

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

TAX ABATEMENT AGREEMENT

This Tax Abatement Agreement (the “Agreement”) is entered into by and between the City of Coppell, Texas (the “City”), and Welbilt FSG US Holding, LLC, a Delaware limited liability company (the “Owner”) (each a “Party” and collectively the “Parties”), acting by and through their authorized representatives.

W I T N E S S E T H:

WHEREAS, the City Council of the City of Coppell, Texas (the “City Council”), passed an Ordinance (the “Ordinance”) establishing Tax Abatement Reinvestment Zone No. 115 (the “Zone”), for commercial/industrial tax abatement, as authorized by the Property Redevelopment and Tax Abatement Act, Chapter 312 of the Texas Tax Code, as amended (the “Tax Code”); and

WHEREAS, the City has adopted guidelines for tax abatement (the “Tax Abatement Guidelines”); and

WHEREAS, the Tax Abatement Guidelines contain appropriate guidelines and criteria governing tax abatement agreements to be entered by the City as contemplated by the Tax Code; and

WHEREAS, the City has adopted a resolution stating that it elects to be eligible to participate in tax abatement; and

WHEREAS, in order to maintain and enhance the commercial and industrial economic and employment base of the Coppell area, it is in the best interests of the taxpayers for the City to enter into this Agreement in accordance with said Ordinance, the Tax Abatement Guidelines and the Tax Code; and

WHEREAS, Owner has purchased and owns the real property and Improvements (hereinafter defined) located at 1010 W. Sandy Lake Road in Coppell, Texas, being further described in **Exhibit “A”** (“Land”) (collectively the Land and Improvements hereinafter defined as the ‘Premises’), and intends to add Tangible Personal Property (hereinafter defined) to the Improvements; and

WHEREAS, Owner’s development efforts described herein will create permanent new jobs in the City; and

WHEREAS, the City Council finds that the contemplated use of the Premises (hereinafter defined), and the contemplated Improvements are consistent with encouraging development of the Zone in accordance with the purposes for its creation and/or in compliance with the Tax Abatement Guidelines, the Ordinance adopted by the City, the Tax Code, and all other applicable laws; and

WHEREAS, the City Council finds that the Improvements sought are feasible and practicable and would be of benefit to the Premises to be included in the Zone and to the City after expiration of this Agreement; and

WHEREAS, a copy of this Agreement has been furnished, in the manner prescribed by the Tax Code, to the presiding officers of the governing bodies of each of the taxing units in which the Premises is located;

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, including the expansion of primary employment, the attraction of major investment in the Zone, which contributes to the economic development of Coppel and the enhancement of the tax base in the City, the Parties agree as follows:

Article I Definitions

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

“Bankruptcy or Insolvency” shall mean the dissolution or termination of a Party’s existence as a going business, insolvency, appointment of receiver for any part of a Party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such Party, and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“Base Year Taxable Value” shall mean the Taxable Value for the Land for the year in which the Tax Abatement Agreement is executed (2023).

“City” shall mean the City of Coppel, Texas.

“City Economic Development Agreement” shall mean that certain economic development agreement by and between the City and Owner, dated of approximate date herewith.

“Completion of Construction” shall mean the date the City issues a certificate of occupancy for the occupancy of the Real Property by Owner.

“Effective Date” shall mean the last date of execution of this Agreement.

“Expiration Date” shall mean March 1 of the calendar year following the eighth (8th) anniversary date of the First Year of Abatement.

“First Year of Abatement” shall mean January 1, 2025.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, riot, terrorism, civil commotion, insurrection, government or de facto governmental action, restrictions or interferences (unless caused by the intentional acts or omissions of the Party), fires, explosions, floods or other inclement weather, strikes, slowdowns or work stoppages, incidence of disease or other illness that reaches outbreak, epidemic, or pandemic proportions or similar causes that results in a reduction of labor force or work stoppage in order to comply with local, state, or national disaster orders, construction delays, shortages or unavailability of supplies, materials or labor, necessary condemnation proceedings, or any other 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 obligation or performance shall be extended for a period of time equal to the period such Party was delayed, provided the Party whose performance is delayed provides written notice to the other Party not later than fifteen (15) business days after the last day of the month of the occurrence of the event(s) or condition(s) causing the delay or the date the Party whose performance has been delayed becomes aware or should have reasonably known of the event, describing such event(s) and/or condition(s) and the date on which such event(s) and/or condition(s) occurred.

