

RESOLUTION NO. 08-2017

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, APPROVING THE TERMS AND CONDITIONS OF A PROGRAM TO PROMOTE LOCAL ECONOMIC DEVELOPMENT AND STIMULATE BUSINESS AND COMMERCIAL ACTIVITY IN THE CITY, AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE AN AGREEMENT FOR SUCH PURPOSES WITH ASHLEY FURNITURE INDUSTRIES, INC., REGARDING A NEW STATE-OF-THE-ART DISTRIBUTION AND MANUFACTURING FACILITY ON APPROXIMATELY 358 ACRES COMMONLY KNOWN AS 3790 FAITHON P. LUCAS, SR. BOULEVARD, MESQUITE, TEXAS AND AUTHORIZING THE CITY MANAGER TO ADMINISTER THE AGREEMENT ON BEHALF OF THE CITY.

WHEREAS, Chapter 380 of the Texas Local Government Code authorizes the City of Mesquite, Texas (“City”) and other municipalities to establish and provide for the administration of programs that promote local economic development and stimulate business and commercial activity; and

WHEREAS, the City Council has been presented with a proposed agreement providing economic incentives to Ashley Furniture Industries, Inc., a Wisconsin corporation (the “Company”) in connection with a new state-of-the-art distribution and manufacturing facility on approximately 358 acres commonly known as 3790 Faithon P. Lucas, Sr. Boulevard, Mesquite, Texas, a copy of said agreement being attached hereto as Exhibit “A” and incorporated herein by reference (the “Agreement”); and

WHEREAS, after holding a public hearing and upon full review and consideration of the Agreement and all matters attendant and related thereto, the City Council is of the opinion that the Agreement will assist in implementing a program whereby local economic development will be promoted, and business and commercial activity will be stimulated in the City.

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

SECTION 1. That the City Council finds that the terms of the proposed Agreement by and between the City and the Company, a copy of which is attached hereto as Exhibit “A” and incorporated herein by reference, will benefit the City and will accomplish the public purpose of promoting local economic development and stimulating business and commercial activity in the City in accordance with Section 380.001 of the Texas Local Government Code.

SECTION 2. That the City Council hereby adopts an economic development program whereby, subject to the terms and conditions of the Agreement, the City will provide economic development incentives to the Company and take other specified actions as more fully set forth in the Agreement in accordance with the terms and subject to the conditions outlined in the Agreement.

SECTION 3. That the terms and conditions of the Agreement, having been reviewed by the City Council and found to be acceptable and in the best interest of the City and its citizens, are hereby approved.

SECTION 4. That the City Manager is hereby authorized to finalize and execute the Agreement and all other documents necessary to consummate the transactions contemplated by the Agreement.

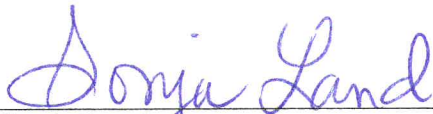
SECTION 5. That the City Manager is further hereby authorized to administer the Agreement on behalf of the City including, without limitation, the City Manager shall have the authority to: (i) provide any notices required or permitted by the Agreement; (ii) approve amendments to the Agreement provided such amendments, together with all previous amendments approved by the City Manager, do not increase City expenditures under the Agreement in excess of \$50,000; (iii) approve or deny any matter in the Agreement that requires the consent of the City provided, however, notwithstanding the foregoing, any assignment of the Agreement that requires the consent of the City pursuant to the terms of the Agreement shall require the approval of the City Council; (iv) approve or deny the waiver of performance of any covenant, duty, agreement, term or condition of the Agreement; (v) exercise any rights and remedies available to the City under the Agreement; and (vi) execute any notices, amendments, approvals, consents, denials and waivers authorized by this Section 5.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 6th day of March, 2017.




Stan Pickett
Mayor

ATTEST:



Sonja Land
City Secretary

APPROVED:



B. J. Smith
City Attorney

3/2/2017

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT**(Chapter 380 Agreement)**

This Economic Development Program Agreement (this "Agreement") is made and entered into by and between the City of Mesquite, a Texas home rule municipality (the "City") and Ashley Furniture Industries, Inc. a Wisconsin corporation (referred to herein as the "Company").

RECITALS:

WHEREAS, all capitalized terms used herein shall have the meanings set forth in this Agreement; and

WHEREAS, the Company is a global leader in furniture manufacturing and distribution (the "Company's Business"); and

WHEREAS, Company is the contract purchaser of that certain tract of real property located in the City consisting of approximately 358 acres and being commonly known as 3790 Faithon P. Lucas Sr. Blvd., Mesquite, Texas 75181 and being more particularly described in Exhibit "A" attached hereto and made a part hereof for all purposes (the "Land"); and

WHEREAS, Company intends to purchase the land and construct a state-of-the-art manufacturing facility which shall contain enclosed building improvements consisting of not less than 850,000 square feet (the "Building"); and

WHEREAS, the Land and Building are hereinafter sometimes collectively referred to as the "Mesquite Facility"; and

WHEREAS, the Company ultimately intends to expend at least SIXTY-FIVE MILLION AND NO/100 DOLLARS (\$65,000,000.00) towards Capital Improvements in acquiring, constructing and equipping the Mesquite Facility; and

WHEREAS, the Company intends to hire and maintain approximately 347 new employees at the Mesquite Facility during the Incentive Period-Phase 1; and

WHEREAS, the Company has advised the City that a principal factor inducing the Company to purchase the Land, make the Capital Improvements and inducing the Company to construct the Building is the agreement by the City to provide the economic development incentives to the Company under the terms and conditions as more fully set forth in this Agreement; and

WHEREAS, the City has established an Economic Development Incentive Program pursuant to Section 380.001 of the Texas Local Government Code (the "Program") and authorizes this Agreement as part of the Program; and

WHEREAS, the Company desires to participate in the Program by entering into this Agreement; and

WHEREAS, the City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program and that the Company's performance of its obligations set forth in this Agreement will increase the amount of ad valorem taxes and local sales/use taxes paid to and collected by

the City, promote employment, promote local economic development in the City, stimulate business and commercial activity in the City and benefit the City and its citizens.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the parties agree as follows:

ARTICLE I

Incorporation of Recitals

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the Parties.

ARTICLE II

Definitions

As used herein, the following terms shall have the following meanings, to-wit:

“Additional Municipal Sales/Use Taxes” shall mean all sales and use taxes now and hereafter authorized, adopted, imposed and/or collected by or on behalf of the City pursuant to §321.101(b) of the Texas Tax Code, as amended and/or replaced, and shall specifically include all Type B Sales/Use Taxes, Property Tax Relief Taxes and all sales and use taxes now and hereafter prohibited by law from being used for payment of economic development incentives.

“Ad Valorem Taxes” shall mean those real property and tangible personal property taxes authorized, adopted, imposed or collected by or on behalf of the City pursuant to §11.01 of the Texas Tax Code, as amended or replaced.

“Affiliate” shall mean any parent or subsidiary business, any entity controlling, controlled by, or under common control with the Company, division, or unit of the Company, and any third party contractors, subcontractors or vendors engaged on its behalf to complete the Project. For the purpose of this definition, “control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities or by contract or otherwise.

“Building” shall have the meaning set forth in the Recitals in this Agreement.

“Business Personal Property” shall mean moveable items of personal property owned by the Company and used in the Company’s ordinary course of business which are located at the Mesquite Facility but are not permanently affixed to, or part of, the Land and shall consist of machinery, equipment, rack shelving, furniture, computers, vehicles, but only if such vehicles are licensed and registered in Dallas County, Texas, and Taxable Inventory provided such items, other than Taxable Inventory, are considered capital assets under generally accepted accounting principles.

“Capital Improvements” shall mean the initial construction and any changes, modifications or additions to the Building and the Company’s Business Personal Property at the Mesquite Facility are, other than Taxable Inventory, considered as capital assets under generally accepted accounting principles.

