

RESOLUTION NO. 05-2021

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 ECONOMIC DEVELOPMENT PROGRAM AGREEMENT (“CHAPTER 380 AGREEMENT”) FOR SUCH PURPOSES WITH ELEMENTS SLEEP, LLC (“ES”), AND STYLE-LINE FURN., INC. (“SLF”), TO INCENTIVIZE ES TO MANUFACTURE BOXED MATTRESSES AND TO INCENTIVIZE SLF TO MANUFACTURE UPHOLSTERED FURNITURE AT AN INDUSTRIAL BUILDING LOCATED AT 1475 REPUBLIC PARKWAY, IN THE CITY OF 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 (the “**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, Elements Sleep, LLC, a Texas limited liability company (“**ES**”) manufactures boxed mattresses for wholesale distribution to retailers via brick and mortar stores and e-commerce operations; and

WHEREAS, Style-Line Furn., Inc. (“**SLF**”) manufactures upholstered furniture including, without limitation, sectionals, accent chairs, sofas, and chaises for wholesale distribution to retailers via brick and mortar stores and e-commerce operations; and

WHEREAS, the City Council has been presented with a proposed agreement providing economic incentives to ES and SLF (collectively the “**Companies**”), to incentivize ES to manufacture boxed mattresses and SLF to manufacture upholstered furniture in approximately 177,473 cumulative square feet of an industrial building located at 1475 Republic Parkway, in the City of 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 Companies, 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 Companies 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.

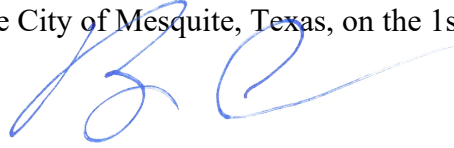
SECTION 3. That the terms and conditions of the Agreement, having been reviewed by the City Council and found to be acceptable and in the best interest of the City and its citizens, are hereby approved.

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 provided, however, notwithstanding anything contained herein to the contrary, the authority of the City Manager pursuant to this Section 5 shall not include the authority to take any action that cannot be delegated by the City Council or that is within the City Council's legislative functions.

SECTION 6. 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 1st day of February 2021.



Bruce Archer
Mayor

ATTEST:



Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:



David L. Paschall
City Attorney

ECONOMIC DEVELOPMENT PROGRAM AGREEMENT

(Chapter 380 Agreement)

This Economic Development Program Agreement ("Agreement") is made and entered into by and between the City of Mesquite, a Texas home rule municipality (the "City"), Elements Sleep, LLC, a Texas limited liability company ("ES") and Style-Line Furn., Inc., a Mississippi corporation ("SLF").

WITNESSETH:

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

WHEREAS, ES manufactures boxed mattresses for wholesale distribution to retailers via brick and mortar stores and e-commerce operations ("ES's Business"); and

WHEREAS, SLF manufactures upholstered furniture including, without limitation, sectionals, accent chairs, sofas and chaises for wholesale distribution to retailers via brick and mortar stores and e-commerce operations ("SLF's Business"); and

WHEREAS, ES and SLF are hereinafter sometimes individually referred to as a "Company" and sometimes collectively referred to as the "Companies"; and

WHEREAS, CH Realty VIII-Urban Logistics I Dallas Urban District 30, L.P., a Delaware limited partnership (the "Landlord") has constructed an industrial building consisting of approximately 380,513 square feet whose address is 1475 Republic Parkway, Mesquite, Texas 75150 (the "Building"); and

WHEREAS, ES and SLF desire to collectively lease a minimum of 177,473 square feet of the Building (the "Premises"); and

WHEREAS, ES has represented to the City that it will make a capital investment in the amount of at least TWO MILLION THREE HUNDRED FORTY THOUSAND AND NO/100 DOLLARS (\$2,340,000.00) in connection with the purchase of business personal property to be installed and located at the Premises within the Investment Period; and

WHEREAS, SLF has represented to the City that it will make a capital investment in the amount of at least THREE HUNDRED SEVENTY THOUSAND AND NO/100 DOLLARS (\$370,000.00) in connection with the purchase of business personal property to be installed and located at the Premises within the Investment Period; and

WHEREAS, ES and SLF have committed to collectively employ and maintain a minimum of twenty-five (25) Employees at the Premises during the Incentive Period; and

WHEREAS, the commitment by ES and SLF to collectively employ and maintain at least twenty-five (25) Employees at the Premises during the Incentive Period will result in the creation and retention of employment opportunities in the City; and

WHEREAS, the purchase and installation by ES and SLF of tangible business personal property to be used in the operation of their businesses at the Premises will result in an increase in the taxable value of tangible business personal property located at the Premises and an increase in the ad valorem business personal property taxes assessed and collected by the City; and

WHEREAS, ES and SLF have advised the City that a principal factor inducing ES and SLF to: (i) lease the Premises; (ii) purchase and install business personal property at the Premises; and (iii) operate their businesses and employ and maintain at least twenty-five (25) Employees collectively at the Premises during the Incentive Period, is the agreement by the City to provide the Economic Development Incentives to ES and SLF under the terms and conditions more fully set forth in this Agreement; and

APPROVED BY CITY COUNCIL

DATE 2.1.2021

AGENDA ITEM NO. 22

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

WHEREAS, the Companies desire 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 Companies' performance of their obligations herein will promote local economic development in the City, increase employment opportunities in the City, stimulate business and commercial activity in the City, increase the amount of ad valorem business personal property taxes assessed and collected by 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 ("Recitals") are 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 Conditions Precedent to First Extended Term" shall have the meaning set forth in Article VII – Part B of this Agreement.

"Additional Conditions Precedent to Second Extended Term" shall have the meaning set forth in Article VII – Part C of this Agreement.

"Agreement" shall mean this agreement together with all exhibits attached hereto.

"Building" shall have the meaning set forth in the Recitals of this Agreement.

"Business Personal Property" shall mean moveable items of personal property owned by ES and SLF and used in the ordinary course of business of ES and/or SLF which are located at the Premises but are not permanently affixed to, or part of, the Building 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.

