

RESOLUTION NO. 29-2000

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, AND ICON HEALTH AND FITNESS, INC., (DBA JUMPKING) 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, and Icon Health and Fitness, Inc. (dba Jumpking) and has established Reinvestment Zone No. 12 in the City of Mesquite, Texas; and

WHEREAS, the City Council has determined to enter into a commercial/industrial tax abatement agreement with Icon Health and Fitness, Inc., (dba Jumpking) 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. That 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. That 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.


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 **ICON HEALTH AND FITNESS, INC., (dba Jumpking)**, duly acting by and through its Chief Executive Officer, hereafter referred to as "**OWNER**").

WITNESSETH:

WHEREAS, on the 5th day of July, 2000, the City Council of the City of Mesquite, Texas, passed Ordinance No. ____ establishing Reinvestment Zone No. Twelve, 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 5-97, Criteria and Guidelines governing tax abatement reinvestment zones and agreements (the "**CRITERIA**"); and

WHEREAS, the CRITERIA constitute appropriate Guidelines and Criteria governing tax abatement agreements to be entered into by the CITY as contemplated by the STATUTE; and

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, 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. Twelve 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, 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. Upon execution of this agreement, the OWNER shall commence construction of its manufacturing and distribution center on the PREMISES (hereinafter referred to as "IMPROVEMENTS"). The IMPROVEMENTS shall be substantially completed on or about December 31, 2000, and the addition of such improvements shall result in a total taxable value of the PREMISES of at least twelve million dollars (\$12,000,000). 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 purposes of this Agreement, "force majeure" shall mean 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 all construction of the IMPROVEMENTS will be in accordance with 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 manufacturing and distribution center for Icon Health and Fitness, Inc. (dba Jumpking).

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 to

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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 such notice was sent to OWNER by the payment of money or currency, non-monetary default within ninety (90) days of the date of the 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:

Chief Executive Officer
Icon Health and Fitness, Inc., (dba Jumpking)
1500 South 1000 West
Logan, Utah 84321

5. In the event of default, and after OWNER fails to cure same in accordance herewith, all taxes previously abated by virtue of this Agreement will be recaptured, immediately become a debt to the CITY, and be paid to CITY within sixty (60) days of the termination of this Agreement. This debt shall include interest on delinquent taxes charged at the statutory rate as specified by Section 33.01 of the Property Tax Code of the State of Texas or any successor statute; however penalties will not be added.

6. 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.

7. The terms and conditions of this Agreement are binding upon the successors and assigns 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, which permission shall be at the sole discretion of the CITY.

8. 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.

9. The OWNER agrees and covenants as a condition of this abatement agreement that the IMPROVEMENTS herein described in this Agreement shall at the completion thereof and beginning of the term of the abatement period created herein contribute to the creation and retention of not less than 500 jobs and that said 500 jobs shall continue to exist during the term of the abatement period.

10. 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 ensure 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 ensure that the PREMISES are thereafter maintained and operated in accordance with this Agreement.

11. It is understood and agreed by CITY and OWNER that for purposes of this Agreement, the value of the IMPROVEMENTS and PREMISES shall be as determined annually by the Chief Appraiser of the Dallas Central Appraisal District, subject to appeal procedures in the Texas Property Tax Code.

12. Subject to the terms and conditions of this Agreement, and subject to the rights and holders of any outstanding bonds of the CITY, a portion of ad valorem real property taxes and business personal property taxes from the PREMISES otherwise owed to the CITY shall be abated. Said abatement shall be an amount equal to fifty percent (50%) of the taxes assessed upon the increased value of the IMPROVEMENTS over the value of IMPROVEMENTS as of January 1, 2000, and in accordance with the terms of this Agreement and all applicable 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 IMPROVEMENTS 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, 2001. The term of the abatement

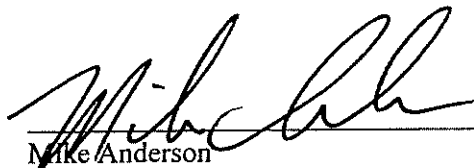
may be extended for an additional five (5) years upon the commencement of a minimum 250,000 square foot expansion to the IMPROVEMENTS on the PREMISES during the initial five (5) year term of the abatement and an issuance of a Certificate of Occupancy by the CITY within a reasonable period of time following commencement of the expansion but not more than 360 days beyond the expiration of the initial term.

