

RESOLUTION NO. 07-344

**A RESOLUTION APPROVING AN ECONOMIC
INCENTIVE CONTRACT AND LOAN
AGREEMENT BETWEEN TRIANGLE WASTE
PROPERTIES AND THE CITY OF PORT ARTHUR
SECTION 4A ECONOMIC DEVELOPMENT
CORPORATION.**

WHEREAS, at its May 16, 2007 regular meeting, the Board of Directors of the City of Port Arthur Section 4A Economic Development Corporation approved an Economic Incentive and Loan Agreement with Triangle Waste Properties; and

WHEREAS, the agreement is attached hereto as Exhibit "A".

**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 duly authorized representatives of the City of Port Arthur Section 4A Economic Development Corporation are herein authorized to execute the Economic Incentive Contract and Loan Agreement with Triangle Waste Properties in substantially the same form as denoted in Exhibit "A", and with a deed of trust second lien and such other changes to be drafted as per Exhibit "B" in a final form to be approved by the City Attorney.

Section 3. That a copy of this Resolution shall be spread upon the Minutes of the City Council.

READ, ADOPTED AND APPROVED ON THE 17th day of July

A.D. 2007, at a Regular Meeting of the City Council of the City of Port Arthur, Texas by
the following vote:

AYES: Mayor Prince; Mayor Pro Tem Sinegal
City Council members Chatman, Jones,
Henderson and Williamson

NOES: None

Deloris Prince
MAYOR

Attest:

Evangelina Green
EVANGELINE GREEN, CITY SECRETARY

APPROVED:

Floyd Batiste
FLOYD BATISTE, EDC CEO

APPROVED AS TO FORM:

Mark Sokolow
MARK T. SOKOLOW, CITY ATTORNEY

EXHIBIT “ A”

TO THE

RESOLUTION

Mark Sokolow

From: "Robin Woolridge" <robinc@germer.com>
To: "Mark Sokolow" <mark@portarthur.net>
Cc: "Fields, Jack" <JFields@andrewskurth.com>
Sent: Thursday, May 17, 2007 5:05 PM
Attach: img-5171701-0001.pdf
Subject: Triangle Waste Incentive Agreement

See attached.

Robin M. Woolridge

-----Original Message-----

From: Administrator
Sent: Thursday, May 17, 2007 5:01 PM
To: Robin Woolridge
Subject: Scan Data from administrator

5/18/2007

**ECONOMIC INCENTIVE CONTRACT & LOAN AGREEMENT
BETWEEN CITY OF PORT ARTHUR SECTION 4A
ECONOMIC DEVELOPMENT CORPORATION
AND TRIANGLE WASTE PROPERTIES, LP**

Executive Summary

Triangle Waste Properties, LP, a Texas limited partnership, ("Triangle") is engaged in metal recycling, which includes metal collection, sorting, cutting, packaging and disposal. Triangle intends to sell the recycled metal in Beaumont, Texas and Houston, Texas.

The City of Port Arthur Section 4A Economic Development Corporation ("PAEDC") will sell a ten (10) acre parcel (the "Property") in the PAEDC Business Park (the "Park"), with an estimated fair market value of \$310,000, to Triangle at a forty percent (40%) discounted value of \$186,000. Additionally, PAEDC will conditionally grant Triangle \$250,000 towards the construction of a building and improvements in the Park. Triangle's total grant value is \$374,000, which includes the forty percent (40%) discounted land value and the cash grant of 250,000. In exchange, Triangle agrees to hire 15 new employees, with an estimated annual payroll of \$436,800 by December 31, 2008, as measured by IRS forms W-2 and W-3, and will maintain said new employees and annual payroll through June 30, 2010. Triangle promises to use its best efforts to hire Port Arthur, Texas residents. Additionally, Triangle agrees to meet or exceed the Park's, original and amended, covenants and restrictions; agrees to meet Triangle-specific restrictions as specified in this Economic Incentive Contract and Loan Agreement (the "Agreement"); agrees to allow the PAEDC to pre-approve the architectural drawings for the facility; and agrees to serve as a model of cleanliness and maintenance for other Park occupants.

If Triangle breaches this agreement then the PAEDC grant of \$374,000, minus any credits earned, will automatically convert to a loan (liquidated damages). The loan will have a three-year term, starting on the date of Triangle's breach, and an interest rate of ten percent (10%). To secure the loan, (1) Joe Swinbank and Donald Poarch will provide a Texas State Bank Certificate or Deposit in the amount of \$374,000, according to a Commercial Security Agreement executed by such parties, and perfected by filing a Financing Statement (UCC-1 Form) with the Secretary of State, and (2) Triangle will grant PAEDC a subordinated Deed of Trust, with PAEDC holding a second priority lien.

Triangle may earn credits to reduce the duration of this Agreement or to reduce liquidated damages in the event of a breach. Starting when Triangle achieves the payroll level of \$436,800 (annualized) and continuing for as long as Triangle maintains at least that level of employment, Triangle will receive a \$1.00 credit for each \$6.00 of payroll paid to residents of Port Arthur. Payroll to non-Port Arthur residents cannot be credited.

Triangle agrees to send PAEDC brief status reports, every three (3) months for the first year and every six (6) months thereafter, until issuance of a close out report. Triangle will forfeit its credits if it fails to cure such default within five (5) days for any reporting period for which it did not issue a report in a timely manner.

**ECONOMIC INCENTIVE CONTRACT & LOAN AGREEMENT
BETWEEN CITY OF PORT ARTHUR SECTION 4A
ECONOMIC DEVELOPMENT CORPORATION
AND TRIANGLE WASTE PROPERTIES, LP**

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**ECONOMIC INCENTIVE CONTRACT & LOAN AGREEMENT
BETWEEN CITY OF PORT ARTHUR SECTION 4A
ECONOMIC DEVELOPMENT CORPORATION
AND TRIANGLE WASTE PROPERTIES, LP**

INTRODUCTION

Triangle Waste Properties, LP ("Incentive Recipient") is a Texas limited partnership, engaged in metal recycling, which includes metal collection, sorting, cutting, packaging and disposal (the "Project") and the other uses and businesses described as being allowed at the Property in *Exhibit "H"* attached hereto. Incentive Recipient's target market is Beaumont, Texas and Houston, Texas. Approximately ninety percent (90%) of Incentive Recipient's recycled metal will be sold in Beaumont, Texas and approximately ten percent (10%) will be sold in Houston, Texas. Incentive Recipient wants to operate its metal recycling facility at a separate location and can promise jobs in exchange for an incentive from the City of Port Arthur 4A Economic Development Corporation ("PAEDC").

CONTRACT DATES

CONTRACT START DATE

1. This Economic Incentive Contract and Loan Agreement (the "Agreement") is entered into with an effective date of _____, 2007, but in no case later than August 31, 2007, by and between PAEDC and Incentive Recipient

CONTRACT END DATE

2. This Agreement expires the earlier of _____ or 30 days after Incentive Recipient and PAEDC perform fully, subject to earlier termination or extension, voluntary or involuntary, as provided herein. In the event of breach, although this Agreement expires, the promissory note in *Exhibit "A"* becomes effective.

PARTIES

3. City of Port Arthur Section 4A Economic Development Corporation, located at 4173-39th Street, Port Arthur, Texas, 77642, is an economic development corporation. It is duly authorized to do business in the State of Texas under Section 4A, Article 5190.6 V.T.C.A. (the Development Corporation Act of 1979) and duly authorized by Resolution of the City Council of the City of Port Arthur to enter into this Agreement. So authorized and as provided by the PAEDC bylaws, the President and Secretary of the PAEDC Board have the authority to execute this Agreement.

4. Triangle Waste Properties, LP ("Incentive Recipient") is a Texas limited partnership. Joseph B. Swinbank is duly authorized to enter into and execute this Agreement for Triangle. The corporation's registered agent in Texas is Triangle Waste Solutions GP, LLC, 1041 Conrad Sauer, Houston, TX 77043, ATTN: Joe Swinbank.

PROMISED PERFORMANCE

5. The parties agree to perform as follows:

(a) PERFORMANCE BY PAEDC

- i. PAEDC shall convey to Incentive Recipient ten (10) acres of land valued at \$310,000 in the new PAEDC Business Park (the "Park"); specifically described in *Exhibit "I"* attached hereto and incorporated herein by reference at a forty percent (40%) discounted value of \$186,000. Thus PAEDC is conditionally granting Incentive Recipient \$124,000 towards the purchase of the ten (10) acre parcel (the "Property") in the Park.

PAEDC has installed underground utility trunk lines for water and sanitary sewer into the Park, but PAEDC is not responsible for the cost of installing underground facility service lines from the trunk lines to the Property. Additionally, PAEDC will not pay utility connection cost for the Property;

- ii. PAEDC shall conditionally grant Incentive Recipient up to \$250,000, subject to the conditions and limitations herein, toward the construction of a building and improvements on the Property in the Park which Incentive Recipient is not required to repay unless Incentive Recipient breaches this Agreement. If Incentive Recipient breaches this Agreement, then the grant will become a loan as provided in *Exhibit "B"*.

These payments are PAEDC's only obligations, except as otherwise expressly set forth herein, including Exhibits hereto.

(b) PERFORMANCE BY INCENTIVE RECIPIENT

- (1) Incentive Recipient promises to employ fifteen (15) employees at an annual total payroll of \$436,800¹ as measured by Internal Revenue Service (IRS) forms W-2 and W-3 by December 31, 2008.
- (2) Incentive Recipient will use good faith efforts to ensure that at least fifty percent (50%) of its employees will be Port Arthur residents. If Incentive Recipient does not hire the stated percentage of Port Arthur residents, Incentive Recipient must provide proof of having made a good faith effort to do so.
- (3) Incentive Recipient will select an architect and general contractor who will build an attractive facility that complies with the Park's covenants and restrictions, original and amended, and have been pre-approved by the PAEDC Board. The Park's original and amended covenants and restrictions are contained in *Exhibit "A"* and

¹ Payroll is based on 2080 hours per year and a starting wage of \$14.00 per hour, per Incentive Recipient's application.

are incorporated by reference into this Agreement in their entirety. The plans for the facility shall be submitted to the PAEDC Board for approval as soon as practicable following execution of this Agreement. The PAEDC Board shall have a period of thirty (30) days within which to approve such plans or advise Incentive Recipient of any reasonable objections to such plans with specific recommendations for resolution of such objections. Incentive Recipient shall then have a period of fifteen (15) days within which to resubmit revised plans for approval of the PAEDC Board, which shall then have a period of fifteen (15) days within which to approve the resubmitted plans or advise Incentive Recipient of any reasonable objections thereto. This process of approval or rejection for resubmission shall continue with the same fifteen (15) day limitations for each party as aforesaid until plans are ultimately approved in their entirety for the facility.

- (4) Contemporaneously with PAEDC's land grant to Incentive Recipient, Joe Swinbank and Donald Poarch will execute a commercial security agreement giving PAEDC a security interest in a \$374,000 Certificate of Deposit at Texas State Bank (See *Exhibits "C" and "E"*), and (b) contemporaneously with the execution of this Agreement, Incentive Recipient will execute a Deed of Trust in the form of *Exhibit "J"* attached hereto (the "Second Deed of Trust") covering the Property subject to the senior lien of Texas State Bank as the lending bank; said senior lien not to exceed FOUR MILLION AND NO/100 (\$4,000,000) of indebtedness.
- (5) Incentive Recipient agrees to the following additional covenants and restrictions to address concerns regarding the potential unsightliness of a metal recycling facility:
 - a. Construction of a covered concrete pad of at least 100' x 100' for metal processing;
 - b. Crews on site will operate according to procedures, rules and regulations of Texas Commission on Environmental Quality ("TCEQ");
 - c. The capture of rainwater and any process water used at the site will be disposed of in accordance with all applicable rules and regulations of TCEQ;
 - d. Design, build and operate so the scrap is not visible to any member of the public standing at ground level on a public way;
 - e. Screen property lines from view with an eight (8) foot concrete tiltwall with landscaping on the outside to provide extra protection and help contain dust, noise, and odors;
 - f. Metals will be contained in proper storage containers when not being processed;
 - g. Metal containing radioactive sources will not be recycled or permitted on the Property in the Park;
 - h. All roll-off containers kept on the Property will be for non-hazardous material and all repairs to these containers will be done at a different location as to insure this area does not become a repair facility;
 - i. Store all equipment, trucks, roll off containers, etc., either behind the buildings or inside of the plant, so as not to be visible from South Business Park Drive.

- (6) On demand by PAEDC and in response to Incentive Recipient's failure to achieve a performance milestone, Incentive Recipient shall provide PAEDC, within fifteen (15) business days, with reasonable assurances, proposed by Incentive Recipient and reasonably acceptable to PAEDC, that it has both the intention and the capabilities to perform fully its contractual obligations.

(C) CREDITS – SUBSTITUTE PERFORMANCE

Incentive Recipient may earn credits according to the following terms, to either reduce the duration of this Agreement or reduce the amount of liquidated damages in the event Incentive Recipient breaches this Agreement.

- (1) Starting on the effective date of this Agreement and for as long as Incentive Recipient performs as specified in Section 5(b)(1) of this Agreement, Incentive Recipient will receive a \$1.00 credit for each \$6.00 of payroll paid to residents of Port Arthur. Payroll to non-residents cannot be credited.
- (2) Total credit cannot exceed \$374,000.
- (3) Incentive Recipient will forfeit any credits it earned during a period for which a report is scheduled but Incentive Recipient fails to issue the report within five (5) days after same is due.
- (4) Once Incentive Recipient has earned credits equal to \$374,000, the conditional grant and all obligations of Incentive Recipient to PAEDC shall terminate, and PAEDC will release all collateral securing the conditional grant (See *Exhibit "H" – Special Addendum*).

PERFORMANCE MILESTONE SCHEDULE

6. Although failure to achieve a performance milestone is not a breach of this Agreement, a failure is grounds for PAEDC to demand reasonable assurances² from Incentive Recipient that it can and will fully perform its contractual obligations. Failure to provide such reasonable assurances following demand of PAEDC is a breach of contract.

7. Incentive Recipient's performance milestones are contained in the table on the following page.

² Examples of reasonable assurances are copies of pending contracts and customer commitment letters.

PERFORMANCE MILESTONE SCHEDULE

	<u>Deadline</u>	<u>Milestone</u>
(a)	Sept. 1, 2007	Review architectural plans with the PAEDC Board for approval;
(b)	Oct. 31, 2007	Issue a <u>status report</u> ³ to PAEDC's Chief Executive Officer (" <u>CEO</u> ") for the period from the effective date of this Agreement to September 30, 2007;
(c)	Feb. 1, 2008	<u>Status report</u> ⁴ for period from the effective date of this Agreement to December 31, 2007;
(d)	July 31, 2008	Complete facility construction; <u>Status report</u> from January 1, 2008 to June 30, 2008;
(e)	Dec. 31, 2008	Achieve performance of 15 full-time, permanent employees; Annualized payroll of \$436,800;
(f)	Feb. 1, 2009	<u>Status report</u> from January 1, 2008 to December 31, 2008; Employment and payroll sustained;
(g)	July 31, 2009	<u>Status report</u> from January 1, 2009 to June 30, 2009; Employment and payroll sustained;
(h)	Feb. 1, 2010	<u>Status report</u> from January 1, 2009 to December 31, 2009; Employment and payroll sustained;
(i)	July 31, 2010	<u>Status report</u> from January 1, 2010 to June 30, 2010; Employment and payroll sustained;
(j)	Sept. 30, 2010 ⁵	<u>Close out report</u> for presentation to the PAEDC Board at its October 2010 meeting submitted.

PAEDC'S CONDITIONAL OBLIGATIONS AND LIMITED LIABILITY

8. It is expressly understood and agreed by the parties hereto that the PAEDC funding obligations herein are contingent upon the actual receipt of adequate sales tax revenue funds to meet the PAEDC's liabilities under this Agreement. If adequate funds are not available to make payments under this Agreement, the PAEDC shall notify Incentive Recipient in writing within a reasonable time after such fact is reasonably determined by the PAEDC Board of Directors. The PAEDC, at its sole option, may then terminate this Agreement without further liability. In the event of such termination by the PAEDC, the PAEDC may, at its sole option, immediately cease all further funding, if any, required by this Agreement and the PAEDC shall not be liable to

³ Status reports shall include the status construction, employment and the percentage of employees who are Port Arthur residents.

⁴ End of February status reports shall also include identity of all shareholders who own more than five percent (5%) of the company. Year end reports shall be substantiated with IRS Forms W-2 and W-3.

⁵ Or thirty (30) days after Triangle and PAEDC fully perform. The PAEDC Board will determine if performance is complete.

Incentive Recipient or to any third parties for failure to make payments to Incentive Recipient under the terms and conditions of this Agreement.

9. The PAEDC shall not be liable, in agreement or otherwise, to Incentive Recipient, or to any person or entity claiming by or through Incentive Recipient, for any expense, expenditure or cost incurred by or on behalf of Incentive Recipient related to the Project made the basis of this Agreement. The PAEDC's sole liability/obligations, if any, shall be to Incentive Recipient and shall be limited to the obligations detailed in Section 5(a) and *Exhibit "H"* of this Agreement.

10. Incentive Recipient shall not use the funds herein for any purpose(s) other than that specifically disclosed herein and as further disclosed within that certain application made by or on behalf of Incentive Recipient, which application is incorporated herein for all purposes.

11. Funds granted by the PAEDC hereunder shall not be utilized by Incentive Recipient for repayment of costs, expenditures or expenses incurred prior to the date of this Agreement.

LIQUIDATED DAMAGES FOR BREACH OF AGREEMENT

12. In the event Incentive Recipient fails to perform its obligations under this Agreement, following notice thereof from PAEDC and thirty-day (30-day) opportunity to cure the same, the PAEDC grant, minus any credits earned, will automatically convert to a loan (liquidated damages), effective on the day of breach, as agreed by Incentive Recipient in the executed Conditional Commercial Promissory Note contained in *Exhibit "B."* Following such conversion to a loan as aforesaid, the PAEDC, at its sole option, may terminate its remaining funding obligations, if any, detailed in Section 5 herein. Further, the PAEDC shall be entitled to recover its reasonable and customary attorney's fees and court costs incurred in collection of said obligation and such remedies as are provided at law or in equity.

13. It is expressly understood and agreed by the parties that any right or remedy shall not preclude the exercise of any other right or remedy under this Agreement or under any provision of law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

RECORDS / INSPECTION / PAEDC AUDIT

14. Incentive Recipient must establish and maintain sufficient records, as reasonably determined by the PAEDC, to account for the expenditure and utilization of funds received by Incentive Recipient from PAEDC under the terms and conditions of this Agreement.

15. Incentive Recipient shall maintain records of the receipt and disposition of all funds provided hereunder as necessary to allow the PAEDC to audit and verify proper utilization of said funds in compliance with this Agreement and the representations and warranties contained herein and in Incentive Recipient's application. Incentive Recipient shall provide reports of utilization of said funds, as reasonably requested by the PAEDC, and upon termination of this Agreement.

16. Upon ten-day (10-day) advance notice, Incentive Recipient shall give the PAEDC, or any of its duly authorized representatives, access to and right to examine all books, accounts, records, reports, files and other papers, things or property belonging to or in use by Incentive Recipient. Such rights to access shall continue as long as the records are maintained by Incentive Recipient. Incentive Recipient agrees to maintain such records in an accessible location. All information obtained by the PAEDC, or its duly authorized representatives, shall be regarded as the confidential business information of Incentive Recipient and the PAEDC shall take reasonable measures to protect such information from disclosure to third parties; however, PAEDC is subject to the requirements of the Texas Open Meetings Act and Open Records Act (Tex.Gov.Code, 551 & 552). Incentive Recipient agrees that disclosures to the public required by the Texas Open Meetings Act, Texas Open Records Act, or any other legal requirement will not expose PAEDC (or any party acting by, through or under PAEDC) to any claim, liability or action by Incentive Recipient (or any party working by, through or under).

17. All records pertinent to this Agreement shall be retained by Incentive Recipient at least three years following the date of termination of this Agreement, whether said termination is a result of default or whether said termination is a result of final submission of a close out report by Incentive Recipient detailing its compliance with its obligations provided herein. Further, in the event any litigation, claim or audit arising out of or related to this Agreement is instituted before the expiration of the three (3) year period and extends beyond the three year period, the records will be maintained until all litigation, claims or audit findings involving this Agreement and the records made the basis of same have been resolved. Further, records relating to real property acquisition, including any long-term lease, shall be retained for a period equal to the useful life of any asset purchased with PAEDC funds.

18. Upon written request, Incentive Recipient shall provide PAEDC with all reports necessary for PAEDC compliance with the Development Corporation Act.

19. It is expressly understood and agreed by the parties hereto that if Incentive Recipient fails to submit to PAEDC in a timely and satisfactory manner any report required by this Agreement, PAEDC may, at its sole discretion, withhold further payments to Incentive Recipient and/or demand assurances that Incentive Recipient can and will fully perform its contractual obligations. If Incentive Recipient fails to provide adequate assurances within fifteen (15) business days then Incentive Recipient is in breach, and any monies advanced by PAEDC automatically become a loan. If PAEDC withholds such payments, it shall notify Incentive Recipient in writing of its decision and the reasons therefore. Payments withheld pursuant to this paragraph may be held by PAEDC until such time as the delinquent obligations for which funds are withheld are fulfilled by Incentive Recipient.

20. The PAEDC reserves the right, from time to time, to carry out field inspections/audits to ensure compliance with the requirements of this Agreement. After completion of any such audit, the PAEDC may provide Incentive Recipient with a written report of the audit findings. If the audit report details deficiencies in its performance under the terms and conditions of this Agreement, the PAEDC may establish requirements for the timely correction of any such deficiencies by Incentive Recipient.

HOLD HARMLESS

21. Incentive Recipient shall indemnify, defend and hold the PAEDC and the City of Port Arthur (together the "Indemnified Parties") harmless from all injuries, claims, liabilities, costs or damages (including court costs and reasonable attorney's fees) sustained by or threatened against any of the Indemnified Parties for injury or death to persons or physical damage to property arising out of relating to Incentive Recipient's entry or activities upon the property which is the subject matter of this Contract.

SUBCONTRACTS

22. Incentive Recipient may not subcontract for performance credits described in this Agreement without obtaining PAEDC's written approval, which may be withheld for any reason. Incentive Recipient shall only subcontract for performance credits described in this Agreement after Incentive Recipient has submitted a Subcontractor Eligibility Request, as specified by PAEDC, for each proposed subcontract, and Incentive Recipient has obtained PAEDC's prior written approval. Incentive Recipient, in subcontracting for any performances described in this Agreement, expressly understands that in entering into such subcontracts, PAEDC is in no way liable to Incentive Recipient's subcontractor(s).