"Certificate of Compliance" shall mean a certificate in such form as is reasonably acceptable to the City executed on behalf of each of the Companies by a duly authorized Representative of each of the Companies certifying to the City: (i) that all Conditions Precedent have been satisfied and are then continuing; and (ii) that no Company Default then exists under the terms of this Agreement and that no event exists which, but for notice, the lapse of time, or both, would constitute a Company Default under the terms of this Agreement. Any Certificate of Compliance submitted during the First Extended Term shall additionally certify that all Conditions Precedent to First Extended Term have been satisfied and are continuing. Any Certificate of Compliance submitted during the Second Extended Term shall additionally certify that all Conditions Precedent to First Extended Term and all Conditions Precedent to Second Extended Term have been satisfied and are continuing.

"Certificate of Occupancy" shall mean a final certificate of occupancy issued by the City to ES and SLF authorizing ES and SLF to occupy a minimum of 177,473 square feet of the Building.

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

“City Default” shall have the meaning set forth in Article IX, Section 2 of this Agreement.

“Company” shall mean ES and SLF, individually and “Companies” shall mean ES and SLF, collectively.

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

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

“Economic Covenants” shall be those representations, covenants, agreements, and requirements of the Companies set forth in Article VI of this Agreement.

“Economic Development Incentive” shall mean an incentive described in Article VIII of this Agreement and “Economic Development Incentives” shall mean more than one, or all, of the incentives described in Article VIII of this Agreement.

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

“Employee” shall mean a full-time, direct employee of ES or SLF, working a minimum of thirty-two (32) hours per week, who shall be employed in a position physically based at the Premises. “Employee” shall not include any part time employees of ES or SLF or any employees of subcontractors or vendors of ES or SLF, whether working at the Premises or otherwise. “Employee” shall include any replacement of a former Employee whose employment is terminated for any reason, with such original Employee and any replacement employee counting as one (1) Employee for purposes of the calculations in this Agreement.

“ES” shall mean Elements Sleep, LLC, a Texas limited liability company, its successors and assigns only as permitted by Article X, Section 1 of this Agreement.

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

“ES Capital Investment Certificate” shall have the meaning set forth in Article VI, Section 3 of this Agreement.

“ES Capital Investment Requirement” shall have the meaning set forth in Article VI, Section 3 of this Agreement.

“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.

“First Extended Term” shall mean the period commencing January 1, 2028, and continuing thereafter until and including the earlier of: (i) December 31, 2030; or (ii) the date this Agreement is terminated by the City or the Companies pursuant to a right to terminate as expressly provided herein provided the Additional Conditions Precedent to First Extended Term have been satisfied.

“First Lease Extension” shall have the meaning set forth in Article VII – Part B, Section 1.

“Incentive Period” shall mean the period commencing with January 1, 2022 and continuing until the earlier of: (i) December 31, 2026; or (ii) the date this Agreement is terminated by the City or the Companies pursuant to a right to terminate more fully set forth herein, provided, however, in the event the Companies timely satisfy all of the Additional Conditions Precedent to First Extended Term set forth in Article VII – Part B of this Agreement, the Incentive Period shall be extended to include the period commencing with January 1, 2027, and continuing thereafter until the earlier of: (i) December 31, 2029; or (ii) the date this Agreement is terminated by the City or the Companies

pursuant to a right to terminate more fully set forth herein and further provided however, in the event the Companies timely satisfy all of the Additional Conditions Precedent to Second Extended Term set forth in Article VII – Part C of this Agreement, the Incentive Period shall be extended to include the period commencing with January 1, 2030, and continuing thereafter until the earlier of: (i) December 31, 2031; or (ii) the date this Agreement is terminated by the City or the Companies pursuant to a right to terminate more fully set forth herein and further provided.

“Incentive Tax Year” shall mean the period consisting of three hundred and sixty five (365) calendar days [or three hundred and sixty six (366) calendar days for any calendar year that is a leap year] beginning on January 1, 2022, and ending on December 31, 2022, and continuing on January 1st and ending on December 31st of each calendar year thereafter during the Incentive Period.

“Initial Term” shall mean the period commencing with the Effective Date and continuing until and including the earlier of: (i) December 31, 2027; or (ii) the date this Agreement is terminated by the City or the Companies pursuant to a right to terminate as expressly provided herein.

“Investment Period” shall mean the period commencing on the Effective Date and continuing thereafter until June 30, 2022.

“Landlord” shall mean CH Realty VIII-Urban Logistics I Dallas Urban District 30, L.P., a Delaware limited partnership, its successors, and assigns.

“Lease” shall mean that certain lease executed by the Landlord, ES and SLF relating to the right and obligation of ES and SLF to occupy 177,473 square feet of the Building for an initial term of at least five (5) years with two (2) options to extend the term of the lease for three (3) years each.

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

“Maximum Lawful Rate” shall mean the maximum lawful rate of non-usurious interest that may be contracted for, charged, taken, received or reserved by the City in accordance with the applicable laws of the State of Texas (or applicable United States federal law to the extent that such law permits the City to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law).

“Parties” shall refer to ES, SLF and the City collectively.

“Party” shall refer to ES, SLF and the City individually.

“Payment Request” shall mean a written request executed by ES and/or SLF and delivered to the City’s Director of Finance requesting the payment of an Economic Development Incentive.

“Permit Fee Grant” shall have the meaning set forth in Article VIII, Section 1(A) of this Agreement.

“Permit Fees” shall mean the building permit fees charged by the City pursuant to Mesquite City Code, Appendix D, Article XII, Section 12-100, as amended or replaced, and the plan review fees charged by the City pursuant to Mesquite City Code, Appendix D, Article XII, Section 12-109, as amended or replaced, in connection with the construction of tenant finish out improvements to the Building and shall specifically exclude all impact fees.

“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.

“Premises” shall mean the approximately 177,473 square feet of the Building leased by ES and SLF from the Landlord.

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

“Recitals” shall have the meaning set forth in Article I of this Agreement.

“Representative” shall mean the Chief Executive Officer, Chief Financial Officer or any other duly authorized officer of ES when referring to a “Representative” of ES. “Representative” shall mean the Chief Executive

Officer, Chief Financial Officer or any other duly authorized officer of SLF when referring to a "Representative" of SLF.

