



P.R. No. 20473  
09/18/2018 FB

RESOLUTION NO. 18-413

**A RESOLUTION APPROVING A PURCHASE AGREEMENT BETWEEN THE CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION AND NDC HOUSING AND ECONOMIC DEVELOPMENT CORPORATION, INC., A NEW YORK CORPORATION FOR PROPERTY LOCATED AT 4<sup>TH</sup> STREET BETWEEN MOBILE AND SHREVEPORT FOR AN AMOUNT OF ONE HUNDRED TEN THOUSAND DOLLARS AND 00/100 DOLLARS (\$110,000)**

**WHEREAS**, the City of Port Arthur Section 4A Economic Development Corporation ("PAEDC") deems it in the best interest of the public to sell land located at 4<sup>th</sup> Street between Mobile and Shreveport for fair market value for the economic development of the City downtown area in accordance with the Freese and Nichols land use planning study; and

**WHEREAS**, NDC Housing and Economic Development Corporation Inc., a New York Corporation wishes to purchase approximately three (3) acres of vacant land located on 4<sup>th</sup> Street at Mobile Avenue and Shreveport in the City of Port Arthur for the purpose of development and building townhomes and condominiums; and

**WHEREAS**, at their special Board meeting of September 17, 2018, the PAEDC Board of Directors approved the sale of land on 4<sup>th</sup> Street between Mobile Avenue and Shreveport in an amount of \$110,000 pursuant to the Purchase Agreement attached hereto as **Exhibit "A"** and made a part hereof for all purposes (the "Purchase Agreement").

**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 City Council of the City of Port Arthur approves the sale of approximately three (3) acres of land located on 4<sup>th</sup> Street between Mobile Avenue and Shreveport in the City of Port Arthur for the purpose of development and building townhomes and condominiums in an amount of \$110,000; and

**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 25<sup>th</sup> day of Sept. A.D., 2018, at a Meeting of the City Council of the City of Port Arthur, Texas, by the following vote:

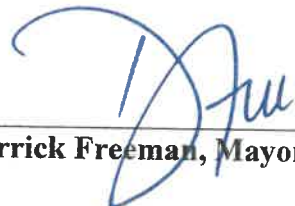
AYES:

Mayor Freeman; Mayor Pro Tem Kimlaw

Councilmembers Scott, Jones, Osuel and  
Moses

NOES: None.

ATTEST:

  
Derrick Freeman, Mayor

  
Sherri Bellard, City Secretary

APPROVED:

  
Floyd Batista, PAEDC CEO

APPROVED AS TO FORM:



Guy N. Goodson, PAEDC Attorney

APPROVED AS TO FORM:

See Confidential Memo  
**Valecia R. Tizenio, City Attorney**

# Exhibit "A"

## PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT ("Agreement") is entered into, and is effective as of \_\_\_\_\_, 2018 (the "Effective Date"), by and between the **City of Port Arthur Section 4A Economic Development Corporation** ("Seller") and **Housing and Economic Development Corporation, Inc., a New York corporation** or its permitted assignee ("Buyer").

### RECITALS:

A. Seller is the owner of certain real property together with all improvements located thereon, which is located at or near the City of Port Arthur Section 4A Economic Development Corporation Business Park.

B. Seller desires to sell to Buyer and Buyer desires to buy \_\_\_\_\_ acres, surface only without minerals (as described in "RECITAL A" above and as more particularly described on **Exhibit "A"** attached hereto) together with all improvements, if any, located on such land and all rights, privileges, servitudes and appurtenances thereunto belonging or appertaining, including all rights, title and interest of Seller in and to the streets, alleys, and rights-of-way adjacent to such parcel (collectively, the "Property") from Seller upon the terms and subject to the conditions contained herein and incorporated by reference herein as if fully set forth.

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 Sale and Purchase.** Seller shall sell, convey, and assign to Buyer, and Buyer shall purchase, assume and accept from Seller, for the Discounted Purchase Price (defined below), and on and subject to the terms and conditions herein, indefeasible fee simple title to the Property. Buyer and Seller agree that the legal description of the Property shall be determined mutually by Buyer and Seller upon completion of the Survey (defined below). The Property shall be sold, conveyed, and assigned to Buyer at Closing (defined below) free and clear of all liens except for the lien of real property taxes not yet due and payable, and subject to the Permitted Exceptions (defined below).

