

RESOLUTION NO. 23-181

A RESOLUTION APPROVING AN ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT BETWEEN THE CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION AND SAIGON PLAZA, LLC FOR AN AMOUNT NOT TO EXCEED \$270,149.00; FUNDS AVAILABLE IN EDC ACCOUNT NO. 120-80-625-5478-00-000

WHEREAS, the City Council deems it in the public interest to authorize the City of Port Arthur Section 4A Economic Development Corporation (“PAEDC”) to enter into an Economic Development Performance Agreement (the “Agreement”) with Saigon Plaza, LLC; and

WHEREAS, PAEDC has reviewed the application presented by Saigon Plaza, LLC and the proposal for infrastructure improvements for the development of a shopping center located at 4439 Gulfway Dr. in Port Arthur, Texas; and

WHEREAS, the PAEDC Board of Directors has concluded that the expenditures found for the infrastructure improvements will promote or develop new or expanded business enterprises as well as determined that Saigon Plaza, LLC has presented an application qualifying as a Section 4A Project as set forth in the Economic Development Act; and

WHEREAS, the PAEDC Board of Directors, at their Regular Board meeting of April 3, 2023, approved a conditional grant in the amount not to exceed \$270,149.00 for the purpose of making qualified infrastructure improvements to the property on Gulfway Dr. based upon findings of facts of economic benefit as to the development of the property; and

WHEREAS, PAEDC under the terms of the Agreement PAEDC will distribute funds to Saigon Plaza, LLC on a reimbursement basis as the improvements to the property on Gulfway Dr. are completed and Certificates of Occupancy for the property are issued; and

WHEREAS, Saigon Plaza, LLC has reviewed and approved the Agreement attached hereto as Exhibit "A".

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 PAEDC is herein authorized to enter into the Agreement with Saigon Plaza, LLC and the President and Secretary of PAEDC are authorized to sign the Agreement in substantially the same form attached hereto as Exhibit "A".

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 25th day of April A.D., 2023, at a Meeting of the City Council of the City of Port Arthur, Texas, by the following vote: AYES:

Mayor Bartie, Mayor Pro Tem Holmer,

Councilmembers Jones, Kinlaw, Markis, Moses, and Frank

NOES: None


Thurman Bartie, Mayor

ATTEST:


Sherri Bellard, City Secretary

APPROVED:



Terry Stokes, PAEDC CEO

APPROVED AS TO FORM:



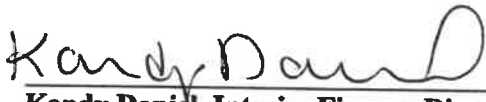
Charles Zech, PAEDC Attorney

APPROVED AS TO FORM:



Valecia R. Tizeno, City Attorney

APPROVED AS TO AVAILABILITY OF FUNDS:



Kandy Daniel, Interim Finance Director

Exhibit "A"

ECONOMIC DEVELOPMENT PERFORMANCE AGREEMENT

This Performance Agreement ("Agreement") is entered into to be effective as of the Effective Date (as defined in Article III below), by and between the Port Arthur Economic Development Corporation, located in Port Arthur, Jefferson County, Texas (hereinafter called "PAEDC"), a Texas Type A non-profit economic development corporation under the Development Corporation Act and governed by TEX. LOC. GOV. CODE chapters 501, 502 and 504 and the Texas Non-Profit Corporation Act and Saigon Plaza, LLC (hereinafter called "COMPANY"), otherwise known as the "Parties" to this Agreement.

