

RESOLUTION NO. 28-2000

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, APPROVING THE AGREEMENT FOR IMPACT FEE ABATEMENT FOR THE EASTPOINT BUSINESS CENTER, INC.; AND DECLARING AN EFFECTIVE DATE THEREOF.

WHEREAS, the City Council has adopted an Impact Fee Ordinance which contains provisions for the abatement of impact fees; and

WHEREAS, procedures and criteria for such abatement were adopted by Resolution No. 41-96; and

WHEREAS, the Eastpoint Business Center, Inc., project meets the requirements and the criteria for impact fee abatement in the following particulars:

1. The project will result in a minimum \$10,000,000 net increase in the taxable value of the property;
2. The project conforms to the Comprehensive Zoning Ordinance;
3. The project shall contribute to the retention or creation of employment in the Mesquite area and shall not have the effect of transferring employment from one part of the City to another; and

WHEREAS, a public hearing, as required by the Impact Fee Ordinance, was held to consider abatement of impact fees for the Eastpoint Business Center.

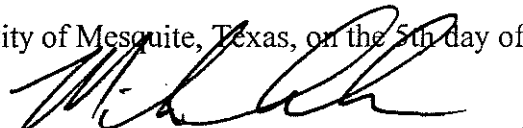
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the project proposed by the Eastpoint Business Center, Inc., meets the criteria for impact fee abatement and abating such fees is hereby approved pursuant to, and together with, the agreement attached hereto as Exhibit "A".

SECTION 2. That the Mayor is hereby authorized to sign the attached agreement.

SECTION 3. That this resolution shall take effect from and after its passage.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 5th day of July, 2000.



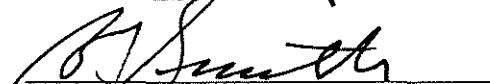
Mike Anderson  
Mayor

ATTEST:



Ellen Williams  
City Secretary

APPROVED:



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**"); and **EASTPOINT BUSINESS CENTER, INC.** (hereinafter referred to as "**EASTPOINT BUSINESS CENTER**"), duly acting by and through its Authorized Representative (hereinafter referred to as "**OWNER**").

WITNESSETH:

WHEREAS, on the 5th day of July, 2000, the City Council of the City of Mesquite, Texas, passed Resolution No. \_\_\_\_\_ approving an application for impact fee abatement for **EASTPOINT BUSINESS CENTER** as authorized by the Mesquite Impact Fee Regulations, City Code Chapter 7.5, as amended, hereinafter referred to as "**REGULATIONS**", and the Administrative Guidelines, hereinafter referred to as "**GUIDELINES**", adopted by Resolution No. 41-96 in connection with such **REGULATIONS**; and

WHEREAS, the **GUIDELINES** constitute appropriate Criteria governing authorization of impact fee abatement by the **CITY** as contemplated by the **REGULATIONS**; and

WHEREAS, the **CITY** desires to abate certain impact fees 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 public's health, safety and welfare in accordance with said **REGULATIONS** and **GUIDELINES**; 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 in accordance with the purposes for its creation and are in compliance with the REGULATIONS and the GUIDELINES 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, the subject of this Agreement, is that property described by metes and bounds and map in Attachments "1" and "2", attached hereto, and made a part hereof for all purposes. Such property is referred to herein as "PREMISES".

2. Promptly following the execution of this Agreement the owner shall commence construction of its industrial project on the PREMISES (hereinafter referred to as "IMPROVEMENTS"). The IMPROVEMENTS shall be substantially completed (excluding tenant improvements) on or about December 31, 2001, and the addition of such IMPROVEMENTS will cost at least ten million dollars (\$10,000,000.00). For purposes of taxable value IMPROVEMENTS shall include the IMPROVEMENTS constructed on the real property and business personal properties as contained on the premises. In the event of a "force majeure", if OWNER is diligently and faithfully pursuing completion of the IMPROVEMENTS, the OWNER shall have such additional time to complete the IMPROVEMENTS as may be required. For the purpose of this Agreement, "force majeure" shall mean a cause beyond the reasonable control of OWNER including, but not limited to, flood, storm or other acts of God, war, riot, civil disturbance, fire, explosion, strikes, governmental action (unless caused by acts or omission of OWNER) or delays caused by franchise utilities.

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 construction of the IMPROVEMENTS will be in accordance with all applicable State and local laws and regulations or valid waiver thereof.

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 at any time during the next five years following the date of this Agreement allows its ad valorem taxes owed the CITY 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 in default. In the event that the OWNER defaults in its performance of (1), (2) or (3) above, then the CITY shall give the OWNER written notice of such default and if the OWNER has not cured a monetary default within thirty (30) days from the date of said written notice by the payment of money or cured a non-monetary default within ninety (90) days of the date of notice, this Agreement may be terminated by the CITY. Notice shall be in writing and shall be delivered by personal delivery or certified mail to:

C/O:

Kennedy Associates Real Estate Counsel, Inc.  
2400 Financial Center Bldg.  
1215 - 4<sup>th</sup> Avenue  
Seattle, WA 98161  
ATTN: Asset Manager

Copy to:

Haynes & Boone  
901 Main Street  
Suite 3100  
Dallas, TX 75202  
ATTN: Ann Saegert

In the event of default, all impact fees which otherwise would have been paid to the CITY without the benefit of abatement will immediately become a debt to be recaptured by the CITY and shall be due, owing and paid to the CITY within sixty (60) days of the termination of this Agreement.

