COURT ORDER 2022-0204

Authorize the provision of a ten-year 35% abatement on real property increases to Ashley Furniture LLC., for the construction of a new furniture manufacturing facility in Dallas County, specifically in the City of Mesquite, adjacent to Ashley Furniture Industries existing facilities, effective no later than January 1, 2024.

On a motion made by Commissioner Dr. Elba Garcia, and seconded by Commissioner JJ Koch, the following order was passed and adopted by the Commissioners Court of Dallas County, State of Texas:

BRIEFING DATE: February 15, 2022

Be it resolved and ordered that the Dallas County Commissioners Court does hereby authorize the provision of a ten-year, 35% abatement on real property increases to Ashley Furniture Inc., for the construction of a new furniture manufacturing facility in Dallas County, effective no later than January 1, 2024. This authorization is subject to the firm creating at least 400 new full-time-equivalent jobs starting in 2024, with the average salary of these jobs being at least $33,200; annually maintaining at least 450 new full-time-equivalent jobs starting in 2025, with the average salary of these jobs being at least $33,200; and increasing the County's tax base by at least $32 million. It is further resolved and ordered that the County Judge is authorized to sign the related tax abatement agreement which shall govern the provision of this abatement.

Done in open Court February 15, 2022 by the following vote:

IN FAVOR:	County Judge Clay Jenkins, Commissioner Dr. Theresa Daniel, Commissioner JJ Koch, Commissioner John Wiley Price, and Commissioner Dr. Elba Garcia
OPPOSED:	None
ABSTAINED:	None
ABSENT:	None

L-40

Dallas County

BRIEFING / COURT ORDER

Commissioners Court - Feb 15 2022

☐ Resolution
☐ Solicitation/Contract
☐ Executive Session
☐ Addendum

Authorize the provision of a ten-year 35% abatement on real property increases to Ashley Furniture LLC., for the construction of a new furniture manufacturing facility in Dallas County, specifically in the City of Mesquite, adjacent to Ashley Furniture Industries existing facilities, effective no later than January 1, 2024.

Briefing Date:	Feb 15 2022
Funding Source:	
Originating Department:	Planning and Development
Prepared by:	Luis Tamayo, Planning and Development Director
Recommended by:	Luis Tamayo, Planning and Development Director

BACKGROUND INFORMATION:

Ashley Furniture Inc., is considering an expansion to their Dallas County furniture operations. To help facilitate this manufacturing project, development staff has proposed a ten-year 35% abatement on real property increases. Ashley Furniture, also having received an assistance commitment from the City of Mesquite, is now prepared to expand their manufacturing facilities in Dallas County and has requested that the County formally authorize the proposed abatement.

OPERATIONAL IMPACT:

The manufacturing facility proposed by Ashley Furniture Inc., is considered to be a facility expansion project under the County's abatement policy. As such, the project must increase the County's tax base by at least $32 million and increase employment by 400 new jobs within three years to be eligible. This project is anticipated to achieve both goals by January 1, 2024.

FINANCIAL IMPACT:

It is estimated that, over the life of the proposed abatement, the County would abate, on average, approximately $29,267 a year in tax revenue that does not presently exist. The County would receive, on average $83,621 per year in new revenue that it might not otherwise receive.

The project would increase the estimated total amount of property that the County would abate in tax year 2024 from approximately $804 million to $836 million. The impact of increase will not significantly change the estimated total percentage of the County's tax base that would be abated in 2024, currently projected to remain at 0.31%. This percentage is near the historical average, and on the low end of the range of a high of 1% in 2006 to a low of 0.13% in 2020.

PROJECT SCHEDULE:

Under this abatement request, Ashley Furniture, Inc., would build a new furniture manufacturing facility located adjacent to their existing facility in Mesquite, located at 4000 East Scyene Road. The project would phase-in employment, where starting in 2024, Ashley Furniture would create and maintain 400 new jobs then adding 50 new positions for a total of 450 new jobs by January 1, 2025.

The average wage of the new positions would be $33,200 annually. Additionally, this project will increase the County's tax base by at least $32 million.

SBE PARTICIPATION:

SBE information pertaining to CBRE is provided to the Court under separate cover.

ADMINISTRATIVE PLAN COMPLIANCE:

The County's administrative plan recommends that the County undertake activities which will allow it to become the destination of choice for businesses and residents. Facilitating the expansion of an existing furniture manufacturing facility is consistent with this plan.

RECOMMENDATION:

Authorize the provision of a ten-year 35% abatement on real property increases for Ashley Furniture Inc., for the construction of a new furniture manufacturing facility in Dallas County.

