

RESOLUTION NO. 2008-44R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A TAX ABATEMENT AGREEMENT BETWEEN THE CITY AND CLOVIS BARKER BUSINESS PARK, L.P., FORMERLY KNOWN AS BDI SAN MARCOS PROPERTY L.P. FOR DEVELOPMENT OF A DISTRIBUTION/WAREHOUSE FACILITY ON A 30.32 ACRE TRACT OF LAND LOCATED ON CLOVIS BARKER ROAD; AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE THE AGREEMENT; AND DECLARING AN EFFECTIVE DATE.

RECITALS:

1. The City Council has adopted an [AEconomic Development Incentives Policy](#) that authorizes tax abatement agreements.
2. Clovis Barker Business Park, L.P. (“Owner”) is proposing a development of a distribution/warehouse facility on its property on a 30.32 acre tract of land located on Clovis Barker Road, and has asked the City to consider granting a tax abatement and other economic development incentives related to the expansion.
3. The City and Owner wish to enter into a tax abatement agreement pertaining to this facility.
4. The property on which the proposed expansion will be located is eligible for tax abatement, and appropriate notice of this tax abatement agreement has been given to other taxing entities.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

PART 1. The attached tax abatement agreement (the “Agreement”) between the City and Owner is found to satisfy the requirements of the City’s [AEconomic Development Incentives Policy](#).

PART 2. The Agreement is found to satisfy all of the requirements of the Property Redevelopment and Tax Abatement Act, Chapter 312 of the Texas Tax Code.

PART 3. The recitals found in the preamble to this resolution are approved and adopted in their entirety.

PART 4. The terms and conditions of the Agreement are approved and adopted.

PART 5. The Interim City Manager, Collette Jamison, is authorized to execute this Agreement.

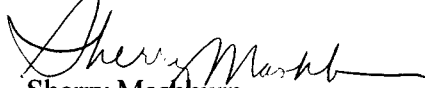
PART 6. This Resolution is in full force and effect immediately upon its passage.

ADOPTED on this day the 18th of March, 2008.



Susan Narvaiz  
Mayor

Attest:



Sherry Mashburn  
City Clerk

**TAX ABATEMENT AGREEMENT BETWEEN THE CITY OF SAN MARCOS AND  
CLOVIS BARKER BUSINESS PARK, L.P. FOR DEVELOPMENT OF A  
DISTRIBUTION/WAREHOUSE FACILITY**

This tax abatement agreement (this "Agreement") is entered into effective the 6<sup>th</sup> day of February, 2008 between the City of San Marcos, Texas (the "City"), a Texas municipal corporation, and Clovis Barker Business Park, L.P., formerly known as BDI San Marcos Property L.P. ("Owner").

**PART 1. GENERAL PROVISIONS**

**Section 1.01.** This Agreement is authorized and governed by the Property Redevelopment and Tax Abatement Act (Chapter 312 of the Texas Tax Code), and by the City's Economic Development Incentives Policy (the "Policy").

**Section 1.02.** BDI owns a 30.32 acre tract of land in the J.M. Veramendi League Survey No. 1, Abstract No. 17, and the C. Wickson Survey, Abstract No. 474, City of San Marcos, Hays County, Texas more particularly described by metes & bounds in the attached Exhibit "A". (The "Property."). The Property meets the eligibility criteria for tax abatement under the Policy. The Property is situated within the City of San Marcos Reinvestment Zone No. 23 designated by separate ordinance by the City Council.

**Section 1.03.** The Property is not part of an improvement project financed with tax increment bonds.

**Section 1.04.** This Agreement is subject to the rights of the holders of outstanding bonds of the City.

**Section 1.05.** The Property is not owned or leased by any member of the San Marcos City Council or any member of the City Planning and Zoning Commission.

**Section 1.06.** Owner agrees to ensure that all of the construction described below will conform to all applicable City ordinances and regulations, including but not limited to the City's Master Plan, and Chapter 5-Buildings and Building Regulations, Chapter 74-Streets and Sidewalks, and Chapter 86, Utilities, of the San Marcos City Code, and Chapters 1 through 8 of the City's Land Development Code.

**PART 2. PROPERTY IMPROVEMENTS**

**Section 2.01.** Owner shall construct a building of 64,260 square feet and a second building

of 84,640 square feet to provide a distribution/warehouse facility of at least 148,900 square feet on the Property at a cost of approximately \$5,950,000 and to be leased to multiple tenants. The real property improvements consisting of these two buildings shall be referred to in this Agreement as “The Facility”.

**Section 2.02.** Owner will ensure that the construction of the Facility is completed by March 31, 2009.

### **PART 3. TERM, ABATEMENT PERIOD AND RATE OF ABATEMENT**

**Section 3.01.** The City will abate 50% of the taxable value of the Facility for tax years 2009 and 2010 and 25% of the taxable value of the Facility for tax years 2011, 2012, and 2013. Tax years 2009 through 2013 shall hereinafter be referred to as the “Abatement Period.”

