

RESOLUTION NO. 12-274

**A RESOLUTION APPROVING AN ECONOMIC
DEVELOPMENT CONDITIONAL GRANT AGREEMENT
BETWEEN PA69 L.P. AND THE CITY OF PORT ARTHUR
SECTION 4A ECONOMIC DEVELOPMENT CORPORATION**

WHEREAS, the City Council deems it in the public interest to authorize the City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC") to enter into an Economic Development Conditional Grant Agreement (the "Agreement") with PA69 L.P.; and

WHEREAS, Germer Getz, L.L.P. has indicated that PA69, L.P. has presented an application qualifying as a Section 4A project as set forth in the Executive Summary of the Agreement; and

WHEREAS, the PAEDC has reviewed the PA69 L.P. application and accompanying financial statements presented by PA69 L.P. and the proposals for the construction of a roadway currently known as PA69 (the "Road") which shall be constructed from the U.S. 69 access road to Medical Center Drive in the City of Port Arthur, Texas; and

WHEREAS, the PAEDC agrees on a conditional grant in the amount of \$470,986 for the construction of the Road based upon findings of fact of economic benefit as to construction of the Road; a copy of the findings of fact as to economic benefit for the construction of the Road are attached to this Resolution as **Exhibit "A"**; and

WHEREAS, in consideration of the conditional grant, PA69 L.P. will construct the Road and shall be obligated to ensure the design and construction of a hotel adjacent to the Road and the construction of at least one additional commercial business adjacent to the Road in order to receive the full benefits of the conditional grant; and

WHEREAS, PA69 L.P. has reviewed and approved 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 PAEDC is herein authorized to enter into the Agreement with PA69 L.P., and the President and Secretary of the PAEDC are authorized to sign the Agreement in substantially the same form attached hereto as **Exhibit "B"**.

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 21st day of May A.D., 2012,
at a Meeting of the City Council of the City of Port Arthur, Texas, by the following vote:

AYES:

Mayor Prince; Mayor Pro Tem Lewis,
Councilmembers Scott, Segler, Albright, Asuncion,
Williamson and Thomas,

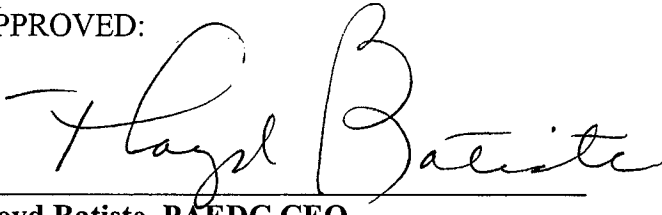
NOES: None

Deloris Prince
Deloris "Bobbie" Prince, Mayor

ATTEST:

Sherri Bellard
Sherri Bellard, City Secretary

APPROVED:

A handwritten signature in cursive script, appearing to read "Floyd Batiste".

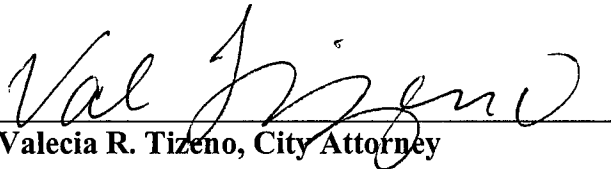
Floyd Batiste, PAEDC CEO

APPROVED AS TO FORM:

A handwritten signature in cursive script, appearing to read "Guy N. Goodson".

Guy N. Goodson, PAEDC Attorney

APPROVED AS TO FORM:

A handwritten signature in cursive script, appearing to read "Valecia R. Tizeno".

Valecia R. Tizeno, City Attorney

**ECONOMIC DEVELOPMENT CONDITIONAL GRANT AGREEMENT BETWEEN
THE CITY OF PORT ARTHUR SECTION 4A
ECONOMIC DEVELOPMENT CORPORATION
AND
PA69 L.P.**

Executive Summary

The City of Port Arthur Section 4A Economic Development Corporation ("PAEDC") finds that the construction of a road from the Highway 69 access road to Medical Center Drive, the City of Port Arthur, Texas (the "City"), is beneficial for the development and expansion of new and existing business enterprises in the City. For that reason, based upon finding of economic development as set forth in this Economic Development Conditional Grant Agreement (the "Agreement"), PAEDC conditionally grants to PA69 L.P. ("PA69") the costs of road construction and related infrastructure, in the amount of \$470,986.00.

