P.R. No. 17609
3/13/2013 kvm

RESOLUTION NO. 13-146

A RESOLUTION APPROVING THE SALE OF APPROXIMATELY 2.984 ACRES OF LAND IN THE CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION'S BUSINESS PARK TO B&B ICE, INC.

WHEREAS, the City of Port Arthur Section 4A Economic Development Corporation ("PAEDC") deems it is in the public interest to sell approximately 2.984 acres of land in the PAEDC Business Park (the "Spur 93 Business Park") to B&B Ice, Inc. ("B&B") at a purchase price of $52,500 per acre to be paid in full at closing; and

WHEREAS, B&B intends to expand their current production and construct a state of the art and ice-water manufacturing plant in the Spur 93 Business Park; and

WHEREAS, the PAEDC Board of Directors at their regular Board meeting of January 8, 2013, approved the terms and conditions for an Economic Incentive Contract & Loan Agreement with B&B including the sale of land in the Spur 93 Business Park; and

WHEREAS, at their regular City Council meeting of March 6, 2013, the City Council of the City of Port Arthur approved Resolution No. 13-101, which was an economic incentive agreement between the PAEDC and B&B for the purchase of equipment needed for the expansion of its business operations to the Spur 93 Business Park.

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

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

Section 2. That the City Council of the City of Port Arthur approves the sale of approximately 2.984 acres of land at the Spur 93 Business Park to B&B Ice, Inc., with B&B Ice, Inc. to pay the costs of the survey, the title report and the other closing costs as specified in the Purchase

Agreement attached hereto as **Exhibit "A"** with title to be conveyed by a special warranty deed to be approved by the City Attorney.

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 19th day of March A.D., 2013, 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 Sastt, Segler, Dsucet, Williamson, Freeman and Thomas;

NOES: None.

Deloris Prince

Deloris "Bobbie" Prince, Mayor

ATTEST:

S. Bellard

Sherri Bellard, City Secretary

APPROVED:

Floyd Batiste

Floyd Batiste, PAEDC CEO

APPROVED AS TO FORM:

Guy N. Goodson, PAEDC Attorney

APPROVED AS TO FORM:

Valecia R. Tizeno, City Attorney

EXHIBIT “A”

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 **B&B Ice, Inc.**, a Texas for profit corporation doing business in Port Arthur, Texas ("Buyer").

RECITALS:

A. Seller is the owner of certain real property together with all improvements located thereon, which is located at or in the City of Port Arthur Section 4A Economic Development Corporation Business Park, adjacent to Spur 93, Port Arthur, Jefferson County, Texas (the "Business Park")

B. Seller desires to sell to Buyer and Buyer desires to buy approximately 2.984 acres, surface only without minerals as described in "RECITALS A" above and as more particularly described by metes and bounds on **Exhibit "A"** and described in the map or plat attached hereto as **Exhibit "B"** (the "Property") from Seller upon the terms and subject to the conditions contained herein and incorporated by reference herein as if fully set forth.

Seller agrees to waive all surface rights with respect to the Property in the Special Warranty Deed. In addition, the Special Warranty Deed shall provide that Seller shall not lease or convey, or join in any lease or conveyance of, any portion of the retained minerals unless such lease or conveyance contains a waiver by the lessee or grantee, as applicable, of any right to enter upon the Land for purposes of exploration, production or development of the retained minerals.

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 Fifty-Two Thousand Five Hundred and no/100 Dollars ($52,500) per acre. The exact acreage on the Survey obtained by Buyer shall be multiplied by $52,500 to obtain 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 Texas Regional Title, Attn: Ken Whitlow, 3195 Dowlen Road, Suite 108, Beaumont, Texas 77706, (409) 861-7330 ("the Escrow Holder") a cash deposit, which shall be deposited into an

interest-bearing account, in the amount of Five Thousand and 00/100 Dollars ($5,000.00) ("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.

1.4 Closing Transaction. Consummation of the sale provided herein shall take place on the Closing Date (as herein defined) through the Escrow Holder at its offices in Houston, Jefferson County, Texas or at such other place Seller and Buyer mutually agree in writing, and provided, however, that either party may close by mail and need not be physically present at closing. At or prior to the Closing Date (as herein defined), each of the parties shall execute and deliver such documents and perform such acts as are provided for in this Agreement or as are necessary to consummate the transaction contemplated hereunder. All obligations of either party to be performed at or prior to the Closing Date are conditions precedent as well as covenants.