RECITALS

WHEREAS, the Development Corporation Act of 1979, as amended (Section 501.001 et seq., Texas Local Government Code, formerly the Development Corporation Act of 1979) (the "Act") authorizes a development corporation to fund certain projects as defined by the Act and requires development corporations to enter into performance agreements to establish and provide for the direct incentive or make an expenditure on behalf of a business enterprise under a project; and

WHEREAS, 501.103 of the Act authorizes expenditures which are found by the PAEDC to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, including water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements;

WHEREAS, Section 501.158 of the Act requires a performance agreement to provide at a minimum for a schedule of additional payroll or jobs to be created or retained, capital investment, to be made as consideration for any direct incentives provided or expenditures made; and to specify the terms under which repayment must be made if the business enterprise does not meet the performance requirements specified in the agreement; and

WHEREAS, COMPANY desires to develop the property located at 4439 Gulfway Drive in Port Arthur, Texas, at a minimum capital investment of Six-hundred and seventy-five thousand three hundred and seventy-two dollars and 50/100 (\$675,372.50), in order to establish and operate a multi tenant shopping center, as provided herein, which is intended to promote new and expanded business development, sales tax revenue and property tax revenue to the City; and

WHEREAS, the PAEDC has been presented with details concerning the projected economic and community development benefits associated with the development of COMPANY's operations in Port Arthur; and

WHEREAS, the PAEDC finds that such development and establishment will contribute to the economic development of the City of Port Arthur, promoting and developing expanded business enterprises, increased development, increased real property value and tax revenue for the City of Port Arthur, and will have both a direct and indirect positive overall improvement/stimulus in the local and state economy; and

WHEREAS, the PAEDC desires to offer an incentive to COMPANY to enable COMPANY to develop the property pursuant to this Agreement and in substantial conformity with the Act; and

WHEREAS, the Parties are executing and entering into this Agreement to set forth certain terms and obligations of the Parties with respect to such matters; and

WHEREAS, on the Effective Date, the commitments contained in this Agreement shall become legally binding obligations of the Parties.

NOW, THEREFORE, in consideration of the mutual covenants, benefits and agreements described and contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and further described herein, the Parties agree as follows:

ARTICLE I RECITALS

1. **Recitals.** The recitals set forth above are declared true and correct by the Parties and are hereby incorporated as part of this Agreement.

ARTICLE II AUTHORITY AND TERM

1. **Authority.** The PAEDC's execution of this Agreement is authorized by the Act and constitutes a valid and binding obligation of the PAEDC. The PAEDC acknowledges that COMPANY is acting in reliance upon the PAEDC's performance of its obligations under this Agreement in making the decision to commit substantial resources and money to the establishment of the Project, hereinafter established.

2. **Term.** This Agreement shall become enforceable upon the Effective Date, hereinafter established, and shall continue until the Expiration Date, hereinafter established, unless terminated sooner or extended by mutual agreement of the Parties, or in the manner provided for herein.

3. **Purpose.** The purpose of this Agreement is to formalize the agreements between COMPANY and the PAEDC for the provision of economic development incentives to cover certain costs associated with the Project as defined in Article III of this Agreement, as well as to specifically state the covenants, representations of the Parties, and the incentives associated with COMPANY's commitment to abide by the provisions of the Act and to abide by the terms of this Agreement, which has been approved by the PAEDC and COMPANY as complying with the specific requirements of the Act. It is expressly agreed that this Agreement constitutes a single transaction. A failure to perform any obligation by COMPANY may constitute a breach of the entire Agreement and terminate any further commitments (if any) by the PAEDC.

4. **Administration of Agreement.** Upon the Effective Date, the PAEDC delegates the administration and oversight of this Agreement to the Executive Director of the PAEDC, or their

designee. Any proposed amendments to the Agreement shall require the approval of the Board of Directors of the PAEDC.

ARTICLE III DEFINITIONS

As used in this Agreement, the following terms shall have the meanings ascribed below. All undefined terms shall retain their usual and customary meaning as ascribed by common and ordinary usage.

“Bankruptcy” shall mean the dissolution or termination of a Party’s existence as an ongoing business, insolvency, appointment of receiver for any part of such Party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“Business Operations” shall mean the management, leasing, and other functions required for the operation of the Food Court Facility, as defined herein, on the Property.

“Default”, unless otherwise specifically defined or limited by this Agreement, shall mean failure by any Party to timely and substantially comply with any performance requirement, duty, or covenant.

