

RESOLUTION NO. 07-2022

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, APPROVING A SECOND AMENDMENT TO AN ECONOMIC DEVELOPMENT PROGRAM AGREEMENT (CHAPTER 380 AGREEMENT) BETWEEN THE CITY OF MESQUITE (“CITY”) AND ASHLEY FURNITURE INDUSTRIES, LLC, AS ASSIGNEE OF ASHLEY FURNITURE INDUSTRIES, INC. (“COMPANY”), TO PROVIDE INCREASED INCENTIVES FOR INCREASED DEVELOPMENT AND EMPLOYMENT BY COMPANY; AND AUTHORIZING THE CITY MANAGER TO FINALIZE, EXECUTE AND ADMINISTER THE SECOND AMENDMENT AND TO TAKE ALL ACTIONS NECESSARY OR ADVISABLE TO COMPLETE THE TRANSACTIONS CONTEMPLATED BY THE SECOND AMENDMENT.

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, 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 “**Original Agreement**”), 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 “**Property**”); and

WHEREAS, on November 4, 2019, by Resolution No. 75-2019, the City Council adopted an Amendment to the Original Agreement regarding the Company’s acquisition of Interurban Railway property from the City (hereinafter referred to as the “**First Amendment**”) (the Original Agreement and First Amendment are collectively referenced herein as the “**Agreement**”); and

WHEREAS, Ashley Furniture Industries, Inc., as a result of a reorganization, assigned the Agreement to Ashley Furniture Industries, LLC, a Wisconsin limited liability corporation (the “**Company**”); and

WHEREAS, the Company has presented the City with a Second Amendment to the Agreement, a copy of said amendment being attached hereto as Exhibit A and incorporated herein by reference for all purposes (the “**Second Amendment**”); and

WHEREAS, instead of and in place of completing Phase 2 as provided in the Original Agreement which required an additional 300,000 square feet of enclosed building improvements and 100 new employees, the Company now desires to construct a minimum of not less than

700,000 of additional square feet of enclosed building improvements on the Property, making minimum expenditures of \$45,000,000.00 and add a minimum of 450 additional new employees for the new Phase 2; and

WHEREAS, instead of and in place of the Phase 2 incentives provided in the Original Agreement which are reimbursement of 60% of all ad valorem taxes for a 10-year period and wavier of all development fees excluding impact fees, the City now desires to provide incentives of 70% of all ad valorem taxes for a 10-year period and waiver of all development fees excluding impact fees; and

WHEREAS, the City would like to encourage the development of the Property by granting certain economic development incentives to the Company as provided in the Second Amendment; and

WHEREAS, development of the Property will increase the taxable value of the Property thereby adding value to the City's tax rolls and increasing the ad valorem property taxes and sale taxes to be collected by the City, along with increasing employment opportunities in the City; and

WHEREAS, after holding a public hearing and upon full review and consideration of the Second Amendment and all matters attendant and related thereto, the City Council is of the opinion that the Second Amendment 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 Second 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 Second Amendment as part of the Program whereby, subject to the terms and conditions of the Second Amendment, the City will provide economic development incentives to the Company and take other specified actions as more fully set forth in the Second Amendment in accordance with the terms and subject to the conditions outlined in the Second Amendment.

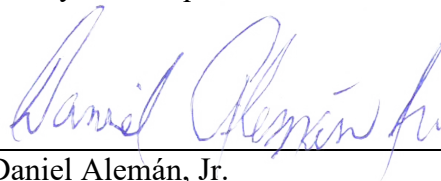
SECTION 4. That the City Council finds that the Second Amendment is acceptable and hereby approves the Second Amendment.

SECTION 5. That the City Manager is hereby authorized to finalize and execute the Second Amendment and to take all actions necessary or advisable to complete the transactions contemplated by the Second Amendment.