1.5 Escrow Instructions. Seller and Buyer shall deliver to the Escrow Holder an executed copy of this Agreement which shall constitute instructions to Escrow Holder. If required by Escrow Holder, Buyer and Seller shall execute the printed form escrow instructions as may be used by Escrow Holder including any mutually acceptable modifications thereto (the "Escrow Instructions") to which may be attached to an executed copy of this Agreement and which together shall constitute Instructions to the Escrow Holder. If any of the provisions of this Agreement conflict with the Escrow Instructions, this Agreement shall govern and control. No Escrow Instruction shall excuse any performance by either Buyer or Seller at the times provided in this Agreement, extend the Closing Date provided for in this Agreement or provide either Buyer or Seller with any grace period not provided in this Agreement, and any Escrow Instruction to the contrary shall be deleted or considered of no force and effect.

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 and 00/100 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 office/warehouse (hereinafter referred to as "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 PROPERTY CONDITION. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, BUYER ACKNOWLEDGES AND AGREES THAT SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF HABITABILITY, AND SUITABILITY AND FITNESS FOR INTENDED PURPOSE, WITH RESPECT TO ANY ASPECT OF THE PROPERTY. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, BUYER IS PURCHASING THE PROPERTY STRICTLY IN "AS IS" "WHERE AS" CONDITION, AND BUYER ACCEPTS AND AGREES TO BEAR ALL RISKS REGARDING ALL ATTRIBUTES AND CONDITIONS, LATENT OR OTHERWISE OF THE PROPERTY. BUYER HAS MADE OR WILL MAKE PRIOR TO THE CLOSING ITS OWN INSPECTION AND INVESTIGATION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, ITS SUBSURFACE, SOIL, ENGINEERING AND OTHER CONDITIONS AND REQUIREMENTS, WHETHER THERE ARE ANY EMINENT DOMAIN OR OTHER PUBLIC OR QUASI-PUBLIC TAKINGS OF THE PROPERTY CONTEMPLATED, AND ALL ZONING AND REGULATORY MATTERS PERTINENT TO THE PROPERTY AND TO THE PRESENT USE OR OCCUPANCY OF THE PROPERTY. BUYER IS ENTERING INTO THIS AGREEMENT AND PURCHASING THE PROPERTY BASED UPON ITS OWN INSPECTION AND INVESTIGATION AND NOT IN RELIANCE ON ANY STATEMENT, REPRESENTATION, INDUCEMENT OR AGREEMENT OF SELLER EXCEPT AS SPECIFICALLY PROVIDED HEREIN. BUYER AGREES THAT NEITHER SELLER NOR ANYONE ACTING ON BEHALF OF SELLER HAS MADE ANY REPRESENTATION, GUARANTEE OR WARRANTY WHATSOEVER, EITHER WRITTEN OR ORAL, CONCERNING THE PROPERTY EXCEPT AS SPECIFICALLY SET FORTH HEREIN. ANY ENGINEERING DATA, SOILS REPORTS, OR OTHER INFORMATION THAT SELLER OR ANY OTHER PARTY MAY HAVE DELIVERED TO BUYER IS FURNISHED WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER. AS BETWEEN BUYER AND SELLER, SELLER SHALL HAVE NO RESPONSIBILITY, LIABILITY OR OBLIGATION SUBSEQUENT TO THE CLOSING WITH RESPECT TO ANY CONDITIONS, INCLUDING, WITHOUT LIMITATION, ENVIRONMENTAL CONDITIONS, OR AS TO ANY OTHER MATTERS WHATSOEVER RESPECTING IN ANY WAY THE PROPERTY, AND BUYER HEREBY RELEASES SELLER, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS WITH RESPECT TO SUCH CONDITIONS.

2.7 Covenants and Restrictions. Buyer has read the Covenants and Restrictions for the Port Arthur Economic Development Corporation Business Park, recorded in the Public Records of Jefferson County, Texas. Further, Buyer has reviewed all regulations and requirements of the City of Port Arthur, Texas as to platting, replatting and construction standards for improvements on the Property including but not limited to requirements of the City

of Port Arthur, Texas for compliance with the Americans with Disability Act and improvements related thereto.

2.8 **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.

