

RESOLUTION NO. 75-2019

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, APPROVING AN AMENDMENT TO AN ECONOMIC DEVELOPMENT PROGRAM AGREEMENT (CHAPTER 380 AGREEMENT) BETWEEN THE CITY OF MESQUITE (“CITY”) AND ASHLEY FURNITURE INDUSTRIES, INC. (“COMPANY”), DATED EFFECTIVE MAY 5, 2017 (“ORIGINAL AGREEMENT”); AUTHORIZING THE CITY TO QUITCLAIM TO THE COMPANY APPROXIMATELY 6.6575 ACRES OF LAND (“PROPERTY”) THAT TRAVERSES 3790 FAITHON P. LUCAS, SR., BOULEVARD, MESQUITE, TEXAS; APPROVING AN ECONOMIC DEVELOPMENT GRANT TO THE COMPANY IN THE AMOUNT OF THE PURCHASE PRICE OF THE PROPERTY TO PROMOTE LOCAL ECONOMIC DEVELOPMENT AND STIMULATE BUSINESS AND COMMERCIAL ACTIVITY IN THE CITY; AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE AN AMENDMENT TO THE ORIGINAL AGREEMENT FOR SUCH PURPOSES (THE “AMENDMENT”); AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE A QUITCLAIM DEED AND ALL OTHER DOCUMENTS NECESSARY OR ADVISABLE TO COMPLETE THE QUITCLAIM OF THE PROPERTY TO THE COMPANY; AND AUTHORIZING THE CITY MANAGER TO FINALIZE AND EXECUTE THE AMENDMENT AND TO TAKE ALL ACTIONS NECESSARY OR ADVISABLE TO COMPLETE THE TRANSACTIONS CONTEMPLATED BY THE AMENDMENT.

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, on March 6, 2017, by Resolution No. 08-2017, the City Council of the City (the “City Council”) adopted an economic development program pursuant to Chapter 380 of the Texas Local Government Code (the “Program”), and to implement the Program, the City Council approved an Economic Development Program Agreement between the City and ASHLEY FURNITURE INDUSTRIES, INC., a Wisconsin corporation (the “Company”), providing economic development incentives to the Company in connection with the development by the Company of an approximately 850,000 square foot state-of-the-art manufacturing and distribution facility on an approximately 358 acre tract of land commonly referred to as 3790 Faithon P. Lucas, Sr., Boulevard, in the City of Mesquite, Texas (the “Original Agreement”); and

WHEREAS, the City has been presented with a proposed amendment to the Original Agreement, a copy of said amendment being attached hereto as Exhibit "A" and incorporated herein by reference for all purposes (the "Amendment"); and

WHEREAS, the City owns an approximately 7.01 acre tract of land, more or less, out of the McKinney & Williams Survey in the City of Mesquite, Dallas County, Texas, and being all of TRACT NO. FIVE conveyed to the County of Dallas, Texas by L.W. Tate, Trustee by Special Warranty Deed dated August 30, 1939, filed September 14, 1939, recorded in Volume 2158, Page 314, Deed Records, Dallas County, Texas and being the same property described as THIRD TRACT in that certain Deed from Edward T. Moore, Trustee, et al, to Texas Interurban Railway dated October 28, 1921, and recorded in Volume 908, Page 644, Deed Records, Dallas County, Texas (the "Interurban Railway Tract"); and

WHEREAS, the Interurban Railway Tract traverses the 358-acre tract of land commonly referred to as 3790 Faithon P. Lucas, Sr., Boulevard, in the City of Mesquite, Texas (the "358 Acre Tract") purchased by the Company pursuant to the Original Agreement; and

WHEREAS, a portion of the Interurban Railway Tract consisting of approximately 15,355 square feet or 0.3525 of an acre of land and being more particularly described by metes and bounds in Exhibit "1" attached to the Amendment and being depicted as the area in green on the Final Plat attached as Exhibit "2" to the Amendment (the "0.3525 Acre Tract"), is needed by the City for right of way; and

WHEREAS, the Interurban Railway Tract SAVE AND EXCEPT the 0.3525 Acre Tract is hereinafter referred to as the "Property"; and

WHEREAS, the Property is described in Exhibit "3" to the Amendment and is depicted as the area highlighted in yellow on the Final Plat attached as Exhibit "2" to the Amendment; and

WHEREAS, during the negotiations of the economic development incentives to be granted under the Original Agreement, it was determined that in order for the Company to proceed with the Phase 2 and/or Phase 3 expansion of the facility being constructed on the 358 Acre Tract as more fully set forth in the Original Agreement and to allow the Company to maximize the commercial potential of the 358 Acre Tract, it was essential that the Property be acquired by the Company; and

WHEREAS, the fair market value of the Property as determined by an appraisal obtained by the City is \$106,520.00; and

WHEREAS, the Company has advised the City that it would not have entered into the Original Agreement or made the commitment to purchase the 358 Acre Tract or construct a 850,000 square foot manufacturing and distribution facility on the 358 Acre Tract without: (i) the City's agreement to quitclaim its interest in the Property to the Company; and (ii) the City providing a grant to the Company in the amount of \$106,520.00 (the "Purchase Grant") to be applied to the purchase price of the Property; and