SECTION 6. That the City Manager is further hereby authorized to administer the Second Amendment 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 Second Amendment; (ii) approve amendments to the Second Amendment provided such amendments, together with all previous amendments approved by the City Manager, do not increase City expenditures under the Second Amendment in excess of \$50,000; (iii) approve or deny any matter in the Second Amendment that requires the consent of the City provided, however, notwithstanding the foregoing, any assignment of the Second Amendment that requires the consent of the City pursuant to the terms of the Second Amendment 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 Second Amendment; (v) exercise any rights and remedies available to the City under the Second Amendment; and (vi) execute any notices, amendments, approvals, consents, denials and waivers authorized by this Section 6 provided, however, notwithstanding anything contained herein to the contrary, the authority of the City Manager pursuant to this Section 6 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.

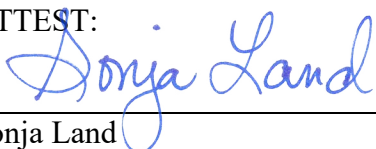
SECTION 7. That the sections, paragraphs, sentences, clauses and phrases of this resolution are severable and, if any phrase, clause, sentence, paragraph or section of this resolution should be declared invalid, illegal or unenforceable by the final judgment or decree of any court of competent jurisdiction, 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 18th day of January 2022.



Daniel Alemán, Jr.  
Mayor

ATTEST:



Sonja Land  
City Secretary

APPROVED AS TO LEGAL FORM:



David L. Paschall  
City Attorney

**EXHIBIT A**

**SECOND AMENDMENT TO AN  
ECONOMIC DEVELOPMENT PROGRAM AGREEMENT  
(CHAPTER 380 AGREEMENT)**

**BETWEEN**

**THE CITY OF MESQUITE, TEXAS,**

**AND**

**ASHLEY FURNITURE INDUSTRIES, LLC,**

**AS ASSIGNEE OF ASHLEY FURNITURE INDUSTRIES, INC.**

**CITY OF MESQUITE, TEXAS  
AND  
ASHLEY FURNITURE INDUSTRIES, LLC**

**SECOND AMENDMENT  
TO  
CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT**

This **SECOND AMENDMENT TO CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT** (hereinafter referred to as the “**Second Amendment**”) is made and entered into by and between the **CITY OF MESQUITE, TEXAS**, a Texas home-rule municipality (hereinafter referred to as the “**City**”), and **ASHLEY FURNITURE INDUSTRIES, LLC**, a Wisconsin limited liability company, f/k/a Ashley Furniture Industries, Inc. (hereinafter referred to as the “**Company**”):

**RECITALS:**

**WHEREAS**, on or about May 5, 2017, the City and Ashley Furniture Industries, Inc. entered into the original Economic Development Program Agreement (hereinafter referred to as the “**Original Agreement**”) regarding the economic development assistance to construct and operate the approximately 850,000 square foot facility located on approximately 358 acres of land being commonly known as 3790 Faithon P. Lucas Sr. Boulevard, within the City of Mesquite, Dallas County, Texas (the “**Land**”); and

**WHEREAS**, on or about November 27, 2019, the City and Ashley Furniture Industries, Inc. entered into the Amendment to Economic Development Program Agreement regarding the Company’s acquisition of Interurban Railway property from the City (hereinafter referred to as the “**First Amendment**”) (the Original Agreement and First Amendment are collectively referenced herein as the “**Agreement**”); and

**WHEREAS**, on or about December 18, 2020 Ashley Furniture Industries, Inc., a Wisconsin corporation, filed a Certificate of Conversion with the Department of Financial Institutions of the State of Wisconsin requesting conversion of its entity form from a business corporation to a limited liability company which was endorsed and approved on or about December 26, 2020; and

**WHEREAS**, Article VI, Section 11 of the Original Agreement, entitled “Phase 2 and Phase 3 Expansion of Mesquite Facility” required the Company to construct a minimum of 300,000 of additional square feet of enclosed building improvements on the Land for both Phase 2 and Phase 3 and receive a certificate of occupancy for each Phase before the expiration of the Incentive Period-Phase 2 and Incentive Period-Phase 3, and add a minimum of 100 New Employees for both Phase 2 and Phase 3; and

**WHEREAS**, instead of and in place of completing Phase 2 as provided in the Original Agreement, the Company now desires to construct a minimum of 700,000 of additional square feet

of enclosed building improvements on the Land and receive a certificate of occupancy and add a minimum of 450 additional New Employees for the new Phase 2 as provided herein; and

