



Interoffice Memorandum

October 19, 2020

TO: Mayor Jerry L. Demings
-AND-
Board of County Commissioners

FROM: Eric Ushkowitz, Economic Development Administrator
Office of Economic, Trade and Tourism Development

A handwritten signature in black ink, appearing to be "EU", written over the printed name of Eric Ushkowitz.

SUBJECT: October 27, 2020 – BCC Public Hearing
Approval and Execution of an Ordinance and Agreement Enacting a New
Economic Development Tax Exemption for The Sherman Williams Company

Article VII, Section 3, of the Florida Constitution, and Section 196.1995, Florida Statutes, authorize the granting of economic development ad valorem tax exemptions to qualifying expansions and expansions of qualifying existing businesses upon the successful passage of a referendum. The electors of Orange County authorized the granting of such exemptions by the successful passage of a referendum held on January 31, 2012. Following the passage of the referendum, this Board enacted Ordinance No. 2012-05, the "Orange County Economic Development Ad Valorem Tax Exemption Ordinance" to establish a program and appropriate procedures and guidelines for submission of applications for the Board's consideration.

The Sherman Williams Company (Sherman Williams) submitted an application for an exemption for an expansion of their local business. Sherman Williams's application has been reviewed and County staff has determined that all requirements of state law and Ordinance No. 2012-05 have been satisfied. Additionally, pursuant to Ordinance No. 2012-05 and the Ordinance to be considered here today, Sherman Williams has executed an Agreement with the County to ensure that Sherman Williams satisfies all requirements associated with the granting and continuation of the exemption for the expansion, as well as any policies and procedures related to the program.

Pursuant to the tax abatement guidelines adopted by the Board in 2012, the recommended exemption level for Sherman Williams is 50% for five years.

Sherman Williams is proposing an expansion of their existing business in Orange County. The proposed expansion will create approximately 14 new high-wage jobs in Orange County, with an average salary of at least \$72,920, which is 150% of the overall prevailing salary in the county. New job functions will include manufacturing, shipping and technical. Financial incentives will help to ensure that this project expands here in Orange County rather than locating elsewhere.

Mayor Jerry L. Demings
-AND-
Board of County Commissioners
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As a result of this project, approximately \$47,100,000 in new investment will be added to the Orange County tax roll.

Backup documents to be provided under separate cover.

ACTION REQUESTED: **Approval and execution of an Ordinance of Orange County, Florida relating to taxation; granting an economic development exemption from certain ad valorem taxation for The Sherman Williams Company, an existing business; providing for definitions; providing findings; providing for the estimated revenue loss attributable to the exemption granted to The Sherman Williams Company; providing the level of exemption and term the exemption will remain in effect; providing the applicability; providing an effective date; and Approval of Economic Development Ad Valorem Tax Exemption Agreement with The Sherman Williams Company**

EU/mf

ORDINANCE NO. 2020-__

2 AN ORDINANCE OF ORANGE COUNTY, FLORIDA
4 RELATING TO TAXATION; GRANTING AN ECONOMIC
6 DEVELOPMENT EXEMPTION FROM CERTAIN AD
8 VALOREM TAXATION FOR THE SHERWIN-WILLIAMS
10 COMPANY, AN EXPANSION OF AN EXISTING
12 BUSINESS; PROVIDING FOR DEFINITIONS; PROVIDING
14 FINDINGS; PROVIDING FOR THE ESTIMATED
16 REVENUE LOSS ATTRIBUTABLE TO THE EXEMPTION
18 GRANTED TO THE SHERWIN-WILLIAMS COMPANY;
20 PROVIDING THE LEVEL OF EXEMPTION AND TERM
22 THE EXEMPTION WILL REMAIN IN EFFECT;
24 PROVIDING FOR APPLICABILITY; PROVIDING AN
EFFECTIVE DATE.

WHEREAS, Article VII, Section 3, of the Florida Constitution, and Section 196.1995, Florida Statutes, authorize granting of economic development ad valorem tax exemptions to qualifying new businesses and expansions of existing businesses upon the successful passage of a referendum; and

WHEREAS, the electors of Orange County authorized the granting of such exemptions by the successful passage of a referendum held on January 31, 2012; and

WHEREAS, subsequent to the passage of such referendum, on February 2, 2012, the Orange County Board of County Commissioners enacted Ordinance No. 2012-05, entitled the "Orange County Economic Development Ad Valorem Tax Exemption Ordinance" ("Program Ordinance"), to establish a program ("Program") for granting such exemptions from certain ad valorem taxation for qualifying new businesses and expansions of existing businesses, and to provide procedures and guidelines for the submissions of applications for the Board's consideration of granting such exemptions; and

WHEREAS, The Sherwin-Williams Company, an Ohio corporation ("Company"), submitted an application for an exemption for an expansion of an existing business ("Application"); and

WHEREAS, the Application indicates that the Company's business will result in an economic benefit to Orange County through the creation of greater employment opportunities in Orange County; and

WHEREAS, the Company has met the requirements to qualify as an expansion of an existing business under the Program; and

WHEREAS, the Office of the Property Appraiser has reviewed the Application, and has provided the report required by the Program Ordinance; and

48 WHEREAS, all requirements of state law and the Program Ordinance have been
satisfied.

50 BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
ORANGE COUNTY, FLORIDA:

52 *Section 1. Enactment of New Economic Development Tax Exemption Ordinance.*

A new economic development exemption from certain ad valorem taxation for The Sherwin-
54 Williams Company is enacted to read as follows:

56 **Title.** This Ordinance shall be known as the “The Sherwin-
Williams Company Economic Development Ad Valorem Tax
Exemption Ordinance.”

58 **Definitions.** All terms used in this Ordinance in capitalized
60 form, unless otherwise defined in this Ordinance, shall have the
same meanings as ascribed to them in the Program Ordinance.

62 **Findings.** The Board, based on the Application submitted
64 by the Company regarding its facility located at 2150 West Sand
Lake Road, Orlando, Florida 32809 (“Expanding Business”), and
66 the report of the Property Appraiser, and in accordance with the
procedures set forth in the Program Ordinance, finds that the
68 Company has met all the requirements of the Program Ordinance
and meets the requirements of Section 196.012(15), Florida
70 Statutes, and that granting the Exemption granted by this
Ordinance will result in an economic benefit to Orange County.

72 **Ad valorem tax revenues.** The total amount of revenue
74 available to the County from ad valorem tax sources for the current
fiscal year is Six Hundred Thirty-Five Million, Seven Hundred
76 Sixty-Three Thousand, Forty-Eight and 00/100 Dollars
(\$635,763,048.00). The total amount of revenue lost to the County
78 for the current fiscal year by virtue of Exemptions currently in
effect is One Hundred Thirty-Eight Thousand Twenty-Nine and
80 00/100 Dollars (\$138,029.00). The Improvements made by or for
the use of the Company’s Expanding Business and the Tangible
82 Personal Property of such Expanding Business are anticipated to
first appear on the Orange County ad valorem tax assessment roles
84 on or after tax year 2020. The estimated revenue loss to the
County during the current fiscal year if the Exemption applied for
86 in the Application was granted for the current fiscal year is Ninety-

88 Five Thousand Four Hundred Five and 00/100 Dollars
(\$95,405.00).

90 **Level and Term of Exemption; Expiration Date.** Based
92 upon the information provided by the Company as to the number
of jobs to be created and the estimated average annual salaries for
94 such jobs, the Company qualifies for a Level 1 Exemption (fifty
percent (50%) for a period of five (5) years) to commence on
96 January 1st of the year in which the Improvements made by or for
the use of the Company's Expanding Business and/or any Tangible
98 Personal Property of such Expanding Business first appear on the
Orange County ad valorem tax assessment rolls, and shall expire
on December 31st of the fifth tax year thereafter. The ability to
100 receive an Exemption for the period granted is conditioned upon
the Company: 1) executing the agreement in substantially the form
102 attached hereto as **Exhibit "A,"** attached hereto ("Agreement"); 2)
maintaining the Expanding Business throughout the five (5) year
104 Exemption period; and 3) continued compliance with the
requirements of this Ordinance and the Program Ordinance,
106 including, but not limited to, the submission of an annual renewal
statement and an annual report. Should the Company fail to satisfy
108 the conditions set forth in this Ordinance, the Board may revoke
the Exemption or take such other action with respect to the
110 Exemption as it deems appropriate, as provided for in the Program
Ordinance or the Agreement.