WHEREAS, the quitclaim of the Property to the Company and the Purchase Grant were inadvertently not included as part of the Original Agreement; and

WHEREAS, the Amendment includes the agreement by the City to quitclaim the Property to the Company for \$106,520.00 and further provides for an economic development grant by the City to the Company in the amount of \$106,520.00 to purchase the Property (the "Purchase Grant"); and

WHEREAS, the quitclaim of the Property by the City to the Company will allow the Company to maximize the commercial potential of the 358 Acre Tract, incentivize further development of the 358 Acre Tract, and place the Property on the City's tax rolls increasing the ad valorem taxes to be assessed and collected by the City; and

WHEREAS, the City Council has determined that the Purchase Grant and the quitclaim of the Property to the Company is advisable and is in the best interest of the City and its citizens; and

WHEREAS, the City is authorized by Article III, Section 52-a of the Texas Constitution and Texas Local Government Code Chapter 380 to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, an economic development grant by the City to the Company in the amount of the Purchase Grant will effectuate the purposes set forth in the Program and will promote local economic development and stimulate business and commercial activity in the City; and

WHEREAS, after holding a public hearing and upon full review and consideration of the Amendment and all matters attendant and related thereto, the City Council is of the opinion that the Amendment including, without limitation, the Purchase Grant, is in the best interest of the City and will benefit the City and its citizens and will assist in implementing the 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 facts and recitations contained in the preamble of this resolution are hereby found and declared to be true and correct and are incorporated and adopted as part of this resolution for all purposes.

SECTION 2. That the City Council finds that the terms and provisions of the Amendment between the City and the Company, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference, is in the best interest of and will benefit the City and its citizens 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 3. That the City Council hereby authorizes the Amendment as part of the Program whereby, subject to the terms and conditions of the Amendment, the City will provide economic development incentives to the Company and take other specified actions as more fully set forth in the Amendment in accordance with the terms and subject to the conditions outlined in the Amendment.

SECTION 4. That the City Council finds that the Amendment is acceptable and hereby approves the Amendment including, without limitation, the Purchase Grant.

SECTION 5. That the City Council hereby approves the quitclaim of the Property by the City to the Company for the purchase price of \$106,520.00, and hereby authorizes the City Manager to finalize and execute a quitclaim deed and all other documents necessary or advisable to complete the quitclaim of the Property to the Company.

SECTION 6. That the City Manager is further hereby authorized to finalize and execute the Amendment and to take all actions necessary or advisable to complete the transactions contemplated by the Amendment.

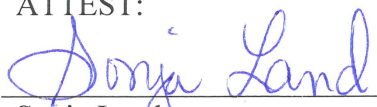
SECTION 7. That the sections, paragraphs, sentences, clauses and phrases of this resolution are severable and, if any phrase, clause, sentence, paragraph or section of this resolution should be declared invalid, illegal or unenforceable by the final judgment or decree of any court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any of the remaining phrases, clauses, sentences, paragraphs and sections of this resolution and such remaining provisions shall remain in full force and effect and shall be construed and enforced as if the invalid, illegal or unenforceable provision had never been included in this resolution.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 4th day of November 2019.



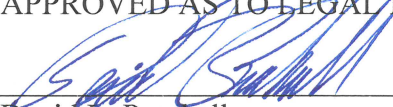
Stan Pickett
Mayor

ATTEST:



Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:



David L. Paschall
City Attorney

**AMENDMENT TO
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT
BETWEEN THE CITY OF MESQUITE
AND ASHLEY FURNITURE INDUSTRIES, INC.**

This AMENDMENT TO ECONOMIC DEVELOPMENT PROGRAM AGREEMENT (this "Amendment") is between the City of Mesquite, a Texas home rule municipality (the "City") and ASHLEY FURNITURE INDUSTRIES, INC., a Wisconsin corporation (the "Company"). The City and the Company may hereafter sometimes be referred to singularly as a "Party" and collectively as the "Parties."

WHEREAS, the Company is a global leader in furniture manufacturing and distribution; and

WHEREAS, the City and the Company have entered into that certain Economic Development Program Agreement dated effective May 5, 2017, relating to economic development incentives in connection with the development by the Company of an approximately 850,000 square foot state-of-the-art manufacturing and distribution facility on an approximately 358 acre tract of land commonly known as 3790 Faithon P. Lucas Sr. Blvd., Mesquite, Texas 75181 (the "Original Agreement"); and

WHEREAS, all capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Original Agreement; and

WHEREAS, on or about April 4, 2017, the County of Dallas, Texas, quitclaimed to the City that certain tract of land consisting of approximately 7.01 acres of land, more or less, out of the McKinney & Williams Survey in the City of Mesquite, Dallas County, Texas, and being all of TRACT NO. FIVE conveyed to the County of Dallas, Texas by L.W. Tate, Trustee by Special Warranty Deed dated August 30, 1939, filed September 14, 1939, recorded in Volume 2158, Page 314, Deed Records, Dallas County, Texas and being the same property described as THIRD TRACT in that certain Deed from Edward T. Moore, Trustee, et al, to Texas Interurban Railway dated October 28, 1921, and recorded in Volume 908, Page 644, Deed Records, Dallas County, Texas (the "Interurban Railway Tract"); and

