

RESOLUTION NO. 35-2001

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 HILLWOOD METRO NO. 9, L.P., 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 Hillwood Metro No. 9, L.P., and has established Reinvestment Zone No. Thirteen (13) in the City of Mesquite, Texas; and

WHEREAS, the City Council has determined to enter into a commercial/industrial tax abatement agreement with Hillwood Metro No. 9, L.P., 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.

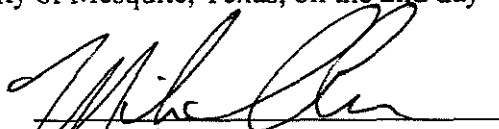
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

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.

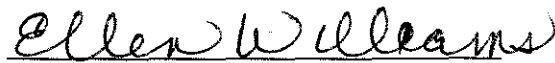
SECTION 2. That the Mayor is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Mesquite substantially according to the terms and conditions set forth in the Agreement.

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

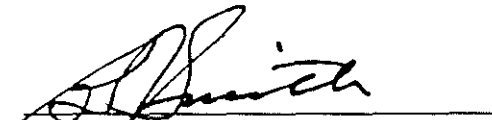
DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 2nd day of July, 2001.


Mike Anderson
Mayor

ATTEST:


Ellen Williams
City Secretary

APPROVED:


B. J. Smith
City Attorney

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

A G R E E M E N T

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 HILLWOOD METRO NO. 9, L.P., duly acting by and through its Vice President (hereinafter referred to as "OWNER").

W I T N E S S E T H:

WHEREAS, on July 2, 2001, the City Council of the City of Mesquite, Texas, passed Ordinance No. 3434 establishing Reinvestment Zone No. Thirteen (13), 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, on September 7, 1999, the City Council of the City of Mesquite, Texas, passed Resolution No. 39-99 establishing criteria and guidelines governing tax abatement reinvestment zones and agreements (hereinafter referred to as 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, on April 4, 1988, the City Council of the City of Mesquite, Texas, passed 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. Thirteen (13) 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 map and metes and bounds attached hereto as Exhibits "A" and "B" and made a part hereof (hereinafter referred to as "PREMISES").

2. The OWNER shall commence construction of its 258,448 square feet concrete tilt-wall office and warehouse facility on approximately 18.24 acres on the PREMISES (hereinafter referred to as "IMPROVEMENTS") with a total taxable value of at least five million nine hundred thousand dollars (\$5,900,000.00) and substantially complete same on or about December 2001; provided that OWNER shall have such additional time to complete the IMPROVEMENTS as may be required in the event of a "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),

delays caused by franchise utilities, 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.

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 an industrial manufacturing, office and distribution facility.

4. The OWNER shall be required to certify annually to the CITY, beginning on the anniversary date of the execution of this Agreement until the expiration hereof, that the OWNER is in compliance with each applicable term of the Agreement. Such certification shall be made by the President of Hillwood Investment Properties, Inc., in writing and shall be delivered by personal delivery or certified mail to the Manager of Economic Development of the CITY at address 1515 N. Galloway, Mesquite, Texas 75149.

5. 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 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 ninety (90)-day period owing to causes beyond the control of the OWNER, this Agreement may be terminated by the CITY 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 to be a reasonable abatement based upon partial performance by the OWNER. Notice shall be in writing and shall be delivered by personal delivery or certified mail to the President of Hillwood Investment Properties, 5310 Harvest Hill, Suite 1801, Dallas, Texas 77230. As liquidated damages in the event of default, all taxes which otherwise would have been paid to the CITY 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 shall be due, owing and paid to the CITY within sixty (60) days of the expiration of the above-mentioned applicable cure period.

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 a 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 CITY harmless therefrom.

9. 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.

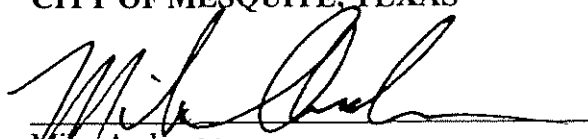
10. Subject to the terms and conditions of this Agreement and subject to the rights and holders of any outstanding bonds of the CITY, a portion of ad valorem real property taxes and business personal property taxes from the PREMISES otherwise owed to the CITY shall be abated. Said abatement shall be an amount equal to fifty percent (50%) of the taxes assessed upon the increased value of the IMPROVEMENTS over the value in the year in which this Agreement is executed 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 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 three (3) years beginning January 1, 2002. The term of the abatement shall be extended for an additional two (2) years upon the issuance of Certificates of Occupancy totaling one hundred percent (100%) of the IMPROVEMENTS on the PREMISES during the initial three (3) year term of the abatement.

