

RESOLUTION NO. 14-053

A RESOLUTION AUTHORIZING THE CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION TO ENTER INTO A SETTLEMENT AGREEMENT AND MUTUAL RELEASE WITH DONSHE POTTERY, LLC

WHEREAS, at its Regular Board Meeting on January 14, 2014, the City of Port Arthur Section 4A Economic Development Corporation Board (the "PAEDC") authorized the Executive Director to enter into a Settlement Agreement and Mutual Release with DonShe Pottery, LLC ("DonShe") as set forth in **Exhibit "A"** attached hereto; and

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

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

Section 2. That the PAEDC is hereby authorized to enter into the Settlement Agreement and Mutual Release with DonShe attached hereto as **Exhibit "A"**.


Section 3. That a copy of this Resolution shall be spread upon the Minutes of the City Council.

READ, ADOPTED AND APPROVED on this 27th day of Feb A.D., 2014, at a Meeting of the City Council of the City of Port Arthur, Texas, by the following vote:

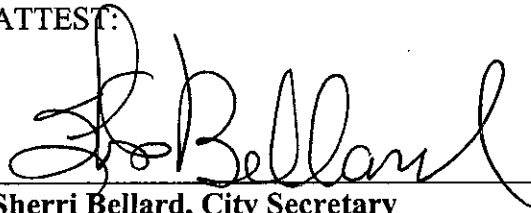
AYES:

Mayor Prince; Mayor Pro Tem Williamson
Councilmembers Scott, Albright, Troy, Lewis
and Freeman

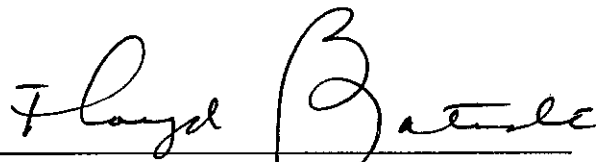
NOES: _____


Deloris "Bobbie" Prince, Mayor

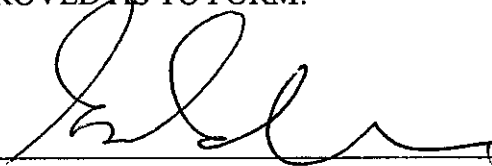
ATTEST:


Sherri Bellard, City Secretary

APPROVED:


Floyd Batiste, PAEDC CEO

APPROVED AS TO FORM:


Guy N. Goodson, PAEDC Attorney

APPROVED AS TO FORM:

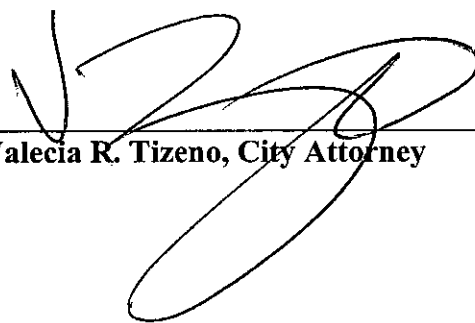

Valecia R. Tizeno, City Attorney

EXHIBIT "A"

WILL BE PRESENTED AT THE COUNCIL MEETING

EXHIBIT "A"

TO

P.R. NO. 18081

STATE OF TEXAS

COUNTY OF JEFFERSON

§
§
§

**SETTLEMENT AGREEMENT
AND MUTUAL RELEASE**

This Settlement Agreement and Mutual Release ("Agreement") is made and entered into effective as of January _____, 2014 (the "Effective Date"), by and among **City of Port Arthur Section 4A Economic Development Corporation** (the "PAEDC") and **Donshe Pottery L.L.C.** ("Donshe"). The aforementioned entities are collectively referred to as the "Settlement Parties" and individually, as a "Settlement Party."

RECITALS

- A. On or about May 5, 2004, Donshe executed that certain Economic Incentive Contract and Loan Agreement ("Contract") with the EDC, as amended by City Council Resolutions 04-193 and 04-0341.
- B. That certain Economic Incentive Contract and Loan Agreement provided for a loan in the amount of \$20,000.00 and a credit extension in an amount not to exceed \$92,500.00.
- C. PAEDC is willing to compromise and forgive the remaining outstanding balance in the amount of \$9,250.00 associated with the \$92,500.00 credit extension which is being forgiven as a grant.
- D. On or about February 2012, Donshe ceased making payments towards the \$20,000 Loan. PAEDC is unwilling to forgive the remaining outstanding balance in the amount of \$6,318.54 of the \$20,000.00 Loan and Donshe understands that it must pay \$175.52 per month for 36 months, with no additional interest, until the outstanding balance of \$6,318.54 is paid in full to PAEDC.