112 **Grant of Exemption.** After consideration of the
114 Application, which includes the report of the Property Appraiser as
required by the Program Ordinance, and applying the exemption
116 criteria set forth in Section 7 thereof, the Board hereby grants and
establishes an Exemption of fifty percent (50%) of the assessed
118 value of the Improvements made by or for the use of the
Company's Expanding Business located at 2150 West Sand Lake
120 Road, Orlando, Florida 32809, and of all Tangible Personal
Property of such Expanding Business for a period of five (5) years,
122 provided that the Improvements are made or the Tangible Personal
Property is added or increased on or after the day this Ordinance is
124 adopted. As a condition to receiving the Exemption, the Company
shall abide by the terms and conditions set forth in this Ordinance
126 and the Program Ordinance, and any and all amendments thereto,
including, but not limited to, entering into the Agreement with the
128 County to ensure that the Company satisfies all requirements
associated with the granting and continuation of the Exemption, as
130 well as any policies and procedures related to the Program, as may
be adopted from time to time. Failure to abide by the same may
2 result in a modification to the Exemption, a revocation of the

134 Exemption, and/or the recovery of all taxes not paid on Tangible
135 Personal Property as a result of the Exemption, as provided for in
136 the Program Ordinance. No Exemption shall be granted for the
land upon which the Company's Expanding Business is located.

138 **Applicability.** The Exemption shall apply only to ad
139 valorem taxes levied by the County. The Exemption shall not
140 apply to taxes or assessments levied by any County municipal
141 service taxing or benefit unit, municipality, school district, or water
142 management district, or to taxes levied for the payment of bonds or
143 taxes authorized by a vote of electors pursuant to Section 9(b) or
144 12, Article VII of the Florida Constitution.

146 **Nullification of the Exemption.** In the event that,
147 subsequent to the adoption of this Ordinance, the Administrator
148 receives written notice that the Company has determined not to
149 undertake or complete the activity giving rise to the Exemption
150 granted pursuant to this Ordinance, the Exemption so granted shall
151 be void, shall not take effect, and shall not be implemented. If
152 such notice is received, this section shall be self-executing and no
153 further action of the Board will be required to void the Exemption.
154 Following the County's receipt of such notice, the Administrator
155 shall forward a copy thereof to the Property Appraiser along with a
156 copy of this Ordinance.

158 **Section 2. Effective date.** This ordinance shall become effective as provided by
general law.

160 ADOPTED THIS ____ DAY OF _____, 2020.

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: _____
Jerry L. Demings
Orange County Mayor

168 **ATTEST:** Phil Diamond, CPA, County Comptroller
169 As Clerk of the Board of County Commissioners

170 By: _____
171 Deputy Clerk

**ECONOMIC DEVELOPMENT AD VALOREM TAX EXEMPTION
AGREEMENT**

The Sherwin-Williams Company
(2150 West Sand Lake Road, Orlando, Florida 32809)

THIS AGREEMENT is made as of the ____ day of _____, 2020 ("Effective Date"), by and between Orange County, Florida, a charter county and political subdivision of the State of Florida ("County") and The Sherwin-Williams Company, a Ohio corporation ("Company")(collectively referred to herein as the "Parties").

WITNESSETH:

WHEREAS, Article VII, Section 3, of the Florida Constitution, and Section 196.1995, Florida Statutes, authorize the granting of economic development ad valorem tax exemptions to qualifying new businesses and expansions of existing businesses upon the successful passage of a referendum; and

WHEREAS, the electors of Orange County have authorized the granting of such exemptions by the successful passage of a referendum held on January 31, 2012; and

WHEREAS, subsequent to the passage of such referendum, on February 2, 2012, the Board of County Commissioners of Orange County ("Board") enacted Ordinance No. 2012-05, the "Orange County Economic Development Ad Valorem Tax Exemption Ordinance" ("Program Ordinance") to establish a program for granting such exemptions from certain ad valorem taxation for certain new businesses and expansions of existing businesses ("Program") and to provide procedures and guidelines for the application and consideration of same; and

WHEREAS, the Company applied for such an exemption under the Program for an expansion of an existing business to be located at 2150 West Sand Lake Road, Orlando, Florida 32809 in Orlando, Florida 32837 ("Expanding Business"); and

WHEREAS, all affected and interested agencies reviewed said application, and provided comments on the granting of such an exemption; and

WHEREAS, all requirements of state law and the Program Ordinance were satisfied with respect to the granting of such an exemption; and

WHEREAS, on the date of this Agreement, the Board enacted an Ordinance, the (the "Exemption Ordinance") which granted an exemption from certain ad valorem taxation for the Company's Expanding Business under the Program, as more specifically set forth in the Exemption Ordinance; and

WHEREAS, pursuant to the Program Ordinance and the Exemption Ordinance, as a condition to receiving the Exemption, the Company is required to, among other things,

enter into an agreement with the County to ensure that the Company satisfies all requirements associated with the granting and continuation of the Exemption for the Expanding Business, as well as any policies and procedures related to the Program as may be adopted from time to time; and

WHEREAS, the County and the Company desire to enter into this Agreement to satisfy the referenced requirement.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties hereto agree as follows:

Section 1. Recitals. The foregoing recitals are true and correct and are incorporated herein by reference.

Section 2. Incorporation of Ordinances. The Program Ordinance and Exemption Ordinance, copies of which are attached hereto as **Exhibit "A"** and **Exhibit "B,"** respectively, are incorporated herein by this reference.

Section 3. Definitions. All terms used in this Agreement in capitalized form, unless otherwise defined in this Agreement, shall have the same meanings as ascribed to them in the Program Ordinance and Exemption Ordinance.

Section 4. Term of Agreement. The term of this Agreement shall commence on the Effective Date and shall remain in effect until the later of December 31st of the fifth (5th) tax year after January 1st of the year in which the Improvements made by or for the use of the Company's Expanding Business and/or the Tangible Personal Property of such Expanding Business first appear on the Orange County ad valorem tax assessment rolls, or the date on which all of the obligations of the Parties provided for in this Agreement have been satisfied.

Section 5. Exemption. The Company has been granted an Exemption on the assessed value of all Improvements made by or for the use of the Company's Expanding Business to be located at 2150 West Sand Lake Road, Orlando, Florida 32809, of all Tangible Personal Property of such Expanding Business, provided that the Improvements are made or the Tangible Personal Property is added or increased on or after January 1, 2020. Subject to the limitations provided for in the Program Ordinance, the Exemption so granted shall remain in effect for a period of five (5) tax years commencing on January 1st of the year in which the Improvements made by or for the use of the Company's Expanding Business and/or the Tangible Personal Property of such Expanding Business first appear on the Orange County ad valorem tax assessment rolls, and expiring on December 31st of the fifth (5th) tax year thereafter. The Exemption shall apply only to taxes levied by the County. The Exemption shall not apply to taxes or assessments levied by a municipality, municipal service benefit or taxing unit, school district, or water management district, or to taxes levied for the payment of bonds or taxes authorized by a vote of the electors pursuant to Section 9(b) or 12, Article VII of the Florida Constitution.

Section 6. Conditions Precedent. The Company's ability to receive the Exemption for the period granted is conditioned upon the Company's continued compliance with the requirements of the Program Ordinance, and any amendments thereto, throughout the five (5) year Exemption period, including, but not limited to:

- A. The Company locating its business at 2150 West Sand Lake Road, Orlando, Florida 32809;
- B. The Company maintaining at the site of the Expanding Business at least fourteen (14) Full-Time Equivalent Employees with Average Annual Wages of at least One Hundred Fifty Percent (150%) of the Average Annual Wage in the County in accordance with the following schedule: 14 jobs by December 31, 2021;
- C. The Company's submission of an annual renewal statement certifying that the information provided in the original application has not changed and an annual report to the Administrator on or before March 1st of each year reporting on the status of the Expanding Business, evidencing continued performance of the conditions set forth in the application and containing such other information as shall be deemed necessary by the Property Appraiser and the Administrator for determining such continuing performance including the forms listed in Section 7 below;
- D. Compliance by the Company with the terms of this Agreement;
- E. Compliance by the Company with any policies and procedures related to the Program as may be adopted from time to time;
- F. Compliance by the Company with federal, state, or local laws and regulations;
- G. Notification of a change in ownership of the Company in writing within ten (10) days of such change;
- H. Compliance by the Company with all filings required pursuant to Section 196.011, Florida Statutes (including the annual filing of an application for an Exemption with the Orange County Property Appraiser);
- I. Notification of any material change in the operation of the Expanding Business.

Section 7. Performance Monitoring and Annual Report.

