

RESOLUTION NO. 08-099

A RESOLUTION APPROVING A WAIVER OF THE OPTION TO REPURCHASE IN THE CONDITIONS OF SALE OF THE COVENANTS AND RESTRICTIONS OF THE PORT ARTHUR BUSINESS PARK AS TO THAT APPROXIMATELY 5.0 ACRES OF LAND SOLD BY THE CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION TO LOCKWOOD HOLDINGS, INC.

WHEREAS, the City of Port Arthur Section 4A Economic Development Corporation deemed it is the public interest to sell approximately 5.0 acres of land in the City of Port Arthur Section 4A Economic Development Corporation Business Park to Lockwood Holdings, Inc.; and

WHEREAS, Lockwood Holdings, Inc. plans to construct a building with an office and warehouse for itself or an affiliated entity, who will be the end user; and

WHEREAS, the City of Port Arthur Section 4A Economic Development Corporation Board of Directors at a regular Board meeting on January 23, 2008, approved the sale of 5.0 acres of land in the City of Port Arthur Section 4A Economic Development Corporation's Business Park (the "Spur 93 Business Park") to Lockwood Holdings, Inc.; and

WHEREAS, the City of Port Arthur approved the sale of approximately 5.0 acres of land in the Spur 93 Business Park by

Resolution No. 08-172, adopted on or about the 22<sup>nd</sup> day of April, 2008; and

**WHEREAS**, the total purchase price was \$42,500.00 per acre, which the Executive Director has indicated has been paid; and

**WHEREAS**, Lockwood Holdings, Inc. and its construction financing lender, Bank of America, have requested that the "option to repurchase" specified in the **CONDITION OF SALE** within the **COVENANTS AND RESTRICTIONS** be waived, as denoted in Exhibits "A" and "B", attached hereto; and

**WHEREAS**, the Board of Directors of the City of Port Arthur Section 4A Economic Development Corporation will consider the waiver of the option to repurchase at their meeting scheduled for Wednesday, July 16, 2008, as requested by Lockwood Holdings, Inc. and its construction lenders, Bank of America.

**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 subject to the approval by the Board of Directors of the City of Port Arthur Section 4A Economic Development Corporation, the City Council of the City of Port Arthur approves the waiver of option to repurchase as to the approximate 5.0 acres sold to Lockwood Holdings, Inc. in the **CONDITIONS OF SALE** of the **COVENANTS AND RESTRICTIONS** for the

Spur 93 Business Park as requested by its construction finance lender, Bank of America.

Section 3. That the PAEDC will notify all adjacent parcel owners of the request for variance by posting such notice and will receive and consider comments from such parcel owners in evaluating such variance to the deed restrictions.

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 15<sup>th</sup> day of July A.D., 2008, 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 Chatman;  
Wesler, Albright, Flood, Beard,  
Williamson and Henderson).

NOES: None.

Terrin Prince  
MAYOR

ATTEST:

Terrin Hanks  
TERRI HANKS, ACTING CITY SECRETARY

APPROVED:

  
\_\_\_\_\_  
FLOYD BATISTE, EDC CEO

APPROVED AS TO FORM:

  
\_\_\_\_\_  
MARK T. SOKOLOW, CITY ATTORNEY

**EXHIBIT "A"**

July 9, 2008

Members of the Board of Directors  
City of Port Arthur EDC  
P.O. Box 3934  
Port Arthur, Texas 77642

Re: City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC") -  
Request for Waiver of Condition Within Covenants and Restrictions for Port Arthur  
Business Park by Lockwood Holdings, Inc. ("Lockwood")

Dear Board Members:

On Tuesday, July 8, 2008, I received a call from Mr. Joe Deshotel of Beaumont Title Company concerning the closing for Lockwood which is purchasing a 5.0 acre tract in the Port Arthur Business Park for construction of a distribution facility. Mr. Deshotel advised that Bank of America, the entity providing construction financing for the distribution facilities being constructed by Lockwood required a waiver of the initial condition of sale found in the Covenants and Restrictions of Port Arthur Business Park dated November 30, 2005.

The condition specifically requested for waiver is found in the first paragraph under **CONDITIONS OF SALE** and as the first, second, fourth and fifth sentences in that paragraph:

"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 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."

The Conditions provide other terms for the exercise of the option.

As the sale to Lockwood was an arm's length transaction where no incentive was provided, and since Bank of America and Lockwood have assured that the construction timetable will be aggressive to completion of the distribution center, they nonetheless wish to avoid the possibilities of the "option to repurchase" and have asked for its waiver.

Please be further advised that the **Covenants and Restrictions** further provides the PAEDC (subject to the approval of the City) from time to time to amend the provisions, covenants and restrictions (see page 6 of 13 of the **Covenants and Restrictions**).

The undersigned has prepared for consideration by the City the attached Resolution for their regular meeting scheduled for Tuesday, July 15, 2008, and subsequently by the PAEDC at its regular meeting of Wednesday, July 16, 2008. By copy of this letter, we are requesting that the Director of Development place this on next week's PAEDC Board meeting, and we are concurrently providing notice through the office of the City Attorney that the attached Resolution also be considered by the City on the date stated. I am further providing a copy of this correspondence to legal counsel for Bank of America and to Mr. Deshotel to advise of when this proposed waiver of covenant will be considered by both entities.

Yours very truly,

**GERMER GERTZ, L.L.P.**

By:   
Guy N. Goodson

GNG/mgm

cc: Mr. Floyd Batiste  
City of Port Arthur EDC  
P.O. Box 3934  
Port Arthur, Texas 77642

Mr. Mark Sokolow  
City of Port Arthur - Legal Dept.  
P.O. Box 1089  
Port Arthur, Texas 77641-1089

Mr. Jason Lloyd  
(via [jllloyd@porterhedges.com](mailto:jllloyd@porterhedges.com))

Mr. Joe Deshotel  
(via [jddeshotel@firstam.com](mailto:jddeshotel@firstam.com))

**EXHIBIT "B"**



**Mark Sokolow**

---

**From:** "Lloyd, Jason T." <[REDACTED]>  
**To:** <[REDACTED]>  
**Cc:** <[REDACTED]> "Daniel J. Lintner"  
<[REDACTED]> "Robin Windsor" <[REDACTED]>  
**Sent:** Friday, July 11, 2008 3:16 PM  
**Subject:** Lockwood/BofA - Waiver

Mark,

As per our conversation, as a condition precedent to financing Lockwood's construction of its new facility, Bank of America has requested that the Port Arthur Economic Development Corporation waive its option to repurchase the property.

If you have any questions, please contact me.

Regards,

Jason

**PORTER & HEDGES LLP**  
— { Business is personal.

Jason T. Lloyd  
Associate  
[REDACTED]  
t (713) 226-6883  
f (713) 226-6283

Porter & Hedges LLP  
1000 Main Street, 36th Fl.  
Houston, Texas 77002  
[REDACTED]

[Web Site](#) | [Bio](#) | [V-card](#)

---

IRS Circular 230 Disclaimer: This e-mail and any attachments are not intended for use and cannot be used: (i) to avoid any penalties under the Internal Revenue Code or (ii) to promote, market or recommend to another party the tax consequences of any matter addressed therein. Please contact us if you desire an opinion on such matters.

Further, this communication may be privileged or contain confidential information. If it has been sent to you in error, please do not read it, reply to the sender that you received it in error, and delete it. Any distribution or other reproduction is strictly prohibited.

---