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 fee simple title of the surface only 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 be solely responsible for 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 undertake any required Final Plat or Replat of the Property, and Seller shall cooperate with Buyer in all respects in its application for Final Plat or Replat approval for the Property. All costs of the platting process will be paid by the Buyer. Seller 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 Seller does not object in writing within ten (10) days following any request for approval.

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 on 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 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.

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 "C".**

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.

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.

ARTICLE 7
TERMINATION AND DAMAGES

7.1 **Termination.** Except as expressly prohibited in this Agreement, in the event of any default in this Agreement by either of the parties hereto, which default continues more than five (5) days following written notice from the other party, in addition to any right or remedy available hereunder, at law or in equity, the other party shall have the right to terminate this Agreement by written notice to the defaulting party and Escrow Agent. If any such termination is the result of default hereunder by Seller, then the Earnest Money and interest accrued thereon shall be returned to Buyer. If Buyer defaults hereunder, actual damages to Seller will be difficult to calculate but Buyer and Seller agree that the amount of the Earnest Money designated above is a reasonable approximation thereof. Accordingly, if Buyer defaults, Seller shall be entitled to terminate this Agreement and immediately upon such termination by Seller, Escrow Agent shall pay to Seller, as Seller's sole remedy, the Earnest Money, together with interest thereon, and any other monies paid on behalf of Seller. Nothing contained in this Section shall prevent Seller from enforcing Buyer's obligations and liabilities which survive a termination of this Agreement.

7.2 **Specific Performance.** If Seller breaches this Agreement prior to the Closing and, as a result, the Closing does not occur, Buyer may also enforce specific performance. In the event Buyer breaches this Agreement and Closing fails to occur, Seller waives the right to specific performance, and instead agrees to accept the Earnest Money as liquidated damages hereunder.

7.3 **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.

7.4 **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

7.5 **Waiver.** Excuse or waiver of the performance by the other party of any obligation under this Agreement shall only be effective if evidenced by a written statement signed by the party so excusing. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by Seller or Buyer of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

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:

B&B Ice, Inc.
6219 Gulfway Drive
Groves, Texas 77619
ATTN: Paul Benton
Telephone: (___) _____
Facsimile: (___) _____
Email:

Seller at:

Floyd Batiste, CEO
PAEDC
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

Escrow Holder at:

Texas Regional Title
Attn: Ken Whitlow
3195 Dowlen Road, Suite 108
Beaumont, TX 77706

(409) 861-7330

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 not assign its rights under this Agreement without the prior written consent of Seller; provided, however, Buyer may assign this Agreement to an affiliate of Buyer without Seller's consent. Except as permitted above, no assignment shall be to an assignee whose business purpose has not been approved by prior written action of the Board of Directors of Seller and, as necessary, the City Council for the City of Port Arthur, Texas. Seller shall, upon written request from Buyer, execute a 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 Fees**. Seller disclaims liability for payment of any brokerage fees as to the transactions specified in this Agreement.

8.10 **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and jurisdiction of any claim or cause of action hereunder shall be in courts of competent jurisdiction in Jefferson County, 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:_____, 2013
President

By:_____ Date:_____, 2013
Secretary

BUYER:

B&B Ice, Inc.

By:_____ Date:_____, 2013
Paul Benton

ESCROW HOLDER:

Attn:

Telephone:
E-mail:

By:_____ **Date Received:_____, 2013**
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 PURCHASE AGREEMENT

ARCENEAUX & GATES
CONSULTING ENGINEERS, INC.

ARCENEAUX & GATES
Consulting Engineers, Inc.
A Burrow Global Company
Engineers ★ Surveyors ★ Planners

METES AND BOUNDS DESCRIPTION FOR 2.984 ACRES OF LAND OUT OF BLOCK 6, PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION BUSINESS PARK SUBDIVISION AS SITUATED IN THE WILLIAM MCFADDIN SURVEY, ABSTRACT NO. 416, PORT ARTHUR, JEFFERSON COUNTY, TEXAS

Being a 2.984 acre tract or parcel of land out of Block 6 of the Amended Plat of the Port Arthur Economic Development Corporation Business Park Subdivision as recorded in Clerk's File No. 2011021212 of the Official Public Records of Real Property, County Clerk's Office, Jefferson County, Texas as situated in and a part of the William McFaddin Survey, Abstract No. 416, Jefferson County, Texas and being more particularly described by metes and bounds as follows;