"Second Extended Term" shall mean the period commencing January 1, 2031, and continuing thereafter until and including the earlier of: (i) December 31, 2032; or (ii) the date this Agreement is terminated by the City or the Companies pursuant to a right to terminate as expressly provided herein provided the Additional Conditions Precedent to Second Extended Term have been satisfied.

"Second Lease Extension" shall have the meaning set forth in Article VII – Part C, Section 1 of this Agreement.

"SLF" shall mean Style-Line Furn., Inc., a Mississippi corporation, its successors and assigns only as permitted by Article X, Section 1 of this Agreement.

"SLF's Business" shall have the meaning set forth in the Recitals of this Agreement.

"SLF Capital Investment Certificate" shall have the meaning set forth in Article VI, Section 4 of this Agreement.

"SLF Capital Investment Requirement" shall have the meaning set forth in Article VI, Section 4 of this Agreement.

"Taxable Inventory" shall mean taxable merchandise and supplies owned by ES and SLF and located at the Premises and shall include raw materials, work-in-process and finished goods but shall specifically exclude goods in transit, freeport goods and merchandise, supplies, materials or other goods that are non-taxable.

"Term" shall have the meaning set forth in Article IV of this Agreement.

"Undocumented Workers" shall mean individuals who, at the time of employment with the Companies, are not: (i) lawfully admitted for permanent residence to the United States or are not authorized under law to be employed in that manner in the United States; and (ii) such other Persons as are included within the definition of undocumented workers pursuant to 8 U.S.C. §1324a (f) or any other applicable law or regulation.

ARTICLE III

Authority for Agreement

This Agreement is authorized by Article III, Section 52-a of the Texas Constitution and 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 Companies' performance of their obligations herein will increase the amount of ad valorem business personal property taxes assessed and collected by the City, result in employment opportunities being created and maintained in 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

The term of this Agreement shall commence on the Effective Date and shall continue until the earlier of: (i) December 31, 2027; or (ii) the date this Agreement is terminated by the City or the Companies pursuant to a right to terminate as expressly provided herein provided, however, in the event the Companies timely satisfy all of the Additional Conditions Precedent to First Extended Term set forth in Article VII – Part B of this Agreement, the term of this Agreement shall be extended to include the additional period from January 1, 2028, and continuing thereafter until the earlier of: (i) December 31, 2030; or (ii) the date this Agreement is terminated by the City or the Companies pursuant to a right to terminate more fully set forth herein provided, however, in the event the Companies timely satisfy all of the Additional Conditions Precedent to Second Extended Term set forth in Article VII – Part C of this Agreement, the term of this Agreement shall be extended to include the additional period from January 1, 2031, and continuing thereafter until the earlier of: (i) December 31, 2032; or (ii) the date this Agreement is terminated by the City or the Companies pursuant to a right to terminate more fully set forth herein (the "Term").

ARTICLE V

Companies' Covenants Not to Employ Undocumented Workers

1. Covenant Not to Employ Undocumented Workers. Each of the Companies hereby certify that it and each of its branches, divisions, and departments do not employ any Undocumented Workers and each of the Companies hereby covenant and agree that it and each of its branches, divisions and departments will not knowingly employ any Undocumented Workers during the Term of this Agreement.
2. Covenant to Notify City of Conviction for Undocumented Workers. ES and SLF covenant and agree to provide the City with written notice of any conviction of ES, SLF, or any branch, division or department of ES and/or SLF, of a violation under 8 U.S.C. §1324a (f) within thirty (30) days from the date of such conviction.
3. Repayment of Economic Development Incentives in Event of Conviction for Employing Undocumented Workers. If, after receiving any Economic Development Incentive under the terms of this Agreement, ES and/or SLF, or a branch, division or department of ES and/or SLF, is convicted of a violation under 8 U.S.C. §1324a (f), each of the Companies receiving any Economic Development Incentives under the terms of this Agreement shall pay to the City, not later than the 120th day after the date the City notifies the Companies of the violation, an amount equal to the total Economic Development Incentives previously paid by the City to each of the Companies under the terms of this Agreement plus interest at the rate equal to the *lesser* of: (i) the Maximum Lawful Rate; or (ii) five percent (5%) per annum, such interest rate to be calculated on the amount of each Economic Development Incentive being recaptured from the date each Economic Development Incentive was paid by the City to each of the Companies until the date repaid by each of the Companies to the City and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate.
4. Limitation on Economic Development Incentives. The City shall have no obligation to pay any Economic Development Incentives to the Companies if any of the Companies, or any branch, division or department of any of the Companies is convicted of a violation under 8 U.S.C. §1324a (f).
5. Remedies. The City shall have the right to exercise all remedies available by law to collect any sums due by the Companies to the City pursuant to this Article V including, without limitation, all remedies available pursuant to Chapter 2264 of the Texas Government Code.
6. Limitation. The Companies are not liable for a violation of Article V of this Agreement by a subsidiary, affiliate, or franchisee of the Companies who are not a Party to this Agreement, or by a person with whom any of the Companies contract.
7. Survival. The terms, provisions, covenants, agreements and obligations of the Companies and the rights and remedies of the City set forth in Article V of this Agreement shall expressly survive the expiration or termination of this Agreement.

ARTICLE VI

Economic Covenants

In consideration of the City's agreement to grant the Economic Development Incentives to the Companies upon the terms and conditions more fully set forth herein, the Companies represent, covenant and agree as follows (collectively the "Economic Covenants"), to-wit:

1. Lease Requirement. ES and SLF shall lease a minimum of 177,473 square feet of the Building for an initial term of at least five (5) years with two (2) options to extend the term of such lease for three (3) years each (the "Lease Requirement");
2. Copy of Lease. On or before the date ES and/or SLF submit the first Payment Request, ES and SLF shall deliver to the City a copy of the Lease executed by the Landlord, ES and SLF;
3. ES Capital Investment. During the Investment Period, ES shall make expenditures in the amount of at least TWO MILLION THREE HUNDRED FORTY THOUSAND AND NO/100 DOLLARS (\$2,340,000.00) in connection with the purchase of machinery, equipment, rack shelving and furniture which are used in the ordinary

course of business of ES and are installed and/or located at the Premises but are not permanently affixed to, or part of, the Building (the "ES Capital Investment Requirement"). When calculating the expenditures required under this Article VI, Section 3, ES agrees that no expenditure shall be included in the calculation of the ES Capital Investment Requirement unless the expenditure is capitalized as a capital asset on the books of ES in accordance with generally accepted accounting principles. Within sixty (60) days after the Investment Period, ES shall submit to the City a certificate in such form as is reasonably acceptable to the City executed by a Company Representative certifying the amount of expenditures made by ES during the Investment Period in connection with the ES Capital Investment Requirement (the "ES Capital Investment Certificate");