**WHEREAS**, the City and Company now desire to amend Article IV, Section 2, Article VI, Section 11, and Article VIII, Section 12 of the Original Agreement as follows: (1) increase the Phase 2 Term from December 31, 2028, to December 31, 2033; increase the Phase 2 additional square feet of enclosed building improvements from 300,000 square feet to a minimum of 700,000 square feet, and increase the New Employees requirement from 100 to 450 New Employees while reducing the mean and median salary requirement from \$43,577.00 to an average of \$31,333.00; and increase the Phase 2 City ad valorem tax reimbursement from 60% to 70%; and

**WHEREAS**, all capitalized terms used in this Second Amendment, to the extent not otherwise expressly defined herein, shall have the meanings ascribed to them in the Agreement; and

**WHEREAS**, the City possesses the legal and statutory authority under Chapter 380 of the Texas Local Government Code to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the City of Mesquite, Texas; and

**WHEREAS**, the City has determined that a grant of funds to the Company will serve the public purpose of promoting local economic development, with the development and diversification of the economy of the State and City, will eliminate unemployment and underemployment in the State and City, and will enhance business and commercial activity within the City of Mesquite, Texas; and

**WHEREAS**, the City has concluded and hereby finds that this Second Amendment clearly promotes economic development in the City of Mesquite, Texas, and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code, and further, is in the best interests of the City and the Company; and

**WHEREAS**, the City has concluded and hereby finds that this Second Amendment clearly promotes economic development in the City of Mesquite, Texas, and, as such, meets the requirements of Article III, Section 52-a of the Texas Constitution by assisting in the development and diversification of the economy of the State, by eliminating unemployment or underemployment in the State, and by the development or expansion of commerce within the State.

**NOW, THEREFORE**, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Company agree as follows:

**SECTION 1. FINDINGS INCORPORATED.**

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



parties.

**SECTION 2. AMENDMENT TO ORIGINAL AGREEMENT AND AMENDMENTS.**

- (a) **Amendment to Original Agreement and Amendments.** That Article II of the Original Agreement is hereby amended by adding a new definition "**Building - Phase 2**" which shall read as follows:

"**Building - Phase 2**' shall mean a state-of-the-art manufacturing facility constructed on the Land by the Company which shall contain enclosed building improvements consisting of a minimum of 700,000 square feet of manufacturing space."

- (b) **Amendment to Original Agreement and Amendments.** That Article II of the Original Agreement is hereby amended by adding a new definition "**Impact Fees**" which shall read as follows:

"**Impact Fees**' shall mean the sewer impact fees, water impact fees and roadway impact fees charged by the City to the Company pursuant to the City's Impact Fee Ordinance Nos. 4366 and 4756, as now and hereafter amended."

- (c) **Amendment to Original Agreement and Amendments.** That Article II of the Original Agreement is hereby amended by adding a new definition "**Required Jobs - Phase 2**" which shall read as follows:

"**Required Jobs - Phase 2**' shall mean not less than four hundred fifty (450) jobs for New Employees at the Mesquite Facility, which group of New Employees have (i) been hired and are working at the Facility and (ii) the mean of which group, in the aggregate, has a total payroll of not less than fourteen million one hundred thousand (\$14,100,000), based on annualized New Employee Wages, as measured on **December 31, 2024.**"

- (d) **Amendment to Original Agreement and Amendments.** That Article IV, Section 2 of the Original Agreement, entitled "Phase 2 Term," is hereby amended to read as follows:

"2. **Phase 2 Term.** If the Company notifies the City in writing, on or before **July 15, 2023**, that it will proceed with the Phase 2 expansion of the Mesquite Facility described in Section 11 a. of Article VI of this Agreement ("**Phase 2 Notice**") then and in this event the terms and conditions of this Agreement that relate to the Company's right to receive those additional incentives described in Section 12 of Article VIII of this Agreement ("**Phase 2 Additional Incentives**") along with the Company's obligations under this Agreement that are directly related to its being entitled to receive the Phase 2 Additional Incentives shall be in full force and effect from the date the Company gives the City the Phase 2 Notice and shall continue until **December 31, 2033**, unless sooner terminated as provided herein (the "**Phase 2 Term**")."