- A. Job Performance. Each Annual Report submitted by the Company to the County must include a then current Florida New Hire Form, Florida Department of Revenue UCT 6 Form, a Federal Employment Tax Form 941, the Company's HR Report, and such other information with respect to the Expanding Business as the County deems necessary to verify that the Company is maintaining the required number of Full-Time Equivalent Employees at the required amount of Average Annual Wages.
- B. Maintenance and Review of Records. The Company shall maintain adequate records and accounts, including but not limited to, property, personnel, operations and financial records and supporting documentation as they pertain to the Exemption, the Expanding Business and this Agreement for a period of

three (3) years from the expiration of the term of this Agreement (the "Audit Period"). The County and its authorized agents shall have the right, and the Company and its subcontractors, as applicable will permit the County and its authorized agents, to examine all such records, accounts and documentation and to make copies thereof, and excerpts or transcriptions therefrom and to audit all contracts, invoices, materials, accounts and records relating to all matters covered by this Agreement, including but not limited to, personnel and employment records for the Audit Period. All such records, accounts and documentation shall be made available to the County and its authorized agents for audit, examination or copying purposes at any time during normal business hours and as often as the County may deem necessary during the Audit Period. The County's right to examine, copy and audit shall pertain likewise to any audits made by any other agency, whether local, State or federal. The Company shall insure that any subcontractor providing any services associated with this Agreement shall recognize the County's right to examine, inspect and audit its records, accounts and documentation in connection with such services. If an audit is begun by the County or other agency, whether local, State or federal, during the Audit Period, but is not completed by the end of the Audit Period, the Audit Period shall be extended until audit findings are issued. This Article shall survive the expiration or earlier termination of this Agreement.

Section 8. Events of Default; Remedies.

A. Events of Default.

Each of the following shall constitute an event of default ("Event of Default") on the part of the Company:

1. The failure of the Company to comply with each of the terms, covenants, conditions, obligations or provisions of this Agreement;
2. Fraud or material misrepresentation by the Company with respect to the Application, any term or condition of this Agreement or the Program.

B. Remedies

1. In the event of the occurrence of an Event of Default, the County shall be entitled to pursue all rights and remedies available under the Program Ordinance and the right to terminate this Agreement as provided for in Section 9 of this Agreement. In the event the County, at the discretion of the Board, exercises its contractual right of termination, the County shall be entitled to recover immediately upon demand from the Company an amount equal to all taxes not paid by the Company as a result of the Exemption as provided in the Program Ordinance and the Exemption Ordinance.

2. The Parties agree that the County shall have the specific rights and remedies set forth in this Agreement. Such rights and remedies are in addition to and cumulative with any and all other rights or remedies, now or hereafter available to the County at law or in equity in order to enforce the provisions of this Agreement. The exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy nor shall any such delay or omission be construed to be a waiver of or acquiescence to any Event of Default. The exercise of any such right or remedy by the County shall not release the Company from its obligations or any liability under this Agreement, except as expressly provided for in this Agreement or as necessary to avoid duplicative recovery from or payments by the Company.

Section 9. Termination. Upon the occurrence of an Event of Default, the County shall have the right to terminate this Agreement, and, in such case, upon receipt by the County from the Company of the payment of an amount equal to all taxes not paid by the Company on Tangible Personal Property as a result of the Exemption, the Parties shall have no further rights or obligations under this Agreement.

Section 10. Liability and Indemnification. By entering into this Agreement, the County does not assume any liability for the acts or omissions or negligence of the Company, its agents, servants or employees; nor will the Company exclude liability for its own acts or omission or negligence to the County. Moreover, the County neither waives any defense of sovereign immunity under section 768.28, Florida Statutes, as may be amended, nor increases the limits of its liability by entering into this Agreement. The Company shall defend, indemnify and hold harmless the County, from and against any and all losses, liabilities, costs, expenses, damages, claims, demands, actions, suits, judgments and other obligations, including without limitation, attorneys' fees, expenses and court costs at the trial and all appellate levels, arising from or as a result of personal injury, or property damage resulting from the acts or omissions of the Company or from any of the Company's activities as described in or performed under this Agreement.

Section 11. Non-Discrimination. The Company will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, handicap or marital status. The Company will take affirmative action to ensure equal opportunity in recruitment advertising, and that employees are treated during employment (employment, upgrading, demotion or transfer; layoff or termination; rate of pay or other forms of compensation; and selection for training), without regard to their race, color, religion, sex, national origin, age, handicap or marital status.

Section 12. Assignment. Neither Party may assign or otherwise transfer its rights, duties or obligations under this Agreement, in whole or in part, without the prior written consent of the other Party, which consent will not be unreasonably withheld.

Section 13. Waiver. A waiver of any performance or default by either Party shall not be construed to be a continuing waiver of other defaults or non-performance of the same provision or operate as a waiver of any subsequent default or non-performance of the terms, covenants and conditions of this Agreement.

Section 14. Compliance with Laws. Each Party shall comply with all applicable federal, state and local laws, rules, regulations and guidelines, relative to the performance of this Agreement.

Section 15. Independent Contractor. Nothing in this Agreement shall be construed to create a relationship of employer and employee, or principle and agent, partnership, joint venture, or any other relationship between the Parties other than that of independent parties contracting with each other solely for the purpose of carrying out the provisions of this Agreement.

Section 16. Governing Law; Venue. This Agreement shall be construed in accordance with and be governed for all purposes by the laws of the State of Florida applicable to contracts executed and to be wholly performed within such state. Venue for any proceeding pertaining to this Agreement shall be in Orange County, Florida.

Section 17. Severability. If any covenant, condition, provision, term or agreement of this Agreement shall, to any extent, be held invalid or unenforceable by any court of competent jurisdiction, the remaining covenants, conditions, provisions, terms and agreements of this Agreement shall not be affected thereby, but each covenant, condition, provision, term or agreement of this Agreement shall be valid and enforced to the fullest extent permitted by law.

Section 18. Headings. Article headings have been included in this Agreement solely for the purpose of convenience and shall not affect the interpretation of any of the terms of this Agreement.

Section 19. Notice. All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed properly given when received if sent by personal delivery, or by certified United States Mail, postage prepaid, return receipt requested, addressed as follows:

To the County:

Orange County Administrator
P.O. Box 1393
Orlando, Florida 32802

With copy to:

Economic Development Administrator
P.O. Box 1393

201 S. Rosalind Avenue, 5th Floor
Orlando, Florida 32802-1393

To the Company:

The Sherwin-Williams Company
Attn: _____
101 West Prospect Avenue
Cleveland, Ohio 44114

Each Party may by written notice to the other specify a different address for subsequent notice purposes. Notice shall be deemed effective on the date of actual receipt or three (3) days after the date of mailing whichever is earlier.

Section 20. Counterparts. This Agreement may be executed by the Parties in any number of separate identical counterparts, no one of which need be signed by both of the Parties so long as each of the Parties has signed at least one such identical counterpart. Each such identical counterpart, when signed and delivered by one or both of the Parties, shall constitute an original instrument and all such counterparts shall constitute one and the same instrument.

Section 21. Amendments. This Agreement may be amended only by written instrument upon mutual consent of both Parties.

Section 22. Land Development Regulations. Notwithstanding anything contained in this Agreement to the contrary, the County does not, by this Agreement, abrogate any right it may have to grant or deny any particular land development regulatory approval, zoning classification or any applicable permit or approval.

Section 23. Survivability. Any term, condition, covenant or obligation which requires performance by either Party subsequent to termination of this Agreement shall remain enforceable against such Party subsequent to such termination.

Section 24. No Third Party Beneficiary. This Agreement is for the benefit of the Parties, and no right or cause of action shall accrue upon or by reason hereof to or for the benefit of any third party. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon or give any person, corporation or governmental entity or agencies, other than the Parties, any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof.

Section 25. Representations and Warranties. Each Party hereby represents and warrants to the other that it has all the requisite power, authority and authorization to enter into this Agreement, has taken all necessary actions required to enter into this Agreement, and to fulfill any and all of its obligations, duties and responsibilities provided for or required of it by this Agreement, whether exercised individually or collectively.

Section 26. Entire Agreement. The foregoing terms and conditions constitute the entire agreement between the Parties and any representation not contained herein shall be null and void and of no force and effect.

IN WITNESS WHEREOF, the County and the Company have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: _____
By: Jerry L. Demings,
Orange County Mayor

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: _____
Deputy Clerk

THE SHERWIN-WILLIAMS COMPANY

By: _____
Printed Name: _____

Title: _____

ATTEST: _____
Printed Name: _____
Title: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this _____ day of _____, 2020, by _____ (printed name), _____ (title) of The Sherwin-Williams Company, a Ohio corporation, on behalf of the corporation. He/she is personally known to me or has produced _____ as identification.

Notary Public

Name typed, printed or stamped:

My Commission Expires; _____

**ECONOMIC DEVELOPMENT AD VALOREM TAX EXEMPTION
AGREEMENT**

The Sherwin-Williams Company
(2150 West Sand Lake Road, Orlando, Florida 32809)

THIS AGREEMENT is made as of the ____ day of _____, 2020 (“Effective Date”), by and between Orange County, Florida, a charter county and political subdivision of the State of Florida (“County”) and The Sherwin-Williams Company, a Ohio corporation (“Company”)(collectively referred to herein as the “Parties”).