“Effective Date” shall be the date of the last signing by a party to this Agreement.

“Expiration Date” shall mean the earlier of:

1. The two-year anniversary of the Effective Date; or
2. The date of termination provided for under Article VII of this Agreement.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a party, including, without limitation, acts of God or the public enemy, war riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of a party), fires, explosions or floods, strikes, slowdowns or work stoppages.

“Improvements” shall mean the infrastructure improvements, drainage improvements, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements; as well as the buildings and ancillary improvements, including a 22,000 square-foot metal building with concrete parking; new sidewalks and ADA ramps; landscaping; and related infrastructure required for the redeveloped site; and as further described by the plans and other documents provided in Exhibit “A” required for the operation of the shopping center.

“Incentives Amount” shall mean the amount of Two hundred seventy thousand and one hundred and forty-nine dollars and 0/100 (\$270,149.00), payable as described in Article IV of this Agreement.

“Incentives Payments” shall mean an amount of money that equals a certain percentage of the Incentives Amount, to be paid out in differing percentage amounts, at differing intervals of Project completion.

“Letter of Credit” shall mean an irrevocable letter of credit governed by ISP98, and obtained by COMPANY as an Applicant or Customer with the PAEDC as Beneficiary.

“Minimum Capital Investment” shall mean the amount of Six-hundred and seventy-five thousand three hundred and seventy-two dollars and 50/100 (\$675,372.50).

“Project” shall mean the development of the Property, as herein defined, to establish a shopping center.

“Property” shall mean the COMPANY- owned real property consisting of approximately 1.702 acres and located at 4439 Gulfway Dr., Port Arthur, Texas.

“Shopping Center” shall mean one or more buildings, or part thereof containing a group of separate permitted commercial uses, which is maintained as a single comprehensive unit and located on a single lot, such lot being held and maintained under one ownership.

“Tenant Space” shall mean the premises within the shopping center leased or otherwise granted permission for individual tenants to occupy and conduct retail operations.

ARTICLE IV PAEDC OBLIGATION

1. Incentives Payments
 - (a) PAEDC shall provide an Incentives Payment in the amount of Eighty-one thousand, forty-four dollars and seventy cents (\$81,044.70) which reflects Thirty percent (30%) of the Incentives Amount. said Incentives Payment shall be paid to Company within thirty (30) days following receipt by the PAEDC of written verification of the completion of construction of the Improvements, along with a Letter of Credit in the amount of \$81,044.70, from the Company. Completion of the construction of Improvements shall occur no later than the deadline provided in Article V(1)(b).
 - (b) PAEDC shall provide an Incentives Payment in the amount of Ninety-four thousand, five hundred and fifty-two dollars and fifteen cents (\$94,552.15) which reflects Thirty-five percent (35%) of the Incentives Amount; said Incentives Payment shall be paid to Company within thirty (30) days following

the PAEDC's receipt of a copy of a certificate of occupancy issued by the City of Port Arthur for the first Tenant Space constructed within the Shopping Center, along with a Letter of Credit in the amount of \$94,552.15, from the Company. The issuance of the certificate of occupancy for the first Tenant Space shall occur no later than the deadline provided in Article V(1)(b).

- (c) PAEDC shall provide an Incentives Payment in the amount of Ninety-four thousand, five hundred and fifty-two dollars and fifteen cents (\$94,552.15) which reflects Thirty-five percent (35%) of the Incentives Amount; said Incentives Payment shall be paid to Company within thirty (30) days following the PAEDC's receipt, from the Company, of a copy of a certificate of occupancy issued by the City of Port Arthur and issued for the second Tenant Space constructed within the Shopping Center; the issuance of the certificate of occupancy for the second Tenant Space shall occur no later than the deadline provided in Article V(1)(c).