FOR LOCATIVE PURPOSES, commence at a ½" steel rod marked Arceneaux & Gates found located on the West line of Richard Wycoff Drive marking the Southeast corner of that certain tract of land (called 12.42 acres) as conveyed by deed dated September 19, 2012 from the City of Port Arthur, Section 4A Economic Development Corporation to Willfire HC, LLC, recorded in Clerk's File No. 2012031662 of said Official Public Records, this point having a Texas State Plane Coordinate Value of North 13,917,839.11 and East 3,540,750.72;

THENCE South 03 deg. 27 min. 23 sec. East (South-Plat) along the said West Right of Way line of Richard Wycoff Drive, passing at a distance of 25 feet the common block line of Block 10 and Block 6 and continuing for a total distance of 174.48 feet to a ½" steel rod with cap marked Arceneaux & Gates set marking the Northeast corner and **PLACE OF BEGINNING** of the herein described tract of land, this point having a Texas State Plane Coordinate Value of North 13,917,664.95 and East 3,540,761.24;

THENCE South 03 deg. 27 min. 23 sec. East (South-Plat) continuing along said West Right of Way line with the East line of this tract a distance of 250.00 feet to a ½" steel rod with cap marked Arceneaux & Gates set marking the Southeast corner of the herein described tract of land, this point having a Texas State Plane Coordinate Value of North 13,917,415.40 and East 3,540,776.31;

THENCE South 86 deg. 33 min. 15 sec. West, departing said West Right of Way line along the South line of this tract a distance of 520.00 feet to a ½" steel rod with cap marked Arceneaux & Gates set marking the Southwest corner of the herein described tract of land, this point having a Texas State Plane Coordinate Value of North 13,917,384.15 and East 3,540,257.25;

THENCE North 03 deg. 27 min. 23 sec. West along the West line of this tract a distance of 250.00 feet to a ½" steel rod with cap marked Arceneaux & Gates set marking the Northwest corner of the herein described tract of land, this point having a Texas State Plane Coordinate Value of North 13,917,633.69 and East 3,540,242.18;

2901 Turtle Creek Dr., Suite 320 Port Arthur, TX 77642 Phone: 409/724-7888 Fax: 409/724-1447

THENCE North 86 deg. 33 min. 15 sec. East along the North line of this tract a distance of 520.00 feet to the Northeast corner and **PLACE OF BEGINNING** and containing in area 2.984 acres of land, more or less.

