

RESOLUTION NO. 18-060

**A RESOLUTION APPROVING AMENDMENT NO. 2 TO THE
ECONOMIC DEVELOPMENT CONDITIONAL GRANT
AGREEMENT BETWEEN THE CITY OF PORT ARTHUR
SECTION 4A ECONOMIC DEVELOPMENT CORPORATION
AND AJ ENTERTAINMENT, LLC**

WHEREAS, per Resolution 17-029 dated January 31, 2017, the City Council of the City of Port Arthur approved an Economic Development Conditional Grant Agreement (the "Agreement") between the City of Port Arthur Section 4A Economic Development Corporation ("PAEDC") and AJ Entertainment, LLC ("AJ Entertainment") in an amount of \$105,500.00 to reimburse AJ Entertainment for the redevelopment and necessary infrastructure improvements to the former Twin City Kia building to open a restaurant and distribution warehouse; and

WHEREAS, the Agreement states that AJ Entertainment has 12-month period which ends on February 15, 2018 to complete the necessary improvements as shown in **Exhibit "A"**; and

WHEREAS, AJ Entertainment has completed and obtained a Certificate of Occupancy for the first portion of the project, the restaurant, which is open and now operational; and

WHEREAS, AJ Entertainment has made PAEDC aware that the second and final portion of the project, the distribution warehouse, is not yet complete due to time setbacks as a result of recent tropical and ice storms, and they do not anticipate it to be complete by February 15, 2018; and

WHEREAS, the PAEDC Board of Directors at their special meeting of February 12, 2018, considered and approved amending the Agreement extending the time period for AJ Entertainment to complete the necessary improvements through November 15, 2018.

**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 Amendment No. 2 to the Economic Development Conditional Grant Agreement between PAEDC and AJ Entertainment, LLC as denoted in the Amendment attached hereto as **Exhibit "B"**.

Section 3. That a copy of the caption 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., 2018,
at a Meeting of the City Council of the City of Port Arthur, Texas, by the following vote:

AYES:

Mayor Freeman; Mayor Pro Lem Jones
Councilmembers Scott, Kinlaw, Doucet, Lewis
Moses and Frank.

NOES: None.

ATTEST:

Sherri Bellard
Sherri Bellard, City Secretary

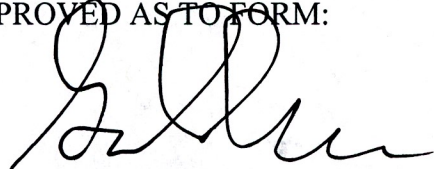
Derrick Freeman
Derrick Freeman, Mayor

APPROVED:



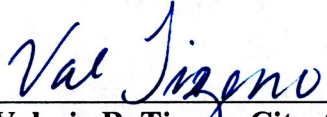
Floyd Batiste, PAEDC CEO

APPROVED AS TO FORM:



Guy N. Goodson, PAEDC Attorney

APPROVED AS TO FORM:



Valecia R. Tizenb, City Attorney

EXHIBIT “A”

These are PAEDC's only obligations.

b. Performance by AJ ENTERTAINMENT, LLC

- i. AJ ENTERTAINMENT, LLC shall make infrastructure improvements to the Building as outlined in the Grant Application referenced in Exhibit "B."
- ii. AJ ENTERTAINMENT, LLC shall provide PAEDC with quarterly reports detailing the progress of the infrastructure improvements.
- iii. AJ ENTERTAINMENT, LLC shall provide PAEDC certificates of occupancy for the restaurant and warehouse in order to receive the reimbursable percentage that coincides with the completion of each of the three retail spaces.
- iv. AJ ENTERTAINMENT, LLC shall use its best efforts to hire architect(s), engineer(s), and general subcontractor(s) from the Nine-County Southeast Texas Region for redevelopment of the Building;
- v. AJ ENTERTAINMENT, LLC will use its best efforts to ensure that Port Arthur, Texas residents are hired for the redevelopment of the Building to the maximum extent feasible.
- vi. AJ ENTERTAINMENT, LLC must complete the infrastructure improvements and receive certificate of occupancy for each space in Section 6.a. above within twelve (12) months from the date this Agreement is executed.
- vii. On written demand by PAEDC and in response to AJ ENTERTAINMENT, LLC's failure to achieve a performance milestone, AJ ENTERTAINMENT, LLC shall provide PAEDC within 10 business days following receipt of such written demand with assurances that it has both the intention and capabilities to perform fully its Agreement dual obligations.
- viii. AJ ENTERTAINMENT, LLC must obtain a Letter of Credit in the amount of \$105,500 and provide to PAEDC.

AJ ENTERTAINMENT LLC'S PERFORMANCE MILESTONE SCHEDULE

7. Although failure to achieve a performance milestone is not a breach of Agreement, a failure is grounds for PAEDC to demand reasonable assurances¹ from AJ ENTERTAINMENT, LLC that it can and will fully perform its Contractual obligations. Failure to provide demanded assurances is a breach of Agreement.
8. AJ ENTERTAINMENT, LLC's performance milestones are contained in Exhibit "C."

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

EXHIBIT “B”

**SECOND AMENDMENT TO THE
ECONOMIC DEVELOPMENT CONDITIONAL GRANT AGREEMENT
BETWEEN
THE CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT
CORPORATION
AND
AJ ENTERTAINMENT, LLC**

WHEREAS, AJ Entertainment, LLC ("AJ Entertainment") and the City of Port Arthur Section 4A Economic Development Corporation ("PAEDC") entered into Economic Development Conditional Grant Agreement (the "Agreement") on _____ pursuant to Resolution No. 17-029;

WHEREAS, the Agreement provided that AJ Entertainment had to complete the necessary improvements by February 15, 2018; and

WHEREAS, AJ Entertainment has completed and obtained a Certificate of Occupancy for the first portion of the project, the restaurant, which is open and operational; and

WHEREAS, AJ Entertainment has requested an extension of time to complete the final portion of the project; and

WHEREAS, AJ Entertainment has not been able to complete the final portion of the project, the distribution warehouse, due to time setbacks as a result of Tropical Storm Harvey and the inclement winter weather;

WHEREAS, the PAEDC Board of Directors agreed to amend the Agreement extending the time period for completion from February 15, 2018 to November 15, 2018.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION that:

1. This Amendment to the Economic Development Conditional Grant Agreement between PAEDC and AJ Entertainment was approved by the PAEDC Board of Directors on February 12, 2018.

2. This Amendment to the Agreement shall be effective upon approval by the City of Port Arthur, Texas.

3. The recitals to this Amendment are incorporated and fully referenced in this Amendment.

4. Other than the amendment set forth herein, AJ Entertainment and PAEDC ratify and affirm all terms and conditions of the Agreement dated _____.

SIGNED AND AGREED to on this ____ day of _____, 2018.

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

By: _____
President

ATTEST:

Secretary

THE STATE OF TEXAS §
 §
COUNTY OF JEFFERSON §

This instrument was acknowledged before me on the ____ day of _____, 2018, by
_____ as President and _____ as Secretary on
behalf of City of Port Arthur Section 4A Economic Development Corporation.

Notary Public, State of Texas

**AJ ENTERTAINMENT, LLC,
a Texas limited liability company**

By: _____
Tony Nguyen

THE STATE OF TEXAS

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§

COUNTY OF JEFFERSON

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This instrument was acknowledged before me on the ____ day of _____, 2018, by
_____ behalf of AJ Entertainment, LLC.

Notary Public, State of Texas