

RESOLUTION NO. 07-444

A RESOLUTION AS IT PERTAINS TO A SUBORDINATION
AGREEMENT WITH TRIANGLE WASTE

WHEREAS, on September 19, 2007, the EDC Board of Directors approved a Subordination Agreement as it pertains to its lien with Triangle Waste in a standard form to be approved by the City Attorney and if that could not be provided, personal guaranties would need to be provided.

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

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

Section 2. That the City Council approves the subordination agreement or agreements as it pertains to Triangle Waste, in substantially the same form as attached hereto as Exhibit "A".

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

READ, ADOPTED AND APPROVED on this 25th day of

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

Mayor Prince;
Councilmembers Mayor Pro Tem Vinopal;
z.pr14373

Chatman, Jones, Henderson and
Williamson.

NOES: None.

Deloris P. Prewitt
MAYOR

ATTEST:

Evangelina Green
CITY SECRETARY

APPROVED AS TO FORM:

SEE CONFIDENTIAL MEMO
CITY ATTORNEY

APPROVED FOR ADMINISTRATION:

CITY MANAGER

EXHIBIT "A"

SUBORDINATION AND PRIORITY AGREEMENT

Date: September __, 2007

WHEREAS, the EDC and Triangle Waste have entered into incentive agreement at the Spur 93 Business Park that was approved by Resolution No. 07-344 as to construct a building and improvements in an approximately 10 acre tract out of Lot 2 of the Port Arthur Economic Development Corporation Business Park, a plat recorded in Clerk's File #2005044721; and

WHEREAS, said incentive agreement provide that the PAEDC would have a security interest in a \$374,000 Certificate of Deposit at Texas State Bank; and

WHEREAS, said agreement also provide for a performance deed of trust which could be subject to a senior lien of a bona fide unrelated lender as the lending bank, said lien not to exceed \$4,000,000 of indebtedness; and

WHEREAS, the EDC has deeded this property to Triangle Waste with covenants and conditions as to maintenance of said property and compliance with the Deed Restrictions; and

WHEREAS, a performance deed of trust was also filed for record on said tract, per County Clerk's File No. 2007031914; and

WHEREAS, the EDC and Triangle Waste have entered into 2006 incentive agreement at the Spur 93 Business Park that was approved by Resolution No. 06-091 and later amended by Resolution No. 07-343 as to construct a building and improvements in an approximately 10 acre site, specifically Lot 4, Block 1 on South Business Drive; and

WHEREAS, said agreement as amended provided a second deed of trust to the original incentive agreement subject to the senior lien of a bona fide unrelated lender as the lending bank, said senior lien not to exceed \$4,000,000 of indebtedness; and

WHEREAS, there is an existing building on Lot 4, Block 1 on South Business Drive; and

WHEREAS, a deed of trust was filed by the EDC on said 10 acre site on Lot 4, Block 1 on South Business Drive, recorded in Clerk's File # 2006025290; and

WHEREAS, Wachovia Bank desires to lend \$4,480,000 to Triangle Waste as to construct a building and improvements on the 10 acre tract out of Lot 2 and obtain a first lien security interest on both tracts as follows:

Senior Lender: Wachovia Bank, National Association
Address: 4000 Twin City Hwy.
Groves, Texas 77619

Junior Lender: City of Port Arthur Section 4A Economic Development Corporation
Address: 4173 39th Street
Port Arthur, Texas 77642

Borrower: Triangle Waste Properties LP
Address: 1000 South Business Park Drive
Port Arthur, Texas 77640

Property: Tract I: Lot Number Four (4) in Block Number One (1) of the Replat of Block One (1), PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION BUSINESS PARK to the City of Port Arthur, Jefferson County, Texas, as the same appears upon the map or plat thereof, on file and of record under County Clerk's File No. 2006021509 Official Public Records of Real Property of Jefferson County, Texas.

Tract II: 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 on Exhibit A attached hereto and incorporated herein for all intents and purposes.