WITNESSETH:

WHEREAS, Article VII, Section 3, of the Florida Constitution, and Section 196.1995, Florida Statutes, authorize the granting of economic development ad valorem tax exemptions to qualifying new businesses and expansions of existing businesses upon the successful passage of a referendum; and

WHEREAS, the electors of Orange County have authorized the granting of such exemptions by the successful passage of a referendum held on January 31, 2012; and

WHEREAS, subsequent to the passage of such referendum, on February 2, 2012, the Board of County Commissioners of Orange County (“Board”) enacted Ordinance No. 2012-05, the “Orange County Economic Development Ad Valorem Tax Exemption Ordinance” (“Program Ordinance”) to establish a program for granting such exemptions from certain ad valorem taxation for certain new businesses and expansions of existing businesses (“Program”) and to provide procedures and guidelines for the application and consideration of same; and

WHEREAS, the Company applied for such an exemption under the Program for an expansion of an existing business to be located at 2150 West Sand Lake Road, Orlando, Florida 32809 in Orlando, Florida 32837 (“Expanding Business”); and

WHEREAS, all affected and interested agencies reviewed said application, and provided comments on the granting of such an exemption; and

WHEREAS, all requirements of state law and the Program Ordinance were satisfied with respect to the granting of such an exemption; and

WHEREAS, on the date of this Agreement, the Board enacted an Ordinance, the (the “Exemption Ordinance”) which granted an exemption from certain ad valorem taxation for the Company’s Expanding Business under the Program, as more specifically set forth in the Exemption Ordinance; and

WHEREAS, pursuant to the Program Ordinance and the Exemption Ordinance, as a condition to receiving the Exemption, the Company is required to, among other things,

enter into an agreement with the County to ensure that the Company satisfies all requirements associated with the granting and continuation of the Exemption for the Expanding Business, as well as any policies and procedures related to the Program as may be adopted from time to time; and

WHEREAS, the County and the Company desire to enter into this Agreement to satisfy the referenced requirement.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties hereto agree as follows:

Section 1. Recitals. The foregoing recitals are true and correct and are incorporated herein by reference.

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Section 3. Definitions. All terms used in this Agreement in capitalized form, unless otherwise defined in this Agreement, shall have the same meanings as ascribed to them in the Program Ordinance and Exemption Ordinance.

Section 4. Term of Agreement. The term of this Agreement shall commence on the Effective Date and shall remain in effect until the later of December 31st of the fifth (5th) tax year after January 1st of the year in which the Improvements made by or for the use of the Company's Expanding Business and/or the Tangible Personal Property of such Expanding Business first appear on the Orange County ad valorem tax assessment rolls, or the date on which all of the obligations of the Parties provided for in this Agreement have been satisfied.

Section 5. Exemption. The Company has been granted an Exemption on the assessed value of all Improvements made by or for the use of the Company's Expanding Business to be located at 2150 West Sand Lake Road, Orlando, Florida 32809, of all Tangible Personal Property of such Expanding Business, provided that the Improvements are made or the Tangible Personal Property is added or increased on or after January 1, 2020. Subject to the limitations provided for in the Program Ordinance, the Exemption so granted shall remain in effect for a period of five (5) tax years commencing on January 1st of the year in which the Improvements made by or for the use of the Company's Expanding Business and/or the Tangible Personal Property of such Expanding Business first appear on the Orange County ad valorem tax assessment rolls, and expiring on December 31st of the fifth (5th) tax year thereafter. The Exemption shall apply only to taxes levied by the County. The Exemption shall not apply to taxes or assessments levied by a municipality, municipal service benefit or taxing unit, school district, or water management district, or to taxes levied for the payment of bonds or taxes authorized by a vote of the electors pursuant to Section 9(b) or 12, Article VII of the Florida Constitution.

Section 6. Conditions Precedent. The Company's ability to receive the Exemption for the period granted is conditioned upon the Company's continued compliance with the requirements of the Program Ordinance, and any amendments thereto, throughout the five (5) year Exemption period, including, but not limited to:

- A. The Company locating its business at 2150 West Sand Lake Road, Orlando, Florida 32809;
- B. The Company maintaining at the site of the Expanding Business at least fourteen (14) Full-Time Equivalent Employees with Average Annual Wages of at least One Hundred Fifty Percent (150%) of the Average Annual Wage in the County in accordance with the following schedule: 14 jobs by December 31, 2021;
- C. The Company's submission of an annual renewal statement certifying that the information provided in the original application has not changed and an annual report to the Administrator on or before March 1st of each year reporting on the status of the Expanding Business, evidencing continued performance of the conditions set forth in the application and containing such other information as shall be deemed necessary by the Property Appraiser and the Administrator for determining such continuing performance including the forms listed in Section 7 below;
- D. Compliance by the Company with the terms of this Agreement;
- E. Compliance by the Company with any policies and procedures related to the Program as may be adopted from time to time;
- F. Compliance by the Company with federal, state, or local laws and regulations;
- G. Notification of a change in ownership of the Company in writing within ten (10) days of such change;
- H. Compliance by the Company with all filings required pursuant to Section 196.011, Florida Statutes (including the annual filing of an application for an Exemption with the Orange County Property Appraiser);
- I. Notification of any material change in the operation of the Expanding Business.

Section 7. Performance Monitoring and Annual Report.

- A. Job Performance. Each Annual Report submitted by the Company to the County must include a then current Florida New Hire Form, Florida Department of Revenue UCT 6 Form, a Federal Employment Tax Form 941, the Company's HR Report, and such other information with respect to the Expanding Business as the County deems necessary to verify that the Company is maintaining the required number of Full-Time Equivalent Employees at the required amount of Average Annual Wages.
- B. Maintenance and Review of Records. The Company shall maintain adequate records and accounts, including but not limited to, property, personnel, operations and financial records and supporting documentation as they pertain to the Exemption, the Expanding Business and this Agreement for a period of

three (3) years from the expiration of the term of this Agreement (the "Audit Period"). The County and its authorized agents shall have the right, and the Company and its subcontractors, as applicable will permit the County and its authorized agents, to examine all such records, accounts and documentation and to make copies thereof, and excerpts or transcriptions therefrom and to audit all contracts, invoices, materials, accounts and records relating to all matters covered by this Agreement, including but not limited to, personnel and employment records for the Audit Period. All such records, accounts and documentation shall be made available to the County and its authorized agents for audit, examination or copying purposes at any time during normal business hours and as often as the County may deem necessary during the Audit Period. The County's right to examine, copy and audit shall pertain likewise to any audits made by any other agency, whether local, State or federal. The Company shall insure that any subcontractor providing any services associated with this Agreement shall recognize the County's right to examine, inspect and audit its records, accounts and documentation in connection with such services. If an audit is begun by the County or other agency, whether local, State or federal, during the Audit Period, but is not completed by the end of the Audit Period, the Audit Period shall be extended until audit findings are issued. This Article shall survive the expiration or earlier termination of this Agreement.

Section 8. Events of Default; Remedies.

A. Events of Default.

Each of the following shall constitute an event of default ("Event of Default") on the part of the Company:

1. The failure of the Company to comply with each of the terms, covenants, conditions, obligations or provisions of this Agreement;
2. Fraud or material misrepresentation by the Company with respect to the Application, any term or condition of this Agreement or the Program.

B. Remedies

1. In the event of the occurrence of an Event of Default, the County shall be entitled to pursue all rights and remedies available under the Program Ordinance and the right to terminate this Agreement as provided for in Section 9 of this Agreement. In the event the County, at the discretion of the Board, exercises its contractual right of termination, the County shall be entitled to recover immediately upon demand from the Company an amount equal to all taxes not paid by the Company as a result of the Exemption as provided in the Program Ordinance and the Exemption Ordinance.

2. The Parties agree that the County shall have the specific rights and remedies set forth in this Agreement. Such rights and remedies are in addition to and cumulative with any and all other rights or remedies, now or hereafter available to the County at law or in equity in order to enforce the provisions of this Agreement. The exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy nor shall any such delay or omission be construed to be a waiver of or acquiescence to any Event of Default. The exercise of any such right or remedy by the County shall not release the Company from its obligations or any liability under this Agreement, except as expressly provided for in this Agreement or as necessary to avoid duplicative recovery from or payments by the Company.

Section 9. Termination. Upon the occurrence of an Event of Default, the County shall have the right to terminate this Agreement, and, in such case, upon receipt by the County from the Company of the payment of an amount equal to all taxes not paid by the Company on Tangible Personal Property as a result of the Exemption, the Parties shall have no further rights or obligations under this Agreement.

Section 10. Liability and Indemnification. By entering into this Agreement, the County does not assume any liability for the acts or omissions or negligence of the Company, its agents, servants or employees; nor will the Company exclude liability for its own acts or omission or negligence to the County. Moreover, the County neither waives any defense of sovereign immunity under section 768.28, Florida Statutes, as may be amended, nor increases the limits of its liability by entering into this Agreement. The Company shall defend, indemnify and hold harmless the County, from and against any and all losses, liabilities, costs, expenses, damages, claims, demands, actions, suits, judgments and other obligations, including without limitation, attorneys' fees, expenses and court costs at the trial and all appellate levels, arising from or as a result of personal injury, or property damage resulting from the acts or omissions of the Company or from any of the Company's activities as described in or performed under this Agreement.

