

ORDINANCE NO. O-2008-60

AN ORDINANCE OF THE CITY OF TYLER, TEXAS, DESIGNATING A CERTAIN AREA AS REINVESTMENT ZONE NO. NINE (SEALTITE) FOR COMMERCIAL/INDUSTRIAL TAX ABATEMENT, CITY OF TYLER, TEXAS; ESTABLISHING THE BOUNDARIES THEREOF AND OTHER MATTERS RELATING THERETO.

WHEREAS, on May 6, 1988, and as amended thereafter, and currently found in City Code Sections 2-30 through 2-32, the Tyler City Council adopted a Tax Abatement Policy; and

WHEREAS, the City Council (the "City") desires to promote the development or redevelopment of a certain contiguous geographic area within its jurisdiction by creation of a reinvestment zone for commercial/industrial tax abatement, as authorized by Texas Property Tax Code Section 312.201; and

WHEREAS, state law (currently Texas Property Tax Code Sec. 312.203) provides that reinvestment zone designations expire after five years, unless renewed; and

WHEREAS, the City Council authorized staff to set a public hearing before the City Council concerning this matter; and

WHEREAS, the City held such public hearing after publishing notice of such public hearing, and giving written notice to all taxing units overlapping the territory inside the proposed reinvestment zone at least seven (7) days prior to such hearing; and

WHEREAS, the City at such hearing invited any interested person, or his attorney, to appear and contend for or against the boundaries of the proposed reinvestment zone, whether all or part of the territory described in the ordinance calling such hearing should be included in such proposed reinvestment zone, and the concept of tax abatement;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS:

PART 1. Definitions.

a) Improvements - Improvements shall include, for the purpose of establishing eligibility under the Tax Abatement Policy, any activity at the location, including but not limited to new construction.

b) Taxable Real Property – The term “taxable real property” shall be defined in the Texas Property Tax Code and said definition shall not include personal property as defined in said Code, nor shall the definition include land.

c) Base Year - The base year for determining increased value shall be the taxable real property value assessed the year in which the agreement is executed.

PART 2. That the facts and recitations contained in the preamble of this ordinance are hereby found and declared to be true and correct.

PART 3. That the City, after conducting such hearings and having heard such evidence and testimony, has made the following findings and determinations based on the testimony presented to it:

- a) That a public hearing on the adoption of the reinvestment zone has been properly called, held and conducted and that notices of such hearings have been published as required by law and mailed to all taxing units overlapping the territory inside the proposed reinvestment zone; and
- b) That the boundaries of the reinvestment zone should be the area as described on the map attached hereto as Exhibit "A" and depicted on the aerial map attached hereto as Exhibit "B"; and
- c) That creation of the reinvestment zone for commercial/industrial tax abatement with boundaries as described in Exhibits "A" and "B" will result in benefits to the City and to the land included in the zone after the term of any agreement executed hereunder, and the improvements sought are feasible and practical; and
- d) That the reinvestment zone as defined in Exhibits "A" and "B" meets the criteria for the creation of a reinvestment zone as set forth in Texas Property Tax Code Section 312.202 in that it is "reasonably likely as a result of the designation to contribute to the retention or expansion of primary employment or to attract major investment in the zone that would be a benefit to the property and that would contribute to the economic development of the City"; and
- e) That the reinvestment zone as defined in Exhibits "A" and "B" meets the criteria for the creation of a reinvestment zone as set forth in the City of Tyler guidelines and criteria for granting tax abatement in reinvestment zones.

PART 4. That pursuant to Texas Property Tax Code Section 312.201, the City hereby creates a reinvestment zone for commercial/industrial tax abatement encompassing only the area described by the legal description in Exhibit "A" attached hereto and depicted on the map attached hereto as Exhibit "B", and such reinvestment zone is hereby designated and shall hereafter be designated as Reinvestment Zone No. Nine, City of Tyler, Texas.

