

RESOLUTION NO. 29248

A RESOLUTION (I) TO MAKE CERTAIN FINDINGS RELATING TO THE ACQUISITION, CONSTRUCTION, AND EQUIPPING BY M & M INDUSTRIES, INC. ("M&M") OF AN EXPANSION OF ITS MANUFACTURING FACILITY AT 316 CORPORATE PLACE, CHATTANOOGA, TENNESSEE (THE "CORPORATE PLACE PROJECT"), (II) TO MAKE CERTAIN FINDINGS RELATING TO THE ACQUISITION, CONSTRUCTION, AND EQUIPPING BY M & M OF A MANUFACTURING FACILITY AT 1435 E. 14TH STREET, CHATTANOOGA, TENNESSEE (THE "14TH STREET PROJECT"; THE CORPORATE PLACE PROJECT AND THE 14TH STREET PROJECT COLLECTIVELY CALLED THE "PROJECT"), AND (III) TO AUTHORIZE THE MAYOR TO ENTER INTO AND EXECUTE AN AGREEMENT FOR PAYMENTS IN LIEU OF AD VALOREM TAXES WITH THE INDUSTRIAL DEVELOPMENT BOARD OF THE COUNTY OF HAMILTON, TENNESSEE, M&M, AND HAMILTON COUNTY, TENNESSEE WITH RESPECT TO THE PROJECT

WHEREAS, M&M Industries, Inc. ("M&M") operates a manufacturing facility that produces plastic pails and plastic open head containers at 316 Corporate Place in Chattanooga, Tennessee (the "Corporate Place Facility"); and

WHEREAS, M&M is contemplating the expansion of the Corporate Place Facility (the "Corporate Place Expansion") and in connection with the Corporate Place Expansion is contemplating making improvements to the Corporate Place Facility and the acquisition of certain machinery, equipment and other personal property (collectively, the "Corporate Place Project"); and

WHEREAS, M&M is contemplating the acquisition, construction, equipping and operation of a new manufacturing facility at 1435 E. 14th Street in Chattanooga, Hamilton County, Tennessee (the "14th Street Facility"), which will require the acquisition of real property and improvements, the construction of new improvements and the acquisition and installation of

equipment, machinery and other tangible personal property (the "14th Street Project"; the Corporate Place Project and the 14th Street Project collectively called the "Project"); and

WHEREAS, because of the substantial public benefits to the City and Hamilton County, Tennessee (the "County") resulting from the Project, M&M has asked The Industrial Development Board of the County of Hamilton, Tennessee (the "Board"), the City Council and the Board of Commissioners of the County to approve certain payments in lieu of ad valorem taxes with respect to the Project (the "In Lieu Payments");

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, AS FOLLOWS:

RESOLVED, that we do hereby find that substantial benefits to the City economy will be derived from the Project and that the In Lieu Payments contemplated under the Agreement for Payments in Lieu of Ad Valorem Taxes in the form attached to this Resolution (the "PILOT Agreement") will be in furtherance of the Board's public purposes; and

BE IT FURTHER RESOLVED, that, having made such findings, we do hereby approve the PILOT Agreement and do hereby authorize the Mayor to enter into the PILOT Agreement on behalf of the City, such PILOT Agreement to be substantially in the form attached to this Resolution, with such changes thereto as he shall approve.

BE IT FURTHER RESOLVED THAT THIS RESOLUTION TAKE EFFECT FROM AND AFTER ITS PASSAGE, THE PUBLIC WELFARE REQUIRING IT.

ADOPTED: November 21, 2017.

**AGREEMENT FOR PAYMENTS IN LIEU
OF AD VALOREM TAXES**

THIS AGREEMENT FOR PAYMENTS IN LIEU OF AD VALOREM TAXES (the "Agreement") is made and entered into as of this the ____ day of _____, 2017, by and among **THE INDUSTRIAL DEVELOPMENT BOARD OF THE COUNTY OF HAMILTON, TENNESSEE** (the "Board"); **M & M INDUSTRIES, INC.**, a Tennessee corporation (the "Company"); the **CITY OF CHATTANOOGA** (the "City"); and **HAMILTON COUNTY** (the "County") and is joined in, for purposes of evidencing their acceptance of the agency relationship established herein, by **WILLIAM F. HULLANDER and his successors, acting in the capacity of HAMILTON COUNTY TRUSTEE** (the "Trustee"), and by **MARTY HAYNES and his successors, acting in the capacity of HAMILTON COUNTY ASSESSOR OF PROPERTY** (the "Assessor").

WITNESSETH:

THAT WHEREAS, the Company operates a manufacturing facility that produces plastic pails and plastic open head containers on real property located at 316 Corporate Place in Chattanooga, Tennessee (the "Existing Corporate Place Facility"), such real property being more particularly described on Exhibit A (the "Corporate Place Land"); and

WHEREAS, the Company is contemplating the expansion of the Existing Corporate Place Facility (the "Corporate Place Expansion") and in connection with the Corporate Place Expansion is contemplating making improvements to the building located on the Corporate Place Land (the "New Corporate Place Improvements"); and

WHEREAS, in connection with the proposed Corporate Place Expansion, the Company is contemplating the acquisition of certain machinery, equipment and other personal property, as more particularly described on Exhibit B attached hereto (collectively, the "New Corporate Place Equipment"; acquisition and/or construction of the New Corporate Place Improvements and the New Corporate Place Equipment collectively called the "Corporate Place Project"); and

WHEREAS, the Company is also contemplating a second manufacturing facility (the "New Facility") and in connection with the New Facility is contemplating the acquisition of certain real property located at 1435 E. 14th Street, Chattanooga, Tennessee (the "14th Street Land"), as more particularly described on Exhibit C attached hereto, and the buildings and other improvements located on the 14th Street Land (the "Existing 14th Street Improvements"; the 14th Street Land and the Existing 14th Street Improvements collectively called the "Existing 14th Street Facility"); and

