

RESOLUTION NO. 08-057

**RESOLUTION APPROVING FIRST AMENDMENT TO  
ECONOMIC DEVELOPMENT CONDITIONAL GRANT  
AGREEMENT BETWEEN THE CITY OF PORT ARTHUR  
SECTION 4A ECONOMIC DEVELOPMENT  
CORPORATION AND CAMELLIA PLAZA, L.P.**

**WHEREAS**, Camellia Plaza, L.P. ("Camellia"), a Texas limited partnership, has planned to construct utility and drainage improvements along West Port Arthur Road (the "Improvements") and to promote and/or develop a hotel and businesses on its adjacent commercial property within the City of Port Arthur, Texas; and

**WHEREAS**, the City of Port Arthur Section 4A Economic Development Corporation ("PAEDC") has agreed to provide up to \$1,044,400.00 as a conditional grant to offset a portion of the construction costs for the Improvements. Said conditional grant to be funded in phases based upon the construction of the Improvements, construction of the hotel, development of additional businesses and satisfaction of certain reporting requirements by Camellia; and

**WHEREAS**, Camellia was to be paid an initial payment by the PAEDC of the conditional grant on October 1, 2007 upon completion of construction of certain of the Improvements; and

**WHEREAS**, due to delays in construction of the Improvements, Camellia did not reach its first milestone; and

**WHEREAS**, Camellia has requested that its Economic Development Conditional Grant Agreement (the "Original Agreement") be amended to provide (i) a revised Performance

Milestone Schedule, (ii) an amendment in the PAEDC payment schedule and (iii) an amendment to the collateral requirements; and

**WHEREAS**, Camellia has provided the status reports on its project as required by the Original Agreement; and

**WHEREAS**, the Board of Directors for the PAEDC authorized a first amendment to the Original Agreement to (i) revised Milestones, (ii) an amended PAEDC payment schedule and (iii) an amended collateral requirement in substantially the same form as attached hereto as Exhibit "A"; and

**WHEREAS**, the Original Agreement was approved by the PAEDC on December 18, 2006; and

**WHEREAS**, this First Amendment to the Original Agreement is being presented to the Port Arthur City Council for approval.

**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 City of Port Arthur Section 4A Economic Development Corporation is herein authorized to enter into the First Amendment to Economic Development Conditional Grant Agreement with Camellia Plaza, L.P., in substantially the same form as attached hereto as Exhibit "A".

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

READ, ADOPTED AND APPROVED on this 17<sup>th</sup> day of June 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 Chatman;

Councilmembers Segler, Albright, Beard,  
Williamson and Wise.

NOES:

None.

Deloris Prince  
Deloris "Bobbie" Prince, Mayor

ATTEST:

Terri Hanks  
Terri Hanks, Acting City Secretary

APPROVED:

Floyd Batiste, PAEDC CEO

APPROVED AS TO FORM:

Mark T. Sokolow  
Mark T. Sokolow, City Attorney  
(on behalf of)

APPROVED AS TO THE AVAILABILITY OF FUNDS:

Rebecca Underhill  
Rebecca Underhill, Director of Finance

# **EXHIBIT "A"**

**FIRST AMENDMENT  
TO ECONOMIC DEVELOPMENT CONDITIONAL GRANT AGREEMENT  
BETWEEN  
THE CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORP.  
&  
CAMELLIA PLAZA, L.P.**

The Economic Development Conditional Grant Agreement (the "Original Agreement") between the City of Port Arthur Section 4A Economic Development Corporation ("PAEDC") and Camellia Plaza, L.P. ("Camellia") dated \_\_\_\_\_, 2006 is hereby amended to revise the promised performance by Camellia, to revise the Performance Milestone Schedule and to revise the reimbursement commitment of PAEDC.

The Original Agreement is modified and amended by this First Amendment to Economic Development Conditional Grant Agreement (the "First Amendment"), and except as specified herein, all terms, conditions, performance obligations, covenants and agreements of Camellia or PAEDC as specified in the Original Agreement are ratified and affirmed, and each party covenants and represents that there are no defaults in the Original Agreement.