MOTION:

On a motion made by TBD, and seconded by TBD, the following order will be voted on by the Commissioners Court of Dallas County, State of Texas:

Be it resolved and ordered that the Dallas County Commissioners Court does hereby authorize the provision of a ten-year, 35% abatement on real property increases to Ashley Furniture Inc., for the construction of a new furniture manufacturing facility in Dallas County, effective no later than January 1, 2024. This authorization is subject to the firm creating at least 400 new full-time-equivalent jobs starting in 2024, with the average salary of these jobs being at least $33,200; annually maintaining at least 450 new full-time-equivalent jobs starting in 2025, with the average salary of these jobs being at least $33,200; and increasing the County's tax base by at least $32 million. It is further resolved and ordered that the County Judge is authorized to sign the related tax abatement agreement which shall govern the provision of this abatement.

ATTACHMENTS:

Ashley Furniture - Tax Abatement Agreement [UPDATED FINAL EXECUTION VERSION 2.3.2022 w Exh B-signed by AF, LT and DACiv]
2022-0126 - Tax Abatement Court Order

ASHLEY FURNITURE TAX ABATEMENT AGREEMENT

STATE OF TEXAS §

COUNTY OF DALLAS §

This Ashley Furniture Tax Abatement Agreement ("*Agreement*") is made and entered into as of the 15th day of February, 2022, by and between Dallas County, Texas ("*County*"), a political subdivision of the State of Texas duly acting by and through its Commissioners Court, and Ashley Furniture Industries, LLC, a Wisconsin Limited Liability Corporation, ("*Owner*"), duly acting by and through its authorized officers for the purposes and considerations stated below. The County and Owner may be referred to individually as a "*Party*" or collectively as "*Parties*".

WITNESSETH:

WHEREAS, the County has adopted a Tax Abatement Policy ("*Policy*"), by the passage of Dallas County Commissioners Court Order 2022-0126 on the 1st day of February, 2022, that contains the guidelines and criteria used to determine the provision of tax abatement assistance from the County authorized under the Property Redevelopment and Tax Abatement Act, Chapter 312 of the Texas Tax Code, as amended, and Chapter 381 of the Texas Local Government Code;

WHEREAS the County's current Tax Abatement Policy is attached as **Exhibit "A"** hereto;

WHEREAS, the Owner owns and maintains certain real property within Dallas County, Texas generally located at 4000 East Scyene Road in Mesquite, Texas;

WHEREAS, Owner anticipates undertaking certain Economic Activity (as hereafter defined) on or about the Property (as hereinafter defined), including, without limitation, (i) construction and use of site Improvements (as hereinafter defined) for the purpose of operating a furniture manufacturing facility; (ii) generation and retention of employment opportunities at or related to the Property as more particularly described herein; and (iii) making certain Improvements and Business Personal Property (hereinafter defined) investments with respect to the Property, and the County finds that the other terms hereof are consistent with encouraging development in accordance with Court Order 2022-0126 and 2022-_____ , Chapter 381 of the Texas Local Government Code, and all other applicable laws; and

WHEREAS, the County finds that the Owner's contemplated construction of the Improvements on the Property and Owner's anticipated use of the Property, the contemplated generation and retention of employment opportunities at or related to the Property, and the contemplated real property Improvements and Business Personal Property investments on or about the Property are feasible and practical and will be of significant benefit to the County and its citizens; and

WHEREAS, the County finds that the terms of this Agreement and the Property and proposed investments, as hereinafter described, meet the applicable guidelines and criteria of the Policy; and

WHEREAS, Court Orders 2022-0126 and 2022-0204 authorize the County to enter into this Agreement with the Owner.

NOW THEREFORE, the County, for good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, which consideration includes the attraction of new investment and increased job generation that contributes to the economic development of the County and the enhancement of the County's tax base; and the Owner, for good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, which consideration includes the tax abatement set forth herein below, as authorized by Court Orders 2022-0126 and 2022-0204 do hereby contract, covenant, and agree as follows:

SECTION I.
DEFINITIONS

Wherever used in this Agreement, the following capitalized terms shall have the meanings set forth below:

1. "*Base Value*" shall mean the appraised value of the Property and the Business Personal Property as determined by Dallas Central Appraisal District ("DCAD") as of January 1, 2021.

2. "*Business Personal Property*" shall include all personal property, including any equipment or machinery characterized as fixtures, owned or leased by Owner located on or re-located to the Property used in connection with operation of the Improvements and for which Owner is responsible for paying any applicable property taxes, but excluding any business personal property that is exempt from ad valorem taxation as Freeport goods pursuant to Section 11.251 of the Texas Tax Code and Article VIII, Section 1-j of the Texas Constitution.