“Capital Investment” shall have the meaning set forth in Article VI, Section 1 of this Agreement and shall include Taxable Inventory and those other expenditures the Company states are capitalized as capital assets on the books of the Company in accordance with generally accepted accounting principles.

“Capital Investment Certificate” shall have the meaning set forth in Article VII, Section 7 of this Agreement.

“Certificate of Compliance” shall mean a certificate in such form as is reasonably acceptable to the City and the Company executed on behalf of the Company by a duly authorized Company Representative certifying to the City: (i) that all Conditions Precedent have been satisfied; (ii) that no Default then exists by the Company under the terms of this Agreement and that no event exists which, but for notice, the lapse of time, or both, would constitute a Default by the Company under the terms of this Agreement.

“Certificate of Occupancy” shall mean a final certificate of occupancy issued to the Company by the City authorizing the Company to operate the Company’s Business from the Building.

“City” shall mean the City of Mesquite, a Texas home rule municipality.

“City Sales/Use Tax” and “City Sales/Use Taxes” shall mean the municipal sales and use taxes that are collected by or on behalf of the City for general fund purposes authorized pursuant to §321.101(a) of the Texas Tax Code, as amended and/or replaced, and currently at the rate of one percent (1.0%) pursuant to §321.103(a) of the Texas Tax Code and specifically does not include the State of Texas Sales/Use Taxes and any Additional Municipal Sales/Use Taxes.

“City’s Sales/Use Tax Account” shall have the meaning set forth in Article VII, Section 3 of this Agreement.

“Company” shall mean Ashley Furniture Industries Inc., a Wisconsin corporation, and its successors and assigns only as permitted by Article X, Section 1 of this Agreement.

“Company’s Business” shall have the meaning set forth in the Recitals in this Agreement.

“Company Representative” shall mean a duly-authorized officer of the Company acting on behalf of the Company.

“Condition Precedent” and “Conditions Precedent” shall have the meanings set forth in Article VII of this Agreement.

“Default” shall have the meaning set forth in Article IX, Section 1 of this Agreement.

“Defaulting Party” shall have the meaning set forth in Article IX, Section 1 of this Agreement.

“Economic Development Incentive(s)” shall mean the incentives described in Article VIII, Sections 1, 2, 3, 5, and 6 of this Agreement, and the term may be used singularly or collectively.

“Economic Covenants” shall be those Company requirements set forth in Article VI, Sections 1-10 of this Agreement.

“Effective Date” shall mean the date the Company and the City execute this Agreement if both the Company and the City execute this Agreement on the same date. If the Company and the City execute this Agreement on different dates, any reference to the “Effective Date” shall mean the later of the two dates on which this Agreement is executed by the Company and the City.

“Event of Bankruptcy or Insolvency” shall mean the dissolution or termination of a Party’s existence as a going business, insolvency, appointment of a receiver for any part of such Party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, the voluntary commencement of any proceeding under

any bankruptcy or insolvency laws by any Party, or the involuntary commencement of any proceeding against any Party under any bankruptcy or insolvency laws and such involuntary proceeding is not dismissed within ninety (90) days after the filing thereof.

“Incentive Period-Phase 1” shall mean the “Term” as defined in Section 1 of Article IV of this Agreement.

“Incentive Period-Phase 2” shall mean the “Phase 2 Term” as defined in Section 2 of Article IV of this Agreement.

“Incentive Period-Phase 3” shall mean the “Phase 3 Term” as defined in Section 3 of Article IV of this Agreement.

“Land” shall have the meaning set forth in the Recitals in this Agreement.

“Interest Rate” shall mean the rate of interest to be applied to the unpaid outstanding balance for payments to be paid in installments under this Agreement, which shall be five percent (5%) per annum.

“Mesquite Facility” shall have the meaning set forth in the Recitals in this Agreement.

“Net City Sales/Use Taxes” shall mean the City Sales/Use Taxes collected by or on behalf of the City less any collection fee retained by the State Comptroller and less any credits for returned items.

“New Employee” shall mean a full-time, direct employee of Company or its Affiliates, working a minimum of thirty-two (32) hours per week, who shall be employed in a position at the Mesquite Facility. New Employee shall not include Company’s or its Affiliates’ part time employees or employees of Company’s subcontractors or vendors, whether working at the Mesquite Facility or otherwise. “New Employee” shall include any replacement of a former New Employee whose employment is terminated for any reason, with such original New Employee and any replacement employee counting as one (1) New Employee for purposes of the calculations in this Agreement. “New Employee” shall also mean employees transferred to the Mesquite Facility from the Company’s and its Affiliates’ locations other than the Mesquite facility.

“Non-Defaulting Party” shall have the meaning set forth in Article IX, Section 1 of this Agreement.

“Party” shall mean either the Company or the City.

“Parties” shall mean both the Company and the City.

“Payment Request” shall mean a written request executed by a Company Representative requesting the payment of all or any portion of the Economic Development Incentive pursuant to the terms of this Agreement.

“Person” or “Persons” shall mean one or more individual(s) or corporation(s), general or limited partnership(s), limited liability company(s), trust(s), estate(s), unincorporated business(es), organization(s), association(s) or any other entity(s) of any kind.

“Program” shall have the meaning set forth in the Recitals in this Agreement.

“Project” shall have the meaning set forth in Article VI, Section 1 of this Agreement.

“Property Tax Relief Taxes” shall mean the municipal sales and use taxes authorized, adopted, imposed or collected by or on behalf of the City pursuant to §321.101(b) of the Texas Tax Code, as amended

or replaced, currently at the rate of one-half of one percent to be used to reduce the ad valorem property tax rate of the City.

“Public Infrastructure” shall mean (i) approximately 10,000 linear feet of reconstructed, public roadway improvements in the City, known as Scyene Road and located generally between Clay-Mathis Road and Airport Drive, and (ii) certain offsite utilities and drainage improvements necessary to serve the Land for construction and operation of the Mesquite Facility, all more specifically described on **Exhibit “C”**.

“Required Jobs” shall mean not less than three hundred forty-seven (347) jobs for New Employees at the Mesquite Facility, which group of New Employees have (i) been hired and are working at the Facility as measured on the expiration of the Incentive Period – Phase 1, and (ii) the mean and median of which group, in the aggregate, has taxable, annual (W-2) wages of not less than \$43,577.00, per New Employee, as measured on the expiration date of the Incentive Period – Phase 1.

“State Comptroller” shall mean the Office of the Texas Comptroller of Public Accounts, or any successor agency.

“State of Texas Sales/Use Taxes” shall mean the State of Texas sales and use taxes, currently at the rate of six and one-quarter percent (6.25%), authorized, adopted, imposed or collected pursuant to §151.051 of the Texas Tax Code, as amended or replaced, and all other sales and use taxes now and hereafter authorized, adopted, imposed or collected by or on behalf of the State of Texas.

“Taxable Inventory” shall mean taxable merchandise and supplies owned by the Company and located at the Mesquite Facility and shall include raw materials, work-in-process and finished goods.

“Type B Sales Taxes” shall mean the municipal sales taxes authorized, adopted, imposed and/or collected by or on behalf of the City pursuant to §321.101(b) of the Texas Tax Code, as amended and/or replaced, currently at the rate of one-half of one percent (.5%), for use by the Mesquite Quality of Life Corporation, a Type B economic development corporation, operating pursuant to Chapter 505 of the Texas Local Government Code, as amended or replaced, and shall also include any other sales taxes now or hereafter authorized, adopted, imposed and collected by or on behalf of the City for use by any other Type B economic development corporation hereafter created by or on behalf of the City.

“Unconfirmed Sales/Use Tax Payment” shall have the meaning set forth in Article VIII, Section 10 of this Agreement.

“Undocumented Workers” shall mean individuals who, at the time of employment with the Company, have not been approved for employment through the e-Verify system or another system/program approved by the United States Department of Homeland Security (the “Approved System”).