**1.2 Price and Payment.** The purchase price for the Property, together with all improvements located thereon, will be One Hundred Ten Thousand Dollars and 00/100 Dollars (\$110,000).

**1.3 Deposit.** Within five (5) days of the Effective Date, Buyer shall deposit with Texas Regional Title, 7980 Anchor Drive, Building 800, Port Arthur, Texas 77642 (the "Escrow Holder" or "Title Company") a cash deposit, which shall be deposited into an interest-bearing account, in the amount of Five Thousand and 00/100 Dollars (\$5,000) (the "Deposit"). The

"Deposit" shall mean the amount deposited by Buyer, together with all interest earned thereon. The Deposit shall be applied as a credit against the Discounted Purchase Price at the closing of the Escrow.

**1.4 Refund of Deposit.** The Deposit 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 provision set forth herein.

**1.5 Closing Transaction.** Consummation of the sale provided herein (the "Closing") shall take place on the Closing Date (as herein defined) through the Escrow Holder at its offices or at such other place Seller and Buyer mutually agree in writing. 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 mutually concurrent conditions precedent as well as covenants. Time is of the essence with regard to the Closing Date.

**1.6 Escrow Instructions.** Seller and Buyer shall deliver to the Escrow Holder an executed copy of this Agreement and such additional escrow instructions to Escrow Holder as each party deems appropriate or as Escrow Holder may reasonably require, provided that such instructions are consistent with this Agreement (the "Escrow Instructions"). 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 considered of no force and effect.

## **ARTICLE 2 PRE-CLOSING 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") to the extent such materials are in Seller's possession or subject to Seller's reasonable control and to the extent such materials relate to the Property and/or any improvements thereon: plans and specifications; land Survey(s); all structural, seismic, soils, engineering and geological investigations and reports; all environmental investigations and reports; Reciprocal Easement Agreement(s); Covenants, Conditions, & Restrictions (CC&R's); any leases, licenses or occupancy agreements (with any amendments) and all agreements (including, but not limited to, service and maintenance agreements) relating to the operation, use and maintenance of the Property.

**2.2 Survey.** On or before Sixty (60) days from the Effective Date, Buyer shall obtain and cause to be delivered to both the Escrow Holder and the Seller a current and updated Category 1A, Condition II survey of the Property, with **Exhibit "A"** being conformed hereto, which survey shall be prepared by a Texas licensed professional 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 (the "Survey").

**2.3 Title Commitment.** Buyer shall have the right, prior to the expiration of the Feasibility Period (defined below) to obtain a current commitment ("Title Commitment") from the Title Company for issuance to Buyer of a standard Texas form (Form T-1) Owner's Policy of Title Insurance in the amount calculated at the \$ [REDACTED] per acre rate (the "Title Policy"). Buyer shall have until sixty (60) days from the Effective Date (the "Title Review Period") to object in writing to any exceptions stated in the Title Commitment. In the event that Buyer shall so object to any exceptions, Seller shall have twenty (20) days from its receipt of such written objections (the "Response Deadline") 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 of its inability to unwillingness to resolve or eliminate such exceptions prior to the Response Deadline, 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 and the Deposit shall be returned to the Buyer; 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 prior to the expiration of the Title Review Period (or which Buyer shall have approved or waived affirmatively) shall be deemed to be "Permitted Exceptions."

**2.4 Right of Entry and Indemnification.** From the Effective Date to the Closing Date, 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 and its representatives shall have the right to make test borings or to remove samples of materials as Buyer shall deem appropriate, provided that, in the event Buyer terminates this Agreement and fails to close the purchase of the Property, Buyer shall repair at its cost any damage to any of the Property resulting from the 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.

**2.5 Feasibility Period.** In addition to the matters covered in Section 2 above and Section 3 below and any other termination rights granted herein, Buyer shall have the right to terminate this Agreement for any reason within Ninety (90) days from the Effective Date (the "Feasibility Period"). The right to terminate during the Feasibility Period shall inure exclusively to Buyer and Buyer may, at its sole option, waive its right to terminate this Agreement prior to the expiration of the Feasibility Period by providing a written notice to Seller. Buyer, at its sole option, shall also 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 each additional Thirty (30) days the Buyer shall deposit with the Escrow Holder the sum of Five Thousand and 00/100 Dollars (\$5,000.00) as an addition to the Deposit for each extension exercised. The additional deposit shall be treated in the same fashion as the Deposit.