5. The CITY represents and warrants that the PREMISES do not include any property that is owned by a member of council 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 assigns for a period of 5 years. This Agreement cannot be assigned by OWNER prior to substantial completion other than to an affiliate of OWNER unless written permission is first granted by the CITY, which permission shall not be unreasonably withheld by the CITY. Such permission shall be granted within 30 days or the permission is deemed granted.

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

8. The OWNER further agrees that the CITY, its 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 State and local laws and regulations or valid waiver thereof. After completion of the IMPROVEMENTS, the CITY shall have the continuing right to inspect the PREMISES to insure that the PREMISES are thereafter maintained and operated in accordance with this Agreement. The foregoing rights are for a period of 5 years, beginning with the execution of this Agreement.


9. Subject to the terms and conditions of this Agreement, a portion of the impact fees from the PREMISES otherwise owed to the CITY shall be abated. Said abatement shall be an amount equal to 100 percent (100%) of the impact fees assessed upon the PREMISES.

10. This Agreement was authorized by Resolution No. 28-2000 of the City Council at its Council meeting on the 5th day of July, 2000, authorizing the Mayor to execute the Agreement on behalf of the City.


11. This shall constitute a valid and binding Agreement between the CITY and EASTPOINT BUSINESS CENTER when executed in accordance herewith.

12. The Agreement is performable in Dallas County, Texas, witness our hands this 5th day of July, 2000.

CITY OF MESQUITE, TEXAS

  
\_\_\_\_\_  
Mike Anderson  
Mayor

ATTEST:

  
\_\_\_\_\_  
Ellen Williams  
City Secretary

APPROVED AS TO FORM:

  
\_\_\_\_\_  
B. J. Smith, or designee  
City Attorney

EASTPOINT BUSINESS CENTER, INC.

\_\_\_\_\_  
Authorized Representative

ATTEST:

\_\_\_\_\_

Attachment "1"Property Description

Being a 14.5992 acre (635,940 square feet) tract of land situated in the James N. Smith Survey, Abstract No. 1419, City of Mesquite, Dallas County, Texas, further being all of LOT 4, BLOCK B, of LOTS 4 & 5, BLOCK B, COMMERCE EAST BUSINESS PARK, an addition to the City of Mesquite according to the Replat thereof recorded in Volume 86064, Page 3458, Deed Records, Dallas County, Texas, all of LOTS 1, 2, 3, BLOCK B of COMMECE EAST BUSINESS PARK, an addition to the City of Mesquite according to the Corrected Final Plat thereof recorded in Volume 85182, Page 3279, Deed Records, Dallas County, Texas, and the remainder of that certain 14.9632 acre tract conveyed to Bunnell Properties, Inc. by Special Warranty Deed recorded in Volume 85006, Page 1834, Deed Records, Dallas County, Texas said 14.5992 acre tract being more particularly described as follows:

BEGINNING at a ½" iron rod found for corner at the intersection of the west line of Big Town Boulevard (100' public R.O.W.) with the south line of Eastover Drive (60' public R.O.W.), at the northeast corner of said LOT 1;

THENCE S01°06'13"W along the west line of said Big Town Boulevard, a distance of 716.57 feet to a capped iron rod found for corner at the northeast corner of that certain 19.00 acre tract conveyed to Computer Language Research, Inc. by Special Warranty Deed recorded in Volume 85006, Page 1864, Deed Records, Dallas County, Texas;

THENCE N89°29'18"W departing the west line of said Big Town Boulevard and along the north line of said 19.00 acre tract, a distance of 803.38 feet to a ½" iron rod found for corner at the southeast corner of LOT 9, BLOCK B, COMMERCE EAST BUSINESS PARK PHASE II, an addition to the City of Mesquite according to the plat thereof recorded in Volume 86060, Page 3951, Deed Records, Dallas County, Texas;

THENCE N00°30'42"E along the east line of said LOT 9, BLOCK B, COMMERCE EAST BUSINESS PARK PHASE II, a distance of 471.53 feet to a 5/8" iron rod set for corner at the northeast corner of said LOT 9;

THENCE N89°29'18" W along the north line of said LOT 9, a distance of 232.36 feet to a 5/8" iron rod set for corner at the east end of the south terminus line of Eastover Circle (60' public R.O.W.);

THENCE N00°56'48"W along the east line of said Eastover Circle, a distance of 235.08 feet to a 5/8" iron rod set for corner;

THENCE N44°46'57"E a distance of 13.96 feet to a 5/8" iron rod set for corner in the south line of the aforementioned Eastover Drive;

THENCE S89°29'18"E along the south line of said Eastover Drive, a distance of 1039.38 feet to the POINT OF BEGINNING and containing 635,940 square feet or 14.5992 acres of land, more or less.

# VICINITY MAP