PA69 (the "Incentive Recipient") plans to construct a road from the Highway 69 access road to Medical Center Drive, in the City (the "Road") to serve an adjacent planned Marriott Hotel and adjacent commercial properties. Once Incentive Recipient completes construction of the road, Incentive Recipient shall dedicate the road to the City within ninety (90) days of the completion of construction of the Road, and shall use its best faith efforts to employ architect(s), engineer(s), and subcontractor(s) from Port Arthur, Texas and then from the nine county region in Southeast Texas for construction of the Road. Once Incentive Recipient completes construction of the Road, the following conditions shall be met in order for Incentive Recipient to receive the conditional grant and for PAEDC to reimburse Incentive Recipient for costs associated with construction of the Road:

- The construction of the Road to the specifications of the City with a one (1) year contractor's warranty provided.
- Incentive Recipient provides to PAEDC a copy of an executed contract for construction of a hotel adjacent to the Road.
- Incentive Recipient provides copies of permits for construction of a hotel adjacent to the Road.
- Incentive Recipient provides approved design plans necessary to construct a hotel adjacent to the Road filed and approved by the City.
- The foundation slab for a hotel adjacent to the Road is poured.

If the foregoing conditions are met, then PAEDC will reimburse Incentive Recipient for fifty percent (50%) of the conditional grant or an amount of \$235,493 with the remaining fifty percent (50%) of the conditional grant of \$235,493.00 upon the issuance of a Certificate of Occupancy for a hotel adjacent to the Road. Additionally, within eighteen (18) months of the completion of the hotel adjacent to the Road, if another commercial business is not opened adjacent to the Road, Incentive Recipient will reimburse PAEDC ten percent (10%) of the conditional grant or a reimbursement amount of \$47,098.60.

If Incentive Recipient breaches or defaults under this Agreement, then any funds granted by PAEDC will automatically convert to a loan for a period of three (3) years from the date of default, and an interest rate of ten percent (10%) per annum.

Incentive Recipient agrees to send PAEDC reports each quarter on the construction status of the Road and the proposed commercial development as outlined in the Performance Milestone Schedule of this Agreement.

Incentive Recipient has agreed to provide as collateral for the performance of its obligations under the Agreement a _____ (to be completed by representative of PA69 as to letter of credit or other collateral to secure performance requirements).

- i. The Road is constructed to the specifications of the City with a one (1) year contractor's warranty provided;
 - ii. Incentive Recipient provides a copy of an executed construction contract for the Marriott Hotel;
 - iii. Incentive Recipient provides a copy of permits for the construction of the Marriott Hotel;
 - iv. The designs necessary to construct the Marriott Hotel are filed and approved by the City; and
 - v. The foundation slab for the Marriott Hotel is poured.
- (4) PAEDC shall reimburse Incentive Recipient the remaining fifty-percent (50%) of the conditional grant, up to \$235,493 once the Marriott Hotel is constructed and open for business.

These are PAEDC's only obligations to Incentive Recipient.