NOW, THEREFORE, for and in consideration of the payments hereinafter referred to, the resolution of certain outstanding matters and disputes between the Settlement Parties, the mutual promises, covenants and conditions set forth herein and the Recitals set forth above which are incorporated into this Agreement as if fully set forth below, the Settlement Parties agree as follows:

1. Payment by Donshe to PAEDC. After the execution of this Agreement, Donshe or its duly authorized representatives shall pay to PAEDC on February 1, 2014 by cashier's check, money order or by wire transfer of funds and on the first of each month thereafter the sum of \$175.52 for thirty-six (36) months until the \$6,318.54 balance on the \$20,000 Note is paid in full.

2. Release by PAEDC. For and in consideration of the payment as set forth in paragraph 1 of this Agreement, PAEDC has agreed to (i) release and discharge any and all other and further payment obligations of Donshe under the Contract including but not limited to accrued interest on the \$20,000 Loan and the \$92,500 Grant and (ii) return \$92,500 Note to Donshe or its duly

authorized representatives, (iii) return the Deed of Trust to Donshe or its duly authorized representatives, and (iii) release the Guaranty Agreement executed by Ms. Sheila Edwards and Mr. Donald Edwards.

3. Security. PAEDC shall retain the \$20,000.00 and Settlement Parties agree, PAEDC shall refrain all rights under (i) the Deed of Trust executed by Donshe as to the Contract and (ii) the Guaranty Payment by Donald Edwards and Sheila Edwards.

4. Assignment of Rights. PAEDC and Donshe each mutually acknowledge and agree that no portion of any claim or obligation hereby being satisfied or released have been assigned or transferred to any other party or entity and that no other party or entity may assert any claim as to the settlement for payment of the Loan as set forth in this Agreement, and each of the released Settlement Parties warrants and represents that there are no outstanding claims or liens of any character in any manner as to the proceeds paid or the receipt of the proceeds in payment and satisfaction of the \$20,000 Loan.

5. Release by Settlement Parties. In consideration of the money paid by Donshe to PAEDC and the concurrent releases as set forth in paragraph 2 of this Agreement, the Settlement Parties release and discharge each other from any additional settlement money whatsoever in any manner arising out of, related or connected, with the Loan, and the Settlement Parties agree to waive any rights to assert against each other any claim for indemnity or contribution, any rights of subrogation or liens, any claims of assignment of claims or causes of action arising out of the Loan and claiming any manner or procedure by, through or under which for any settlement whatsoever in any manner arising out of or related to the Loan, and the Settlement Parties agree to indemnify and hold harmless each other from any claims, demands, causes of action whatsoever which have been made or hereafter asserted by any natural person, their representative or assigns or any firm, corporation or other entity as to the Loan.

6. Mutual Release. The Settlement Parties agree that this is a full and final mutual release and indemnity agreement and shall be so interpreted in accordance with the laws of the State of Texas. The Settlement Parties also agree that as a full and final release and discharge of the claims and causes of action between the Settlement Parties, their agents, servants, employees, heirs, successors, insurers and assigns, whether named or not named, expressly herein, as to matters arising as to the Loan, and this mutual release may be pled by the Settlement Parties as an absolute and final bar to any and all suits pending or that may hereafter be pending or prosecuted by a Settlement Party, their heirs or beneficiaries or anyone claiming by, through or under them or by any way of subrogation, indemnity, or contribution as to the Loan.

7. Costs and Expenses. Except as otherwise noted herein, each Settlement Party shall bear its own costs and expenses (including attorneys' fees) incurred in connection with the consummation of the transactions contemplated in this Agreement and the exhibits attached hereto.

8. Enforcement of Terms. In the event that any Settlement Party: (a) directly or indirectly, contests, challenges, or attacks this Agreement or any of its provisions in any legal or equitable proceeding; or (b) finds it reasonably necessary to seek enforcement of this Agreement

by way of judicial proceeding, including declaratory judgment, the prevailing party (whether that party originally sought to enforce this Agreement or originally defended against enforcement) shall be entitled to and the non-prevailing party shall bear all costs of the prosecution and/or defense, legal fees and other expenses incurred by the prevailing party to such action (whether by intervention or otherwise as a result of such judicial proceeding).