“Wages” shall mean the annual, taxable compensation of any New Employee, as reported on such New Employee’s Form W-2.

ARTICLE III

Authority for Agreement

This Agreement is authorized by Chapter 380 of the Texas Local Government Code. The City Council finds and determines that this Agreement will effectuate the purposes set forth in the Program and that the Company’s performance of its obligations herein will increase the amount of local sales/use taxes paid to and collected by the City, promote local economic development in the City, stimulate business and commercial activity in the City and benefit the City and its citizens.

ARTICLE IV

Term

1. Term. The term for the Incentive Period-Phase 1 shall commence on the Effective Date and shall continue until December 31, 2022, unless sooner terminated as provided herein (the "Term").

2. Phase 2 Term. If the Company notifies the City in writing, on or before July 15, 2023, that it will proceed with the Phase 2 expansion of the Mesquite Facility described in Section 11 a. of Article VI of this Agreement ("Phase 2 Notice") then and in this event the terms and conditions of this Agreement that relate to the Company's right to receive those additional incentives described in Section 12 of Article VIII of this Agreement ("Phase 2 Additional Incentives") along with the Company's obligations under this Agreement that are directly related to its being entitled to receive the Phase 2 Additional Incentives shall be in full force and effect from the date the Company gives the City the Phase 2 Notice and shall continue until December 31, 2028, unless sooner terminated as provided herein (the "Phase 2 Term").

3. Phase 3 Term. If the Company notifies the City in writing, on or before July 15, 2029, that it will proceed with the Phase 3 expansion of the Mesquite Facility described in Section 11 b. of Article VI of this Agreement ("Phase 3 Notice") then and in this event the terms and conditions of this Agreement that relate to the Company's right to receive those additional incentives described in Section 12 of Article VIII of this Agreement ("Phase 3 Additional Incentives") along with the Company's obligations under this Agreement that are directly related to its being entitled to receive the Phase 3 Additional Incentives shall be in full force and effect from the date the Company gives the City the Phase 3 Notice and shall continue until December 31, 2034, unless sooner terminated as provided herein (the "Phase 3 Term").

ARTICLE V

Company's Covenant Not to Employ Undocumented Workers

1. Covenant Not to Employ Undocumented Workers. The Company hereby covenants and agrees that the Company will use an Approved System in an effort to avoid employing Undocumented Workers (as defined in this Agreement) at its Mesquite Facility during the Term.

2. Covenant to Notify City of Conviction for Undocumented Workers. The Company further hereby covenants and agrees to provide the City with written notice of any conviction of the Company of a violation under 8 U.S.C. §1324a (f) for employing Undocumented Workers (as defined in this Agreement) originating at the Mesquite Facility within thirty (30) days from the date of such conviction.

3. Repayment of Economic Development Incentive in Event of Conviction for Employing Undocumented Workers. If, after receiving any Economic Development Incentive under the terms of this Agreement, the Company is convicted of a violation under 8 U.S.C. §1324a (f) for employing Undocumented Workers (as defined in this Agreement) originating at the Mesquite Facility, the Company shall pay to the City, not later than the 120th day after the date the City notifies the Company of a final, non-appealable conviction, an amount equal to the total amount of the Economic Development Incentive previously paid by the City to the Company under the terms of this Agreement plus interest at the rate equal to the Interest Rate on each such Economic Development Incentive being recaptured from the date each such Economic Development Incentive was paid by the City to the Company until the date repaid by the Company to the City.

4. Limitation on Economic Development Incentive. The City shall have no obligation to pay all or any part of the Economic Development Incentive to the Company if the Company is convicted of a

violation under 8 U.S.C. §1324a (f) for employing Undocumented Workers (as defined in this Agreement) originating at the Mesquite Facility.

5. Intentionally omitted.

6. Limitation. The Company is not liable for a violation of this Agreement, including but not limited to Article V of this Agreement, by a subsidiary, Affiliate, or franchisee or licensee of the Company, or by an unrelated person or entity with whom the Company contracts.

ARTICLE VI

Company's Economic Covenants

In consideration of the City's agreement to grant the Economic Development Incentive to the Company upon the terms and conditions as more fully set forth herein, the Company represents, covenants and agrees as follows, to-wit:

1. Capital Investment. The Company shall take fee simple title to the Land on or before May 31, 2017. During the Incentive Period – Phase 1, the Company will make expenditures in the amount of at least SIXTY-FIVE MILLION AND NO/100 DOLLARS (\$65,000,000.00) (the "Capital Investment") in connection with the following capital improvements, to-wit: (i) the purchase of the Land and (ii) the construction of a 850,000 square feet Building substantially as described and/or depicted in Exhibit "B" attached hereto and made a part hereof for all purposes, including the purchase and installation of Business Personal Property and Taxable Inventory at the Mesquite Facility (collectively the "Project"). When calculating the expenditures required under this Article VI, Section 1, the Parties agree that no expenditure shall be included as part of the Capital Investment unless the expenditure is capitalized as a capital asset on the books of the Company in accordance with generally accepted accounting principles;

2. Intentionally omitted;

3. Employment. On or before the expiration of the Incentive Period – Phase 1, the Company and its Affiliates shall create the Required Jobs for New Employees;

4. Commencement of Construction and Certificate of Occupancy. The Company shall commence construction of the Building on or before December 31, 2017, evidenced by its receipt of a land disturbance permit for construction and thereafter obtain a Certificate of Occupancy for the not less than 850,000 square feet within the Building on or before twenty-four (24) months after December 31, 2017 and the Company shall commence operations of the Company's Business within the Building on or before ninety (90) days after receipt of the Certificate of Occupancy;

5. Sourcing of Local Sales Tax. The Company acknowledges that the manner in which a purchase/sale transaction is structured determines whether local sales/use taxes paid in connection with such transaction will be sourced/paid to the City. The Company may elect to forego inclusion of any purchase/sale transaction from this Agreement provided, however, the Company acknowledges that no economic development incentive will be paid with respect to any purchase/sale transaction pursuant to Article VIII, Section 2 unless the transaction is in connection with and attributable solely to the Project and the local sales/use tax incurred in connection with such transaction is sourced/paid to the City;

6. Intentionally omitted.

7. Disclosure of Information. The Company further agrees to disclose to the City, within thirty (30) days after written request by the City, all information reasonably requested by the City related to purchase/sale transactions in connection with the Project, but not including the Company's financial or income statements or income tax returns;

8. Inspection. The Company shall provide the City, its agents and employees with access to the Mesquite Facility at such times as the City may reasonably request to conduct such inspections as the City deems necessary in order to confirm compliance by the Company with the representations, covenants and agreements of the Company as set forth in this Agreement provided the City has given the Company at least seventy-two (72) hours prior written notice of such inspection, so long as the inspection is made in the presence of a designated officer of the Company and does not interfere with or otherwise compromise the Company's or its facility's operational efficiency, safety, security or confidentiality;

9. Representative of Company to Accompany Inspections. The Company will, upon receiving an inspection request, designate a representative of the Company to accompany the City during all inspections of the Mesquite Facility conducted by the City pursuant to Article VI, Section 8 above;

10. Timely Payment of Ad Valorem Taxes. The Company shall timely pay all ad valorem taxes assessed against the Land, the Building, and any buildings subsequently constructed on the Land, and the Business Personal Property, except those amounts being contested in accordance with applicable law and prior to the date such taxes become delinquent;

11. Phase 2 and Phase 3 Expansion of Mesquite Facility. The Company shall be eligible for Additional Economic Development Incentives, at Company's sole election, upon the construction and receipt of a certificate of occupancy for the sequential expansion of the Mesquite Facility if each Phase satisfies the following:

- a. Phase 2—Not less than 300,000 of additional square feet of enclosed building improvements receiving a certificate of occupancy before the expiration of the Incentive Period-Phase 2 and not less than 100 New Employees.
- b. Phase 3—Not less than 300,000 of additional square feet of enclosed building improvements receiving a certificate of occupancy before the expiration of the Incentive Period-Phase 3 and not less than 100 New Employees.