4. SLF Capital Investment. During the Investment Period, SLF shall make expenditures in the amount of at least THREE HUNDRED SEVENTY THOUSAND AND NO/100 DOLLARS (\$370,000.00) in connection with the purchase of machinery, equipment, rack shelving and furniture which are used in the ordinary course of business of SLF and are installed and/or located at the Premises but are not permanently affixed to, or part of, the Building (the "SLF Capital Investment Requirement"). When calculating the expenditures required under this Article VI, Section 4, SLF agrees that no expenditure shall be included in the calculation of the SLF Capital Investment Requirement unless the expenditure is capitalized as a capital asset on the books of SLF in accordance with generally accepted accounting principles. Within sixty (60) days after the Investment Period, SLF shall submit to the City a certificate in such form as is reasonably acceptable to the City executed by a Company Representative certifying the amount of expenditures made by SLF during the Investment Period in connection with the SLF Capital Investment Requirement (the "SLF Capital Investment Certificate");

5. Certificates of Occupancy and Commencement of Operations. ES and SLF shall obtain a Certificate of Occupancy for the Premises on or before October 31, 2021. ES shall commence the operation of ES' Business at the Premises on or before October 31, 2021, and SLF shall commence the operation of SLF's Business at the Premises on or before October 31, 2021;

6. Required Jobs. ES and SLF shall collectively employ at least twenty-five (25) Employees who conduct their job duties at the Premises on or before October 31, 2021, and shall maintain at least twenty-five (25) Employees who conduct their job duties at the Premises at all times thereafter during the Term of this Agreement;

7. Records and Reports. The Companies shall each deliver to the City within sixty (60) days after written request, copies of such invoices, payment records, and such other records and documentation as the City may reasonably request to confirm compliance by the Companies with the representations, covenants and agreements set forth in this Article VI;

8. Inspection. The Companies shall provide the City, its agents and employees with access to the Premises 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 Companies with the representations, covenants and agreements of the Companies as set forth in this Agreement provided the City has given the Companies at least seventy-two (72) hours prior written notice of such inspection;

9. Representative of Company to Accompany Inspections. The Companies shall provide a representative of the Companies to accompany the City during all inspections of the Premises conducted by the City pursuant to Article VI, Section 8 above;

10. Timely Payment of Taxes. ES shall timely pay all ad valorem taxes assessed against the tangible personal property owned by ES located at the Premises during the Term of this Agreement (including, without limitation, Business Personal Property) prior to the date such taxes become delinquent. SLF shall timely pay all ad valorem taxes assessed against the tangible personal property owned by SLF located at the Premises during the Term of this Agreement (including, without limitation, Business Personal Property) prior to the date such taxes become delinquent;

11. Maintenance Obligations. The Companies shall comply with all applicable building codes, zoning ordinances and all other codes, ordinances and regulations of the City applicable to the Premises at all times during the Term of this Agreement and shall, at the Companies' sole cost and expense, maintain the Premises in good repair during the Term of this Agreement;

12. Compliance with Laws. The Companies shall comply with all applicable federal, state, and local laws, ordinances, and regulations during the Term of this Agreement;

13. Performance of Agreement. ES shall timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by ES under the terms of this Agreement and SLF shall timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by SLF under the terms of this Agreement; and

14. Performance of Other Agreements. ES shall timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by ES under the terms of all other written, executed agreements now or hereafter existing between ES and the City and SLF shall timely keep and perform all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by SLF under the terms of all other written, executed agreements now or hereafter existing between SLF and the City.

ARTICLE VII – PART A

Conditions Precedent to Payment of Economic Development Incentives

The Parties agree that the payment by the City of Economic Development Incentives during the Term 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 for Permit Fee Grant. ES and SLF shall have submitted a Payment Request to the City’s Director of Finance at 757 N. Galloway, Mesquite, Texas, requesting payment of the Permit Fee Grant. Such Payment Request shall be accompanied by a Certificate of Compliance dated effective as of the date of the Payment Request and, as of the date of the Payment Request, all Conditions Precedent set forth in Article VII – Part A (1), (2), (3), and (5) through (15), inclusive, shall have been satisfied and are then continuing;

2. ES Capital Investment. ES shall have: (i) satisfied the ES Capital Investment Requirement within the Investment Period; and (ii) submitted the ES Capital Investment Certificate to the City evidencing that ES has satisfied the ES Capital Investment Requirement;

3. SLF Capital Investment. SLF shall have: (i) satisfied the SLF Capital Investment Requirement; within the Investment Period; and (ii) submitted the SLF Capital Investment Certificate to the City evidencing that SLF has satisfied the SLF Capital Investment Requirement;

4. Payment Request for BPP Grants. ES and SLF shall have submitted a Payment Request to the City’s Director of Finance at 757 N. Galloway, Mesquite, Texas, no earlier than January 30th and no later than April 15th of the calendar year following the Incentive Tax Year for which the Payment Request is being made requesting payment of the Economic Development Incentive then due by the City to ES and SLF pursuant to the terms of this Agreement. For example, the first such Payment Request shall be submitted no earlier than January 30, 2023, and no later than April 15, 2023, for the Economic Development Incentive for the first Incentive Tax Year, and subsequent Payment Requests shall be submitted no earlier than January 30th and no later than April 15th of each calendar year thereafter during the Incentive Period. Each Payment Request shall be accompanied by a Certificate of Compliance dated effective as of the date of the Payment Request and, as of the date of the Payment Request, all other Conditions Precedent set forth herein shall have been satisfied and are then continuing;