Section 11. Non-Discrimination. The Company will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, handicap or marital status. The Company will take affirmative action to ensure equal opportunity in recruitment advertising, and that employees are treated during employment (employment, upgrading, demotion or transfer; layoff or termination; rate of pay or other forms of compensation; and selection for training), without regard to their race, color, religion, sex, national origin, age, handicap or marital status.

Section 12. Assignment. Neither Party may assign or otherwise transfer its rights, duties or obligations under this Agreement, in whole or in part, without the prior written consent of the other Party, which consent will not be unreasonably withheld.

Section 13. Waiver. A waiver of any performance or default by either Party shall not be construed to be a continuing waiver of other defaults or non-performance of the same provision or operate as a waiver of any subsequent default or non-performance of the terms, covenants and conditions of this Agreement.

Section 14. Compliance with Laws. Each Party shall comply with all applicable federal, state and local laws, rules, regulations and guidelines, relative to the performance of this Agreement.

Section 15. Independent Contractor. Nothing in this Agreement shall be construed to create a relationship of employer and employee, or principle and agent, partnership, joint venture, or any other relationship between the Parties other than that of independent parties contracting with each other solely for the purpose of carrying out the provisions of this Agreement.

Section 16. Governing Law; Venue. This Agreement shall be construed in accordance with and be governed for all purposes by the laws of the State of Florida applicable to contracts executed and to be wholly performed within such state. Venue for any proceeding pertaining to this Agreement shall be in Orange County, Florida.

Section 17. Severability. If any covenant, condition, provision, term or agreement of this Agreement shall, to any extent, be held invalid or unenforceable by any court of competent jurisdiction, the remaining covenants, conditions, provisions, terms and agreements of this Agreement shall not be affected thereby, but each covenant, condition, provision, term or agreement of this Agreement shall be valid and enforced to the fullest extent permitted by law.

Section 18. Headings. Article headings have been included in this Agreement solely for the purpose of convenience and shall not affect the interpretation of any of the terms of this Agreement.

Section 19. Notice. All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed properly given when received if sent by personal delivery, or by certified United States Mail, postage prepaid, return receipt requested, addressed as follows:

To the County:

Orange County Administrator
P.O. Box 1393
Orlando, Florida 32802

With copy to:

Economic Development Administrator
P.O. Box 1393

201 S. Rosalind Avenue, 5th Floor _____
Orlando, Florida 32802-1393

To the Company:

The Sherwin-Williams Company
Attn: _____
101 West Prospect Avenue
Cleveland, Ohio 44114

Each Party may by written notice to the other specify a different address for subsequent notice purposes. Notice shall be deemed effective on the date of actual receipt or three (3) days after the date of mailing whichever is earlier.

Section 20. Counterparts. This Agreement may be executed by the Parties in any number of separate identical counterparts, no one of which need be signed by both of the Parties so long as each of the Parties has signed at least one such identical counterpart. Each such identical counterpart, when signed and delivered by one or both of the Parties, shall constitute an original instrument and all such counterparts shall constitute one and the same instrument.

Section 21. Amendments. This Agreement may be amended only by written instrument upon mutual consent of both Parties.

Section 22. Land Development Regulations. Notwithstanding anything contained in this Agreement to the contrary, the County does not, by this Agreement, abrogate any right it may have to grant or deny any particular land development regulatory approval, zoning classification or any applicable permit or approval.

Section 23. Survivability. Any term, condition, covenant or obligation which requires performance by either Party subsequent to termination of this Agreement shall remain enforceable against such Party subsequent to such termination.

Section 24. No Third Party Beneficiary. This Agreement is for the benefit of the Parties, and no right or cause of action shall accrue upon or by reason hereof to or for the benefit of any third party. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon or give any person, corporation or governmental entity or agencies, other than the Parties, any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof.

Section 25. Representations and Warranties. Each Party hereby represents and warrants to the other that it has all the requisite power, authority and authorization to enter into this Agreement, has taken all necessary actions required to enter into this Agreement, and to fulfill any and all of its obligations, duties and responsibilities provided for or required of it by this Agreement, whether exercised individually or collectively.

Section 26. Entire Agreement. The foregoing terms and conditions constitute the entire agreement between the Parties and any representation not contained herein shall be null and void and of no force and effect.

IN WITNESS WHEREOF, the County and the Company have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: _____
By: Jerry L. Demings,
Orange County Mayor

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: _____
Deputy Clerk

THE SHERWIN-WILLIAMS COMPANY

By: _____
Printed Name: _____

Title: _____

ATTEST: _____
Printed Name: _____
Title: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this ____ day of _____, 2020, by _____ (printed name), _____ (title) of The Sherwin-Williams Company, a Ohio corporation, on behalf of the corporation. He/she is personally known to me or has produced _____ as identification.

Notary Public

Name typed, printed or stamped:

My Commission Expires; _____

APPROVED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS
FEB 21 2012 CMS/LE

EXHIBIT "A"
to Economic Development Ad Valorem
Tax Exemption Agreement

ORDINANCE NO. 2012-05

EFFECTIVE DATE
MAR 02 2012

AN ORDINANCE OF ORANGE COUNTY, FLORIDA, PERTAINING TO EXEMPTIONS FROM AD VALOREM TAXATION; AMENDING CHAPTER 25 OF THE ORANGE COUNTY CODE; ESTABLISHING AN EXEMPTION FROM CERTAIN AD VALOREM TAXATION FOR CERTAIN NEW BUSINESSES AND EXPANSIONS OF EXISTING BUSINESSES; PROVIDING A SHORT TITLE; PROVIDING FOR ENACTMENT AUTHORITY; PROVIDING FINDINGS OF FACT; PROVIDING FOR DEFINITIONS OF TERMS; PROVIDING FOR ESTABLISHMENT OF ECONOMIC DEVELOPMENT AD VALOREM TAX EXEMPTION; PROVIDING FOR AN APPLICATION FOR AN EXEMPTION; PROVIDING FOR BOARD CONSIDERATION OF SUCH APPLICATIONS; PROVIDING FOR AN APPLICATION FEE; PROVIDING FOR CONTINUING PERFORMANCE; PROVIDING FOR BOARD REVOCATION OF EXEMPTION; PROVIDING FOR APPLICABILITY; PROVIDING FOR A SUNSET DATE; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Orange County believes that local government should support economic growth by providing an incentive for job creation that will lead to the improvement of the quality of life of the residents of Orange County and the positive expansion of the economy; and

WHEREAS, to this end, the Board of County Commissioners desires to offer ad valorem tax exemptions to certain qualifying new businesses and expansions of existing businesses already situated in Orange County; and

WHEREAS, the granting of ad valorem tax exemptions to such businesses will provide Orange County with an additional economic development incentive and enhance the ability of Orange County to compete for new business development within Orange County and retain local businesses with planned expansions which will increase employment opportunities in Orange County; and

WHEREAS, local governments are authorized to grant such tax exemptions pursuant to Article VII, Section 3, of the Florida Constitution and Section 196.1995, Florida Statutes, upon the successful passage of an approving referendum; and

WHEREAS, the electors of Orange County have authorized the offering of ad valorem tax exemptions to qualified new and expanding businesses in a referendum held on January 31, 2012.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ORANGE COUNTY, FLORIDA:

Section 1. Title. This Ordinance shall be known as the “Orange County Economic Development Ad Valorem Tax Exemption Ordinance.”

Section 2. Enactment Authority. Article VII, Section 3, of the Constitution of the State of Florida and Section 196.1995, Florida Statutes, enable the County to grant economic development ad valorem tax exemptions to certain new businesses and expansions of existing businesses expected to create new jobs after the electors of the County, voting on the question in a referendum, authorize such exemptions. In a referendum held on January 31, 2012, the electors of Orange County authorized the Board to grant economic development ad valorem tax exemptions.

Section 3. Findings of Fact; Declaration of Intent.

A. It is a recognized function of local government to promote economic development within its jurisdiction by providing financial incentives that will encourage new businesses to relocate within its jurisdiction and existing businesses to expand, thereby creating employment opportunities that will benefit the entire community.

B. The current economic climate has resulted in a high unemployment rate in Orange County, impacting the quality of life for the citizens of Orange County and the sustainability of local businesses.

C. The Board determines that the granting of economic development ad valorem tax exemptions to new businesses locating in Orange County and to existing businesses expanding in Orange County that meet the guidelines provided in this Ordinance will promote and strengthen

the local economy, will enhance the health and welfare of the citizens of Orange County, and is in the best interests of the County and serves both a county and a public purpose.