3. "*Economic Activity*" shall mean the following acts undertaken by or on behalf of Owner: (i) construction of the Improvements and use of the Improvements as a furniture manufacturing facility; (ii) Owner's creation of 400 Full-Time Permanent Positions (as hereinafter defined) and/or Full-Time Equivalent Permanent Positions (as hereinafter defined) to be located on the Property, such creation of employment opportunities being more particularly described in the Job Creation Requirement set forth below, by January 1, 2024 with this number increasing to 450 by January 1, 2025; and (iii) the investment of funds with regard to certain real property Improvements and Business Personal Property located on or relocated to the Property or used in connection with the Owner's operations on the Property.

4. "*Eligible Business Personal Property Value*" shall mean the value, as annually established by DCAD, of all of Owner's Business Personal Property, excluding any Freeport-eligible inventory, within the Property less the Business Personal Property's Base Value, as defined herein and as established by DCAD.

5. "*Eligible Real Property Value*" shall mean the value, as annually established by DCAD of all Property and Improvements within the Property less the Property's Base Value, as defined herein and as established by DCAD.

6. "*Improvements*" shall mean those certain improvements constructed or to be constructed on or about the Property. The Improvements shall be used in connection with the Economic Activity undertaken by Owner.

7. "*Job Creation Requirement*" shall refer to the Owner's agreement to annually employ an aggregate number of a minimum of 400 persons in Full-Time Permanent Positions (as defined herein) and/or Full-Time Equivalent Permanent Positions (as defined herein), at an average annual salary of THIRTY THREE THOUSAND TWO HUNDRED DOLLARS ($33,200.00), to be located on or based out of the Property, beginning as of January 1, 2024 and, then beginning January 1, 2025, annually employ an aggregate number of a minimum of 450 persons in Full-Time Permanent Positions and/or Full-Time Equivalent Permanent Positions with an average salary of THIRTY THREE THOUSAND TWO HUNDRED DOLLARS ($33,200.00), to be located on or based out of the Property, and being maintained thereafter for the remainder of the Tax Abatement.

8. "*Owner*" shall mean and refer to the parties to this Agreement who are the respective owners from time to time of the Property and Business Personal Property that is subject to tax abatement hereunder and any Successor Entity.

9. "*Property*" shall mean that land physically located at 4000 East Scyene Road in Mesquite, Texas and legally described and generally depicted in **Exhibit "B",** attached hereto and incorporated by reference. The County relies on the attached Exhibit "B", provided by Owner to be a full, complete and accurate legal description of said parcel(s), and to the extent that said description might exceed said parcel(s), it is excluded from any abatement provided for hereunder.

10. "*Successor Entity*" shall mean (i) any entity which is a successor or assign to the Owner by merger, consolidation, assignment reorganization or otherwise; or (ii) a purchaser of all or substantially all of the Owner's assets.

SECTION II.
GENERAL PROVISIONS

1. The County has adopted guidelines and criteria governing tax abatement agreements such that it is authorized to enter into this Agreement.

2. The Property is not located in an improvement project financed by tax increment bonds.

3. This Agreement is entered into subject to the rights of the holders of outstanding bonds of the County.

4. The Property is not owned or leased by any member of the Dallas County Commissioners Court.

5. The Owner represents that it owns the Property and intends to construct the Improvements thereon, and locate Business Personal Property on the Property.

6. Owner covenants and agrees that the construction of the Improvements and use of the Property and Business Personal Property subject to this Agreement will be in accordance with and will comply with all applicable federal, state, and local laws, statutes, ordinances, and regulations including all federal and state laws relating to nondiscrimination, including but not limited to, Title VI of the Civil Rights Act of 1964, as amended.

7. During the Tax Abatement Period (hereinafter defined), Owner shall be subject to all County taxation not specifically abated or exempted.

8. Owner, shall have the right to protest and/or contest DCAD appraisals of the Property, the Improvements located upon the Property and/or Business Personal Property over and above the respective Base Value of the Property, the Improvements located upon the Property and/or the Business Personal Property, as the case may be, under the procedures in place by the Tax Code of the State of Texas. The Tax Abatement (as hereinafter defined) shall be applied to the amount of taxes finally determined by DCAD to be due as a result of any such protest and/or contest by Owner.

SECTION III.
RATE AND CONDITIONS OF TAX ABATEMENT

1. Owner, shall receive the Real Property Tax Abatement (hereinafter defined) upon satisfaction of the conditions set forth in Section III(1)(a)-(d) below. For purposes of this Agreement, the Real Property Tax Abatement shall be referred to herein as the "*Tax Abatement*". Owner shall receive a thirty-five percent (35%) abatement of the taxes assessed on the Eligible Real Property Value (the "*Real Property Tax Abatement*") from the County for each qualifying year during the Tax Abatement Period subject to the terms of this Agreement.