12. Intentionally omitted.

ARTICLE VII

Conditions Precedent to Payment of Economic Development Incentive

The Company and the City hereby expressly acknowledge and agree that the City's obligation to pay the Economic Development Incentive under the terms of this Agreement shall be conditioned upon the satisfaction of each and every one of the following conditions precedent (sometimes referred to singularly herein as a "Condition Precedent" and sometimes collectively referred to as the "Conditions Precedent"), to-wit:

1. Payment Request. The Company shall have submitted a Payment Request to the City requesting payment of the portion of the Economic Development Incentive then due by the City to the Company pursuant to the terms of this Agreement. Each Payment Request shall be accompanied by a Certificate of Compliance dated effective as of the date of the Payment Request. Notwithstanding the foregoing or anything contained herein to the contrary, the City shall commence construction of the improvements to the Public Infrastructure on or before October 1, 2017, and complete all such improvements on or before June 30, 2018, and without written request from the Company;

2. Supporting Documentation Submitted With Payment Request. The Company shall have submitted in support of its Payment Request a listing identifying the following information in connection with such Payment Request:

- each legal entity that remitted City Sales/Use Tax to the State Comptroller in connection with taxable purchases/sales made by the Company or an Affiliate in connection with and attributable solely to the Project during the period covered by such Payment Request; and,
- the tax remitting legal entity's sales/use tax number under which the tax was remitted; and,
- the period that the sales/use tax payment was made by the Company or an Affiliate; and,
- the amount of taxable purchases/sales made by the Company or an Affiliate during the period covered by the Payment Request that resulted in the payment of City Sales/Use Tax, with sufficient supporting documentation to confirm the amount of purchases/sales that were made by the Company or an Affiliate during such period in connection with and attributable solely to the Project; and
- the amount of City Sales/Use Taxes paid by the Company or an Affiliate during the period covered by the Payment Request and the amount of City Sales/Use Taxes paid by the Company or an Affiliate during such period that were made in connection with and attributable solely to the Project.

3. Deposit to City's Sales/Use Tax Account. The Company shall have provided to the City documentation that local sales/use taxes attributable solely to purchase transactions made by the Company or an Affiliate in connection with the Project have been deposited to the City's sales/use tax account, Texas Comptroller of Public Account's Local Authority Code 2057039 (the "City's Sales/Use Tax Account");

4. Verification of Deposit to City's Sales/Use Tax Account. The City has verified the amount of local sales/use taxes deposited to the City's Sales/Use Tax Account that are attributable solely to purchase transactions made by the Company or an Affiliate in connection with the Project;

5. Confirmation of Receipt of Sales/Use Tax Payments. The City has confirmed that it has received the City's portion of all sales/use tax payment(s) for which the Payment Request is being requested;

6. Capital Investment. The Company shall have satisfied its obligation to make the Capital Investment by making expenditures in the collective amount of at least SIXTY-FIVE MILLION AND NO/100 DOLLARS (\$65,000,000.00) in connection with the Project no later than the expiration of the Incentive Period – Phase 1. In the event the Company has not made the Capital Investment on or before the expiration of the Incentive Period-Phase 1, the City shall pay the Economic Development Incentive to the Company in proportion to the capital expenditure already made by the Company if the total of the capital expenditure is at least \$50,000,000.00 but less than \$65,000,000.00 for real property improvements and Business Personal Property at the Mesquite Facility. When calculating such expenditures, the Parties agree that no expenditure, other than Taxable Inventory, shall be included as part of the Capital Investment unless the expenditure is capitalized as a capital asset on the books of the Company in accordance with generally accepted accounting principles. For purposes of meeting the conditions of this Section 6, owned Business Personal Property shall be valued at its cost on the Company's books as of the date of City's receipt of the Capital Investment Certificate;

7. Capital Investment Certificate. The Company shall have submitted to the City a certificate in such form as is reasonably acceptable to the City executed by a Company Representative certifying that the Company has made expenditures of at least SIXTY-FIVE MILLION AND NO/100 DOLLARS (\$65,000,000.00) in connection with the Capital Improvements (the "Capital Investment Certificate"). In the alternative, the Company shall have submitted to the City a certificate in such form as is reasonably acceptable to the City executed by a Company Representative certifying that the Company has made expenditures of at least FIFTY MILLION AND NO/100 DOLLARS (\$50,000,000.00) but less than SIXTY-FIVE MILLION AND NO/100 DOLLARS (\$65,000,000.00) for real property improvements and

Business Personal Property at the Mesquite Facility in connection with the Capital Improvements (the "Capital Investment Certificate"). When calculating the expenditures in connection with the Capital Improvements, the Parties agree that no expenditure, other than Taxable Inventory, shall be included as part of the Capital Investment unless the expenditure is capitalized as a capital asset on the books of the Company in accordance with generally accepted accounting principles;

8. Records and Reports. The Company shall have delivered to the City copies of such invoices, paid receipts, payment records, capital asset schedules, and such documentation, other than tax returns, financial statements, or financial records, as the City may reasonably request to confirm compliance by the Company with the Conditions Precedent set forth in this Article VII;

9. Timely Payment of Ad Valorem Taxes. The Company shall have paid all ad valorem taxes assessed against the Land, the Building and the Company's Business Personal Property, except for those amounts above the amount required pursuant to Article VI, Section 2 above and except those amounts being contested according to law, as of the date of the Payment Request;

10. Performance of this Agreement. The Company shall have kept and performed all terms, provisions, agreements, covenants, conditions and obligations then required to be kept or performed by the Company under the terms of this Agreement and no Default by the Company shall then exist and no event shall exist which, but for notice, the lapse of time, or both, would constitute a Default by the Company under the terms of this Agreement; and

11. Inspection. At the option of the City, the City may, pursuant to Article VI Section 8, inspect the Mesquite Facility to confirm the Company's compliance with the terms and provisions of this Agreement.

ARTICLE VIII

City Covenants

1. Grant of Economic Development Incentive—Net City Sales/Use Taxes (Mesquite Facility Sales). Provided the Conditions Precedent set forth in Article VII of this Agreement and the Economic Covenants have been satisfied, the City hereby approves an economic development grant to the Company in the amount equal to seventy percent (70%) of the Net City Sales/Use Taxes paid to the City during the Term and during Incentive Period-Phase 2 and Incentive Period-Phase 3, if applicable, in connection with taxable sales made by the Company or an Affiliate in connection with the Mesquite Facility and in the amount equal to fifty percent (50%) of the Net City Sales/Use Taxes paid to the City during the Term only, in connection with taxable purchases made by the Company or an Affiliate in connection with and attributable to construction of the Project.

2. Payment of Economic Development Incentive—Net City Sales/Use Taxes (Mesquite Facility Sales). Provided the Conditions Precedent set forth in Article VII and Economic Covenants have been satisfied, the City will pay the Economic Development Incentive – Net City Sales/Use Taxes to the Company in annual installments with the first annual installment being due and payable on June 1st of the calendar year succeeding the calendar year during which the Company satisfies its obligation to make the Capital Investment and Economic Covenants and with subsequent annual installments, if any, being due and payable on June 1st of each calendar year thereafter until and including the final annual installment payment which shall be due and payable on the sooner of June 1st of the year subsequent to any early termination or June 1, 2035. Provided the Conditions Precedent set forth in Article VII and Economic Covenants have been satisfied, the first annual installment payment shall be in the amount equal to the sum of seventy percent (70%) of the Net City Sales/Use Taxes paid to the City in connection with taxable sales made by the Company or an Affiliate in connection with the Mesquite Facility during the Term and fifty percent (50%) of the Net City Sales/Use Taxes paid to the City during the Term only, in connection with taxable purchases made by the Company or an Affiliate in connection with and

attributable to construction of the Project and that are paid to the City during the period from the Effective Date to December 31st of the calendar year during which the Company satisfies its obligation to make the Capital Investment provided, however, notwithstanding anything contained herein, any Unconfirmed Sales/Use Tax Payments shall be subject to the provisions of Sections 10 and 11 of Article VIII of this Agreement. Provided the Conditions Precedent set forth in Article VII and Economic Covenants have been satisfied, the second and subsequent annual installment payments, if any, shall be in the amount equal to the sum of seventy percent (70%) of the Net City Sales/Use Taxes paid to the City in connection with taxable sales made by the Company or an Affiliate in connection with the Mesquite Facility and fifty percent (50%) of the Net City Sales/Use Taxes paid to the City during the Term in connection with taxable purchases made by the Company or an Affiliate in connection with and attributable to construction of the Project and that are paid to the City during the calendar year preceding the calendar year during which the payment is to be made provided, however, notwithstanding anything contained herein, any Unconfirmed Sales/Use Tax Payments shall be subject to the provisions of Sections 10 and 11 of Article VIII of this Agreement.