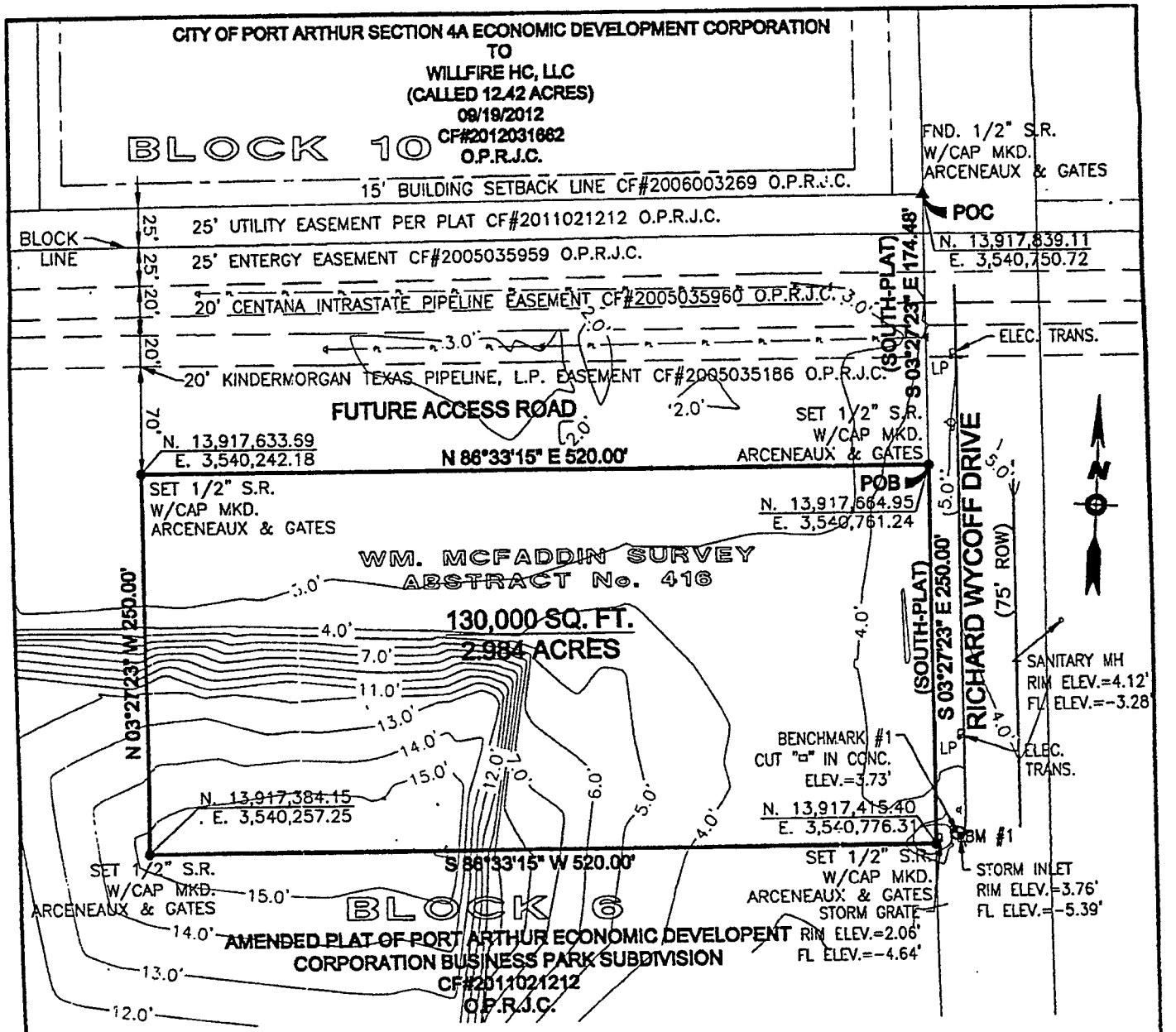
Surveyed: February, 2013

STATE OF TEXAS
REGISTERED
JOHN R. (BOB) HODGES
4583
PROFESSIONAL
LAND SURVEYOR

John R. (Bob) Hodges R.P.L.S. #4583
2/14/13

Notes:
Bearings, distances and coordinates referenced to the Texas State Plane Coordinate System, South Central Zone, NAD 83
Grid Scale Factor = 0.999916791
A Plat of even date accompanies this metes and bounds description.

"EXHIBIT B" TO THE PURCHASE AGREEMENT



NOTES:
BEARINGS, DISTANCES, AND COORDINATES REFERENCED TO THE TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE, NAD 83 DATUM.

GRID SCALE FACTOR 0.999916791

ELEVATIONS REFERENCED TO BM#30 AS SHOWN ON PLAT ELEV.=4.60'

METES AND BOUNDS DESCRIPTION ACCOMPANIES THIS PLAT.