(b) PERFORMANCE BY INCENTIVE RECIPIENT

- (1) Incentive Recipient shall construct or have constructed the Road outlined in **Exhibit "A"**, subject to the following time constraints:
- a. Once under construction, the Road must be completed within three (3) months and dedicated to the City within six (6) months;
 - b. Construction work on the Road may commence at any time, but PAEDC will not pay for construction costs unless and until Incentive Recipient presents its agreement with the developer of the Marriott Hotel wherein Incentive Recipient agrees to build the Road and the developer agrees to build the Marriott Hotel adjacent to the Road.
- (2) Incentive Recipient guarantees that the Marriott Hotel will be built fronting the Road, by September 30, 2013, or Incentive Recipient will refund PAEDC for any monies released for the Road construction costs.
- (3) Incentive Recipient shall use its best faith efforts to employ architect(s), engineer(s), and subcontractor(s) from Port Arthur, Texas;
- (4) Incentive Recipient will use its best efforts to ensure that City residents are hired for the Road construction project to the maximum extent feasible, and shall track and report actual performance, as a percent of subcontractors hired; and
- (5) On written demand by PAEDC and in response to Incentive Recipient's failure to achieve a performance milestone, Incentive Recipient shall provide PAEDC within ten (10) business days following receipt of such written demand with assurances that it has both the intention and the capabilities to perform fully its contractual obligations.

**ECONOMIC DEVELOPMENT CONDITIONAL GRANT AGREEMENT
BETWEEN
THE CITY OF PORT ARTHUR SECTION 4A
ECONOMIC DEVELOPMENT CORPORATION
AND
PA69 L.P.**

RECITALS

A. PA69, L.P. (hereinafter sometimes referred to as "PA69" or "Incentive Recipient") intends to develop property for the construction of the Marriott Hotel and related commercial businesses and needs to improve road infrastructure to the development area.

B. The success of the planned hotel and adjacent commercial properties for business enterprises is dependent on the construction of PA69 as shown on Exhibit "A" (the "Road") in Port Arthur from the access road of State Highway 69 to Medical Center Drive to serve the hotel and commercial properties.

C. Section 2(11)(C) of the Development Corporation Act of 1979 (now codified as Chapter 501, Local Government Code) authorizes expenditures on infrastructure by the City of Port Arthur Section 4A Economic Development Corporation ("PAEDC") if the PAEDC Board finds the expenditure "to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises".

D. On April 30, 2012, after Incentive Recipient presented the facts contained in Exhibit "B", the PAEDC Board found that the facts reasonably support the finding that the Road is beneficial to promote the new hotel enterprise and adjacent commercial properties for business enterprises.

E. PAEDC Board approved a conditional economic development grant to Incentive Recipient to build the Road.

F. PAEDC and Incentive Recipient desire to set forth in this Agreement the terms and conditions for PAEDC's grant payments for the Road and the performance requirements of Incentive Recipient.

NOW THEREFORE, the parties agree as follows:

AGREEMENT DATES

AGREEMENT START DATE

1. This Economic Development Conditional Grant Agreement ("Agreement") is entered into with an effective date of _____, 2012, but in no case later than _____, 2012, by and between the City of Port Arthur Section 4A Economic Development Corporation ("PAEDC") and Incentive Recipient.

AGREEMENT END DATE

2. This Agreement expires thirty (30) days after Incentive Recipient either performs fully or breaches the Agreement, subject to earlier termination or extension, voluntary or involuntary, as provided herein.

PARTIES

3. City of Port Arthur Section 4A Economic Development Corporation ("PAEDC"), located at 4173 39th Street, Port Arthur, Texas, 77642, is a corporation. It is duly authorized to do business in the State of Texas under Section 4A, Chapter 501, Local Government Code (the Development Corporation Act of 1979) (the "Act") and duly authorized by Resolution of the City Council of the City of Port Arthur, Texas (the "City") 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. PA69 L.P. ("PA69" or "Incentive Recipient") is a Texas limited partnership whose general partners are Freeway Real Properties, LLC, 8705 Katy Freeway, #301, Houston, Texas 77024 and Kerry R. LaGrone, LLC, 13810 Champions Forest Drive, Suite 145, Houston, Texas 77024. The partnership's registered address is 8705 Katy Freeway, #301, Houston, Texas 77024. Kerry R. LaGrone is duly authorized to execute and enter into this Agreement on behalf of PA69.

CONDITIONS PRECEDENT

5. This Agreement has no legal consequences unless and until:

- (a) both PAEDC and the City have approved this Agreement in its final form; and
- (b) Incentive Recipient delivers to PAEDC a copy of its executed agreement with the developer of the Marriott Hotel for the purchase of property of Incentive Recipient for the hotel project.