D. The Board desires to provide incentives to businesses of diverse industries having a positive impact on the local economy through the creation of greater employment opportunities in Orange County. The Board declares that the provision of ad valorem tax exemptions pursuant to this Ordinance serves the public purpose of fostering economic growth in Orange County, to the benefit of Orange County's residents and business owners.

E. The granting of or denial of exemptions should be conducted on a rational, non-arbitrary and non-discriminatory basis by the Board in furtherance of the economic development goals of Orange County. Exemptions shall be granted for the purpose of creating new jobs in and economic benefit to the County. To this end, prior to any grant of an exemption, the Board shall consider the factors set forth in this Ordinance. Applications for exemptions will be considered on a case-by-case basis in determining whether sufficient economic benefits are presented.

F. This Ordinance shall expire on January 31, 2022.

Section 4. Definitions. The following words, phrases, and terms shall have the meanings set forth below. Except where indicated otherwise, such words, phrases and terms shall have the same meanings attributed to them in the Florida Statutes and the Florida Administrative Code as amended from time to time:

"Administrator" means the Economic Development Administrator of the County or such other person designated by the County Administrator.

"Applicant" means any person, firm, partnership or corporation who files an Application with the Board seeking an Exemption.

“Application” means a written application for an Exemption on the form prescribed by the Florida Department of Revenue, together with any supplemental form prescribed by the Administrator and such other certificates, representations, documents, data, or additional information requested by the Administrator or the Orange County Property Appraiser from time to time as may be reasonably necessary or useful for the determinations contemplated by this Ordinance.

“Board” means the Board of County Commissioners of Orange County, Florida.

“Brownfield Area” means an area designated as a Brownfield area pursuant to Section 376.80, Florida Statutes.

“Business” means any activity engaged in by any person, firm, partnership, corporation, or other business organization or entity, with the object of private or public gain, benefit, or advantage, either direct or indirect.

“Capital Investment” means any expenditure for an Expansion of an Existing Business or a New Business to be located in Orange County which can be capitalized under generally accepted accounting principles.

“Change of Ownership or Control” means any sale, foreclosure, transfer of legal title or beneficial title in equity to any person, or the cumulative transfer of control of more than fifty percent (50%) of the legal entity that owned the property when it was most recently assessed at just value. A change of control is present when a change of a director or directors, general partner, or other controlling person or entity, results in a transfer of control to a successor, or when a lease, contract, or other arrangement transfers control to another person or entity.

“Community Redevelopment Agency” means the agency with jurisdiction over an area designated as a community redevelopment area pursuant to Part III, Chapter 163, Florida Statutes.

“County” means Orange County, Florida.

“Enterprise Zone” means an area designated as an enterprise zone pursuant to Section 290.0065, Florida Statutes.

“Exemption” or “Economic Development Ad Valorem Tax Exemption” means an ad valorem tax exemption granted by the Board in its sole and absolute discretion to a Qualified Business pursuant to this Ordinance as authorized by Article VII, Section 3 of the Constitution of the State of Florida and Section 196.1995, Florida Statutes.

“Exemption Criteria” means the criteria to be applied by the Board in making its determination as to whether to grant an Exemption, as provided for in Subsection 7 of this Ordinance.

“Expansion of an Existing Business” means:

A. 1. A business or organization establishing ten (10) or more new jobs to employ ten (10) or more full-time employees in Orange County, paying an average wage for such new jobs that is above the average wage in the County which:

- a. principally manufactures, processes, compounds, fabricates, or produces for sale items of tangible personal property at a fixed location and which comprises an industrial or manufacturing plant; or
- b. is a Target Industry Business.

2. A business or organization establishing 25 or more jobs to employ 25 or more full-time employees in this County, the sales factor of which for the facility with respect to

which it requests an Exemption is less than 0.50 for each year the Exemption is claimed; provided that such business increases operations on a site collocated with a commercial or industrial operation owned by the same business, or organization under common control with the same business or organization, resulting in a net increase in employment of not less than 10 percent or an increase in productive output of not less than 10 percent.

B. Any business or organization located in an Enterprise Zone or Brownfield Area that increases operations on a site located within the same zone or area collocated with a commercial or industrial operation owned by the same business or organization.

“Goods” means all personal property when purchased primarily for personal, family, or household use, but not including personal property sold for commercial or industrial use.

“Improvements” means physical changes made to raw land, and structures placed on or under the land surface.

“New Business” means:

A. A business or organization establishing ten (10) or more new jobs to employ ten (10) or more full-time employees in Orange County, paying an average wage for such new jobs that is above the average wage in the County which principally engages in any one or more of the following operations:

1. manufactures, processes, compounds, fabricates, or produces for sale items of tangible personal property at a fixed location and which comprises an industrial or manufacturing plant; or
2. is a Target Industry Business.

B. A business or organization establishing twenty-five (25) or more new jobs to employ twenty-five (25) or more full-time employees in Orange County, the sales factor of

which for the facility with respect to which it requests an Exemption is less than 0.50 for each year the Exemption is claimed; or

C. An office space in Orange County owned and used by a business or organization newly domiciled in Orange County; provided that such office space houses fifty (50) or more full-time employees of such business or corporation; provided that such business or organization office first begins operation on a site clearly separate from any other commercial or industrial operation owned by the same business or organization.

D. Any business located in an Enterprise Zone or Brownfield Area that first begins operation on a site clearly separate from any other commercial or industrial operation owned by the same business or organization.

E. A business that is situated on property annexed into a municipality and that, at the time of the annexation, is receiving an Exemption from the County.

“Qualified Business” means either a New Business or an Expansion of an Existing Business, as defined herein, that meets the criteria to be considered for an Exemption.

“Sales Factor” means a fraction, the numerator of which is the total sales of the taxpayer in this state during the taxable year or period and the denominator of which is the total sales of the taxpayer everywhere during the taxable year or period.

“Tangible Personal Property” shall have the meaning set forth in Section 192.001(11)(d), Florida Statutes.

“Target Industry Business” means an Expansion of an Existing Business or a New Business that is engaged in a Business designated, at the time of consideration of an application for Exemption, as a target industry business pursuant to Section 288.106, Florida Statutes.

Section 5. Establishment of Economic Development Ad Valorem Tax Exemption.

A. **Incentive.** There is herein established an Economic Development Ad Valorem Tax Exemption for ad valorem taxes levied by the County. The Exemption is a local option tax incentive for a Qualified Business which may be granted or refused at the sole and absolute discretion of the Board.

B. **Ineligible Property.** The Exemption shall not apply to Improvements and Tangible Personal Property made or acquired by or for the use of a Qualified Business when such Improvements or Tangible Personal Property have been included on the tax roll prior to the effective date of the ordinance granting the Exemption.

C. **Eligible Property.** At the sole and absolute discretion of the Board, and except as otherwise provided for in this Ordinance, the Exemption may be granted for up to 100 percent of the assessed value of all Improvements made by or for the use of a qualifying New Business and of all Tangible Personal Property of such New Business, or up to 100 percent of the assessed value of all added Improvements made to facilitate the qualifying Expansion of an Existing Business and of the net increase in all Tangible Personal Property acquired to facilitate such Expansion of an Existing Business, provided that the Improvements to real property are made or the Tangible Personal Property is added or increased on or after the day the ordinance granting the Exemption is adopted. Exemptions for less than 100 percent of such assessed values may be granted at the sole and absolute discretion of the Board. Property acquired to replace existing property shall not be eligible for the Exemption.

D. **Land.** Land is ineligible for the Exemption.

E. ***Duration of Exemption.*** Each Ordinance granting an Exemption shall state the period of time for which the Exemption shall remain in effect and the expiration date of the Exemption, which may be any period of time up to ten (10) years.

F. ***Applicable Taxes.*** The Exemption shall apply only to ad valorem taxes levied countywide by the County. The exemption shall not apply to taxes levied by a County municipal service taxing unit, municipality, school district, or water management district, or other special district or to taxes levied for the payment of bonds or taxes authorized by a vote of the electors pursuant to Section 9(b) or 12, Article VII of the Florida Constitution.

G. ***Maximum Amount of Annual Exemptions.*** Notwithstanding any other provision of this Ordinance, the total Exemptions granted by the Board for each fiscal year shall not result in an estimated aggregate annual amount of forgone ad valorem tax revenues in excess of two million dollars (\$2,000,000.00), or such other amount approved by a supermajority vote of the entire Board, which amount shall be determined by the Board based on estimates of the revenue lost to the County during the applicable fiscal year by virtue of Exemptions previously granted plus Exemptions under consideration in such applicable fiscal year.

Section 6. Application for Exemption.

A. ***Application.*** Any eligible person, firm, partnership or corporation which desires an Exemption shall file with the Board a written Application. The Application must be filed no later than March 1st of the year the Exemption is desired to take effect.