WHEREAS, the Interurban Railway Tract traverses the Land purchased by the Company pursuant to the Original Agreement; and

WHEREAS, a portion of the Interurban Railway Tract consisting of approximately 15,355 square feet or 0.3525 of an acre of land and being more particularly described by metes and bounds in Exhibit "1" attached hereto and made a part hereof for all purposes and being depicted as the area in green on the Final Plat attached hereto as Exhibit "2" and made a part hereof for all purposes (the "0.3525 Acre Tract"), is needed by the City for right of way; and

WHEREAS, the Interurban Railway Tract **SAVE AND EXCEPT** the 0.3525 Acre Tract is hereinafter referred to as the "Property"; and

WHEREAS, the Property is described in Exhibit "3" attached hereto and made a part hereof for all purposes and is depicted as the area highlighted in yellow on the Final Plat attached hereto as Exhibit "2" and made a part hereof for all purposes; and

WHEREAS, during the negotiations of the economic development incentives to be granted under the Original Agreement, it was determined that in order for the Company to proceed with the Phase 2 and/or Phase 3 expansion of the Mesquite Facility as more fully set forth in the Agreement and develop the Land to its maximum commercial potential, it was essential that the Property be acquired by the Company; and

WHEREAS, the fair market value of the Property as determined by an appraisal obtained by the City is \$106,520.00; and

WHEREAS, the Company would not have entered into the Original Agreement or made the commitment to purchase the Land, construct the Building and make the Capital Investment without: (i) the City's agreement to quitclaim its interest in the Property to the Company; and (ii) the City providing a grant to the Company in the amount of \$106,520.00 (the "Purchase Grant") to be applied to the purchase price of the Property; and

WHEREAS, the City is authorized by Article III, Section 52-a of the Texas Constitution and Texas Local Government Code Chapter 380 to provide economic development grants to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City Council of the City ("City Council") has adopted an economic development program pursuant to Chapter 380 of the Local Government Code (the "Program") to promote local economic development and to stimulate business and commercial activity in the City and authorizes this Amendment as part of the Program; and

WHEREAS, the quitclaim of the Property by the City to the Company will allow the Company to maximize the commercial potential of the Land and will place the Property back on the City's tax rolls increasing the ad valorem taxes to be assessed and collected by the City; and

WHEREAS, an economic development grant by the City to the Company in the amount of the Purchase Grant will effectuate the purposes set forth in the Program and will promote local economic development and stimulate business and commercial activity in the City; and

WHEREAS, the quitclaim of the Property by the City to the Company is advisable and is in the best interest of the City and its citizens; and

WHEREAS, the City and the Company desire to amend the Original Agreement as more fully set forth herein.

NOW, THEREFORE, in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the City and the Company hereby agree to amend the Original Agreement as follows:

1. Addition of Exhibits to Original Agreement. The Original Agreement shall be amended by attaching Exhibits "1", "2", "3" and "4" attached hereto and made a part hereof for all purposes to the Original Agreement as Exhibits "1", "2", "3" and "4".

2. Amendment to Article II, Definitions. The Original Agreement shall be amended by adding the following definitions to Article II of the Original Agreement:

"Property" shall mean the property described in Exhibit "3" attached hereto and made a part hereof for all purposes and depicted as the area highlighted in yellow on Exhibit "2" attached hereto and made a part hereof for all purposes.

"Permitted Exceptions" shall have the meaning set forth in Article XI, Section 2 of this Agreement.

“Purchase Grant” shall have the meaning set forth in Article VIII, Section 14 of this Agreement.

“Quitclaim Deed” shall have the meaning set forth in Article XI, Section 2 of this Agreement.

3. Addition of new Article XI to the Original Agreement. The Original Agreement shall be amended by adding the following provisions as Article XI of the Original Agreement:

“ARTICLE XI

Quitclaim of Property by City to Company

1. Quitclaim of Property by City to Company. The Property is located within an industrial zoning district and is insufficient in size and shape to be developable independently under its current zoning and accordingly the Parties agree the Property will be quitclaimed by the City to the Company pursuant to V.T.C.A., Local Government Code §272.001(b)(1).

2. Quitclaim of Property. The City agrees to quitclaim to the Company all right, title and interest of the City in and to the Property, subject to the terms and provisions set forth herein. The Property will be quitclaimed to the Company subject to: (i) mineral reservations, severances and leases, if any, that affect the Property; (ii) validly existing easements, rights-of-way and prescriptive rights that affect the Property, whether of record or not; (iii) all presently recorded and validly existing restrictions, restrictive covenants, reservations, exceptions, covenants, conditions, interests and instruments that affect the Property; (iv) any discrepancies, conflicts or shortages in area or boundary lines, any encroachments or protrusions and any overlapping of improvements affecting the Property; (v) taxes and assessments against the Property for all subsequent years and taxes and assessments for prior years, if any, due to changes in land usage, ownership, or both, the payment of which the Company assumes; and (vi) zoning regulations and ordinances of municipal and/or other governmental authorities affecting the Property (collectively the “Permitted Exceptions”). The Company accepts the Property subject to the Permitted Exceptions. The City shall deliver to the Company a quitclaim deed in the form attached hereto as Exhibit “4” and made a part hereof for all purposes (the “Quitclaim Deed”) on or before December 1, 2019. The provisions of this Article XI, Section 2 shall survive the closing of the transfer of the Property by the City to the Company.

