

RESOLUTION NO. 08-180

**A RESOLUTION AMENDING RESOLUTION NO. 07-553 AS
IT PERTAINS TO APPROVING A PURCHASE AGREEMENT
BETWEEN CITY OF PORT ARTHUR SECTION 4A ECONOMIC
DEVELOPMENT CORPORATION AND EMBREE ASSET GROUP, INC.**

WHEREAS, the Board of Directors of the City of Port Arthur Section 4A Economic Development Corporation ("PAEDC") authorized a Purchase Agreement between the PAEDC and Embree Asset Group, Inc. ("Embree").

WHEREAS, the Embree desires to buy approximately 2.607 acres of land at the Business Park for \$92,548.50.

WHEREAS, the ultimate use of the 2.607 acres of land at the Business Park will be a lease by Embree to RSC, who will be the tenant.

WHEREAS, RSC will be providing equipment rental to the public.

WHEREAS, the Purchase Agreement was approved by the PAEDC Board of Directors at their September 5, 2007, meeting, in substantially the same form as attached hereto as **Exhibit "A"**.

WHEREAS, the City of Port Arthur has agreed to the sale of the property in accordance with Resolution No. 07-553.

WHEREAS, Embree has requested two modifications in the Conditions of Sale as to the sale of the 2.607 acre tract in the Port Arthur Business Park including:

- 1) an agreement that any third party purchaser of the property from Embree would be identified to the PAEDC Board prior to closing of the sale of the property by Embree; however, such third party purchaser would not be required to present financial or credit information; and

- 2) as the property is proposed for occupancy by RSC whose business necessitates outside storage, Embree has requested that the PAEDC Board of Directors allow outside storage on the property.

WHEREAS, the PAEDC Board of Directors has reviewed these requests by Embree and has consented to these two modifications in the condition for occupancy of the property the Business Park in accordance with the attached Agreement on Modification of Conditions for property located in the PAEDC Business Park (the "Agreement") in substantially the same form as attached hereto as **Exhibit "B"**.

WHEREAS, the EDC attorney on April 18, 2007 has made minor modifications thereon as to clarify the language which is delineated in Exhibit "B"

WHEREAS, the PAEDC now desires that the Port Arthur City Council amend its Resolution No. 07-553 to provide for the sale of the property to Embree or its assignees with the modifications in the Conditions of Sale as outlined in the Agreement.

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 Conditions of Sale for property located in the PAEDC be modified in substantially the same form as attached hereto as **Exhibit "B"** for sale of property to Embree,.

Section 3. That except as provided herein the sale of the property is ratified and affirmed as previously approved in Resolution No. 07-553.

Section 4. That a copy of the caption of this Resolution be spread upon the Minutes of the City Council.

READ, ADOPTED AND APPROVED on this 22nd day of April A.D.,

2008, at a Meeting of the City Council of the City of Port Arthur, Texas, by the following

vote: AYES:

Mayor Prince; Mayor Pro Tem Sinegal

Councilmembers Chatman, Jones, Henderson
Flood, Beard, Williamson &
Lewis

NOES: None

Deloris Prince
DELORIS "BOBBIE" PRINCE, MAYOR

ATTEST:

TERRI HANKS
TERRI HANKS, ACTING CITY SECRETARY
(on behalf of)

APPROVED:

Floyd Batiste
FLOYD BATISTE, PAEDC CEO

APPROVED AS TO FORM:

Mark Sokolow
MARK T. SOKOLOW, CITY ATTORNEY

EXHIBIT "A"

to the Resolution

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT ("Agreement") is entered into, and is effective as of the date the Escrow Holder dates this Agreement as provided herein (the "Effective Date"), by and between the **City of Port Arthur Section 4A Economic Development Corporation** ("Seller") and **Embree Asset Group, Inc.**, a Texas Corporation or its permitted assignee ("Buyer").

RECITALS:

A. Seller is the owner of certain real property together with all improvements located thereon, which is located at or near the **City of Port Arthur Section 4A Economic Development Corporation Business Park**.

B. Seller desires to sell to Buyer and Buyer desires to buy approximately 2.607 acres, surface only without minerals (as described in "RECITALS A" above and as more particularly described on **Exhibit "A"** attached hereto) (the "Property") from Seller upon the terms and subject to the conditions contained herein and incorporated by reference herein as if fully set forth.

NOW, THEREFORE, in consideration of the promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1 PURCHASE PRICE

1.1 **Price and Payment.** The Purchase Price for the Property, together with all improvements located thereon, shall be **Ninety Two Thousand, Five Hundred Forty Eight Dollars and 50 Cents (\$92,548.50)** (the "Purchase Price"). The Purchase Price, less all other amounts to be credited towards the Purchase Price, shall be payable to Seller in cash, by certified or bank cashier's check, or by wire transfer, in full upon closing of the Escrow.

1.2 **Deposit.** Within **Five (5) days** of the Effective Date, Buyer shall deposit with **Beaumont Title Company-Joe Deshotel, 275 N. 18th Street, Beaumont, Texas 77707, (409) 212-1400** (the "Escrow Holder") a cash deposit, which shall be deposited into an interest-bearing account, in the amount of **Ten Thousand Dollars (\$10,000.00)** ("the Deposit"). The Deposit, including interest, shall be applied as a credit against the Purchase Price at the closing of the Escrow.