11. This Agreement was authorized by Resolution No. 35-2001 of the City Council at its Council meeting on July 2, 2001, authorizing the Mayor to execute the Agreement on behalf of the City.


12. This shall constitute a valid and binding Agreement between the CITY and Hillwood Metro No. 9, L.P., when executed in accordance herewith.

13. The Agreement is performable in Dallas County, Texas, witness our hands this 2nd day of July, 2001.


CITY OF MESQUITE, TEXAS


 Mike Anderson
 Mayor

ATTEST:


 Ellen Williams
 City Secretary

APPROVED:

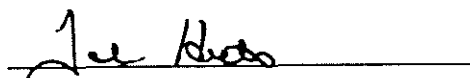

 B. J. Smith
 City Attorney

OWNER

HILLWOOD METRO NO. 9, L.P.,
 A Texas limited partnership

By: Hillwood Operating, L.P.,
 A Texas limited partnership,
 Its general partner

By: Hillwood Development Corporation,
 A Texas corporation,
 Its general partner

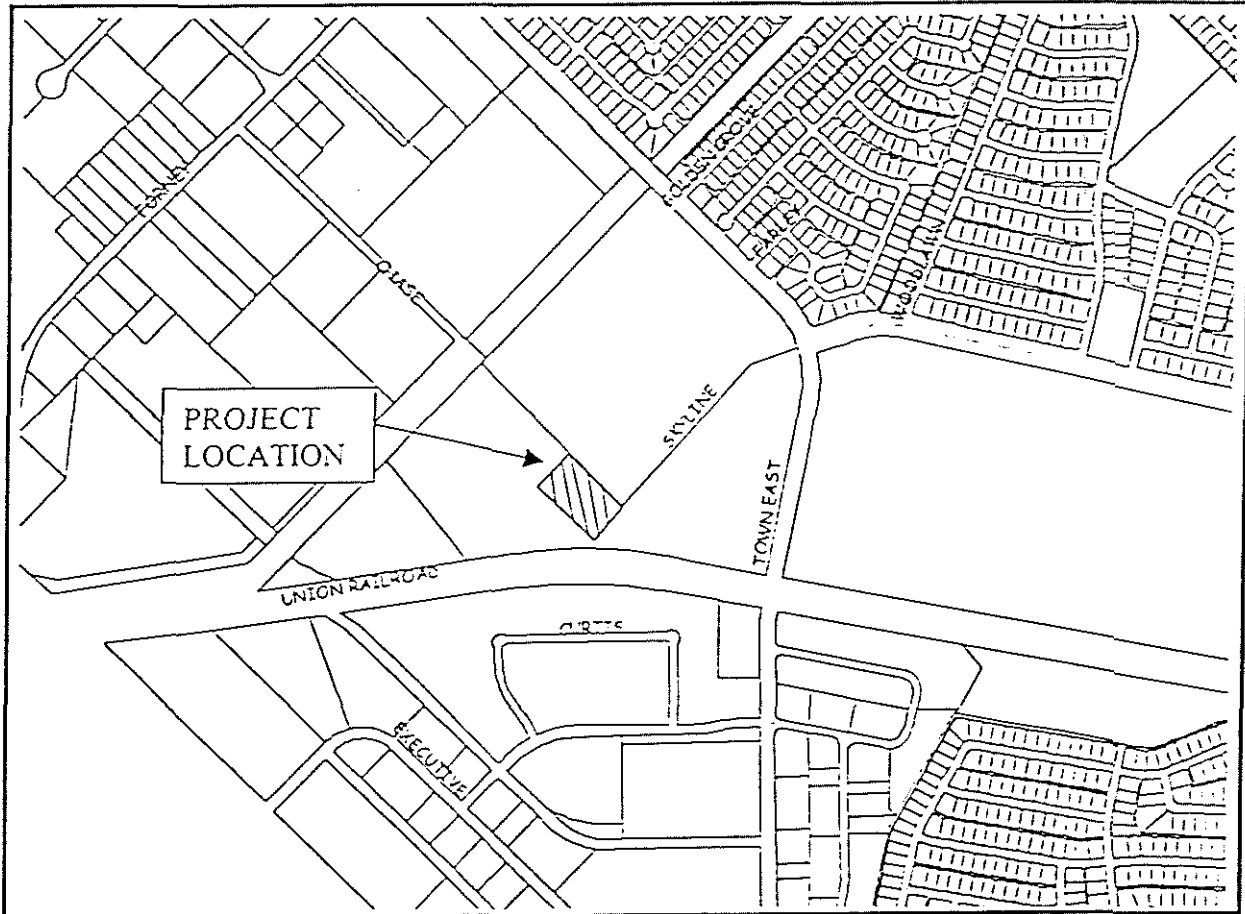
By: 

