

INCENTIVE AGREEMENT

This INCENTIVE AGREEMENT (the "Agreement") is made and entered into as of the 7th day of June, 2018, by and between the CITY OF MANTECA, a California municipal corporation (the "City"), and LIVING SPACES FURNITURE, LLC, a Delaware limited liability company ("Business").

RECITALS

A. Business hereby represents and warrants to City that it shall acquire, or is under contract to acquire, the land described on Exhibit "A" attached hereto and all improvements thereon (collectively, the "Property") and Business intends to operate a retail furniture store on the Property, provided Business receives financial assistance from the City.

B. The City has agreed to provide contingent financial assistance to the Business on the terms and subject to the conditions hereinafter set forth.

C. The City has found that the use and operation of the Property proposed by Business: (i) promotes the long-term employment of residents of the City and will significantly contribute to the maintenance, growth, and expansion of the economic base of the City; (ii) constitutes a valid exercise of the police powers of the City and serves public purposes in which the City has peculiar and unique interests; and (iii) otherwise substantially relates to the municipal affairs of the City.

COVENANTS

Based upon the foregoing Recitals and for good and valuable consideration, the sufficiency of which is acknowledged by both parties, the City and Business hereby agree as follows:

1. Certain Defined Terms. As used in this Agreement, the following terms shall have the meanings hereinafter set forth:

(a) Fiscal Year. "Fiscal Year" shall mean the City's fiscal year, which commences on July 1 and ends on June 30.

(b) Qualified Business. "Qualified Business" shall mean the operation on approximately 10 (ten) acres of the Property of a retail furniture store, and create approximately 75 FTE jobs.

(c) Quarter. "Quarter" shall mean any one of the three (3) month periods commencing July 1, October 1, January 1 or April 1

(d) Sales Tax. "Sales Tax" means, for each Quarter during the term of the City's payment obligations hereunder, that portion of base sales taxes actually received by the City from the imposition of the Bradley-Burns Uniform Local Sales and Use Tax Law (commencing with Section 7200 of the California Revenue & Taxation Code) and Chapter 3.08 (Sections 3.08.010 et seq.) of the Manteca Municipal Code, as reported to the California State

Board of Equalization from the operation of the Qualified Business on the Property. For purposes of this Agreement, the term "Sales Tax" shall not include: (i) any portion of taxes received by the City from the operation of any of the Property that the City may be required to pay, transfer, assign, or allocate to any other entity or entities by virtue of any law now or hereafter existing, or by virtue of any agreement entered into between City and any other governmental entity under California Government Code Section 53084; (ii) the State Board of Equalization's administrative and processing fee attributable to the City's portion of such taxes (calculated at the same percentage of such taxes as applies city-wide); and (iii) any sales tax "over-rides" for transportation and public safety. "Sales Tax" shall not be considered to have been received by the City until the City is able to confirm receipt of such taxes from the State Board of Equalization.

2. Contingent Payments by City. In consideration of Business's compliance with Section 5 below in each full or partial Fiscal Year during the Term (as defined in Section 4 below), the City shall make payments to Business twice a year (i.e. once every six months) as described in Section 4 below in an amount equal to fifty percent (50%) of the total Sales Tax generated by the Qualified Business and received by the City.

3. Term. This Agreement shall commence upon execution by the City and Business and, unless sooner terminated pursuant to Section 6 below, shall expire on the date on which the City has fully paid (without interest) to Business the sum of three-million and No/100 Dollars (\$3,000,000) (the "Assistance"), or ten years from the retail store opening date regardless of the unpaid balance, whichever occurs first.

4. Payment Procedures. Semi-annual payments of the amount calculated to be owing to Business in accordance with this Agreement shall be made by the City within sixty (60) days after the end of the second Quarter and fourth Quarter of each Fiscal Year based on the City's receipt of Sales Taxes generated and received during the preceding two Quarters. Payments may be made by the City from any funds available to the City. The City shall provide to Business at the time of each payment documentation supporting the calculation thereof.