23. In no event shall PAEDC's prior written approval of a subcontractor's eligibility, be construed as relieving Incentive Recipient of the responsibility for ensuring that the performances rendered under all subcontracts are rendered so as to comply with all terms of this Agreement, as if such performances rendered were rendered by Incentive Recipient. PAEDC's approval does not constitute adoption, ratification, or acceptance of Incentive Recipient's or subcontractor's performance hereunder. PAEDC maintains the right to insist upon Incentive Recipient's full compliance with the terms of this Agreement, and by the act of subcontractor approval, PAEDC does not waive any right of action which may exist or which may subsequently accrue to PAEDC under this Agreement.

24. Incentive Recipient, as well as all of its approved subcontractors, shall comply with all applicable federal, state, and local laws, regulations, and ordinances for making procurement under this Agreement.

CONFLICT OF INTEREST / DISCLOSURE OBLIGATION

25. Conflict of Interest: No employee, agent, officer or elected or appointed official of the City of Port Arthur or the PAEDC who has participated in a decision making process related to this Agreement (without recusing him/herself and executing a conflict affidavit) may obtain a personal or financial interest or benefit from an PAEDC assisted activity, or have an interest in any contract, subcontract, or agreement (or proceeds thereof) with respect to an PAEDC assisted activity, during their tenure or for one (1) year thereafter. Insofar as relates to the conduct hereunder of Incentive Recipient, its agents, employees or representatives, Incentive Recipient shall ensure compliance with applicable provisions under Article 5190.6 V.T.C.A. and Chapter 171 Local Government Code V.T.C.A.

26. Disclosure: In conjunction with execution of this Agreement, Incentive Recipient has fully disclosed to PAEDC all known and potential owners of interests in Incentive Recipient (whether shareholder, partner, limited partner, manager, member or otherwise). In the event of any change in ownership or control of Incentive Recipient of five percent (5%) or greater, Incentive Recipient shall notify PAEDC in writing. Further, Incentive Recipient shall be obligated to notify in writing the PAEDC in the event any time prior to, during or one (1) year after the term of this Agreement, any City or PAEDC employee or representative or any third party with a conflict of interest obtains or proposes to obtain a financial benefit, direct or indirect, from Incentive Recipient. Failure to provide said notice immediately or no later than five (5) business days after receipt of information shall constitute a default herein.

NONDISCRIMINATION / EMPLOYMENT / REPORTING

27. Incentive Recipient shall ensure that no person shall on the grounds of race, color, religion, sex, handicap, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds provided under this Agreement. Additionally, funds shall be used in accordance with the following requirements:

- (a) To the greatest extent feasible, opportunities for training and employment arising in connection with the planning and carrying out of any project assisted with PAEDC funds provided under this Agreement be given to Port Arthur residents; and
- (b) To the greatest extent feasible, agreements for work to be performed in connection with any such project be awarded to Port Arthur residents and businesses, including, but not limited to, individuals or firms doing business in the field of planning, consulting, design, architecture, building construction, rehabilitation, maintenance, or repair, which are located in or owned in substantial part by persons residing in the City of Port Arthur, Texas.
- (c) If Incentive Recipient advertises for employment then it shall among any other advertising that it chooses to undertake covenants that it will advertise in the Port Arthur News. Incentive Recipient acknowledges that PAEDC does not intend to restrain any advertising in additional publications or media nor direct any others than that stated.

LEGAL AUTHORITY

28. Incentive Recipient assures and guarantees it possesses legal and/or corporate authority (i) to enter into this Agreement, receive funds authorized by this Agreement, and (ii) to perform the obligations hereunder. Incentive Recipient has provided, or shall provide, as requested by the PAEDC, such resolutions or other required authorizations necessary to evidence this authority.

29. The person or persons signing and executing this Agreement on behalf of Incentive Recipient, or representing themselves as signing and executing this Agreement on behalf of Incentive Recipient, do hereby warrant and guarantee that he, she, or they have been duly

authorized by Incentive Recipient to execute this Agreement on behalf of Incentive Recipient and to validly and legally bind Incentive Recipient to all terms, performances, and provisions herein set forth.

NOTICE OF LEGAL OR REGULATORY CLAIMS

30. Incentive Recipient shall give PAEDC immediate notice in writing of 1) any legal or regulatory action, including any proceeding before an administrative agency filed against Incentive Recipient, directly or indirectly; and 2) any material claim against Incentive Recipient, which may impact continued operations. For purposes herein, "material" claims shall mean claims in excess of \$15,000. Except as otherwise directed by PAEDC, Incentive Recipient shall furnish immediately to PAEDC copies of all pertinent documentation of any kind received by Incentive Recipient with respect to such action or claim.

CHANGES AND AMENDMENTS

31. Except as specifically provided otherwise in this Agreement, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment in writing and executed by all parties to this Agreement. Such amendments must be approved by the PAEDC Board of Directors and, in many cases, by the City Council for City of Port Arthur.

32. It is understood and agreed by the parties hereto that performances under this Agreement must be rendered in accordance with the regulations promulgated under the Development Corporation Act, the assurances and certifications made to PAEDC by Incentive Recipient, and the assurances and certifications made to the City of Port Arthur with regard to the operation of the PAEDC's Projects. Based on these considerations, and in order to ensure the legal and effective performance of this Agreement by all parties, it is agreed by the parties hereto that the performances under this Agreement are by the provisions of the PAEDC Program and any amendments thereto and may further be amended in the following manner: PAEDC may from time to time during the period of performance of this Agreement issue policy directives which serve to interpret, or clarify performance requirements under this Agreement consistent with the intention of the parties hereunder. Such policy directives shall be promulgated by the PAEDC Board of Directors in the form of PAEDC issuances, shall be approved by the City Council and shall have the effect of qualifying the terms of this Agreement and shall be binding upon Incentive Recipient, as if written herein.

33. Any alterations, additions, or deletions to the terms of this Agreement which are required by changes in Federal, state law or local law are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulation.

DEFAULT / TERMINATION

34. In the event of default of any of the obligations of Incentive Recipient detailed herein or in the event of breach of any of the representations of or warranties of Incentive Recipient either detailed herein or in its application to the PAEDC, and following any notice and opportunity to cure provided for in this Agreement, the PAEDC may, at its sole option, terminate this Agreement, in whole or in part. In the event of such termination, the PAEDC may, at its sole option, utilize one or more of the following actions to resolve or otherwise remedy said default:

- (a) Declare the Commercial Promissory Note executed in conjunction with this Agreement immediately effective. If Incentive Recipient defaults on the note, then the PAEDC may exercise its default remedies provided under collateral documentation executed in conjunction with said Note and this Agreement
- (b) Exercise any remedies provided herein and/or within the Commercial Security Agreement, Subordinated Deed of Trust, or any other collateral security documents;
- (c) Disallow all or a part of the incentives which are not in compliance with the terms and conditions of this Agreement or in compliance with the representations and warranties contained within this Agreement and Incentive Recipient's application to the PAEDC;
- (d) Withhold and/or disallow further PAEDC incentives to Incentive Recipient; and
- (e) Exercise any and all other remedies that may be legally available to the PAEDC, under the laws of the State of Texas and as authorized by the terms and conditions of this Agreement.

35. In addition to the foregoing, the parties agree that this Agreement may be terminated at any time when both parties agree, in writing, to the terms and conditions of any such voluntary termination.

COMPLIANCE AUDITS

36. If directed by PAEDC Board, Incentive Recipient shall arrange for the performance of a compliance audit, by a certified public accountant, of funds received and performances rendered under this Agreement, subject to the following conditions and limitations:

- (a) Incentive Recipient shall have a compliance audit which may be limited to use of funds received from the PAEDC, made for any of its fiscal years included within the term of this Agreement in which Incentive Recipient receives more than \$50,000 in PAEDC financial assistance provided by PAEDC in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, interest subsidies, or direct appropriations. Backup documentation regarding actual expenditures shall be provided by Incentive Recipient. Said audit must be received and accepted by the Chief Executive Officer of PAEDC and/or the PAEDC Board.

- (b) At the option of Incentive Recipient, each audit required by this section may cover either its entire operations or each department, agency, or establishment of Incentive Recipient which received, expended, or otherwise administered PAEDC funds;
- (c) Unless otherwise specifically authorized by PAEDC in writing, Incentive Recipient shall submit the report of such audit to PAEDC within thirty (30) days after completion of the audit, but no later than one hundred twenty (120) days after the end of each fiscal period included within the term of this Agreement.
- (d) As a part of its audit, Incentive Recipient shall verify that the expenditures were exclusively for the facility and improvements in the Park. Any discrepancies in excess of \$500 shall be specifically documented in writing.

37. Incentive Recipient understands and agrees that it shall be liable to reimburse immediately PAEDC for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this Agreement and it may be required to submit formal audits at its expense.

38. Incentive Recipient shall take all necessary actions to facilitate the performance of any and all such audits, whether annual, mandatory or otherwise requested under this Agreement.

39. Subject to financial privacy requirements of Incentive Recipient and properly designated requests for non-disclosure due to proprietary reasons, all approved audit reports may be made available for public inspection to the extent required by law.

40. PAEDC shall not release any funds for costs incurred by Incentive Recipient under this Agreement until PAEDC has received certification from Incentive Recipient that its fiscal control and fund accounting procedures are adequate to assure proper disbursement of and accounting for funds provided under this Agreement. PAEDC shall specify the content and form of such certification.

ENVIRONMENTAL REQUIREMENTS

41. Incentive Recipient understands and agrees that by execution of this Agreement, Incentive Recipient shall be responsible for making all reasonable efforts in providing to PAEDC all information, concerning this PAEDC funded project, required for PAEDC to meet its responsibilities for environmental review, decision making, and other action which applies to PAEDC in accordance with and to the extent specified in Federal, State and Local Law. Incentive Recipient further understands and agrees that Incentive Recipient shall make all reasonable efforts to assist PAEDC in handling inquiries and complaints from persons and agencies seeking redress in relation to environmental reviews covered by approved certifications.

ORAL AND WRITTEN AGREEMENTS / PRIOR AGREEMENTS

42. All oral and written contracts between the parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

43. The documents required below are hereby made a part of this Agreement for all purposes, and constitute promised performances by Incentive Recipient and PAEDC in accordance with this Agreement:

Required

_____	<i>Exhibit "A"</i>	Industrial Park Original Covenants and Restrictions and Amendment No. 1
_____	<i>Exhibit "B"</i>	Commercial Promissory Note for Conditional Grant
_____	<i>Exhibit "C"</i>	Commercial Security Agreement
_____	<i>Exhibit "D"</i>	Texas State Bank Acknowledgment
_____	<i>Exhibit "E"</i>	UCC-1 Financing Statement
_____	<i>Exhibit "F"</i>	Certification Regarding Lobbying
_____	<i>Exhibit "G"</i>	Form of Deed
_____	<i>Exhibit "H"</i>	Special Addendum
_____	<i>Exhibit "I"</i>	Property Description
_____	<i>Exhibit "J"</i>	Second Deed of Trust

VENUE

44. For purposes of litigation that may accrue under this Agreement, venue shall lie in Jefferson County, Texas, where substantially all the performance will occur.

ADDRESS OF NOTICE AND COMMUNICATIONS

City of Port Arthur Section 4A Economic Development Corporation
444 4th Street
Port Arthur, Texas 77640
ATTN: Floyd Batiste, Chief Executive Officer

Triangle Waste Properties, LP
1041 Conrad Sauer Road
Houston, Texas 77043
ATTN: Joe Swinbank

CAPTIONS

45. This Agreement has been supplied with captions to serve only as a guide to the contents. The caption does not control the meaning of any paragraph or in any way determine its interpretation or application.

COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

46. Incentive Recipient shall comply with all Federal, State and local laws, statutes, ordinances, resolutions, rules, regulations, orders and decrees of any court or administrative body or tribunal, including those related to the activities and performances of Incentive Recipient under this Agreement. Upon request by PAEDC and by the City, Incentive Recipient shall furnish reasonable satisfactory proof of its compliance herewith.

CONDITIONS PRECEDENT

47. This Agreement has no legal consequences, and neither party shall rely on this Agreement, unless and until:

- a. The PAEDC Board and the Port Arthur City Council approve this Agreement in its final executed form;
- b. Incentive Recipient executes this Conditional Commercial Promissory Note, the Subordinated Deed of Trust, other collateral security documents and required affidavits and certificates;
- c. Joe Swinbank and Donald Poarch execute the Commercial Security Agreement in *Exhibit "C"*, and deliver the Certificate of Deposit;
- d. Acknowledgement by Texas State Bank that the Certificate of Deposit purchased by Joe Swinbank and Donald Poarch is pledged to secure the hereinable described contract and note;
- e. PAEDC executes and delivers to Incentive Recipient the deed in the form attached hereto as *Exhibit "G"* attached.

ATTORNEY APPROVALS

APPROVED AS TO FORM:

Guy Goodson, General Counsel for PAEDC

VERIFIED BY
CITY COUNCIL RESOLUTION:

Resolution Number: _____

Mark T. Sokolow, City Attorney

AGREEMENT EXECUTION

SIGNED AND AGREED TO on the ____ day of _____, 2007.

**City of Port Arthur Section 4A
Economic Development Corporation**

By: _____
Richard Wycoff, President

By: _____
Keith Daws, Sr., Secretary

Witness

Witness

SIGNED AND AGREED TO on the ____ day of _____, 2007.

**Triangle Waste Properties, LP,
A Texas Limited Partnership.**

By: Triangle Waste Solutions, LLC
Its General Partner,
A Texas Limited Liability Company

By: _____
Joseph B. Swinbank, President

Acknowledgment

EXHIBIT "A"

COVENANTS AND RESTRICTIONS PORT ARTHUR BUSINESS PARK

11/30/05

GENERAL

The City of Port Arthur Section 4A Economic Development Corporation (PAEDC) is the owner of the Port Arthur Business Park (Business Park). PAEDC has determined that it is in the best interests of the City of Port Arthur, PAEDC, the Business Park and its future occupants to adopt the following provisions restrictions and covenants to control the development within the business park.

CONDITIONS OF SALE

Each parcel sold or conveyed to a user by PAEDC is for the purpose of development of facilities and occupancy by a user. Development of facilities (buildings) for user occupancy must be completed within eighteen months of purchase. If there is an incentive agreement with the PAEDC, the construction must be completed within the timetables of the incentive agreement. If construction has not been completed in the period specified, PAEDC shall have the option to repurchase the property on the basis of reversing (or rescinding) the terms of the original sale, including price. This option may be exercised at any time subsequent to the failure of construction to be completed by the specified date. Exercise of the option will be by formal action of the PAEDC Board. Delivery of written notice of exercise of this option shall be the cause of an immediate halt to actions to develop the parcel by the parcel owner.

If the owner or lessee of property in the Business Park wishes to sell or assign the property to a third party, the owner or lessee shall obtain the approval of the PAEDC Board of Directors, with such approval not to be unreasonably withheld. The owner or lessee shall present information as to the financial and credit information as to the new buyer or assignee and such other information as reasonably requested by the PAEDC Chief Executive Officer (CEO). The new owner or lessee shall be required to assume the obligations in the incentive agreement, with such changes as are approved by the PAEDC Board of Directors.

If the owner or lessee wishes to subdivide and sell or assign only a portion of its property to a third party, the owner or lessee shall obtain the approval of the PAEDC Board of Directors which can deny the request at its discretion. At the discretion of the PAEDC, the PAEDC shall have a first option to repurchase said undeveloped portion for the same cost as delineated in the incentive agreement or sales agreement and in such additional reasonable amounts as to reimburse the owner for monies that he has expended in maintaining said portion of the property. In such case, PAEDC shall have 90 days to notify the owner of its decision in regard to this option.

LEGAL DESCRIPTION

The Port Arthur Business Park includes all land as described in Appendix A, and on such other property as approved by PAEDC.

TERMS AND DEFINITIONS

For the purposes of these covenants and restrictions, certain terms, phrases, words and their derivatives shall have their meaning as specified in this section. Where terms are not defined, they shall have their ordinary accepted meanings within the context with which they are used. Webster's Ninth New Collegiate Dictionary, Copyright 1987, shall be considered as providing ordinary accepted meaning.

- (1) *Board.* City of Port Arthur Section 4A Economic Development Corporation Board of Directors.
- (2) *Building.* Any structure built for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind. When subdivided in a manner sufficient to prevent the spread of fire, each portion so subdivided may be deemed a separate building.
- (3) *City council.* The governing and legislative body of the City of Port Arthur.
- (4) *District.* A section of the City of Port Arthur for which the regulations governing the height, area or use of the land and buildings are uniform.
- (5) *Height.* The vertical distance of a building measured from the average established grade at the street line or from the average natural front yard ground level, whichever is higher, to (1) the highest point of the roof's surface if a flat surface; (2) to the deck line of mansard roofs; or (3) to the mean height level between eaves and ridge for hip and gable roofs, and, in any event, excluding chimneys, cooling towers, elevator bulkheads, penthouses, tanks, water towers, radio towers, ornamental cupolas, domes or spires and parapet walls not exceeding ten feet in height. If the street grade has not been officially established, the average front yard shall be used for a base level.
- (6) *Lot.* Land occupied or to be occupied by a building and its accessory buildings, and including such open spaces as are required under these covenants and restrictions and having its principal frontage upon a public street or officially approved place.
- (7) *Occupancy.* The use or intended use of the land or buildings by proprietors or tenants.
- (8) *Planning and zoning commission.* The agency designated in the City Charter as the planning commission and appointed by the city council as an advisory body to it and which is authorized to recommend changes in the zoning ordinance.
- (9) *Parking lot or structure, commercial (motor vehicle).* An area or structure devoted to the parking or storage of motor vehicles. May include, in the case of a parking structure only, a facility for servicing of motor vehicles provided such facility is primarily an internal function for use only by motor vehicles occupying the structure and creates no special problems of ingress or egress.
- (10) *Structure.* Any structure built for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind. When subdivided in a manner sufficient to prevent the spread of fire, each portion so subdivided may be deemed a separate building.
- (11) *Yard.* An open space other than a court, on the lot in which a building is situated and which is not obstructed from a point 30 inches above the general ground level of the graded lot to

the sky, except as provided for roof overhang and similar features and for the usual trees and landscape planting.

(12) *Yard, front.* An open, unoccupied space on a lot facing a street extending across the front of the lot between the side lot lines and from the front face of the building to the front lot or street line with the minimum horizontal distance between the street line and the main building line as specified for the district in which it is located. The front face of the building shall not necessarily be determined by the primary access to the building or any unit therein.

(13) *Yard, rear.* An open, unoccupied space, except for permitted detached accessory buildings, trees and planting, extending across the rear of a lot from one side lot line to the other side lot line and having a depth between the building and the rear lot line.

(14) *Yard, side.* An open, unoccupied space or spaces on one or two sides of a main building situated between the building and a side line of the lot and extending through from the front yard to the rear yard. Any lot line not the rear line or a front line shall be deemed a side line.

REVIEW AND APPROVAL OF USES AND IMPROVEMENTS

All uses that occupy parcels and all facilities and improvements constructed in the park (including all alterations and additions to the site and such facilities and improvements) shall be subject to approval by PAEDC and may require approval by the City of Port Arthur. PAEDC and the City may at their sole discretion involve other parties in the review of proposed uses and improvements. In cases where specialized evaluations are deemed necessary, PAEDC may require a fee to cover the cost of the services of consultants engaged to perform these evaluations. No construction may be initiated upon any parcel in the Business Park until approval has been granted by PAEDC (and where required, by the City of Port Arthur). Failure of the user of a parcel to seek approval for development plans in a timely manner will not be the basis for granting an extension as to the timetable for construction. Approval means formal action by the PAEDC Board, (and where required by City Council of the City of Port Arthur) and the receipt of written confirmation of approval from a competent authority of these bodies. Application for approval shall be made in writing and must contain all submission requirements specified by PAEDC. Such requirements will include site plans, building plans and specifications, and other such information as PAEDC and the City may request.

PERMITTED OCCUPANCIES

Sites and facilities within the Business Park may be occupied by the uses specified in the following chart (Parcels are as designated on the Business Park Final Plat).

Parcels 1, 2, 3, 5, 7 & 9 – Office, warehouse, distribution, light fabrication and assembly, recycling, manufacturing and other approved uses.

Parcel 4 & 8 – Office and other approved uses.

Parcel 6, 10 – Warehouse, distribution, manufacturing, assembly and other approved uses.

Other uses may be approved by PAEDC at its sole discretion which includes career centers and other types of development as approved by the PAEDC and as authorized by State Law. All occupancies permitted may be subject to additional restrictions imposed as a result of

review of user applications provided that such specific requirements are intended to implement the restrictions previously established by the PAEDC in these Covenants and Restrictions or subsequent amendments.

PROHIBITED OCCUPANCIES

Specifically prohibited uses include manufacturing and process operations that transmit noise, or release odors, fumes or dust that materially exceed City, State, or Federal Standards or discharge a waste stream that is not acceptable (due to content or volume) for the City's sanitary sewer system. Any use that requires onsite treatment of waste in order to meet the above requirements will be allowed only on the basis of a special use permit from PAEDC, the City of Port Arthur, the TCEQ or the applicable regulatory agency. In general, on site treatment of significant quantities of special waste will not be permitted. A special use permit may, at the sole discretion of PAEDC, be granted, conditional upon continued and demonstrative conformance to specific requirements and standards. Failure by the user receiving such conditional approval to strictly conform to the requirements and standards imposed will be the basis of termination of the special use permit, without recourse by the user. Notice of termination of any permit required by any regulatory agency (including the City) will require the user to immediately cease all onsite processes that generate or contribute to the subject waste stream.

In addition, all exterior site uses including parking areas, truck maneuvering and docking areas, storage and equipment yards and the like will be developed and maintained in strict conformance with these covenants and restrictions and with the specific terms of approvals granted by PAEDC and the City of Port Arthur.

CONSTRUCTION STANDARDS, CODES AND ORDINANCES

All improvements constructed in the Business Park shall meet or exceed the standards and ordinances of the City of Port Arthur, State of Texas statutes and regulations, and national standards. It shall be the duty of the user of any parcel in the Business Park to conform to such requirements and to obtain all approvals and permits granted by governing authorities. Such requirements include but are not limited to City Building Permits and local drainage, environmental and utility requirements. Review and approval by PAEDC and the City of Port Arthur under the above provisions for Review and Approval of Uses and Improvements does not relieve or mitigate in any way this separate duty of the user.