If the Property zoning classification is not proper in order to build and operate an office/warehouse (hereinafter referred to as "the Facility"), upon Buyer's written request, Seller shall be responsible for, and hereby covenants to take actions necessary to, change 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. If Buyer requests a zoning change, Seller agrees to cooperate with Buyer 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.** NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT TO THE CONTRARY, 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. 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, IN THE INCENTIVE AGREEMENT OR THE DOCUMENTS DELIVERED BY SELLER AT CLOSING. 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. 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, EXCEPT FOR ANY MATTERS OF FRAUD OR KNOWING MISREPRESENTATION.



## **2.7 Covenants and Restrictions.**

2.7.1 Prior to Closing Buyer will have reviewed all requirements of the City of Port Arthur, Texas for 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 Disabilities 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 as specifically set forth in this Agreement or in the event of a Seller default) and applicable to the Discounted 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, the Title Company shall be ready, willing and able to issue to Buyer or Buyer's assignee the Title Policy insuring Buyer in the amount calculated at the rate set forth in Article 2.3 above 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 to Buyer all of Seller's right, title and interest in and to any contracts, permits and warranties specifically identified and relating to the Property which Buyer wishes to assume pursuant to an Assignment of Contracts, Permits and Warranties in the form attached hereto as **Exhibit "B"** (the "Assignment").

**3.3 Seller's Warranties and Covenants.** 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. All covenants to have been performed by Seller before or at Closing shall have been satisfied.

**3.4 Governmental Approvals.** Buyer shall be obligated to proceed to Closing only after 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 conveyance of the Property or the development of the Facility, Buyer's obligation to close shall be subject to obtaining a Final Plat or Replat of the Property which is acceptable to Buyer. Buyer shall cooperate with Seller in all reasonable respects in obtaining Final Plat or Replat approval for the Property and in recording the Final Plat or Replat. All costs

of the platting process will be paid by the Seller. Buyer shall have the right to review and approve the Final Plat or Replat.

**3.6 Condition of Property.** There shall have been by Closing no material adverse change in the condition of the Property or any elements of the Property from the dates of the inspections conducted in satisfaction of the conditions of this Agreement or in the building, subdivision, or other laws, ordinances, rules, or regulations applicable to the Property from the date of satisfaction of the conditions set forth herein until Closing.

## **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 in the offices of the Escrow Holder fifteen (15) business days following the expiration of the Feasibility Period (or such earlier date on which Buyer waives its right to terminate the Agreement).

**4.3 Escrow Instructions.** The parties hereby instruct Escrow Holder to open and complete Escrow and Closing in accordance with the Escrow Instructions. 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.

**4.4 Closing Deliveries.** At the Closing the following, which are mutually concurrent conditions, shall occur:

4.4.1 Buyer, at its expense, shall deliver or cause to be delivered to Seller the following:

- (a) the Discounted Purchase Price, subject to the Earnest Deposit and adjustments and prorations as provided herein, in funds available for immediate value in Seller's accounts;
- (b) evidence satisfactory to Title Company that the person(s) executing the closing documents on behalf of Buyer have full right, power, and authority to do so;
- (c) a fully-executed counterpart of the Incentive Agreement; and
- (d) such other documents as may be reasonably requested by the Title Company in accordance with this Agreement, or as are customarily executed in the county in which the Property is located to effectuate the conveyance of property similar to the Property.

4.4.2 Seller, at its expense, shall deliver or cause to be delivered to Buyer the following:

- (a) a special warranty deed in the form attached hereto as **Exhibit "C"** (the "Deed"), fully executed and acknowledged by Seller, and otherwise in recordable form as provided in Section 5.1;
- (b) the Assignment, fully executed by Seller;
- (c) Seller's certificate that the representations and warranties contained in Section 6 hereof are true and correct as of the Closing Date;
- (d) evidence satisfactory to Buyer and Title Company that the person(s) executing and delivering the closing documents on behalf of Seller have full right, power and authority to do so;
- (e) a certificate meeting the requirements of Section 1445 of the Internal Revenue Code of 1986, executed and sworn to by Seller;
- (f) a fully-executed counterpart of the Incentive Agreement; and
- (g) such other documents as may be reasonably requested by the Title Company in accordance with this Agreement, or as are customarily executed in the county in which the Property is located to effectuate the conveyance of property similar to the Property.

**4.5 Closing Costs and Charges.** Seller shall pay for Standard Owner's Policy of Title Insurance 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 set forth in this Agreement or if not specified herein as customary in Jefferson County, Texas. At Closing, Seller shall provide Buyer with a credit against the Discounted Purchase Price to reimburse Buyer for the cost of the Survey, provided such credit shall not exceed \$7,000.00.