5. Conditions to Receipt of Payments. During the term of this Agreement, Business shall receive and continue receiving payments hereunder with respect to such periods as Business operates a Qualified Business on the Property, provided, however, Business hereby agrees with the City that the right of Business to receive payments pursuant to this Agreement is subject to conditions as follows:

(a) Assisted Improvements. Business shall substantially complete construction of the initial improvements for the Qualified Business (the "Assisted Improvements") and shall open the Qualified Business for business on the Property (the "Opening") by the date that is twelve (12) months after the date the building permit for the improvement is obtained. In connection with the Assisted Improvements, Business shall (i) pay prevailing wages and otherwise comply with California Labor Code Sections 1720 et seq. ("Prevailing Wage Laws"), and (ii) shall be responsible for carrying out the requirements of such provisions. Upon written request by the City from time to time, Business shall provide reasonable evidence of its compliance with such Prevailing Wage Laws.

(b) Retail Identification Number. On or before the Opening, Business shall notify the City in writing of its Board of Equalization retail identification number. Prior to allowing any subtenants or concessions to open for business on the Property, Business shall notify the City in writing of the State Board of Equalization retail identification number for such subtenant or concessionaire.

(c) Maintenance. Business shall maintain and repair or cause to be maintained and repaired the improvements and landscaping on the Property in good order, and in the condition (and, as to landscaping, in a healthy condition) and in accordance with all applicable laws. In this regard, Business shall further prevent excessive accumulation of any waste materials, rubbish, graffiti, weeds, or debris on the Property and shall not permit any unlawful use or unlawful nuisance to occur on the Property.

(d) No Discrimination. In its operation of the Property and the Qualified Business, Business agrees not to violate applicable laws regarding discrimination against any person or class of persons by reason of gender, marital status, race, color, creed, mental or physical disability, religion, age, ancestry, or national origin or other class protected by such laws.

(e) Indemnity. Business shall defend (with counsel reasonably acceptable to the City), indemnify and hold the City and its councilpersons, officers, agents and employees (collectively, the "Indemnified Parties") harmless from and against all losses, costs and expenses (including, without limitation, reasonable attorneys' fees and costs), damages (including, without limitation, consequential damages), claims and liabilities arising from the gross negligence or willful misconduct of Business, its members, officers, employees, agents, contractors, invitees and any third parties on the Property, but only to the extent actually incurred by Indemnified Parties and not caused by the acts, negligence or willful misconduct of the Indemnified Parties. The obligations of Business under this Section 5(e) shall survive the expiration or any earlier termination, as applicable, of this Agreement. Business shall obtain contractual liability insurance to cover Business's obligations under this Section 5(e) and Business shall cause the City to be named as an additional insured on such insurance.

(f) Indemnity Regarding Prevailing Wage Laws. Without limiting the indemnity set forth in Section 5(e) above, Business shall indemnify, defend (with counsel reasonably acceptable to the City) and hold the Indemnified Parties harmless from and against all claims losses, damages, costs, expenses and liabilities which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, any failure by Business to comply with the second sentence of Section 5(a) above, including any failure to pay prevailing wages in the construction of the Assisted Improvements and any failure to comply with any state or federal labor laws, regulations or standards in connection with the construction of the Assisted Improvements, including but not limited to the Prevailing Wage Laws. The provisions of this Section 5(f) shall survive the expiration or earlier termination of this Agreement.

6. Defaults and Termination. Failure by the City to make a payment to Business that the City is required to make to Business under this Agreement shall constitute a default by the City under this Agreement. Notwithstanding any other provision set forth in this Agreement to

the contrary, this Agreement and any obligation of the City to make payments to Business hereunder shall terminate without further notice or demand, at the City's option, upon the occurrence of the following events:

(a) Performance. Failure in the due, prompt, and complete observance or performance of any covenant, condition or obligation set forth in this Agreement for a period of thirty (30) days after written notice to Business from the City Manager specifying the nature thereof and the action required to cure the default; provided if the default is such that it cannot reasonably be cured within thirty (30) days, Business shall not be in default if, during such thirty (30) days, business commences the cure and thereafter diligently pursues the cure to completion.