1.3 **Refund of Deposit.** The Deposit, together with any interest accrued thereon, shall be fully refundable to Buyer if Seller breaches or defaults in the performance of any of its obligations under this Agreement, or if Buyer elects to terminate this Agreement pursuant to any of the contingencies or conditions set forth herein.

ARTICLE 2
PRECLOSING MATTERS

2.1 Delivery of Due Diligence Materials. On or before **Fifteen (15)** days following the Effective Date, Seller shall deliver to Buyer the following documents (the "Due Diligence Materials"):

2.1.1. A preliminary title report or commitment ("Title Commitment") for title insurance for the Property issued by Escrow Holder, together with full and complete copies of all documents identified as exceptions therein.

2.1.2. To the extent such materials are in Seller's possession or subject to Seller's reasonable control, plans and specifications; ALTA Survey(s); all structural, seismic and geological investigations and reports; all environmental investigations and reports; Reciprocal Easement Agreement(s); **Covenants, Conditions, & Restrictions (CC&R's)**; and all agreements (including, but not limited to, service and maintenance agreements) relating to the operation, use and maintenance of the Properties for which Buyer will be required to assume any responsibility or liability after the Closing Date.

2.2 Survey. On or before **Sixty (60)** days from the Effective Date, Buyer shall cause to be delivered to both the Escrow Holder and the Seller a current and updated Boundary Survey of the Property, with **Exhibit "A"** being conformed hereto, at Buyer's sole cost and expense, which survey shall be prepared by a registered land surveyor and shall be certified to Seller and Buyer, and which shall include a metes and bounds legal description of the Property, a calculation of the land area of the Property to the nearest one-thousandth (.001) of an acre (together with the number of square feet of area contained therein), and the area, dimensions and locations of all recorded easements affecting or benefiting the Property.

2.3 Title Commitment. Buyer shall have **Thirty (30)** days after receipt of both the Title Commitment and Survey within which to object in writing to any exceptions stated in the Title Commitment or to approve the Title Commitment. In the event that Buyer shall so object to any exceptions, Seller shall have **Twenty (20)** days within which to resolve or eliminate such exceptions or to notify Buyer in writing of its inability or unwillingness to remove such exceptions. In the event Seller shall so notify Buyer within said period, Buyer, by written notice to Seller, may do one of the following: (i) terminate this Agreement and be released from all duties and obligations hereunder; or (ii) waive such exceptions and proceed with the transaction contemplated herein. Any exceptions listed in the Title Commitment to which Buyer shall not object within such 30 day period (or which Buyer shall have approved or waived affirmatively) shall be deemed to be "Permitted Exceptions."

2.4 Right of Entry and Indemnification. Buyer and its agents shall have the right to enter upon the Property upon reasonable notice to Seller for the purpose of making such surveys, examinations, soil and engineering tests and other tests and determinations as Buyer shall elect (collectively "Tests"). Buyer shall indemnify, defend and hold Seller harmless from (i) any and all liabilities, claims, damages and expenses (including attorneys' fees, court costs, and costs of investigation) arising out of or in connection with the Tests or the entry unto the Property by

Buyer or its agents and (ii) any mechanics' liens on the Property arising from the Tests. In addition, Buyer shall immediately repair any physical damage to the Property arising out of the Tests.

2.5 Feasibility Period. In addition to the matters covered in Section 2 above and Section 3 below, buyer shall have the right to terminate this agreement for any reason within **Ninety (90)** days from the Effective Date. At its sole option, Buyer shall have the right to extend the Feasibility period for **two (2)** additional periods of **Thirty (30)** days each, provided notice of such election is given prior to the expiration of the Feasibility Period. For the right to extend the Feasibility Period for **Thirty (30)** additional days the Buyer shall deposit the sum of **Five Thousand Dollars (\$5,000.00)** as Additional Earnest Money with the Escrow Holder for each extension exercised. The Additional Earnest Money deposit shall be treated in the same fashion as the Initial Earnest Money deposit.

If the Property zoning classification is not proper in order to build and operate an equipment rental services business (the "Facility"), then Seller shall be responsible for changing the existing zoning classification to a new classification which will allow for the construction and operation of the Facility. If necessary, the Feasibility Period shall be extended in order to allow the time necessary to obtain any necessary zoning change. Buyer agrees to cooperate with Seller and to provide such information, take such action(s) and execute such documents as may be necessary to affect any requisite zoning change.

2.6 Deposit Non-Refundable. Upon satisfaction of all of the conditions described elsewhere in Article 2 and below in Article 3.5 of this Agreement, Buyer's Deposit shall become non-refundable (except in the event of a Seller default) and applicable to the Purchase Price.

