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RESOLUTION NO. 43-94

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN AGREEMENT BY AND BETWEEN THE CITY OF MESQUITE, TEXAS, THE MESQUITE INDEPENDENT SCHOOL DISTRICT, AND THE BROOKSHIRE GROCERY COMPANY AND AUTHORIZING ITS EXECUTION BY THE MAYOR; AND PROVIDING AN EFFECTIVE DATE THEREOF.

WHEREAS, the City Council has been presented a proposed Agreement by and between the City of Mesquite, Texas, the Mesquite Independent School District, and Brookshire Grocery Company, has established Reinvestment Zone No. Five in the City of Mesquite, Texas, and has determined to enter into a commercial/industrial tax abatement agreement with Brookshire Grocery Company, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

WHEREAS, upon full review and consideration of the Agreement, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the Mayor, shall be authorized to execute it on behalf of the City of Mesquite;

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

SECTION 1. The terms and conditions of the Agreement having been reviewed by the City Council of the City of Mesquite and found to be acceptable and in the best interests of the City of Mesquite and its citizens, are hereby in all things approved.


SECTION 2. The Mayor is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Mesquite, substantially according to the terms and conditions set forth in the Agreement.

SECTION 3. That this Resolution shall take effect from and after its passage, as in the Charter in such cases is made and provided.

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DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 7th day of November, 1994.



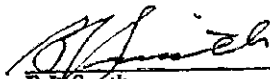
Cathye Ray
Mayor

ATTEST:

APPROVED:



Lynn Prugel
City Secretary



B.J. Smith
City Attorney

THE STATE OF TEXAS
COUNTY OF DALLAS

AGREEMENT

This Agreement is entered into by and between the City of Mesquite, Texas, a home rule city and Municipal Corporation of Dallas County, Texas, duly acting herein by and through its Mayor, hereinafter referred to as CITY; Mesquite Independent School District duly acting herein by and through its Board President, (hereafter referred to as MISD); and Brookshire Grocery Company, duly acting by and through its Chief Executive Officer, (hereafter referred to as OWNER).

WITNESSETH:

WHEREAS, on the 7th day of November, 1994, the City Council of the City of Mesquite, Texas, passed Ordinance No. 2999 establishing Reinvestment Zone No. Five, City of Mesquite, Texas for commercial/industrial tax abatement, hereinafter referred to as the ORDINANCE, as authorized by Chapter 312, Texas Property Tax Code, as amended, hereinafter referred to as STATUTE; and

WHEREAS, the CITY has adopted by Resolution No. 23-94, Criteria and Guidelines governing tax abatement reinvestment zones and agreements (the "CRITERIA"); and

WHEREAS, the CRITERIA constitutes appropriate guidelines and criteria governing tax abatement agreements to be entered into by the CITY as contemplated by the STATUTE; and

Tax Abatement Agreement
Brookshire Grocery Company
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WHEREAS, the CITY has adopted a resolution (Resolution No. 9-88) stating that it elects to be eligible to participate in tax abatement; and

WHEREAS, the CITY desires to participate in tax abatement to maintain and/or enhance the commercial/industrial economic and employment base of the Mesquite area to the long term interest and benefit of the CITY and MISD, in accordance with said ORDINANCE and STATUTE; and

WHEREAS, the contemplated use of the PREMISES, as hereinafter defined, the contemplated improvements to the PREMISES in the amount as set forth in this Agreement, and the other terms hereof are consistent with encouraging development of said Reinvestment Zone No. Five in accordance with the purposes for its creation and are in compliance with the CRITERIA and the ORDINANCE and similar guidelines and criteria adopted by the CITY and all applicable law;

NOW THEREFORE the parties hereto do mutually agree as follows:

1. The property to be the subject of this Agreement shall be that property described by metes and bounds and map attached hereto as EXHIBITS "A" and "B" made a part hereof and shall be hereinafter referred to as PREMISES.
2. The OWNER shall commence construction of its "Super 1 Foods" Warehouse Store on the PREMISES (hereinafter referred to as IMPROVEMENTS) with total construction cost of not less than Four and One-Half Million Dollars (\$4,500,000) and substantially complete same on or about January 1, 1997; provided, that OWNER shall have such additional time to complete the IMPROVEMENTS as may be required in the event

of "force majeure" if OWNER is diligently and faithfully pursuing completion of the IMPROVEMENTS. For this purpose, "force majeure" shall mean any contingency or cause beyond the reasonable control of OWNER including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, governmental or de facto governmental action (unless caused by acts or omission of OWNER), fire, explosions or floods, and strikes. The date of completion of the IMPROVEMENTS shall be defined as the date a Certificate of Occupancy is issued by the City of Mesquite.