PROMISED PERFORMANCE

6. The parties agree to perform as follows.

(a) PERFORMANCE BY PAEDC

- (1) PAEDC shall conditionally grant Incentive Recipient \$470,986 for the cost of construction of the Road, subject to the limitations detailed herein.
- (2) Incentive Recipient will send invoices to PAEDC, and PAEDC will pay invoices directly to the subcontractors for the construction work identified in Exhibit "C", within forty-five (45) days of receipt by PAEDC.
- (3) PAEDC shall reimburse Incentive Recipient fifty-percent (50%) of the conditional grant, up to \$235,493 once the following conditions are met:

- i. The Road is constructed to the specifications of the City with a one (1) year contractor's warranty provided;
- ii. Incentive Recipient provides a copy of an executed construction contract for the Marriott Hotel;
- iii. Incentive Recipient provides a copy of permits for the construction of the Marriott Hotel;
- iv. The designs necessary to construct the Marriott Hotel are filed and approved by the City; and
- v. The foundation slab for the Marriott Hotel is poured.

(4) PAEDC shall reimburse Incentive Recipient the remaining fifty-percent (50%) of the conditional grant, up to \$235,493 once the Marriott Hotel is constructed and open for business.

These are PAEDC's only obligations to Incentive Recipient.

(b) PERFORMANCE BY INCENTIVE RECIPIENT

- (1) Incentive Recipient shall construct or have constructed the Road outlined in Exhibit "A", subject to the following time constraints:
 - a. Once under construction, the Road must be completed within three (3) months and dedicated to the City within six (6) months;
 - b. Construction work on the Road may commence at any time, but PAEDC will not pay for construction costs unless and until Incentive Recipient presents its agreement with the developer of the Marriott Hotel wherein Incentive Recipient agrees to build the Road and the developer agrees to build the Marriott Hotel adjacent to the Road.
- (2) Incentive Recipient guarantees that the Marriott Hotel will be built fronting the Road, by September 30, 2013, or Incentive Recipient will refund PAEDC for any monies released for the Road construction costs.
- (3) Incentive Recipient shall use its best faith efforts to employ architect(s), engineer(s), and subcontractor(s) from the nine County Southeast Texas Region;
- (4) Incentive Recipient will use its best efforts to ensure that City residents are hired for the Road construction project to the maximum extent feasible, and shall track and report actual performance, as a percent of subcontractors hired; and
- (5) On written demand by PAEDC and in response to Incentive Recipient's failure to achieve a performance milestone, Incentive Recipient shall provide PAEDC within ten (10) business days following receipt of such written demand with assurances that it has both the intention and the capabilities to perform fully its contractual obligations.

INCENTIVE RECIPIENT'S PERFORMANCE MILESTONE SCHEDULE

7. Failure to achieve any specific performance milestone shall be a breach of agreement, and PAEDC may either terminate this Agreement, and Incentive Recipient shall meet its obligations as set forth herein of termination, or PAEDC may demand reasonable assurances¹ from Incentive Recipient that it can complete its contractual obligations under this Agreement and may require or amend the performance milestone schedules and obligations of Incentive Recipient thereafter. Failure to concur with amendments to performance milestone schedules or agreement revisions and/or failure to provide any demanded assurances shall result in termination of this Agreement.