1. The Executive Summary is amended and restated to read as follows:

**EXECUTIVE SUMMARY**

Camellia Plaza, L.P. ("Camellia") is a Texas limited partnership whose general partner is Camellia Management LLC, a Texas limited liability company which has undertaken to construct utility and drainage improvements (the "Improvements") on property owned by Camellia. A planned hotel and adjacent commercial sites for business enterprises (the "Project") is dependent upon construction of the Improvements.

PAEDC agreed to a \$1,044,400.00 conditional grant to offset a portion of the construction costs for the Improvements. The conditional grant was to be funded in phases based upon Camellia's completion of construction of the Improvements, the opening of a hotel and businesses at the Project and satisfaction of certain reporting requirements, and the PAEDC would reimburse Camellia with scheduled payments. Camellia agreed to construct a hotel to be owned or franchised by a national chain with said construction to be completed by December 30, 2008, and by December 30, 2009, the hotel project would be completed, at least Fifty (50%) percent of the eligible infrastructure to be completed, and two businesses to be opened.

Although Camellia experienced delays in initiating work, as of April, 2008, approximately sixty-five (65%) percent of the Improvements in the project were complete, and \$950,000 had been expended for the construction of Improvements. Camellia anticipates completion of the Improvements by early Summer, 2008.

Camellia further anticipates the completion of the hotel to be owned and operated by a national chain by August, 2008, and a convenient store and gas station together with a fast food restaurant to be completed by late December, 2008.

PAEDC has agreed to amend Camellia's performance milestone schedules in the Original Agreement and to amend the initial payments under the incentive agreement to Camellia and make modifications in the conditions precedent to the distribution of the incentive payments as set forth in this First Amendment.

If Camellia breached or defaulted on the Original Agreement including the providing of guarantees as provided in the Original Agreement, then all funds granted by PAEDC would automatically convert to a three (3) year loan at an interest rate of ten (10%) percent per annum.

Camellia has provided all reports required under its Performance Milestone Schedule.

Camellia has agreed to amendments to its promised performance and revisions to the Performance Milestone Schedule and agrees to a revised reimbursement commitment by the PAEDC.

2. The following sections of the Original Agreement are amended and restated to read as follows:

(a) **Section 6(a)(2):** PAEDC will pay up to \$1,044,400.00 according to the following schedule provided Camellia performs its contractual obligations and meets the conditions precedent for each payment.

<u>Date</u>	<u>Payment By PAEDC</u>	<u>CONDITIONS PRECEDENT</u>	
		<u>Minimum Cumulative Collateral</u>	<u>Minimum Cumulative Eligible Infrastructure Spending</u>
October 1, 2008	\$150,000	\$225,000	\$311,786
October 1, 2009	\$133,880	\$283,880	\$405,543
October 1, 2010	\$133,880	\$417,760	\$596,800
October 1, 2011	\$133,880	\$551,640	\$788,057
October 1, 2012	\$133,880	\$685,520	\$979,314
October 1, 2013	\$133,880	\$819,400	\$1,170,571
October 1, 2014	\$75,000	\$894,400	\$1,277,714
October 1, 2015	\$75,000	\$969,400	\$1,384,857
October 1, 2016	\$75,000	\$1,044,400	\$1,492,000

(b) **Section 6(a)(3):** If Camellia cannot document, with paid invoices, the required minimum spending on eligible infrastructure then the payment will be delayed until it can document the spending.

(c) **Section 6(a)(4):** Once Camellia completes the following obligations, no additional collateral will be required and all prior collateral will be released:

- i. 100% of the Plaza's water, sewer, and drainage improvements are complete;
- ii. Four (4) separate businesses are fully constructed and open for business, one of which must be a hotel owned or franchised by a national chain; and
- iii. At least \$1,492,000.00 has been expended on eligible infrastructure.

These are PAEDC's only obligations.

(d) **Section 7:** Although failure to achieve a performance milestone is not a breach of contract, a failure is grounds for PAEDC to demand reasonable assurances<sup>1</sup> from Camellia that it can and will fully perform its contractual obligations. Failure to provide demanded assurances is a breach of contract.

<sup>1</sup> Examples of reasonable assurances, which the PAEDC may demand, include but are not limited to copies of pending contracts and commitment letters.