The owners or lessees of the property shall take such precautions as to commence and complete the improvements wherein laborers, subcontractors and contractors are promptly paid with no materials and mechanic's liens being filed on the property. Prior to commencing construction, the owner or lessee shall provide to the PAEDC such evidence of financial ability to complete the project, which may include letters of credit, and contractor's performance bonds and payment bonds.

PROPERTY MAINTENANCE

Owners and Users of parcels and improvements shall perform regular and routine maintenance on these properties. Undeveloped parcels shall be kept mowed and free of debris. Developed parcels (including site and facilities) shall be maintained in a manner consistent with the users' approved proposal for use and improvements.

Lawns and landscaping shall be kept free of overgrowth, trash and debris. Parking or storage of vehicles, equipment or materials in areas other than approved outdoor storage is prohibited. Areas shall be maintained free of trash, sediment, debris, and abandoned or unsightly equipment.

Outdoor storage areas other than those approved by PAEDC are prohibited. Approved outdoor storage areas shall be well maintained and shall be kept neat and orderly in appearance. Only materials and equipment that are in active use at the site may be stored on site. Storage of derelict or junked materials, equipment or vehicles onsite is prohibited.

Buildings and other structures shall be kept in an attractive condition. Exterior surfaces shall be washed and painted as required to maintain a fresh appearance. Exterior materials that deteriorate shall be replaced.

No open burning of rubbish is permitted on the site. All waste material shall be confined to trash receptacles in approved and screened locations for removal from the site.

In case of fire or damage from other causes, the owner or lessee shall restore the improvements within nine (9) months unless granted an extension by PAEDC.

INSURANCE

The lot owners and lessees shall maintain casualty insurance in an amount sufficient to replace the buildings. A copy of the certificate of insurance shall be given to the PAEDC and the PAEDC shall be listed as an additional insured. If the lot owner or lessee fails to maintain or pay for the insurance, the PAEDC (in its sole discretion) may pay for the costs thereof, assess the lot owners and lessees, and file liens.

ASSESSMENT

The lessees and private owners of the land in the Business Park shall pay assessments to the PAEDC for the maintenance of the street signage and landscaping, the costs to enforce these deed restrictions, and the costs to maintain business park, such assessments shall be a minimum of \$200 per acre per year and shall be payable on or before December 31st of each year. Additional assessments, as determined by the PAEDC Board of Directors shall not exceed the actual proportionate share of the expenditures made by the PAEDC plus a 10% administrative fee. The proportionate share shall be the number of acres owned or leased divided by 246.

CONTINUATIONS, AMENDMENT AND VARIATION OF COVENANTS AND RESTRICTIONS

These covenants and restrictions shall remain in force on all parcels and shall be binding on all current and future owners and lessees of parcels within the Business Park. Variation in these covenants and restrictions is limited to one of the following methods:

PAEDC (subject to the approval of the City of Port Arthur) may from time to time amend the provisions, covenants and restrictions.

PAEDC may in its sole discretion grant variances to these provisions, covenants and restrictions as a part of the approval of the Review and Approval of Use and Improvement process. Such variances must be requested in writing by the user of the parcel. PAEDC will notify all adjacent parcel owners of the request for variation by posting such notice and will receive and consider comments from such parcel owners in evaluating such variances. It is the intent of PAEDC to maintain the general character and intent of the provisions, covenants and restrictions and to comply with Article 5190.6 V.T.C.A.

SITE DEVELOPMENT

Building sites of individual users must be planned to have an attractive image and must be well maintained. The following requirements shall apply to the development of sites within the Business Park:

Category			Requirements
Set Backs	Building	Street Frontage	45 feet
		Side and rear lot lines	15 feet
	Paving	Street Frontage	20 feet
		Side and rear lot lines	No requirement
Landscaping	All non paved areas		Maintained lawns
	Street Frontage		1 tree per 100 feet of frontage - 2 inch caliper
Paving	Parking	Automobile	Concrete
		Trucks and Trailers	Concrete
	Aprons and maneuvering areas		Concrete
Access and Entry			As approved by PAEDC
			May not conflict with street traffic or access to adjacent sites.
Utilities			All connections and service underground and; Equipment (transformers etc.) screened from public view
Outdoor Yards and Storage Ares			Not allowed forward of the line of the building face
			Fully screened from frontage with berms, planting or walls constructed in conformance with standards for front face of buildings

	Area Limitations	Parcels 1, 2, 3, 5, 7, 9	No larger than the area of the building
		Parcels 4, 8	Not permitted
		Parcel 6, 10	No limit
Fencing			Side and rear yards only
	Visible from Street		Decorative iron or as approved by PAEDC (no wood fences permitted)
	Side and rear		Chain link or as approved by PAEDC (no wood fences permitted)
Ancillary Structures and Equipment			Constructed to meet applicable building standards
			Tanks, trash receptacles and other equipment screened from public view
			Mail boxes as approved by PAEDC
			Flagpoles as approved by PAEDC
Lighting			Pole or building mounted lighting
			All lighting will be natural in color (no uncorrected high pressure sodium fixtures)
			Lighting must be controlled to prevent glare as seen from adjacent public ways and adjacent properties
Drainage			Surface drainage must be controlled within site boundaries.
			Discharge into drainage ways as approved by responsible authorities.
Signage			All signs must be approved by PAEDC
			May be internally or externally illuminated
			May not be animated
Site Mounted Signs			Maximum of 6 feet in height
			Base no more than 2 feet above ground
			No closer then 10 feet to property line
			Compatible with building color and materials
			Integrated and compatible with landscaping
Building Mounted Signs			Not painted on building
			May not extend beyond building profile
			Must be compatible is size, color and material with building

BUILDING DESIGN AND CONSTRUCTION

Building design including all exterior materials and colors must be attractive, compatible with adjacent development and be approved by the PAEDC.

<u>Category</u>		<u>Requirements</u>
Exterior Materials		Except for trim and accents, no wood will be permitted
Walls Facing Frontage and Public Ways		Concrete or masonry
Walls Facing Side and Rear Yards	Parcel 1, 2, 3, 5, 6, 7, 9, 10	Concrete, masonry, or metal panels
	Parcel 4, 8	Concrete or masonry
Roofing Materials		Any roof surface that is exposed to public view must be approved by PAEDC
Roof top equipment		No more than five feet in height and screened from public view
Awnings and Canopies		Compatible with building design and approved by PAEDC
Exterior Colors		Exterior surfaces will be predominately neutral or natural colors. Bright accent or trim colors will be considered by the PAEDC.

ENFORCEMENT OF COVENANTS AND RESTRICTIONS

Determination regarding the meaning, applicability and enforcement of these covenants and restrictions is the sole domain of PAEDC Board of Directors. Inquiry in regard to such matters shall be made to PAEDC in writing. A determination rendered in writing by PAEDC Board of Directors shall be deemed final and binding on all parties.

Enforcement of the provisions, covenants and restrictions shall be in accordance with law or through civil or criminal proceedings initiated by PAEDC or by the City of Port Arthur. Enforcement action may include but is not limited to restraint of violations, recovery of costs, attorneys fees and damages, assessments, fines, civil penalties, foreclosure, and judicial sale.

APPENDIX "A"

DESCRIPTION OF A
297.960 ACRE TRACT OR PARCEL OF LAND
OUT OF AND PART OF
THE WM. McFADDIN SURVEY, ABSTRACT NO. 416,
THE T. & N.O.R.R. SURVEY, SECTION NO. 5, ABSTRACT NO. 238,
AND THE T. & N.O.R.R. SURVEY, SECTION NO. 9, ABSTRACT NO. 242
JEFFERSON COUNTY, TEXAS

AUGUST 20, 2001

All that certain tract or parcel of land lying and being situated in Jefferson County, Texas, parts of the WM. McFADDIN SURVEY, ABSTRACT NO. 416, the T. & N.O.R.R. SURVEY, SECTION NO. 5, ABSTRACT NO. 238, and the T. & N.O.R.R. SURVEY, SECTION NO. 9, ABSTRACT NO. 242, and being parts of Blocks 14, 15 and 16, Range N, Blocks 14, 15 and 16, Range O, and Blocks 15 and 16, Range P of the Lands of the Port Arthur Land Co., the plat of which said subdivision is of record in Volume 1, Page 22 of the Map Records of Jefferson County, Texas, and being a part of that certain tract of land herein referred to as the "McFaddin and Cordts" tract, which said McFaddin and Cordts tract is designated "TRACT NO. 18-C" and is described in that certain instrument from W.P.H. McFaddin, Jr., and J.L.C. McFaddin, as Trustees of the McFaddin Trust to J.L.C. McFaddin, Di McFaddin Houk, Perry McFaddin Duncan, W.P.H. McFaddin Jr., Mamie McFaddin Ward, Camelia B. McFaddin and Di Vernon McFaddin Cordts, W.P.H. McFaddin Jr., and J.L.C. McFaddin, jointly, and Mamie McFaddin Ward, W.P.H. McFaddin, Jr., J.L.C. McFaddin, and Camelia B. McFaddin and Di Vernon McFaddin Cordts, jointly, dated February 26, 1948 and recorded in Volume 692, Page 22 of the Deed Records of Jefferson County, Texas, and which said TRACT NO. 18-C is indicated on that certain plat entitled "PARTITION MAP NO. 3 OF THE McFADDIN TRUST PROPERTY IN JEFFERSON COUNTY, TEXAS ..." which said plat is of record in Volume 8, Page 110 of the Map Records of Jefferson County, Texas, and being a part of that certain tract of land herein referred to as the "Cordts" tract, which said Cordts tract is described in that certain instrument from E.G. Cordts, Jr., Independent Executor of the Estate of Di Vernon McFaddin Berly to E.G. Cordts, Jr., Colleen Clave Cordts and Anna Camelia Cordts, dated September 13, 1994 and recorded under County Clerk's File No. 94-9432523 of the Official Public Records of Real Property of Jefferson County, Texas, and the said tract herein described being that exact same certain tract of land herein referred to as the "PAEDC" tract, which said PAEDC tract is described in that certain instrument from E.G. Cordts, Jr., ..., Colleen Clare Cordts Rice, ..., and Anna Camelia Cordts Edwardson, ... to Port Arthur Economic Development Corporation, dated February 28, 2001 and recorded under County Clerk's File No. 2001007554 of the Official Public Records of Real Property of Jefferson County, Texas, and the said tract herein described being more particularly described as follows:

BEGINNING at a iron rod with a Texas Department of Transportation aluminum cap (TxDOT Type 1 Monument) found for the southeast corner of the said tract herein described, the said corner being the southeast corner of the said PAEDC tract, and the said corner also being the

most southerly southwest corner of that certain tract of land herein referred to as the "Parcel 31" tract, which said Parcel 31 tract is so designated and is described in that certain instrument from E.G. Cordts, Jr., Colleen Clare Cordts Rice and Anna Camelia Cordts Edwardson to Jefferson County, dated March 15, 1999 and recorded under County Clerk's File No. 1999009190 of the Official Public Records of Real Property of Jefferson County, Texas, and the said corner being in the north line of that certain tract of land herein referred to as the "Parcel 32" tract, which said Parcel 32 tract is so designated and is described in that certain instrument from The Mamie McFaddin Ward Heritage Foundation to Jefferson County, dated December 12, 1996 and recorded under County Clerk's File No. 96-9638512 of the Official Public Records of Real Property of Jefferson County, Texas, the said corner being an interior angle point corner in the southwesterly right-of-way line of Texas State Highway Spur 93, and the said TxDOT Type 1 Monument found for corner being East (Assumed Basis of Bearings - called South 89° 37' 00" East) along and with the south line of the said PAEDC tract, said north line of the Parcel 32 tract and north line of that certain tract of land herein referred to as the "Ward" tract, which said Ward tract is designated "TRACT NO. 19-C" and is described in the hereinbefore referenced instrument recorded in Volume 692, Page 22 of the Deed Records of Jefferson County, Texas, and which said TRACT NO. 19-C is indicated on the hereinbefore referenced plat of record in Volume 8, Page 110 of the Map Records of Jefferson County, Texas, a total distance of 5,430.99 feet (called 5,431.07 feet) from a 5/8" iron rod with a yellow cap stamped "RPLS 3636" found for reference;

THENCE West (called North 89° 37' 00" West) along and with the said south line of the PAEDC tract, north line of the Parcel 32 tract and north line of the Ward tract, passing at a distance of 16.92 feet (called 16.92 feet) a 5/8" iron rod found for the most northerly northwest corner of the said Parcel 32 tract, the said corner being an exterior angle point corner in the said southwesterly right-of-way line of Texas State Highway Spur 93, and passing at a distance of 4,938.57 feet (called 4,938.91 feet) a 5/8" iron rod with a yellow cap stamped "RPLS 3636" found for reference at the southeast corner of that certain tract of land herein referred to as the "TRACT 196-A" tract, which said TRACT 196-A tract is so designated and is described in that certain instrument (titled "RIGHT-OF-WAY EASEMENT") from Di Vernon McFaddin Kibodeaux, formerly Di Vernon McFaddin Cordts, joined therein by her husband, Oren J. Kibodeaux to Jefferson County Drainage District No. 7 dated January 4, 1968 and recorded in Volume 1531, Page 123 of the Deed Records of Jefferson County Texas, and passing at a distance of 5,430.99 feet (called 5,431.07 feet) the hereinbefore said 5/8" iron rod with a yellow cap stamped "RPLS 3636" found for reference at the southwest corner of the said TRACT 196-A tract, and continuing (West) along and with the said south line of the PAEDC tract and north line of the Ward tract, a total distance of 5,545.27 feet (called 5,545.35 feet) to a point for the southwest corner of the said tract herein described, the said corner being the southwest corner of the said PAEDC tract, and the said corner also being the northwest corner of the said Ward tract, and the said corner being in the easterly line of that certain tract of land herein referred to as the "TRACT A" tract, which said TRACT A tract is so designated and is described in that certain instrument from Darling Klaver, et al to Jefferson County Drainage District No. 7 dated November 22, 1971 and recorded in Volume 1727, Page 481 of the Deed Records of Jefferson County, Texas, and the said corner being in the centerline of Rhodiar Gully;

THENCE North 12° 17' 39" West (called North 11° 54' 13" West) along and with the westerly line of the said PAEDC tract, the said easterly line of the TRACT A tract and said centerline of Rhodair Gully, a distance of 724.96 feet (called 724.92 feet) to a point for the most

westerly northwest corner of the said tract herein described, the said corner being the most westerly northwest corner of the said PAEDC tract, and the said corner also being the most southerly corner of that certain tract of land herein referred to as the "J.L.C. McFaddin" tract, which said J.L.C. McFaddin tract is designated "TRACT NO. 12-C" and is described in the hereinbefore referenced instrument recorded in Volume 692, Page 22 of the Deed Records of Jefferson County, Texas, and which said TRACT NO. 12-C is indicated on the hereinbefore referenced plat of record in Volume 8, Page 110 of the Map Records of Jefferson County, Texas;

THENCE North 39° 57' 00" East (called North 40° 20' 00" East) along and with the most westerly northwest line of the said PAEDC tract and most southerly southeast line of the said J.L.C. McFaddin tract, passing at a distance of 132.53 feet (called 132.53 feet) a 5/8" iron rod with a yellow cap stamped "RPLS 3636" found for reference at the northwest corner of the hereinbefore said TRACT 196-A tract, and passing at a distance of 736.10 feet (called 735.85 feet) a 5/8" iron rod with a red plastic cap stamped "S&P INC" set for reference at the northeast corner of the said TRACT 196-A tract (and which said 5/8" iron rod with a red plastic cap set for reference is North 37° 58' 15" West a distance of 0.39 feet from a 5/8" iron rod with a yellow cap stamped "RPLS 3636" found for reference), and continuing (North 39° 57' 00" East) along and with the said most westerly northwest line of the PAEDC tract and most southerly southeast line of the J.L.C. McFaddin tract, a total distance of 3,925.49 feet (called 3,925.61 feet) to a 1/2" iron rod found for the most northerly corner of the said tract herein described, the said corner being the most northerly corner of the said PAEDC tract, and the said corner also being the most westerly corner of that certain tract of land herein referred to as the "Barnette - 1483/177" tract, which said Barnette - 1483/177 tract is described in that certain instrument from Gulf Refining Company to N.K. Barnette, Jr. dated October 24, 1966 and recorded in Volume 1483, Page 177 of the Deed Records of Jefferson County, Texas;

THENCE South 49° 46' 07" East (called South 49° 23' 24" East) along and with the most northerly northeast line of said PAEDC tract and southwesterly line of the said Barnette - 1483/177 tract, a distance of 1,317.60 feet (called 1,317.54 feet) to a 1/2" iron rod found for an interior corner of the said tract herein described, the said corner being an interior corner of the said PAEDC tract, and the said corner also being the most southerly corner of the said Barnette - 1483/177 tract;

THENCE North 40° 07' 58" East (called North 40° 33' 04" East) along and with the most easterly northwest line of the said PAEDC tract and southeasterly line of the said Barnette - 1483/177 tract, a distance of 151.95 feet (called 151.86 feet) to a 5/8" iron rod with a yellow cap stamped "RPLS 3636" found for the most easterly northwest corner of the said tract herein described, the said corner being the most easterly northwest corner of the said PAEDC tract, and the said corner also being the most westerly corner of that certain tract of land herein referred to as the "Barnette - 1483/176" tract, which said Barnette - 1483/176 tract is described in that certain instrument from Di Vernon McFaddin Cordts joined therein by her husband, Edwin G. Cordts to N.K. Barnette, Jr. dated October 11, 1966 and recorded in Volume 1483, Page 176 of the Deed Records of Jefferson County, Texas, and the said 5/8" iron rod with a yellow cap stamped "RPLS 3636" found for corner being South 40° 11' 19" West (called South 40° 33' 04" West) along and with the said southeasterly line of the Barnette - 1483/177 tract, northwesterly line of the said Barnette - 1483/176 tract and southeasterly line of that certain tract of land herein referred to as the "LNVA" tract, which said LNVA tract is described in that certain instrument from Gulf Refining Company to the Lower Neches Valley Authority dated April 8, 1975 and recorded in Volume 1876, Page 290 of the Deed Records of Jefferson County, Texas, a total

distance of 499.44 feet (called 500.00 feet) from a 5/8" iron rod found for the most northerly corner of the said Barnette - 1483/176 tract, the said corner also being the most easterly corner of the said LNVA tract, and the said corner being in the hereinbefore said southwesterly right-of-way line of Texas State Highway Spur 93;

THENCE South 83° 44' 08" East (called South 83° 21' 35" East) along and with the most easterly north line of the said PAEDC tract and southerly line of the said Barnette - 1483/176 tract, a distance of 557.12 feet (called 557.12 feet) to a 5/8" iron rod found for the most northerly northeast corner of the said tract herein described, the said corner being the most northerly northeast corner of the said PAEDC tract, and the said corner also being the most northerly northwest corner of the hereinbefore said Parcel 31 tract, and the said corner being in the said southwesterly right-of-way line of Texas State Highway Spur 93, and the said 5/8" iron rod found for corner being South 27° 38' 14" East (called South 27° 11' 44" East) along and with the said southwesterly right-of-way line of Texas State Highway Spur 93, a distance of 499.26 feet (called 499.56 feet) from the hereinbefore said 5/8" iron rod found for the most northerly corner of the Barnette - 1483/176 tract and most easterly corner of the LNVA tract;

THENCE South 27° 30' 14" East (called South 27° 07' 03" East) along and with the most easterly northeast line of the said PAEDC tract, southwesterly line of the said Parcel 31 tract and said southwesterly right-of-way line of Texas State Highway Spur 93, a total distance of 3,294.33 feet (called 3,294.40 feet) to the Point of Beginning and

Containing 297.960 acres (called 297.9732 acres) of land, more or less.

Prepared by
Schaumburg & Polk, Inc.
E. James Verrett,
Registered Professional Land Surveyor No. 1781

**AMENDMENT NO. 1 TO
COVENANTS AND RESTRICTIONS
PORT ARTHUR BUSINESS PARK**

WHEREAS, the City of Port Arthur Section 4A Economic Development Corporation filed the original Covenants and Restrictions in the Jefferson County Real Estate Records on or about January 26, 2006, File No. 2006003269 as it pertains to the land in Appendix "A"; and

WHEREAS, the original deed restrictions stated the following as to landscaping requirements:

Landscaping	All non paved areas	Maintain Lawns
	Street Frontage	1 tree per 100 feet of frontage – 2 inch caliper

WHEREAS, the City of Port Arthur Section 4A Economic Development Corporation herein desires to amend the Deed Restrictions, and does herein amend the Deed Restrictions so that the following landscaping and screening requirements apply.

Landscaping and screening requirements.

(a) *Purpose.* The provisions of this section for the installation and maintenance of landscaping and screening are intended to protect the character and stability of commercial, and industrial areas within the City of Port Arthur Section 4A Economic Development Corporation Business Park (the "Park"), to conserve the value of land and buildings of surrounding properties and neighborhoods, to enhance the aesthetic and visual image of the Park, to encourage the preservation of existing trees and to assist with clean air. In no case shall these provisions restrict ADA requirements.

(b) *Landscape plan required.* All building permit applications for new building construction within the Park shall be accompanied by two (2) blue-line or blackline prints of the landscape plan that has been approved by the PAEDC.

The landscape plan shall contain sufficient detail to show the following:

- (1) The date, scale, north arrow and names and address and phone numbers of each property owner and person preparing the plans.

- (2) The footprint of all existing and proposed structures.
- (3) Remaining and/or proposed site elements such as power poles, fences, walls, drainage swales, easements, sidewalks, parking lot layout, pedestrian walkways, and other such elements.
- (4) A schedule identifying name, size, number, and location of all landscape elements.
- (5) Name, location and size of existing trees, and type and location of other vegetation proposed to remain for credit purposes.
- (6) The size and location of the parking lot and the number of spaces, and how the owner proposes to address the interior landscaping requirement.
- (7) Such other information as may be reasonably necessary to administer and enforce the provisions of this ordinance.
- (8) Drawn at a scale of one (1) inch equals twenty (20) feet or greater.

(c) *Irrigation required.*

- (1) All landscaped areas shall require an automatic irrigation system sufficient to provide complete coverage of required screening landscaped areas, including sodded or seeded areas along front and side of building.
- (2) Irrigation system shall be installed and operational prior to issuance of a certificate of occupancy or final building inspection.
- (3) State law requires installation by licensed irrigators.
- (4) Irrigation systems shall be maintained in good and operating condition.