5. Payment of Fees. ES and SLF shall have timely paid to the City all Permit Fees payable by ES and SLF to the City in connection with the Premises;

6. Lease. ES and SLF shall have satisfied the Lease Requirement and shall have provided the City with a copy of the Lease executed by ES, SLF and the Landlord;

7. Certificate of Occupancy and Commencement of Operations. ES and SLF shall have obtained a Certificate of Occupancy for the Premises on or before October 31, 2021; ES shall have commenced operation of ES’ Business at the Premises on or before October 31, 2021, and SLF shall have commenced operations of SLF’s Business at the Premises on or before October 31, 2021;

8. Required Jobs. ES and SLF shall have collectively employed at least twenty-five (25) Employees who conduct their job duties at the Premises on or before October 31, 2021, and shall collectively have maintained at least

twenty-five (25) Employees who conduct their job duties at the Premises at all times thereafter up to and including the date of the Payment Request;

9. Payment of Business Personal Property Ad Valorem Taxes. ES shall have timely paid the ad valorem taxes assessed against the Business Personal Property owned by ES at the Premises and SLF shall have timely paid the ad valorem taxes assessed against the Business Personal Property owned by SLF at the Premises for the Incentive Tax Year for which the Payment Request is being requested;

10. Maintenance Obligations. The Premises shall, as of the date of the Payment Request, comply with all applicable building codes, zoning ordinances and all other codes, ordinances, and regulations of the City applicable to the Premises;

11. Records and Reports. The Companies shall have delivered to the City copies of such invoices, payment records, and such other records and documentation as the City may reasonably request to confirm compliance by the Companies with the Economic Covenants and the Conditions Precedent;

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

13. Performance of other Agreements by ES. ES shall have timely kept and performed all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by ES under the terms of all other agreement(s) now and hereafter existing between ES and the City, and no default shall then exist under the terms of such agreement(s) and no event shall exist which, but for notice, the lapse of time, or both, would constitute a default by ES under the terms of such agreement(s);

14. Performance of other Agreements by SLF. SLF shall have timely kept and performed all terms, provisions, agreements, covenants, conditions and obligations to be kept or performed by SLF under the terms of all other agreement(s) now and hereafter existing between SLF and the City, and no default shall then exist under the terms of such agreement(s) and no event shall exist which, but for notice, the lapse of time, or both, would constitute a default by SLF under the terms of such agreement(s); and

15. No Conviction for Undocumented Workers. As of the date of the Payment Request, and at all times during the Term of this Agreement prior to the Payment Request, ES and SLF, and each branch, division and department of ES and SLF, shall not have been convicted by a court of competent jurisdiction of knowingly employing Undocumented Workers.

ARTICLE VII – Part B

Additional Conditions Precedent to First Extended Term

The Parties agree that the payment by the City of Economic Development Incentives during the First Extended Term shall be conditioned upon: (i) the satisfaction of all of the Conditions Precedent set forth in Article VII – Part A of this Agreement during the Initial Term and First Extended Term; and (ii) the satisfaction of the following additional conditions precedent (collectively the “Additional Conditions Precedent to First Extended Term”), to-wit:

1. First Extension of Lease. On or before January 1, 2027, ES and SLF shall have: (i) extended the term of the Lease in writing for at least the period covered by the First Extended Term (the “First Lease Extension”); and (ii) provided the City with a copy of the First Lease Extension; and

2. Confirmation of First Lease Extension by Landlord. ES and SLF shall have provided to the City on or before January 1, 2027, a written confirmation signed by the then owner of the Premises acknowledging that the Lease has been extended for at least the period covered by the First Extended Term (such confirmation may take the form of a copy of a written amendment to the Lease executed by the owner of the Premises, ES and SLF that acknowledges the occurrence of the extension).

ARTICLE VII – Part C

Additional Conditions Precedent to Second Extended Term

The Parties agree that the payment by the City of Economic Development Incentives during the Second Extended Term shall be conditioned upon: (i) the satisfaction of all of the Conditions Precedent set forth in Article VII – Part A of this Agreement during the Initial Term, the First Extended Term and the Second Extended Term; (ii) the satisfaction of all of the Additional Conditions Precedent to First Extended Term; and (iii) the satisfaction of the following additional conditions precedent (collectively the “Additional Conditions Precedent to Second Extended Term”), to-wit:

1. Second Extension of Lease. On or before January 1, 2030, ES and SLF shall have: (i) extended the term of the Lease in writing for at least the period covered by the Second Extended Term (the “Second Lease Extension”); and (ii) provided the City with a copy of the Second Lease Extension; and

2. Confirmation of Second Lease Extension by Landlord. ES and SLF shall have provided to the City on or before January 1, 2030, a written confirmation signed by the then owner of the Premises acknowledging that the Lease has been extended for at least the period covered by the Second Extended Term (such confirmation may take the form of a copy of a written amendment to the Lease executed by the then owner of the Premises, ES and SLF that acknowledges the occurrence of the extension).

ARTICLE VIII

Economic Development Incentives

1. Grant of Economic Development Incentives during Initial Term.

A. Permit Fee Grant. The City hereby approves an economic development grant to ES and SLF in the amount equal to the lesser of: (i) the Permit Fees paid by ES and SLF to the City in connection with the Premises; and (ii) the collective amount of TWENTY FOUR THOUSAND AND NO/100 DOLLARS (\$24,000.00) (the “Permit Fee Grant”).