“Freeport Goods” shall have the same meaning as assigned by Section 11.251 of the Tax Code and Article VIII, Section 1-j of the Texas Constitution. Freeport Goods does not include “Goods in Transit” as defined by Tax Code, Section 11.253.

“Goods in Transit” shall have the same meaning assigned by Tax Code, Section 11.253.

“Improvements” shall mean an industrial / warehouse building on the Land, and other ancillary facilities such as reasonably required parking and landscaping; provided, however, that “Improvements” shall not include the Land.

“Land” means the real property described in **Exhibit “A”**.

“Owner” shall mean Welbilt FSG US Holding, LLC, a Delaware limited liability company.

“Owner Affiliate” shall mean any entity that is directly or indirectly controlled by or is under common control with Owner.

“Premises” shall mean collectively, the Land and Improvements following construction thereof.

“Related Agreement” shall mean agreement (other than this Agreement) by and between: (i) the City and the Owner or any Company Affiliate; and (ii) the City Economic Development Agreement.

“Required Use” shall mean the distribution of Owner’s, and any Owner Affiliate’s, equipment and products for the food service industry, demonstration kitchens and showrooms for products, office space including, but not limited to, offices for certain Owner Affiliate North American headquarters and other business of Owner and Owner Affiliates related to the following NAICS Codes: 33241 Food Product Machinery; 333415 Commercial Refrigeration; 333318 Other Commercial Machinery.

“Tangible Personal Property” shall mean furniture, fixtures and equipment owned or leased by Owner and located at the Premises, after the execution of this Agreement. Tangible Personal Property shall not include inventory, supplies, Freeport Goods and Goods in Transit located at the Premises.

“Taxable Value” means the appraised value as certified by the applicable Appraisal District (or its successor) as of January 1 of a given year.

Article II

General Provisions

2.1 Owner owns the Land and Improvements, which Land is located within the city limits of the City and within the Zone. Owner intends to locate Tangible Personal Property at the Improvements on the Land.

2.2 The Premises are not in an improvement project financed by tax increment bonds.

2.3 This Agreement is entered into subject to the rights of the holders of outstanding bonds of the City.

2.4 The Premises are not owned or leased by any member of the Coppell City Council or any member of the Coppell Planning and Zoning Commission.

2.5 Owner shall, before May 1, of each calendar year that the Agreement is in effect, certify in writing to the City that it is in compliance with each term of the Agreement.

2.6 The Land and the Improvements constructed thereon at all times shall be used in the manner (i) that is consistent with the City’s Comprehensive Zoning Ordinance, as amended, and (ii) that, during the period taxes are abated hereunder, is consistent with the general purposes of encouraging development or redevelopment within the Zone.

Article III

Tax Abatement Authorized

3.1 This Agreement is authorized by the Tax Code and in accordance with the City Tax Abatement Guidelines and approved by resolution of the City Council.

3.2 Subject to the terms and conditions of this Agreement and provided the Taxable Value for the Tangible Personal Property is at least Seven Million Dollars (\$7,000,000.00),

beginning with the second year of abatement and as of January 1 of each year thereafter that this Agreement is in effect, the City hereby grants Company an abatement of seventy-five percent (75%) of the Taxable Value of the Tangible Personal Property for a period of eight (8) consecutive years beginning with the First Year of Abatement. The actual percentage of Taxable Value of the Tangible Personal Property subject to abatement for each year this Agreement is in effect will apply only to the Tangible Personal Property located at the Improvements subsequent to the execution of this Agreement. The failure of the Tangible Personal Property to have a Taxable Value of at least Seven Million Dollars (\$7,000,000.00) as of January 1 of any given Tax Year (other than the first year of abatement) shall not be an event of default subject to termination and repayment of the abated taxes pursuant to Article V hereof but shall result in the forfeiture of the tax abatement for the Tangible Personal Property for such Tax Year.