(d) *Certificate of occupancy.* No certificate of occupancy for new construction in the Business Park shall be issued or final approval of parking lot expansion made unless a letter is received from the PAEDC that the property owner has complied with terms and conditions required herein.

(e) *Definitions.*

- (1) *Berm.* Landscaped earthen hill of three (3) feet height or greater.
- (2) *Caliper.* The measure of the diameter of a tree at eighteen (18) inches above grade.

Class A trees must be two (2) inches caliper or greater.

Class B trees if multi-trunked, must have a minimum of three (3) trunks of one (1) inch caliper each.

- (3) *Class A tree.* A tree with a mature height of thirty (30) feet or more. See recommended list.

- (4) ***Class B tree.*** A tree with a mature height of less than thirty (30) feet. See recommended list.
- (5) ***Critical root zone.*** A circular region measured outward from the tree trunk to the drip line representing the area of roots that must be maintained or protected for the tree's survival.
- (6) ***Drip line.*** A vertical line extending from the outermost edge of the tree canopy or shrub branch to the ground.
- (7) ***Easement.*** The legal grant of right-of-use to an area of designated private property utilized by public corporations (states, municipalities) and also made to companies providing public services such as gas, electricity, and telephone.
- (8) ***Island.*** A curbed landscaped area in a parking lot that is surrounded on all sides by parking spaces.
- (9) ***Landscaped.*** Shall consist of any combination of turf/grass/ground cover, shrubs, and trees. It must be installed in a sound manner and in accordance with accepted standards of the nursery industry.
- (10) ***Median.*** A curbed landscaped area in a parking lot that separates parking aisles.
- (11) ***Open space buffer planting strip.*** The area between single-family residential and any other zoned property. This strip is to include required trees.
- (12) ***Planting strip.*** The area between the curb and sidewalk, two (2) curbs, a curb and fence, or a sidewalk and fence.
- (13) ***Peninsula.*** A curbed landscaped area that protrudes into parking aisles and adjoins other nonparking open space.
- (14) ***Public right-of-way.*** The entire strip of land lying between the property line and a street or thoroughfare, alley, crosswalk, or easement.
- (15) ***Shrub.*** A woody plant of low or medium height, usually multi-stemmed. See recommended list for three foot high hedge.
- (16) ***Vehicular use area.*** The total area of all the parking spaces and drives serving the parking area.

(f) *Perimeter landscaping and screening.*

(1) When a commercial or industrial use is established on a lot or premises located adjacent to any residential zoning district, or when any multiple-family dwelling use is established on a lot or premises adjacent to any property located in a single-family residential zoning district, a ten-foot width of landscaping open-space buffer strip shall be installed and maintained by the owner, developer or operator of the commercial or industrial property between it and the adjacent residentially zoned property.

(2) In an open space buffer planting strip required under the terms of this section, a minimum of one (1) class A tree or two (2) class B trees shall be planted and maintained for each twenty-five (25) lineal feet or portion thereof of said open space buffer strip. The required trees may be planted anywhere within the buffer strip with a minimum of ten (10) feet apart for class A trees and a minimum of five (5) feet apart for class B trees. Refer to definitions on tree size.

(3) In addition, an eight-foot high opaque fence or wall shall be erected and maintained along the property line to provide visual screening. The fence or wall shall be masonry or a wood diagonal, horizontal or vertical stockade type privacy fence, although the framing may be metal.

(4) In lieu of the fence, a thirty-foot wide landscape planted buffer for the purpose of screening, may be provided along the property line.

(5) For a thirty-foot wide landscape planted buffer, one (1) class A tree or two (2) class B trees shall be planted and maintained for each ten (10) lineal feet of buffer. The required trees may be planted anywhere within the buffer strip with a minimum of twenty (20) feet apart for class A trees and a minimum of ten (10) feet apart for class B trees. Refer to definitions on tree size.

(6) The provisions of this perimeter landscaping and screening shall not apply where districts are separated by a public street.

(7) When a specific use permit is required, the landscape buffering and fencing required by this section may be modified or eliminated as a condition of a specific use permit.

(g) *Dumpster and immobile trash containers.* Any fixed or otherwise immobile trash container must be set back from the property line no less than twenty-five (25) feet or be completely screened from view from any street via landscaping and solid, opaque fencing on a minimum of three (3) sides.

No such container shall be allowed on city right-of-way.

(h) *Landscaping of off-street parking.*

(1) *Perimeter requirements.*

- a. A landscaping edge or buffer shall be required along each side of a parking lot that faces towards a public right-of-way.
- b. The landscaping edge shall be no less than six (6) feet wide and may use up to three (3) feet of the public right-of-way, if unused and available at the time of permitting.
- c. The landscaping edge shall be for the parking lot's entire length.
- d. The landscaping edge shall contain no less than one (1) class A tree or two (2) class B trees for each twenty-five (25) lineal feet or fraction thereof of the edge.
- e. The required trees may be located anywhere within the six (6) foot landscape edge with a minimum of ten (10) feet apart for class A trees and a minimum of five (5) feet apart for class B trees. Refer to definitions on tree size.
- f. If overhead lines are present along the perimeter landscape edge, no trees will be permitted in that perimeter landscape edge. In addition, no trees shall be permitted within a thirty-foot distance from the outermost power line.
- g. A screen no less than three (3) feet height comprised of a wall, solid fence, berm, or plant material or combination of shall be provided along the entire length of the landscaping edge or buffer, if any part of the landscaping edge is within ten (10) feet of the right-of-way. The screen does not have to be straight with the street or parking edge.
- h. The three-foot high screen shall not be on the right-of-way.
- i. The three-foot high screen shall not be required across driveways.
- j. The three-foot high screen shall not be within three (3) feet of a driveway or restrict a driver's line of sight of approaching vehicles as determined by the city.
- k. The required three-foot high screen, when planted, shall be a minimum of two (2) feet in height. See list of suggested shrubs.
- l. A minimum width of three (3) feet is required for the bed containing the planted screen.
- m. The required three-foot high screen, if planted shall be maintained at no less than three (3) feet high.

(3) An increase in the size of an existing parking lot by twenty-five (25) percent in the number of parking spaces or more shall require the entire parking lot, in addition to the twenty-five (25) percent expansion, to be brought into compliance with this section.

- a. A turf area is to be located between the paved or curbed portion or sidewalk of the adjacent street right-of-way and the front property line.
- b. The landscape planting strip shall not be used for parking, but can be crossed with driveways providing direct ingress and egress to the

development that have been approved by the development services manager or his designee.

c. This landscape planting strip shall be planted with one (1) class A or two (2) class B trees for each twenty-five (25) lineal feet or fraction thereof along the property line. The required trees may be planted anywhere within the landscape planting strip with a minimum of ten (10) feet apart for class A trees and a minimum of five (5) feet apart for class B trees.

d. Three (3) feet of public right-of-way may be used with written permission from the City of Port Arthur.

(j) *Installation and maintenance.*

- (1) All landscaping shall be installed in accordance with accepted standards of the Texas Nurseryman's Manual.
- (2) All plant material shall be true to name, variety, and size and shall conform to all applicable provisions of the American Standards for Nursery Stock, latest edition.
- (3) The owner and/or tenant shall be responsible for installing and maintaining all landscaping according to standard horticultural practices.
- (4) All landscaping shall be maintained in a healthy, neat, and orderly condition.
- (5) No trees may be located within ten (10) feet of a fire hydrant.
- (6) No trees may be topped if the limbs are three (3) inches in diameter or greater.
- (7) Required three-foot hedges shall be maintained at a minimum of three (3) feet in height.
- (8) Dead, dying or damaged landscaping material shall be immediately replaced in conformance herein.
- (9) Irrigation systems must be in good and operating condition.
- (10) Failure to install required material or maintain landscaping within sixty (60) days of notification shall be subject to legal action.
- (11) Any request for a variance to the terms of the deed restrictions must be submitted in writing and be responded to in writing by the PAEDC President after due consideration by the PAEDC Board of Directors.

(k) *Letter of credit.*

- (1) A letter of credit may be utilized when the landscaping improvements required by the PAEDC have not been completed prior to the issuance of a certificate of occupancy.
- (2) The applicant shall post cash or an irrevocable letter of credit payable to the Port Arthur Section 4A Economic Development Corporation in an amount equal to one hundred thirty (130) percent of the estimated cost. This amount shall include the Port Arthur Section 4A Economic Development Corporation's cost of administering the completion of the improvement in the

event the sub divider defaults as provided herein. The security shall be deposited with the Port Arthur Section 4A Economic Development Corporation or in escrow with a bank at the option of the Port Arthur Section 4A Economic Development Corporation. Such letter of credit shall comply with all statutory requirements and shall be satisfactory to the Port Arthur Section 4A Economic Development Corporation's attorney as to form, sufficiency, and manner of execution as set forth in these regulations. The period within which required improvements must be completed shall be specified by the Port Arthur Section 4A Economic Development Corporation or his designee and shall be incorporated in the letter of credit. In those cases where a letter of credit has been posted and the required improvements have not been installed within the terms of the letter of credit, the PAEDC may thereupon declare the letter of credit in default and require that all of the improvements be installed.

TREES FOR PORT ARTHUR BUSINESS PARK

<i>Class A Tree:</i>	Mature height greater than thirty (30) feet
	Branches begin at six (6) feet
	Must be two (2) inches or greater in caliper when planted
Common Name	Latin Name
Bald Cypress (back property only)	Taxodium distichum
Canary Island Date Palm	Phoenix canariensis
Cherrybark Oak	Quercus falcata var. pagodifolia
Green Ash (back property only)	Fraxinus pennsylvanica
Live Oak	Quercus virginiana
Sawthooth Oak	Quercus
Loblolly Pine (back property only)	Pinus Taeda
Nuttall Oak	Quercus Nuttallii
Pecan (back property only)	Carya illinoensis
Red Maple	Acer rubrum 'Drummondii'
Sabal Palms, Florida Fan Palm/cabbage Palm	Sabal palmetto
Shumard Oak	Quercus Shumardii
Slash Pine (back property only)	Pinus Elliottii
Southern Red Oak	Quercus falcata

Spruce Pine (back property only)	Pinus glabra
Swamp Chestnut Oak, Cow, Basket	Quercus Michauxii
Washingtonia Palm	Washingtonia robusta
Water Oak	Quercus nigra
White Oak	Quercus alba
Willow Oak	Quercus phellos
Windmill Palm	Tracycarpus fortunei

Class B Tree:	Less than thirty-foot mature height
	Eight (8) to ten (10) feet height when planted

Common Name	Latin Name
American Holly	Ilex opaca
Chinese Fan Palm	Livistona chinensis
Chinese Pistachio (back property only)	Pistacia chinensis
Crape Myrtle	Lagerstroemia indica and hybrid
Flowering Pear (side/back property only)	Pyrus Calleryana 'Bradford', 'Aristocrat'
Japanese Evergreen Oak	Quercus glauca
Parsley Hawthorn	Crataegus Marshallii
River Birch	Betula nigra
Texas Redbud	Cercis canadensis 'Texensis'
Tree Ligustrum	Ligustrum lucidum
Wax Ligustrum Tree	Ligustrum japonicum

SHRUBS FOR SCREENING REQUIREMENTS

Shrubs:	Maintain three-foot height or greater
	Must be evergreen

Common Name	Latin Name
Blue Vase Juniper	Juniperus chinensis 'Glaucia'
Bottlebrush	Callistemon rigidus

Camellia Sasanqua, upright	Camellia Sasanqua
Chinese Holly	Ilex cornuta 'Rotunda'
Cleyera	Ternstroemia gymnanthera
Dwarf Burford Holly	Ilex cornuta 'Burfordii Nana'
Dwarf Japanese Holly	Ilex crenata 'Compacta'
Dwarf Wax Myrtle	Myrica pusilla
English Boxwood	Buxus sempervirens
Fringe Flower	Loropetalum chinense
Gardenia, Cape Jasmine	Gardenia jasminoides
Glossy Abelia	Abelia grandiflora
Indian Azalea	Rhododendron indica
Indian Hawthorn	Raphiolepis indica
Nandina	Nandina domestica
Oleander DWARF	Nerium Oleander
Red Tip Photinia	Photinia glabra
Wax-leaf Ligustrum	Ligustrum japonicum

SIGNED and AGREED to on this the 30th day of April, 2007.



Richard Wycoff, President
City of Port Arthur Section 4A
Economic Development Corporation

ACKNOWLEDGEMENT

THE STATE OF TEXAS:

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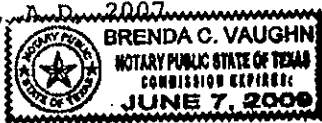
COUNTY OF JEFFERSON:

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BEFORE ME, THE UNDERSIGNED Notary Public, on this day personally appeared Richard Wycoff, President, known to me to be the person whose name is described to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of the City of Port Arthur Section 4A Economic Development Corporation, for the purposes and considerations therein expressed, and the capacities therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 30th day of

April



Brenda Vaughn
NOTARY PUBLIC, STATE OF TEXAS

SIGNED and AGREED to on this the 30th day of April, 2007.

Keith Daws
Keith Daws, Sr., Secretary
City of Port Arthur Section 4A
Economic Development Corporation

ACKNOWLEDGEMENT

THE STATE OF TEXAS:

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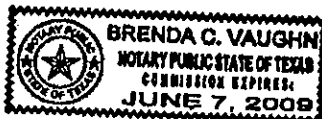
COUNTY OF JEFFERSON:

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BEFORE ME, THE UNDERSIGNED Notary Public, on this day personally appeared Keith Daws, Sr., Secretary, known to me to be the person whose name is described to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of the City of Port Arthur Section 4A Economic Development Corporation, for the purposes and considerations therein expressed, and the capacities therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 30th day of

April, A.D., 2007.



Brenda Vaughn
NOTARY PUBLIC, STATE OF TEXAS

AFTER RECORDING, RETURN TO:

City of Port Arthur Section 4A Economic Development
Corporation
P. O. Box 1089
Port Arthur, TX 77641-1089

APPENDIX "A"

DESCRIPTION OF A
297 960 ACRE TRACT OR PARCEL OF LAND
OUT OF AND PART OF
THE WM. McFADDIN SURVEY, ABSTRACT NO 416,
THE T. & N O R.R. SURVEY, SECTION NO. 5, ABSTRACT NO. 238,
AND THE T & N.O.R R. SURVEY, SECTION NO 9, ABSTRACT NO. 242
JEFFERSON COUNTY, TEXAS

AUGUST 20, 2001

All that certain tract or parcel of land lying and being situated in Jefferson County, Texas, parts of the WM. McFADDIN SURVEY, ABSTRACT NO. 416, the T. & N.O.R.R. SURVEY, SECTION NO. 5, ABSTRACT NO. 238, and the T. & N.O.R.R. SURVEY, SECTION NO. 9, ABSTRACT NO. 242, and being parts of Blocks 14, 15 and 16, Range N, Blocks 14, 15 and 16, Range O, and Blocks 15 and 16, Range P of the Lands of the Port Arthur Land Co., the plat of which said subdivision is of record in Volume 1, Page 22 of the Map Records of Jefferson County, Texas, and being a part of that certain tract of land herein referred to as the "McFaddin and Cordts" tract, which said McFaddin and Cordts tract is designated "TRACT NO. 18-C" and is described in that certain instrument from W P H McFaddin, Jr., and J.L.C. McFaddin, as Trustees of the McFaddin Trust to J.L.C. McFaddin, Di McFaddin Houk, Perry McFaddin Duncan, W P H. McFaddin Jr., Mamie McFaddin Ward, Camelia B. McFaddin and Di Vernon McFaddin Cordts, W.P.H. McFaddin Jr., and J.L.C. McFaddin, jointly, and Mamie McFaddin Ward, W P H. McFaddin, Jr., J.L.C. McFaddin, and Camelia B. McFaddin and Di Vernon McFaddin Cordts, jointly, dated February 26, 1948 and recorded in Volume 692, Page 22 of the Deed Records of Jefferson County, Texas, and which said TRACT NO. 18-C is indicated on that certain plat entitled "PARTITION MAP NO 3 OF THE McFADDIN TRUST PROPERTY IN JEFFERSON COUNTY, TEXAS . ." which said plat is of record in Volume 8, Page 110 of the Map Records of Jefferson County, Texas, and being a part of that certain tract of land herein referred to as the "Cordts" tract, which said Cordts tract is described in that certain instrument from E.G. Cordts, Jr., Independent Executor of the Estate of Di Vernon McFaddin Berly to E.G. Cordts, Jr., Colleen Clave Cordts and Anna Camelia Cordts, dated September 13, 1994 and recorded under County Clerk's File No 94-9432623 of the Official Public Records of Real Property of Jefferson County, Texas, and the said tract herein described being that exact same certain tract of land herein referred to as the "PAEDC" tract, which said PAEDC tract is described in that certain instrument from E.G. Cordts, Jr., Colleen Clare Cordts Rice, .., and Anna Camelia Cordts Edwardson, to Port Arthur Economic Development Corporation, dated February 28, 2001 and recorded under County Clerk's File No. 2001007554 of the Official Public Records of Real Property of Jefferson County, Texas, and the said tract herein described being more particularly described as follows:

BEGINNING at a iron rod with a Texas Department of Transportation aluminum cap (TxDOT Type 1 Monument) found for the southeast corner of the said tract herein

described, the said corner being the southeast corner of the said PAEDC tract, and the said corner also being the most southerly southwest corner of that certain tract of land herein referred to as the "Parcel 31" tract, which said Parcel 31 tract is so designated and is described in that certain instrument from E.G. Cordts, Jr., Colleen Clare Cordts Rice and Anna Camelia Cordts Edwardson to Jefferson County, dated March 15, 1999 and recorded under County Clerk's File No. 1999009190 of the Official Public Records of Real Property of Jefferson County, Texas, and the said corner being in the north line of that certain tract of land herein referred to as the "Parcel 32" tract, which said Parcel 32 tract is so designated and is described in that certain instrument from The Mamie McFaddin Ward Heritage Foundation to Jefferson County, dated December 12, 1996 and recorded under County Clerk's File No. 96-9638512 of the Official Public Records of Real Property of Jefferson County, Texas, the said corner being an interior angle point corner in the southwesterly right-of-way line of Texas State Highway Spur 93, and the said TxDOT Type 1 Monument found for corner being East (Assumed Basis of Bearings - called South 89° 37' 00" East) along and with the south line of the said PAEDC tract, said north line of the Parcel 32 tract and north line of that certain tract of land herein referred to as the "Ward" tract, which said Ward tract is designated "TRACT NO. 19-C" and is described in the hereinbefore referenced instrument recorded in Volume 692, Page 22 of the Deed Records of Jefferson County, Texas, and which said TRACT NO. 19-C is indicated on the hereinbefore referenced plat of record in Volume 8, Page 110 of the Map Records of Jefferson County, Texas, a total distance of 5,430.99 feet (called 5,431.07 feet) from a 5/8" iron rod with a yellow cap stamped "RPLS 3636" found for reference;

THENCE West (called North 89° 37' 00" West) along and with the said south line of the PAEDC tract, north line of the Parcel 32 tract and north line of the Ward tract, passing at a distance of 16.92 feet (called 16.92 feet) a 5/8" iron rod found for the most northerly northwest corner of the said Parcel 32 tract, the said corner being an exterior angle point corner in the said southwesterly right-of-way line of Texas State Highway Spur 93, and passing at a distance of 4,938.57 feet (called 4,938.91 feet) a 5/8" iron rod with a yellow cap stamped "RPLS 3636" found for reference at the southeast corner of that certain tract of land herein referred to as the "TRACT 196-A" tract, which said TRACT 196-A tract is so designated and is described in that certain instrument (titled "RIGHT-OF-WAY EASEMENT") from Di Vernon McFaddin Kibodeaux, formerly Di Vernon McFaddin Cordts, joined therein by her husband, Oren J. Kibodeaux to Jefferson County Drainage District No. 7 dated January 4, 1968 and recorded in Volume 1531, Page 123 of the Deed Records of Jefferson County Texas, and passing at a distance of 5,430.99 feet (called 5,431.07 feet) the hereinbefore said 5/8" iron rod with a yellow cap stamped "RPLS 3636" found for reference at the southwest corner of the said TRACT 196-A tract, and continuing (West) along and with the said south line of the PAEDC tract and north line of the Ward tract, a total distance of 5,545.27 feet (called 5,545.35 feet) to a point for the southwest corner of the said tract herein described, the said corner being the southwest corner of the said PAEDC tract, and the said corner also being the northwest corner of the said Ward tract, and the said corner being in the easterly line of that certain tract of land herein referred to as the "TRACT A" tract, which said TRACT A tract is so designated and is described in that certain instrument from Darling Klaver, et al to Jefferson County Drainage District No. 7 dated November 22, 1971 and recorded in Volume 1727, Page 481 of the Deed Records of Jefferson County, Texas, and the said corner being in the centerline of Rhodiar Gully,

THENCE North 12° 17' 39" West (called North 11° 54' 13" West) along and with the westerly line of the said PAEDC tract, the said easterly line of the TRACT A tract and said centerline of Rhodair Gully, a distance of 724.96 feet (called 724.92 feet) to a point for the most westerly northwest corner of the said tract herein described, the said corner being the most westerly northwest corner of the said PAEDC tract, and the said corner also being the most southerly corner of that certain tract of land herein referred to as the "J.L.C. McFaddin" tract, which said J.L.C. McFaddin tract is designated "TRACT NO. 12-C" and is described in the hereinbefore referenced instrument recorded in Volume 692, Page 22 of the Deed Records of Jefferson County, Texas, and which said TRACT NO. 12-C is indicated on the hereinbefore referenced plat of record in Volume 8, Page 110 of the Map Records of Jefferson County, Texas;

THENCE North 39° 57' 00" East (called North 40° 20' 00" East) along and with the most westerly northwest line of the said PAEDC tract and most southerly southeast line of the said J.L.C. McFaddin tract, passing at a distance of 132.53 feet (called 132.53 feet) a 5/8" iron rod with a yellow cap stamped "RPLS 3636" found for reference at the northwest corner of the hereinbefore said TRACT 196-A tract, and passing at a distance of 736.10 feet (called 735.85 feet) a 5/8" iron rod with a red plastic cap stamped "S&P INC" set for reference at the northeast corner of the said TRACT 196-A tract (and which said 5/8" iron rod with a red plastic cap set for reference is North 37° 58' 15" West a distance of 0.39 feet from a 5/8" iron rod with a yellow cap stamped "RPLS 3636" found for reference), and continuing (North 39° 57' 00" East) along and with the said most westerly northwest line of the PAEDC tract and most southerly southeast line of the J.L.C. McFaddin tract, a total distance of 3,925.49 feet (called 3,925.61 feet) to a 1/2" iron rod found for the most northerly corner of the said tract herein described, the said corner being the most northerly corner of the said PAEDC tract, and the said corner also being the most westerly corner of that certain tract of land herein referred to as the "Barnette - 1483/177" tract, which said Barnette - 1483/177 tract is described in that certain instrument from Gulf Refining Company to N.K. Barnette, Jr. dated October 24, 1966 and recorded in Volume 1483, Page 177 of the Deed Records of Jefferson County, Texas;