**Section 3.02.** The tax abatement will not include any materials or other personal property. The tax abatement will not include the value of the Property on which the Facility is constructed or any increase in the value of the Property during the term of this Agreement. The tax abatement will not include any property owned by a tenant at the Facility.

### **PART 4. RECORDS AND AUDITS**

**Section 4.01.** On or before February 1st of each year of the Abatement Period, Owner will furnish records to the City supporting Owner’s tax abatement for the current tax year. These records will pertain to Owner’s compliance with this Agreement for the previous calendar year. The City will evaluate the information furnished, and will have the right to request and receive from Owner additional information needed to help the City determine Owner’s compliance with this Agreement. Upon the City’s verification of compliance with this Agreement by Owner for the previous calendar year, the City will issue a tax abatement certificate to Owner validating the tax abatement for the current tax year.

**Section 4.02.** At all times until the City’s rights to declare default against Owner have expired, the City will have access to the Property and the Facility upon reasonable prior notice for the purpose of inspecting them to ensure that the Facility is constructed, installed, maintained and used in accordance with the terms of this Agreement.

### **PART 5. DEFAULT**

**Section 5.01.** The City Manager may declare a default under this Agreement if Owner:

1. fails to complete construction of the Facility by the deadline in Section 2.02 above;

2. refuses, fails or neglects to comply with any of the terms of this Agreement; or
3. allows ad valorem taxes on the Property or the Facility owed to the City to become delinquent unless Owner timely and properly protests or contests the taxes.

**Section 5.02.** If the City Manager determines that Owner is in default of this Agreement by failing to complete construction of the Facility on or before March 31, 2009 or by failing to pay ad valorem taxes due on the Property or the Facility before they have become delinquent, then the City Manager shall terminate this agreement and the tax abatement for the remainder of the Abatement Period will be deemed rescinded.

**Section 5.03.** If this Agreement is terminated under Section 5.02, Owner will pay to the City the full value of all fee waivers provided for in Section 6 below within 60 days of the termination date. The City will be entitled to record a lien against the Property to secure the full value of the fees so waived if this payment is not timely made.

**Section 5.04.** At the time this Agreement is fully performed by Owner, and upon the written request of Owner the City Manager will execute a certificate in recordable form stating this Agreement has been performed, and Owner will be released of all further duties or obligations under this Agreement.

**Section 5.05.** The remedies set forth in this Agreement may be used in conjunction with one another or separately, and together with any other statutory or common law remedies available to the City. Any failure by the City to enforce this Agreement with respect to one or more defaults by Owner will not waive the City's ability to enforce the agreement after that time.

#### **PART 6. ECONOMIC INCENTIVES PROVIDED BY THE CITY**

**Section 6.01.** As partial consideration for the construction of the Facility and the creation of the jobs by Owner described in Section 2 above, the City agrees to provide the following incentives and benefits to Owner:

1. The City agrees to waive all City fees (the "Fee Waiver") associated with zoning, the platting process, and building permits and inspections associated with the construction of the Facility and the installation of the Equipment. The Fee Waiver does not extend to water and wastewater impact fees charged by the City.
2. The City agrees to consider any other reasonable requests made by Owner in order to

assist it in constructing the Facility and installing the Equipment.

## **PART 7. EFFECT OF SALE, ASSIGNMENT OR LEASE OF PROPERTY**

**Section 7.01.** This Agreement will be assignable to each new owner of the Property for the balance of the term of this Agreement. An assignment which results in a continuation of the business in the same general manner as previously operated by Owner does not require City Council approval, but Owner or its assignee will give written notice to the City within 10 days after the assignment has occurred and BDI will be released of any further duties or obligations under this Agreement.

**Section 7.02.** If a proposed assignment of this Agreement to a new owner of the Property will not result in a continuation of business in the same manner as previously operated by Owner, then written consent of the City Council shall be required but shall not be unreasonably withheld.

**Section 7.03.** Following an authorized assignment of this Agreement, the new owner of the Property will assume all the duties and obligations of Owner upon the same terms and conditions as set out in this Agreement. An assignment of this Agreement will be invalid if the assignor or the assignee is indebted to the City for ad valorem taxes or other obligations.

## **PART 8. PROPERTY TAX APPRAISED VALUE**

**Section 8.01.** It is understood and agreed between the parties that the Property and the improvements upon the Property will be appraised at market value for the purposes of property tax assessment throughout the term of this Agreement, and that this value may change during the term of this Agreement. The calculation of abated taxes will make use of this appraised value as it is determined for each year of the Abatement Period.