PART 5. That written agreements with property owner(s) located within the zone shall provide the terms regarding duration of exemption and share of taxable real property value from taxation as shown below:

- a) Duration of Exemption - _____ (_____) consecutive tax years beginning with and including the January 1, 2_____, assessment date.
- b) Share of taxes abated:

_____ % of taxes on total value of appraised improvements which are added.

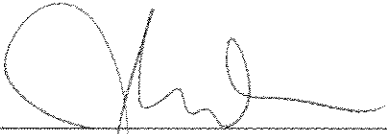
PART 6. That written agreements for tax abatement as provided for by Texas Property Tax Code Section 312.205 shall include provisions for:

- a) Listing the kind, number, and location of all proposed improvements of the property;
- b) Access to and inspection of property by municipal employees to ensure that the improvements or repairs are made according to the specifications and conditions of the agreements;
- c) Limiting the use of the property consistent with the general purpose of encouraging development or redevelopment of the zone during the period that property tax exemptions are in effect; and
- d) Recapturing property tax revenue lost as a result of the agreement if the owner of the property fails to make the improvements or repairs as provided by the agreement;
- e) Containing terms agreed to by the owner of the property;
- f) Requiring the owner of the property to certify annually to the governing body of each taxing unit that the owner is in compliance with each applicable term of the agreement; and
- g) Providing that the governing body of the municipality may cancel or modify the agreement if the property owner fails to comply with the agreement.

PART 7. If any portion of this ordinance shall, for any reason, be declared invalid by any court of competent jurisdiction, such invalidity shall not affect the remaining provisions hereof.

PART 8. That the zone shall take effect immediately upon its adoption.

PASSED AND APPROVED this 23rd day of April, A. D., 2008.



JOSEPH O. SEEBER, MAYOR
OF THE CITY OF TYLER, TEXAS

ATTEST:



CASSANDRA BRAGER, CITY CLERK

APPROVED:



GARY C. LANDERS, CITY ATTORNEY



EXHIBIT "A" TO ORDINANCE 0-2008-60

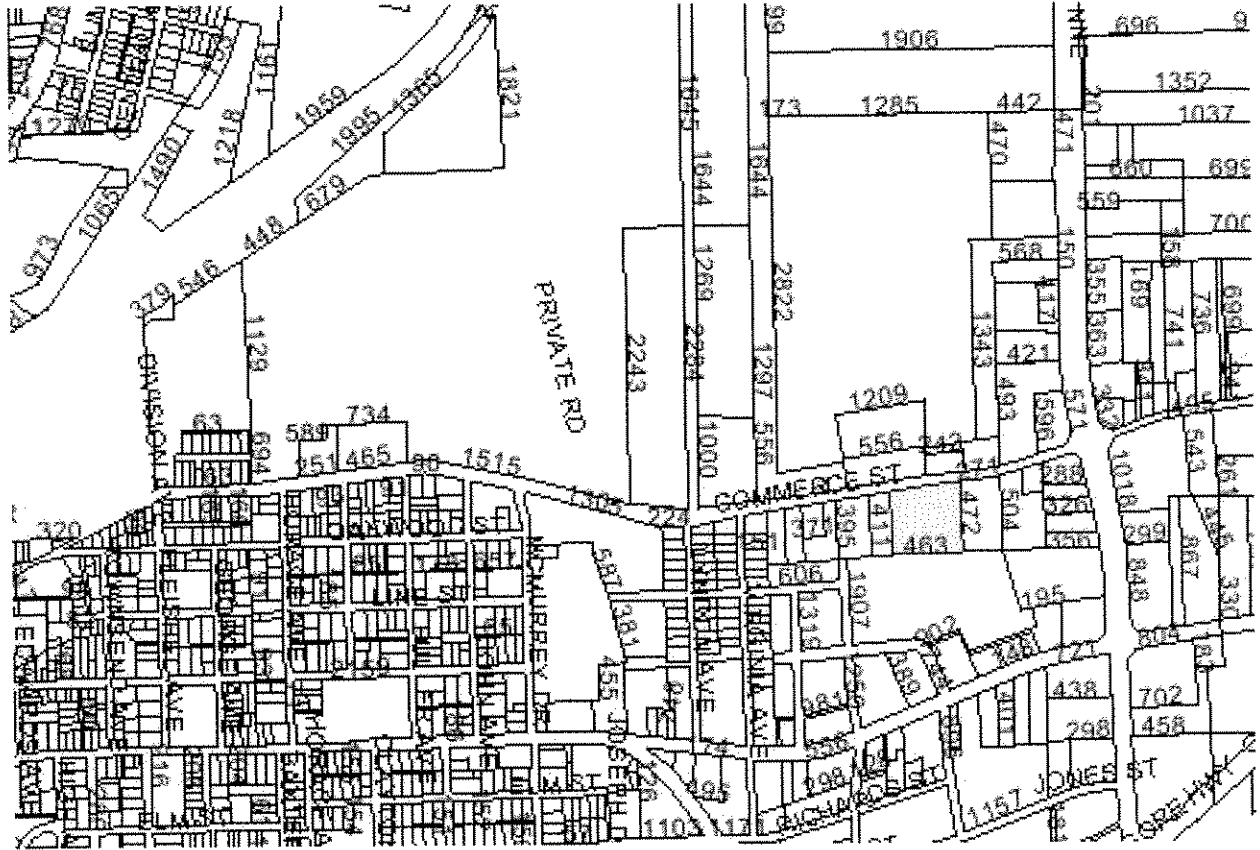


EXHIBIT "B" TO ORDINANCE 0-2008-60



THE STATE OF TEXAS)

COUNTY OF SMITH)

AGREEMENT

This Agreement is entered into by and between the City of Tyler, Texas, a home rule city and municipal corporation of Smith County, Texas, duly acting herein by and through its City Manager, hereinafter referred to as CITY; the County of Smith, Texas, duly acting herein by and through its County Judge; the Tyler Junior College District, duly acting herein by and through its President of the Board of Trustees; hereinafter referred to collectively as TAXING UNITS; and J. A. HARGIS PARTNERSHIP #2, LP, duly acting by and through its President, Joe A. Hargis, hereinafter referred to as OWNER, and as Lessor to Sealtite Building Fasteners, hereinafter referred to as LESSEE.

WITNESSETH

WHEREAS, on the 23rd day of April, 2008, the City Council of the City of Tyler, Texas, approved Ordinance No. O-2008-60 designating Reinvestment Zone Number Nine (Sealtite), City of Tyler, Texas, for industrial tax abatement, hereinafter referred to as the ORDINANCE, as authorized by Chapter 312 of the Texas Tax Code, as amended, hereinafter referred to as STATUTE; and

WHEREAS, the CITY has adopted an ordinance set out in Code Sections 28-40 through 28-42, stating that it elects to be eligible to participate in tax abatement, hereinafter referred to as the POLICY; and

WHEREAS, the POLICY constitutes appropriate guidelines and criteria governing tax abatement agreements to be entered into by the CITY as contemplated by the STATUTE; and

WHEREAS, in order to maintain and/or enhance the commercial/industrial economic and employment base of the Tyler area to the long-term interest and benefit of the CITY and TAXING UNITS, 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 Number Nine (Sealtite), City of Tyler, Texas, in accordance with the purposes for its creation, and are in compliance with the POLICY, 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 belonging to OWNER and described and shown on the maps attached hereto as EXHIBITS A, B-1, and B-2, and made a part hereof, and shall be hereinafter referred to as the PREMISES. The PREMISES are located entirely within the City of Tyler and within Reinvestment Zone Number Nine (Sealtite).