Name: Tal Hicks

Title: Vice President



PUBLIC HEARING



To: ALL INTERESTED PERSONS AND THE OWNERS OF PROPERTY IN THE CITY OF MESQUITE

"NOTICE OF PUBLIC HEARING ON THE CREATION OF REINVESTMENT ZONE"

The City Council of the City of Mesquite, Texas will conduct a public hearing at 3:00 P.M. Monday, July 2, 2001, in the City Council Chambers of the Municipal Center, 711 N. Galloway, for the purpose of receiving public comment on the creation of a Reinvestment Zone Number Thirteen (13), City of Mesquite, Texas (The "Zone"), and its benefits to the City and to the property in the proposed Zone. The proposed Zone is the tract of land in Dallas County, Texas, as indicated on the map above. A more particular legal description of the boundary of the proposed Zone, a description of the tentative plans for the development of the proposed Zone and an estimate of the general impact of the proposed Reinvestment Zone on property value and tax revenues is on file in the Economic Development Office for public inspection. This hearing is pursuant to Resolution No. 25-2001 approved by the City Council on June 5, 2001.

(SBP-4)

PROPOSED BLOCK 1, LOT 2

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 (D.R.D.C.T.), and being all of proposed Block 1, Lot 2 of proposed Skyline Business Park, Block 1, Lot 1, & Lot 2 and Block 2, Lot 1, a proposed addition to said City of Mesquite, and being more particularly described as follows:

COMMENCING at a set 1/2-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 Texas & Pacific Railroad right-of-way (200 foot right-of-way);

THENCE North 79 degrees 34 minutes 15 seconds West, departing said westerly line and along said northerly line, a distance of 616.03 feet to a set 1/2-inch iron rod with cap for the point of curvature of a circular curve to the left having a radius of 2964.79 feet;

THENCE Westerly, continuing along said northerly line and said curve to the left, through a central angle of 02 degrees 13 minutes 47 seconds for an arc distance of 115.38 feet to the POINT OF BEGINNING, said point being on a circular curve to the left having a radius of 2964.79 feet and whose chord bears North 89 degrees 35 minutes 51 seconds West, a distance of 804.44 feet;

THENCE Westerly, continuing along said northerly line and said curve to the left, through a central angle of 15 degrees 35 minutes 39 seconds for an arc distance of 806.93 feet to a found 1/2-inch iron rod on the northeast line of a tract of land described in deed to Missouri Pacific Railroad Co. as recorded in Volume 96052, Page 1833, D.R.D.C.T.;

THENCE North 45 degrees 10 minutes 05 seconds West, departing said northerly line and along said northeast line, a distance of 947.58 feet to a set 1/2-inch iron rod with cap on the southeast line of a Dallas Power & Light Co. right-of-way (125 foot right-of-way) as recorded in Volume 5591, Page 588, D.R.D.C.T.;

THENCE North 44 degrees 13 minutes 32 seconds East, departing said northeast line and along said southeast line, a distance of 681.59 feet to a point on the southerly line of proposed Chase Road (70 foot right-of-way at this point);

THENCE South 45 degrees 46 minutes 28 seconds East, departing said southeast line and along said southerly line, a distance of 775.90 feet to the point of curvature of a circular curve to the right having a radius of 25.00 feet;

THENCE Southeasterly, continuing along said southerly line and said curve to the right, through a central angle of 50 degrees 49 minutes 53 seconds for an arc distance of 22.18 feet to the point of reverse curvature of a circular curve to the left having a radius of 70.00 feet;

THENCE Southeasterly, continuing along said southerly line and said curve to the left, through a central angle of 94 degrees 05 minutes 09 seconds for an arc distance of 114.95 feet to a point on the westerly line of proposed Block 1, Lot 1;

THENCE South 00 degrees 58 minutes 10 seconds West, departing said southerly line and along said westerly line a distance of 162.87 feet to a point for corner;

THENCE South 45 degrees 46 minutes 29 seconds East continuing along said westerly line, a distance of 518.78 feet to the POINT OF BEGINNING AND CONTAINING 794,473 square feet or 18.24 acres of land, more or less.