- (e) **Amendment to Original Agreement and Amendments.** That Article VI, Section 11 of the Original Agreement, entitled “Phase 2 and Phase 3 Expansion of Mesquite Facility,” is hereby amended to read as follows:

- “11. **Phase 2 and Phase 3 Expansion of Mesquite Facility.** The Company shall be eligible for Additional Economic Development Incentives at Company’s sole election, upon the construction and receipt of a certificate of occupancy for the sequential expansion of the Mesquite Facility if each Phase satisfies the following:
- a. Phase 2 - A minimum of 700,000 of additional square feet of enclosed building improvements receiving a certificate of occupancy by **September 30, 2023**, and not less than 450 New Employees by **September 30, 2024**. The Company will make expenditures in the amount of at least FORTY-FIVE MILLION AND NO/100 DOLLARS (\$45,000,000.00) consisting of THIRTY-FOUR MILLION AND NO/100 DOLLARS (\$34,000,000.00) in real property and ELEVEN MILLION AND NO/100 DOLLARS (\$11,000,000.00) in business personal property. The Company agrees to receive a certificate of occupancy for the Phase 2.
  - b. Phase 3 - Not less than 300,000 of additional square feet of enclosed building improvements receiving a certificate of occupancy before the expiration of the Incentive Period-Phase 3 and not less than 100 New Employees.”

- (f) **Amendment to Original Agreement and Amendments.** That Article VIII, Section 12 of the Original Agreement, entitled “Additional Economic Development Incentives for Phase 2 and Phase 3,” is hereby amended to read as follows:

12. **Additional Economic Development Incentives for Phase 2 and Phase 3.** Provided the Condition Precedent set forth in Section 7 of Article VII of this Agreement has been satisfied and the Company has received a Certificate of Occupancy for the Building - Phase 2 by **September 30, 2023**, and satisfy the Required Jobs - Phase 2 by **September 30, 2024**, the Company shall receive reimbursement of equivalent ad valorem payments for those amounts of City ad valorem taxes representing the increase in taxable value over the taxable value of the Phase 1 (or Phase 1 and Phase 2, as the case dictates) real property improvements and Business Personal Property as computed from the immediately prior Tax Year for the Tax Year in which the respective phase receives its certificate of occupancy from the City. The period of reimbursement shall be 10 years for each respective phase. The percentage of reimbursed amounts shall be 70% of the increased value for Phase 2 and 70% of the increased value for Phase 3. In addition, if the Company elects to proceed with Phase 2 or Phase 3 or both Phase 2 and Phase 3 the City shall grant a waiver, for the Phase 2 and/or Phase 3 project as described in Section 11 of Article VI of this Agreement, of all fees imposed by the City required for planning, constructing, and



operating the Phase 2 and/or Phase 3 projects, including but not limited to development permit fees, plan review fees, building permit fees and inspection fees for the construction of the Phase 2 and/or Phase 3 project referred to in Section 11 of Article VI of this Agreement. The waivers in the foregoing sentence expressly exclude the payment of Impact Fees under applicable City codes and ordinances.”

### SECTION 3. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Second Amendment:

- (a) **Amendments.** This Second Amendment constitutes the entire understanding and agreement of the parties as to the matters set forth in this Second Amendment. No alteration of or amendment to this Second Amendment shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Second Amendment shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Dallas County, Texas. Venue for any action arising under this Second Amendment shall lie in the state district courts of Dallas County, Texas.
- (c) **Assignment.** Neither Party shall have the right to assign its rights and/or obligations under this Second Amendment, or any interest herein, without the prior written consent of the other Party.
- (d) **Binding Obligation.** This Second Amendment shall become a binding obligation on the signatories upon execution by all signatories hereto. City warrants and represents that the individual executing this Second Amendment on behalf of City has full authority to execute this Second Amendment and bind City to the same. Company warrants and represents that the individual executing this Second Amendment on Company’s behalf has full authority to execute this Second Amendment and bind it to the same.
- (e) **Caption Headings.** Caption headings in this Second Amendment are for convenience purposes only and are not to be used to interpret or define the provisions of the Second Amendment.
- (f) **Counterparts.** This Second Amendment may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (g) **Effective Date.** The effective date (the “Effective Date”) of this Second Amendment shall be the date of the latter to execute this Second Amendment by the City and Company.
- (h) **Original Agreement and First Amendment.** All of the terms, conditions, and obligations of the Original Agreement, First Amendment, and any other amendments remain in full force and effect except where specifically modified by this Second Amendment.