2.7. Road. Seller shall construct a road within a publicly dedicated right-of-way in and along a tract of land immediately adjacent to and west of the Property for a distance of approximately 600 feet which will provide driveway access to the Property. Seller shall have the road constructed so that one or two lane traffic shall be available to the Property within 180 days from the Closing Date (as herein defined). In consideration of the construction of the road by Seller or on its behalf, Buyer will deposit upon the Closing Date the sum of \$124,000 with the Escrow Holder which shall be deposited in an interest bearing account. The amount of \$124,000 (the "Road Deposit") shall be withdrawn and paid by the Escrow Holder to Seller upon receipt of a certification from the Seller and/or its engineers that the road has been completed and accepted by Seller. If the road is not completed within 180 days from the Closing Date, the Escrow Holder shall withdraw from the Road Deposit the sum of \$5,000 per month and tender such amount by check or wire transfer to Buyer. All interest accruing on the Road Deposit after release of all funds to either Seller or Buyer shall be payable by the Escrow Holder to Buyer.

ARTICLE 3
CLOSING CONDITIONS

The obligation of Buyer to purchase the Property is subject to the satisfaction or waiver by Buyer of the conditions set forth below, which conditions are for the sole benefit of Buyer and which may be waived, in whole or in part, by Buyer:

3.1 Title. On or before the Closing Date, Escrow Holder shall be ready, willing and able to issue to Buyer or Buyer's assignee its ALTA or CLTA form policy of title insurance (or its nearest equivalent in the jurisdiction where the Property is located) insuring Buyer in the sum of the Purchase Price that title to the Property is vested in Buyer, together with such endorsements as Buyer may reasonably require and subject only to (i) liens for then-current real property taxes, bonds and assessments not delinquent, (ii) the Permitted Exceptions, (iii) any other matters to which Buyer shall agree in writing.

3.2 Assignment. At the Closing, Seller shall assign all of Seller's right, title and interest in and to any leases and to any personal property of Seller located at the Property (if any) and used in the operation and maintenance thereof, and any other agreements entered into between Seller and third parties as may be approved by Buyer pursuant to Article 2 above, and shall deliver the originals thereof to Buyer.

3.3 Seller's Warranties. On the Closing Date, Seller shall not be in material breach of any of Seller's Warranties and Representations set forth in Article 6 below.

3.4 Governmental Approvals. Buyer shall proceed to closing only after obtaining all necessary governmental approvals, including but not limited to the proper zoning for the Facility, legal lot status (final plat), any required conditional or special use permits, and all required building permits for the Facility. Seller agrees, upon Buyer's request, to cooperate with Buyer in connection with Buyer's efforts to secure such approvals, provided any such requested cooperation is reasonable under the circumstances.

3.5 Subdivision. If the Property is not currently legally subdivided in a manner sufficient to permit the Facility, Buyer shall cooperate with Seller in all respects in obtaining Final Plat or Replat approval for the Property and in recording the Final Plat or Replat. All costs of the platting process will be paid by the Seller. Buyer shall have the right to review and approve the Final Plat or Replat, which approval shall not be unreasonably withheld, conditioned or delayed and shall be deemed given if Buyer does not object in writing within ten (10) days following any request for approval.

3.6 Right of Buyer to Assign Purchase Agreement. Buyer shall have the right to assign this Agreement to a third party without the prior approval of Seller. Buyer shall not be required to obtain the approval of the Seller or the City of Port Arthur, Texas prior to any such sale or transaction, and the Buyer shall not be required to present financial and credit information concerning a new buyer to the Seller or the City of Port Arthur, Texas. **The ultimate use of said property shall be initially for an RSC rental service corporation, who will be the tenant.**

3.7 **Drilling Rights.** At or prior to closing, Seller shall confirm to Buyer, to Buyer's satisfaction, that the owner(s) of the mineral interest in the Property has either waived his surface drilling rights, drilling locations have been established in the Seller's Spur 93 Business Park or the ordinances of the City of Port Arthur, Texas as to oil and gas drilling would prohibit drilling on the Property.

ARTICLE 4 CLOSING

4.1 **Escrow.** The purchase and sale transaction contemplated by this Agreement shall be consummated through the Escrow established by the Escrow Holder.

4.2 **Closing Date.** Closing of the Escrow (the "Closing Date") shall take place at a mutually convenient date and time not less than Three (3) business days nor more than Fifteen (15) business days following the satisfaction and/or waiver by Buyer of all conditions described in Articles 2 and 3 of this Agreement.

4.3 **Escrow Instructions.** The parties agree that this Agreement shall serve as Escrow Instructions to Escrow Holder for the transactions contemplated hereunder, and by delivery of this Agreement to Escrow Holder, hereby instruct Escrow Holder to open and complete Escrow and Closing in accordance with the terms hereof. Buyer and Seller shall deposit with Escrow Holder in a timely fashion all funds, documents, supplemental instructions and instruments necessary to consummate the transactions contemplated by this Agreement prior to the Closing Date. Buyer and Seller shall execute and deliver such additional Escrow Instructions to Escrow Holder as Escrow Holder may reasonably require, provided that such instructions are consistent with this Agreement.

4.4 **Prorations.** Assessments, real property taxes and rents (if any) shall be prorated between Buyer and Seller as of the Closing Date.