3. Purchase Price of the Property. The purchase price of the Property shall be \$106,520.00, which amount is the fair market value of the Property as determined by an independent appraisal obtained by the City. The purchase price for the Property will be payable at the closing of the transfer of the Property by the City to the Company and shall be credited by the Purchase Grant.

4. Closing. The closing of the transfer of the Property shall occur at the City offices at 1515 N. Galloway, Mesquite, Texas 75149 on or before 10:00 a.m. on December 1, 2019.

5. Taxes. The Company understands and acknowledges that the Property is presently exempt from the assessment of ad valorem taxes, which status will change upon the quitclaim of the Property to the Company. The City shall not be responsible for payment of property taxes assessed against the Property for periods before or after the transfer of the Property to the Company, the Company hereby assuming the responsibility for the payment of all such taxes. The provisions of this Article XI, Section 5 shall survive the closing of the transfer of the Property by the City to the Company.

6. Costs. The City shall record the Quitclaim Deed and shall pay the recording fee to record the Quitclaim Deed. Each Party shall be responsible for all costs and expenses incurred by or on behalf of such Party in connection with the quitclaim of the Property by the City to the Company, including such Party's attorney's fees. The Parties represent and warrant to each other that they have not worked with any broker relative to this transaction and that no brokerage commission is due and payable in connection with the quitclaim of the Property to the Company.

7. "AS IS" AND WITH ALL FAULTS. The Company hereby acknowledges and agrees that the quitclaim of the Property by the City to the Company is and will be made on an "**AS IS" condition WITH ALL FAULTS.** The acceptance of the Quitclaim Deed by the Company shall constitute an acknowledgment by the Company that the Property was accepted **WITHOUT REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED. THE COMPANY RELEASES ALL CLAIMS AND CAUSES OF ACTION, AT LAW OR IN EQUITY, THE COMPANY MAY NOW OR HEREAFTER HAVE AGAINST THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, IN CONNECTION WITH THE QUITCLAIM OF THE PROPERTY BY THE CITY TO THE COMPANY.** The Company acknowledges that it owns the adjacent property on both sides of the Property and that it has had the opportunity to examine and investigate the Property and that, in purchasing the Property, the Company is relying solely upon its own independent examination, study, inspection, and knowledge of the Property and the Company's determination of the value of the Property and uses to which the Property may be put, and the Company is not relying on any representations, disclosures, information or warranties, either express or implied, of any kind by the City. **THE COMPANY ACKNOWLEDGES THAT THE CITY HAS NOT MADE AND IS EXPRESSLY DISCLAIMING ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE TITLE, CONDITION, HABITABILITY, MARKETABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE OF THE PROPERTY.** The provisions of this Article XI, Section 7 shall survive the closing of the transfer of the Property by the City to the Company."

4. Amendment to Article VIII to add a new Section 14. Article VIII of the Original Agreement shall be amended by adding the following as Article VIII, Section 14:

"14. Purchase Grant. The City approves an economic development grant to the Company in the amount of \$106,520.00 (the "Purchase Grant"). The Purchase Grant shall be payable at the closing of the purchase of the Property and shall be applied to the purchase price of the Property. Under no circumstances shall the City's obligations under this Article VIII, Section 14 be deemed to create any debt within the meaning of any constitutional or statutory provision and shall in no way be construed as being secured by ad valorem taxes or financed by debt. The Purchase Grant made hereunder shall be paid solely from lawfully available funds and shall be subject to the City's appropriation of funds for such purpose to be paid in the budget year for which the Purchase Grant is to be made. The provisions of this Article VIII, Section 14 shall expressly survive the expiration or termination of this Agreement."

5. Amendment to definition of Economic Development Incentive(s). "Economic Development Incentive(s) as defined in Article II of the Original Agreement shall be amended to read as follows:

"Economic Development Incentive(s)" shall mean the incentives described in Article VIII, Sections 1, 2, 3, 5, 6 and 14 of this Agreement, and the term may be used singularly or collectively".

6. Amendment to Article VIII, Section 7. Article VIII, Section 7 of the Original Agreement shall be amended to read as follows:

“7. Economic Development Incentive(s). The provisions of Article VIII, Sections 1, 2, 3, 4, 5, 6, and 14 shall constitute the entirety of the City incentives which the 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”.

7. Amendment to Article IX to add a new Section 4a. Article IX of the Original Agreement shall be amended by adding the following new Section 4a:

“4a. Additional Recapture Provision. The following provision shall be in addition to and not in substitution or replacement of the recapture provisions set forth in Article IX, Section 4 above:

In the event of Default by the 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 of this Agreement during the Incentive Period – Phase 1, 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, in addition to the amounts payable under Article IX, Section 4 of this Agreement, one hundred percent (100%) of the Purchase Grant described in Article VIII, Section 14 of this Agreement.”

8. Effect of Amendment. This Amendment amends the Original Agreement in no other manner except as expressly set forth herein. In the event there is any conflict between this Amendment and the Original Agreement, the terms and provisions of this Amendment shall control.

9. Modification. This Amendment may only be modified by a written document signed by both Parties.

10. Assignment. Neither Party may assign its rights and obligations under this Amendment without the prior written consent of the other Party which consent may be withheld in the sole discretion of the Party’s whose consent is required.