2. The OWNER shall construct its Production and Capacity Improvements on the PREMISES (hereinafter referred to as IMPROVEMENTS) with total new construction and associated improvement costs of not more than Two Million Five Hundred Thousand Dollars (\$2,500,000), which will be subject to abatement under this agreement as further described in EXHIBIT C, made a part hereof. The OWNER shall have such additional time to complete the IMPROVEMENTS as may be required in the event of "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 omissions of OWNER), fires, explosions or floods, and strikes.
3. The proposed IMPROVEMENTS are described in EXHIBIT C. After completion of IMPROVEMENTS, the OWNER shall provide the Smith County Appraisal District with floor plans showing the IMPROVEMENTS described in EXHIBIT C as built and shall certify in writing to the City of Tyler Reinvestment Zone Committee the costs of construction of that facility. Such certification shall be deemed to be incorporated by reference herein and made a part hereof for all purposes. OWNER's abatement may be denied or reduced for failure to provide the floor plans and certification in a timely manner (also see Paragraph 6).
4. 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.
5. OWNER entered into a lease agreement with Sealtite Building Fasteners, hereinafter referred to as LESSEE, on or about _____, attached hereto as EXHIBIT D (the Lease). Said Lease requires LESSEE to thereafter continuously operate and maintain during the term of the Agreement, except as excused because of "force majeure" events as defined above in Paragraph 2, the PREMISES as the Sealtite Building Fasteners production facility. The PREMISES and the IMPROVEMENTS constructed thereon shall at all times during the term of this Agreement be used in a manner that is consistent with the City's general purpose of encouraging development in the Zone and the City's comprehensive zoning ordinance, as amended.
6. Subject to the due performance and satisfaction by LESSEE of each of the terms and conditions of, and the accuracy of the representations set forth in, that certain agreement entered into by and between CITY and LESSEE on April 23, 2008 (the Sealtite Building Fasteners Tax Abatement Agreement), the CITY shall abate a portion of ad valorem real and personal property taxes from the IMPROVEMENTS otherwise owed to the CITY in accordance with the provisions of paragraph 13 hereof. OWNER shall have no responsibility or liability for the failure of LESSEE to perform under the Sealtite Building Fasteners Abatement Agreement.

7. Compliance with this tax abatement agreement will be monitored by the City of Tyler Reinvestment Zone Committee on at least an annual basis. The OWNER will be required to provide written documentation upon request of the Committee on or before March 1 each year that reasonable progress has been made toward all of the requirements set forth in this agreement. Each year's abatement during the term of this Agreement shall stand on its own. If the conditions for abatement are not met for a year, the taxing entities may choose to terminate this Agreement, continue the Agreement without any abatement for that year, or reduce the amount of abatement according to the conditions in Paragraph 12 of the Sealrite Building Fasteners Tax Abatement Agreement. Further, the City of Tyler Reinvestment Zone Committee may recommend to the taxing entities a full yearly abatement if, after their review and in their opinion, substantial compliance by Owner has been achieved.

8. In the event that (1) the IMPROVEMENTS and additional JOBS for which the Sealrite Building Fasteners Reinvestment Zone has been created are not completed substantially in accordance with this Agreement, and subject to the conditions listed in Paragraph 12 of the Sealrite Building Fasteners Tax Abatement Agreement, or (2) OWNER allows its ad valorem taxes owed the CITY or other TAXING UNIT 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 other material 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 or TAXING UNITS 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 or modified by the CITY or TAXING UNITS. Notices shall be in writing and shall be delivered by personal delivery or certified mail to OWNER, at its Tyler address of record. As liquidated damages, in the event of default and subject to the terms of Paragraph 6, all taxes which otherwise would have been paid to the CITY and TAXING UNITS without the benefit of the abatement under this Agreement (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 TAXING UNITS and shall be due, owing, and paid to the CITY and TAXING UNITS within sixty (60) days of the expiration of the above mentioned applicable cure period as the sole remedy of the CITY and TAXING UNITS, subject to any and all lawful offsets, settlements, deductions, or credits to which OWNER may be entitled. In the event a debt is created, the City of Tyler Reinvestment Zone Committee shall consider all factors in determining whether to recommend the debt be collected and the terms of that collection. The parties acknowledge that actual damages, in the event of default and termination, would be speculative and difficult to determine.

9. The CITY and TAXING UNITS each represent and warrant that the PREMISES does not include any property that is owned by a member of their respective councils or boards, agencies, commissions, or other governmental bodies approving or having responsibility for the approval of this Agreement.