3. Grant of Economic Development Incentive—Reimbursement of Equivalent Ad Valorem Payments. Provided the Conditions Precedent set forth in Section 7 of Article VII and Sections 1 and 10 of Article VI of this Agreement have been satisfied, for each Tax Year beginning with the first (1st) Tax Year in which ad valorem taxes are assessed against the real property improvements and Business Personal Property and ending on the tenth (10th) Tax Year thereafter, that amount of the revenue in the City's general funds equaling 50% of the City's portion of ad valorem taxes on real property improvements and Business Personal Property (exclusive of ad valorem taxes on building improvements taxed in the Tax Year preceding the year of commencement of construction of the Building, the Land, or rollback taxes on the Land) (i) assessed against the Project, (ii) paid by Company, and (iii) received from the Tax Assessor Collector by the City shall be tendered to Company on an annual basis, but in any event no later than March 1 of a Tax Year, for Tax Year 2022 and any Tax Year in which Company is eligible for reimbursements under this Article VIII, Section 3. No other taxing authority's taxes shall be included in determining the amounts due to Company hereunder.

4. Public Infrastructure Incentive. The City shall complete the construction of that portion of the Public Infrastructure relating to the utilities and drainage improvements necessary to serve the Land on or before December 31, 2017, and that portion of the Public Infrastructure relating to public roadway improvements on or before September 30, 2018, both as described on **Exhibit "C."**

5. City Development Fee Waivers. The City shall grant a waiver of all fees imposed by the City required for planning, constructing, and operating the Project, including but not limited to development permit fees, plan review fees, building permit fees, and inspection fees for any construction of the Mesquite Facility. The waivers in the foregoing sentence expressly exclude the payment of Roadway Impact fees under applicable City codes and ordinances.

6. City Economic Development Grant. Provided the Conditions Precedent set forth in Article VII and the Economic Covenants have been satisfied, the City shall pay in five (5) annual installments of Two Hundred Thousand and No/100 Dollars (\$200,000.00) for an aggregate sum of \$1,000,000 payable on the first anniversary of the Effective Date of this Agreement and on each anniversary date thereafter, until paid.

7. Economic Development Incentive(s). The foregoing provisions of Article VIII (Sections 1, 2, 3, 4, 5, and 6) shall constitute the entirety of the City incentives which Company may receive during the Incentive Period-Phase 1. The Company will be eligible for those Additional Economic Development Incentives described in Section 12 of Article VIII of this Agreement provided that it is not in Default of this Agreement at the time it elects to proceed with either or both of Phase 2 or Phase 3 of this Agreement.

8. Funds Available for Payment of Economic Development Incentive(s). The grant of the Economic Development Incentive payable by the City to the Company as more fully set forth in this Agreement is secured by a pledge of ad valorem taxes or financed by the issuance of any bonds or other obligations payable from ad valorem taxes of the City. City acknowledges and agrees that the Economic Development Incentive payable hereunder is a primary inducement to the Company to undertake the Project and Capital Improvements, and in doing so, Company is relying upon City's grant of Economic Development Incentives. This provision shall expressly survive the expiration or termination of this Agreement.

9. Confidentiality of Sales Tax Information. The Company acknowledges that sales tax information, records and reports are confidential under the laws of the State of Texas and accordingly, the Company agrees that it shall have no right to review or audit any sales tax information, records or reports in the possession of the City including, without limitation, any confidential information reports obtained by the City from the State Comptroller and/or any reports, working papers or other information obtained by the City from any Person. Notwithstanding the foregoing, City shall, upon reasonable request from the Company, share with the Company sales tax information, records and reports concerning the Company and its Affiliates that the City receives from the State Comptroller. This provision shall expressly survive the expiration or termination of this Agreement.

10. Reduction of Payment Request. In the event the City is not able to confirm receipt of any sales/use tax payment(s) of the Company or any Affiliate by comparing the amounts included on the Company's Payment Request to the State Comptroller's detailed confidentiality report listing each tax receipt by month (individually an "Unconfirmed Sales/Use Tax Payment" and collectively the "Unconfirmed Sales/Use Tax Payments"), then the City shall immediately (i) contact the Company, and (ii) work with the Company and the appropriate State of Texas Sales Tax representatives to correct reports and take such other reasonable actions to obtain the information to enable it to give the Company credit for the sales tax payments in question. If, after a reasonable effort, the City and Company are unable to correct the record discrepancy the City shall have the right to deny the portion of the Payment Request relating to all Unconfirmed Sales/Use Tax Payments and in such event, the Payment Request shall automatically be reduced by the amount attributed to the Unconfirmed Sales/Use Tax Payments and the Economic Development Incentive payment made to the Company in connection with such Payment Request shall not include the payment of any portion of any sales/use tax claimed to have been paid to the City in connection with such Unconfirmed Sales/Use Tax Payments.

11. Supplemental Payment Request. In the event the City denies any portion of a Payment Request pursuant to Article VIII, Section 10 above, the Company may, within thirty (30) days after such denial, submit a supplemental Payment Request for the portion of the Payment Request that was denied along with documentation evidencing that one or more Unconfirmed Sales/Use Tax Payments were indeed received by the City. If the documentation provided by the Company to the City pursuant to this Article VIII, Section 11 is satisfactory to the City and the City is able to confirm receipt of such previously Unconfirmed Sales/Use Tax Payment(s), the City will pay the Company an amount equal to fifty percent (50%) or seventy percent (70%), as applicable, of the Net City Sales/Use Taxes paid to the City in connection with such Unconfirmed Sales/Use Tax Payment(s) within thirty (30) days after the City confirms receipt of the Unconfirmed Sales/Use Tax Payment(s).

12. Additional Economic Development Incentives for Phase 2 and Phase 3. Provided the Condition Precedent set forth in Section 7 of Article VII of this Agreement has been satisfied and the Company has received a Certificate of Occupancy for the Building, the Company shall receive reimbursement of equivalent ad valorem payments for those amounts of City ad valorem taxes representing the increase in taxable value over the taxable value of the Phase 1 (or Phase 1 and Phase 2, as the case dictates) real property improvements and Business Personal Property as computed from the immediately prior Tax Year for the Tax Year in which the respective phase receives its certificate of occupancy from the City. The period of reimbursement shall be 10 years for each respective phase. The percentage of reimbursed amounts shall be 60% of the increased value for Phase 2 and 70% of the

increased value for Phase 3. In addition, if the Company elects to proceed with Phase 2 or Phase 3 or both Phase 2 and Phase 3 the City shall grant a waiver, for the Phase 2 and/or Phase 3 project as described in Section 11 of Article VI of this Agreement, of all fees imposed by the City required for planning, constructing, and operating the Phase 2 and/or Phase 3 projects, including but not limited to development permit fees, plan review fees, building permit fees and inspection fees for the construction of the Phase 2 and/or Phase 3 project referred to in Section 11 of Article VI of this Agreement. The waivers in the foregoing sentence expressly exclude the payment of Roadway Impact fees under applicable City codes and ordinances.