(b) Representations and Warranties. Any of the representations or warranties by Business to the City contained in Section 8(m) below proves to have been materially false or misleading when made.

(c) Cessation of Qualified Business. Cessation of operation of a Qualified Business from the Property where a Qualified Business does not commence operation after notice to cure pursuant to Section 6(a) above; provided, however, that the following shall not be deemed a cessation of operation: (i) closing for holidays, special occasions and other circumstances consistent with Business's then typical operations in the greater Sacramento area; (ii) closing for up to one (1) year for repair of damage or destruction to or for renovation or reconstruction of the improvements on the Property; or (iii) closing caused or extended by an Enforced Delay, as hereinafter defined.

7. Certain Remedies. The City's sole and exclusive remedy for a default by Business under this Agreement shall be termination of this Agreement pursuant to Section 6 above and/or injunctive relief.

8. General Provisions.

(a) General Provisions. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior agreements and understandings of the parties with respect to the subject matter hereof. This Agreement may not be modified, amended, supplemented, or otherwise changed, except by a writing executed by both parties hereto.

(b) Waiver. No failure or delay by any party in the exercise of any right hereunder shall constitute a waiver thereof, nor shall any single or partial exercise of any such right preclude other or further exercise thereof, or any other right.

(c) Captions. Section headings used in this Agreement are for convenience of reference only and shall not affect the construction of any provisions of this Agreement.

(d) Assignment. Except as expressly provided herein, Business shall not assign any of the rights or obligations under this Agreement without the prior written consent, except to an entity that is controlled by Business, controls Business or is under common control with Business (an "Affiliate"), in each instance provided: (i) Business gives the City at least ten (10) business days' prior written notice of the assignment with reasonable evidence of the

required ownership and control and a copy of the assignment document(s); and (ii) the assignee assumes in writing all obligations of Business under this Agreement. In no event shall any assignment relieve Business from its obligations under this Agreement. Anything in this Agreement to the contrary notwithstanding, if the Qualified Business is transferred to an entity other than an Affiliate within five (5) years after the date of this Agreement, the City shall have the unilateral right, in the City's sole and absolute discretion, to terminate this Agreement at any time on or after the effective date of such transfer by giving notice of such termination to Business and the transferee. After such initial five (5)-year period, if the Qualified Business is transferred to an entity other than an Affiliate, the City may, as a condition of its consent to the transfer, limit the total amount of the Assistance to be paid to that amount attributable to Sale Tax generated through the tenth (10th) anniversary of this Agreement.

(e) Calculation of Time. Except as may otherwise be provided, wherever this Agreement states a period of time and number of days, it shall be construed to mean calendar days; provided, however, that when any period of time so stated would end upon a Saturday, Sunday, or legal holiday, such period shall be construed to end upon the next day following which is not a Saturday, Sunday or legal holiday.

(f) Non-Qualified Business. Nothing in this Agreement shall preclude Business or its successors and assigns, subject to the approval of the City acting in its municipal capacity, from any or all of the following: (i) operating on the Property or any portion or portions thereof, one or more separate or successor businesses that are not a Qualified Business (a "Non-Qualified Business"), (ii) leasing, licensing, franchising, granting concessions for or otherwise authorizing third parties to operate a Non-Qualified Business on a portion or portions of the Property, or (iii) subdividing and selling a portion or portions of the Property to persons or entities who may operate a Non-Qualified Business thereon; provided that any Sales Tax generated by the Non-Qualified Business shall not be included in the calculation of payments due Business under this Agreement and that a Qualified Business shall continue to be operated on at least 10 (ten) acres of the Property.

(g) Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State of California and for all purposes shall be governed by and construed in accordance with the laws of the State of California.

(h) Authority. Each individual executing this Agreement on behalf of Business represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of Business.