ARTICLE V PERFORMANCE OBLIGATIONS OF COMPANY

The obligation of the PAEDC to pay funds under this Agreement shall be conditioned upon COMPANY's continued compliance with, and satisfaction of each of, the performance obligations set forth in this Agreement.

1. Improvements; Operations.
 - (a) Commencement of Construction shall occur on or before May 31, 2023.
 - (b) Completion of Improvements shall occur on or before November 30, 2024.
 - (c) COMPANY shall cause for the issuance of a certificate of occupancy from the City of Port Arthur for the first Tenant Space on or before February 28, 2025.
 - (d) COMPANY shall cause for the issuance of a certificate of occupancy from the City of Port Arthur for the second Tenant Space on or before May 31, 2025.
 - (e) COMPANY will provide for the Minimum Capital Investment to be made in the improvement of the Property and establishment of the Shopping Center thereon.
 - (f) First two Incentive Payments by the PAEDC shall be collateralized by a Letter of Credit issued by the Company.
 - (g) New Jobs. The Company will be not be obligated to create or retain any new jobs in the performance of this Agreement.

- (h) The deadlines and other obligations as provided herein may be amended upon mutual agreement of the Parties, as provided in Article II, Section 4 of this Agreement.

2. Payment of Legal Fees.

- (a) COMPANY shall reimburse the PAEDC for the reasonable and necessary legal fees in the preparation of any amendment to this Agreement requested by COMPANY. Timely payment shall be made within thirty (30) days of submittal of an invoice to COMPANY by the PAEDC or its assigns. Each Party shall bear its own legal fees in connection with the negotiation of this Agreement.

**ARTICLE VI
COVENANTS AND DUTIES**

1. COMPANY's Covenants and Duties. COMPANY makes the following covenants and warranties to the PAEDC and agrees to timely and fully perform the obligations and duties contained in Articles V of this Agreement. Any false or substantially misleading statements contained herein or failure to timely and fully perform those obligations and duties within this Agreement shall be an act of Default by COMPANY.

- (a) COMPANY is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas, with the Texas Comptroller of Public Accounts, and the United States of America during any term of this Agreement.
- (b) The individual signing this Agreement is empowered to execute such Agreement and bind the entity. Said authorization, signing, and binding effect is not in contravention of any law, rule, regulation, or of any agreement or instrument to which COMPANY is a party to or by which it may be bound.
- (c) COMPANY is not a party to any Bankruptcy proceedings currently pending or contemplated, and COMPANY has not been informed of any potential involuntary Bankruptcy proceedings.
- (d) To its current, actual knowledge, COMPANY has acquired and maintained all necessary rights, licenses, permits, and authority to carry on its business in the City of Port Arthur and will continue to use its best efforts to maintain all necessary rights, licenses, permits, and authority.
- (e) COMPANY shall make the Improvements to the Property as described herein and outlined in Exhibit "A."
- (f) COMPANY shall provide PAEDC with written and summarized quarterly reports detailing the progress of the Improvements.

- (g) COMPANY shall comply with the Obligations provided in Article IV in order to receive the Incentives Payments.
- (h) COMPANY shall use its best efforts to hire architect(s), engineer(s), and general subcontractor(s) from the Nine-County Southeast Texas Region for the construction of the Improvements
- (i) COMPANY will use its best efforts to ensure that Port Arthur, Texas residents are hired for the construction and implementation of the Project to the maximum extent feasible.
- (j) COMPANY agrees to obtain, or cause to be obtained, all necessary permits and approvals from the City of Port Arthur and/or all other governmental agencies having jurisdiction over the construction of any improvements to the Property.
- (k) PAEDC has the right to periodically (and with reasonable advance notice) verify the terms and conditions of this Agreement; COMPANY shall cooperate with the PAEDC in providing all necessary information to assist with such verification.
- (l) During the term of this Agreement, COMPANY agrees to not knowingly employ any undocumented workers as part of the Project, and, if convicted of a violation under 8 U.S.C. Section 1324a (1), COMPANY shall be in Default (subject to the remedies in Article V above).
- (m) COMPANY shall not be in arrears and shall be current in the payment of all City and State taxes and fees.
- (n) Under Texas Law, the PAEDC may not enter into a contract with a COMPANY for goods and services unless the contract contains a written verification from the COMPANY that it; (i) does not boycott Israel; and (ii) will not boycott Israel during the term of the contract. (Texas Government Code, Chapter 2270.002) by accepting this rider, the COMPANY hereby verifies that it does not boycott Israel, and agrees that, during the term of this agreement, will not boycott Israel as that term is defined in the Texas Government Code, Section 808.001, as amended. Further, the COMPANY hereby certifies that it is not a COMPANY identified under Texas Government Code, Section 2252.152 as a COMPANY engaged in business with Iran, Sudan, or Foreign Terrorist Organization.