3. The OWNER agrees and covenants that it will diligently and faithfully in a good and workmanlike manner pursue the completion of the IMPROVEMENTS as a good and valuable consideration of this AGREEMENT. OWNER further covenants and agrees that all construction of the IMPROVEMENTS will be in accordance with the guidelines required by the Americans with Disabilities Act and all applicable state and local laws and regulations or valid waiver thereof. In further consideration, OWNER shall thereafter, from the date a Certificate of Occupancy is issued until the expiration of the Agreement, continuously operate and maintain the PREMISES as a "Super 1 Foods" Warehouse Store for Brookshire Grocery Company.

4. In the event that (1) the IMPROVEMENTS for which an abatement has been granted are not completed in accordance with this Agreement or (2) OWNER allows its ad valorem taxes owed the CITY and MISD to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of any such ad valorem taxes; or (3) OWNER breaches any of the terms or conditions of this Agreement, then this

Agreement shall be default. In the event that the OWNER defaults in its performance of (1), (2) or (3) above, then the CITY or MISD shall give the OWNER written notice of such default and if the OWNER has not cured such default within thirty (30) days of said written notice, or, if such default cannot be cured by the payment of money and cannot with due diligence be cured within a 90-day period owing to causes beyond the control of the OWNER, this Agreement may be terminated by the CITY or MISD or the abatement extended by this agreement may be reduced in percentage of taxes to be abated and/or period during which abatement is to be extended by revision of this agreement as may be determined by the City and MISD to be reasonable abatement based upon partial performance by OWNER. Notice shall be in writing and shall be delivered by personal delivery or certified mail to the Chief Executive Officer of Brookshire Grocery Company, 1600 SW Loop 323, Tyler, Texas 75703. As liquidated damages in the event of default, all taxes which otherwise would have been paid to the CITY and MISD without the benefit of abatement (but without the addition of penalty; interest will be charged at the statutory rate for delinquent taxes as determined by Section 33.01 of the Property Tax Code of the State of Texas) will become a debt to the CITY and MISD and shall be due, owing and paid to the CITY and MISD within sixty (60) days of the expiration of the above-mentioned applicable cure period.

5. The CITY and the MISD each represent and warrant that the PREMISES does not include any property that is owned by a member of their respective councils or boards, agencies, commissions, or other governmental bodies approving, or having

responsibility for the approval of, this Agreement.

6. The terms and conditions of this Agreement are binding upon the successors and assignees of all parties hereto. This Agreement cannot be assigned by OWNER other than to wholly-owned subsidiary of OWNER unless written permission is first granted by the CITY and MISD, which permission shall be at the sole discretion of the CITY and MISD.

7. It is understood and agreed between the parties that the OWNER, in performing its obligations hereunder, is acting independently, and the CITY and MISD assume no responsibilities or liabilities in connection therewith to third parties and OWNER agrees to indemnify and hold harmless therefrom.

8. The OWNER agrees and covenants that the IMPROVEMENTS herein described in this Agreement shall contribute to the creation and retention of not less than 135 jobs after the expiration of the abatement period.

9. The OWNER further agrees that the CITY and MISD, their agents and employees, shall have reasonable right of access to the PREMISES to inspect the IMPROVEMENTS in order to insure that the construction of the IMPROVEMENTS are in accordance with this Agreement and all applicable federal, state and local laws and regulations or valid waiver thereof. After completion of the IMPROVEMENTS, the CITY and MISD shall have the continuing right to inspect the PREMISES to insure that the PREMISES are thereafter maintained and operated in accordance with this Agreement.

10. Subject to the terms and conditions of this Agreement, and subject to the rights and holders of any outstanding bonds of the CITY and MISD, a portion of ad valorem

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EXHIBIT "A"
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real property taxes from the PREMISES otherwise owed to the CITY and MISD shall be abated. Said abatement shall be an amount equal to twenty percent (20%) of the taxes assessed upon the increased value of the IMPROVEMENTS over the value in the year in which this Agreement is executed and in accordance with the terms of this Agreement and all applicable federal, state and local regulations or valid waiver thereof; provided that the OWNER shall have the right to protest and/or contest any assessment of the PREMISES and said abatement shall be applied to the amount of taxes finally determined to be due as a result of any such protest and/or contest. Said abatement shall extend for a period of five (5) years beginning January 1, 1997.

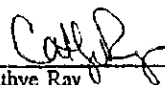
11. This Agreement was authorized by Resolution No. 43-94 of the City Council at its council meeting on the 7th day of November, 1994, authorizing the Mayor to execute the Agreement on behalf of the City.