13. No Obligation. Notwithstanding anything contained in this Agreement to the contrary, the City acknowledges and agrees that the Company has no obligation to pursue or complete Phase 2 or Phase 3 improvements and hereby waives any and all right to assert or claim that such failure constitutes a breach of this Agreement by the Company. This provision shall expressly survive the expiration or termination of this Agreement.

ARTICLE IX

Defaults Recapture of Incentives Remedies

1. Default. A Party shall be in default of this Agreement (the "Defaulting Party"): (i) upon the occurrence of an Event of Bankruptcy or Insolvency of such Party; or (ii) if such Party fails to timely keep or perform any term, provision, agreement, covenant, Economic Covenant, condition or obligation to be kept or performed by such Party under the terms of this Agreement and such failure continues for ninety (90) days (the Party's right to cure period) after written notice by the other Party (the "Non-Defaulting Party") (each a "Default").

2. Remedies. Upon the occurrence of a Default, the Non-Defaulting Party shall have the right to terminate this Agreement by written notice to the Defaulting Party and shall further have the right to exercise any and/or all other rights and/or remedies under this Agreement, except for the recovery of attorneys' fees.

3. Non-Payment of Economic Development Incentives. In the event the Company is determined by the City to be in Default of this Agreement, the City shall have no obligation to pay any Economic Development Incentive to the Company during any period during which the Company is in default.

4. Recapture of Economic Development Incentive. In the event of Default by Company for its failure to perform its Incentive Period-Phase 1 obligations described in Sections 1, 3, or 4 of Article VI of this Agreement, or in the event this Agreement is terminated by the City pursuant to Article IX, Section 2 above during the Incentive Period-Phase 1, the City, while still being obligated to construct the Public Infrastructure referred to in Article VIII Section 4, shall have no obligation to pay any of the other Economic Development Incentive(s) to the Company and the Company shall immediately pay to the City, at the City's address set forth in Article X, Section 2 of this Agreement, or such other address as the City may hereafter notify the Company in writing, the sum equal to: (i) one hundred percent (100%) of the City Economic Development Grant described in Section 6 of Article VIII of this Agreement, which has previously been paid to Company, and (ii) one hundred percent (100%) of the Economic Development Incentive(s) for Equivalent Ad Valorem Payments described in Section 3 of Article VIII of this Agreement and Net City Sales/Use Taxes previously paid by the City to the Company pursuant to this Agreement for any year in which an Economic Covenants have not been satisfied. Notwithstanding the foregoing sentence, if the Building is at least 50% completed on the expiration of the Incentive Period – Phase 1, the recapture percentages for (ii) above shall be reduced to 50% of the respective recapture amounts. Upon recapture and if the Agreement is not terminated by City, at its election under this Article

IX, Section 4, the Company may become eligible for subsequent receipt of Economic Development Incentives for Equivalent Ad Valorem Payments and Net City Sales/Use Taxes upon a showing of subsequent compliance. Notwithstanding anything to the contrary contained in this Agreement, in the event of Default by Company on its obligations under Section 11 a. of Article VI of this Agreement during Incentive Period – Phase 2, or in the event this Agreement is terminated by the City pursuant to Article IX, Section 2 above during Incentive Period – Phase 2, the City shall have no obligation to pay any further Economic Development Incentive to the Company pursuant to Section 12 of Article VIII, and the Company shall immediately pay to the City, at the City’s address set forth in Article X, Section 2 of this Agreement, or such other address as the City may hereafter notify the Company in writing, only the Economic Development Incentives received by the Company during Incentive Period – Phase 2 solely for satisfying the conditions for eligibility contained in Section 11 a. of Article VI of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, in the event of Default by Company on its obligations under Section 11 b. of Article VI of this Agreement during Incentive Period – Phase 3, or in the event this Agreement is terminated by the City pursuant to Article IX, Section 2 above during Incentive Period – Phase 3, the City shall have no obligation to pay any further Economic Development Incentive to the Company pursuant to Section 12 of Article VIII, and the Company shall immediately pay to the City, at the City’s address set forth in Article X, Section 2 of this Agreement, or such other address as the City may hereafter notify the Company in writing, only the Economic Development Incentives received by the Company during Incentive Period – Phase 3 solely for satisfying the conditions for eligibility contained in Section 11 b. of Article VI of this Agreement. In addition to the above and in the event the Company fails to fulfill its obligations under Section 1 and 4 of Article VI of this Agreement on or before the 31st day of December, 2022, and the City declares the Company in Default for its failure to comply with Section 1 or 4 of Article VI of this Agreement, then and in this event, the Company shall repay the City an amount, not to exceed eight hundred thousand dollars (\$800,000.00) that equals the City’s verifiable direct and actual costs, between the date of this Agreement and the Date of Default, of constructing that portion of Public Infrastructure described in Section 4 of Article VIII of this Agreement that was constructed for the sole and exclusive benefit of the Company. For the purposes of this Article IX Section 4 the “Date of Default” shall mean the date that is ninety (90) days after the Company receives written notice from the City that it is in default under this Article IX Section 4 of the Agreement, and for which the Company has not subsequently cured. Notwithstanding anything contained herein to the contrary, in the event the Company completes the Capital Investment during the Incentive Period-Phase 1, the Company shall have no obligation to repay City for the Economic Development Incentive under Article VIII, Section 4 of this Agreement.

5. Survival. All terms, provisions, agreements, covenants, conditions, obligations, rights and remedies of each Party pursuant to this Article IX shall expressly survive the expiration or termination of this Agreement for a period of two (2) years thereafter.

ARTICLE X

Miscellaneous

1. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns permitted under the terms of this Article X, Section 1, provided, however, except as provided otherwise herein to the contrary, this Agreement and the rights and obligations of each of the Parties hereunder may not be assigned or transferred to any Person without the prior written consent of the Party which may not be unreasonably withheld. Any consent by either Party to any assignment of this Agreement shall be held to apply only to the specific transaction thereby authorized and shall not constitute a waiver of the necessity for such consent to any subsequent assignment. Every assignee shall be subject to and be bound by all the provisions, covenants, and conditions of this Agreement and shall be required to obtain the prior written consent of the non-assigning Party with respect to any future or further assignment. Any attempted assignment in violation of the terms and provisions of this Agreement shall be void and shall constitute a material breach of this Agreement. A collateral assignment shall not require consent pursuant to this Section. Notwithstanding

the foregoing or anything to the contrary in this Agreement contained, the Company shall have the right upon written notice to the City, but otherwise without the City's prior consent, to assign this Agreement as follows:

- a. A transfer of any stock or other interest in the Company by gift, bequest, or the laws of descent, whether outright or in trust, and provided that the management and control of the business operations of the Company are not materially affected thereby; or
- b. A transfer to a corporation, limited liability company, partnership or other entity into or with which the Company is merged or consolidated or to which substantially all of the Company's assets or shares, membership or partnership interests are transferred or which controls, is controlled by, or is under common control with the Company. In such case the Company shall be released of its obligations under this Agreement arising after the date of such assignment, all without the necessity of any further written consent, release or approval of the City; or
- c. An assignment of this Agreement to any Successor (as hereinafter defined) or to any Affiliate.

For this purpose, "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities or by contract or otherwise. The term "Successor" shall mean: (i) any successor to the Company by merger, consolidation or other operation of law; or (ii) any entity acquiring all or substantially all of the assets of the Company; or (iii) any person purchasing the business which the Company conducts at the Land.