2. PAEDC's Covenants and Duties. PAEDC agrees to timely and fully perform the obligations and duties contained in Article IV of this Agreement. Any false or substantially misleading statements contained herein or failure to timely and fully perform those obligations and duties within this Agreement shall be an act of Default by the PAEDC.

3. Compliance and Default. Failure by COMPANY to timely comply with any performance requirement, duty, or covenant shall be considered an act of Default and shall

give the PAEDC the right to terminate this Agreement, recapture any Incentives Payments paid by the PAEDC to COMPANY, convert the grant provided for herein to a loan, or void any of its relevant obligations under the Agreement.

ARTICLE VII TERMINATION

1. Termination. This Agreement shall terminate upon the earliest occurrence of any one or more of the following:

- (a) The written agreement of the Parties;
- (b) The Agreement's Expiration Date;
- (c) Default by COMPANY (at the option of the PAEDC);

ARTICLE VIII DEFAULT & REMEDIES

1. COMPANY Events of Default.

- (a) Failure of COMPANY to perform or comply with any term, covenant obligation, or agreement contained in Articles V and VI; or
- (b) Any representation or warranty contained herein or in any financial statement, certificate, report or opinion submitted to PAEDC in connection with or pursuant to the requirements of this Agreement was incorrect or misleading in any material respect when made; or
- (c) Any judgment is assessed against COMPANY or any attachment or other levy against the property of COMPANY with respect to a claim remains unpaid, unstayed on appeal, undischarged, not bonded or not dismissed for a period of sixty (60) days; or
- (d) COMPANY makes an assignment for the benefit of creditors; admits in writing its inability to pay its debts generally as they become due; files a petition in bankruptcy; is adjudicated insolvent or bankrupt; petitions or applies to any tribunal for any receiver or any trustee of COMPANY or any substantial part of its/their property, commences any action relating to COMPANY under any reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction whether now or hereafter in effect; or if there is commenced against COMPANY any such action and such action remains undismissed or unanswered for a period of sixty (60) days from such filing, or COMPANY by any act indicates its consent to or approval of any trustee of COMPANY or any substantial part of its property; or suffers any such receivership or trustee to and such appointment remains unvacated for a period of sixty (60) days; or
- (e) COMPANY substantially changes its present ownership without written notification to and approval from PAEDC within thirty (30) days of such change; or

(f) COMPANY materially changes the general character of business from the type of business on the date hereof.

2. PAEDC Events of Default.

(a) PAEDC materially fails to fulfill an obligation set forth within Article IV.

3. Remedies for Default.

(a) The PAEDC may employ any remedy as provided for in this Agreement, and may require the repayment of any Incentives Payments made by the PAEDC to COMPANY. At the PAEDC's sole option and discretion, any Incentives Payments requiring such repayment may be converted into a loan to the COMPANY, in accordance with payment terms as deemed advisable to the PAEDC (including but not limited to an interest rate of seven percent [7%] on repayable amounts), and which the COMPANY agrees to execute a promissory note (as provided in substantial form in Exhibit "B") secured by a deed of trust naming the property as collateral for the loan (as provided in substantial form in Exhibit "C").