   (a) Owner shall construct and/or have constructed the Improvements on the Property for the purpose of operating a furniture manufacturing facility and shall use the Property for such purposes.

   (b) The sum of the Eligible Real Property Value and Eligible Business Personal Property Value by January 1 of each year during the Tax Abatement Period, as determined by DCAD, shall be at least equal to THIRTY-TWO MILLION DOLLARS ($32,000,000.00) above the Base Value ("*Value Condition*").

   (c) The Owner shall file or cause to be filed the annual exemption application (the "*Exemption Application*") forms with DCAD for the Real Property Tax Abatement that the Owner believes it is eligible to receive under this Agreement.

   (d) Owner shall comply with the Job Creation Requirement. Employment positions applied toward satisfaction of the Job Creation Requirement shall include Full-Time Permanent Positions or Full-Time Equivalent Permanent Positions (as such terms are hereinafter defined). A Full-Time Permanent Position means a "position for which an individual is scheduled to work at least 1800 hours in a twelve-month period for Owner, its subsidiaries, or its affiliates as an employee." A Full-Time Equivalent Permanent Position means "two or more part-time positions filled by individuals working with or for Owner, its subsidiaries, or its affiliates a combined total of at least 35 hours per week as an employee" which shall be counted as one Full-Time Equivalent Permanent Position.

SECTION IV.
ABATEMENT PERIODS

The Tax Abatement provided under this Agreement is for a period of ten (10) years and will begin no later than January 1, 2024 (the "*Tax Abatement Period*"). Owner and the County shall have no further obligations under this Agreement upon expiration of the Tax Abatement Period, except as otherwise provided herein.

SECTION V.
RECORDS AND AUDITS

1. No later than March 31 of the first year that this Tax Abatement goes into effect and January 31 of each applicable year thereafter during the Tax Abatement Period, Owner shall submit to the County in writing, a certification as to the number of Full-Time Permanent Positions and Full-Time Equivalent Permanent Positions that are located on or based out of the Property as of January 1 of such year.

2. At all times throughout the Tax Abatement Period, the County shall have reasonable access during normal business hours to the Property by County employees (upon at least one-week's prior written notice to the Owner) for the purpose of inspecting same to ensure that the Property is being used for the required Economic Activity in accordance with the specifications and conditions of this Agreement; provided that the Owner shall have the right to accompany County employees on any such inspection. In no event shall such inspections interfere with Owner's ownership and operation of the Property.

3. The Property at all times during the Tax Abatement Period shall be used in a manner consistent with Court Orders 2022-0126 and 2022-0204 and shall be consistent with the general purpose of encouraging economic development within the County.

SECTION VI.
DEFAULT

1. Subject to the cure provisions of this Section VI, a default under this Agreement occurs in the event that the Owner: (i) allows its ad valorem real property taxes and/or tangible business personal property taxes owed to the County from the Property associated with this Agreement as well as from other property the Owner may own within the County to become delinquent during the Tax Abatement Period and fail to timely and properly follow the legal procedures for protest and/or contest of any such taxes; (ii) fails to file an annual Exemption Application; (iii) fails to meet the Value Condition for each relevant year; (iv) fails to comply with the Job Creation Requirement during the Tax Abatement Period; (v) is convicted of a violation under 8 USC Section 1324a(f); or (vi) fails to comply with any of the terms or conditions set forth in this Agreement. In the event that the Owner defaults in its performance as set forth in any of (i), (ii), or (vi) above, the County or DCAD shall give Owner written notice of such default and Owner shall have the right to cure such default. If Owner has not cured a default under (i), (ii), or (vi) within ninety (90) days of said written notice or if a default under (iii) or (iv) occurs, an event of default (an "*Event of Default*") shall exist and this Agreement shall terminate (and Owner shall not receive any

Tax Abatements for years after such Event of Default, it being expressly understood that, except as set forth in Section VI (2) below, an Event of Default shall not entitle County to reclaim or receive a repayment right with respect to any Tax Abatement for any year before the Event of Default occurs, and that the sole remedy by the County for an Event of Default which results from a failure by the Owner to meet a condition is the termination of this Agreement and not damages or specific performance or any other remedy). In the event that Owner cures any such default within the applicable cure period or prior to termination of this Agreement, no Event of Default shall exist and this Agreement shall continue in full force and effect, without penalty to Owner.