2. Notices. Any notice and/or certificate or statement required or permitted to be given under the terms of this Agreement shall be in writing and shall be considered properly given if mailed by United States mail, certified mail, return receipt requested, in a postage paid envelope addressed to the Party at the address set forth below, or by delivering same in person to the intended addressee by hand delivery or by a nationally recognized courier service such as United Parcel Service. Notices mailed by certified mail as set forth above shall be effective upon deposit in the United States mail. Notice given in any other manner shall be effective only if and when received by the addressee. For purposes of notice, the addresses of the Parties shall be as set forth below; provided, however, that any Party shall have the right to change such Party's address for notice purposes by giving the other Party at least thirty (30) days prior written notice of such change of address in the manner set forth herein:

COMPANY: Ashley Furniture Industries, Inc.
1 Ashley Way
Arcadia, WI 54612
Attention: Dan Aiman

With a Copy to: Ashley Furniture Industries, Inc.
3790 Faithun P. Lucas Sr. Blvd.
Mesquite, TX 75181
Attention: Plant Manager

Ashley Furniture Industries, Inc.
1670 East 8th Avenue
Tampa, FL 33605
Attention: Todd R. Wanek

CITY: City of Mesquite
1515 N. Galloway Avenue
Mesquite, TX 75149
Attention: City Manager

With a copy to: City Attorney
City of Mesquite
1515 N. Galloway Ave.
Mesquite, Texas 75149

3. Right to Offset. Each party shall have the right to offset any amounts due and payable to that party under this Agreement against any debt (including taxes) lawfully due and owing by the other party, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise, and regardless of whether or not the debt has been reduced to judgment by a court.

4. Remedies Cumulative. Each right and remedy of the Parties provided for in this Agreement or now or hereafter existing pursuant to the laws of the State of Texas shall be cumulative and concurrent and shall be in addition to every other right or remedy provided for in this Agreement or now or hereafter existing pursuant to the laws of the State of Texas, except that neither party shall be entitled to recover attorneys' fees incurred in connection with enforcing the terms of this Agreement.

5. Captions. The descriptive captions of this Agreement are for convenience of reference only and shall in no way define, describe, limit, expand or affect the scope, terms, conditions, or intent of this Agreement.

6. Modification. This Agreement may only be revised, modified or amended by a written document signed by the City and the Company. Oral revisions, modifications or amendments are not permitted and shall be of no force or effect.

7. Interpretation. Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any Party.

8. Waivers. All waivers, to be effective, must be in writing and signed by the waiving Party. No failure by any Party to insist upon the strict or timely performance of any covenant, duty, agreement, term or condition of this Agreement shall constitute a waiver of any such covenant, duty, agreement, term or condition. No delay or omission in the exercise of any right or remedy accruing to any Party upon a Default of this Agreement shall impair such right or remedy or be construed as a waiver of any such breach or a waiver of any breach theretofore or thereafter occurring.

9. GOVERNING LAW, VENUE, FORUM AND WAIVER OF TRIAL BY JURY.
THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED AND ENFORCED IN

ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS (WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANY STATE OTHER THAN TEXAS). EACH PARTY AGREES THAT ANY SUIT, ACTION OR PROCEEDING ARISING FROM OR RELATING TO THIS AGREEMENT SHALL ONLY BE BROUGHT IN A UNITED STATES FEDERAL DISTRICT COURT IN THE NORTHERN DISTRICT OF TEXAS OR A TEXAS STATE COURT LOCATED IN DALLAS COUNTY, TEXAS AND EACH PARTY WAIVES THE RIGHT TO CHALLENGE THE VENUE OF SUCH COURTS OR TO SEEK THE TRANSFER OF SUCH SUIT, ACTION OR PROCEEDING TO A MORE CONVENIENT FORUM. THE PARTIES HEREBY IRREVOCABLY AGREE TO SUBMIT TO THE PERSONAL AND SUBJECT MATTER JURISDICTION OF UNITED STATES FEDERAL DISTRICT COURTS IN THE NORTHERN DISTRICT OF TEXAS AND TEXAS STATE COURTS LOCATED IN DALLAS COUNTY, TEXAS (AND ALL OTHER FEDERAL AND TEXAS STATE COURTS TO WHICH ANY SUCH SUIT, ACTION OR PROCEEDING MAY BE APPEALED). EACH PARTY WAIVES ALL RIGHTS TO TRIAL BY JURY IN ANY SUIT, ACTION, OR PROCEEDING ARISING FROM OR RELATING TO THIS AGREEMENT BROUGHT IN UNITED STATES FEDERAL DISTRICT COURT IN THE NORTHERN DISTRICT OF TEXAS ONLY.

10. WAIVER OF CONSEQUENTIAL, PUNITIVE OR SPECULATIVE DAMAGES. THE COMPANY AND THE CITY AGREE THAT, IN CONNECTION WITH ANY ACTION, SUIT OR PROCEEDING ARISING FROM OR RELATING TO THIS AGREEMENT, EACH PARTY MUTUALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY CLAIM FOR CONSEQUENTIAL, PUNITIVE OR SPECULATIVE DAMAGES.

11. Severability. The sections, paragraphs, sentences, clauses, and phrases of this Agreement are severable and, if any phrase, clause, sentence, paragraph, or section of this Agreement should be declared invalid, illegal or unenforceable by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect the validity or enforceability of any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Agreement and such remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid provision had never been included in the Agreement.

12. No Partnership or Joint Venture. Nothing contained in this Agreement shall be deemed or construed by the Parties hereto, nor by any third party, as creating the relationship of partnership or joint venture between the Parties.

13. No Third Party Beneficiaries. The Parties to this Agreement do not intend to create any third party beneficiaries of the contract rights contained herein. This Agreement shall not create any rights in any individual or entity that is not a signatory hereto. No Person who is not a party to this Agreement may bring a cause of action pursuant to this Agreement as a third party beneficiary.

14. Number and Gender. Whenever used herein, unless the context otherwise provides, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all other genders.

15. Counterparts. This Agreement may be executed in any number of original, facsimile or electronically-scanned counterparts, each of which shall be considered an original and all of which shall be considered one and the same instrument.

16. Entire Agreement. This Agreement sets forth the entire agreement between the Parties with respect to the subject matter hereof, and all prior discussions, representations, proposals, offers, and oral or written communications of any nature are entirely superseded hereby and extinguished by the execution of this Agreement. There are no oral agreements between the Parties.

17. **Authority.** The Company represents that it is duly formed, validly existing and in good standing under the laws of the State of its formation and is duly authorized to transact business in the State of Texas. Each Party represents and warrants to each other Party that this Agreement has been duly authorized by such Party and that each Party has the full power and authority to enter into and fulfill its obligations under this Agreement. Each Person signing this Agreement represents that such Person has the authority to sign this Agreement on behalf of the Party indicated.

18. **City Council Authorization.** This Agreement was authorized by resolution of the City Council approved at a City Council meeting.

19. **Force Majeure.** Neither party shall be in default under this Agreement if such party fails to perform any of its obligations under this Agreement because of events beyond the reasonable control of such party, such as, but not limited to earthquake, landslide, flood or other acts of God (excluding inclement weather); power failure; fire; war; labor disturbances or strikes; lawsuits; shortages of or inability to obtain any materials; government moratoria, regulations of government (excluding existing regulations of the City), controls or failure or delay in acting; riots; (individually, an "Event of Force Majeure"). If either party is prevented from doing, accomplishing or performing any act or thing required of such party under the terms of this Agreement due to an Event of Force Majeure, the time provided in this Agreement for doing, accomplishing or performing such act or thing shall be extended in order to provide such party with the same number of days to accomplish or perform such act or thing after termination of such Event of Force Majeure as such party would have had in the absence of such Event of Force Majeure.

20. **Execution of Agreement by Parties.** If this Agreement is not executed by both the Company and the City on or before May 5, 2017, this Agreement will be null and void and of no force or effect.