## **PART 9. INDEPENDENT CONTRACTOR/INDEMNITY**

**Section 9.01.** It is understood and agreed between the parties that the City and Owner, in executing this Agreement, and in performing their respective obligations, are acting independently, and not in any form of partnership or joint venture. The City assumes no responsibilities or liabilities to any third parties in connection with this Agreement, and Owner agrees to indemnify, defend and hold the City harmless from any such liabilities.

## **PART 10. NOTICE**

**Section 10.01.** All notices called for or required by this Agreement will be delivered to the following by certified mail, postage pre-paid, effective five days after mailing, or by hand delivery or

overnight delivery, effective upon delivery:

Clovis Barker Business Park, L.P.  
Attn: Dennis D. Teeter  
10460 W. Sam Houston Parkway S.  
Suite 200  
Houston, TX 77099

City Manager  
City of San Marcos  
630 East Hopkins  
San Marcos, Texas 78666

Each party will notify the other party in writing of any change in its address.

#### **PART 11. MISCELLANEOUS**

**Section 11.01.** Owner agrees to ensure that no discrimination will occur in the provision of services or in employment practices at the Facility on the basis of race, creed, color, national origin, sex or disability.

**Section 11.02.** In the event any section, subsection, paragraph, sentence, phrase or word is held invalid for any reason, the balance of this Agreement will remain in effect and will be read as if the parties intended at all times not to include the invalid section, subsection, paragraph, sentence, phrase or word. This Agreement may be amended only by a written instrument executed by both parties.

**Section 11.03.** This Agreement will be construed under the laws of the State of Texas. The term “will” is mandatory in this Agreement. Mandatory venue for any action under this Agreement will be in the state court of appropriate jurisdiction for the action in Hays County, Texas. This Agreement is performable in Hays County, Texas.

**Section 11.04.** A copy of this Agreement will be recorded in the official records of Hays County, Texas, by the City. Owner will be responsible for providing to the Hays County Appraisal District all information necessary to give effect to this Agreement.

This Agreement has been executed by the parties in multiple originals or counterparts each having full force and effect.

[signatures on following page]



CITY OF SAN MARCOS, TEXAS

By: [Signature]  
Collette Jamison, Interim City Manager

STATE OF TEXAS

COUNTY OF HAYS

This instrument was acknowledged before me on March 19, 2008 by Collette Jamison, known personally by me to be the Interim City Manager of the City of San Marcos, on behalf of the City of San Marcos.

Notary seal:

[Signature]  
Notary Public, State of Texas



CLOVIS BARKER BUSINESS PARK, L.P.  
By: Bearden Management, Inc., its General Partner

By: [Signature]  
Dennis D. Teeter, Vice President

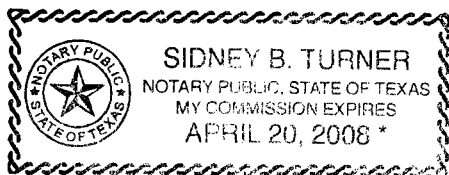
STATE OF Texas

COUNTY OF Harris

This instrument was acknowledged before me on 6 Feb, 2008 by Dennis D. Teeter, known personally by me to be the Vice President of Bearden Management, Inc. on behalf of that corporation and acting as general partner of Clovis Barker Business Park L.P.

Notary Seal:

[Signature]  
Notary Public, State of Texas



CERTIFICATE FOR CORPORATIONS AND PARTNERSHIPS: (if applicable)

I, Sidney B. Turner (name of Official), certify that I am

Assistant Secretary (title/position of Official);

That Dennis D. Teeter (name of Signer) who signed this right-of-entry on behalf of

Clavis Barker Business Park (Corporation/Partnership/Organization) is the

Vice President <sup>L.P.</sup> (title/position of Signer) for

Bearden Management Inc G.P. (Corporation/Partnership/Organization);

That said right-of-entry was duly signed for and on behalf of Bearden Management, Inc.

\_\_\_\_\_ (Corporation/Partnership/Organization), by authority of its governing body and is within the

scope of Signer's corporate or partnership powers.

By:   
Official's signature

281-568-4285  
Telephone number

**NOTE:** THE PERSON SIGNING THE ABOVE CERTIFICATE CANNOT BE THE SAME PERSON THAT SIGNED THE RIGHT-OF-ENTRY.

DESCRIPTION OF 30.32 ACRES, MORE OR LESS, OF LAND AREA IN THE J.M. VERAMENDI LEAGUE SURVEY NO. 1, ABSTRACT NO. 17, AND THE C. WICKSON SURVEY, ABSTRACT NO. 474, CITY OF SAN MARCOS, HAYS COUNTY, TEXAS, BEING A PORTION OF THAT TRACT DESCRIBED AS "TRACT III - 34.49 ACRES" IN A DEED FROM TERRY PAUL GILMORE TO GILMORE PROPERTIES, LTD. DATED DECEMBER 30, 1996 AND RECORDED IN VOLUME 1279, PAGE 181 OF THE HAYS COUNTY OFFICIAL PUBLIC RECORDS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a ½" iron rod found for the west corner of this description and the Gilmore Properties 34.49 acre Tract III and a northeast interior corner of that tract described as 150.02 acres in a deed from Alex T. Forshage to Ellen Marie Jaster et vir dated December 24, 1955 and recorded in Volume 166, Page 624 of the Hays County Deed Records;

