

RESOLUTION NO. 02-2001

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, AMENDING RESOLUTION NO. 29-2000 BY APPROVING THE TERMS AND CONDITIONS OF A REVISED AGREEMENT BY AND BETWEEN THE CITY OF MESQUITE, TEXAS, AND JUMPING, INC., AND AUTHORIZING ITS EXECUTION BY THE MAYOR; AND PROVIDING AN EFFECTIVE DATE THEREOF.

WHEREAS, the City Council has been presented a proposed revised agreement by and between the City of Mesquite, Texas, and Jumping, Inc., a wholly owned subsidiary of Icon Health and Fitness, Inc., and has established Reinvestment Zone No. 12 in the City of Mesquite, Texas; and

WHEREAS, the City Council has determined to enter into a revised commercial/industrial tax abatement agreement with Jumping, Inc., a wholly owned subsidiary of Icon Health and Fitness, Inc., a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Revised Agreement"); and

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

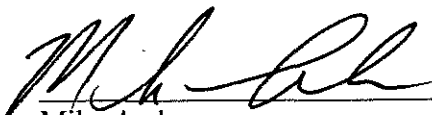
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the terms and conditions of the Revised 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 Revised 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 Revised Agreement.

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

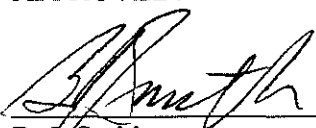
DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 16th day of January 2001.

  
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 JUMP KING, INC., a wholly owned subsidiary of Icon Health and Fitness, Inc., duly acting by and through its Chief Financial Officer (hereafter referred to as "TENANT") and PANATTONI-HILLWOOD DEVELOPMENT COMPANY (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. 3373 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 March 31, 2001, and the addition of such improvements shall result in a total taxable value of the PREMISES an estimated twelve million dollars (\$12,000,000) but not less than seven million dollars (\$7,000,000). 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 Jumpking, Inc., a wholly owned subsidiary of Icon Health and Fitness, Inc.

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

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 Financial 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 an initial 450 jobs. These 450 jobs may increase or decrease as business conditions change.

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 two (2) years upon the commencement of a minimum 100,000 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. The terms of this agreement may be extended for an additional two (2) years upon the build out of the site.

13. The TENANT shall certify to the CITY, annually during the term of this AGREEMENT compliance by TENANT and/or OWNER with each applicable term of this AGREEMENT. Such certification shall be in writing and shall be duly served when it shall have been deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to the CITY at the following address:


City of Mesquite  
1515 N. Galloway  
Mesquite, Texas 75149  
Attention: Manager of Economic Development

14. This Agreement was authorized by Resolution No. 02-2001 of the City Council at its Council meeting on the 16th day of January, 2001, authorizing the Mayor to execute the Agreement on behalf of the City.

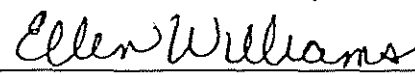
15. This shall constitute a valid and binding Agreement between the CITY and Jumpking, Inc., a wholly owned subsidiary of Icon Health and Fitness, Inc., when executed in accordance herewith.

16. The Agreement is performable in Dallas County, Texas, witness our hands this 16th day of January, 2001.


CITY OF MESQUITE, TEXAS

  
Mike Anderson  
Mayor


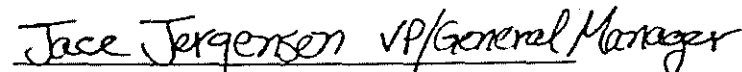
ATTEST:

  
Ellen Williams  
City Secretary

APPROVED:

  
B.J. Smith  
City Attorney

Jumpking, Inc., a wholly owned subsidiary of Icon Health and Fitness, Inc.

  
~~Chief Financial Officer~~ VP/General Manager  
  
Printed Name & Title

ATTEST:



  
Printed Name & Title