2. Upon the occurrence of a court finding a violation of Section VI (1)(v) (supra), all taxes which otherwise would have been paid by the Owner to the County without the benefit of the Tax Abatement, including interest and penalties thereon ("Recapture Liability"), will become a debt to the County and shall be due, owing, and paid to the County within one hundred twenty (120) calendar days of a final determination by a court of competent jurisdiction that the Owner has violated 8 USC 1324a(f) as the sole remedy of the County, subject to any and all lawful offsets, settlements, deductions, or credits to which the Owner may be entitled, and subject to the rights of the Owner under applicable law to contest an assertion that a violation of Section VI(1)(v) has occurred. The Recapture Liability interest and penalties shall be charged at the statutory rate for delinquent taxes as determined by Section 33.01 of the Property Tax Code of the State of Texas.

3. This Agreement inures to the benefit of and is enforceable by the County. The County has the right to prosecute or take appropriate action, at law or in equity, against the Owner to enforce any other covenant or provision (but not a condition) contained within this Agreement. If the County substantially prevails in a legal proceeding to enforce this Agreement against the Owner, the County is further entitled to recover damages (to the extent the County's remedies are not expressly limited herein), reasonable attorney's fees, and court costs from the Owners. Any payment due to the County under this Agreement will automatically become a lien which attaches to the Property on January 1 of each year to enforce the payment of all taxes, penalties, and interest ultimately imposed for the year on the Property.

SECTION VII.
EFFECT OF SALE, ASSIGNMENT, OR LEASE OF PROPERTY

The terms and conditions of this Agreement are binding upon the successors and assigns of all Parties hereto. The Owner, including any Successor Entity, may assign its rights and responsibilities under this Agreement including the right to receive the Tax Abatement to a parent, subsidiary, or an affiliate entity of an Owner or Successor Entity, or any new entity created as a result of a merger, acquisition or other corporate restructure or reorganization of the Owner or Successor Entity acquiring title to the Property without the prior approval of the County so long as the entity that will succeed to Owner's or Successor Entity's rights and responsibilities under this Agreement enters into a written agreement with the County agreeing to assume, perform, and be bound by all of the covenants, obligations, and agreements contained within this Agreement. Should the Owner or Successor Entity assign such rights and responsibilities under this Agreement, the Owner or Successor Entity shall give County prior written notice of such

assignment at least sixty (60) calendar days prior to such assignment. Owner agrees that such an assignment will in no way relieve it from any obligation created under this Agreement attributable to the period prior to the assignment.

SECTION VIII.
NOTICE

All notices called for or required by this Agreement shall be reduced to writing and shall be given by (a) electronic mail; and (b) at least one of the following: (i) U.S. mail postage prepaid, by certified or registered mail, return receipt requested; (ii) a nationally recognized overnight delivery service; or (iii) personal delivery, with signed acceptance by the person designated below. In order to be effective, notice shall be addressed to the person shown at the respective addresses set forth below, or such other party or address as a party designates in writing, and shall be deemed properly given: (i) on the third (3rd) business day after being deposited in the U.S. mail postage prepaid, by certified or registered mail, return receipt requested; (ii) on the first (1st) business day after being deposited into the custody of a nationally recognized overnight delivery service; or (iii) on the date personally delivered, with signed acceptance thereof by the person designated below.

OWNER:

Ashley Furniture Industries, LLC
Attn: Chief Legal Officer
1670 E 8th Avenue
Tampa Bay, Florida 33602

COUNTY:

Director of Planning & Development
Dallas County Commissioners Court
411 Elm Street, 3rd Floor
Dallas, Texas 75202
Luis.Tamayo@dallascounty.org

Copies to:

Dallas County District Attorney's Office
Chief, Civil Division
Records Building
500 Elm Street, Suite 6300
Dallas, Texas 75202
Russell.Roden@dallascounty.org

SECTION IX.
COUNTY AUTHORIZATION

This Agreement is authorized by Court Orders 2022-0126 and 2022-0204 approved at the Commissioners Court meetings of the 1st day of February, 2022 and the 15th day of February, 2022, respectively.

SECTION X.
OWNER AUTHORIZATION

The execution and performance of this Agreement by Owner has been duly authorized by their governing authority and does not require the consent or approval of any other person which has not been obtained. Additionally, the person or persons executing this Agreement on behalf of the Owner represents, warrants, assures and guarantees that he, she or they have full legal authority to execute this Agreement on behalf of the Owner and to bind Owner to all terms, performances, and provisions herein contained.

SECTION XI.
SEVERABILITY

In the event any section, subsection, paragraph, sentence, phrase, or word is held invalid, illegal, or unconstitutional, the balance of this Agreement shall stand, shall be enforceable, and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase, or word.

SECTION XII
ESTOPPEL CERTIFICATE

Any party hereto may request an estoppel certificate from the other party hereto so long as the certificate is requested in connection with a bona fide business purpose. The certificate, which, if requested, will be addressed to a subsequent purchaser assignee or Successor Entity of the Owner, shall include, but not necessarily be limited to, statements that this Agreement is in full force and effect without default (or if default exists, the nature of default and curative action which should be undertaken to cure same), the remaining term of this Agreement, the levels of tax abatement in effect, and such other matters reasonably requested by the party to receive the certificate.