8. The performance milestones of Incentive Recipient are contained in the following schedule.

PERFORMANCE MILESTONE SCHEDULE

	<u>Deadline</u>	<u>Milestone</u>
(a)	August 1, 2012	Review new street construction plans and projected costs and schedule with PAEDC staff
(b)	September 30, 2012	Issue a status report to PAEDC Chief Executive Officer ("CEO") for the period of the contract to August 31, 2012
(c)	February 28, 2013	Issue a status report to PAEDC CEO for the period of June 1, 2012 to December 31, 2012
(d)	March 31, 2013	Foundation for Marriott Hotel completed
(e)	April 30, 2013	Issue a status report to PAEDC CEO for the period of January 1, 2013 to March 30, 2013
(f)	July 31, 2013	Issue a status report to PAEDC CEO for the period of April 1, 2013 to June 30, 2013
(g)	September 30, 2013	Marriott Hotel open for business
(h)	October 31, 2013	Issue a status report to PAEDC CEO for the period of July 1, 2013 to September 30, 2013
(i)	February 28, 2014	Issue a status report to PAEDC CEO for the period of October 1, 2013 to December 31, 2013
(j)	July 31, 2014	Issue a status report to PAEDC CEO for the period of January 1, 2014 to June 30, 2014
(k)	December 30, 2014	Issue a status report to PAEDC CEO for the period of July 1, 2014 to December 31, 2014
(l)	February 28, 2015	Close out report to PAEDC Board to compare actual economic development results against expectation as presented to the Board

¹ Examples of reasonable assurances are copies of pending contracts and commitment letters.

PAEDC'S CONDITIONAL OBLIGATIONS AND LIMITED LIABILITY

9. PAEDC's sole obligations to Incentive Recipient are set forth in Section 6(a) of this Agreement. 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 construction of the Road.

LIQUIDATED DAMAGES FOR BREACH OF AGREEMENT BY INCENTIVE RECIPIENT

10. In the event Incentive Recipient breaches this Agreement the funds granted to Incentive Recipient will automatically convert to a loan, effective on the day of breach, as evidenced by the Commercial Promissory Note contained in Exhibit "D".

11. It is expressly understood and agreed 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

12. Incentive Recipient shall maintain records as necessary to allow the PAEDC to audit in compliance with this Agreement and the representations and warranties contained herein and in Incentive Recipient's grant/loan application.

13. 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 pertaining to this Agreement. 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. The reporting objective is to include documentation necessary to for PAEDC to verify Incentive Recipient's reports without further outside inquiry.

14. All records pertinent to this Agreement shall be retained by Incentive Recipient at least three (3) 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.

15. Upon written request, Incentive Recipient shall provide PAEDC with all reports reasonably necessary for PAEDC compliance with the Act.

16. It is expressly understood and agreed 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, demand assurances that Incentive Recipient can and will fully perform its contractual obligations. If Incentive Recipient fails to provide adequate assurances in ten (10) business days then Incentive Recipient is in breach and the conditional grant automatically become a loan, as described herein.

17. 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, at its option, may provide Incentive Recipient with a written report of the audit findings. If the audit report details deficiencies in Incentive Recipient's 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

18. INCENTIVE RECIPIENT SHALL INDEMNIFY, DEFEND AND HOLD THE PAEDC AND THE CITY (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 THE PERFORMANCE BY INCENTIVE RECIPIENT OF ITS OBLIGATIONS UNDER THIS AGREEMENT.

SUBCONTRACTS

19. Incentive Recipient may subcontract obligations under this Agreement; however, Incentive Recipient, in subcontracting for any performances described in this Agreement, expressly understands that PAEDC is in no way liable to Incentive Recipient's subcontractor(s).

20. Incentive Recipient is responsible for performances, as if such performances rendered were rendered by Incentive Recipient. PAEDC's maintains any right of action which may exist or which may subsequently accrue to PAEDC under this Agreement.

21. Incentive Recipient, as well as all of its subcontractors, shall comply with all applicable federal, state, and local laws, regulations, and ordinances relating to the construction of the Road and satisfaction of its obligations otherwise under this Agreement.

CONFLICT OF INTEREST / DISCLOSURE OBLIGATION

22. Conflict of Interest: No employee, agent, officer or elected or appointed official of the City 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. Incentive Recipient shall ensure compliance with applicable provisions of the Act and Chapter 171, Local Government Code.

23. 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 and its general partners (whether stockholder, 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 or its general partner. 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

24. 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 in the construction of the Road. Additionally:

- (a) To the greatest extent feasible, employment arising in connection with the construction of the Road will be given to Port Arthur residents; and
- (b) To the greatest extent feasible, contracts for work to be performed in connection with the construction of the Road will be awarded to Port Arthur residents and businesses, then to the residents and businesses of the nine-County Southeast Texas Region.

