

RESOLUTION NO. 51-2001

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 IRIS U.S.A., INC., 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 IRIS U.S.A., Inc., and has established Reinvestment Zone No. Fifteen (15) in the City of Mesquite, Texas; and

WHEREAS, the City Council has determined to enter into a commercial/industrial tax abatement agreement with IRIS U.S.A., Inc., 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 17th day of September, 2001.



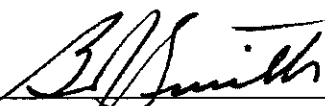
Mike Anderson  
Mayor

ATTEST:



Ellen Williams  
City Secretary

APPROVED:



B. J. Smith  
City Attorney

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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 IRIS U.S.A., INC., duly acting by and through its Chief Executive Officer (hereinafter referred to as "OWNER").

**W I T N E S S E T H:**

WHEREAS, on September 17, 2001, the City Council of the City of Mesquite, Texas, passed Ordinance No. \_\_\_\_\_ establishing Reinvestment Zone No. Fifteen (15), 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 4, 2001, the City Council of the City of Mesquite, Texas, passed Resolution No. 46-2001 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

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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. Fifteen (15) 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 250,000 square feet concrete tilt-wall office and manufacturing facility on approximately thirty-seven (37) acres on the PREMISES (hereinafter referred to as "IMPROVEMENTS") with a total land, construction and fixed improvements of at least eight million one hundred thousand dollars (\$8,100,000.00) and substantially complete same on or about September 2002; 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 agrees that it shall thereafter, from the date a Certificate of Occupancy is issued until the expiration of this Agreement and any extension thereof, 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 Chief Executive Officer of Iris U.S.A., 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

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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 Linda A. Kupper, Director of Finance of Iris, U.S.A., Inc., 1111 – 80<sup>th</sup> Avenue, P. O. Box 581910, Pleasant Prairie, Wisconsin 53158. 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 five (5) years beginning January 1, 2003. The term of the abatement may be extended for an additional five (5) years should expansion of an additional 125,000 square feet of manufacturing occur prior to the end of the first five (5)-year term. Should the plant expand an additional 250,000 square feet of manufacturing before the end

of the initial five (5)-year term, then the term shall be extended an additional five (5) years to the State allowed maximum of ten (10) years and the percent of abatement on the final five (5) years shall be increased to sixty percent (60%).

11. This Agreement was authorized by Resolution No. 51-2001 of the City Council at its Council meeting on September 17, 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 IRIS U.S.A., Inc., when executed in accordance herewith.

13. The Agreement is performable in Dallas County, Texas, witness our hands this 17th day of September, 2001.

CITY OF MESQUITE, TEXAS



Mike Anderson  
Mayor

ATTEST:



Ellen Williams  
City Secretary

APPROVED:



B. J. Smith  
City Attorney

OWNER  
IRIS U.S.A., INC.

By: 

Name: Masao Watanabe

Title: President





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**FIELD NOTES**

BEING a tract or parcel of land situated in the City of Mesquite, Dallas County, Texas and being part of the Daniel Tanner Survey, Abstract No. 1462, and further being part of the tract of land conveyed to Caroline Hunt Trust Estate by deed recorded in Volume 5122, Page 195, of the Deed Records of Dallas County, Texas, and being more particularly described as follows:

BEGINNING at the point of intersection of the West line of Town East Boulevard. (a 100' R.O.W.), with the North line of Curtis Blvd. (a 50" R.O.W.), an iron stake found for corner;

THENCE along the North and Northwest line of said Curtis Blvd., the following:

S 89 degrees 50' 05" W, a distance of 100.46 feet to the beginning of a curve to the left having a central angle of 10 degrees 20' and a radius of 854.46 feet, an iron stake for corner;

Westerly around said curve, a distance of 154.10 feet to an iron stake for corner;

S 79 degrees 30' 05" W. a distance of 2.47 feet to the beginning of a curve to the right, having a central angle of 10 degrees 20' and a radius of 804.46 feet, an iron stake found for corner;

Westerly around said curve, a distance of 145.09 feet to an iron stake found for corner;

S 89 degrees 50' 05" W, a distance of 687.94 feet to the beginning of a curve to the left, having a central angle of 44 degrees 53' and a radius of 629.55 feet, an iron stake found for corner;

Southwesterly around said curve, a distance of 493.17 feet to an iron stake set for corner;

S 44 degrees 57' 05" W, a distance of 49.70 feet to a point on the Northeast line of a 63'; Texas & Pacific R.R. R.O.W. & Utility Easements, an iron stake set for corner;

THENCE N 44 degrees 58' 40" W, along said Northeast line of a 63' Texas & Pacific R.R. R.O.W. & Utility Easement, and leaving said Northwest line of Curtis Blvd., a distance of 1387.29 feet to a point along the Southerly line of the Texas & Pacific R.R. (a 200' R.O.W.) an iron stake found for corner;

THENCE along the said Southerly line of the Texas & Pacific R.R. the following:

N 83 degrees 11' 25" E, a distance of 1038.84 feet to the beginning of a curve to the right, having a central angle of 17 degrees 59' 25" and a radius of 2764.79 feet, an iron stake found for corner;

Easterly around said curve, a distance of 868.12 feet to an iron stake found for corner;

S 78 degrees 49' 10" E, a distance of 349.92 feet to the Northwest corner of Lot 1, Block H of Skyline Industrial Village No. 4, an addition to the City of Mesquite, Texas, as recorded in Volume 82197, Page 3079 of the Map Records of Dallas County, Texas, an iron stake found for corner;

THENCE S 0 degrees 12' 10" E, leaving said Southerly line of the Texas & Pacific R.R. and along the West line of said Lot 1, Block H of Skyline Industrial Village No. 4, a distance of 465.19 feet to the Southwest corner of same said Lot 1, Block H, an iron stake set for corner;

THENCE N 89 degrees 50' 05" E, along the South line of said Lot 1, Block H, a distance of 250.0 feet to a point on the above-mentioned West line of Town East Blvd., an "X" in concrete for corner;

THENCE S 12' 10" E, along said West line of Town East Blvd., a distance of 232.22 feet to the PLACE OF BEGINNING and containing 1,639,128 square feet, or 37.629 gross acres, SAVE AND EXCEPT 114,124 square feet or 2.619 acres in the Curtis Circle Street Dedication Plat, leaving 35.010 net acres of land.