4.5 **Closing Costs and Charges.** Buyer shall pay for Standard Owner's Policy of Title Insurance, any County or City transfer taxes, Brokerage Commission further described in Article 4.6 of this Agreement and half of Escrow Fees. Buyer shall pay for any extended Title Policy Endorsements and half of Escrow Fees. Any and all other charges shall be paid as customary in Jefferson County, Texas.

4.6 **Brokerage Commissions.** The parties represent and warrant to each other that no broker or finder was instrumental in arranging or bringing about this transaction other than George Scully and that there are no other claims or rights for brokerage commissions or finder's fees in connection with the transactions contemplated by this Agreement. If any other person or entity brings a claim for a commission or finders fee based upon any contact, dealings or communication with Buyer or Seller, then the party through whom such person makes his claim shall defend the other party (the "Indemnified Party") from such claim, and shall indemnify the Indemnified Party and hold the Indemnified Party harmless from any and all costs, damages, claims, liabilities or expenses (including, without limitation, reasonable attorneys' fees and third-party disbursements) incurred by the Indemnified Party in defending against the claim. The

provisions of this Article 4.6 shall survive the closing or, if the purchase and sale is not consummated, any termination of this Agreement. Upon closing and through the escrow at closing, Buyer agrees to pay a real estate commission equal to Two Thousand Four Hundred Twenty-Five Dollars (\$2,425.00).

ARTICLE 5
TRANSFER OF TITLE AND POSSESSION

5.1 **Deed.** Seller shall convey to Buyer or to Buyer's assignee at the Closing, by Special Warranty Deed, fee simple title to the Property, free and clear of any and all recorded and unrecorded liens, claims, obligations, encumbrances, easements, leases, covenants, restrictions and other matters affecting the Property and/or title thereto except only the Permitted Exceptions, current real property taxes, bonds and assessments not yet due and payable, and any other matters to which Buyer shall agree in writing. The form of the Special Warranty Deed to be executed by Seller to Buyer is attached hereto as **Exhibit "B"**.

5.2 **Possession.** Seller shall deliver possession of the Property to Buyer on the Closing Date.

ARTICLE 6
REPRESENTATIONS AND COVENANTS OF SELLER

Seller represents to the best of its knowledge and agrees as follows, which representations, warranties and agreements shall survive the close of escrow and delivery of the Deed to Buyer:

6.1 **Authority.** No further authorization, whether corporate, partnership, individual or otherwise is necessary or required as a condition precedent to Seller entering into this Agreement or performing its obligations hereunder, **except for the consent of the City of Port Arthur, which is required.**

6.2 **Code.** Seller has no knowledge of and has not received any notice of any code violation. To the best of Seller's knowledge, the Property, including all improvements located thereon (if any), complies with all applicable building, health, fire, safety and similar laws, ordinances, regulations and codes. Seller has not received and is not aware of any notices of violations and or notification from the Department of Building and Safety, Health Department or applicable Local, State or Federal Authority that may have jurisdiction over the subject property which are requiring work to be done at the property.

6.3 **Accuracy of Documents.** To the best of Seller's knowledge, Seller represents that all of the documents, information and records provided to Buyer by Seller in connection with the transaction contemplated herein are true in all material respects.

6.4 **Public Improvements; Condemnation.** Other than matters recorded in the public record and listed in the Title Commitment, Seller knows of no intended or contemplated public improvements or condemnation or of any condition of the land that will frustrate or

interfere with Buyer's intended use of the Property. To the best of Seller's knowledge the Property satisfies all federal, state, and local statutes, ordinances and regulations.

6.5 Litigation. To the best of Seller's knowledge, there are no claims, administrative actions or lawsuits, pending or threatened, against Seller relating in any manner to the Property, or on account of the surface or subsurface physical characteristics of the Property. To the best of Seller's knowledge, there are no violations, threatened or pending, of any local, state or federal law or regulation affecting the Property and there are no pending or contemplated assessments, eminent domain, condemnation or other governmental takings of the Property or any part thereof.

6.6 Hazardous Materials; Unsafe Conditions. Except as otherwise disclosed to Buyer by Seller, Seller has received no notice from any local, state or national governmental entity or agency or other source of any hazardous waste condition existing or potentially existing with respect to the Property. To the best of Seller's knowledge, there has been no use, discharge, release, generation, storage or disposal of in, on, or under the Property of any hazardous waste, toxic substances or related materials ("Hazardous Materials") except in accordance with applicable law. For the purposes of this representation and warranty, Hazardous Materials shall include but shall not be limited to, any substance, material, or waste which is or becomes regulated by any local governmental authority, the State in which the Property is located, or the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) as amended from time to time. Further Seller agrees that it will not discharge, release, use, generate, store or dispose, or permit or suffer the discharge, release, use, generation, storage or disposal of any Hazardous Materials above, in, on, under or around the Property in violation of any environmental law prior to the Closing. Seller further warrants that to the best of its knowledge, there is no underground storage tanks located on the Property.

6.7 Condition. From the date of Buyer's inspections through Close of Escrow, Seller will maintain the Property in the same condition, reasonable wear and tear excepted.

6.8 New Agreements. From and after the date hereof, Seller shall not renew, extend or enter into any new lease or service or management contract, or other agreement that affects the use of the Property without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed.