3.3 The period of tax abatement herein authorized shall be for a period of eight (8) consecutive years beginning with the First Year of Abatement.

3.4 During the period of tax abatement herein authorized, Owner shall be subject to all taxation not abated, including but not limited to, sales tax and ad valorem taxation on the Land.

3.5 The term of this Agreement shall begin on the Effective Date and shall continue until the Expiration Date, unless sooner terminated as provided herein.

3.6 As a condition of receiving the tax abatement provided herein, Owner, or Owner Affiliate, shall continuously own and occupy the Premises.

3.7 Required Use. During the term of this Agreement, beginning on the First Year of Abatement and continuing for a period of at least eight (8) years thereafter, the Premises shall not be used for any purpose other than the Required Use, and the operation of the Premises in conformance with the Required Use shall not cease for more than thirty (30) continuous days except in connection with, and to the extent of, an event of Force Majeure or casualty, or for reasonable periods of time not to exceed one hundred twenty (120) days for expansion, re-equipping or remodeling.

Article IV Improvements

4.1 Nothing in this Agreement shall obligate Owner to locate Tangible Personal Property at the Improvements on the Land, but said actions are conditions precedent to tax abatement for such Parties pursuant to this Agreement.

4.2 Owner agrees to maintain the Improvements during the term of this Agreement in accordance with all applicable state and local laws, codes, and regulations.

4.3 The City, its agents and employees shall have the right of access to the Premises during and following construction to inspect the Improvements at reasonable times and with reasonable notice to Owner, and in accordance with visitor access and security policies of the

Owner in order to insure that the construction of the Improvements are in accordance with this Agreement and all applicable state and local laws and regulations (or valid waiver thereof).

Article V

Default: Recapture of Tax Revenue

5.1 In the event that during the term of this Agreement: (i) Owner has delinquent ad valorem or sales taxes owed to the City (provided Owner retains its right to timely and properly protest such taxes or assessment) after the expiration of the notice and cure periods described below; (ii) has an event of Bankruptcy or Insolvency; or (iii) breaches any of the terms and conditions of this Agreement, or a Related Agreement, then Owner, after the expiration of the notice and cure periods described below, shall be in default of this Agreement. As liquidated damages in the event of such default, the Owner shall, within thirty (30) days after demand, pay to the City all taxes which otherwise would have been paid by the Owner to the City without benefit of a tax abatement, for the property the subject of this Agreement at the statutory rate for delinquent taxes as determined by Section 33.01 of the Tax Code, as amended, but without penalty. The Parties acknowledge that actual damages in the event of default termination would be speculative and difficult to determine. The Parties further agree that any abated tax, including interest, as a result of this Agreement, shall be recoverable against the Owner, its successors and assigns and shall constitute a tax lien against the Premises, and shall become due, owing, and shall be paid to the City within thirty (30) days after notice of termination.

5.2 Upon breach by Owner of any of the obligations under this Agreement, the City shall notify Owner in writing, which shall have thirty (30) days from receipt of the notice in which to cure any such default. If the default cannot reasonably be cured within such 30-day period, and the Owner has diligently pursued such remedies as shall be reasonably necessary to cure such default, then the City may extend the period in which the default must be cured.

5.3 If the Owner fails to cure the default within the time provided as specified above or, as such time period may be extended, the City, at its sole option, shall have the right to terminate this Agreement by providing written notice to the Owner.

5.4 Upon termination of this Agreement by City, all tax abated as a result of this Agreement, shall become a debt to the City as liquidated damages, and shall become due and payable not later than thirty (30) days after a notice of termination is provided. The City shall have all remedies for the collection of the abated tax provided generally in the Tax Code for the collection of delinquent property tax. The computation of the abated tax for the purposes of the Agreement shall be based upon the full Taxable Value of the Tangible Personal Property without tax abatement for the years in which tax abatement hereunder was received by the Owner, as determined by the Appraisal District, multiplied by the tax rate of the years in question, as calculated by the City Tax Assessor-Collector. The liquidated damages shall incur penalties as provided for delinquent taxes and shall commence to accrue after expiration of the thirty (30) day payment period.