(i) Inability to Perform. Except as may be otherwise provided herein, performance by any party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where the party seeking the extension has acted diligently and delays or defaults are due to events beyond the reasonable control of the party (financial inability excepted) such as but not limited to war; insurrection; acts of terrorism; riots; floods; earthquakes; fires; casualties; acts of nature; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions; litigation that directly prevents performance by the Business or the City; weather; and other causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform that

are not excluded above (collectively, "Enforced Delays"); provided, however, that the party claiming the extension notify the other party in writing of the nature of the matter constituting the Enforced Delay within thirty (30) days after the party claiming the extension has notice of the occurrence of the Enforced Delay. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of time reasonable in light of the Enforced Delay and shall commence to run from the time of the commencement of the cause.

(j) Notices. Notices given or to be given by the City or Business to the other party hereunder may be personally served, may be served by certified return-receipt mail, or delivered by means of a receipted nationally-recognized overnight delivery service (such as Federal Express), in each instance addressed to the appropriate address hereinafter set forth or to such other address as such party may hereafter designate by written notice. If served by certified mail, service will be considered completed and binding on the party served on the date set forth in the certification receipt.

To City: City of Manteca
1001 West Center Street
Manteca, California 95337
Attn: City Manager

To Business: If by U.S. Mail:

Living Spaces Furniture, LLC
P.O. Box 2309
Buena Park, CA 90621
Attn: Jeff Seabrook

If by personal delivery or receipted overnight delivery:

Living Spaces Furniture, LLC
14501 Artesia Boulevard
La Mirada, California 90638
Attn: Jeff Seabrook

(k) Attorneys' Fees and Costs. If a dispute arises under or in connection with this Agreement that results in an arbitration (including, without limitation, the enforcement or interpretation of this Agreement), the prevailing party (as determined by the arbitrators) shall be entitled to recover its reasonable attorneys' fees and costs incurred in such arbitration from the other party as awarded by the arbitrator.

(l) Alternative Dispute Resolution. If a dispute arises regarding the making, formation, interpretation, or performance of this Agreement, the City and Business agree to adhere to the dispute resolution protocol as delineated and explained herein.

(i) NEGOTIATION: The City and Business will make a good faith effort to resolve any claim or issues as to this Agreement, through negotiation. The parties shall

meet at the offices of the City to negotiate within ten (10) days after any party sends a notice to the other referring to this Section.

(ii) **MEDIATION:** If the City and Business cannot resolve such a claim or issue as to this Agreement, through negotiation by the date that is fifteen (15) business days after the date of the notice described in clause (a) above, then that claim or issue shall be the subject of mediation, administered by a mediator.

(iii) **ARBITRATION:** Should mediation fail to resolve such a claim or issue as to this Agreement, then that claim or issue shall be the subject of arbitration administered by an arbitrator or multiple arbitrators sitting on a panel.

(iv) **LITIGATION (Limited):** The City or Business may pursue an action at law or in equity in the County of San Joaquin, California (only) with respect to a claim or issue as to this Agreement that has been subject to mediation and arbitration only as specified in clause (v) below.