## **ARTICLE 5**

### **TRANSFER OF TITLE AND POSSESSION**

**5.1 Deed.** Seller shall convey to Buyer or to Buyer's assignee at the Closing, by the 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.

**5.2 Possession.** Seller shall deliver possession of the Property to Buyer free and clear of the occupancy or possessory rights of all others on the Closing Date.

## **ARTICLE 6**

### **REPRESENTATIONS AND COVENANTS OF SELLER**

Seller represents and warrants and covenants as follows, which representations, warranties and covenants shall survive the Close of Escrow and delivery of the Deed to Buyer:

**6.1 Authority.** Seller has full right, power and authority to execute and deliver this Agreement and to consummate the purchase and sale transactions provided herein. 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.

**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, including the Due Diligence Materials, are true and complete 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 Effective Date 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 Effective Date, Seller shall not renew, extend or enter into any new lease or service or management contract, or other agreement that affects the Property without the prior written consent of Buyer.

**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.

**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 Failure to Obtain Project Financing:** Buyer shall have the right to terminate this Agreement at any time if it doesn't secure funding through \_\_\_\_\_ and/or receive disaster assistance recovery funds.

**7.2 Termination.** Except as expressly prohibited in this Agreement, in the event of any default in this Agreement by either of the parties hereto, the other party, in addition to any right or remedy available hereunder, at law or in equity, 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 Deposit 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 Deposit 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 Deposit, 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.

**7.3 No Specific Performance.** If either Buyer or Seller breaches this Agreement prior to the Closing and, as a result, the Closing does not occur, each party waives the right to specific performance. Each party agrees that this clause shall constitute an absolute defense to

any action filed by one of the parties hereto against the other for specific performance. This clause, if asserted by one of the parties hereto against an action for specific performance, shall enable said party to cause the action for a specific performance to be set aside at any time nunc pro tunc.

**7.4 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.

**7.5 DAMAGES.** SELLER AND BUYER AGREE THAT IF BUYER BREACHES ITS OBLIGATIONS HEREUNDER, SELLER SHALL TERMINATE THIS AGREEMENT AND 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.

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BUYER

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SELLER

**7.6 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: **Housing and Economic Development Corporation, Inc.**

\_\_\_\_\_  
**One Battery Park Plaza  
24 Whitehall Street, Suite 710  
New York, New York 10004**

**Telephone:** \_\_\_\_\_

**Fax:** \_\_\_\_\_

**E-mail:** \_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**Telephone:** \_\_\_\_\_

**Fax:** \_\_\_\_\_

**E-mail:** \_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**Telephone:** \_\_\_\_\_

**Fax:** \_\_\_\_\_

**E-mail:** \_\_\_\_\_

Seller at:

**Floyd Batiste, CEO  
Port Arthur Section 4A Economic Development Corp.  
501 Procter Street  
Port Arthur, TX 77640  
Telephone: (409) 963-0579**



**Facsimile: (409) 962-4445**  
**E-mail: fbatiste@paedc.org**

**Guy N. Goodson, EDC Attorney**  
**Germer PLLC**  
**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**  
**7980 Anchor Drive, Building 800**  
**Port Arthur, Texas 77642**  
**Telephone: (409) 861-7300**  
**Facsimile: (409) 727-8386**

**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 to any third party that is not an Affiliate (defined below) without the prior written consent of Seller. Buyer shall be permitted to assign this Agreement without the prior written consent of Seller to an Affiliate. For purposes of this Section, "Affiliate" shall mean (i) a subsidiary of Buyer, (ii) a corporation or other entity into or with which Buyer has merged or consolidated, or to which substantially all of Buyer's stock or assets are transferred, (iii) any corporation or other entity which controls, is controlled by, or is

under common control with Buyer, (iv) a limited liability company in which Buyer is a member, or (v) any corporation or other entity with which Buyer is otherwise affiliated. Except as provided above with respect to Affiliates, 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.** Each party represents and warrants to the other that it has not engaged any agent or broker with respect to this transaction. No other person is entitled to a broker's commission or fee as a result of the purchase and sale of the Property. Each party agrees to indemnify and hold the other party harmless from and against any loss, cost and expense, including attorneys' fees, which the other party shall suffer by reason of the breach of the foregoing representation and warranty by the representing and warranting party.