13. This Agreement was authorized by Resolution No. _____ 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.

14. This shall constitute a valid and binding Agreement between the CITY and ICON HEALTH AND FITNESS, INC. (dba Jumpking) when executed in accordance herewith.

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

CITY OF MESQUITE, TEXAS



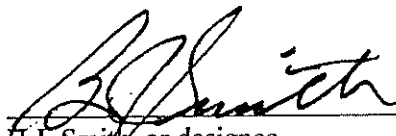
Mike Anderson
Mayor

ATTEST:

APPROVED AS TO FORM:



Ellen Williams
City Secretary



B.J. Smith, or designee
City Attorney

ICON HEALTH AND FITNESS, INC.
(dba Jumpking)

Chief Executive Officer

ATTEST:

Attachment "1"PROPOSED BLOCK 2, LOT 3

BEING a tract of land situated in the Daniel Turner Survey, Abstract No. 1462, in the City of Mesquite, Dallas County, Texas, and being a part of that tract of land described in deed to Petrus Investment, L.P., as recorded in Volume 98251, Page 9371, Deed Records, Dallas County, Texas (DRDCT), and being more particularly described as follows:

COMMENCING at a set ½-inch iron rod with a yellow plastic cap stamped "HALFF ASSOC. INC." (hereafter referred to as "with cap"), at the intersection of the westerly right-of-way line of Town East Boulevard (100 foot right-of-way) and the northerly right-of-way line of a Dallas Power and Light Company right-of-way, as recorded in Volume 5624, Page 250, DRDCT, (125 foot right-of-way);

THENCE South 44 degrees 13 minutes 32 seconds West, departing said westerly line and along said northerly line, a distance of 930.01 feet to the POINT OF BEGINNING;

THENCE South 44 degrees 13 minutes 32 seconds West, continuing along said northerly line, a distance of 498.81 feet to a point at the intersection of said northerly line with the easterly right-of-way line of Chase Road (50 foot right-of-way);

THENCE North 45 degrees 45 minutes 33 seconds West, departing said northerly line and along said easterly line, a distance of 889.98 feet to a point for corner on the north line of said Petrus Investment tract;

THENCE North 44 degrees 16 minutes 17 seconds East, departing said easterly line and along the north line of said Petrus Investment tract, a distance of 493.45 feet to a point for corner;

THENCE South 45 degrees 31 minutes 28 seconds East, departing said north line, a distance of 889.59 feet to the POINT OF BEGINNING AND CONTAINING 437,446 square feet or 10.04 acres of land, more or less.

PROPOSED BLOCK 2, LOT 4

BEING a tract of land situated in the Daniel Turner Survey, Abstract No. 1462, in the City of Mesquite, Dallas County, Texas, and being a part of that tract of land described in deed to Petrus Investment, L.P., as recorded in Volume 98251, Page 9371, Deed Records, Dallas County, Texas (DRDCT), and being more particularly described as follows:

BEGINNING at a set ½-inch iron rod with a yellow plastic cap stamped "HALFF ASSOC. INC." (hereafter referred to as "with cap"), at the intersection of the westerly right-of-way line of Town East Boulevard (100 foot right-of-way) and the northerly right-of-way line of a Dallas Power and Light Company right-of-way, as recorded in Volume 5624, Page 250, DRDCT, (125 foot right-of-way);

THENCE South 44 degrees 13 minutes 32 seconds West, departing said westerly line and along said northerly line, a distance of 930.01 feet to a set ½-inch iron rod with cap for a corner;

THENCE North 45 degrees 31 minutes 28 seconds West, departing said northerly line, a distance of 889.59 feet to a set ½-inch iron rod with cap for corner;

THENCE North 44 degrees 16 minutes 17 seconds East, a distance of 930.01 feet to a set ½-inch rod with cap on the said westerly line of Town East Boulevard;

THENCE South 45 degrees 31 minutes 28 seconds East, along said westerly line of said Town East Boulevard, a distance of 888.85 feet to the POINT OF BEGINNING AND CONTAINING 826,976 square feet or 18.98 acres of land, more or less.

Reinvestment Zone No. Twelve (12)