11. Severability. In the event any one or more of the provisions contained in this Amendment shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions of this Amendment, and this Amendment shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Amendment.

12. Counterparts. This Amendment may be executed in any number of original, facsimile or electronically scanned counterparts, each of which shall be deemed to be an original, but all of which, when taken together, shall constitute one agreement.

13. Entire Agreement. The Original Agreement and this Amendment set forth the entire agreement between the City and the Company with respect to the subject matter hereof, and all prior discussions, representations, proposals, offers, and oral or written communications of any nature relating to

the subject matter of this Amendment are entirely superseded hereby and extinguished by the execution of this Amendment.

14. 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 and execute the completed certificate in such form as is required by Texas Government Code, Section 2252.908 and the rules of the Texas Ethics Commission and provide to the City, at the time of delivery of an executed counterpart of this Amendment, a duly executed completed Form 1295 Certificate.

15. Time is of the Essence. Time is of the essence with respect to the performance by the Parties of their respective obligations hereunder.

16. Effective Date. The Effective Date of this Amendment shall be the last date on which the authorized representatives of both Parties have signed this Amendment.

17. Law Governing. This Amendment shall be construed under and in accordance with the laws of the State of Texas; and venue for any action arising from this Amendment shall be in the State District Courts of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said courts in any such action.

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

ATTEST:

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

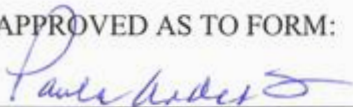
By: 
Name: Sonja Land
Title: City Secretary

By: 
Name: Cliff Keheley
Title: City Manager

Date: November 27, 2019

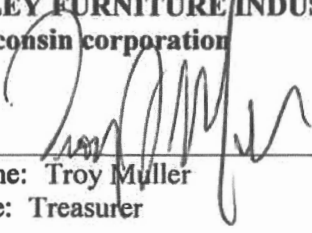
Date: November 27, 2019

APPROVED AS TO FORM:


City Attorney or his Designee

THE COMPANY:

**ASHLEY FURNITURE INDUSTRIES, INC.,
a Wisconsin corporation**

By  _____
Name: Troy Muller
Title: Treasurer

Date: November 21, 2019

EXHIBIT "1"

Legal Description of 0.3525 Acre Tract
(Portion of Interurban Railway Tract not being Quitclaimed)

BEING a tract of land situated in the Thomas F. McKinney & Samuel M. Williams Survey, Abstract No. 1026, City of Mesquite, Dallas County, Texas, and being part of that tract of land described as Third Tract in deed to Texas Interurban Railway as recorded in Volume 908, Page 644 of the Deed Records of Dallas County, Texas (D.R.D.C.T.), said Third Tract being the same as that tract of land described as Tract No. Five in Deed to the County of Dallas, Texas, as recorded in Volume 2158, Page 314, D.R.D.C.T., said tract being more particularly described as follows:

COMMENCING at a 5/8-inch found iron rod for the northwest corner of that tract of land described as Tract One in deed to Laura Jernigan Espensen and James William Jernigan as recorded in Volume 2004172, Page 10588, D.R.D.C.T., said Tract One being the same as that tract of land described in deed to Laura Jernigan Espensen as recorded in Volume 2004172, Page 10617, D.R.D.C.T., said Tract One also being the same as that tract of land described in deed to James William Jernigan as recorded in Volume 2004172, Page 10643, D.R.D.C.T., said corner being at the intersection of the southerly right-of-way line of Scyene Road (60 foot wide roadway by usage) with the east right-of-way line of Faithon P. Lucas Sr. Boulevard (a variable width right-of-way);

THENCE South 00 degrees 49 minutes 25 seconds East, with the common west line of said Tract One and said east right-of-way line of Faithon P. Lucas Sr. Boulevard, at a distance of 501.75 feet passing a 1/2 inch set iron rod with yellow plastic cap stamped "HALFF" (hereinafter referred to as "with cap") for the northwest corner of a 100 foot wide right-of-way to the County of Dallas as recorded in Volume 84076, Page 1954, D.R.D.C.T., continuing with the common west line of said County of Dallas tract and said east right-of-way line of Faithon P. Lucas Sr. Boulevard, at a cumulative distance of 601.75 feet passing a 1/2 inch set iron rod with cap for the southwest corner of said County of Dallas tract, continuing again with said common west line of said Tract One and said east right-of-way line of Faithon P. Lucas Sr. Boulevard, in all a total distance of 673.00 feet to a found "X" cut in concrete for corner;

THENCE South 04 degrees 39 minutes 41 seconds East, continuing with said common line, a distance of 300.48 feet to a point for corner from which a 5/8-inch found iron rod stamped "CLS 5129" bears North 65 degrees 36 minutes 54 seconds West a distance of 0.27 of a foot;

THENCE South 00 degrees 50 minutes 41 seconds East, continuing with said common line, a distance of 354.00 feet to a 1/2 inch found iron rod with cap stamped "RPLS 5129" for corner;

THENCE South 00 degrees 44 minutes 03 seconds East, continuing with said common line, a distance of 370.12 feet to a 1/2-inch set iron rod with cap for the POINT OF BEGINNING at the intersection of said common line with the north line of the aforementioned Tract No. Five;