SECTION XIII.
APPLICABLE LAW AND VENUE

The validity and interpretation of this Agreement, and the rights and obligations of the Parties hereunder, shall be governed by and construed in accordance with the laws of the State of Texas. This Agreement is performable and enforceable in Dallas County, Texas where the principal office of County is located and the federal and state courts physically located in Dallas County, Texas shall be the sole and exclusive venue for any litigation, special proceeding, or other proceeding as between the Parties that may be brought, or arise out of, in connection with, or by reason of this Agreement.

SECTION XIV.
SOVEREIGN IMMUNITY

THIS AGREEMENT IS EXPRESSLY MADE SUBJECT TO THE COUNTY'S SOVEREIGN IMMUNITY, TITLE 5 OF THE TEXAS CIVIL PRACTICES AND REMEDIES CODE, .AND ALL APPLICABLE FEDERAL AND STATE LAW. THE PARTIES EXPRESSLY AGREE THAT NO PROVISION OF THIS AGREEMENT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER OF ANY IMMUNITIES FROM SUIT OR FROM LIABILITY THAT THE COUNTY HAS BY OPERATION OF LAW. NOTHING IN THIS AGREEMENT IS INTENDED TO BENEFIT ANY THIRD-PARTY BENEFICIARY.

SECTION XV.
AMENDMENTS AND CHANGES IN THE LAW

No modification, amendment, novation, renewal or other alteration of this Agreement shall be effective unless mutually agreed upon in writing and executed by the parties hereto. Any alteration, addition, or deletion to the terms of this Agreement which are required by changes in federal or State law are automatically incorporated herein without written amendment to this Agreement and shall be effective on the date designated by said law.

SECTION XVI.
INDEMNIFICATION

OWNER, INCLUDING ITS ASSIGNS, SUCCESSORS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUBCONTRACTORS AND REPRESENTATIVES, (COLLECTIVELY "INDEMNIFYING PARTY") AGREES TO DEFEND, PROTECT, INDEMNIFY, AND HOLD HARMLESS THE COUNTY, INCLUDING ITS COMMISSIONERS, ELECTED OFFICIALS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, ASSIGNS AND REPRESENTATIVES (COLLECTIVELY "INDEMNIFIED PARTIES") FROM AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIENS, SUITS, LOSSES, COSTS, DAMAGES, JUDGMENTS, AND EXPENSES, (INCLUDING WITHOUT LIMITATION, COURT COSTS, REASONABLE ATTORNEY'S FEES AND COSTS OF INVESTIGATION) OR OTHERWISE OF ANY NATURE, KIND OR DESCRIPTION DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART), INDEMNIFYING PARTY'S PERFORMANCE, FAILURE TO PERFORM OR COMPLY OR BREACH OF ANY OF THE REQUIREMENTS AND PROVISIONS OF THIS AGREEMENT.

NO INDEMNIFICATION BY COUNTY: OWNER ACKNOWLEDGES AND AGREES THAT COUNTY DOES NOT HAVE THE ABILITY UNDER ARTICLE XI, SECTION 7 OF THE TEXAS CONSTITUTION TO INDEMNIFY OWNER OR ANY OTHER THIRD PARTY FOR DAMAGES ARISING UNDER THIS AGREEMENT.

SURVIVAL: THESE PROVISIONS IN SECTION XVI SHALL SURVIVE TERMINATION, EXPIRATION, OR CANCELLATION OF THIS AGREEMENT, OR ANY DETERMINATION THAT THIS AGREEMENT OR ANY PORTION HEREOF,

EXCEPT FOR THIS SECTION XVI, IS VOID, VOIDABLE, INVALID, OR UNENFORCEABLE.

SECTION XVII.
CONTRA PROFERENTUM

The doctrine of contra proferentum shall not apply to this Agreement. If an ambiguity exists in this Agreement, this Agreement shall not be construed against the party who drafted this Agreement, and such party shall not be responsible for the language used.

SECTION XVIII.
ENTIRE AGREEMENT

This Agreement, including all Exhibits, Attachments, Addendums, and determinations recited and declared in the preamble to this Agreement are hereby incorporated as part of this Agreement and together constitutes the entire agreement between the Parties hereto and supersedes any other agreement concerning the subject matter of this transaction, whether oral or written, by and between Owner and the County.

SECTION XIX.
NUMBER/GENDER AND HEADINGS

Words of any gender used in this Agreement shall be held and construed to include any other gender and any words in the singular shall include the plural and vice versa, unless the context clearly requires otherwise. Headings herein are for the convenience of reference only and shall not be considered in any interpretation of this Agreement.

