF NOTICE:

	ABRAHAM MFG., INC., a Texas corporation 1520 Woodworth Blvd. Port Arthur, Texas 77640 ATTN: Janice Richard
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