B. Grant to ES. For each Incentive Tax Year during the Initial Term, provided all Conditions Precedent set forth in Article VII – Part A and the Economic Covenants set forth in Article VI of this Agreement have been satisfied and are then continuing, the City hereby approves an economic development grant to ES for such Incentive Tax Year from the revenue in the City’s general funds calculated by multiplying the ad valorem taxes paid by ES to the City for Business Personal Property owned by ES located at the Premises for such Incentive Tax Year by the following percentages:

Incentive Tax Year	Percentage
2022, 2023, 2024	80%
2025, 2026	70%

C. Grant to SLF. For each Incentive Tax Year during the Initial Term, provided all Conditions Precedent set forth in Article VII – Part A and the Economic Covenants set forth in Article VI of this Agreement have been satisfied and are then continuing, the City hereby approves an economic development grant to SLF for such Incentive Tax Year from the revenue in the City’s general funds calculated by multiplying the ad valorem taxes paid by SLF to the City for Business Personal Property owned by SLF located at the Premises for such Incentive Tax Year by the following percentages:

Incentive Tax Year	Percentage
2022, 2023, 2024	80%
2025, 2026	70%

2. Grant of Economic Development Incentives during First Extended Term.

A. Grant to ES. For each Incentive Tax Year during the First Extended Term, provided all Conditions Precedent set forth in Article VII – Part A, all Additional Conditions Precedent to First Extended Term set forth in Article VII – Part B, and the Economic Covenants set forth in Article VI of this Agreement have been satisfied and are then continuing, the City hereby approves an economic development grant to ES for such Incentive Tax Year from

the revenue in the City's general funds calculated by multiplying the ad valorem taxes paid by ES to the City for Business Personal Property owned by ES located at the Premises for such Incentive Tax Year by the following percentages:

Incentive Tax Year	Percentage
2027 and 2028	70%
2029	60%

B. Grant to SLF. For each Incentive Tax Year during the First Extended Term, provided all Conditions Precedent set forth in Article VII – Part A, all Additional Conditions Precedent to First Extended Term set forth in Article VII – Part B, and the Economic Covenants set forth in Article VI of this Agreement have been satisfied and are then continuing, the City hereby approves an economic development grant to SLF for such Incentive Tax Year from the revenue in the City's general funds calculated by multiplying the ad valorem taxes paid by SLF to the City for Business Personal Property owned by SLF located at the Premises for such Incentive Tax Year by the following percentages:

Incentive Tax Year	Percentage
2027 and 2028	70%
2029	60%

3. Grant of Economic Development Incentives during Second Extended Term.

A. Grant to ES. For each Incentive Tax Year during the Second Extended Term, provided all Conditions Precedent set forth in Article VII – Part A, all Additional Conditions Precedent to First Extended Term set forth in Article VII- Part B, all Additional Conditions Precedent to Second Extended Term set forth in Article VII – Part C, and the Economic Covenants set forth in Article VI of this Agreement have been satisfied and are then continuing, the City hereby approves an economic development grant to ES for such Incentive Tax Year from the revenue in the City's general funds calculated by multiplying the ad valorem taxes paid by ES to the City for Business Personal Property owned by ES located at the Premises for such Incentive Tax Year by the following percentage:

Incentive Tax Year	Percentage
2030 and 2031	60%

B. Grant to SLF. For each Incentive Tax Year during the Second Extended Term, provided all Conditions Precedent set forth in Article VII – Part A, all Additional Conditions Precedent to First Extended Term set forth in Article VII-Part B, all Additional Conditions Precedent to Second Extended Term set forth in Article VII – Part C, and the Economic Covenants set forth in Article VI of this Agreement have been satisfied and are then continuing, the City hereby approves an economic development grant to SLF for such Incentive Tax Year from the revenue in the City's general funds calculated by multiplying the ad valorem taxes paid by SLF to the City for Business Personal Property owned by SLF located at the Premises for such Incentive Tax Year by the following percentage:

Incentive Tax Year	Percentage
2030 and 2031	60%

4. Other Taxing Entities. The Parties acknowledge and agree that ad valorem taxes assessed or collected against the Business Personal Property by the Mesquite Independent School District, the County of Dallas and/or any other taxing entity other than the City shall not be included in determining the amount of any Economic Development Incentive payable under the terms of this Agreement.

5. Payment of Economic Development Incentives.

A. Initial Term.

(a) The Permit Fee Grant shall be payable by the City to ES and SLF within sixty (60) days after all Conditions Precedent set forth in Article VII – Part A (1), (2), (3), and (5) through (15), inclusive, have been satisfied. The amount of the Permit Fee Grant payable to ES shall be the lesser of : (i) the Permit Fees paid by ES to the City in connection with the Premises; and (ii) the amount of TWELVE THOUSAND AND NO/100 DOLLARS (\$12,000.00). The amount of the Permit Fee Grant payable to SLF shall be the lesser of : (i) the Permit Fees paid by

SLF to the City in connection with the Premises; and (ii) the amount of TWELVE THOUSAND AND NO/100 DOLLARS (\$12,000.00).

(b) Provided all Conditions Precedent set forth in Article VII – Part A and the Economic Covenants set forth in Article VI have been satisfied and are then continuing, the economic development grants set forth in Article VIII, Section 1(B) and Article VIII, Section 1(C) of this Agreement shall be payable by the City to ES and SLF, respectively, in annual payments on the later of: (i) June 1st of the calendar year following the Incentive Tax Year for which the incentive payment is payable; or (ii) sixty (60) days after all Conditions Precedent to the payment of such incentive have been satisfied.

B. First Extended Term. Provided all Conditions Precedent set forth in Article VII – Part A, the Additional Conditions Precedent to First Extended Term set forth in Article VII – Part B and the Economic Covenants set forth in Article VI, have been satisfied and are then continuing, the economic development grants set forth in Article VIII, Section 2(A) and Article VIII, Section 2(B) of this Agreement shall be payable by the City to ES and SLF, respectively, in annual payments on the later of: (i) June 1st of the calendar year following the Incentive Tax Year for which the incentive payment is payable; or (ii) sixty (60) days after all Conditions Precedent to the payment of such incentive have been satisfied.

C. Second Extended Term. Provided all Conditions Precedent set forth in Article VII – Part A, the Additional Conditions Precedent to First Extended Term set forth in Article VII – Part B, the Additional Conditions Precedent to Second Extended Term set forth in Article VII – Part C, and the Economic Covenants set forth in Article VI, have been satisfied and are then continuing, the economic development grants set forth in Article VIII, Section 3(A) and Article VIII, Section 3(B) of this Agreement shall be payable by the City to ES and SLF, respectively, in annual payments on the later of: (i) June 1st of the calendar year following the Incentive Tax Year for which the incentive payment is payable; or (ii) sixty (60) days after all Conditions Precedent to the payment of such incentive have been satisfied.