THENCE South 49° 46' 07" East (called South 49° 23' 24" East) along and with the most northerly northeast line of said PAEDC tract and southwesterly line of the said Barnette - 1483/177 tract, a distance of 1,317.60 feet (called 1,317.54 feet) to a 1/2" iron rod found for an interior corner of the said tract herein described, the said corner being an interior corner of the said PAEDC tract, and the said corner also being the most southerly corner of the said Barnette - 1483/177 tract,

THENCE North 40° 07' 58" East (called North 40° 33' 04" East) along and with the most easterly northwest line of the said PAEDC tract and southeasterly line of the said Barnette - 1483/177 tract, a distance of 151.95 feet (called 151.86 feet) to a 5/8" iron rod with a yellow cap stamped "RPLS 3636" found for the most easterly northwest corner of the said tract herein described, the said corner being the most easterly northwest corner of the said PAEDC tract, and the said corner also being the most westerly corner of that certain tract of land herein referred to as the "Barnette - 1483/176" tract, which said Barnette - 1483/176 tract is described in that certain instrument from Dr. Vernon McFaddin Cordts joined therein by her husband, Edwin G. Cordts to N.K. Barnette, Jr. dated October 11, 1966

and recorded in Volume 1483, Page 176 of the Deed Records of Jefferson County, Texas, and the said 5/8" iron rod with a yellow cap stamped "RPLS 3636" found for corner being South 40° 11' 19" West (called South 40° 33' 04" West) along and with the said southeasterly line of the Barnette - 1483/177 tract, northwesterly line of the said Barnette - 1483/176 tract and southeasterly line of that certain tract of land herein referred to as the "LNVA" tract, which said LNVA tract is described in that certain instrument from Gulf Refining Company to the Lower Neches Valley Authority dated April 8, 1975 and recorded in Volume 1876, Page 290 of the Deed Records of Jefferson County, Texas, a total distance of 499.44 feet (called 500.00 feet) from a 5/8" iron rod found for the most northerly corner of the said Barnette - 1483/176 tract, the said corner also being the most easterly corner of the said LNVA tract, and the said corner being in the hereinbefore said southwesterly right-of-way line of Texas State Highway Spur 93,

THENCE South 83° 44' 08" East (called South 83° 21' 35" East) along and with the most easterly north line of the said PAEDC tract and southerly line of the said Barnette - 1483/176 tract, a distance of 557.12 feet (called 557.12 feet) to a 5/8" iron rod found for the most northerly northeast corner of the said tract herein described, the said corner being the most northerly northeast corner of the said PAEDC tract, and the said corner also being the most northerly northwest corner of the hereinbefore said Parcel 31 tract, and the said corner being in the said southwesterly right-of-way line of Texas State Highway Spur 93, and the said 5/8" iron rod found for corner being South 27° 38' 14" East (called South 27° 11' 44" East) along and with the said southwesterly right-of-way line of Texas State Highway Spur 93, a distance of 499.26 feet (called 499.56 feet) from the hereinbefore said 5/8" iron rod found for the most northerly corner of the Barnette - 1483/176 tract and most easterly corner of the LNVA tract;

THENCE South 27° 30' 14" East (called South 27° 07' 03" East) along and with the most easterly northeast line of the said PAEDC tract, southwesterly line of the said Parcel 31 tract and said southwesterly right-of-way line of Texas State Highway Spur 93, a total distance of 3,294.33 feet (called 3,294.40 feet) to the Point of Beginning and

Containing 297.960 acres (called 297.9732 acres) of land, more or less

Prepared by
Schaumburg & Polk, Inc
B. James Verrett,
Registered Professional Land Surveyor No. 1781

EXHIBIT "B"

CONDITIONAL COMMERCIAL PROMISSORY NOTE

Port Arthur, Texas

This CONDITIONAL COMMERCIAL PROMISSORY NOTE becomes effective on the date when Triangle Waste Properties, LP, a Texas Limited Partnership (hereinafter called "Maker") breaches and receives written notification from Lender of such breach, and the effective date of this Note, that certain Economic Incentive Contract and Loan Agreement between the City of Port Arthur Section 4A Economic Development Corporation (hereinafter called "Lender") and Maker, dated _____, 2007.

Effective Date of Note: the _____ day of _____, 200__ ("date of breach and receipt of written notice from Lender advising of breach")

Principal Amount: \$ _____, which is \$374,000 minus the incentive credits earned by Maker according to that certain Economic Incentive Contract and Loan Agreement between the Lender and Maker (described hereinbefore).

Term of the Loan: Three years from effective date.

Payment Schedule: Monthly until principal is paid fully.

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 effective date hereof until maturity at the rate of **ten percent (10%)** 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 greater) as may hereafter be in effect, payable on demand after maturity.

This note is due and payable as follows: Monthly on the 1st of each month, starting the month immediately following the month the Note became effective. The amount of monthly payment will be a payment of principal and interest sufficient to fully amortize the principal amount of this Note by its maturity date.

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. No liens covering any real property currently serve as security for this Note except for a second deed of trust from Maker to Lender covering the Property described in Attachment "1" on South Business Park Drive, Port Arthur, Texas 77640, for an indebtedness not to exceed \$374,000.

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; 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 _____, 200__.

Triangle Waste Properties, LP,
A Texas Limited Partnership.

By: Triangle Waste Solutions, LLC
Its General Partner,
A Texas Limited Liability Company

By: _____
Joseph B. Swinbank, President

THE STATE OF TEXAS

§
§
§

ACKNOWLEDGEMENT

COUNTY OF JEFFERSON

BEFORE ME, THE UNDERSIGNED Notary Public, on this day personally appeared Joseph W. Swinbank, President of Triangle Waste Solutions, LLC, a Texas limited liability company and General Partner of Triangle Waste Properties, LP, a Texas limited partnership 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 such entities, for the purposes and consideration therein expressed, and the Capacities therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the ____ day of _____, 200__.

Notary Public, State of Texas

MAKERS' ADDRESS FOR RECEIPT OF NOTICE:

TRIANGLE WASTE PROPERTIES, LP

c/o Joe Swinbank
1041 Conrad Sauer Road
Houston, Texas 77043

Attachment "1"

DESCRIPTION OF A
10.00 ACRE TRACT OUT OF LOT 2
OF THE
PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION BUSINESS PARK
PORT ARTHUR, TEXAS

APRIL 16, 2007

That certain 10.00 acre tract out of Lot 2 of the Port Arthur Economic Development Corporation Business Park, a plat recorded in Clerk's File #2005044721 of the Official Real Property Records of Jefferson County, Texas; said 10.00 acre tract being more particularly described by metes and bounds as follows:

(Note: the concrete monuments found in the center line of South Business Park Drive were used for the basis of bearings)

COMMENCING at a concrete monument found in the center line of the intersection of Jade Avenue and South Business Park Drive;

THENCE South 35°32'26" West, a distance of 64.52 feet to a ½" iron rod set for the southeast corner of a turn of a turn out on Jade Avenue and being the POINT OF BEGINNING;

THENCE South (called South) along the west line of Jade Avenue and the east line of Lot 2, a distance of 342.63 feet (called 342.63 feet) to a ½" iron rod set for the northeast corner of Reserve C and being an angle point in the east line of the said 10.00 acre tract;

THENCE West (called West) along the north line of Reserve C, a distance of 150.00 feet (called 150.00 feet) to a ½" iron rod set for the northwest corner of said Reserve C and being an interior corner of the east line of the said 10.00 acre tract;

THENCE South (called South) along the west line of Reserve C, a distance of 150.00 feet to a ½" iron rod set for the southwest corner of said Reserve C and being an angle point on the east line of the said 10.00 acre tract;

THENCE East (called East) along the south line Reserve C, a distance of 150.00 feet (called 150.00 feet) to a ½" set for the southeast corner of said Reserve C and a point on the east line of said Lot 2, a point on the west line of Jade Avenue, and an angle point in the east line of the said 10.00 acre tract;

THENCE South (called South) along the east line of Lot 2 being the west line of Jade Avenue, a distance of 40.00 feet (called 40.00 feet) to a ½" iron rod set for the southeast corner of Lot 2 and the southeast corner of the said 10.00 acre tract;

THENCE West (called West) along the south line of said Lot 2, a distance of 836.72 feet to a ½" iron rod set for the southwest corner of the said 10.00 acre tract;

THENCE North, a distance of 547.63 feet to a ½" iron rod set on the north line of said Lot 2 and the south line of the South Business Park Drive; said iron rod being the northwest corner of the said 10.00 acre tract;

THENCE East (called East) along the north line of said Lot 2 and the south line of the South Business Park Drive, a distance of 821.72 feet to a ½" iron rod set for the northwest corner of the turn out at the intersection of Jade Avenue with the south line of South Business Park Drive;

THENCE South 45°00'00" East (called South 45°00'00" East) along the said turn out, a distance of 21.21 feet (called 21.21 feet) to the POINT OF BEGINNING and containing 10.00 acres of land, more or less.

Prepared by
Faust Engineering and Surveying, Inc.
Richard F. Faust, P.E.
Registered Professional Land Surveyor No. 4782

EXHIBIT "C"

COMMERCIAL SECURITY AGREEMENT

Dated _____, 200__

<u>Debtor(s)</u>	<u>Secured Party</u>
Joe Swinbank	Port Arthur Economic Development
Donald Poarch	Corporation ("PAEDC")
P.O. Box 19129	4173 39 th Street
Houston, Texas 77224	Port Arthur, Texas 77642

(hereinafter referred to as "Debtor" whether one or more)

(hereinafter referred to as "Secured Party")

FOR VALUE RECEIVED, the receipt and sufficiency of which is hereby acknowledged, Debtor grants to Secured Party the security interest (and the pledges and assignments as applicable) hereinafter set forth and agrees with Secured Party as follows:

A. **OBLIGATIONS SECURED.** The first priority lien and pledges and assignments as applicable granted hereby are to secure punctual payment and performance by the principal, **TRIANGLE WASTE PROPERTIES, LP**, of the following: (i) that certain conditional promissory note(s) of even date herewith in the original principal sum of up to \$374,000, executed by Debtor and payable to the order of Secured Party, but to be effective only if Debtor defaults under the Contract (defined below) and receive a written notice from the Secured Party advising that such note is effective, and any and all extensions, renewals, modifications and rearrangements thereof, and (ii) certain obligations of Triangle Waste Properties, LLC ("Triangle") to Secured Party under that certain Economic Incentive Contract and Loan Agreement (the "Contract") of even date and all extensions, renewals, modifications and rearrangements thereof (all of which are herein separately and collectively referred to as the "Obligations"). Debtor acknowledges that the security interest (and pledges and assignments as applicable) hereby granted shall secure all future advances as well as any and all other indebtedness, liabilities and obligations of Debtor under the Contract to Secured Party whether now in existence or hereafter arising.

B. **USE OF COLLATERAL.** Debtor represents, warrants and covenants that Collateral will be used by the Debtor primarily for business use.

C. **DESCRIPTION OF COLLATERAL.** Debtor hereby grants to Secured Party a first priority lien in (and hereby pledges and assigns as applicable) and agrees that Secured Party shall continue to have a security interest in (and a pledge and assignment of as applicable), the following property, to wit:

n/a ☐ **All Accounts.** A security interest in all accounts now owned or existing as well as any and all that may hereafter arise or be acquired by Debtor, and all the proceeds and products thereof, including without limitation, all notes, drafts, acceptances, instruments and chattel paper arising therefrom, and all returned or repossessed goods arising from or relating to any such accounts, or other proceeds of any sale or other disposition of inventory.

n/a ☐ **Specific Accounts.** A security interest in the supervised account at Texas State Bank, including earned interest, described by the Deposit Agreement between the Financial Institution, the Debtor and the Secured Party. Such agreement attached or which may hereafter be attached hereto.

n/a ☐ **All Inventory.** A security interest in all of Debtor's inventory, including all goods, merchandise, raw materials, goods in process, finished goods and other tangible personal property, wheresoever located, now owned or hereafter acquired and held for sale or lease or furnished or to be furnished under contracts for service or used or consumed in Debtor's business and all additions and accessions thereto and contracts with respect thereto and all documents of title evidencing or representing any part thereof, and all products and proceeds thereof, including, without limitation, all of such which is now or hereafter located at the following locations: (give locations)

n/a ☐ **All Fixtures.** A security interest in all of Debtor's fixtures and appurtenances thereto, and such other goods, chattels, fixtures, equipment and personal property affixed or in any manner attached to the real estate and/or building(s) or structure(s), including all additions and accessions thereto and replacements thereof and articles in substitution therefor, howsoever attached or affixed, located at the following locations: (give legal address)

The record owner of the real estate is: _____.

n/a ☐ **All Equipment.** A security interest in all equipment of every nature and description whatsoever now owned or hereafter acquired by Debtor including all appurtenances and additions thereto and substitutions therefor, wheresoever located, including all tools, parts and accessories used in connection therewith.

n/a ☐ **General Intangibles.** A security interest in all general intangibles and other personal property now owned or hereafter acquired by Debtor other than goods, accounts, chattel paper, documents and instruments.

n/a ☐ **Chattel Paper.** A security interest in all of Debtor's interest under chattel paper, lease agreements and other instruments or documents, whether now existing or owned by Debtor or hereafter arising or acquired by Debtor, evidencing both a debt and security interest in or lease of specific goods.

n/a ☐ **Farm Products.** A security interest in alt of Debtor's interest in any and all crops, livestock and supplies used or produced by Debtor in farming operations wheresoever located: Debtor's residence is in the county shown at the beginning of this Agreement and Debtor agrees to notify promptly Secured Party of any change in the county of

Debtor's residence; all of Debtor's crops or livestock are presently located in the following counties: (give counties)

n/a ☐ **Securities.** A pledge and assignment of and security interest in the securities described below, together with all instruments and general intangibles related thereto and all monies, income, proceeds and benefits attributable or accruing to said property, including, but not limited to, all stock rights, options, rights to subscribe, dividends, liquidating dividends, stock dividends, dividends paid in stock, new security or other properties or benefits to which the Debtor is or may hereafter become entitled to receive on account of said property. (give description)

X ☒ **Certificates of Deposit.** A pledge and assignment of and security interest in all of Debtor's interest in and to the certificates of deposit described below and instruments related thereto, and all renewals or substitutions therefor, together with all monies, income, interest, proceeds and benefits attributable or accruing to said property or to which Debtor is or may hereafter be entitled to receive on account of said property. A first priority lien on Texas State Bank Certificate of Deposit Number _____ in the name of Joe Swinbank and Donald Poarch.

n/a ☐ **Instruments.** A pledge and assignment of and security interest in all of Debtor's now owned or existing as well as hereafter acquired or arising instruments and documents.

n/a ☐ **Other.** A first priority lien on all of Debtor's interest, now owned or hereafter acquired, in and to _____, as detailed in that certain Incentive Contract and Loan Agreement between Debtor and Secured Party. Invoice for _____ is attached.

Model Number: _____ Serial Number: _____

The term "Collateral" as used in this Agreement shall mean and include, and the security interest (and pledge and assignment as applicable) shall cover, all of the foregoing property, as well as any accessions, additions and attachments thereto and the proceeds and products thereof, including without limitation, all cash, general intangibles, accounts, inventory, equipment, fixtures, farm products, notes, drafts, acceptances, securities, instruments, chattel paper, insurance proceeds payable because of loss or damage, or other property, benefits or rights arising therefrom, and in and to all returned or repossessed goods arising from or relating to any of the property described herein or other proceeds of any sale or other disposition of such property.

As additional security for the punctual payment and performance of the Obligations, and as part of the Collateral, Debtor hereby grants to Secured Party a security interest in, and a

pledge and assignment of, any and all money, property, deposit accounts, accounts, securities, documents, chattel paper, claims, demands, instruments, items or deposits of the Debtor, and each of them, or to which any of them is a party, now held or hereafter coming within Secured Party's custody or control, including without limitation, all certificates of deposit and other depository accounts, whether such have matured or the exercise of Secured Party's rights results in loss of interest or principal or other penalty on such deposits, but excluding deposits subject to tax penalties if assigned. Without prior notice to or demand upon the Debtor, Secured Party may exercise its rights granted above at any time when a default has occurred under the Contract and Debtor has been advised in writing by Secured Party of such breach. Secured Party's rights and remedies under this paragraph shall be in addition to and cumulative of any other rights or remedies at law and equity, including, without limitation, any rights of set-off to which Secured Party may be entitled.

D. REPRESENTATIONS, WARRANTIES AND COVENANTS OF DEBTOR.
Debtor represents and warrants as follows:

1. **Ownership; No Encumbrances:** Except for the security interest (and pledges and assignments as applicable) granted hereby, the Debtor is, and as to any property acquired after the date hereof which is included within the Collateral, Debtor will be, the owner of all such Collateral free and clear from all charges, liens, security interests, adverse claims and encumbrances of any and every nature whatsoever.

2. **No Financing Statements:** There is no financing statement or similar filing now on file in any public office covering any part of the Collateral, and Debtor will not execute and there will not be on file in any public office any financing statement or similar filing except the financing statements filed or to be filed in favor of Secured Party.

3. **Accuracy of Information:** All information furnished to Secured Party concerning Debtor, the Collateral and the Obligations, or otherwise for the purpose of obtaining or maintaining credit, is or will be at the time the same is furnished, accurate and complete in all material respects.

4. **Authority:** Debtor has full right and authority to execute and perform this Agreement and to create the security interest (and pledges and assignment as applicable) created by this Agreement. The making and performance by Debtor of this Agreement will not violate any articles of incorporation, bylaws or similar document respecting Debtor, any provision of law, any order of court or governmental agency, or any indenture or other agreement to which Debtor is a party, or by which Debtor or any of Debtor's property is bound, or be in conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture or other agreement, or result in the creation or imposition of any charge, lien, security interest, claim or encumbrance of any and every nature whatsoever upon the Collateral, except as contemplated by this Agreement.

5. **Addresses:** The address of Debtor designated at the beginning of this Agreement is Debtor's place of business if Debtor has only one place of business; Debtor's chief executive

office if Debtor has more than one place of business; or Debtor's residence if Debtor has no place of business. Debtor agrees not to change such address without advance written notice to Secured Party.

E. **GENERAL COVENANTS.** Debtor covenants and agrees as follows:

1. **Operation of the Collateral:** Debtor agrees to maintain and use the Collateral solely in the conduct of its own business, in a careful and proper manner, and in conformity with all applicable permits or licenses. Debtor shall comply in all respects with all applicable statutes, laws, ordinances and regulations. Debtor shall not use the Collateral in any unlawful manner or for any unlawful purposes, or in any manner or for any purpose that would expose the Collateral to unusual risk, or to penalty, forfeiture or capture, or that would render inoperative any insurance in connection with the Collateral.

2. **Condition:** Debtor shall maintain, service and repair the Collateral so as to keep it in good operating condition. Debtor shall replace within a reasonable time all parts that may be worn out, lost, destroyed or otherwise rendered unfit for use, with appropriate replacement parts. Debtor shall obtain and maintain in good standing at all times all applicable permits, licenses, registrations and certificates respecting the Collateral.

3. **Assessments:** Debtor shall promptly pay when due all taxes, assessments, license fees, registration fees, and governmental charges levied or assessed against Debtor or with respect to the Collateral or any part thereof.

4. **No Encumbrances:** Debtor agrees not to suffer or permit any charge, lien, security interest, adverse claim or encumbrance of any and every nature whatsoever against the Collateral or any part thereof.

5. **No Removal:** Except as otherwise provided in this Agreement, Debtor shall not remove the Collateral from the county or counties designated at the beginning of this Agreement without Secured Party's prior written consent.

6. **No Transfer:** Except as otherwise provided in this Agreement with respect to inventory, Debtor shall not, without the prior written consent of Secured Party, sell, assign, transfer, lease, charter, encumber, hypothecate or dispose of the Collateral, or any part thereof, or interest therein, or offer to do any of the foregoing.

7. **Notices and Reports:** Debtor shall promptly notify Secured Party in writing of any change in the name, identity or structure of Debtor, any charge, lien, security interest, claim or encumbrance asserted against the Collateral, any litigation against Debtor or the Collateral, any theft, loss, injury or similar incident involving the Collateral, and any other material matter adversely affecting Debtor or the Collateral. Debtor shall furnish such other reports, information and data regarding Debtor's financial condition and operations, the Collateral and such other matters as Secured Party may request from time to time.

8. **Landlord's Waivers:** Debtor shall furnish to Secured Party, if requested, a landlord's waiver of all liens with respect to any Collateral covered by this Agreement that is or may be located upon leased premises, such landlord's waivers to be in such form and upon such terms as are acceptable to Secured Party.

9. **Additional Filings:** Debtor agrees to execute and deliver such financing statement or statements, or amendments thereof or supplements thereto, or other documents as Secured Party may from time to time require in order to comply with the Texas Uniform Commercial Code (or other applicable state law of the jurisdiction where any of the Collateral is located) and to preserve and protect the Secured Party's rights to the Collateral.

10. **Protection of Collateral:** Secured Party, at its option, whether before or after default, but without any obligation whatsoever to do so, may (a) discharge taxes, claims, charges, liens, security interests, assessments or other encumbrances of any and every nature whatsoever at any time levied, placed upon or asserted against the Collateral, (b) place and pay for insurance on the Collateral, including insurance that only protects Secured Party's interest, (c) pay for the repair, improvement, testing, maintenance and preservation of the Collateral, (d) pay any filing, recording, registration, licensing or certification fees or other fees and charges related to the Collateral, or (e) take any other action to preserve and protect the Collateral and Secured Party's rights and remedies under this Agreement as Secured Party may deem necessary or appropriate. Debtor agrees that Secured Party shall have no duty or obligation whatsoever to take any of the foregoing action. Debtor agrees to promptly reimburse Secured Party upon demand for any payment made or any expense incurred by the Secured Party pursuant to this authorization. These payments and expenditures, together with interest thereon from date incurred until paid by Debtor at the maximum contract rate allowed under applicable laws, which Debtor agrees to pay, shall constitute additional Obligations and shall be secured by and entitled to the benefits of this Agreement.