(e) **Section 8 – Performance Milestone Schedule:** The Performance Milestone Schedule is amended as included below:

**CAMELLIA’S AMENDED PERFORMANCE MILESTONE SCHEDULE**

	<u>Deadline</u>	<u>Milestone</u>
(a)	Oct. 31, 2006	Issue a <i>status report</i> <sup>2</sup> to PAEDC’s Chief Executive Officer (“CEO”) for the period from the effective date of this contract to September 30, 2006
(b)	Feb. 28, 2007	<i>Status report</i> <sup>3</sup> for January 1, 2006 to December 31, 2006
(c)	April 30, 2007	<i>Status report</i> for January 1, 2007 to March 31, 2007
(d)	July 31, 2007	<i>Status report</i> for April 1, 2007 to June 30, 2007
(e)	Aug. 15, 2007	Construction of eligible Plaza infrastructure started.
(f)	Sept., 2007	Review Plaza construction status, plans, and projected costs and schedule with PAEDC Board at one of its September 2007 Board meetings.
(g)	Sept. 30, 2007	Engineering complete; contractor bids reviewed; contract signed with selected contractor.
(h)	Oct. 31, 2007	<i>Status report</i> for July 1, 2007 to September 30, 2007
(i)	Feb. 28, 2008	<i>Status report</i> for January 1, 2007 to December 31, 2007
(j)	April 30, 2008	<i>Status report</i> for January 1, 2008 to March 31, 2008; at least sixty five percent (65%) of the water, sewer, drainage and site preparation (“dirt work”) completed.
(k)	July 31, 2008	<i>Status report</i> for April 1, 2008 to June 30, 2008; 100% of the water, sewer, drainage and site preparation (“dirt work”) completed.
(l)	Oct. 31, 2008	<i>Status report</i> for July 1, 2008 to September 30, 2008; hotel completed and convenience store/gas station and fast food restaurant under construction.
(m)	Dec. 30, 2008	Start construction of hotel owned or franchised by national chain.
(n)	Feb. 28, 2009	<i>Status report</i> for January 1, 2008 to December 31, 2008; completion of construction of convenience store/gas station and fast food restaurant.
(o)	April 30, 2009	<i>Status report</i> for January 1, 2009 to March 31, 2009; convenience store/gas station and fast food restaurant operating.
(p)	July 31, 2009	<i>Status report</i> for April 1, 2009 to June 30, 2009
(q)	Oct. 31, 2009	<i>Status report</i> for July 1, 2009 to September 30, 2009

<sup>2</sup> Status reports shall include, but are not limited to: spending for the construction of the Plaza; the status of construction against the plan presented to the PAEDC; Port Arthur residents’ involvement in the Plaza construction; and Southeast Texas business participation in the Plaza design and construction. Driver’s license information is appropriate for interim reporting of Port Arthur residents hired. The reporting objective is to include documentation necessary for PAEDC to verify Camellia’s reports without further outside inquiry.

<sup>3</sup> February 28<sup>th</sup> Status reports shall also include the identity of all Camellia Plaza, L.P. partners owning more than 5% of the partnership, and all Camellia Management, L.L.C. members owning more than 5% of the company.

(r)	Dec. 30, 2009	Construction of the hotel completed; At least fifty percent (50%) of eligible infrastructure completed; Two (2) businesses fully constructed and open for business in the Plaza.
-----	---------------	--

3. Paragraph 6 of the Original Agreement is modified to include a reference to the EXECUTIVE SUMMARY as a part of the Original Agreement for all purposes and constitutes promise performance by Camellia and/or PAEDC as the case may be in accordance with the Original Agreement.

**ATTORNEY APPROVALS**

APPROVED AS TO FORM:

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

VERIFIED AS CONSISTENT  
 WITH CITY COUNCIL RESOLUTION:

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

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



**AMENDMENT EXECUTION**

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

**SIGNED AND AGREED TO** on the \_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

**CAMELLIA PLAZA, L.P.**

**SIGNED AND AGREED TO** on the \_\_\_ day of \_\_\_\_\_, 2008.

**CAMELLIA PLAZA, L.P.,  
a Texas limited partnership**

**By: Camellia Management, L.L.C.,  
Its General Partner**

\_\_\_\_\_  
**Douglas Lam, Manager**

\_\_\_\_\_  
Witness