6.9 No Leases. There are no leases, licenses, concessions, or other oral or written agreements affecting the Property that grant to any person or entity the right of occupancy or use thereof, except as may be disclosed in the Title Commitment or otherwise included in the Due Diligence Materials.

6.10 Foreign Person. Seller is not a foreign person or entity under the Foreign Investment in Real Property Tax Act of 1980, as amended, and no taxes or withholding under the Foreign Investment in Real Property Tax Act of 1980, as amended, shall be assessed or applied to Buyer in connection with the transaction contemplated hereby.

6.11 Closing Warranties. All warranties and representations contained in this Agreement, except as otherwise disclosed in writing, shall be deemed to have been repeated by Seller as of the Closing, and shall be true and accurate as of the Closing.

6.12 Property Restrictions. The Property currently complies with all applicable ordinances, laws, zoning, regulation and deed restrictions.

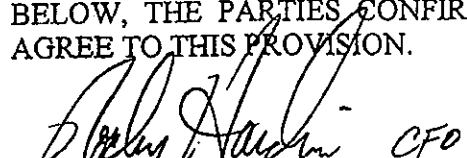
ARTICLE 7
TERMINATION AND DAMAGES

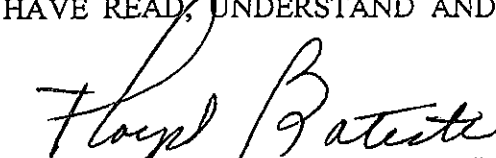
7.1 Failure of Condition. Should the conditions set forth in Articles 2 and 3 of this Agreement not be satisfied and/or waived in writing on or prior to the Closing Date, or upon breach by Seller of any of its obligations hereunder, or upon the inaccuracy of any of Seller's representations under Article 6, Buyer shall (i) have the right to terminate this Agreement, in which case the Deposit, with interest accrued thereon, shall be refunded to Buyer; or (ii) seek Specific Performance from Seller, in which case Buyer shall have the right to recover from Seller its actual expenses (including legal fees) incurred in securing Seller's performance.

7.2 Condemnation and Casualty. If before the Closing, either party receives notice of any condemnation or eminent domain proceeding, any proceeding in lieu of condemnation being initiated against the Property, or the damage or destruction of all or a part of any improvements located at the Property, the party receiving the notice shall promptly notify the other party in writing of that fact. Buyer may elect to either proceed with the sale of the Property or to terminate this Agreement within **Thirty (30)** days from the date that the notice is received. If Buyer elects to proceed with the acquisition of the Property, then Buyer may, solely at its own discretion, accelerate the Closing to any time prior to the Closing Date set forth hereinabove. If Buyer proceeds with the purchase in accordance with the terms of this Agreement, all condemnation and insurance proceeds shall be paid to Buyer. If any proceeds have not been collected as of the Closing, then all rights to those proceeds shall be assigned to Buyer at the Closing.

7.3 DAMAGES. SELLER AND BUYER AGREE THAT IF BUYER BREACHES ITS OBLIGATIONS HEREUNDER, SELLER SHALL RETAIN, AS SELLER'S SOLE AND EXCLUSIVE REMEDY, THE AMOUNTS DEPOSITED WITH ESCROW HOLDER PURSUANT TO THIS AGREEMENT, TOGETHER WITH ANY ACCRUED INTEREST THEREON AS OF THE TIME OF DEFAULT AS LIQUIDATED DAMAGES, IT BEING AGREED THAT UNDER ALL THE CIRCUMSTANCES EXISTING AT THE TIME OF THIS AGREEMENT, THIS PROVISION LIQUIDATING DAMAGES IN THE EVENT OF THE BUYER'S DEFAULT IS REASONABLE, THE DAMAGES RESULTING TO SELLER BY REASON OF SUCH BREACH ARE NOW AND THEN WOULD BE DIFFICULT AND IMPRACTICAL TO DETERMINE AND THAT THE BEST ESTIMATE, BASED ON ALL OF THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, OF THE TOTAL DAMAGES THAT SELLER WOULD SUFFER IS AND SHALL BE AN AMOUNT EQUAL TO THE SUMS DEPOSITED BY BUYER WITH ESCROW HOLDER AS OF THE TIME OF DEFAULT. IN PLACING THEIR INITIALS IN THE SPACES PROVIDED

BELOW, THE PARTIES CONFIRM THAT THEY HAVE READ, UNDERSTAND AND AGREE TO THIS PROVISION.


BUYER


SELLER

**ARTICLE 8
MISCELLANEOUS**

8.1 Merger. Except as otherwise expressly provided in this Agreement, the representations, warranties and agreements of the parties contained or provided for in this Agreement shall survive the close of escrow and delivery of the deed to Buyer.