(v) Any mediator and/or arbitrator administering proceeding pursuant to this Agreement shall be selected from the roster of the American Arbitration Association, hereinafter the "AAA," and must be a resident of California and approved by all involved parties, provided that if the parties are unable to agree on a mediator or arbitrator, as applicable, within ten (10) business days after a party has notified the other parties in writing that it desires mediation or arbitration, as applicable, then the AAA's first selection of a mediator or arbitrator shall govern and bind the parties. Mediation and/or arbitration pursuant to this Agreement shall be conducted in the County of San Joaquin pursuant to the AAA's "Commercial Dispute Resolution Procedures (Including Mediation and Arbitration Rules)" as amended and effective on July 1, 2002, or alternatively, such AAA Commercial Mediation and/or Arbitration rules as may supersede. The AAA Optional Rules for Emergency Measures of Protection shall apply to proceedings pursuant to this Agreement. An agreement made pursuant to mediation and/or an award made pursuant to arbitration shall be final, binding and conclusive upon City and Business, those claiming under them, and their successors and assigns. No arbitrator(s) shall have the power to make any award inconsistent with, or contrary to the terms and provisions of this Agreement. The costs and expenses of arbitration, including but not limited to full reasonable attorneys' fees of the prevailing party, shall be borne and paid by the party who does not prevail therein, as determined and awarded by the arbitrator(s). If there is no prevailing party within the judgment of the arbitrator(s), costs and expenses, including but not limited to full reasonable attorneys' fees of each party, shall be borne and paid as awarded and/or directed in the decision of the arbitrator(s). A judgment on a mediated agreement or on an award rendered by arbitration may be entered in any court having jurisdiction as to the malpractice claim, or the issue as to this Agreement, in question. The submission to mediation and/or arbitration of any matter pursuant to this Section is hereby made a condition precedent to the institution of any action at law or in equity or an issue as to this Agreement. No party shall institute an action at law or in equity with respect to any matter subject to mediation and/or arbitration pursuant to this Section until after a mediated agreement has been entered into or an arbitration award has been rendered. Such an action shall be restricted solely to (i) enforcement of the terms of the agreement or award or (ii) the subject matter of a challenge to such an arbitration award on the grounds, and shall only be pursued in the manner, permitted by California law. Such an action at

law shall not be a trial de novo as to the merits, but shall be restricted to challenge of the award on such grounds as are permitted by California law.

Business's Initials: *Q* City's Initials: *TYD*

"NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE INCLUDED IN THE FOREGOING ARBITRATION PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."

"WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."

Business's Initials: *Q* City's Initials: *TYD*

(m) Authority. The persons and entities executing this Agreement on behalf of Business represent and warrants that Business has duly authorized this Agreement, that they are duly authorized to execute this Agreement on behalf of Business, and that they have provided a copy of this Agreement to each owner (whether a person or a business entity) of an interest in Business.

(n) Successors and Assigns. The obligations of the parties hereunder shall bind their successors and assigns.

(o) Counterparts. This Agreement may be executed in two or more counterparts and by different parties hereto on separate counterparts, each of which when so executed and delivered shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

[SIGNATURES COMMENCE ON FOLLOWING PAGE.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

CITY:

CITY OF MANTECA,
California municipal corporation

By: 
Tim Ogden, City Manager

Address: 1001 West Center Street
Manteca, California 95337

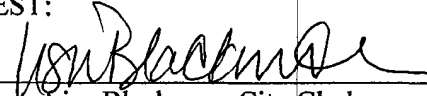
BUSINESS:

LIVING SPACES FURNITURE, LLC,
a Delaware limited liability company

By: 
Its: EMP OF REAL ESTATE

Address: 14501 Artesia Boulevard
La Mirada, California 90638

ATTEST:

By: 
Lisa Blackmon, City Clerk

APPROVED AS TO FORM

RICHARDS, WATSON & GERSHON, a professional corporation,
Special Counsel to the City

By: _____
Bruce W. Galloway

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

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CITY OF MANTECA,
California municipal corporation

By: 
Tim Ogden, City Manager

Address: 1001 West Center Street
Manteca, California 95337

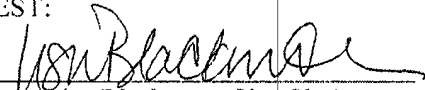
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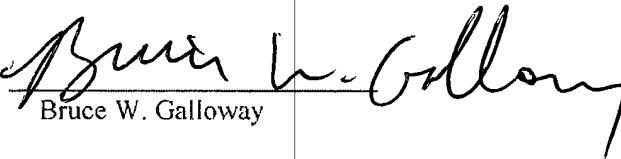
ATTEST:

By: 
Lisa Blackmon, City Clerk

APPROVED AS TO FORM

RICHARDS, WATSON & GERSHON, a professional corporation,

Special Counsel to the City

By: 
Bruce W. Galloway