(b) COMPANY's sole remedy under this Agreement is specific performance for PAEDC's default of its obligation under Section IV of this Agreement.

ARTICLE IX MISCELLANEOUS

1. Binding Agreement. The terms and conditions of this Agreement shall be binding on and inure to the benefit of the Parties, and their respective successors and assigns. The Executive Director of the PAEDC shall be responsible for the administration of this Agreement and shall have the authority to execute any instruments, duly approved by the PAEDC, on behalf of the Parties related thereto.

2. Mutual Assistance. The Parties will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.

3. Representations and Warranties. Upon approval of this Agreement by the PAEDC Board and the governing body of the City of Port Arthur at duly-authorized meetings held in compliance with the Texas Open Meetings Act, the PAEDC represents and warrants to COMPANY that this Agreement is within their authority, and that they are duly authorized and empowered to enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. COMPANY represents and warrants to the PAEDC that it has the requisite authority to enter into this Agreement.

4. Assignment. COMPANY shall have the right to assign all of its rights, duties, and obligations under this Agreement to a duly qualified third party with prior written approval of the

PAEDC. Any assignment provided for herein shall not serve to enlarge or diminish the obligations and requirements of this Agreement, nor shall they relieve COMPANY of any liability to the PAEDC, including any required indemnity in the event that any Assignee hereof shall at any time be in Default of the terms of this Agreement. The PAEDC may demand and receive adequate assurance of performance including the deposit or provision of reasonable financial security by any proposed Assignee prior to its approval of an assignment.

5. Independent Contractors.

(a) It is expressly understood and agreed by all Parties hereto that in performing their services hereunder, COMPANY at no time will be acting as an agent of the PAEDC and that all consultants or contractors engaged by COMPANY respectively will be independent contractors of COMPANY; and nothing contained in this Agreement is intended by the Parties to create a partnership or joint venture between the Parties and any implication to the contrary is hereby expressly disavowed. The Parties hereto understand and agree that the PAEDC will not be liable for any claims that may be asserted by any third party occurring in connection with services performed by COMPANY respectively under this Agreement, including but not limited to Subcontractors hired by COMPANY or hired by any Contractor or third party by COMPANY.

(b) By entering into this Agreement, except as specifically set forth herein, the Parties do not waive, and shall not be deemed to have waived, any rights, immunities, or defenses either may have, including the defense of parties, and nothing contained herein shall ever be construed as a waiver of sovereign or official immunity by the PAEDC with such rights being expressly reserved to the fullest extent authorized by law and to the same extent which existed prior to the execution hereof.

(c) No employee of the PAEDC, or any board member, or agent of the PAEDC, shall be personally responsible for any liability arising under or growing out of this Agreement.

6. Notice. Any notice required or permitted to be delivered hereunder shall be deemed delivered by actual delivery, or on the first business day after depositing the same in the hands of a reputable overnight courier (such as United States Postal Service, FedEx or UPS) and addressed to the Party at the address set forth below:

If intended for PAEDC:

Port Arthur Economic Development Corporation
501 Procter St #100, Port Arthur, Texas 77640
Attn: Terry Stokes

With a copy to:

Denton, Navarro, Rocha, Bernal & Zech PC
Attn: Charles E. Zech
2500 W. William Cannon, Suite 609
Austin, Texas 78745

If to COMPANY:

Saigon Town, LLC
c/o Michelle Nguyen
4439 Gulfway Dr., Port Arthur, Texas 77642

Any Party may designate a different address at any time upon written notice to the other Parties.

7. Governmental Records. All invoices, records and other documents required for submission to the City pursuant to the terms of this Agreement are Governmental Records for the purposes of Texas Penal Code Section 37.10.

- (a) Governing Law. The Agreement shall be governed by the laws of the State of Texas, and the venue for any action concerning this Agreement (subject to the dispute resolution mechanisms of Article VIII above) shall be in the Courts of Guadalupe County. The Parties agree to submit to the personal and subject matter jurisdiction of said court.
- (b) Amendment. This Agreement may be amended by mutual written agreement of the Parties, as approved by the Board of Directors of the PAEDC and paid for by the COMPANY.