THENCE South 78 degrees 23 minutes 43 seconds East, departing said common line, with said north line, a distance of 153.55 feet to a 1/2 inch set iron rod with cap for corner;

THENCE South 00 degrees 44 minutes 03 seconds East, departing said north line, with a line offset 150 feet east of and parallel to the last cited east right-of-way line of Faithon P. Lucas Sr. Boulevard, over and across said Tract No. Five, a distance of 102.36 feet to a 1/2 inch set iron rod with cap for corner on the south line of said Tract No. Five;

THENCE North 78 degrees 23 minutes 43 seconds West, departing said parallel offset line, with the south line of said Tract No. Five, a distance of 153.55 feet to a ½ inch set iron rod with cap for the intersection of said south line with said east right-of-way line of Faithon P. Lucas Sr. Boulevard;

THENCE North 00 degrees 44 minutes 03 seconds West, departing said south line, with said east right-of-way line, a distance of 102.36 feet to the POINT OF BEGINNING and containing 15,355 square feet or 0.3525 of an acre of land, more or less.

EXHIBIT "3"

Legal Description of Property
(Portion of Interurban Railway Tract being
Quitclaimed by the City to the Company)

Being approximately 6.6575 acres of land situated in the McKinney & Williams Survey, City of Mesquite, Dallas County, Texas, and being part of a called 7.01 acre tract of land described as TRACT NO. FIVE in that certain Special Warranty Deed from L. W. Tate, Trustee, to the County of Dallas, Texas dated August 30, 1939, filed September 14, 1939, recorded in Volume 2158, Page 314, Deed Records, Dallas County, Texas, said called 7.01 acre tract being the same property described as THIRD TRACT in that certain Deed from Edward T. Moore, Trustee, et al, to Texas Interurban Railway dated October 28, 1921, and recorded in Volume 908, Page 644, Deed Records, Dallas County, Texas, said approximately 6.6575 acre tract being more particularly described as follows:

Being the property described as TRACT NO. FIVE in the Special Warranty Deed from L.W. Tate, Trustee, to the County of Dallas, Texas dated August 30, 1939, filed September 14, 1939, recorded in Volume 2158, Page 314, Deed Records, Dallas County, Texas, said TRACT NO. FIVE being the same property described as THIRD TRACT in that certain Deed from Edward T. Moore, Trustee, et al, to Texas Interurban Railway dated October 28, 1921, and recorded in Volume 908, Page 644, Deed Records, Dallas County, Texas **SAVE AND EXCEPT** the following tract of land consisting of approximately 15,355 square feet or 0.3525 of an acre:

BEING a tract of land situated in the Thomas F. McKinney & Samuel M. Williams Survey, Abstract No. 1026, City of Mesquite, Dallas County, Texas, and being part of that tract of land described as Third Tract in deed to Texas Interurban Railway as recorded in Volume 908, Page 644 of the Deed Records of Dallas County, Texas (D.R.D.C.T.), said Third Tract being the same as that tract of land described as Tract No. Five in Deed to the County of Dallas, Texas, as recorded in Volume 2158, Page 314, D.R.D.C.T., said tract being more particularly described as follows:

COMMENCING at a 5/8-inch found iron rod for the northwest corner of that tract of land described as Tract One in deed to Laura Jernigan Espensen and James William Jernigan as recorded in Volume 2004172, Page 10588, D.R.D.C.T., said Tract One being the same as that tract of land described in deed to Laura Jernigan Espensen as recorded in Volume 2004172, Page 10617, D.R.D.C.T., said Tract One also being the same as that tract of land described in deed to James William Jernigan as recorded in Volume 2004172, Page 10643, D.R.D.C.T, said corner being at the intersection of the southerly right-of-way line of Scyene Road (60 foot wide roadway by usage) with the east right-of-way line of Faithon P. Lucas Sr. Boulevard (a variable width right-of-way);

THENCE South 00 degrees 49 minutes 25 seconds East, with the common west line of said Tract One and said east right-of-way line of Faithon P. Lucas Sr. Boulevard, at a distance of 501.75 feet passing a ½ inch set iron rod with yellow plastic cap stamped "HALFF" (hereinafter referred to as "with cap") for the northwest corner of a 100 foot wide right-of-way to the County of Dallas as recorded in Volume 84076, Page 1954, D.R.D.C.T., continuing with the common west line of said County of Dallas tract and said east right-of-way line of Faithon P. Lucas Sr. Boulevard, at a cumulative distance of 601.75 feet passing a ½ inch set iron rod with cap for the southwest corner of said County of Dallas tract, continuing again with said common west line of said Tract One and said east right-of-way line of Faithon P. Lucas Sr. Boulevard, in all a total distance of 673.00 feet to a found "X" cut in concrete for corner;

THENCE South 04 degrees 39 minutes 41 seconds East, continuing with said common line, a distance of 300.48 feet to a point for corner from which a 5/8-inch found iron rod stamped "CLS 5129" bears North 65 degrees 36 minutes 54 seconds West a distance of 0.27 of a foot;

THENCE South 00 degrees 50 minutes 41 seconds East, continuing with said common line, a distance of 354.00 feet to a 1/2 inch found iron rod with cap stamped "RPLS 5129" for corner;