12. This Agreement was authorized by the Board Minutes of the Mesquite Independent School District at its Board of Trustees meeting on the 14th day of November, 1994, whereupon it was duly determined that the Board President would execute the Agreement on behalf of the Mesquite Independent School District, a copy of said authorization is attached as Exhibit "C".

13. This shall constitute a valid and binding Agreement between the CITY and Brookshire Grocery Company executed in accordance herewith, regardless of whether MISD executes this Agreement. If MISD executes this Agreement, this shall constitute a valid and binding Agreement between MISD and Brookshire Grocery Company, when executed on behalf of said parties, for the abatement of MISD's taxes in accordance therewith.

The Agreement is performable in Dallas County, Texas, witness our hands this 7th day of November, 1994.

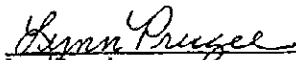
CITY OF MESQUITE, TEXAS



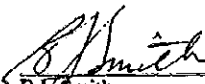
Cathye Ray
Mayor

ATTEST:

APPROVED:



Lynn Prugel
City Secretary




B.J. Smith
City Attorney

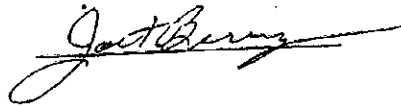
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EXHIBIT "A"
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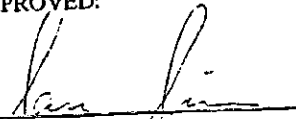
MESQUITE INDEPENDENT SCHOOL
DISTRICT


Robert Seward
Board President

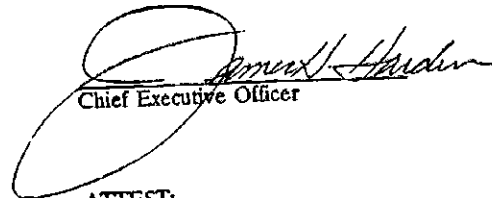
ATTEST:



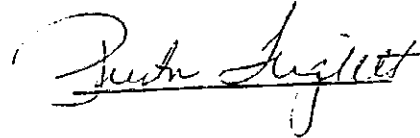
APPROVED:


Gary Grimes
Attorney at Law

BROOKSHIRE GROCERY COMPANY


Chief Executive Officer

ATTEST:



BEING a 6.0 acre tract of land situated in the S.W. Caldwell Survey, Abstract No. 337, in the City of Mesquite, Dallas County, Texas, as recorded in Volume 85244, Page 1539, of the Deed Records of Dallas County, Texas, and being a part of Lots 6, 7, 8, and 10 of East Dallas Estates, an addition to the City of Mesquite as recorded in Volume 5, Page 62, of the Deed Records of Dallas County, Texas, and a part of Lot 8-A of East Dallas Estates as recorded in Volume 78054, Page 3255, of the Deed Records of Dallas County, Texas, and being more particularly described as follows:

BEGINNING at a point in the west right-of-way line of Belt Line Road, said point being 350.0 feet South $01^{\circ}36'20''$ West from the intersection of the south right-of-way line of Hanby Drive with the west right-of-way line Belt Line Road;

TRENCHE North $88^{\circ}14'57''$ West a distance of 880.4 feet to a point in the west line of Lot 6, East Dallas Estates;

TRENCHE North $1^{\circ}26'42''$ East with the west line of Lot 6, East Dallas Estates, a distance of 350.0 feet to the northwest corner of said Lot 6, said corner also being in the south right-of-way line of Hanby Drive;

TRENCHE South $88^{\circ}14'57''$ East with the south right-of-way line of Hanby Drive a distance of 667.33 feet to a point, said point being 214.0 feet North $88^{\circ}14'57''$ West from the intersection of the south right-of-way line of Hanby Drive and the west right-of-way line of Belt Line Road;

TRENCHE South $01^{\circ}36'20''$ West a distance of 220.0 feet to a point;

TRENCHE South $88^{\circ}14'57''$ East a distance of 214.0 feet to a point in the west right-of-way line of Belt Line Road;

TRENCHE South $01^{\circ}36'20''$ West with the west right-of-way line of Belt Line Road a distance of 150.0 feet to the Point of Beginning and containing 6.0 acres of land, more or less.

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EXHIBIT "A"
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EXHIBIT B

TRIPP ROAD

HANBY DRIVE

BELTLINE ROAD

6 ACRES



EXHIBIT B

U.S. HIGHWAY 80

REINVESTMENT ZONE NO.5