10. The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. The Agreement cannot be assigned by OWNER unless written permission is first granted by the CITY and TAXING UNITS, which permission shall be at the sole discretion of the CITY and TAXING UNITS, except under the following conditions:
 - A. Assignment to a wholly-owned subsidiary of OWNER or its parent company is permissible.
 - B. A transfer of interest, under a "Sale and Lease Back", is permissible wherein OWNER or a wholly-owned subsidiary of OWNER shall continue to conduct business on the subject premises.
11. It is understood and agreed between the parties that the OWNER, in performing its obligations hereunder, is acting independently, and the CITY and TAXING UNITS assume no responsibilities or liabilities in connection therewith to third parties, and OWNER agrees to indemnify and hold CITY and TAXING UNITS harmless therefrom; it is further understood and agreed among the parties that the CITY and the TAXING UNITS, in performing their obligations hereunder, are each acting independently, and OWNER assumes no responsibilities or liabilities in connection therewith to third parties, and, to the extent permitted by law, the CITY and TAXING UNITS agree to indemnify and hold OWNER harmless therefrom.
12. The OWNER further agrees that the CITY and TAXING UNITS, their 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 is in accordance with this Agreement and all applicable state and local laws and regulations or valid waiver thereof. After completion of the IMPROVEMENTS and until the expiration of this Agreement, the CITY and TAXING UNITS shall have the continuing right to inspect the PREMISES subject to reasonable security requirements to insure that the Premises are thereafter maintained and operated in accordance with this Agreement.
13. Subject to the terms and conditions of this Agreement, and subject to the rights and holders of any outstanding bonds of the CITY and TAXING UNITS, a portion of ad valorem real property taxes from the PREMISES otherwise owed to the CITY and TAXING UNITS shall be abated. Said abatement shall be an amount equal to a fixed percentage of the taxes assessed as defined below, upon the increased value of the IMPROVEMENTS to the Sealtite Building Fasteners facility up to Two Million Five Hundred Thousand Dollars (\$2,500,000) over the value in the year in which this Agreement is executed, or the appropriate depreciated value thereafter, 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 four (4) years beginning the 1st day of January, 2009. In accordance with the above, the abatement shall be 100% for four (4) years.
14. The term shall be from January 1, 2009, through December 31, 2012.
15. This Agreement was authorized by the City Council at its Council meeting on the 23rd day of April, 2008, authorizing the City Manager to execute the Agreement on behalf of the City.

16. This Agreement was authorized by the Minutes of the Commissioners Court of Smith County, Texas, at its meeting on the 28th day of April, 2008, whereupon it was duly determined that the County Judge would execute the Agreement on behalf of Smith County.
17. This Agreement was authorized by the Minutes of the Board of Trustees of the Tyler Junior College District at its Board Meeting on the 15th day of May, 2008, whereupon it was duly determined that the Board President would execute the Agreement on behalf of the Tyler Junior College District.
18. This Agreement was entered into by J. A. Hargis Partnership #2, LP, by authority granted under a Certification of Authority, whereby President Joe A. Hargis is authorized to execute this Agreement on behalf of J. A. Hargis Partnership #2, LP, a copy of which Certification is attached hereto as EXHIBIT E.
19. This shall constitute a valid and binding Agreement between the CITY, TAXING UNITS, and J. A. Hargis Partnership #2, LP, when executed in accordance herewith and constitutes the entire agreement between the parties and shall supersede all previous understandings, agreements and representations, either oral or written, between the parties with respect to the subject matter hereof. No modification of this Agreement shall be binding unless by written agreement of the parties and signed by their duly authorized representatives in which express reference is made to the provision of this Agreement being so modified.

This Agreement is performable in Smith County, Texas. Witness our hands this 23rd day of April, 2008.

ATTEST:

CITY OF TYLER, TEXAS

CITY CLERK

CITY MANAGER

APPROVED AS TO FORM:

CITY ATTORNEY

ATTEST:

COMMISSIONERS COURT OF SMITH COUNTY

COUNTY CLERK

COUNTY JUDGE

APPROVED AS TO FORM:

ATTORNEY FOR COMMISSIONERS COURT OF SMITH COUNTY, TEXAS

ATTEST:

TYLER JUNIOR COLLEGE DISTRICT

SECRETARY, BOARD OF TRUSTEES

PRESIDENT OF THE BOARD OF TRUSTEES

APPROVED AS TO FORM:

ATTORNEY FOR TYLER JUNIOR COLLEGE DISTRICT

J. A. HARGIS PARTNERSHIP #2, LP

PRESIDENT JOE A. HARGIS

EXHIBIT "A"
Sealtite Building Fasteners
J.A. Hargis Partnership
2310 East Commerce Street



EXHIBIT "C"

Plant Expansion at 2310 East Commerce Street

**57,589 square feet expansion to existing warehouse
and manufacturing facilities**

**Metal building with access and egress
improvements \$2,500,000**

Building will be owned by J. A. Hargis Partnership #2, LP