(i) All those certain tracts of land in the City of Port Arthur, County of Jefferson, State of Texas described above (the "Land"); (ii) all buildings and improvements now or hereafter erected on the Land; (iii) all fixtures, machinery, equipment and other articles of real, personal or mixed property attached to, situated or installed in or upon, or used in the operation or maintenance of, the Land or any buildings or improvements situated thereon, whether or not such real, personal or mixed property is or shall be affixed to the Land; (iv) all building materials, building machinery and building equipment delivered on site to the Land during the course of, or in connection with, any construction, repair or renovation of the buildings and improvements situated or to be situated thereon; (v) all leases, licenses or occupancy agreements of all or any part of the Land and all extensions, renewals, and modifications thereof, and any options, rights of first refusal or guarantees relating thereto; all rents, income, revenues, security deposits, issues, profits, awards and payments of any kind payable under the leases or otherwise arising from the Land; (vi) all contract rights, accounts receivable and general intangibles relating to the Land or the use, occupancy, maintenance, construction, repair or operation thereof;

all management agreements, franchise agreements, utility agreements and deposits; all maps, plans, surveys and specifications; all warranties and guaranties; all permits, licenses and approvals; and all insurance policies; (vii) all estates, rights, tenements, hereditaments, privileges, easements, and appurtenances of any kind benefiting the Land; all means of access to and from the Land, whether public or private; and all water and mineral rights; and (viii) all "Proceeds" of any of the above-described property, which term shall have the meaning given to it in the Uniform Commercial Code of the jurisdiction where this Deed of Trust is recorded (the "UCC"), whether cash or non-cash, and including insurance proceeds and condemnation awards; and all replacements, substitutions and accessions thereof.

Senior Lien Documents: Deed of Trust, Assignment of Rents and Security Agreement dated August __, 2007, by and between Triangle Waste Properties LP and Wachovia Bank, National Association.

Junior Lien Documents: 1. Deed of Trust executed by Triangle Waste Properties LP to Kathleen A. McGlynn, Trustee, dated June 12, 2006, filed for record on June 29, 2006 and recorded under County Clerk's File No. 2006025290 Official Public Records of Real Property of Jefferson County, Texas, for the benefit of Port Arthur 4A Economic Development Corporation, given to secure the payment of one certain promissory note for the original sum of Beneficiary's cash grant minus credit earned, pursuant to the certain Economic Incentive Contract and Loan Agreement dated April 7, 2006.

2. Performance Deed of Trust dated August 1, 2007, by and between Triangle Waste Properties LP and Port Arthur Section 4A Economic Development Corporation, filed for record on August 14, 2007 and recorded under County Clerk's File No. 2007031914 Official Public Records of Real Property of Jefferson County, Texas.

Regardless of the frequency or manner of renewal, extension, change, or alteration of the notes, liens, or obligations held by Senior Lender or owed to Senior Lender by Borrower, Junior Lender subordinates all its liens and interests in or against any part of the Property and subordinates all liens and interests described in the Junior Lien Documents to (a) the liens and interests of Senior Lender in or against any part of the Property and (b) the liens described in the Senior Lien Documents.

Regardless of the frequency or manner of renewal, extension, change, or alteration of the notes, liens, or obligations held by Senior Lender or owed to Senior

Lender by Borrower, Borrower, Senior Lender, and Junior Lender agree that the liens and interests described in the Senior Lien Documents are prior and superior to (a) the liens in favor of Junior Lender against all or any part of the Property and (b) the liens described in the Junior Lien Documents, so that any foreclosure against any of the Property by Senior Lender or the owner or holder of any liens or interests under any of the Senior Lien Documents or the obligations secured by the Senior Lien Documents shall foreclose and discharge all security interests, liens, and mortgages against any part of the Property securing any notes or obligations to Junior Lender and any purchaser at any such foreclosure sale shall take title to the Property or part thereof purchased free of all security interests, liens, and mortgages securing any notes or obligations to Junior Lender, and free and clear of the liens described in the Junior Lien Documents.

Borrower, Senior Lender, and Junior Lender agree to take all actions and execute all documents requested by Lender necessary for performance of this agreement.

This agreement is performable in the Jefferson County, Texas.