8. Legal Construction. In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions of this Agreement, and it is the intention of the Parties to this Agreement that, in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid, or unenforceable.

Each of the Parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which Party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, whatever its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any Party.

9. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that, in any manner, relates to the subject matter of this Agreement, except as provided for in any Exhibits attached hereto or duly approved amendments to this Agreement, as approved by the Board of Directors of the PAEDC.

10. Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.

11. Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

12. Exhibits. Any Exhibits attached hereto are incorporated by reference for all purposes.

13. Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

14. Indemnification.

COMPANY AGREES TO DEFEND, INDEMNIFY AND HOLD THE PAEDC AND THE CITY OF Port Arthur ("CITY"), AND THEIR RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS FROM AND AGAINST ANY AND ALL REASONABLE LIABILITIES, DAMAGES, CLAIMS, LAWSUITS, JUDGMENTS, ATTORNEY FEES, COSTS, EXPENSES AND ANY CAUSE OF ACTION THAT DIRECTLY RELATES TO ANY OF THE FOLLOWING: ANY CLAIMS OR DEMANDS BY THE STATE OF TEXAS THAT THE PAEDC HAS BEEN ERRONEOUSLY OR OVER-PAID SALES AND USE TAX FOR ANY PERIOD DURING THE TERM OF THIS AGREEMENT AS A RESULT OF THE FAILURE OF COMPANY TO MAINTAIN A PLACE OF BUSINESS AT THE PROPERTY OR IN THE CITY OF Port Arthur, OR AS A RESULT OF ANY ACT OR OMISSION OR BREACH OR NON-PERFORMANCE BY COMPANY UNDER THIS AGREEMENT EXCEPT THAT THE INDEMNITY PROVIDED HEREIN SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE ACTION OR OMISSIONS OF THE PAEDC OR CITY. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY, IT BEING THE INTENTION OF THE PARTIES THAT COMPANY SHALL BE RESPONSIBLE FOR THE REPAYMENT OF ANY FUNDS PAID AND PROPERTY GRANTED TO COMPANY HEREIN THAT INCLUDES CITY SALES TAX RECEIPTS THAT THE STATE OF TEXAS HAS DETERMINED WAS ERRONEOUSLY PAID, DISTRIBUTED OR ALLOCATED TO THE PAEDC.

15. Additional Instruments. The Parties agree and covenant to cooperate, negotiate in good faith, and to execute such other and further instruments and documents as may be reasonably required to fulfill the public purposes provided for and included within this Agreement.

16. Force Majeure. Whenever a period of time is herein prescribed for action to be taken by COMPANY, COMPANY shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to causes of any kind whatsoever which are caused by Force Majeure.

[SIGNATURE PAGE FOLLOWS]

Executed on this _____ day of _____, 20____.

**COMPANY:
SAIGON TOWN, LLC**

By: _____
Michelle Nguyen
Title:

STATE OF TEXAS }
COUNTY OF JEFFERSON }

This information was acknowledged before me on this _____ day of _____, 2023, by Michelle Nguyen for Saigon Town, LLC.

Notary Public, State of Texas

Notary's typed or printed name

My commission expires

**PORT ARTHUR ECONOMIC
DEVELOPMENT CORPORATION (PAEDC)**

By: _____
Name: Terry Stokes
Title: Chief Executive Officer

STATE OF TEXAS }
COUNTY OF JEFFERSON }

This information was acknowledged before me on this _____ day of _____, _____, by Terry Stokes for the Port Arthur Economic Development Corporation, a Texas municipal economic development corporation, on behalf of said corporation.

Notary Public, State of Texas

Notary's typed or printed name

My commission expires

Performance Agreement
Exhibit A

Plans Documents (attached as .pdf)

[SEE ATTACHED]