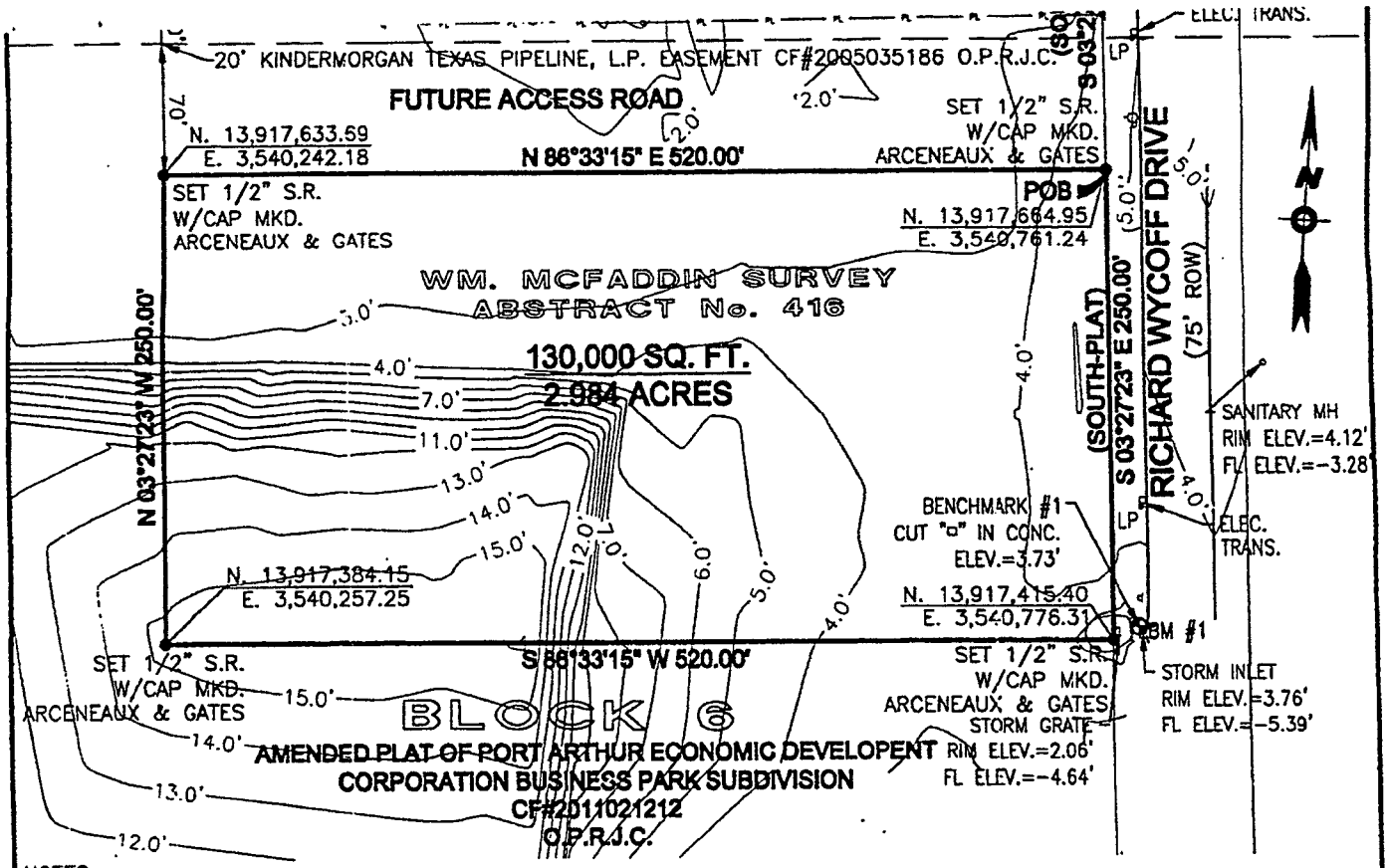
THIS SURVEY PERFORMED WITHOUT BENEFIT OF TITLE COMMITMENT OR REPORT.

FLOOD ZONES: B
FIRM: 485499 0025 E
DATED: 04-17-1984

LS. No.: 13-006
SCALE: 1"=100'
DATE: 02/14/2013

ARCENEAUX & GATES
CONSULTING ENGINEERS, INC.
PORT ARTHUR, TEXAS
ENGINEERS
SURVEYORS
PLANNERS
A Burrow Global Company

LEGEND:
- ▲ FOUND CORNER (AS SHOWN)
- ● SET 1/2" S.R. W/CAP MKD. ARCENEAUX & GATES
- LP LIGHT POLE
- MANHOLE (AS SHOWN)
- FIRE HYDRANT
- WATER VALVE
- SIGNPOST



NOTES:
BEARINGS, DISTANCES, AND COORDINATES REFERENCED TO THE TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE, NAD 83 DATUM.

GRID SCALE FACTOR 0.999916791

ELEVATIONS REFERENCED TO BM#30 AS SHOWN ON PLAT ELEV.=4.60'

METES AND BOUNDS DESCRIPTION ACCOMPANIES THIS PLAT.

THIS SURVEY PERFORMED WITHOUT BENEFIT OF TITLE COMMITMENT OR REPORT.

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ARCENEAUX & GATES
CONSULTING ENGINEERS, INC.
PORT ARTHUR, TEXAS
ENGINEERS
SURVEYORS
PLANNERS
A Burrow Global Company

LEGEND:
- ▲ FOUND CORNER (AS SHOWN)
- ● SET 1/2" S.R. W/CAP MKD. ARCENEAUX & GATES
- LP LIGHT POLE
- MANHOLE (AS SHOWN)
- FIRE HYDRANT
- WATER VALVE
- SIGNPOST