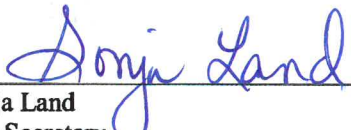
21. **Form 1295 Certificate.** The Company agrees to comply with Texas Government Code, Section 2252.908 and in connection therewith, the Company agrees to go online with the Texas Ethics Commission to complete a Form 1295 Certificate and further agrees to print the completed certificate, execute the completed certificate before a notary and provide to the City, at the time of delivery of an executed counterpart of this Agreement, the duly executed and notarized completed Form 1295 Certificate.

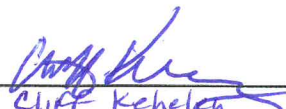
22. Time is of the Essence. THE PARTIES SPECIFICALLY AGREE THAT TIME IS OF THE ESSENCE OF EACH AND EVERY PROVISION OF THIS AGREEMENT AND EACH PARTY HEREBY WAIVES ANY RULE OF LAW OR EQUITY WHICH WOULD OTHERWISE GOVERN TIME OF PERFORMANCE.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized agents, officers and/or officials on the dates set forth below.

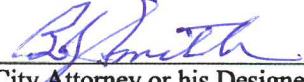
ATTEST:

**CITY OF MESQUITE,
a Texas home rule municipality**

By: 
Sonja Land
City Secretary
Date: 5/5/17

By: 
Name: Cliff Keheley
Title: City Manager
Date: 5/5/17

APPROVED AS TO FORM:


City Attorney or his Designee

COMPANY:

Ashley Furniture Industries Inc., a Wisconsin Corporation

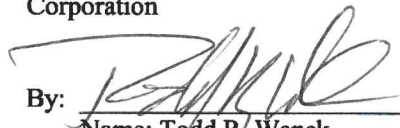
By: 
Name: Todd R. Wanek
Title: President and CEO
Date: 5-2-17

EXHIBIT "A"
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

Legal Description of Land

See Attached.

EXHIBIT "B"
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

Proposed Building Capital Improvements

See Attached.



EXHIBIT B - MSQ01 Capital Investment Summary

Title of Project Mesquite Plant 1 Capital Investment Summary
Location Mequite, Tx

Building Construction Costs	Cost Basis	Cost Subtotal
MSQ Land Purchase - 358 Acre Espensen Tract	ea	\$12,375,000
MSQ0101 Main Building	ea	\$42,877,434
MSQ0101 Racking	ea	\$5,309,108
MSQ0101 Equipment	ea	\$2,975,767
MSQ01 Additional Racking & Equipment (estimate)	ea	\$1,500,000
Total Capital Expense		\$65,037,309

EXHIBIT "C"
TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

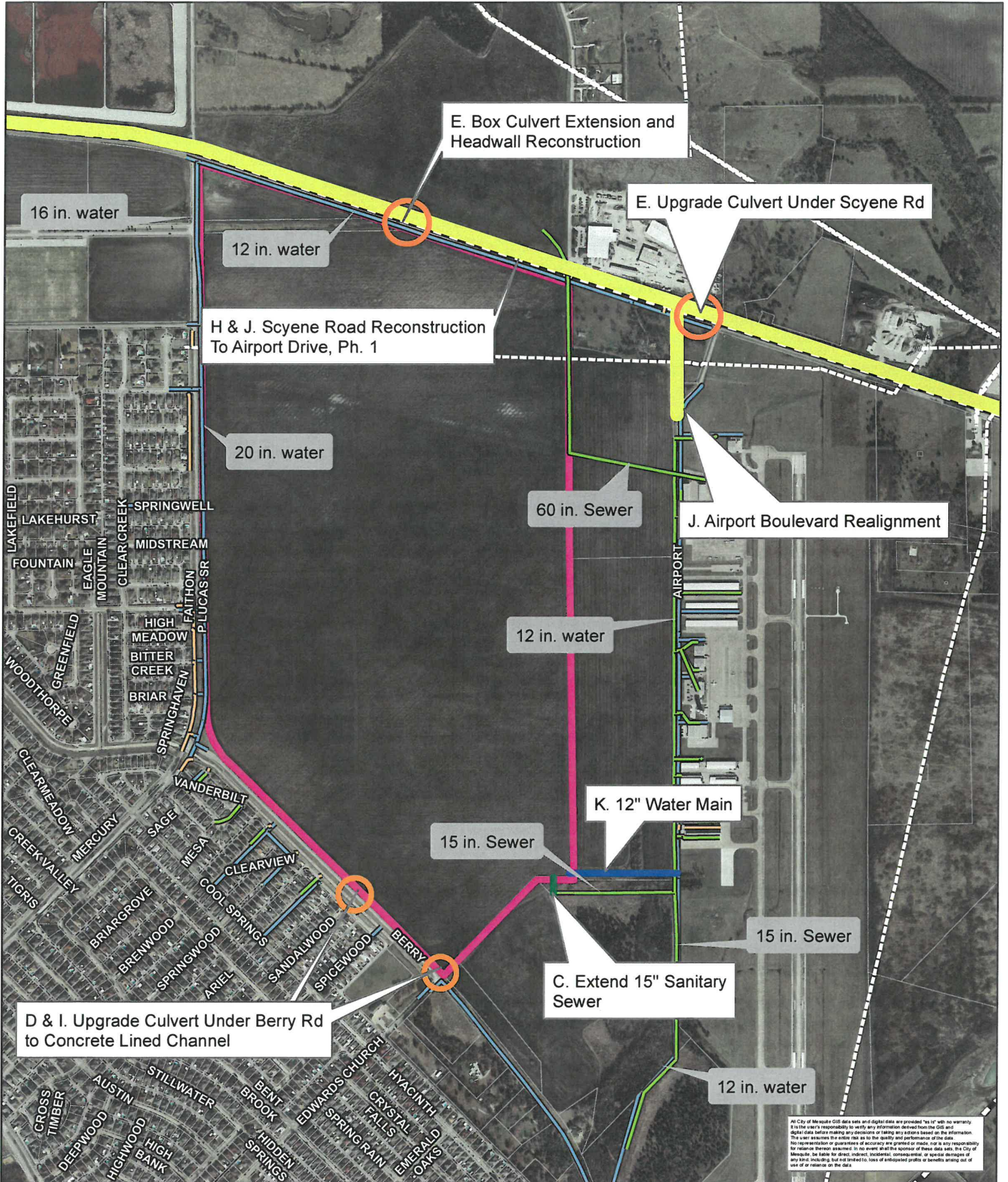
Public Infrastructure Components

City shall:

- A. [Intentionally omitted.]
- B. [Intentionally omitted.]
- C. Install approximately 50 feet of 15-inch sewer main extension to the south property line of the Land.
- D. Install concrete box culverts including but not limited to roadway repairs for the two (2) culverts under Berry Street, which will be designed and sized for 100-year flood event per City Drainage Ordinance.
- E. Install drainage improvements to accommodate drainage under Scylene Road designed and sized for 100-year flood event per City Drainage Ordinance.
- F. [Intentionally omitted.]
- G. [Intentionally omitted.]
- H. Construct turn lanes or deceleration lanes off Scylene Road into the site
- I. Construct any downstream channel improvements for drainage or erosion concerns.
- J. Construct improvements to the roadway to the Airport.
- K. Install approximately 1000 feet of 12-inch water main extension westward from Airport Boulevard to east property line of the Land.

The above-described infrastructure improvements are depicted in the diagram which is attached hereto, marked "Exhibit C-1", and incorporated herein by this reference.

Exhibit "C-1"



All City of Mesquite GIS data sets and digital data are provided "as is" with no warranty. It is the user's responsibility to verify any information derived from the GIS and digital data before making any decisions or taking any actions based on the information. The user assumes the entire risk as to the quality and performance of the data. No representation or guarantee of accuracy are granted or made, nor is any responsibility for reliance thereon assumed. In no event shall the approval of these data sets, the City of Mesquite, be liable for direct, indirect, incidental, consequential, or special damages of any kind, including, but not limited to, loss of anticipated profits or benefits arising out of use of or reliance on the data.