THENCE leaving the PLACE OF BEGINNING as shown on that plat numbered 25025-07-14-c dated March 30, 2007 prepared for T.P. Gilmore by Byrn & Associates, Inc., of San Marcos, Texas, with the common northwest line of the Gilmore Properties 34.49 acre Tract III and a southeast line of the Jaster 150.02 acre tract N 45°09'12" E 883.17 feet to a ½" iron rod found with a plastic cap stamped "Byrn Survey" in the southwest line of Clovis Barker Road for the north corner of this description and west corner of that tract described as "Parcel No. 6-0.167 acres" in a deed from Gilmore Properties, Ltd. To the City of San Marcos dated January 21, 2003 and recorded in Volume 2161, Page 501 of the Hays County Official Public Records;

THENCE leaving the Jaster 150.02 acre tract with the southwest line of Clovis Barker Road and the City of San Marcos 0.167 acre Parcel No. 6 the following four courses:

1. S 45°12'42" E 108.26 feet to a concrete nail found with aluminum washer stamped "Byrn Survey" for Point of Curvature,
2. with a right-breaking curve having the following characteristics: delta = 03°04'27", radius = 7594.44 feet, arc = 407.48 feet, and a chord bearing

S 43°40'28" E 407.43 feet to a ½" iron rod found with a plastic cap stamped "Byrn Survey" for Point of Tangency,

3. S 42°08'15" E 190.17 feet to a ½" iron rod found with a plastic cap stamped "Byrn Survey" for Point of Curvature,
4. with a left-breaking curve having the following characteristics: delta = 00°51'24", radius = 7684.44 feet, arc = 114.89 feet, and a chord bearing S 42°33'57" E 114.89 to a ½" iron rod found with a plastic cap stamped "Byrn Survey" in the original southwest line of Clovis Barker Road and northeast line of the Gilmore Properties 34.49 acre Tract III for the southeast corner of the City of San Marcos 0.167 acre Parcel No. 6;

THENCE leaving the City of San Marcos 0.167 acre Parcel No. 6 with the common northeast line of the Gilmore Properties 34.49 acre Tract III and southwest line of Clovis Barker Road the following two courses:

1. with a left-breaking curve having the following characteristics: delta = 03°47'17", radius = 6360.10 feet, arc = 420.50 feet, and a chord bearing S 43°48'49" E 420.42 feet to a cotton spindle found with aluminum washer stamped "Byrn Survey" for Point of Tangency, and
2. S 45°47'46" E 308.99 feet to a ½" iron rod found with a plastic cap stamped "Byrn Survey" for the east corner of this description, and north corner of that tract described as 4.00 acres in a deed from Gilmore Properties, Ltd. To Pavestone Company, L.P., dated May 16, 2005 and recorded in Volume 2688, Page 375 of the Hays County Official Public Records (said Pavestone Company 4.00 acre tract being a portion of the Gilmore Properties 34.49 acre Tract III);

THENCE leaving Clovis Barker Road crossing the Gilmore Properties 34.49 acre Tract III with the northwest line of the Pavestone Company 4.00 acre tract, S 44°12'26" W (being the Bearing Basis for this description) 822.22 feet to a ½" iron rod found with a plastic cap stamped "Byrn Survey" in the southwest line of the Gilmore Properties 34.49 acre Tract III and northeast line of the previously mentioned Jaster 150.02 acre tract for the south corner of this description and west corner of the Pavestone Company 4.00 acre tract;

THENCE leaving the Pavestone Company 4.00 acre tract with the

common southwest line of the Gilmore Properties 34.49 acre Tract III and northeast line of the Jaster 150.02 acre tract N 46°13'01" W 1563.69 feet to the PLACE OF BEGINNING.

There are contained within these metes and bounds 30.32 acres, more or less, as prepared from public records and a survey made on the ground in 2005 and on March 30, 2007, by Byrn & Associates, Inc., of San Marcos, Texas.

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Kyle Smith, R.P.L.S. No.5307

Client: Gilmore, T.P.  
Date: March 30, 2007  
Survey: Veramendi No. 1, J.M. A-17  
Wickson, C. A-474  
County: Hays, TX  
Job No: 25025-07-14  
Fnd30.32