6. Funds Available for Payment of Economic Development Incentives. The grants of Economic Development Incentives payable by the City to ES and SLF as more fully set forth in this Agreement are not 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. All Economic Development Incentives payable hereunder shall be paid only from funds of the City authorized by Article III, Section 52-a, of the Texas Constitution and Texas Local Government Code Chapter 380. Each Economic Development Incentive payment shall be subject to the City's appropriation of funds for such purpose to be paid in the budget year for which the incentive payment is to be made. The provisions of this Article VIII, Section 6 shall expressly survive the expiration or termination of this Agreement.

ARTICLE IX

Defaults Recapture of Incentives Remedies

1. Company Default. Each of the Companies shall be in default of this Agreement: (i) upon the occurrence of an Event of Bankruptcy or Insolvency of any one or both of the Companies; or (ii) if ES fails to timely keep or perform any term, provision, agreement, covenant, condition or obligation to be kept or performed by ES under the terms of this Agreement and such failure continues for sixty (60) days after written notice by the City to ES; or (iii) if SLF fails to timely keep or perform any term, provision, agreement, covenant, condition or obligation to be kept or performed by SLF under the terms of this Agreement and such failure continues for sixty (60) days after written notice by the City to SLF (each a "Company Default").

2. City Default. The City shall be in default of this Agreement: (i) upon the occurrence of an Event of Bankruptcy or Insolvency of the City; or (ii) if the City fails to timely keep or perform any term, provision, agreement, covenant, condition or obligation to be kept or performed by the City under the terms of this Agreement and such failure continues for sixty (60) days after written notice by the Companies (each a "City Default").

3. Remedies. Upon the occurrence of a Company Default, the City shall have no obligation to pay any future Economic Development Incentive to the Companies under the terms of this Agreement and the City shall have the right to: (i) recapture the Economic Development Incentives previously paid by the City to the Companies pursuant to Article IX, Section 4 below; (ii) terminate this Agreement by written notice to the Companies; and (iii) exercise

any remedy available to the City pursuant to the laws of the State of Texas, provided, however, the City shall not be entitled to the recovery of attorneys' fees. Upon the occurrence of a City Default, the Companies shall have the right to terminate this Agreement by written notice to the City and shall further have the right to exercise any remedy available to the Companies pursuant to the laws of the State of Texas, provided, however, the Companies shall not be entitled to the recovery of attorneys' fees.

4. Recapture of Economic Development Incentives. In the event of a Company Default, each of the Companies shall be jointly and severally liable to pay to the City, within thirty (30) days after written demand by 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 Companies in writing, the amount equal to fifty percent (50%) of the Economic Development Incentives previously paid by the City to the Companies under the terms of this Agreement plus interest at the rate equal to the *lesser* of: (a) the Maximum Lawful Rate; or (b) three percent (3%) per annum, such interest rate to be calculated on each Economic Development Incentive being recaptured from the date such Economic Development Incentive was paid by the City until the date repaid by any one or more of the Companies to the City and such interest rate shall adjust periodically as of the date of any change in the Maximum Lawful Rate. In the event the Companies fail to timely pay any sums due by the Companies pursuant to this Article IX, Section 4, the Companies shall be in breach of this Agreement and the City shall have the right, without further demand or notice to the Companies, to exercise any and/or all rights and/or remedies available to the City pursuant to the laws of the State of Texas including, without limitation, institution of a suit in a court of competent jurisdiction, to collect such sums from any one or all of the Companies.

5. Survival. All terms, provisions, agreements, covenants, conditions, obligations, rights and remedies of the City and the Companies pursuant to this Article IX shall expressly survive the expiration or termination of this Agreement.

ARTICLE X

Miscellaneous Provisions

1. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective successors and permitted assigns provided, however, notwithstanding anything contained herein to the contrary, this Agreement and the rights and obligations of ES and SLF may not be assigned or transferred by ES and/or SLF to any Person without the prior written consent of the City, which may be withheld in the City's sole discretion. The sale, transfer or assignment of a controlling interest in the shares of SLF or the sale, transfer or assignment of a controlling interest in the membership interests of ES shall constitute an assignment of this Agreement and the failure of ES and/or SLF, as applicable, to obtain the prior written consent of the City prior to such sale, transfer or assignment of such shares or membership interests shall be an attempted assignment of this Agreement in violation of this Agreement and shall constitute a breach of this Agreement by the Companies. Furthermore, neither ES, SLF nor any approved assignee or their legal representatives or successors in interest shall, by operation of law or otherwise, collaterally assign, mortgage, pledge, encumber or otherwise transfer any interest in any receivables under this Agreement or any part hereof, or the interest of the Companies or any approved assignee under this Agreement, without obtaining the City's prior written consent, which may be withheld in the City's sole discretion. Any consent by the City 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 bound by all the provisions, covenants, and conditions of this Agreement and shall be required to obtain the prior written consent of the City 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 of no force or effect.

2. Notices. Any notice and/or certificate or statement required or permitted to be given to any Party under the terms of this Agreement shall be in writing and shall be considered properly given if sent by United States electronically tracked certified mail, return receipt requested, in a postage paid envelope addressed to the respective Party at the following addresses or by delivery of the notice in person to the intended addressee by hand delivery or by a nationally recognized courier service having the ability to track shipping and delivery of notices including but not limited to services such as Federal Express or United Parcel Service (UPS). Notices mailed by certified mail as set forth above shall be effective one (1) business day after deposit in the United States mail. Notices sent by a nationally recognized courier service as set forth above shall be effective one (1) business day after deposit with the nationally recognized courier service. Notices 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:

If to: ES:

Elements Sleep, LLC
c/o Elements International Group, LLC
2250 Skyline Dr.,
Mesquite, TX 75149
Attn: Mike Wurster, President
Phone: (877) 575-3888
Facsimile: 972-692-7238
Email: mwurster@elementsgroup.com

with copies to:

Elements Sleep, LLC
c/o Elements International Group, LLC
2250 Skyline Dr.,
Mesquite, TX 75149
Attn: Richard Frankl, Chief Financial Officer
Phone: (877) 575-3888
Facsimile: 972-692-7238
Email: rfrankl@elementsgroup.com

and to:

C. Bruce Willis, II
Attorney & Counselor at Law
Musgrove Law Firm P.C.
10,000 N. Central Expressway, Ste. 1000
Dallas, Texas 75231
D: (214) 615-4237
T: (214) 615-4150
F: (214) 615-4151
E: bwillis@musgrovelaw.com

If to: SLF:

Style-Line Furn., Inc.
c/o Elements International Group, LLC
2250 Skyline Dr.,
Mesquite, TX 75149
Attn: Mike Wurster, President
Phone: (877) 575-3888
Facsimile: 972-692-7238
Email: mwurster@elementsgroup.com

with copies to:

Style-Line Furn., Inc.
c/o Elements International Group, LLC
2250 Skyline Dr.,
Mesquite, TX 75149
Attn: Richard Frankl, Chief Financial Officer
Phone: (877) 575-3888
Facsimile: 972-692-7238
Email: rfrankl@elementsgroup.com

and to:

C. Bruce Willis, II
Attorney & Counselor at Law
Musgrove Law Firm P.C.
10,000 N. Central Expressway, Ste. 1000
Dallas, Texas 75231
D: (214) 615-4237
T: (214) 615-4150
F: (214) 615-4151
E: bwillis@musgrovelaw.com

If to City:

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

with copies to:

City of Mesquite
1515 N. Galloway Ave.
Mesquite, Texas 75149
Attention: Director of Economic Development

and to:

City Attorney
City of Mesquite
1515 N. Galloway Ave.
Mesquite, Texas 75149

3. Right to Offset. The City shall have the right to offset any amounts due and payable by the City under this Agreement against any debt (including taxes) lawfully due and owing by ES and/or SLF to the City 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. The Parties hereby agree that 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 no 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 Companies. Oral revisions, modifications or amendments are not permitted.

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. 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). The Parties agree that venue of any suit to construe or enforce this Agreement shall lie exclusively in state courts in Dallas County, Texas.

10. **WAIVER OF CONSEQUENTIAL, PUNITIVE OR SPECULATIVE DAMAGES.** THE COMPANIES 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. ES and SLF each represent 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. ES represents that it has the full power and authority to enter into and fulfill its obligations under this Agreement and that the Person signing this Agreement on behalf of ES has the authority to sign this Agreement on behalf of ES. SLF represents that it has the full power and authority to enter into and fulfill its obligations under this Agreement and that the Person signing this Agreement on behalf of SLF has the authority to sign this Agreement on behalf of SLF.

18. Usury Savings Clause. The Companies and the City intend to conform strictly to all applicable usury laws. All agreements of the City and the Companies are hereby limited by the provisions of this Article X, Section 18 which shall override and control all such agreements, whether now existing or hereafter arising and whether written or oral. In no event shall any interest contracted for, charged, received, paid or collected under the terms of this Agreement exceed the Maximum Lawful Rate or amount of non-usurious interest that may be contracted for, taken, reserved, charged, or received under applicable law. If, from any possible development of any document, interest would otherwise be payable to City in excess of the Maximum Lawful Rate, any such construction shall be subject to the provisions of this Article X, Section 18 and such document shall be automatically reformed and the interest payable to the City shall be automatically reduced to the Maximum Lawful Rate, without the necessity of execution of any amendment or new document. If the City shall ever receive anything of value which is characterized

as interest under applicable law and which would apart from this provision be in excess of the Maximum Lawful Rate, an amount equal to the amount which would have been excessive interest shall at the option of the City be refunded to Companies or applied to the reduction of the principal amount owing under this Agreement or such document in the inverse order of its maturity and not to the payment of interest. The right to accelerate any indebtedness does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and City does not intend to charge or receive any unearned interest in the event of acceleration. All interest paid or agreed to be paid to the City shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term (including any renewal or extension) of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the Maximum Lawful Rate.

19. Non-Collusion. Each Company represents and warrants that neither the Company, nor anyone on the Company's behalf has given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any employee, agent, representative or official of the City as an inducement to or in order to obtain the benefits to be provided by the City under this Agreement.

20. Date for Performance. If the time period by which any act required hereunder must be performed falls on a Saturday, Sunday, legal or City holiday, then such time period shall be automatically extended through the close of business on the next regularly scheduled business day.

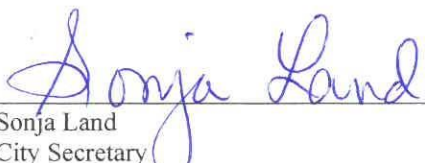
21. Form 1295 Certificate. Each Company agrees to comply with Texas Government Code, Section 2252.908 and in connection therewith, each Company agrees to go online with the Texas Ethics Commission to complete a Form 1295 Certificate and further agrees to print the completed certificate and execute the 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 Agreement, a duly executed completed Form 1295 Certificate.

22. Execution of Agreement by Parties. If this Agreement is not executed by the Companies and the City on or before April 2, 2021, this Agreement will be null and void and of no force or effect.

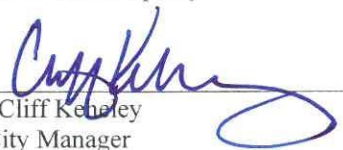
23. Time is of the Essence. THE PARTIES SPECIFICALLY AGREE THAT TIME IS OF THE ESSENCE OF EACH AND EVERY PROVISION OF THIS AGREEMENT AND EACH PARTY HEREBY WAIVES ANY RULE OF LAW OR EQUITY WHICH WOULD OTHERWISE GOVERN TIME OF PERFORMANCE.

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.

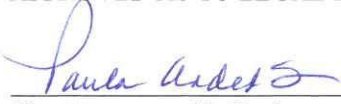
ATTEST:

By: 
Sonja Land
City Secretary
Date: 2.2.21


CITY OF MESQUITE,
a Texas home rule municipality

By: 
Name: Cliff Kenaley
Title: City Manager
Date: 2.2.21

APPROVED AS TO LEGAL FORM:



City Attorney or his Designee

ELEMENTS SLEEP, LLC,
a Texas limited liability company

By: 
Name: Michael Wurster
Title: Manager

Date: February 1st, 2021

STYLE-LINE FURN., INC.,
a Mississippi corporation

By: 
Name: Michael Wurster
Title: Secretary

Date: February 1st, 2021