PLAT OF BOUNDARY AND TOPOGRAPHIC SURVEY

I CERTIFY THAT THIS IS A TRUE AND ACCURATE PLAT OF THE PROPERTY KNOWN AS (VACANT) RICHARD WYCOFF DRIVE PORT ARTHUR, TEXAS 77642 THE PROPERTY OF B&B ICE, INC. AS SURVEYED BY ME SHOWING ALL IMPROVEMENTS AND BEING 2.984 ACRES OUT OF BLOCK 6 IN THE AMENDED PORT ARTHUR ECONOMIC DEVELOPMENT CORPORATION BUSINESS PARK SUBDIVISION A MAP OF WHICH IS RECORDED IN CF#2011021212 OF THE MAP RECORDS OF JEFFERSON COUNTY TEXAS. THERE ARE NO VISIBLE ENCROACHMENTS OF THIS PROPERTY AT THE TIME OF THE SURVEY, EXCEPT AS SHOWN.

STATE OF TEXAS
REGISTERED
JOHN R. (BOB) HODGES
4583
PROFESSIONAL
LAND SURVEYOR

JOHN R. (BOB) HODGES
R.P.L.S. NO. 4583

TEXAS REGISTERED ENGINEERING FIRM F-30
TEXAS LICENSED SURVEYING FIRM 100142-00

"EXHIBIT C" TO THE PURCHASE AGREEMENT

SPECIAL WARRANTY DEED

STATE OF TEXAS §
§
COUNTY OF JEFFERSON §

The **City of Port Arthur Section 4A Economic Development Corporation**, a Texas not-for-profit economic development corporation ("Grantor") in consideration of the sum of TEN AND NO/100 DOLLARS ($10.00) and other good and valuable consideration, to Grantor in hand paid by **B&B Ice, Inc.,** a Texas for profit corporation doing business in Port Arthur, Texas ("Grantee") the receipt of which is hereby acknowledged, has GRANTED, SOLD and CONVEYED, to Grantee, the surface estate only of that certain property situated in the County of Jefferson, State of Texas, described as follows (the "Property"):

See **Exhibit "A"** attached.

This conveyance is made subject to the following:

(1) easements and rights-of-way appearing of record in the office of the County Clerk of Jefferson County, Texas;

(2) all covenants, restrictions, and all conditions and exceptions, reservations and conveyances of minerals and/or royalties, oil and gas and/or mineral leases, affecting the above described property, of record in the Office of the County Clerk of Jefferson County, Texas, to the extent they are still in effect and relate to the above described property;

(3) all covenants, restrictions, and conditions contained within the Covenants and Restrictions for the Port Arthur Highway 93 Business Park as amended, a copy of which Covenants has been provided to Grantee by Grantor;

(4) the treatment or storage of the following is prohibited:
- *hazardous industrial waste*, as defined by 30 Texas Administrative Code ("TAC") §335.1(60) (in accordance with RCRA of 1976 and 40 Code of Federal Regulations ("CFR") Part 261);
- *hazardous waste*, as defined by 30 TAC §335.1 (62) (in accordance with the federal Solid Waste Disposal Act, as amended by RCRA, 42 United States Code §§6901 et seq., as amended) and as determined by the procedures in 30 TAC §335.504;
- *hazardous waste constituent*, as defined by 30 TAC §335.1(63) (listed in 40 CFR Part 261, Subpart D or in Table 1 of 40 CFR §261.24); and
- tanks, drums, or containers used for shipping or storing any material that has been listed as a hazardous constituent in 40 code of Federal Regulations (40 CFR), Part

261, Appendix VIII but has not been listed as a commercial chemical product in 40 CFR, §261.33(e) or (f);

(5) taxes on the above described property for 2012 and subsequent years not yet due and payable; and

(6) all zoning laws, regulations and ordinances of municipal and other governmental authorities, if any, but only to the extent that they are still in effect, relating to the above described property.