8.2 Notices. Unless otherwise specifically provided herein, all notices, consents, directions, approvals, instructions, requests and other communications required or permitted by the terms hereof to be given to any person or entity shall be in writing, and any such notice shall become effective Five (5) business days after being deposited in the mails, certified or registered, with appropriate postage prepaid for first-class mail or, if delivered personally, by reputable overnight courier service, or by facsimile transmission or electronic mail, when received, and shall be directed to the address of such person or entity set forth below, or at such other address as either party shall hereafter designate in writing and deliver to the other in accordance with the provision of this paragraph:

Buyer at: Philip H. Annis
Embree Asset Group, Inc
4747 Williams Drive
Georgetown, Texas 78633
Telephone: (512) 819-4714
E-mail: pannis@embreegroup.com

Seller at: Floyd Batiste, CEO
Port Arthur Section 4A Economic Development Corporation
4173 39th Street
Port Arthur, TX 77640
Telephone: (409) 963-0579
Facsimile: (409) 962-4445
E-mail: fbatiste@paedc.org

Guy N. Goodson, EDC Attorney
Germer Gertz, LLP
P. O. Box 4915
Beaumont, Texas 77704
Telephone: (409) 654-6730
Facsimile: (409) 835-2115
E-mail: ggoodson@germer.com

8.3 **Authority and Execution.** Each person executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so, has full right and authority to enter into this Agreement and all of its obligations hereunder.

8.4 **Severability.** The invalidity or unenforceability of any term or provision of this Agreement or the nonapplication of any such term or provision to any person or circumstance shall not impair or affect the remainder of this Agreement, and the remaining terms and provisions hereof shall not be invalidated but shall remain in full force and effect and shall be construed as if such invalid, unenforceable, or nonapplicable provision were omitted.

8.5 **Waiver or Modification.** No waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the party to be charged therewith. No evidence of any waiver or modification shall be offered or received in evidence in any proceeding, arbitration, or litigation between the parties arising out of or affecting this Agreement or the rights or obligations of any party hereunder, unless such waiver or modification is in writing and duly executed as aforesaid. The provisions of this Article 8.5 may not be waived except as herein set forth.

8.6 **Headings.** The headings of the various Articles of this Agreement are for convenience of reference only and shall not modify, define or limit any of the terms or provisions hereof or thereof.

8.7 **Parties in Interest.** The terms of this Agreement shall be binding upon, and inure to the benefit of, the parties to this Agreement and their successors and assigns. Buyer shall have the right to assign its rights under this Agreement to an affiliated entity or third party, provided that no such assignment shall release Buyer from its obligations hereunder. Seller shall, upon written request from Buyer, execute the Special Warranty Deed directly in favor of Buyer's assignee.

8.8 **Counterparts.** This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

8.9 **Broker Disclosure.** The parties acknowledge that the Buyer and/or officers of the Buyer include Texas licensed real estate brokers (collectively "Brokers") acting as principals, and intend to make a profit as a result of this transaction. Seller hereby expressly consents and waives any objection thereto. Nothing in this Agreement shall in any way be construed as a breach of any duty of Brokers, and Seller waives any claim of any conflict or breach of duty arising out of Brokers' participation as principals herein.

8.10 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

8.11 **Time.** Time is of the essence of this Agreement.

8.12 Attorneys' Fees. In the event of any proceeding brought by either party to enforce the terms of or arising out of this Agreement, the prevailing party shall be entitled to recover all costs and expenses incurred in connection therewith, including reasonable attorneys' fees.

8.13 Cooperation. Each party hereto will, upon the reasonable request of the other party, execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered, such further instruments and documents as may be reasonably necessary in order to fulfill the intents and purposes of this Agreement.

8.14 IRC §1445. Buyer's performance hereunder is conditioned upon Seller providing Buyer at close of escrow with all documentation required by Internal Revenue Code Section 1445 to assure Buyer that Seller is not a "foreign person" as that term is used in Section 1445, or in the alternative, if Seller is a "foreign person," to assure that all steps have been taken so that Buyer will not be liable for payment of any taxes due on the proceeds of the sale.

8.15 Exchange. The parties, or either of them, shall have the right to secure a trade or exchange of properties of like kind of the parties' respective choices (pursuant to Section 1031 of the Internal Revenue Code as amended), as long as the obligations imposed on the other party shall not be greater than the terms and conditions of this Agreement, nor shall such obligations delay the Closing Date beyond that allowed by this Agreement. Nothing in this Article 8.15 shall require either party to take title to any other real property as part of its obligation to cooperate in any such trade or exchange.

8.16 Entire Agreement. This Agreement constitutes and contains the entire agreement of the parties with respect to the subject matter hereof and thereof, and supersedes any and all other prior negotiations, correspondence, understandings and agreements respecting the subject matter hereof and thereof. This Agreement is executed without reliance upon any representation by any party hereto except as expressly set forth herein. This Agreement may not be changed orally but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification, extension or discharge is sought.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement and the Effective Date is the date that the Escrow Holder has received, signed and dated this document set forth below ("the Effective Date"):

Signatures on next page:

SELLER:

City of Port Arthur Section 4A Economic Development Corporation

By: _____ Date: _____, 2007
President

By: _____ Date: _____, 2007
Secretary

BUYER:

Embree Asset Group, Inc. (a Texas corporation)

By: Rocky Hardin Date: December 13, 2007
Rocky Hardin
Executive Vice President

ESCROW HOLDER:

Beaumont Title
Attn: Joe Deshotel
275 N. 18th Street
Beaumont, Texas 77707
Telephone: (409) 212-1400
E-mail: _____

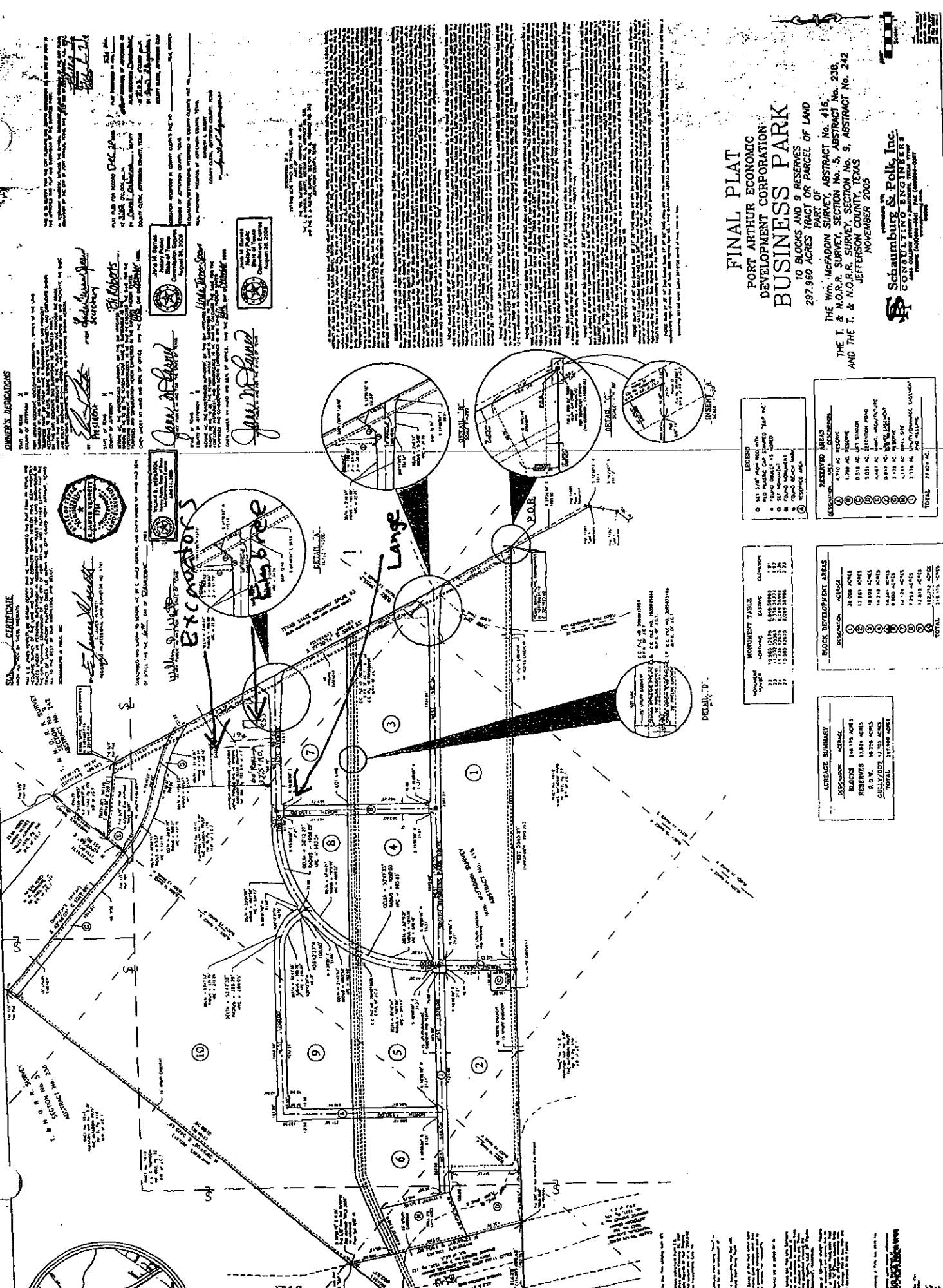
By: _____ Date Received: _____, 2007
Title: _____ the "Effective Date"

Escrow Holder shall notify both Seller and Buyer in writing of the "Effective Date" of this Agreement and deliver copies of the fully executed Agreement to each.

EXHIBIT "A"

TO THE AGREEMENT

15746 BIT A



FINAL PLAT
PORT ARTHUR ECONOMIC
DEVELOPMENT CORPORATION
BUSINESS PARK

10 BLOCKS AND 9 RESERVES
 297.960 ACRES TRACT OR PARCEL OF LAND
 PART OF

THE Wm. McFADDIN SURVEY, ABSTRACT No. 416, No. 238,
 THE T. & N.O.R.R. SURVEY, SECTION No. 5, ABSTRACT No. 242
 AND THE T. & N.O.R.R. SURVEY, SECTION No. 5, ABSTRACT No. 242
 JEFFERSON COUNTY, TEXAS
 NOVEMBER 2005