LEGAL AUTHORITY

25. Incentive Recipient assures and guarantees that Incentive Recipient possesses legal authority to enter into this Agreement, and is duly authorized to perform its obligations hereunder and has provided, and will in the future provide, as requested by the PAEDC, such resolutions necessary to evidence this authority.

26. 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 AGAINST INCENTIVE RECIPIENT

27. 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

or its general partner, 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

28. 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.

29. It is understood and agreed by the parties hereto that performances under this Agreement must be rendered in accordance with the Act, the regulations promulgated under the Act, the assurances and certifications made to PAEDC by Incentive Recipient, and the assurances and certifications made to the City with regard to the construction of the Road. 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 may 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 establish interpret or clarify performance requirements under this Agreement consistent with the intent of the parties. 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.

30. 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. Incentive Recipient agrees to comply with all Federal, State and local laws whether existing or hereinafter enacted.

DEFAULT / TERMINATION

31. 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 Incentive Recipient's application to the PAEDC, the PAEDC may, at its sole and exclusive option and remedy, terminate this Agreement, in whole or in part. In the event of such termination, but subject to the provisions hereof, in addition to (i) any other remedies available to the PAEDC as provided by the laws of the State of Texas or (ii) any other remedies available to the PAEDC as provided herein, the PAEDC may, at its sole option:

- (a) convert the grant to a loan evidenced by the Commercial Promissory Note (Exhibit "D") executed in conjunction with this Agreement immediately effective, and if Incentive Recipient defaults on the Note then PAEDC may exercise its default remedies provided under said Note.

- (b) withhold and/or disallow further PAEDC grant payments or incentives to Incentive Recipient, including funds to be advanced to Incentive Recipient by PAEDC hereunder.

32. 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.

INCENTIVE RECIPIENT AUDITS

33. If directed by the PAEDC, Incentive Recipient shall arrange for a compliance audit by a certified public accountant to verify performances reported under this Agreement.

34. 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.

35. 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 disclosure to the extent required by the Texas Public Information Act.

ENVIRONMENTAL CLEARANCE REQUIREMENTS

36. 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 CONTRACTS / PRIOR AGREEMENTS

37. 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.

38. The documents listed below are hereby made a part of this Agreement for all purposes, and constitute promised performances by Incentive Recipient and/or PAEDC, as the case may be, in accordance with this Agreement:

EXHIBIT "A" DESCRIPTION OF ROAD/MAP
EXHIBIT "B" FINDINGS OF FACT AS TO ECONOMIC DEVELOPMENT BENEFITS
EXHIBIT "C" SCOPE AND ESTIMATED PROJECT COST
EXHIBIT "D" COMMERCIAL PROMISSORY NOTE
EXHIBIT "E" COLLATERAL/SECURITY

EXHIBIT "F" CERTIFICATION REGARDING LOBBYING
EXHIBIT "G" COMPLIANCE STATEMENT

VENUE

39. 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
4173 39th Street
Port Arthur, Texas 77642
ATTN: Floyd Batiste, Chief Executive Officer

PA69, L.P.
Attn: Kerry R. LaGrone
8705 Katy Freeway, #301
Houston, Texas 77024.

CAPTIONS

40. 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

41. 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 related to Incentive Recipient's performance under this Agreement. Upon request by PAEDC or by the City, Incentive Recipient shall furnish reasonably satisfactory proof of its compliance herewith.

ASSIGNMENT

42. This Agreement may not be assigned by Incentive Recipient to another entity unless and until the PAEDC, by the action of the PAEDC Board, approves the assignment. This includes assignment to an entity controlled by Incentive Recipient or its partners.

SUPPLEMENTAL COVENANT

43. Incentive Recipient and any branch, division or department of Incentive Recipient certifies that they have not and will not knowingly employ an "undocumented worker" which means "an individual who, at the time of employment, is not lawfully admitted for permanent

residence to the United States or authorized under law to be employed in that manner in the United States."