SECTION XX.
EFFECTIVE DATE OF AGREEMENT

This Agreement shall become effective on the date on which the last of the two parties signs this Agreement (the "*Effective Date*") and shall continue until the expiration of the Tax Abatement Period (the "*Term*") unless this Agreement is terminated sooner as provided hereunder. Either Party may terminate this Agreement without cause prior to the beginning of the Tax Abatement Period with sixty (60) days prior written notice. This Agreement may be signed and executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

SECTION XXI.
FORCE MAJEURE

It is expressly understood and agreed by the Parties to this Agreement that if a Party's ability to satisfy any obligation under this Agreement including, but not limited to the substantial completion of the Improvements is delayed by reason of war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, or interferences, delays caused by franchised utilities or their contractors, fire or other casualty, court injunction, necessary condemnation proceedings, or any circumstances which are reasonably beyond the control of the Party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such

circumstances are similar to any of those enumerated or not, the Party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such performance, including without limitation, the Tax Abatement Period shall be extended for a period of time equal to the period such Party was delayed, but in no event shall the abatement of taxes exceed more than ten years.

SECTION XXII.
OWNER CERTIFICATIONS

TEXAS GOVERNMENT CODE CHAPTER 2264 CERTIFICATION. Owner, by execution of this Agreement and in accordance with Chapter 2264 of the Texas Government Code, certifies that they do not and will not knowingly employ any undocumented workers at the Property during the Term of this Agreement and that if the Owner is convicted of a violation under 8 U.S.C. Section 1324a(f), Owner shall repay all taxes which otherwise would have been paid to the County without the benefit of the tax abatement, including interest and penalties thereon within the time period set forth in Section VI (2) of this Agreement.

SECTION XXIII.
NON-WAIVER OF DEFAULT

Failure of any Party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of the Party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the Party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach. It is not a waiver of default if the non-defaulting Party fails to immediately declare a default or delays in taking any action. The rights and remedies provided by this Agreement are cumulative, and either Party's use of any right or remedy will not preclude or waive its right to use any other remedy at law or in equity. These rights and remedies are in addition to any other rights the Parties may have by law, statute, ordinance or otherwise. Parties have a duty to mitigate damages.

SECTION XXIV.
NOTICE TO OTHER GOVERNING BODIES

At least seven (7) days prior to the execution of this Agreement, notice of the County's intention to enter into this Agreement shall be delivered to the governing bodies of each other taxing unit that includes in its boundaries the real property that is the subject of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURES ON FOLLOWING PAGE]

WITNESS HEREOF, the Parties hereto have executed this Ashley Furniture Tax Abatement Agreement as of the date set forth below.

DALLAS COUNTY:

By: _____

Name: Clay Lewis Jenkins

Title: County Judge

Date: 2-15-2022

ASHLEY FURNITURE INDUSTRIES, LLC:

By: _____

Name: Stephen R. Calkins

Title: Secretary

Date: February 4, 2022

RECOMMENDED BY:

Luis Tamayo 2/4/2022

Luis Tamayo DATE
Director of Planning & Development

APPROVED AS TO FORM:*

JOHN CREUZOT
DALLAS COUNTY CRIMINAL DISTRICT ATTORNEY

RUSSELL RODEN
CHIEF, CIVIL DIVISION

Tina R. Patel

Digitally signed by Tina R. Patel
DN: cn=Tina R. Patel, o=Dallas County District Attorney's Office, ou=Civil Division, email=Tina.Patel@dallascounty.org, c=US
Date: 2022.02.04 13:37:52 -06'00'

By: _____
Tina R. Patel, Assistant District Attorney

*BY LAW, THE DISTRICT ATTORNEY'S OFFICE MAY ONLY ADVISE OR APPROVE CONTRACTS OR LEGAL DOCUMENTS ON BEHALF OF ITS CLIENTS. IT MAY NOT ADVISE OR APPROVE A LEASE, CONTRACT, OR LEGAL DOCUMENT ON BEHALF OF OTHER PARTIES. OUR REVIEW OF THIS DOCUMENT WAS CONDUCTED SOLELY FROM THE LEGAL PERSPECTIVE OF OUR CLIENT. OUR APPROVAL OF THIS DOCUMENT WAS OFFERED SOLELY FOR THE BENEFIT OF OUR CLIENT. OTHER PARTIES SHOULD NOT RELY ON THIS APPROVAL, AND SHOULD SEEK REVIEW AND APPROVAL BY THEIR OWN RESPECTIVE ATTORNEY(S).