Grantor has executed and delivered this Special Warranty Deed and has granted, bargained, sold, and conveyed the Property to Grantee, and Grantee has received and accepted this Special Warranty Deed and has purchased, received, and, accepted the Property, ON AN AS-IS, WHERE IS BASIS, WITH ALL FAULTS AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WRITTEN OR ORAL, IT BEING THE INTENTION OF GRANTOR AND GRANTEE TO EXPRESSLY REVOKE, RELEASE, NEGATE, AND EXCLUDE ALL REPRESENTATIONS AND WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY AND ALL EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES AS TO (i) THE CONDITION OF THE PROPERTY OR ANY ASPECT THEREOF, INCLUDING, WITHOUT LIMITATION, ANY AND ALL EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES RELATED TO SUITABILITY FOR HABITATION, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR USE OR PURPOSE; (ii) THE NATURE OR QUALITY OF CONSTRUCTION, STRUCTURAL DESIGN OR ENGINEERING OF ANY IMPROVEMENTS WHICH ARE PART OF THE PROPERTY OR WHICH SERVE THE PROPERTY (the "IMPROVEMENTS"); (iii) THE QUALITY OF THE LABOR OR MATERIAL INCLUDED IN THE IMPROVEMENTS; (iv) THE SOIL CONDITIONS, DRAINAGE, TOPOGRAPHICAL FEATURES OR OTHER CONDITIONS WHICH AFFECT THE PROPERTY; (v) THE AREA, SIZE, SHAPE, CONFIGURATION, LOCATION, CAPACITY, USE, DEVELOPMENT POTENTIAL, PURPOSE OR OTHER CHARACTERISTIC CONCERNING OR RELATING TO THE PROPERTY; (vi) ANY FEATURES OR CONDITIONS AT OR WHICH AFFECT THE PROPERTY WITH RESPECT TO ANY PARTICULAR PURPOSE, USE, DEVELOPMENTAL POTENTIAL, CASH FLOW, OR OTHERWISE; (vii) ALL EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES CREATED BY ANY AFFIRMATION OF FACT OR PROMISE OR BY ANY DESCRIPTION OF THE PROPERTY; (viii) ANY ENVIRONMENTAL, GEOLOGICAL, METEOROLOGICAL, STRUCTURAL OR OTHER CONDITION OR HAZARD OR THE ABSENCE THEREOF HERETOFORE, NOW, OR HEREAFTER AFFECTING IN ANY MANNER ANY OF THE PROPERTY; AND (ix) ALL OTHER EXPRESS OR IMPLIED WARRANTIES AND REPRESENTATIONS BY GRANTOR WHATSOEVER, EXCEPT SOLELY THE SPECIAL WARRANTY OF TITLE EXPRESSLY SET FORTH IN THIS DEED CONVEYING THE PROPERTY TO GRANTEE.

TO HAVE AND TO HOLD, the said Property, together with all rights, hereditaments and appurtenances thereto belonging, unto Grantee, its successors, heirs, and assigns forever. And Grantor does hereby bind itself, its successors, heirs, executors, administrators, and personal representatives to WARRANT AND FOREVER DEFEND the title to said Property unto Grantee, its successors, heirs, and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through, or under Grantor, but not otherwise.

When Grantor or Grantee or both of them are more than one (1) person, or when Grantor or Grantee or both of them are a corporation, limited liability company, partnership, trustee, administrator, executor, or

personal representative, this Deed shall read as though pertinent verbs, nouns, and pronouns are changed correspondingly, and pronouns of the masculine gender where used herein shall be construed to include persons of the female sex. When this Deed is executed by or to or by and to a corporation, limited liability company or partnership, references to "heirs, executors, administrators, and personal representatives" shall be appropriately disregarded, and when this Deed is executed by or to or by and to a natural person or persons, references to "successors" shall be appropriately disregarded.

Grantee has joined in this Deed to evidence Grantee's acceptance of this Deed.

EXECUTED this the _____ day of _____, 2013.

GRANTOR:

The City of Port Arthur Section 4A Economic Development Corporation

By: _____
President

By: _____
Secretary

Accepted by GRANTEE:

B&B Ice, Inc.

By: _____
Paul Benton

STATE OF TEXAS §
§
COUNTY OF JEFFERSON §

This instrument was acknowledged before me on the ___ day of _____, 2013, by _____, President of the **City of Port Arthur Section 4A Economic Development Corporation**, a Texas not-for-profit corporation, on behalf of such corporation.

_____
Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF JEFFERSON §

This instrument was acknowledged before me on the ___ day of _____, 2013, by _____, Secretary of the **City of Port Arthur Section 4A Economic Development Corporation**, a Texas not-for-profit corporation, on behalf of such corporation.

_____
Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF JEFFERSON §

This instrument was acknowledged before me on the ___ day of _____, 2013, by **Paul Benton** of **B&B Ice, Inc.**, on behalf of such corporation.

_____
Notary Public, State of Texas

GRANTEE'S MAILING ADDRESS:
B&B Ice, Inc.
6219 Gulfway Drive
Groves, Texas 77619
ATTN: Paul Benton