9. No Admission of Liability. It is expressly agreed and understood by the Settlement Parties that the consideration given in connection with this Agreement is given in compromise of disputed claims and does not constitute an admission of liability by any Settlement Party.

10. Numerous Originals. It is expressly understood and agreed that this Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes, but in making proof of the Agreement, it shall only be necessary to produce one such counterpart.

11. Binding Successors. It is expressly understood and agreed that this Agreement will be binding on each Settlement Party and their successors, heirs and assigns.

12. Entire Agreement. This Agreement, including any exhibits hereto, contains the entire agreement between the Settlement Parties and the terms of this Agreement are contractual and not mere recitals.

13. Time of the Essence. Time is of the essence in connection with any obligations of any Settlement Party that are specified in this Agreement.

14. Severability. Should any term or provision of this Agreement be declared invalid by a court of competent jurisdiction, the Settlement Parties agree that all other terms of this Agreement are binding and have full force and effect as if the invalid portion had not been included.

15. Governing Law; Venue. The Settlement Parties agree that this Agreement shall be governed by, construed, interpreted and enforced in accordance with the laws of the State of Texas. Any lawsuits between the parties hereto shall be filed and litigated in a state or federal court in Texas. The parties agree that this Agreement is performable, in whole or in part, in Jefferson County, Texas.

16. Further Assurances. The Settlement Parties shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonable necessary or appropriate in connection with the performance of its and their obligations hereunder and to carry out the intent of the Settlement Parties, and to correct or modify in good faith any errors or omissions which shall subsequently be discovered.

17. Cooperation. Each Settlement Party agrees to reasonably cooperate to the extent necessary to effectuate all terms and conditions of this Agreement.

18. Captions. The captions appearing at the commencement of the sections or paragraphs hereof are descriptive only and for convenience in reference. Should there be any conflict between any such caption and the section or paragraph at the head or beginning of which it appears, the section or paragraph and not such caption shall control and govern the construction of this document.

19. Waiver and Amendment. No breach of this Agreement can be waived unless done in writing and signed by the Settlement Party to be charged. Waiver of any one breach shall not be deemed to be a waiver of any other breach of the same or any other provision hereof. This Agreement may be amended only by a written agreement executed by all of the Settlement Parties.

20. Ambiguities. This Agreement shall be construed as having been drafted by all of the Settlement Parties so that the rule of construing ambiguities against a drafter shall have no force and effect as between the settlement parties.

21. Authority to Execute. The Settlement Parties represent, warrant and covenant that each of them has the authority or power to enter into the transactions contemplated herein. The Settlement Parties further represent and warrant that they have not been induced into this Agreement by a statement, action or representation of any kind or character made by the persons hereby released or any person or persons representing them, other than those made herein.

22. Representation by Counsel. Each Settlement Party has had the benefit of counsel of its own choice and has been afforded an opportunity to review this Agreement with chosen counsel. Each Settlement Party, after conferring with counsel, believes that they, and any entity for which such person is executing, is legally bound by this Agreement. The Settlement Parties further acknowledge and represent that they have carefully read this Agreement, understand it, and have executed it voluntarily and on their own best judgment. This Agreement was prepared by the joint efforts of all the Settlement Parties and it is agreed that this Agreement shall be construed without consideration as to which party actually drafted this Agreement.

23. Counterparts. This Agreement may be executed in any number of counterparts for all purposes being deemed an original, and all such counterparts shall together constitute only one and the same instrument. The Settlement Parties before signing below, declare that they have read all of this Settlement Agreement and Mutual Release before signing or have had the document read to or on their behalf and understand that it is a full, final and complete release in settlement of all issues related to the Loan as herein described and that they have made an indemnity agreement to protect to the other Settlement Parties against claims that may be made or may hereafter be made against them by any other person or entity arising in the future from any of the circumstances arising out of and in relation to the Loan and that no additional monies will be paid on account of the Loan or the settlement thereof as set forth and as above recited.

[Remainder of Page Intentionally Deleted]

EXECUTED on the dates set forth below, to be effective as of the Effective Date.

SETTLEMENT PARTIES:

**City of Port Arthur Section 4A
Economic Development Corporation**

DATE: _____

By: _____
President

ATTEST:

Secretary

SIGNED AND AGREED TO on the ____ day of _____, 2014.

Donshe Pottery, L.L.C.

By: _____

Witness

Donald Edwards

Witness

Sheila Edwards

Witness