THENCE South 00 degrees 44 minutes 03 seconds East, continuing with said common line, a distance of 370.12 feet to a 1/2-inch set iron rod with cap for the POINT OF BEGINNING at the intersection of said common line with the north line of the aforementioned Tract No. Five;

THENCE South 78 degrees 23 minutes 43 seconds East, departing said common line, with said north line, a distance of 153.55 feet to a 1/2 inch set iron rod with cap for corner;

THENCE South 00 degrees 44 minutes 03 seconds East, departing said north line, with a line offset 150 feet east of and parallel to the last cited east right-of-way line of Faithon P. Lucas Sr. Boulevard, over and across said Tract No. Five, a distance of 102.36 feet to a 1/2 inch set iron rod with cap for corner on the south line of said Tract No. Five;

THENCE North 78 degrees 23 minutes 43 seconds West, departing said parallel offset line, with the south line of said Tract No. Five, a distance of 153.55 feet to a 1/2 inch set iron rod with cap for the intersection of said south line with said east right-of-way line of Faithon P. Lucas Sr. Boulevard;

THENCE North 00 degrees 44 minutes 03 seconds West, departing said south line, with said east right-of-way line, a distance of 102.36 feet to the POINT OF BEGINNING and containing 15,355 square feet or 0.3525 of an acre of land, more or less.

EXHIBIT "4"

Form of Quitclaim Deed

Please Record and Return to:

**Sonja Land, City Secretary
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137**

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

Quitclaim Deed

Date: November ___, 2019

Grantor: City of Mesquite, a Texas home rule municipality

Grantor's Mailing Address: P. O. Box 850137
Mesquite, Texas 75185-0137
Attention: City Secretary

Grantee: Ashley Furniture Industries, Inc., a Wisconsin corporation

Grantee's Mailing Address: 108 W. Main Street
Arcadia, WI 54612
Attention: Terry Madden

Consideration: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration

Property (including any improvements):

Being approximately 6.6575 acres of land situated in the McKinney & Williams Survey, City of Mesquite, Dallas County, Texas, and being part of a called 7.01 acre tract of land described as TRACT NO. FIVE in that certain Special Warranty Deed from L. W. Tate, Trustee, to the County of Dallas, Texas dated August 30, 1939, filed September 14, 1939, recorded in Volume 2158, Page 314, Deed Records, Dallas County, Texas, said called 7.01 acre tract being the same property described as THIRD TRACT in that certain Deed from Edward T. Moore, Trustee, et al, to Texas Interurban Railway dated October 28, 1921, and recorded in Volume 908, Page 644, Deed Records, Dallas County, Texas, said approximately 6.6575 acre tract being more particularly described as follows:

Being the property described as TRACT NO. FIVE in the Special Warranty Deed from L.W. Tate, Trustee, to the County of Dallas, Texas dated August 30, 1939, filed September 14, 1939, recorded

in Volume 2158, Page 314, Deed Records, Dallas County, Texas, said TRACT NO. FIVE being the same property described as THIRD TRACT in that certain Deed from Edward T. Moore, Trustee, et al, to Texas Interurban Railway dated October 28, 1921, and recorded in Volume 908, Page 644, Deed Records, Dallas County, Texas **SAVE AND EXCEPT** the following tract of land consisting of approximately 15,355 square feet or 0.3525 of an acre:

BEING a tract of land situated in the Thomas F. McKinney & Samuel M. Williams Survey, Abstract No. 1026, City of Mesquite, Dallas County, Texas, and being part of that tract of land described as Third Tract in deed to Texas Interurban Railway as recorded in Volume 908, Page 644 of the Deed Records of Dallas County, Texas (D.R.D.C.T.), said Third Tract being the same as that tract of land described as Tract No. Five in Deed to the County of Dallas, Texas, as recorded in Volume 2158, Page 314, D.R.D.C.T., said tract being more particularly described as follows:

COMMENCING at a 5/8-inch found iron rod for the northwest corner of that tract of land described as Tract One in deed to Laura Jernigan Espensen and James William Jernigan as recorded in Volume 2004172, Page 10588, D.R.D.C.T., said Tract One being the same as that tract of land described in deed to Laura Jernigan Espensen as recorded in Volume 2004172, Page 10617, D.R.D.C.T., said Tract One also being the same as that tract of land described in deed to James William Jernigan as recorded in Volume 2004172, Page 10643, D.R.D.C.T, said corner being at the intersection of the southerly right-of-way line of Scyene Road (60 foot wide roadway by usage) with the east right-of-way line of Faithon P. Lucas Sr. Boulevard (a variable width right-of-way);

THENCE South 00 degrees 49 minutes 25 seconds East, with the common west line of said Tract One and said east right-of-way line of Faithon P. Lucas Sr. Boulevard, at a distance of 501.75 feet passing a ½ inch set iron rod with yellow plastic cap stamped "HALFF" (hereinafter referred to as "with cap") for the northwest corner of a 100 foot wide right-of-way to the County of Dallas as recorded in Volume 84076, Page 1954, D.R.D.C.T., continuing with the common west line of said County of Dallas tract and said east right-of-way line of Faithon P. Lucas Sr. Boulevard, at a cumulative distance of 601.75 feet passing a ½ inch set iron rod with cap for the southwest corner of said County of Dallas tract, continuing again with said common west line of said Tract One and said east right-of-way line of Faithon P. Lucas Sr. Boulevard, in all a total distance of 673.00 feet to a found "X" cut in concrete for corner;