11. **Inspection:** Debtor shall at all reasonable times allow Secured Party by or through any of its officers, agents, attorneys or accountants, to examine the Collateral, wherever located.

12. **Further Assurances:** Debtor shall do, make, procure, execute and deliver all such additional and further acts, things, deeds, interests and assurances as Secured Party may require from time to time to protect, assure and enforce Secured Party's rights and remedies.

13. **Insurance:** Debtor shall have and maintain insurance at all times with respect to all tangible Collateral insuring against risks of fire (including so-called extended coverage), theft and other risks as Secured Party may require, containing such terms, in such form and amounts and written by such companies as may be satisfactory to Secured Party, all of such insurance to contain loss payable clauses in favor of Secured Party as its interest may appear. All policies of insurance shall provide for ten (10) days written minimum cancellation notice to Secured Party and at the request of Secured Party shall be delivered to and held by it. Secured Party is hereby authorized to act as attorney for Debtor in obtaining, adjusting, settling and canceling such insurance and endorsing any drafts or instruments. Secured Party shall be

authorized to apply the proceeds from any insurance to the Obligations secured hereby whether or not such Obligations are then due and payable. Debtor specifically authorizes Secured Party to disclose information from the policies of insurance to prospective insurers regarding the Collateral.

F. **ADDITIONAL PROVISIONS REGARDING ACCOUNTS.** The following provisions shall apply to all accounts included within the Collateral:

1. **Definitions:** The term "account", as used in this Agreement, shall have the same meaning as set forth in the Uniform Commercial Code of Texas in effect as of the date of execution hereof, and as set forth in any amendment to the Uniform Commercial Code of Texas to become effective after the date of execution hereof, and also shall include all present and future notes, instruments, documents, general intangibles, drafts, acceptances and chattel paper of Debtor, and the proceeds thereof.

2. **Additional Warranties:** As of the time any account becomes subject to the security interest (or pledge or assignment as applicable) granted hereby, Debtor shall be deemed further to have warranted as to each and all of such accounts as follows: (a) each account and all papers and documents relating thereto are genuine and in all respects what they purport to be; (b) each account is valid and subsisting and arises out of a bona fide sale of goods sold and delivered to, or out of and for services theretofore actually rendered by the Debtor to the account debtor named in the account; (c) the amount of the account represented as owing is the correct amount actually and unconditionally owing except for normal cash discounts and is not subject to any setoffs, credits, defenses, deductions or countercharges; and (d) Debtor is the owner thereof free and clear of any charges, liens, security interests, adverse claims and encumbrances of any and every nature whatsoever.

3. **Collection of Accounts:** Secured Party shall have the right in its own name or in the name of the Debtor, whether before or after default, to require Debtor forthwith to transmit all proceeds of collection of accounts to Secured Party, to notify any and all account debtors to make payments of the accounts directly to Secured Party, to demand, collect, receive, receipt for, sue for, compound and give acquittal for, any and all amounts due or to become due on the accounts and to endorse the name of the Debtor on all commercial paper given in payment or part payment thereof, and in Secured Party's discretion to file any claim or take any other action or proceeding that Secured Party may deem necessary or appropriate to protect and preserve and realize upon the accounts and related Collateral. Unless and until Secured Party elects to collect accounts, and the privilege of Debtor to collect accounts is revoked by Secured Party in writing, Debtor shall continue to collect accounts, account for same to Secured Party, and shall not commingle the proceeds of collection of accounts with any funds of the Debtor. In order to assure collection of accounts in which Secured Party has a security interest (or pledge or assignment of as applicable) hereunder, Secured Party may notify the post office authorities to change the address for delivery of mail addressed to Debtor to such address as Secured Party may designate, and to open and dispose of such mail and receive the collections of accounts included herewith. Secured Party shall have no duty or obligation whatsoever to collect any account, or to take any other action to preserve or protect the Collateral; however,

should Secured Party elect to collect any account or take possession of any Collateral, Debtor releases Secured Party from any claim or claims for loss or damage arising from any act or omission in connection therewith.

4. **Identification and Assignment of Accounts:** Upon Secured Party's request, whether before or after default, Debtor shall take such action and execute and deliver such documents as Secured Party may reasonably request in order to identify, confirm, mark, segregate and assign accounts and to evidence Secured Party's interest in same. Without limitation of the foregoing, Debtor, upon request, agrees to assign accounts to Secured Party, identify and mark accounts as being subject to the security interest (or pledge or assignment as applicable) granted hereby, mark Debtor's books and records to reflect such assignments, and forthwith to transmit to Secured Party in the form as received by Debtor any and all proceeds of collection of such accounts.

5. **Account Reports:** Debtor will deliver to Secured Party, prior to the tenth (10) day of each month, or on such other frequency as Secured Party may request, a written report in form and content satisfactory to Secured Party, showing a listing and aging of accounts and such other information as Secured Party may request from time to time. Debtor shall immediately notify Secured Party of the assertion by any account debtor of any set-off, defense or claim regarding an account or any other matter adversely affecting an account.

6. **Segregation of Returned Goods:** Returned or repossessed goods arising from or relating to any accounts included within the Collateral shall if requested by Secured Party be held separate and apart from any other property. Debtor shall as often as requested by Secured Party, but not less often than weekly even though no special request has been made, report to Secured Party the appropriate identifying information with respect to any such returned or repossessed goods relating to accounts included in assignments or identifications made pursuant hereto.

G. **ADDITIONAL PROVISIONS REGARDING INVENTORY.** The following provisions shall apply to all inventory included within the Collateral:

1. **Inventory Reports:** Debtor will deliver to Secured Party, prior to the tenth (10th) day of each month, or on such other frequency as Secured Party may request, a written report in form and content satisfactory to Secured Party, with respect to the preceding month or other applicable period, showing Debtor's opening inventory, inventory acquired, inventory sold, inventory returned, inventory used in Debtor's business, closing inventory, any other inventory not within the preceding categories, and such other information as Secured Party may request from time to time. Debtor shall immediately notify Secured Party of any matter adversely affecting the inventory, including, without limitation, any event causing loss or depreciation in the value of the inventory and the amount of such possible loss or depreciation.

2. **Location of Inventory:** Debtor will promptly notify Secured Party in writing of any addition to, change in or discontinuance of its place(s) of business as shown in this agreement, the places at which inventory is located as shown herein, the location of its chief

executive office and the location of the office where it keeps its records as set forth herein. All Collateral will be located at the place(s) of business shown at the beginning of this agreement as modified by any written notice(s) given pursuant hereto.

3. **Use of Inventory:** Unless and until the privilege of Debtor to use inventory in the ordinary course-of Debtor's business is revoked by Secured Party in the event of default or if Secured Party deems itself insecure, Debtor may use the inventory in any manner not inconsistent with this Agreement, may sell that part of the Collateral consisting of inventory provided that all such sales are in the ordinary course of business, and may use and consume any raw materials or supplies that are necessary in order to carry on Debtor's business. A sale in the ordinary course of business does not include a transfer in partial or total satisfaction of a debt.

4. **Accounts as Proceeds:** All accounts that are proceeds of the inventory included within the Collateral shall be subject to all of the terms and provisions hereof pertaining to accounts.

5. **Protection of Inventory:** Debtor shall take all action necessary to protect and preserve the inventory.

H. **ADDITIONAL PROVISIONS REGARDING SECURITIES AND SIMILAR COLLATERAL.** The following provisions shall apply to all securities and similar property included within the Collateral:

1. **Additional Warranties:** As to each and all securities and similar property included within the Collateral (including securities hereafter acquired that are part of the Collateral), Debtor further represents and warrants (as of the time of delivery of same to Secured Party) as follows: (a) such securities are genuine, validly issued and outstanding, fully paid and non-assessable, and are not issued in violation of the preemptive rights of any person or of any agreement by which the issuer or obligor thereof or Debtor is bound; (b) such securities are not subject to any interest, option or right of any third person; (c) such securities are in compliance with applicable law concerning form, content and manner of preparation and execution; and (d) Debtor acquired and holds the securities in compliance with all applicable laws and regulations.

2. **Dividends and Proceeds:** Any and all payments, dividends, other distributions (including stock redemption proceeds), or other securities in respect of or in exchange for the Collateral, whether by way of dividends, stock dividends, recapitalizations, mergers, consolidations, stock splits, combinations or exchanges of shares or otherwise, received by Debtor shall be held by Debtor in trust for Secured Party and Debtor shall immediately deliver same to Secured Party to be held as part of the Collateral. Debtor may retain ordinary cash dividends unless and until Secured Party requests that same be paid and delivered to Secured Party (which Secured Party may request either before or after default).

3. **Collections:** Secured Party shall have the right at any time and from time to time (whether before or after default) to notify and direct the issuer or obligor to make all payments, dividends and distributions regarding the Collateral directly to Secured Party. Secured Party shall have the authority to demand of the issuer or obligor, and to receive and receipt for, any and all payments, dividends and other distributions payable in respect thereof, regardless Of the medium in which paid and whether they are ordinary or extraordinary. Each issuer and obligor making payment to Secured Party hereunder shall be fully protected in relying on the written statement of Secured Party that it then holds a security interest which entitles it to receive such payment, and the receipt by Secured Party for such payment shall be full acquittance therefor to the one making such payment.

4. **Voting Rights:** Upon default, or if Secured Party deems itself insecure, Secured Party shall have the right, at its discretion, to transfer to or register in the name of Secured Party or any nominee of Secured Party any of the Collateral and/or to exercise any or all voting rights as to any or all of the Collateral. For such purposes, Debtor hereby names, constitutes and appoints the President or any Vice President of Secured Party as Debtor's proxy in the Debtor's name, place and stead to vote any and all of the securities, as such proxy may elect, for and in the name, place and stead of Debtor, as to all matters coming before shareholders, such proxy to be irrevocable and deemed coupled with an interest. The rights, powers and authority of said proxy shall remain in full force and effect, and shall not be rescinded, revoked, terminated, amended or otherwise modified, until all Obligations have been fully satisfied.

5. **No Duty:** Secured Party shall never be liable for its failure to give notice to Debtor of default in the payment of or. upon the Collateral: Secured Party shall have no duty to fix or preserve rights against prior parties to the Collateral and shall never be liable for its failure to use diligence to collect any amount payable in respect to the Collateral, but shall be liable only to account to Debtor for what it may actually collect or receive thereon. Without limiting the foregoing, it is specifically understood and agreed that Secured Party shall have no responsibility for ascertaining any maturities, calls, conversions, exchanges, offers, tenders, or similar matters relating to any of the Collateral or for informing Debtor with respect to any of such matters (irrespective of whether Secured Party actually has, or may be deemed to have, knowledge thereof). The foregoing provisions of this paragraph shall be fully applicable to all securities or similar property held in pledge hereunder, irrespective of whether Secured Party may have exercised any right to have such securities or similar property registered in its name or in the name of a nominee.

6. **Further Assurances:** Debtor agrees to execute such stock powers, endorse such instruments, or execute such additional pledge agreements or other documents as may be required by the Secured Party in order effectively to grant to Secured Party the security interest in (and pledge and assignment of) the Collateral and to enforce and exercise Secured Party's rights regarding same.

7. **Securities Laws:** Debtor hereby agrees to cooperate fully with Secured Party in order to permit Secured Party to sell, at foreclosure or other private sale, the Collateral

pledged hereunder. Specifically, Debtor agrees to fully comply with the securities laws of the United States and of the State of Texas and to take such action as may be necessary to permit Secured Party to sell or otherwise transfer the securities pledged hereunder in compliance with such laws. Without limiting the foregoing, Debtor, at its own expense, upon request by Secured Party, agrees to effect and obtain such registrations, filings, statements, rulings, consents and other matters as Secured Party may request.

8. **Power of Attorney:** Debtor hereby makes, constitutes, and appoints Secured Party or its nominee, its true and lawful attorney in fact and in its name, place and stead, and on its behalf, and for its use and benefit to complete, execute and file 'with the United States Securities and Exchange Commission one or more notices of proposed sale of securities pursuant to Rule 144 under the Securities Act of 1933 and/or any similar filings or notices with any applicable state agencies, and said attorney in fact shall have full power and authority to do, take and perform all and every act and thing whatsoever requisite, proper or necessary to be done, in the exercise of the rights and powers herein granted, as fully to all intents and purposes as Debtor might or could do if personally present. This power shall be irrevocable and deemed coupled with an interest. The rights, powers and authority of said attorney in fact herein granted shall commence and be in full force and effect from the date of this agreement, and such rights, powers and authority shall remain in full force and effect, and this power of attorney shall not be rescinded, revoked, terminated, amended or otherwise modified, until all Obligations have been fully satisfied.

9. **Private Sales:** Because of the Securities Act of 1933, as amended, or any other laws or regulations, there may be legal restrictions or limitations affecting Secured Party in any attempts to dispose of certain portions of the Collateral in the enforcement of its rights and remedies hereunder. For these reasons Secured Party is hereby authorized by Debtor, but not obligated, in the event any default hereunder, to sell all or any part of the Collateral at private sale, subject to investment letter or in any other manner which will not require the Collateral, or any part thereof, to be registered in accordance with the Securities Act of 1933, as amended, or the rules and regulations promulgated thereunder, -or any other law or regulation. Secured Party is also hereby authorized by Debtor, but not obligated, to take such actions, give such notices, obtain such rulings and consents, and do such other things as Secured Party may deem appropriate in the event of a sale or disposition of any of the Collateral. Debtor clearly understands that Secured Party may in its discretion approach a restricted number of potential purchasers and that a sale under such circumstances may yield a lower price for the Collateral or any part or parts thereof than would otherwise be obtainable if same were registered and sold in the open market, and Debtor agrees that such private sales shall constitute a commercially reasonable method of disposing of the Collateral.

I. **ADDITIONAL PROVISIONS REGARDING CERTIFICATES OF DEPOSIT AND SIMILAR COLLATERAL.** The following provisions shall apply to certificates of deposit and similar property included within the Collateral:

1. **Collection of Deposits:** Debtor agrees that Secured Party may, at any time (whether before or after default) and in its sole discretion, surrender for payment and obtain

payment of any portion of the Collateral, whether such have matured or the exercise of Secured Party's rights results in loss of interest or principal or other penalty on such deposits, and, in connection therewith, cause payment to be made directly to Secured Party.

2. **Notice to Third Party Issuer:** With regard to any certificates of deposit or similar Collateral for which Secured Party is not the issuer, Debtor agrees to notify the issuer or obligor of the interests hereby granted to Secured Party and to obtain from such issuer or obligor acknowledgement of the interests in favor of Secured Party and the issuer's or obligor's agreement to waive in favor of Secured Party any and all rights of set-off or similar rights or remedies to which such issuer or obligor may be entitled, and, in connection therewith, to execute and cause the issuer or obligor to execute, any and all acknowledgments, waivers and other agreements in such form and upon such terms as Secured Party may request.

3. **Proceeds:** Any and all replacement or renewal certificates, instruments, or other benefits or proceeds related to the Collateral that are received by Debtor shall be held by Debtor in trust for Secured Party and immediately delivered to Secured Party to be held as part of the Collateral.

4. **No Duty:** Secured Party shall never be liable for its failure to give notice to Debtor of default in the payment of or upon the Collateral. Secured Party shall have no duty to fix or preserve rights against prior parties to the Collateral and shall never be liable for its failure to use diligence to collect any amount payable in respect to the Collateral, but shall be liable only to account to Debtor for what it may actually collect or receive thereon. Without limiting the foregoing, it is specifically understood and agreed that Secured Party shall have no responsibility for ascertaining any maturities or similar matters relating to any of the Collateral or for informing Debtor with respect to any of such matters (irrespective of whether Secured Party actually has, or may be deemed, to have, knowledge thereof).

J. **EVENTS OF DEFAULT.** Debtor shall be in default hereunder upon the happening of any of the following events or conditions: (i) non-payment when due (whether by acceleration of maturity or otherwise) of any payment of principal, interest or other amount due on any Obligation by Debtor after receiving written notice thereof by Secured Party; (ii) the occurrence of any event which under the terms of any evidence of indebtedness, indenture, loan agreement, security agreement or, similar instrument permits the acceleration of maturity of any obligation of Debtor (whether to Secured Party or to others); (iii) any representation or warranty made by Debtor to Secured Party in connection with this Agreement, the Collateral or the Obligations, or in any statements or certificates, proves incorrect in any material respect as of the date of the making or the issuance thereof; (iv) default occurs in the observance or performance of, or if Debtor fails to furnish adequate evidence of performance of, any provision of this Agreement or of any note, assignment, transfer, other agreement, document or instrument delivered by Debtor to Secured Party in connection with this Agreement, the Collateral or the Obligations; (v) death, dissolution, liquidation, termination of existence, insolvency, business failure or winding-up of Debtor or any maker, endorser, guarantor, surety or other party liable in any capacity for any of the Obligations; (vi) the commission of an act of bankruptcy by, or the application for appointment of a receiver or any other legal custodian for

any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceedings under any bankruptcy, arrangement, reorganization, insolvency or similar laws for the relief of debtors by or against, the Debtor or any maker, endorser, guarantor, surety or other party primarily or secondarily liable for any of the Obligations: or (vii) the filing of any levy, attachment, execution, garnishment or other process against the Debtor or any of the Collateral or any maker, endorser, guarantor, surety or other party liable in any capacity for any of the Obligations.

K. **REMEDIES.** Upon the occurrence of an event of default, or if Secured Party deems payment of the Obligations to be insecure, Secured Party, at its option, shall be entitled to exercise any one or more of the following remedies (all of which are cumulative):

1. **Declare Obligations Due:** Secured Party, at its option, may declare the Obligations or any part thereof immediately due and payable, without demand, notice of intention to accelerate, notice of acceleration, notice of non-payment, presentment, protest, notice of dishonor, or any other notice whatsoever, all of which are hereby waived by Debtor and any maker, endorser, guarantor, surety or other party liable in any capacity for any of the Obligations.

2. **Remedies:** Secured Party shall have all of the rights and remedies provided for in this Agreement and in any other agreements executed by Debtor, the rights and remedies Of the Uniform Commercial Code of Texas, and any and all of the rights and remedies at law and in equity, all of which shall be deemed cumulative. Without limiting the foregoing, Debtor agrees that Secured Party shall have the right to: (a) require Debtor to assemble the Collateral and make it available to Secured Party at a place designated by Secured Party that is reasonably convenient to both parties, which Debtor agrees to do; (b) peaceably take possession of the Collateral and remove same, with or without judicial process; (c) without removal, render equipment included within the Collateral unusable, and dispose of the Collateral on the Debtor's premises; (d) sell, lease or otherwise dispose of the Collateral, at one or more locations, by public or private proceedings for cash or credit, without assumption of credit risk; and/or (e) whether before or after default, collect and receipt for, compound, compromise, and settle, and give releases, discharges and acquittances with respect to, any and all amounts owed by any person or entity with respect to the Collateral. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Secured Party will send Debtor reasonable notice of the time and place of any public sale or of the time after which any private sale or other disposition will be made. Any requirement of reasonable notice to Debtor shall be met if such notice is mailed, postage prepaid, to Debtor at the address of Debtor designated at the beginning of this Agreement, at least five (5) days before the day of any public sale or at least five (5) days before the time after which any private sale or other disposition will be made.

3. **Expenses:** Debtor shall be liable for and agrees to pay the reasonable expenses incurred by Secured Party in enforcing its rights and remedies, in retaking, holding, testing, repairing, improving, selling, leasing or disposing of the Collateral, or like expenses, including, without limitation, attorneys' fees and legal expenses incurred by Secured Party.

These expenses, together with interest thereon from date incurred until paid by Debtor at the maximum contract rate allowed under applicable laws, which Debtor agrees to pay, shall constitute additional Obligations and shall be secured by and entitled to the benefits of this Agreement.

4. **Proceeds, Surplus, Deficiencies:** Proceeds received by Secured Party from disposition of the Collateral shall be applied toward Secured Party's expenses and other Obligations in such order or manner as Secured Party may elect. Debtor shall be entitled to any surplus if one results after lawful application of the proceeds. Debtor shall remain liable for any deficiency.

5. **Remedies Cumulative:** The rights and remedies of Secured Party are cumulative and the exercise of any one or more of the rights or remedies shall not be deemed an election of rights or remedies or a waiver of any other right or remedy. Secured Party may remedy any default and may waive any default without waiving the default remedied or without waiving any other prior or subsequent default.

L. OTHER AGREEMENTS.

1. **Savings Clause:** Notwithstanding any provision to the contrary herein, or in any of the documents evidencing the Obligations or otherwise relating thereto, no such provision shall require the payment or permit the collection of interest in excess of the maximum permitted by applicable usury laws. If any such excessive interest is so provided for, then in such event (i) the provisions of this paragraph shall govern and control; (ii) neither the Debtor nor his heirs, legal representatives, successors or assigns or any other party liable for the payment thereof, shall be obligated to pay the amount of such interest to the extent that is in excess of the maximum amount permitted by law; (iii) any such excess interest that may have been collected shall be, at the option of the holder of the instrument evidencing the Obligations, either applied as a credit against the then unpaid principal amount thereof or refunded to the maker thereof; and (iv) the effective rate of interest shall be automatically reduced to the maximum lawful rate under applicable usury laws as now or hereafter construed by the courts having jurisdiction.

2. **Joint and Several Responsibility:** If this Security Agreement is executed by more than one Debtor, the obligations of all such Debtors shall be joint and several.

3. **Waivers:** Debtor and any maker, endorser, guarantor, surety or other party liable in any capacity respecting the Obligations hereby waive demand, notice of intention to accelerate, notice of acceleration, notice of non-payment, presentment, protest, notice of dishonor and any other similar notice whatsoever.

4. **Severability:** Any provision hereof found to be invalid by courts having jurisdiction shall be invalid only with respect to such provision (and then only to the extent necessary to avoid such invalidity). The offending provision shall be modified to the maximum extent possible to confer upon Secured Party the benefits intended thereby. Such provision as

modified and the remaining provisions hereof shall be construed and enforced to the same effect as if such offending provision (or portion thereof) had not been contained herein, to the maximum extent possible.

5. **Use of Copies:** Any carbon, photographic or other reproduction of any financing statement signed by Debtor is sufficient as a financing statement for all purposes, including without limitation, filing in any state as may be permitted by the provisions of the Uniform Commercial Code of such state.