B. ***Review.*** Upon submittal of the Application, the Administrator shall review same and, within 10 days of submission, notify the Applicant of any facial deficiencies. The Administrator shall promptly deliver a copy of the Application, to the Orange County Property Appraiser, who shall promptly notify the Applicant and the Administrator of any additional

information he or she determines to be necessary for adequate consideration of the Application. Complete Applications shall be scheduled for a public hearing before the Board no later than forty-five (45) days following receipt by the Administrator of the Property Appraiser's report provided for in this Ordinance. The Applicant shall be notified of the date and time of the public hearing.

C. ***Agreement.*** As a condition to receiving an Exemption, a Business will be required to enter into an agreement with the County to ensure that the Business satisfies all requirements associated with the creation of jobs in the County, the fulfillment of other representations made in applying for the Exemption and the granting of the Exemption by the Board.

D. ***Community Redevelopment Agency.*** If a New Business is locating to, or an Expansion of an Existing Business is occurring in, a Community Redevelopment Area, the Property Appraiser shall promptly so notify the Administrator and the Community Redevelopment Agency overseeing such area shall be provided a copy of the Application for review and comment. Input from the Community Redevelopment Agency will be considered by the Board in deciding whether an Exemption is to be granted. If such Community Redevelopment Agency objects to the granting of an Exemption, the Community Redevelopment Agency must submit an objection in writing to the Board for its consideration.

E. ***Additional Submission Requirements.*** An Application for an Exemption shall be submitted in advance of any necessary permit application changing the future land use or changing zoning for proposed sites. In the case of existing sites or facilities where adequate zoning and future land use is in place, an Application shall be submitted prior to application for building permits.

Section 7. Application Process.

A. **Property Appraiser Review and Report.** Before the Board takes action on an Application, a copy of the Application shall have been delivered to the Property Appraiser for review pursuant to Section 6 of this Ordinance. After receipt and analysis of the Application, and after receipt and analysis of such additional information as the Property Appraiser may have requested in connection with the Application, the Property Appraiser shall provide a report to the Board, which shall include the following:

1. The total revenue available to the County for the current fiscal year from ad valorem tax sources, or an estimate of such revenue if the actual total revenue available cannot be determined;

2. The amount of any revenue lost to the County for the current fiscal year by virtue of Exemptions previously granted, or an estimate of such revenue if the actual revenue lost cannot be determined;

3. An estimate of the amount of revenue which would be lost to the County during the current fiscal year if the exemption applied for were granted, had the property for which the Exemption is requested otherwise been subject to taxation; and

4. A determination as to whether the property for which an Exemption is requested is to be incorporated into a New Business or the Expansion of an Existing Business, or into neither, which determination the Property Appraiser shall also affix to the face of the Application.

5. Such additional information as the Property Appraiser may elect to submit, including (but not limited to) a description of the data, information, documents, certifications, opinions, and assumptions on which the report is based and on which the Property

Appraiser relied in reaching his/her determinations, the credibility and reliability (or lack thereof) of such data, information, certifications, opinions, and assumptions used by the Property Appraiser in reaching his/her determinations, and caveats that the Property Appraiser may deem important or relevant to the Board's consideration of the Application.

B. ***Eligibility Threshold.*** The threshold for eligibility is whether the Business meets the definition of New Business or of an Expansion of an Existing Business as provided in this Ordinance.

C. ***Ineligible Business.*** Any Business in violation of any federal, state, or local law or regulation, including but not limited to, environmental matters, will not be eligible for an Exemption.

D. ***Exemption Criteria.*** In considering an Application for an Exemption, the Board shall take into account the following factors:

1. the total number of net new jobs to be created by the Applicant;
2. the average annual wage of the new jobs to be created by the Applicant;
3. the Capital Investment to be made by the Applicant;
4. the type of business or operation and whether it qualifies as a targeted industry;
5. the environmental impact of the proposed business or operation;
6. the extent to which the Applicant intends to source its supplies and materials within the County; and
7. Any other economic-related characteristics or criteria deemed necessary or relevant by the Board.

The Board may also implement additional criteria or guidelines for determining whether to grant Exemptions and the extent of such Exemptions.

E. **Board Ordinance.** After consideration of the Application, the Property Appraiser's report, input from a Community Redevelopment Agency, if applicable, and such other information it deems relevant, and the evaluation of the Exemption Criteria, the Board may choose in its sole and absolute discretion to enact an ordinance granting an Exemption to the Applicant. If the Board decides to enact such an ordinance, the ordinance shall be enacted in the same manner as any other general ordinance of the County, and shall include the following:

1. The name and address of the New Business or the Expansion of an Existing Business to which the Exemption is granted;

2. The name of the owner(s) of the New Business or the Expansion of an Existing Business;

3. The total amount of revenue available to the County from ad valorem tax sources for the current fiscal year, the total amount of revenue lost to the County for the current fiscal year by virtue of Exemptions currently in effect, and the estimated revenue loss to the County for the current fiscal year attributable to the Exemption of the business named in the ordinance;

4. The percentage of assessed value of Improvements and Tangible Personal Property to be exempt from the County's ad valorem tax levies.

5. The period of time for which the Exemption will remain in effect and the expiration date of the Exemption; and

6. A finding that the Business named in the ordinance meets the requirements of Section 196.012(15) or (16), Florida Statutes.

7. A provision conditioning the Exemption upon the execution by the Business of, and the ongoing compliance with, an agreement setting forth, among other things, continuing performance obligations of the Business associated with the creation of jobs in the County, the fulfillment of other representations made in applying for the Exemption and the granting of the Exemption by the Board.

F. *Precedent; Standard for Consideration of Applications.* No precedent shall be implied or inferred by the granting of an Exemption. Each Application shall be considered by the Board in its legislative capacity on a case-by-case basis, after considering the Property Appraiser's report on the Application and the exemption criteria set forth herein.

Section 8. Application Fees. By resolution, the Board may establish a nonrefundable fee for processing each Application and preparing, implementing and monitoring any implementing ordinance enacted by the Board.

Section 9. Continuing Performance.

A. *Change in Ownership.*

1. The Business granted an Exemption shall be required to inform the Board in writing within ten (10) days as to any changes in ownership of the Business granted an Exemption. Moreover, the transferee Business shall continue to comply with all Exemption requirements and shall assume in writing all of the obligations of the transferor Business provided for in the agreement required pursuant to this Ordinance.

2. Failure of the Business granted an Exemption to notify the Board of any such changes in ownership is cause for revocation of the Exemption by adoption of an ordinance repealing the Exemption ordinance, at the Board's discretion.

B. **Annual Filings.** The ability to receive an Exemption for the period granted shall be conditioned upon the Applicant's ability to maintain the Qualified Business throughout the entire period. The Applicant shall be required to submit an annual renewal statement and an annual report to the Administrator on or before March 1st of each year for which the Exemption was granted. The Applicant shall also timely comply with all filing required pursuant to Section 196.011, Florida Statutes.

1. The annual renewal statement shall certify that the information provided in the original Application has not changed.

2. The annual report shall provide a report on the status of the business, evidencing satisfaction of the business maintenance and continued performance conditions set forth in the Application. The report shall be prepared in substantially the form approved by the Administrator and the Property Appraiser and shall contain such information as the Administrator and Property Appraiser may reasonably deem necessary for the purpose of determining continuing performance by the Business of the conditions provided for in this Ordinance, the ordinance specifically granting the Business an Exemption and the representations made in the Application.

Section 10. Board Revocation. Should any Business granted an Exemption pursuant to this Ordinance fail to file the annual renewal statement and/or annual report on or before March 1st of each year the Exemption has been granted as required by this Ordinance, fail to continue to meet the definition of a New Business or an Expansion of an Existing Business, fail to timely inform the Board of a change of ownership, fail to file a new Application upon any change in the information provided in the original Application, fail to fulfill any other representation made to the Board during the Application process, and/or fail to comply with any

other requirement provided for in this Ordinance, the Board, may, upon thirty (30) days written notice to the respective Business, adopt an ordinance revoking the Exemption or take such other action with respect to the Exemption as it deems appropriate.

A. **Notification.** Upon revocation, the Board shall immediately notify the Property Appraiser.

B. **Recovery of Taxes.** If it is determined that a Business was not in fact entitled to an Exemption in any year for which the Business received an exemption, the County, Property Appraiser or Tax Collector shall be entitled to recover all taxes not paid as a result of the Exemption for such year or years, plus interest at the maximum rate allowed by law, plus all costs of collection, including, without limitation, reasonable attorney's fees.

C. **Reapplication.** Nothing herein shall prohibit a Business from reapplying for an ad valorem tax exemption pursuant to state law.

Section 11. Applicability. This Ordinance shall be applicable in all areas of Orange County where Orange County is the taxing authority.

Section 12. Review. The decision of the Board not to grant an Exemption shall not be reviewable by the value adjustment board pursuant to Part I of Chapter 194 of Florida Statutes.