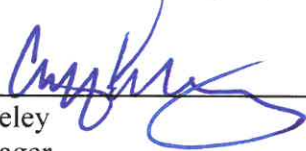
- (i) **Severability.** The provisions of this Second Amendment are severable. If any paragraph, section, subdivision, sentence, clause, or phrase of this Second Amendment is for any reason held by a court of competent jurisdiction to be contrary to law or contrary to any rule or regulation have the force and effect of the law, the remaining portions of the Second Amendment shall be enforced as if the invalid provision had never been included.
- (j) **Time is of the Essence.** Time is of the essence in the performance of this Second Amendment.
- (k) **Non-Boycott of Israel Provision.** In accordance with Chapter 2270 of the Texas Government Code, a Texas governmental entity may not enter into an agreement with a business entity for the provision of goods or services unless the agreement contains a written verification from the business entity that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement. Chapter 2270 of the Texas Government Code does not apply to a (1) a company that is a sole proprietorship; (2) a company that has fewer than ten (10) full-time employees; or (3) the contract has a value of less than One Hundred Thousand Dollars (\$100,000.00). Unless Company is not subject to Chapter 2270 of the Texas Government Code for the reasons stated herein, the signatory executing this Second Amendment on behalf of Company verifies that Company does not boycott Israel and will not boycott Israel during the Term of this Second Amendment.
- (l) **Prohibition on Contracts with Certain Companies Provision.** In accordance with Section 2252.152 of the Texas Government Code, the Parties covenant and agree that Company is not on a list maintained by the State Comptroller's office prepared and maintained pursuant to Section 2252.153 of the Texas Government Code.
- (m) **Report Second Amendment to Comptroller's Office.** City covenants and agrees to report this Second Amendment to the State Comptroller's office within fourteen (14) days of the Effective Date of this Second Amendment, in accordance with Section 380.004 of the Texas Government Code, as added by Texas House Bill 2404, 87<sup>th</sup> Tex. Reg. Session (2021) (effective September 1, 2021).
- (n) **Verification Against Discrimination of Firearm or Ammunition Industries.** Pursuant to Texas Government Code Chapter 2274, (as added by Texas Senate Bill 19, 87<sup>th</sup> Tex. Reg. Session (2021) (effective September 1, 2021)) unless otherwise exempt, if the Company employs at least ten (10) fulltime employees and this Second Amendment has a value of at least \$100,000 that is paid wholly or partly from public funds of the City, the Company represents that: (1) the Company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) the Company will not discriminate during the Term of the Second Amendment against a firearm entity or firearm trade association.

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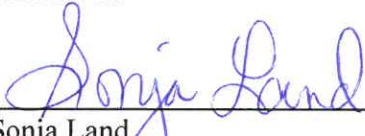
IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed.

**CITY:**

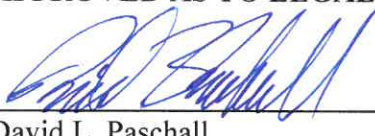
**CITY OF MESQUITE, TEXAS,**  
A Texas home-rule municipality

  
\_\_\_\_\_  
Cliff Keheley  
City Manager

**ATTEST:**

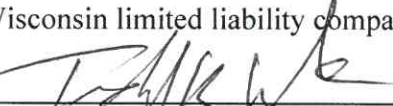
  
\_\_\_\_\_  
Sonja Land  
City Secretary

**APPROVED AS TO LEGAL FORM:**

  
\_\_\_\_\_  
David L. Paschall  
City Attorney

**COMPANY:**

**ASHLEY FURNITURE INDUSTRIES, LLC,**  
A Wisconsin limited liability company,

By:   
\_\_\_\_\_  
Todd R. Wanek, its President & CEO

Date Signed: 1/31/22