6. **Relationship to Other Agreements:** This Security Agreement and the security interests (and pledges and assignments as applicable) herein granted are in addition to (and not in substitution, novation or discharge of) any and all prior or contemporaneous security agreements, security interests, pledges, assignments, liens, rights, titles or other interests in favor of Secured Party or assigned to Secured Party by others in connection with the Obligations. All rights and remedies of Secured Party in all such agreements are cumulative, but in the event of actual conflict in terms and conditions, the terms and conditions of the latest security agreement shall govern and control.

7. **Notices:** Any notice or demand given by Secured Party to Debtor in connection with this Agreement, the Collateral or the Obligations, shall be deemed given and effective upon deposit in the United States mail, postage prepaid, addressed to Debtor at the address of Debtor designated at the beginning of this Agreement. Actual notice to Debtor shall always be effective no matter how given or received.

8. **Headings and Gender:** Paragraph headings in this Agreement are for convenience only and shall be given no meaning or significance in interpreting this Agreement. All words used herein shall be construed to be of such gender or number as the circumstances require.

9. **Amendments:** Neither this Agreement nor any of its provisions may be changed, amended, modified, waived or discharged orally, but only by an instrument in writing signed by the party against whom enforcement of the change, amendment, modification, waiver or discharge is sought.

10. **Continuing Agreement:** The security interest (and pledges and assignments as applicable) hereby granted and all of the terms and provisions in this Agreement shall be deemed a continuing agreement and shall continue in full force and effect until terminated in writing. Any such revocation or termination shall only be effective if explicitly confirmed in a signed writing issued by Secured Party to such effect and shall in no way impair or affect any transactions entered into or rights created or Obligations incurred or arising prior to such revocation or termination, as to which this Agreement shall be fully operative until same are repaid and discharged in full. Unless otherwise required by applicable law Secured Party shall be under no obligation to issue a termination statement or similar documents unless Debtor requests same in writing and, provided further, that all Obligations have been repaid and

discharged in full and there are no commitments to make advances, incur any Obligations or otherwise give value.

11. **Binding Effect:** The provisions of this Security Agreement shall be binding upon the heirs, personal representatives, successors and assigns of Debtor and the rights, powers and remedies of Secured Party hereunder shall inure to the benefit of the successors and assigns of Secured Party.

12. **Governing Law:** This Security Agreement shall be governed by the law of the State of Texas and applicable federal law.

EXECUTED this ____ day of _____, 200__.

By: _____
Joe Swinbank

By: _____
Donald Poarch

SUBSCRIBED AND SWORN TO BEFORE ME by the said Joe Swinbank, on the ____ day of _____, 200__, to certify which witness my hand and seal of office.

Notary Public, State of Texas

SUBSCRIBED AND SWORN TO BEFORE ME by the said Donald Poarch, on the ____ day of _____, 200__, to certify which witness my hand and seal of office.

Notary Public, State of Texas

EXHIBIT "D"

TEXAS STATE BANK ACKNOWLEDGEMENT

Texas State Bank hereby acknowledges and recognizes that The City of Port Arthur Section 4A Economic Development Corporation ("PAEDC") holds a first priority lien against Certificate of Deposit Number _____, in the name of Joe Swinbank and Donald Poarch to secure Triangle Waste Properties LP ("Triangle") performance of the Economic Incentive Contract and Loan Agreement between Triangle and PAEDC dated _____, 2007.

TEXAS STATE BANK

By

Its

Date

SUBSCRIBED AND SWORN TO BEFORE ME on the _____ day of _____, 2007, to certify which witness my hand and seal of office.

Notary Public, State of Texas

EXHIBIT "E"

UCC-1

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)	
B. SEND ACKNOWLEDGMENT TO: (Name and Address)	
City of Port Arthur Section 4A Economic Development Corp. 4173 39th Street Port Arthur, Texas 77642	

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME						
OR	1b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
	Swinbank		Joe			
1c. MAILING ADDRESS			CITY	STATE	POSTAL CODE	COUNTRY
P.O. Box 19129			Houston	TX	77224	USA
1d. SEE INSTRUCTIONS	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION	1f. JURISDICTION OF ORGANIZATION		1g. ORGANIZATIONAL ID #, if any	
					<input type="checkbox"/> NONE	

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME						
OR	2b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
2c. MAILING ADDRESS			CITY	STATE	POSTAL CODE	COUNTRY
2d. SEE INSTRUCTIONS	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION		2g. ORGANIZATIONAL ID #, if any	
					<input type="checkbox"/> NONE	

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR SIP) - Insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME						
OR	3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
	City of Port Arthur Section 4A Economic Development Corp.					
3c. MAILING ADDRESS			CITY	STATE	POSTAL CODE	COUNTRY
4173 39th Street			Port Arthur	TX	77642	USA

4. This FINANCING STATEMENT covers the following collateral:

Texas State Bank Certificate of Deposit No. _____

5. ALTERNATIVE DESIGNATION (if applicable):	LESSEE/LESSOR	CONSIGNEE/CONSIGNOR	BAILEE/BAILOB	SELLER/BUYER	AG. LIEN	NON-UCC FILING
6. This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable)	7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (optional)		All Debtors		Debtor 1	Debtor 2
8. OPTIONAL FILER REFERENCE DATA						

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]	
B. SEND ACKNOWLEDGMENT TO: (Name and Address)	
City of Port Arthur Section 4A Economic Development Corp. 4173 39th Street Port Arthur, Texas 77642	

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME				
OR				
1b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
Poarch		Donald		
1c. MAILING ADDRESS		CITY	STATE	POSTAL CODE COUNTRY
P.O. Box 19129		Houston	TX	77224 USA
1d. SEE INSTRUCTIONS	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION	1f. JURISDICTION OF ORGANIZATION	1g. ORGANIZATIONAL ID #, if any
				<input type="checkbox"/> NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME				
OR				
2b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE COUNTRY
2d. SEE INSTRUCTIONS	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any
				<input type="checkbox"/> NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR(S)) - Insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME				
City of Port Arthur Section 4A Economic Development Corp.				
OR				
3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
3c. MAILING ADDRESS		CITY	STATE	POSTAL CODE COUNTRY
4173 39th Street		Port Arthur	TX	77642 USA

4. This FINANCING STATEMENT covers the following collateral:

Texas State Bank Certificate of Deposit No. _____

5. ALTERNATIVE DESIGNATION (if applicable):	LESSEE/LESSOR	CONSIGNEE/CONSIGNOR	BAILEE/BAILOB	SELLER/BUYER	AG. LIEN	NON-UCC FILING
6. This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable)	7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (ADDITIONAL FEE) (optional)		All Debtors Debtor 1 Debtor 2			
8. OPTIONAL FILER REFERENCE DATA						

EXHIBIT "F"

CERTIFICATION REGARDING LOBBYING

For Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his knowledge and belief, that:

1. No funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of the City or of the PAEDC in connection with the awarding of any contract, the making of any grant, the making of any loan, the entering into of any cooperative agreement, or modification of any contract, grant, loan, or cooperative agreement.
2. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements), and that all Subs shall certify and disclose accordingly.

This certification is material representation of fact which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction.

**Triangle Waste Properties, LP,
A Texas Limited Partnership.**

**By: Triangle Waste Solutions, LLC
Its General Partner,
A Texas Limited Liability Company**

**By: _____
Joe Swinbank, President**

EXHIBIT “G”

SPECIAL WARRANTY DEED

STATE OF TEXAS

COUNTY OF JEFFERSON

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KNOW ALL MEN BY THESE PRESENTS:

That the City of Port Arthur Section 4A Economic Development Corporation, a Texas not-for-profit corporation, hereinafter called "Grantor," whether one or more, in consideration of jobs as described in that certain Economic Incentive Contract and Loan Agreement, approved by City of Port Arthur, Texas Resolution No. _____, and other good and valuable consideration, to Grantor in hand paid by Triangle Waste Properties LP a Texas limited partnership, hereinafter called "Grantee," whether one or more, the receipt of which is hereby acknowledged, has GRANTED, SOLD and CONVEYED, and by these presents does GRANT, SELL and CONVEY unto Grantee, all that certain property situated in the County of Jefferson, State of Texas, described as follows, to-wit:

Ten (10) acres in Jefferson County, Texas (hereinafter referred to as the "Property"). See attachment for Legal Property description.

This conveyance is made subject to the following:

- (1) easements and rights-of-way appearing of record in the office of the County Clerk of Jefferson County, Texas;
- (2) the right of Grantor and its designees to use and maintain storm water stub-outs, which extend a few feet from the South Business Park Drive right-of-way, and serve to connect the Property drainage system to the drainage system of the Port Arthur Economic Development Corporation Business Park;
- (3) all covenants, restrictions, and all conditions and exceptions, reservations and conveyances of minerals and/or royalties, oil and gas and/or mineral leases, affecting the above described Property, of record in the Office of the County Clerk of Jefferson County, Texas, to the extent they are still in effect and relate to the above described Property;
- (4) taxes on the above described Property for 2007 and subsequent years not yet due and payable;
- (5) all zoning laws, regulations and ordinances of municipal and other governmental authorities, if any, but only to the extent that they are still in effect, relating to the above described property; and
- (6) the following additional covenants and restrictions which run with the land:
 - a. Construction of a covered concrete pad of at least 100'x 100' for metal processing;
 - b. Crews on site will operate according to procedures, rules and regulations of TCEQ;
 - c. The capture of rainwater and any process water used at the site will be disposed of in accordance with all applicable rules and regulations of TCEQ;
 - d. Design, build and operate so that scrap is not visible to any member of the public standing at ground level on a public way;

- e. Screen property lines from view with an eight (8) foot concrete tiltwall with landscaping on the outside to provide extra protection and help contain dust, noise, and odors;
- f. Metal will be contained in proper storage containers when not being processed;
- g. Metal containing radioactive sources will not be recycled or permitted on the Property in the Park;
- h. All roll off containers kept on the Property will be for non hazardous material and all repairs to these containers will be done at a different location as to insure this area does not become a repair area; and
- i. Store all equipment, trucks, roll off containers, etc., either behind the buildings or inside of the plant, so as not to be visible from South Business Park Drive.

Grantor has executed and delivered this Special Warranty Deed and has granted, bargained, sold, and conveyed the Property to Grantee, and Grantee has received and accepted this Special Warranty Deed and has purchased, received, and, accepted the Property, ON AN AS-IS, WHERE IS BASIS, WITH ALL FAULTS AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WRITTEN OR ORAL, IT BEING THE INTENTION OF GRANTOR AND GRANTEE TO EXPRESSLY REVOKE, RELEASE, NEGATE, AND EXCLUDE ALL REPRESENTATIONS AND WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY AND ALL EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES AS TO (i) THE CONDITION OF THE PROPERTY OR ANY ASPECT THEREOF, INCLUDING, WITHOUT LIMITATION, ANY AND ALL EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES RELATED TO SUITABILITY FOR HABITATION, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR USE OR PURPOSE; (ii) THE NATURE OR QUALITY OF CONSTRUCTION, STRUCTURAL DESIGN OR ENGINEERING OF ANY IMPROVEMENTS WHICH ARE PART OF THE PROPERTY OR WHICH SERVE THE PROPERTY (the "IMPROVEMENTS"); (iii) THE QUALITY OF THE LABOR OR MATERIAL INCLUDED IN THE IMPROVEMENTS; (iv) THE SOIL CONDITIONS, DRAINAGE, TOPOGRAPHICAL FEATURES OR OTHER CONDITIONS WHICH AFFECT THE PROPERTY; (v) THE AREA, SIZE, SHAPE, CONFIGURATION, LOCATION, CAPACITY, USE, DEVELOPMENT POTENTIAL, PURPOSE OR OTHER CHARACTERISTIC CONCERNING OR RELATING TO THE PROPERTY; (v) ANY FEATURES OR CONDITIONS AT OR WHICH AFFECT THE PROPERTY WITH RESPECT TO ANY PARTICULAR PURPOSE, USE, DEVELOPMENTAL POTENTIAL, CASH FLOW, OR OTHERWISE; (vi) ALL EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES CREATED BY ANY AFFIRMATION OF FACT OR PROMISE OR BY ANY DESCRIPTION OF THE PROPERTY; (vii) ANY ENVIRONMENTAL, GEOLOGICAL, METEOROLOGICAL, STRUCTURAL OR OTHER CONDITION OR HAZARD OR THE ABSENCE THEREOF HERETOFORE, NOW, OR HEREAFTER AFFECTING IN ANY MANNER ANY OF THE PROPERTY; AND (viii) ALL OTHER EXPRESS OR IMPLIED WARRANTIES AND REPRESENTATIONS BY GRANTOR WHATSOEVER, EXCEPT SOLELY THE SPECIAL WARRANTY OF TITLE EXPRESSLY SET FORTH IN THIS DEED CONVEYING THE PROPERTY TO GRANTEE.

TO HAVE AND TO HOLD, the said Property, together with all rights, hereditaments and appurtenances thereto belonging, unto Grantee, its successors, heirs, and assigns forever. And Grantor does hereby bind

itself, its successors, heirs, executors, administrators, and personal representatives to WARRANT AND FOREVER DEFEND the title to said Property unto Grantee, its successors, heirs, and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through, or under Grantor, but not otherwise.

When Grantor or Grantee or both of them are more than one (1) person, or when Grantor or Grantee or both of them are a corporation, partnership, trustee, administrator, executor, or personal representative, this Deed shall read as though pertinent verbs, nouns, and pronouns are changed correspondingly, and pronouns of the masculine gender where used herein shall be construed to include persons of the female sex. When this Deed is executed by or to or by and to a corporation or partnership, references to "heirs, executors, administrators, and personal representatives" shall be appropriately disregarded, and when this Deed is executed by or to or by and to a natural person or persons, references to "successors" shall be appropriately disregarded.

Grantee has joined in this Deed to evidence Grantee's acceptance of this Deed.

EXECUTED this the ____ day of _____, 200__.

GRANTOR:

City of Port Arthur Section 4A
Economic Development Corporation,
a Texas Corporation

By: _____
Richard Wycoff, President

By: _____
Keith Daws Sr., Secretary

GRANTEE:

Triangle Waste Properties, LP,
A Texas Limited Partnership.

By: Triangle Waste Solutions, LLC
Its General Partner,
A Texas Limited Liability Company

By: _____
Joe Swinbank, President

STATE OF TEXAS

§
§

COUNTY OF JEFFERSON §

This instrument was acknowledged before me on the ____ day of _____, 200__, by Richard Wycoff, President of the City of Port Arthur Section 4A Economic Development Corporation, a Texas not-for-profit corporation, on behalf of such corporation.

Notary Public, State of Texas

STATE OF TEXAS §

§

COUNTY OF JEFFERSON §

This instrument was acknowledged before me on the ____ day of _____, 200__, by Keith Daws Sr., Secretary of the City of Port Arthur Section 4A Economic Development Corporation, a Texas not-for-profit corporation, on behalf of such corporation.

Notary Public, State of Texas

STATE OF TEXAS §

§

COUNTY OF JEFFERSON §

BEFORE ME, THE UNDERSIGNED Notary Public, on this day personally appeared Joseph W. Swinbank, President of Triangle Waste Solutions, LLC, a Texas limited liability company and General Partner of Triangle Waste Properties, LP, a Texas limited partnership 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 such entities, for the purposes and consideration therein expressed, and the Capacities therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the ____ day of _____, 200__.

Notary Public, State of Texas

GRANTEE'S MAILING ADDRESS:

c/o Poarch/Swinbank LLC
1041 Conrad Sauer Road
Houston, Texas 77043

ATTACHMENT
DESCRIPTION OF A
10.00 ACRE TRACT OUT OF LOT 2
OF THE
PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION BUSINESS PARK
PORT ARTHUR, TEXAS

APRIL 16, 2007

That certain 10.00 acre tract out of Lot 2 of the Port Arthur Economic Development Corporation Business Park, a plat recorded in Clerk's File #2005044721 of the Official Real Property Records of Jefferson County, Texas; said 10.00 acre tract being more particularly described by metes and bounds as follows:

(Note: the concrete monuments found in the center line of South Business Park Drive were used for the basis of bearings)

COMMENCING at a concrete monument found in the center line of the intersection of Jade Avenue and South Business Park Drive;

THENCE South 35°32'26" West, a distance of 64.52 feet to a ½" iron rod set for the southeast corner of a turn of a turn out on Jade Avenue and being the POINT OF BEGINNING;

THENCE South (called South) along the west line of Jade Avenue and the east line of Lot 2, a distance of 342.63 feet (called 342.63 feet) to a ½" iron rod set for the northeast corner of Reserve C and being an angle point in the east line of the said 10.00 acre tract;

THENCE West (called West) along the north line of Reserve C, a distance of 150.00 feet (called 150.00 feet) to a ½" iron rod set for the northwest corner of said Reserve C and being an interior corner of the east line of the said 10.00 acre tract;

THENCE South (called South) along the west line of Reserve C, a distance of 150.00 feet to a ½" iron rod set for the southwest corner of said Reserve C and being an angle point on the east line of the said 10.00 acre tract;

THENCE East (called East) along the south line Reserve C, a distance of 150.00 feet (called 150.00 feet) to a ½" set for the southeast corner of said Reserve C and a point on the east line of said Lot 2, a point on the west line of Jade Avenue, and an angle point in the east line of the said 10.00 acre tract;

THENCE South (called South) along the east line of Lot 2 being the west line of Jade Avenue, a distance of 40.00 feet (called 40.00 feet) to a ½" iron rod set for the southeast corner of Lot 2 and the southeast corner of the said 10.00 acre tract;

THENCE West (called West) along the south line of said Lot 2, a distance of 836.72 feet to a ½" iron rod set for the southwest corner of the said 10.00 acre tract;

THENCE North, a distance of 547.63 feet to a ½" iron rod set on the north line of said Lot 2 and the south line of the South Business Park Drive; said iron rod being the northwest corner of the said 10.00 acre tract;

THENCE East (called East) along the north line of said Lot 2 and the south line of the South Business Park Drive, a distance of 821.72 feet to a ½" iron rod set for the northwest corner of the turn out at the intersection of Jade Avenue with the south line of South Business Park Drive;

THENCE South 45°00'00" East (called South 45°00'00" East) along the said turn out, a distance of 21.21 feet (called 21.21 feet) to the POINT OF BEGINNING and containing 10.00 acres of land, more or less.

Prepared by
Faust Engineering and Surveying, Inc.
Richard F. Faust, P.E.
Registered Professional Land Surveyor No. 4782

EXHIBIT "H"

Special Addendum To Economic Incentive Contract and Loan Agreement Between The City Of Port Arthur Section 4A Economic Development Corporation and Triangle Waste Properties LP

Notwithstanding anything to the contrary set forth in the Economic Incentive Contract And Loan Agreement (the "Contract") between The City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC") and Triangle Waste Properties LP ("Triangle") to which this Special Addendum is attached, the parties hereto agree that the following provisions shall supercede and control over any other provisions of the Contract.

1. The PAEDC has good and indefeasible fee simple title to the 10 acre parcel located in the Park to be conveyed to Triangle (the "Property") free and clear of all liens, restrictions and other matters and encumbrances except for the restrictions specifically referenced in the Contract and of record in Jefferson County.
2. Effective upon delivery of the Deed conveying title to the Property from the PAEDC to Triangle, the PAEDC agrees that it will have no (and waives any) claims or interests whatsoever (including, without limitation, any implied vendor's liens) in and to the Property except for a second deed of trust to be granted by Triangle in favor of PAEDC covering the Property as security for the Contract.
3. Upon the full performance by Triangle of its obligations under the Contract, the PAEDC agrees to release and relinquish all security interests, assignments and other rights and interests it may have in and to any collateral securing Triangle's obligations under the Contract, and upon written request will deliver a UCC-1 Termination Statement and such other evidence of such reasonably requested by Triangle. In addition, if at any time Triangle pays to the PAEDC the sum of Three Hundred Seventy Four Thousand and No/100 Dollars (\$374,000.00) less any "credits" (as such term is used and defined in the Contract) then earned, the PAEDC agrees that Triangle shall be released from any further obligations under the Contract, and the PAEDC agrees to release and relinquish all security interests, assignments and other rights and interests it may have in and to any collateral securing Triangle's obligations under the Contract and its second lien deed of trust, and upon written request will deliver a UCC-1 Termination Settlement and release of such second lien deed of trust and such other evidence of such release as may be reasonably requested by Triangle.
4. Triangle will not forfeit any "credits" (as such term is used and defined in the Contract) by failing to issue a required report in a timely manner unless Triangle fails to so issue such report within five (5) days after it receives a written notice from the PAEDC that it has failed to so issue such report.
5. PAEDC represents to Triangle that the Property has legal and unencumbered access to and from a street, which PAEDC will dedicate or has dedicated to the City for use as a public street.

6. Triangle intends to use the Property for the following purposes:
- a. Operation of a truck/vehicle repair, maintenance and storage facility but only trucks and vehicles owned, controlled or used by Triangle;
 - b. Operation of a repair and storage facility for portable buildings;
 - c. Operation of a recycling center (pursuant to a TCEQ permit for a Type 5 facility)

provided, however, regardless of whether a Type 5 permit allows for recycling of a broader category of items or wastes, only the following types of items and wastes may be sorted and recycled by Triangle on the Property:

1. Construction-demolition waste (waste resulting from construction or demolition projects, including all materials that are directly or indirectly the by-products of construction work or that result from the demolition of buildings and other structures, including, but not limited to paper, cartons, gypsum board, wood, excelsior, rubber and plastics).
2. Class 3 industrial solid waste (inert and essentially insoluble industrial solid waste, including materials such as concrete rubble, rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable as defined in 30 TAC §335.507).

provided, however, in no event will any of the following items or wastes be sorted or recycled on the Property:

- Household garbage;
- Putrescible waste;
- Special waste from health-care-related facilities;
- Wastes from commercial or industrial waste water treatment plants; air pollution control facilities; and tanks, drums, or containers used for shipping or storing any material that has been listed as a hazardous constituent in 40 code of Federal Regulations (40 CFR), Part 261, Appendix VIII but has not been listed as a commercial chemical product in 40 CFR, §261.33(e) or (f);
- Slaughterhouse wastes;
- Dead animals;
- Pesticides (insecticide, herbicide, fungicide, or rodenticide) containers in accordance with 30 TAC §330.136(b)(5);
- Discarded materials containing asbestos;
- Incinerator ash;
- Soil contaminated by petroleum products, crude oils, or chemicals;

- Hazardous waste⁶;
- Polychlorinated biphenyls (PCB) waste;
- Radioactive waste;
- Unknown chemical or containerized waste;
- Class 1 non-hazardous industrial waste;
- Class 2 non-hazardous industrial waste; and
- Regulated Asbestos Containing Materials (RACM).