Article VI
Annual Application for Tax Exemption

It shall be the responsibility of the Owner, pursuant to the Tax Code, to file an annual exemption application form for the Tangible Personal Property with the Chief Appraiser for the Appraisal District (or its successor) in which the eligible taxable property has situs. A copy of the respective exemption application shall be submitted to the City upon request.

Article VII
Annual Rendition

The Owner shall annually render the value of the Tangible Personal Property to the Appraisal District and shall provide a copy of the same to the City upon written request.

Article VIII
Miscellaneous

8.1 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received upon the earlier of (a) actual receipt or (b) three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below, or such other address as is designated by the applicable Party from time to time, or on the day actually received as sent by courier or otherwise hand delivered.

If intended for City, to:

Attn: City Manager
City of Coppell, Texas
P. O. Box 478
Coppell, Texas 75019

With a copy to:

Attn: Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 N. Akard
Dallas, Texas 75201

If intended for Owner, to:

Attn: Kim Perez, CFO
Welbilt FSG US Holding, LLC
2227 Welbilt Boulevard
New Port Richey, Florida 34655

With a copy to:

Attn: Maribel de la Rosa
VP of Tax
Ali Group North America
101 Corporate Woods Parkway
Vernon Hills, Illinois 60061

8.2 Authorization. This Agreement was authorized by resolution of the City Council approved by its Council meeting authorizing the Mayor to execute this Agreement on behalf of the City.

8.3 Severability. In the event any section, subsection, paragraph, sentence, phrase, or word herein 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.

8.4 Governing Law. This Agreement shall be governed by the laws of the State of Texas without regard to any conflict of law rules. Exclusive venue for any action under this Agreement shall be the State District Court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

8.5 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

8.6 Entire Agreement. This Agreement embodies the complete agreement of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties and relating to the matters in this Agreement, and except as otherwise provided herein cannot be modified without written agreement of the Parties to be attached to and made a part of this Agreement.

8.7 Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.

8.8 Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

8.9 Assignment. This Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns. This Agreement may not be assigned by the Owner without the prior written consent of the City Manager.

8.10 Employment of Undocumented Workers. During the term of this Agreement, the Owner agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a (f), the Owner shall repay the taxes abated herein, and any other funds received by the Owner from the City as of the date of such violation within 120 days after the date the Owner is notified by the City of such violation, plus interest at the rate of six percent (6%) compounded annually from the date of violation until paid. Owner is not liable for a violation of this section by a subsidiary, affiliate, or franchisee of Owner or by a person with whom Owner contracts.

8.11 Right of Offset. The City may at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to the City from the Owner, regardless of whether the amount due arises pursuant to the terms of this Agreement or a Related Agreement or otherwise and regardless of whether or not the debt due the City has been reduced to judgment by a court.

8.12 Conditions Precedent. The following are conditions precedent to this Agreement and the obligations of the Parties pursuant to this Agreement are expressly subject to the execution of City Economic Development Agreement.

[Signature page to follow]

EXECUTED in duplicate originals the ____ day of _____, 2023.

CITY OF COPPELL, TEXAS

By: _____
Wes Mays, Mayor

Attest:

By: _____
Ashley Owens, City Secretary

Agreed as to Form:

By: _____
City Attorney

EXECUTED in duplicate originals the ____ day of _____, 2023.

WELBILT FSG US HOLDING, LLC

By: _____
Name: _____
Title: _____

**EXHIBIT “A”
Legal Description**

Being Lot 1, Block A of West Sandy Lake Road Addition II, an Addition to the City of Coppell, Dallas County, Texas, according to the plat thereof recorded in cc#202200001345, in the Plat Records, Dallas County Texas.