44. Incentive Recipient acknowledges that it has reviewed Chapter 2264, Texas Government Code and hereby affirmatively agrees by execution of this Agreement to repay the amount of any incentive with interest at the rate of ten (10%) percent per annum not later than the 120th day after the date PAEDC notifies Incentive Recipient of a violation.

45. Incentive Recipient acknowledges PAEDC may bring a civil action or cover any amounts owed under this Chapter and further acknowledges that PAEDC may recover court costs and reasonable attorneys' fees incurred in an action brought under §2264.101(a). Incentive Recipient is not liable for a violation of this Chapter by a subsidiary, affiliate or franchisee of the Incentive Recipient or by a person with whom the Incentive Recipient contracts.

ATTORNEY APPROVALS

APPROVED AS TO FORM:

Guy Goodson, General Counsel for PAEDC

VERIFIED AS CONSISTENT

WITH CITY COUNCIL RESOLUTION: Resolution Number : _____

Valecia R. Tizeno, City Attorney

AGREEMENT EXECUTION

CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION

SIGNED AND AGREED TO on the ____ day of _____, 2012.

By: _____
President

By: _____
Secretary

Witness

Witness

PA69 L.P.

SIGNED AND AGREED TO on the ____ day of _____, 2012.

PA69 L.P., a Texas limited partnership

By: Freeway Real Properties, LLC, and
Kerry R. LaGrone, LLC

By: _____
Kerry R. LaGrone, Manager

Witness

EXHIBIT "A"

EXHIBIT "B"

FINDINGS OF FACT AS TO ECONOMIC DEVELOPMENT BENEFITS

PA69 – a Road to be constructed within the City of Port Arthur, Texas.

FACTS

- PA69 shall be a major arterial street adjacent to the access road on Highway 69, terminating at Medical Center Drive within the City of Port Arthur, Texas (the "City").
- PA69 (the "Road") shall be constructed in accordance with City specifications to handle commercial vehicular traffic.
- The construction of the Road in this commercial area will open additional property for development and its developer, PA69 L.P. (the "Developer"), shall receive a conditional grant based upon the construction upon the design, construction, and operation of a hotel adjacent to the Road, and at least one (1) additional commercial business in order to receive the conditional grant.
- The proposed hotel may employ up to seventy-five (75) new, local staff members.
- The access Road on Memorial Blvd./Highway 69 is 67,000 cars per day and it is estimated that ten percent (10%) of the traffic could use the Road for access to the proposed hotel, adjacent commercial buildings, adjacent commercially developed shopping areas, and the regional hospital.
- It is anticipated that new businesses adjacent to the Road could employ ninety (90) new local employees.
- The Road provides improved access to shopping areas to the south, which shopping area when built out could employ another 200 local employees.
- The added tax value for the proposed hotel would be \$8,000,000, restaurant and future commercial businesses would be \$4,000,000, and future retail and commercial businesses in the master plan center to the south would be \$14,000,000.
- The attached plat of the map shows the location of the development and the proposed Road and its relationship to existing and anticipated future development areas.

FINDINGS

- Based upon the Findings of Fact set forth above, the PAEDC Board determines that the construction of the Road will lead to the development of new and/or expansion of business enterprises in the City.

EXHIBIT "C"
SCOPE AND ESTIMATED PROJECT COST

DEVELOPMENT
FROM JIMMY JOHNSON TO APPROXIMATELY 650 FEET
SOUTH TOWARD LAKE ARTHUR DRIVE
PORT ARTHUR, TEXAS
MARCH 2006

Joint Venture Soutex Surveyors, Inc. and Stanley G. "George" Newsome, Jr., P.E.