Section 13. Conflicts. All ordinances or parts of ordinances in conflict herewith are hereby superseded or repealed to the extent of such conflict.

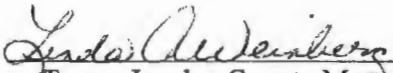
Section 14. Sunset Date. Pursuant to Section 196.1995, Florida Statutes, the Board's authority to grant Exemptions shall expire on January 31, 2022. For purposes of enforcement and revocation of Exemptions, this Ordinance shall survive such expiration date. Such expiration date shall not affect the operation of any Exemption granted under this Ordinance prior to January 31, 2022.

Section 15. Codification. Sections 1 through 12 of this Ordinance shall be codified in Chapter 25 of the Orange County Code.

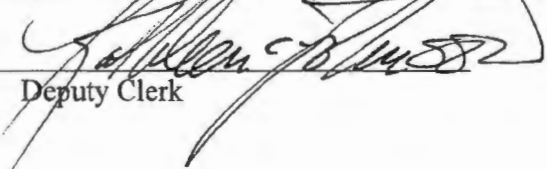
Section 16. Effective Date. This ordinance shall become effective as provided by general law.

ADOPTED THIS 21st DAY OF FEBRUARY 2012.

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: 
Teresa Jacobs, County Mayor

ATTEST: Martha O. Haynie, County Comptroller
As Clerk of the Board of County Commissioners

By: 
Deputy Clerk



ORDINANCE NO. 2020-__

AN ORDINANCE OF ORANGE COUNTY, FLORIDA RELATING TO TAXATION; GRANTING AN ECONOMIC DEVELOPMENT EXEMPTION FROM CERTAIN AD VALOREM TAXATION FOR THE SHERWIN-WILLIAMS COMPANY, AN EXPANSION OF AN EXISTING BUSINESS; PROVIDING FOR DEFINITIONS; PROVIDING FINDINGS; PROVIDING FOR THE ESTIMATED REVENUE LOSS ATTRIBUTABLE TO THE EXEMPTION GRANTED TO THE SHERWIN-WILLIAMS COMPANY; PROVIDING THE LEVEL OF EXEMPTION AND TERM THE EXEMPTION WILL REMAIN IN EFFECT; PROVIDING FOR APPLICABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article VII, Section 3, of the Florida Constitution, and Section 196.1995, Florida Statutes, authorize granting of economic development ad valorem tax exemptions to qualifying new businesses and expansions of existing businesses upon the successful passage of a referendum; and

WHEREAS, the electors of Orange County authorized the granting of such exemptions by the successful passage of a referendum held on January 31, 2012; and

WHEREAS, subsequent to the passage of such referendum, on February 2, 2012, the Orange County Board of County Commissioners enacted Ordinance No. 2012-05, entitled the "Orange County Economic Development Ad Valorem Tax Exemption Ordinance" ("Program Ordinance"), to establish a program ("Program") for granting such exemptions from certain ad valorem taxation for qualifying new businesses and expansions of existing businesses, and to provide procedures and guidelines for the submissions of applications for the Board's consideration of granting such exemptions; and

WHEREAS, The Sherwin-Williams Company, an Ohio corporation ("Company"), submitted an application for an exemption for an expansion of an existing business ("Application"); and

WHEREAS, the Application indicates that the Company's business will result in an economic benefit to Orange County through the creation of greater employment opportunities in Orange County; and

WHEREAS, the Company has met the requirements to qualify as an expansion of an existing business under the Program; and

WHEREAS, the Office of the Property Appraiser has reviewed the Application, and has provided the report required by the Program Ordinance; and

WHEREAS, all requirements of state law and the Program Ordinance have been satisfied.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
ORANGE COUNTY, FLORIDA:

Section 1. Enactment of New Economic Development Tax Exemption Ordinance.

A new economic development exemption from certain ad valorem taxation for The Sherwin-Williams Company is enacted to read as follows:

Title. This Ordinance shall be known as the “The Sherwin-Williams Company Economic Development Ad Valorem Tax Exemption Ordinance.”

Definitions. All terms used in this Ordinance in capitalized form, unless otherwise defined in this Ordinance, shall have the same meanings as ascribed to them in the Program Ordinance.

Findings. The Board, based on the Application submitted by the Company regarding its facility located at 2150 West Sand Lake Road, Orlando, Florida 32809 (“Expanding Business”), and the report of the Property Appraiser, and in accordance with the procedures set forth in the Program Ordinance, finds that the Company has met all the requirements of the Program Ordinance and meets the requirements of Section 196.012(15), Florida Statutes, and that granting the Exemption granted by this Ordinance will result in an economic benefit to Orange County.

Ad valorem tax revenues. The total amount of revenue available to the County from ad valorem tax sources for the current fiscal year is Six Hundred Thirty-Five Million, Seven Hundred Sixty-Three Thousand, Forty-Eight and 00/100 Dollars (\$635,763,048.00). The total amount of revenue lost to the County for the current fiscal year by virtue of Exemptions currently in effect is One Hundred Thirty-Eight Thousand Twenty-Nine and 00/100 Dollars (\$138,029.00). The Improvements made by or for the use of the Company’s Expanding Business and the Tangible Personal Property of such Expanding Business are anticipated to first appear on the Orange County ad valorem tax assessment roles on or after tax year 2020. The estimated revenue loss to the County during the current fiscal year if the Exemption applied for in the Application was granted for the current fiscal year is Ninety-

Five Thousand Four Hundred Five and 00/100 Dollars (\$95,405.00).

Level and Term of Exemption; Expiration Date. Based upon the information provided by the Company as to the number of jobs to be created and the estimated average annual salaries for such jobs, the Company qualifies for a Level 1 Exemption (fifty percent (50%) for a period of five (5) years) to commence on January 1st of the year in which the Improvements made by or for the use of the Company's Expanding Business and/or any Tangible Personal Property of such Expanding Business first appear on the Orange County ad valorem tax assessment rolls, and shall expire on December 31st of the fifth tax year thereafter. The ability to receive an Exemption for the period granted is conditioned upon the Company: 1) executing the agreement in substantially the form attached hereto as **Exhibit "A,"** attached hereto ("Agreement"); 2) maintaining the Expanding Business throughout the five (5) year Exemption period; and 3) continued compliance with the requirements of this Ordinance and the Program Ordinance, including, but not limited to, the submission of an annual renewal statement and an annual report. Should the Company fail to satisfy the conditions set forth in this Ordinance, the Board may revoke the Exemption or take such other action with respect to the Exemption as it deems appropriate, as provided for in the Program Ordinance or the Agreement.

Grant of Exemption. After consideration of the Application, which includes the report of the Property Appraiser as required by the Program Ordinance, and applying the exemption criteria set forth in Section 7 thereof, the Board hereby grants and establishes an Exemption of fifty percent (50%) of the assessed value of the Improvements made by or for the use of the Company's Expanding Business located at 2150 West Sand Lake Road, Orlando, Florida 32809, and of all Tangible Personal Property of such Expanding Business for a period of five (5) years, provided that the Improvements are made or the Tangible Personal Property is added or increased on or after the day this Ordinance is adopted. As a condition to receiving the Exemption, the Company shall abide by the terms and conditions set forth in this Ordinance and the Program Ordinance, and any and all amendments thereto, including, but not limited to, entering into the Agreement with the County to ensure that the Company satisfies all requirements associated with the granting and continuation of the Exemption, as well as any policies and procedures related to the Program, as may be adopted from time to time. Failure to abide by the same may result in a modification to the Exemption, a revocation of the

Exemption, and/or the recovery of all taxes not paid on Tangible Personal Property as a result of the Exemption, as provided for in the Program Ordinance. No Exemption shall be granted for the land upon which the Company's Expanding Business is located.

Applicability. The Exemption shall apply only to ad valorem taxes levied by the County. The Exemption shall not apply to taxes or assessments levied by any County municipal service taxing or benefit unit, municipality, school district, or water management district, or to taxes levied for the payment of bonds or taxes authorized by a vote of electors pursuant to Section 9(b) or 12, Article VII of the Florida Constitution.

Nullification of the Exemption. In the event that, subsequent to the adoption of this Ordinance, the Administrator receives written notice that the Company has determined not to undertake or complete the activity giving rise to the Exemption granted pursuant to this Ordinance, the Exemption so granted shall be void, shall not take effect, and shall not be implemented. If such notice is received, this section shall be self-executing and no further action of the Board will be required to void the Exemption. Following the County's receipt of such notice, the Administrator shall forward a copy thereof to the Property Appraiser along with a copy of this Ordinance.

Section 2. Effective date. This ordinance shall become effective as provided by general law.

ADOPTED THIS ____ DAY OF _____, 2020.

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: _____

Jerry L. Demings
Orange County Mayor

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: _____
Deputy Clerk