**8.10 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of 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.

**8.17 Computation of Time.** If the expiration date of any period of time for performance hereunder falls on a Saturday, Sunday or legal holiday, then, in such event, the expiration date of such period of time for performance shall be extended to the next business day.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement:

**SELLER:**

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

By: \_\_\_\_\_ Date: \_\_\_\_\_, 2018  
President

By: \_\_\_\_\_ Date: \_\_\_\_\_, 2018  
Secretary

**BUYER:**

Housing and Economic Development Corporation, Inc.

By: \_\_\_\_\_ Date: \_\_\_\_\_, 2018

**ESCROW HOLDER:**

Attn:

Telephone:

E-mail:

By: \_\_\_\_\_ Date Received: \_\_\_\_\_, 2018  
Title: \_\_\_\_\_

**Exhibit "A"**  
**Legal Description**

## **Exhibit “B”**

### **Assignment**



**Exhibit "C"**

**Form of Deed**

**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 **Housing and Economic Development Corporation, Inc.**, a Texas corporation ("Grantee") the receipt of which is hereby acknowledged, has GRANTED, SOLD and CONVEYED, to Grantee, all that certain property situated in the County of Jefferson, State of Texas, described as in Exhibit A attached hereto and incorporated herein (the "Property").

Grantor hereby reserves unto itself, its successors and assigns, any and all of the oil and gas and their constituents, sulfur, coal, lignite, uranium, and other fissionable material, geothermal energy, base and precious metals, rock, stone, gravel, and any other mineral substances presently in or under the premises described in Exhibit A. The within reservation of the aforesaid materials and minerals pertains to the exclusive right to execute any and all oil and gas leases and any other mineral leases or other contractual arrangements whereby the right of exploring, mining, removing and marketing of the hereinabove reserved minerals could be transferred by Grantor to third parties, and the within reservation also pertains to the exclusive right to receive any and all bonuses, royalties, shut-in and/or delayed marketing payments and any other types of rental or lease payments associated with any of the aforementioned leases or

other contractual arrangements with third parties; together with the ownership of any future reversionary oil and gas and their constituents, and other mineral rights, in total, upon the expiration of any such lease or other contractual arrangement with third parties. The foregoing reservation does not include a right to enter upon or use the surface of the premises described in Exhibit A.

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) 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);
- (4) taxes on the above described property for 2018 and subsequent years not yet due and payable; and

- (5) 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; (v) ANY FEATURES OR CONDITIONS AT OR WHICH AFFECT THE PROPERTY WITH RESPECT TO ANY PARTICULAR PURPOSE, USE, DEVELOPMENTAL POTENTIAL, CASH FLOW, OR OTHERWISE; (vi) ALL EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES CREATED BY ANY AFFIRMATION OF FACT OR PROMISE OR BY ANY DESCRIPTION OF THE PROPERTY; (vii) 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 (viii) 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 \_\_\_\_\_, 2018.

GRANTOR:

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

By: \_\_\_\_\_  
President

By: \_\_\_\_\_  
Secretary

Accepted by GRANTEE:

**Housing and Economic Development  
Corporation, Inc.**

By: \_\_\_\_\_

By: \_\_\_\_\_

STATE OF TEXAS                   §  
  §  
COUNTY OF JEFFERSON       §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2018, by \_\_\_\_\_, President of the **City of Port Arthur Section 4A Economic Development Corporation**, a Texas not-for-profit corporation, on behalf of such corporation.

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Notary Public, State of Texas

STATE OF TEXAS                   §  
  §  
COUNTY OF JEFFERSON       §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2018, by \_\_\_\_\_, Secretary of the **City of Port Arthur Section 4A Economic Development Corporation**, a Texas not-for-profit corporation, on behalf of such corporation.

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Notary Public, State of Texas

STATE OF TEXAS                   §  
   §  
COUNTY OF \_\_\_\_\_ §

      This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2018, by  
\_\_\_\_\_ of **Housing and Economic Development Corporation, Inc.**,  
on behalf of such corporation.

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS                   §  
   §  
COUNTY OF \_\_\_\_\_ §

      This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2018, by  
\_\_\_\_\_ of **Housing and Economic Development Corporation, Inc.**,  
on behalf of such corporation.

\_\_\_\_\_  
Notary Public, State of Texas

GRANTEE'S MAILING ADDRESS:

Housing and Economic Development Corporation, Inc.

\_\_\_\_\_  
\_\_\_\_\_