THENCE South 04 degrees 39 minutes 41 seconds East, continuing with said common line, a distance of 300.48 feet to a point for corner from which a 5/8-inch found iron rod stamped "CLS 5129" bears North 65 degrees 36 minutes 54 seconds West a distance of 0.27 of a foot;

THENCE South 00 degrees 50 minutes 41 seconds East, continuing with said common line, a distance of 354.00 feet to a ½ inch found iron rod with cap stamped "RPLS 5129" for corner;

THENCE South 00 degrees 44 minutes 03 seconds East, continuing with said common line, a distance of 370.12 feet to a 1/2-inch set iron rod with cap for the POINT OF BEGINNING at the intersection of said common line with the north line of the aforementioned Tract No. Five;

THENCE South 78 degrees 23 minutes 43 seconds East, departing said common line, with said north line, a distance of 153.55 feet to a ½ inch set iron rod with cap for corner;

THENCE South 00 degrees 44 minutes 03 seconds East, departing said north line, with a line offset 150 feet east of and parallel to the last cited east right-of-way line of Faithon P. Lucas Sr.

Boulevard, over and across said Tract No. Five, a distance of 102.36 feet to a ½ inch set iron rod with cap for corner on the south line of said Tract No. Five;

THENCE North 78 degrees 23 minutes 43 seconds West, departing said parallel offset line, with the south line of said Tract No. Five, a distance of 153.55 feet to a ½ inch set iron rod with cap for the intersection of said south line with said east right-of-way line of Faithon P. Lucas Sr. Boulevard;

THENCE North 00 degrees 44 minutes 03 seconds West, departing said south line, with said east right-of-way line, a distance of 102.36 feet to the POINT OF BEGINNING and containing 15,355 square feet or 0.3525 of an acre of land, more or less.

This Quitclaim Deed is made subject to and Grantee accepts title to the Property subject to: (i) mineral reservations, severances and leases, if any, that affect the Property; (ii) validly existing easements, rights-of-way and prescriptive rights that affect the Property, whether of record or not; (iii) all presently recorded and validly existing restrictions, restrictive covenants, reservations, exceptions, covenants, conditions, interests and instruments that affect the Property; (iv) any discrepancies, conflicts or shortages in area or boundary lines, any encroachments or protrusions and any overlapping of improvements affecting the Property; (v) taxes and assessments against the Property for all subsequent years and taxes and assessments for prior years, if any, due to changes in land usage, ownership, or both, the payment of which the Grantee assumes; and (vi) zoning regulations and ordinances of municipal and/or other governmental authorities affecting the Property (collectively the "Permitted Exceptions"). Grantee accepts the Property subject to the Permitted Exceptions.

In accepting the quitclaim of the Property, Grantee expressly accepts the Property in its "AS IS" condition and **WITH ALL FAULTS**. The acceptance of this Quitclaim Deed by the Grantee shall constitute an acknowledgment by the Grantee that the Property is being accepted **WITHOUT REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED. THE GRANTEE RELEASES ALL CLAIMS AND CAUSES OF ACTION, AT LAW OR IN EQUITY, THE GRANTEE MAY NOW OR HEREAFTER HAVE AGAINST THE GRANTOR, ITS OFFICERS, AGENTS AND EMPLOYEES, IN CONNECTION WITH THE QUITCLAIM OF THE PROPERTY BY THE GRANTOR TO THE GRANTEE.** The Grantee acknowledges that it owns the adjacent property on both sides of the Property and that Grantee has had the opportunity to examine and investigate the Property and that, in purchasing the Property, the Grantee is relying solely upon its own independent examination, study, inspection, and knowledge of the Property and the Grantee's determination of the value of the Property and uses to which the Property may be put, and the Grantee is not relying on any representations, disclosures, information or warranties, either express or implied, of any kind by the Grantor. **THE GRANTEE ACKNOWLEDGES THAT THE GRANTOR HAS NOT MADE AND IS EXPRESSLY DISCLAIMING ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE TITLE, CONDITION, HABITABILITY, MARKETABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE OF THE PROPERTY.**

For the Consideration, Grantor quitclaims to Grantee all of Grantor's right, title, and interest in and to the Property, to have and to hold it to Grantee and Grantee's successors and assigns forever. Neither Grantor's nor Grantor's successors or assigns will have, claim, or demand any right or title to the Property or any part of it.

When the context requires, singular nouns and pronouns include the plural.

EXECUTED by Grantor and Grantee on the dates set forth below.

GRANTOR:

CITY OF MESQUITE,
a Texas home rule municipality

By: _____
Cliff Keheley, City Manager

Date: November ____, 2019

ATTEST:

Sonja Land, City Secretary

APPROVED AS TO FORM:

City Attorney or his designee

ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the ____ day of November, 2019, by Cliff Keheley, City Manager for the City of Mesquite, a Texas home rule municipality, on behalf of said home rule municipality.

Notary Public, State of Texas

My Commission Expires:

Notary Seal