Notwithstanding any other term in this agreement, the principal amount advanced under the Senior Lien Documents shall not exceed a total of \$4,480,000 in principal as to Tracts I and II. The foregoing maximum shall not apply to amounts other than principal, such as amounts advanced for insurance, taxes, repairs or otherwise and shall not apply to interest or costs of collection or enforcement or protection of the rights of Senior Lender. Notwithstanding any other term in this agreement, Senior Lender agrees not to increase the maximum principal amount of the indebtedness secured by the Senior Lien Documents.

Notwithstanding any other term in this agreement, the liens under the Senior Lien Documents shall not extend to the Certificates of Deposit (\$374,000) plus accrued interest of Triangle Waste, Joseph B. Swinbank, Poarch Family Limited Partnership) that are pledged toward the Incentive Agreement which are being presently held by Texas State Bank.

Notwithstanding any other term in this agreement, the Senior Lien Documents shall not affect the viability and enforceability of the covenants, easements and restrictions as denoted in the Special Warranty Deed from the EDC to Triangle Waste dated June 12, 2006, except to the extent the enforcement of such covenants, easement and restrictions is secured by any of the Junior Lien Documents in which case the Senior Lien Documents do impair and affect Junior Lender's rights under the Junior Lien Documents..

Notwithstanding any other term in this agreement, the senior lien of Wachovia shall not affect the viability and enforceability of the covenants, easements and restrictions as denoted in the Special Warranty Deed from the EDC to Triangle Waste dated August 1, 2007 which includes but is not limited to the deed restrictions and the performance criteria for metal processing, except to the extent the enforcement of such covenants, easement and restrictions is secured by any of the Junior Lien Documents in

which case the Senior Lien Documents do impair and affect Junior Lender's rights under the Junior Lien Documents..

Senior Lender agrees to give to Junior Lender twenty days notice in writing before any foreclosure sale under the Senior Lien Documents.

Junior Lender agrees to give to Senior Lender twenty days notice in writing before any foreclosure sale under the Junior Lien Documents.

This instrument shall bind, inure to the benefit of, and be exercised by successors in interest of all parties.

BORROWER:

TRIANGLE WASTE PROPERTIES LP

By: Triangle Waste Properties GP, LLC, a
Texas limited liability company, general partner

By: _____
J OSEPH B. SWINBANK, President

THE STATE OF TEXAS }
COUNTY OF JEFFERSON }

BEFORE ME, the undersigned authority, on this day personally appeared Joseph B. Swinbank, President of Triangle Waste Properties GP, LLC, a Texas limited liability company,

☐ known to me
☐ proved to me on the oath of
or through _____

to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacities therein stated, both individually and on behalf of Triangle Waste Properties GP, LLC as the act and deed of said Triangle Waste Properties GP, LLC.

GIVEN UNDER MY HAND AND SEAL OF OFFICE ON THIS ____ DAY OF
SEPTEMBER, 2007.

NOTARY PUBLIC, STATE OF TEXAS

SENIOR LENDER:

**WACHOVIA BANK, NATIONAL
ASSOCIATION**

By: _____
Its: _____

**THE STATE OF TEXAS }
COUNTY OF JEFFERSON }**

BEFORE ME, the undersigned authority, on this day personally appeared _____ of Wachovia Bank, National Association,

☐ known to me
☐ proved to me on the oath of
or through _____

to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed and in the capacities therein stated, both individually and on behalf of Wachovia Bank, National Association as the act and deed of said Wachovia Bank, National Association.

GIVEN UNDER MY HAND AND SEAL OF OFFICE ON THIS ____ DAY OF
SEPTEMBER, 2007.

NOTARY PUBLIC, STATE OF TEXAS

JUNIOR LENDER:

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

By: _____
Its: _____

By: _____
Its: _____

**THE STATE OF TEXAS }
COUNTY OF JEFFERSON }**

BEFORE ME, the undersigned authority, on this day personally appeared _____ of City of Port Arthur Section 4A Economic Development Corporation,

☐ known to me
☐ proved to me on the oath of
or through _____

to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed and in the capacities therein stated, both individually and on behalf of City of Port Arthur Section 4A Economic Development Corporation as the act and deed of said City of Port Arthur Section 4A Economic Development Corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE ON THIS ____ DAY OF SEPTEMBER, 2007.

NOTARY PUBLIC, STATE OF TEXAS

EXHIBIT "A"

LEGAL DESCRIPTION OF TRACT II

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