In addition, Triangle's recycling activities shall consist of transporting such items and wastes to the Property, spreading out such items and wastes on the floor of the recycling center, sorting and removing recyclable items therefrom and hauling the remainder of such items or wastes to an appropriate landfill;

- d. Use of an administrative building or buildings; and
- e. Any uses which are reasonably incidental to any of the foregoing uses.

The PAEDC approves of such uses and agrees that same comply with the covenants and restrictions set forth or referenced in the Contract.

⁶ This includes *hazardous industrial waste*, as defined by 30 Texas Administrative Code ("TAC") §335.1(60) (in accordance with RCRA of 1976 and 40 Code of Federal Regulations ("CFR") Part 261); *hazardous substances*, as defined by 30 TAC §335.1(61) (as designated under CERCLA, 40 Code of Federal Regulations Part 302); *hazardous waste*, as defined by 30 TAC §335.1 (62) (in accordance with the federal Solid Waste Disposal Act, as amended by RCRA, 42 United States Code §§6901 et seq., as amended) and as determined by the procedures in 30 TAC §335.504; *hazardous waste constituent*, as defined by 30 TAC §335.1(63) (listed in 40 CFR Part 261, Subpart D or in Table 1 of 40 CFR §261.24); and as further defined by new or revised federal or state regulations concerning hazardous substances and waste, promulgated after execution of this contract.

EXHIBIT "I"

DESCRIPTION OF A 10.00 ACRE TRACT OUT OF LOT 2 OF THE PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION BUSINESS PARK PORT ARTHUR, TEXAS

APRIL 16, 2007

That certain 10.00 acre tract out of Lot 2 of the Port Arthur Economic Development Corporation Business Park, a plat recorded in Clerk's File #2005044721 of the Official Real Property Records of Jefferson County, Texas; said 10.00 acre tract being more particularly described by metes and bounds as follows:

(Note: the concrete monuments found in the center line of South Business Park Drive were used for the basis of bearings)

COMMENCING at a concrete monument found in the center line of the intersection of Jade Avenue and South Business Park Drive;

THENCE South $35^{\circ}32'26''$ West, a distance of 64.52 feet to a $\frac{1}{2}$ " iron rod set for the southeast corner of a turn of a turn out on Jade Avenue and being the POINT OF BEGINNING;

THENCE South (called South) along the west line of Jade Avenue and the east line of Lot 2, a distance of 342.63 feet (called 342.63 feet) to a $\frac{1}{2}$ " iron rod set for the northeast corner of Reserve C and being an angle point in the east line of the said 10.00 acre tract;

THENCE West (called West) along the north line of Reserve C, a distance of 150.00 feet (called 150.00 feet) to a $\frac{1}{2}$ " iron rod set for the northwest corner of said Reserve C and being an interior corner of the east line of the said 10.00 acre tract;

THENCE South (called South) along the west line of Reserve C, a distance of 150.00 feet to a $\frac{1}{2}$ " iron rod set for the southwest corner of said Reserve C and being an angle point on the east line of the said 10.00 acre tract;

THENCE East (called East) along the south line Reserve C, a distance of 150.00 feet (called 150.00 feet) to a $\frac{1}{2}$ " set for the southeast corner of said Reserve C and a point on the east line of said Lot 2, a point on the west line of Jade Avenue, and an angle point in the east line of the said 10.00 acre tract;

THENCE South (called South) along the east line of Lot 2 being the west line of Jade Avenue, a distance of 40.00 feet (called 40.00 feet) to a $\frac{1}{2}$ " iron rod set for the southeast corner of Lot 2 and the southeast corner of the said 10.00 acre tract;

THENCE West (called West) along the south line of said Lot 2, a distance of 836.72 feet to a $\frac{1}{2}$ " iron rod set for the southwest corner of the said 10.00 acre tract;

THENCE North, a distance of 547.63 feet to a ½" iron rod set on the north line of said Lot 2 and the south line of the South Business Park Drive; said iron rod being the northwest corner of the said 10.00 acre tract;

THENCE East (called East) along the north line of said Lot 2 and the south line of the South Business Park Drive, a distance of 821.72 feet to a ½" iron rod set for the northwest corner of the turn out at the intersection of Jade Avenue with the south line of South Business Park Drive;

THENCE South 45°00'00" East (called South 45°00'00" East) along the said turn out, a distance of 21.21 feet (called 21.21 feet) to the POINT OF BEGINNING and containing 10.00 acres of land, more or less.

Prepared by
Faust Engineering and Surveying, Inc.
Richard F. Faust, P.E.
Registered Professional Land Surveyor No. 4782

EXHIBIT “J”

DEED OF TRUST

Date: _____, 2007

Grantors: Triangle Waste Properties LP

Grantors' Mailing Address
(including county): 1041 Conrad Sauer Road
Houston, TX 77043
ATTN: Joe Swinbank
(Harris County)

Trustee: GUY N. GOODSON

Trustee's Mailing Address
(including county): Germer Gertz, L.L.P.
P.O. Box 4915
Beaumont, Texas 77704
(Jefferson County)

Beneficiary: PORT ARTHUR SECTION 4A ECONOMIC
DEVELOPMENT CORPORATION

Beneficiary's Mailing Address
(including county): 4173 39th Street
Port Arthur, Texas 77642
(Jefferson County)

Note

Date: _____
Date Grantor breaches that certain Economic Incentive
Contract and Loan Agreement dated _____,
2007.

Amount: \$ _____
The sum of Beneficiary's cash grant to Grantee minus credit
earned, pursuant to that certain Economic Incentive Contract and
Loan Agreement dated _____, 2007 (not to exceed
\$374,000).

Maker: Triangle Waste Properties LP

Payee: PAEDC (Beneficiary)

Final Maturity Date: Three (3) years after Grantor breaches that certain Economic Incentive Contract and Loan Agreement dated _____, 2007.

Property: See Attachment for legal description.

The Property covered by this Instrument includes the Land and the following items, whether now owned or hereafter acquired, all of which, including replacements and additions thereto, shall be deemed to be and remain part of the Property covered by this Instrument, and all rights, hereditaments and appurtenances pertaining thereto, all of which are referred to as the "Property":

- (a) Any and all buildings, improvements, and tenements now or hereafter attached to or placed, erected, constructed, or developed on the Land;
- (b) all fixtures, now or hereafter attached to Land or Improvements, that are necessary or useful for the complete and comfortable use and occupancy of the Land and Improvements;
- (c) all water and water rights, timber, crops, and mineral interest pertaining to the Land;
- (d) all building materials and fixtures now or hereafter delivered to and intended to be installed in or on the Land or the Improvements;
- (e) all plans and specifications for the Improvements and for any future development of or construction on the Land;
- (f) all Grantor's rights (but not Grantor's obligations) under any contracts relating to the Land or the Improvements;
- (g) all deposits (including tenant security deposits), funds, instruments, notes or chattel paper arising from or by virtue of any transactions related to the Land or the Improvements;
- (h) all Grantor's rights (but not Grantor's obligations) under any documents, contract rights, accounts, commitments, construction contracts (and all payment and performance bonds, statutory or otherwise, issued by any surety in connection with any such construction contracts, and the proceeds of such bonds), architectural contracts and engineering contracts arising from or by virtue of any transactions related to the Land or the Improvements;
- (i) all permits, licenses, franchises, certificates, and other rights and privileges now owned or held or hereafter obtained in connection with the Land and the Improvements;
- (j) all development rights, utility commitments, water and wastewater taps, capital improvement project contracts, utility construction agreements with any governmental authority, including municipal utility districts, or with any utility companies (and all refunds and reimbursements thereunder) relating to the Land or the Improvements;
- (k) all proceeds arising from or by virtue of the sale, lease or other disposition of the Land or the Improvements;
- (l) all proceeds (including premium refunds) of each policy of insurance relating to the Land and the Improvements;

- (m) all proceeds from the taking of any of the Land or the Improvements or any rights appurtenant thereto by right of eminent domain or by private or other purchase in lieu thereof, including change of grade of streets, curb cuts or other rights of access, for any public or quasi-public use under any law;
- (n) all right, title, and interest of Grantor in and to all streets, roads, public places, easements, and rights-of-way, existing or proposed, public or private, adjacent to or used in connection with, belonging or pertaining to the Land;
- (o) all of the Leases, rents, royalties, bonuses, issues, profits, revenues, or other benefits of the Land or the Improvements, including without limitation cash or securities deposited pursuant to leases to secure performance by the tenants of their obligations thereunder (subject to the Assignment of Rents made in Article V below); and
- (p) other interest of every kind and character that Grantor now has or at any time hereafter acquires in and to the Land and the Improvements, including rights of ingress and egress and all reversionary rights or interests of Grantor with respect to such property and all of Grantor's rights (but not Grantor's obligations) under any covenants, conditions, and restrictions for the Land, as the same may be amended from time to time, including Grantor's rights, title, and interests thereunder as declarant or developer, if applicable.

Senior (prior) Lien (including recording information): Deed of Trust, dated _____, 2007, and recorded at _____, for the benefit of Texas State Bank, which Deed of Trust shall be senior in priority to this Deed of Trust up to the amount of \$4,000,000.00 of indebtedness (the "Senior Deed of Trust").

Other Exceptions to Conveyance and Warranty:

This conveyance is made expressly SUBJECT TO any and all restrictions, covenants, conditions, easements, right-of-ways, and mineral and/or royalty reservations of record, if any, affecting this Property and the Senior Deed of Trust up to \$4,000,000.00 of indebtedness.

For value received and to secure payment of the note, Grantor conveys the property to Trustee in trust. Grantor warrants and agrees to defend the title to the property. If Grantor performs all the covenants and pays the amount of indebtedness on the Note which relates to Beneficiaries cash grants to Grantor (not to exceed \$500,000) plus all interest attributable to such indebtedness according to its terms, this deed of trust shall have no further effect, and Beneficiary shall release it at Grantor's expense.

Grantor's Obligations

Grantor agrees to:

1. keep the property in good repair and condition;
2. pay all taxes and assessments on the property when due and by January 31 of the year immediately following, furnishing Beneficiary copies of tax receipts showing that all such taxes and assessments have been paid;
3. preserve the lien's priority as it is established in this deed of trust but subject to the Senior Deed of Trust up to \$4,000,000.00 of indebtedness;

4. maintain, in a form reasonably acceptable to Beneficiary, an insurance policy that
 - a. covers all improvements for their full insurable value as determined when the policy is issued and renewed, unless Beneficiary approves a smaller amount in writing;
 - b. contains an 80% coinsurance clause;
 - c. provides fire and extended coverage, including windstorm coverage;
 - d. protects Beneficiary with a standard mortgage clause;
 - e. provides flood insurance at any time the property is in a flood hazard area; and
 - f. contains such other coverage as Beneficiary may reasonably require;
5. comply at all times with the requirements of the 80% coinsurance clause;
6. deliver the insurance policy to Beneficiary and deliver renewals to Beneficiary at least ten days before expiration;
7. keep any buildings occupied as required by the insurance policy; and
8. provide the Beneficiary herein copies of all notices, financial statements, reports and other information provided to the senior lien holder;
9. punctually pay or cause to be paid the principal and interest to become due in respect of the senior debt according to the terms thereof;
10. perform all of its obligations under the senior lender documents;
11. immediately report to Beneficiary in writing any default by Grantor under the senior lien;
12. immediately report to Beneficiary in writing any tax, judgment, materialmen's or mechanic's lien on the Property;
13. in the event the Beneficiary herein reasonably deems itself reasonably insecure, because the value of the Property is close to equaling the total amount of indebtedness secured or represented by this Deed of Trust and the Senior Deed of Trust, upon notice thereof to Grantor, provide the Beneficiary with (or cause the Beneficiary to be provided with) such additional collateral as may reasonably secure the Beneficiary's position, subject to the rights and restrictions imposed by the senior lien holder; and
14. arrange for senior lien holder to provide notice of default to Beneficiary.

Grantor shall not, without the prior written consent of Beneficiary,

1. materially alter any of the terms and conditions of the senior debt or increase the maximum indebtedness \$4,000,000.00 available to Grantor under the senior lender documents; or
2. further encumber the Property except for the Senior Deed of Trust.

Beneficiary's Rights

1. Beneficiary may appoint in writing a substitute or successor trustee, succeeding to all rights and responsibilities of Trustee;
2. If the proceeds of the note are used to pay any debt secured by senior (prior) liens, Beneficiary is subrogated to all of the rights and liens of the holders of any debt so paid;
3. Subject to the provisions of the Covenants and Restrictions recorded in the Real Property Records of Jefferson County, Texas, and the Senior Deed of Trust which shall control and supercede anything herein contained to the contrary, Beneficiary

shall apply any proceeds received under the insurance policy to repair or replace damaged or destroyed improvements covered by the policy, unless Grantor is in default of Note or Deed of Trust in which case insurance proceeds may be applied to reduce Grantor's obligation under Note or Deed of Trust;

4. If Grantor fails to perform any of Grantor's obligations, Beneficiary may perform those obligations and be reimbursed by Grantor on demand at the place where the note is payable for any sums so paid, including attorney's fees, plus interest on those sums from the dates of payments at the rate stated in the note for matured, unpaid amounts. The sum to be reimbursed shall be secured by this deed of trust.
5. If Grantor defaults on the note or fails to perform any of Grantor's obligations or if default occurs on the senior lien note or Senior Deed of Trust, and the default continues after Beneficiary gives Grantor notice of the default and the time within which it must be cured, as may be required by law or by written agreement, then Beneficiary may:
 - a. Declare the unpaid principal balance and earned interest on the note immediately due; and
 - b. Request Trustee to reconvey property to Beneficiary following a non-judicial foreclosure as required by law by a proper recorded warranty deed.

Trustee's Duties

If requested by Beneficiary to foreclose this lien, Trustee shall:

1. Either personally or by agent give notice of the foreclosure sale as required by the Texas Property Code as then amended;
2. Sell and convey all of part of the property to the highest bidder for cash with a general warranty binding Grantor subject to prior liens and other exceptions to conveyance and warranty; and
3. From the proceeds of the sale, pay in this order:
 - a. Expenses of foreclosure;
 - b. To Beneficiary, the full amount of principle, interest, attorney's fees, and other charges due and unpaid;
 - c. Any amount required by law to be paid before payment to Grantor; and
 - d. To Grantor, any balance.

General Provisions

1. If any of the property is reconveyed under this deed of trust following a non-judicial foreclosure as required by law, Grantor shall immediately surrender possession to the Beneficiary. If Grantor fails to do so, Grantor shall become a tenant at sufferance of the Beneficiary, subject to an action for forcible detainer.
2. Recitals in any Trustee's deed conveying the property will be presumed to be true.
3. Proceeding under this deed of trust, filing suit or pursuing any other remedy will not constitute an election of remedies.
4. This lien shall remain superior to liens later created even if the time of payment of all or part of the note is extended or part of the property is released.
5. If any portion of the note cannot be lawfully secured by this deed of trust, payments shall be applied first to discharge that portion.

6. Grantor assigns to Beneficiary all sums payable to or received by Grantor from condemnation of all or part of the property, from private sale in lieu of condemnation, and from damages caused by public works or construction on or near the property. After deducting any expenses incurred, including attorney's fees, Beneficiary may release any remaining sums to Grantor or apply such sums to reduce the note. Beneficiary shall not be liable for failure to collect or to exercise diligence in collecting any such sums.
7. Grantor assigns to Beneficiary absolutely, not only as collateral, all present and future rent and other income and receipts from the property. Leases are not assigned. Grantor warrants the validity and enforceability of the assignment. Grantor may as Beneficiary's licensee collect rent and other income and receipts as long as Grantor is not in default under the note or this deed of trust. Grantor will apply all rent and other income and receipts to payment of the note and performance of this deed of trust, but if the rent and other income and receipts exceed the amount due under the note and deed of trust, Grantor may retain the excess. If Grantor defaults in payment of the note or performance of this deed of trust, Beneficiary may terminate Grantor's license to collect and then as Grantor's agent may rent the property if it is vacant and collect all rent and other income and receipts. Beneficiary neither has nor assumes any obligations as lessor or landlord with respect to any occupant of the property. Beneficiary may exercise Beneficiary's rights and remedies under this paragraph without taking possession of the property. Beneficiary shall apply all rent and other income and receipts collected under this paragraph first to expenses incurred in exercising Beneficiary's rights and remedies and then to Grantor's obligations under the note and this deed of trust in the order determined by Beneficiary. Beneficiary is not required to act under this paragraph, and acting under this paragraph does not waive any of Beneficiary's other rights or remedies. If Grantor becomes a voluntary or involuntary bankrupt, Beneficiary's filing a proof of claim in bankruptcy will be tantamount to the appointment of a receiver under Texas law.
8. Interest on the debt secured by this deed of trust shall not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law; any interest in excess of that maximum amount shall be credited on the principal of the debt or, if that has been paid, refunded. On any acceleration or required or permitted prepayment, any such excess shall be canceled automatically as of the acceleration or prepayment or, if already paid, credited on the principal of the debt or, if the principal of the debt has been paid, refunded. This provision overrides other provisions in this and all other instruments concerning the debt.
9. When the context requires, singular nouns and pronouns include the plural.
10. The term note includes all sums secured by this deed of trust.
11. This deed of trust shall bind, insure to the benefit of, and be exercised by successors in interest of all parties.
12. If Grantor and Maker are not the same person, the term Grantor shall include Maker.
13. If all or any part of the Property is sold, conveyed, leased for a period longer than three (3) years, leased with the option to purchase, or otherwise sold (including

contract for deed), without the prior written consent of Beneficiary, then Beneficiary may at its option declare the outstanding balance of the Note(s), plus accrued interest to be immediately due and payable. The creation of a subordinate lien, any sale thereunder, any deed under threat or order of condemnation, any conveyance solely between Makers, the passage of title by reason of the death of a Maker or by operation of law shall not be construed as a sale or conveyance of the Property.

14. THIS DEED OF TRUST IS GRANTED IN CONJUNCTION WITH THAT CERTAIN ECONOMIC INCENTIVE CONTRACT AND LOAN AGREEMENT DATED _____, 2007.
15. Notwithstanding any provision herein to the contrary, any and all covenants, warranties, grants, liens, assignments (including assignments of rents or leases), security interests, transfers and conveyances set forth herein, and all other terms and provisions hereof and all rights and benefits of Beneficiary hereunder are expressly subject to, inferior and subordinate to (a) all covenants, warranties, grants, liens, assignments (including assignments of rents or leases), security interests, transfers and conveyances created under and pursuant to, and all terms and provisions of, that certain Deed of Trust, effective as of _____, 2007 covering the Property, executed by Beneficiary to _____, Trustee for the benefit of Texas State Bank and other loan documents executed in connection therewith (together with any and all extensions, renewals, modifications, substitutions and/or amendments thereof) securing that certain promissory note of even date therewith in the principal amount of \$ _____ executed by Grantor and payable to the order of Texas State Bank, and any extensions, renewals, modifications, substitutions and/or amendments thereof up to but not to exceed an indebtedness of \$4,000,000.00 in favor of Texas State Bank.

SIGNED AND AGREED TO on the _____ day of _____, 200__.

**TRIANGLE WASTE PROPERTIES LP,
a Texas limited partnership**

**By: Triangle Waste Solutions, LLC
its General Partner,
a Texas limited liability company**

By: _____
Joseph B. Swinbank, President

STATE OF _____

§

§

COUNTY OF _____

§

BEFORE ME, THE UNDERSIGNED Notary Public, on this day personally appeared Joseph W. Swinbank, President of Triangle Waste Solutions, LLC, a Texas limited liability company and General Partner of Triangle Waste Properties, LP, a Texas limited partnership 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 such entities, for the purposes and consideration therein expressed, and the Capacities therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the ____ day of _____, 200__.

Notary Public, State of Texas

AFTER RECORDING RETURN TO:

Guy N. Goodson
Germer Gertz, L.L.P.
P.O. Box 4915
Beaumont, Texas 77704

ATTACHMENT

DESCRIPTION OF A
10.00 ACRE TRACT OUT OF LOT 2
OF THE
PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION BUSINESS PARK
PORT ARTHUR, TEXAS

APRIL 16, 2007

That certain 10.00 acre tract out of Lot 2 of the Port Arthur Economic Development Corporation Business Park, a plat recorded in Clerk's File #2005044721 of the Official Real Property Records of Jefferson County, Texas; said 10.00 acre tract being more particularly described by metes and bounds as follows:

(Note: the concrete monuments found in the center line of South Business Park Drive were used for the basis of bearings)

COMMENCING at a concrete monument found in the center line of the intersection of Jade Avenue and South Business Park Drive;

THENCE South 35°32'26" West, a distance of 64.52 feet to a ½" iron rod set for the southeast corner of a turn of a turn out on Jade Avenue and being the POINT OF BEGINNING;

THENCE South (called South) along the west line of Jade Avenue and the east line of Lot 2, a distance of 342.63 feet (called 342.63 feet) to a ½" iron rod set for the northeast corner of Reserve C and being an angle point in the east line of the said 10.00 acre tract;

THENCE West (called West) along the north line of Reserve C, a distance of 150.00 feet (called 150.00 feet) to a ½" iron rod set for the northwest corner of said Reserve C and being an interior corner of the east line of the said 10.00 acre tract;

THENCE South (called South) along the west line of Reserve C, a distance of 150.00 feet to a ½" iron rod set for the southwest corner of said Reserve C and being an angle point on the east line of the said 10.00 acre tract;

THENCE East (called East) along the south line Reserve C, a distance of 150.00 feet (called 150.00 feet) to a ½" set for the southeast corner of said Reserve C and a point on the east line of said Lot 2, a point on the west line of Jade Avenue, and an angle point in the east line of the said 10.00 acre tract;

THENCE South (called South) along the east line of Lot 2 being the west line of Jade Avenue, a distance of 40.00 feet (called 40.00 feet) to a ½" iron rod set for the southeast corner of Lot 2 and the southeast corner of the said 10.00 acre tract;

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THENCE North, a distance of 547.63 feet to a ½" iron rod set on the north line of said Lot 2 and the south line of the South Business Park Drive; said iron rod being the northwest corner of the said 10.00 acre tract;

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THENCE South 45°00'00" East (called South 45°00'00" East) along the said turn out, a distance of 21.21 feet (called 21.21 feet) to the POINT OF BEGINNING and containing 10.00 acres of land, more or less.

Prepared by
Faust Engineering and Surveying, Inc.
Richard F. Faust, P.E.
Registered Professional Land Surveyor No. 4782

EXHIBIT “ B”

TO THE

RESOLUTION