Schaumburg & Folk, Inc.
 CONSULTING ENGINEERS
 1000 WEST 10TH STREET, SUITE 100
 HOUSTON, TEXAS 77008
 PHONE: 713.865.1111
 FAX: 713.865.1112
 WWW.SCHAUMBURG-AND-FOLK.COM

LOCATED

0	161 1/2 AC. RESERVE
1	178 AC. RESERVE
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MONUMENT TABLE

MONUMENT NUMBER	DATE	ACRES	SECTION
1	1915	184	5
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BLK DEVELOPMENT AREAS

BLK	ACRES
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ACRES SUMMARY

DESCRIPTION	ACRES
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RESERVE DEVELOPMENT AREAS

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EXHIBIT "B"

to the Resolution

**AGREEMENT ON MODIFICATION OF CONDITIONS FOR
PROPERTY LOCATED IN THE CITY OF PORT ARTHUR SECTION 4A
ECONOMIC DEVELOPMENT CORPORATION BUSINESS PARK**

State of Texas §
 §
County of Jefferson §

WHEREAS, The City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC") and Embree Asset Group, Inc., a Texas corporation ("Embree") have negotiated for the acquisition of part of Lot 10, in the PAEDC Business Park in the City of Port Arthur, Jefferson County, Texas (the "Property") pursuant to the terms of a Purchase Agreement dated December 13, 2007 (the "Agreement").

~~**WHEREAS**, by letter dated April 8, 2008, Embree has requested certain modification of the Conditions of Sale for purchase of the Property.~~

WHEREAS, the Board of Directors of the PAEDC has considered the request of Embree for the modification of the Conditions of Sale as hereinafter specified and considers the modifications to be in accordance with the negotiations by and between PAEDC and Embree for the purchase and sale of the Property.

NOW, THEREFORE, the Board of Directors of the PAEDC agree as follows:

- 1) The foregoing recitals are set forth in this Agreement as if fully written herein.
- 2) The Conditions of Sale for the purchase and sale of the Property of the Property as required by regulations and policies of the PAEDC are modified as to the Property as follows:
 - a) If Embree, as owner of the Property, sells or transfers the Property to a third party, such third party shall be disclosed to PAEDC prior to the transfer or sale of the Property; however, such third party purchaser shall not be required to present financial and/or credit information to the PAEDC prior to the transfer of the Property; and
 - b) The Property may be used for outdoor storage of equipment. Embree advised the PAEDC that the end user of the Property would be RSC, a nationwide rental company, which would have its rental equipment stored outside on the Property.
- 3) RSC or any end user of the Property shall maintain the Property in a neat and orderly fashion.

4) Within 15 days of executing a contract of sale, Embree will provide written notice to the PAEDC of a third party purchaser of the Property and the estimated closing date. Further, if the proposed transfer to a third party purchaser is subsequently terminated, Embree will provide due notification of any termination of sale to a third party.

5) Except as specified in this Agreement, all other terms of Conditions of Sale including but not limited to use of the Property, maintenance obligations of the Property and all other covenants, conditions and agreements of the Conditions of Sale or as set forth in the Agreement are ratified and affirmed.

6) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of Jefferson County, Texas.

7) **Notices.** Unless otherwise specifically provided herein, all notices, consents, directions, approvals, instructions, requests and other communications required or permitted by the terms hereof to be given to any person or entity shall be in writing, and any such notice shall become effective Five (5) business days after being deposited in the mails, certified or registered, with appropriate postage prepaid for first-class mail or, if delivered personally, by reputable overnight courier service, or by facsimile transmission or electronic mail, when received, and shall be directed to the address of such person or entity set forth below, or at such other address as either party shall hereafter designate in writing and deliver to the other in accordance with the provision of this paragraph:

Buyer at: Philip H. Annis
Embree Asset Group, Inc
4747 Williams Drive
Georgetown, Texas 78633
Telephone: (512) 819-4714
E-mail: pannis@embreegroup.com

Seller at: Floyd Batiste, CEO
Port Arthur Section 4A Economic Development Corporation
4173 39th Street
Port Arthur, TX 77640
Telephone: (409) 963-0579
Facsimile: (409) 962-4445
E-mail: fbatiste@paedc.org

Guy N. Goodson, EDC Attorney
Germer Gertz, LLP
P. O. Box 4915
Beaumont, Texas 77704
Telephone: (409) 654-6730
Facsimile: (409) 835-2115
E-mail: ggoodson@germer.com

8) **Entire Agreement.** This Agreement constitutes and contains the entire agreement of the parties with respect to the subject matter hereof and thereof, and supersedes any and all other prior negotiations, correspondence, understandings and agreements respecting the subject matter hereof and thereof. This Agreement is executed without reliance upon any representation by any party hereto except as expressly set forth herein. This Agreement may not be changed orally but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification, extension or discharge is sought.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the ____ day of _____, 2008

Signatures on next page:

SELLER:

City of Port Arthur Section 4A Economic Development Corporation

By: _____ Date: _____, 2008
President

By: _____ Date: _____, 2008
Secretary

BUYER:

Embree Asset Group, Inc. (a Texas corporation)

By: _____ Date: _____, 2008
Philip H. Annis
President