ESTIMATE IS BASED ON FIRST QUARTER OF 06 COST

<i>Mobilization/Bonds</i>	<i>7,000</i>
<i>Street (37' back of curb and considers roadway excavation, Lime stabilized sub-grade, 6" thick reinforced concrete, 6" curb, pavement tie-in, St. Augustine grass behind the curb, concrete cap over pipelines, pavement marking/signage, street lights, 5' sidewalks, and barricades for traffic control)</i>	<i>137,906</i>
<i>Drainage (considers curb inlets, manhole, concrete Rip-rap at outfall ditch, storm sewer and trench protection)</i>	<i>75,740</i>
<i>Water (considers 8" water line, fittings and fire hydrants)</i>	<i>24,700</i>
<i>Sewer (considers 8" sanitary sewer, service lines, manholes and trench protection)</i>	<i>48,600</i>
<i>Pollution Prevention (considers silt fence, inlet protection And trench entrance/exit treatment)</i>	<i>6,200</i>
<i>Total Construction Cost</i>	<i>\$300,146</i>

EXHIBIT "D"
CONDITIONAL COMMERCIAL PROMISSORY NOTE

Port Arthur, Texas

This COMMERCIAL PROMISSORY NOTE becomes effective on the date when PA69, L.P., a limited partnership (hereinafter called "Maker") breaches 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 _____, 2012

Effective Date of Note: The Note shall be dated effective the _____ day of _____, 201____ which is the date upon which Lender provided notification to Maker of its default under the Economic Incentive Contract & Loan Agreement (the "Agreement") by and between Lender and Maker dated _____, 2012 ("Date of Default").

Principal Amount: Principal amount is \$_____, which is \$_____ less the incentive credits earned by Maker according to the Agreement (described hereinabove).

Term of the Loan: From the Date of Default, Maker shall thereafter make equal monthly installments of principal and interest (interest being calculated as hereinafter specified at the rate of 10% per annum) until September 15, 2015 (the "Final Payment Date"). Lender shall provide to Maker, a payment amortization schedule for the monthly installments due hereunder. Maker agrees that all principal and interest on this Note shall be due and payable by the Final Payment Date.

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 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.

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.

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; or any event occurs or condition exists which causes Lender to in good faith deem itself insecure or in good faith believe the prospect of payment or performance by Maker or any other liable party under this note, under any instrument or agreement executed in connection with or as security for this note, or under any other indebtedness of Maker or any other liable party to Lender is impaired; 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 _____, 201__.

PA69, L.P.

By: _____
Kerry R. LaGrone

THE STATE OF TEXAS
COUNTY OF JEFFERSON

§
§
§

ACKNOWLEDGEMENT

BEFORE ME, THE UNDERSIGNED Notary Public, on this day personally appeared Kerry R. LaGrone, 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 PA69, L.P. for the purposes and consideration therein expressed, and the Capacities therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the ____ day of _____, 2012.

Notary Public, State of Texas

MAKERS' ADDRESS FOR RECEIPT OF NOTICE:

PA69, L.P.
8705 Katy Freeway, #301
Houston, Texas 77024

ACKNOWLEDGEMENT

THE STATE OF TEXAS

*

COUNTY OF JEFFERSON

*

BEFORE ME, THE UNDERSIGNED Notary Public, on this day personally appeared Kerry R. LaGrone, a Manager of Freeway Real Properties, LLC and Kerry R. LaGrone, LLC, Texas limited liability companies, known to me to be the person and Manager whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same as the act and deed of said Company in its capacity as General Partners of PA69, L.P., a Texas limited partnership, for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the ____ day of _____, 2012.

Notary Public, State of Texas

MAKERS' ADDRESS FOR RECEIPT OF NOTICE:

PA69, L.P.
8705 Katy Freeway, #301
Houston, Texas 77024

"EXHIBIT E"

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.

PA69, L.P.

Date: _____

By: _____
Kerry R. LaGrone, Manager

EXHIBIT "G"
COMPLIANCE STATEMENT

PA69, L.P. hereby certifies that it has fully complied with Local Government Code §176.006, as amended, which mandates the disclosure requirements for persons who contract or seek to contract with a local governmental entity.

PA69, L.P.

Date: _____

By: _____
Kerry R. LaGrone, Manager