EXHIBIT A
(Dallas County Tax Abatement Policy)

EXHIBIT B
(Legal Description of Property)

Being a tract or parcel of land situated in the McKinney & Williams Survey, Abstract No. 1026, in the W.S. Long Survey, Abstract No. 825 and in the Wm. S. Robinson Survey, Abstract No. 1262 and being in the City of Mesquite, Dallas County, Texas and being a part of a called 358.218 acre tract of land conveyed to Laura Jernigan Espensen and James William Jernigan by deed recorded in Volume 2004172, Page 10588, Official Public Records, Dallas County, Texas and being more particularly described as follows:

Commencing at a 5/8" iron pin found in the south right-of-way line of Scyene Road (60-foot public right-of-way) and the northeast corner of said 358.218 acre tract, said point also being the northwest corner of a tract of land described to Velvet Tooman Carroll in Judgement Cause No. TX11-40560, District County, 162nd Judicial District, Dallas County, Texas and recorded in Instrument No. 201300228592, Official Public Records, Dallas County, Texas; thence, South 00"25'26" East, departing the south right-of-way line of said Scyene Road, along the common east line of said 358.218 acre tract and the west line of said Carroll tract, a distance of 1321.88 feet to a 1 /2" iron pin set with yellow cap stamped "CCG INC RPLS 5129" for the northeast corner of a called 7.01 acre tract of land as conveyed to County of Dallas in Tract Five by deed recorded in Volume 2158, Page 314, Deed Records, Dallas county, Texas and as described as the Third Tract in deed conveyed to Texas Interurban Railway recorded in Volume 908, Page 644, Deed Records, Dallas County, Texas; South 00"25'26" East, along the east line of said 7.01 acre tract and the west line of Carroll tract, a distance of 102.36 feet to a 1/2" iron pin set with yellow cap stamped "CCG INC RPLS 5129" for the southeast corner of said 7.01 acre tract and the Point of Beginning;

Thence, South 00"25'26" East. along the east line of said 358.218 acre tract, the west line of said Carroll tract and the west line of a 50.00 acre tract of land conveyed to City of Mesquite by deed recorded in Volume 95083, Page 253, Deed Records, Dallas County, Texas, a distance of 3449.71 feet to a 1/2" iron pin found with yellow cap stamped "CLS

5129" for a southeast corner of said 358.218 acre tract;

Thence, South 89" 40' 49" West, along a south line of said 358.218 acre tract, a north line of said City of Mesquite tract and a north line of a called 44.8518 acre tract of land described to Charles D. Blakely by deed recorded in Volume 80159, Page 2308, Deed Records, Dallas County, Texas, a distance of 363.61 feet to a 1/2" iron pin found with yellow cap stamped "CLS 5129" for corner;

Thence, South 45"12'54" West, along the southeast line of said 358.218 acre tract, the northwest line of said Blakely tract and the northwest line of a tract of land conveyed to the City of Dallas by deed recorded in Instrument No. 201100146186, Official Public Records, Dallas County, Texas, a distance of 978.37 feet to a 5/8" iron pin found for corner, said point also being on the northeast right-of-way line of Berry Road (a 85-foot public right-of-way), said point also being the beginning of a curve to the right having a radius of 5,729.58 feet, through a central angle of 03·15•00· and a chord bearing of North 43"06'39" West, 324.96 feet;

Thence, along the northeast right-of-way line of said Berry Road, the southwest line of said 358.218 acre tract and said curve to the right, an arc distance of 325.00 feet to a 1/2" iron pin found for the end of said curve to the right;

Thence, North 44·57'04" West, along the southwest line of said 358.218 acre tract and the northeast right-of-way line of said Berry Road, a distance of 2,115.73 feet to a 1/2" iron pin set with yellow cap stamped "CCG INC RPLS 5129" for corner, said point also being the beginning of a curve to the right having a radius of 686.37 feet, through a central angle of 42"52'41" and a chord bearing of North 22"41 '46" West, 501.75 feet;

Thence, northwesterly, along said Berry Road and said curve to the right, an arc distance of 513.65 feet to a 1/2" iron pin found with yellow cap stamped "CLS 5129" for the end of said curve to the right;

Thence, North 00"25'46" West, along the west line of said 358.218 acre tract and the east right-of-way line of Berry Road (85-foot public right-of-way), a distance of 2568.22 feet to a 1/2" iron pin found with yellow cap stamped "HALFF" for the southwest corner of a 0.3525 ocre tract of land conveyed to City of Mesquite by deed recorded in Instrument No. 201600026524, Official Public Records, Dallas County, Texas;

Thence, South 78"05'26" East, along the south line of said 0.3525 acre tract and the south line of said 7.01 acre tract, a distance of 3027.35 feet to the Point of Beginning and containing 10,830,507 square feet or 248.634 acres of land.