WHEREAS, in connection with the proposed New Facility, the Company is contemplating making improvements to the Existing 14th Street Improvements and constructing new improvements on the 14th Street Land (collectively, the "New 14th Street Improvements"); and

WHEREAS, in connection with the proposed New Facility, the Company is contemplating the acquisition of certain machinery, equipment and other personal property, as

more particularly described on Exhibit D attached hereto (collectively, the "14th Street Equipment"; acquisition and/or construction of the Existing 14th Street Real Property, the New 14th Street Improvements and the 14th Street Equipment collectively called the "New 14th Street Project"); and

WHEREAS, the Corporate Place Project and the New 14th Street Project (collectively, the "Project") are expected to result in an investment by the Company of at least \$42.7 million in the aggregate and the creation of at least 110 full-time jobs in the aggregate at the Corporate Place Facility and the New Facility, such jobs to have an average hourly wage (excluding benefits) equal to at least \$17.92 (collectively the "Investment, Jobs and Wage Projection"), and

WHEREAS, the Company would be unable to complete the Project without the Board's assistance; and

WHEREAS, substantial economic benefits to the City and County economies will be derived from the Project, the Corporate Place Expansion and the New Facility; and

WHEREAS, the Board has agreed to hold title to all real property, improvements and tangible personal property used in connection with the Existing Corporate Place Facility, the Corporate Place Expansion and the New Facility, together with all additions thereto, replacements thereof, and substitutions therefor (collectively, the "Property") and (i) to lease all such real property and improvements pursuant to a Real Property Lease Agreement (the "Real Property Lease"), to be entered into between the Board and the Company, and (ii) to lease all tangible personal property pursuant to a Personal Property Lease Agreement (the "Personal Property Lease"), to be entered into between the Board and the Company (the Real Property Lease and the Personal Property Lease collectively called the "Leases"); and

WHEREAS, because the Property is to be owned by the Board, which is a public corporation organized under the provisions of Tennessee Code Annotated, § 7-53-101, *et seq.*, the Property will be exempt from ad valorem property taxes ("property taxes") normally paid to the City and to the County, so long as the Property is owned by the Board, pursuant to the provisions of Tennessee Code Annotated, § 7-53-305; and

WHEREAS, for the public benefit of the citizens of the City and the County, the Board has requested that the Company make certain payments to the Board in lieu of the payment of property taxes that would otherwise be payable on the Property; and

WHEREAS, the Company has agreed to make such payments to the Board in lieu of the property taxes otherwise payable on the Property (the "In Lieu Payments"), as more particularly set forth hereinafter; and

WHEREAS, the Board has been authorized to receive the In Lieu Payments in lieu of property taxes by resolutions adopted by the City and the County, acting through their duly elected Council and Commission, respectively, which resolutions delegate to the Board the authority to accept the In Lieu Payments upon compliance with certain terms and conditions, including, without limitation, the requirement that the Board collect and expend such payments in furtherance of the public purposes for which the Board was created; and

WHEREAS, the Company and the Board have agreed that all In Lieu Payments made to the Board by the Company shall be paid to the City of Chattanooga Treasurer (the “Treasurer”) and the Trustee, who shall disburse such amounts to the City and the County in accordance with the requirements specified herein; and

WHEREAS, the Board wishes to designate the Assessor as its agent to appraise the Property and assess a percentage of its value in the manner specified herein; and

WHEREAS, the Board wishes to designate the Treasurer and the Trustee as its agents to receive the In Lieu Payments in accordance with the terms of this Agreement;

NOW, THEREFORE, IN CONSIDERATION OF the mutual covenants and agreements set forth herein, the parties hereto agree as follows:

1. Designation of Assessor; Appraisal and Assessment of Property. The Board hereby designates the Assessor as its agent to appraise and assess the Property. The Assessor shall appraise and assess the Property in accordance with the Constitution and laws of the State of Tennessee as though the Property were subject to property taxes. The Assessor shall give the Treasurer, the Trustee, the Board, and the Company written notice of any changes in appraisals of the Property in the same manner that notices are given to owners of taxable property. The Assessor shall make available to the Board and the Company all records relating to the appraisal and assessment of the Property.

2. Designation of Trustee; Computation and Billing of Payments In Lieu of Taxes. The Board hereby designates the Trustee as its agent to compute the amounts of the In Lieu Payments, to receive such payments from the Company, except as referenced in Section 3 below, and to disburse such payments to the City and County as set forth in Section 3. On or about October 1 of each year during the term of this Agreement, the Treasurer and the Trustee shall compute the taxes which would be payable on the Property if it were subject to property taxes, in accordance with the Constitution and laws of the State of Tennessee and in accordance with the appraisal and assessment of the Assessor. Each year hereunder, the Trustee shall send the Board and the Company a bill for appropriate amount of In Lieu Payments (the “Tax Bill”).

3. Payments in Lieu of Taxes. After receipt of the Tax Bill, the Company shall pay to the Trustee the amount indicated on the Tax Bill to be paid to the County, and the Company shall pay to the City Treasurer the amounts on the Tax Bill to be paid to the City which amounts shall be determined in accordance with the provisions set forth below in Section 4. The In Lieu Payments shall be made by the Company in lieu of the property taxes which would otherwise be payable on the Property if it were subject to property taxes.

4. Amount of In Lieu Payments by the Company.

(a) Existing Corporate Place Facility. For each of the years 2018 through 2025 (the "Tax Abatement Period"), the Company shall make In Lieu Payments with respect to the Existing Corporate Place Facility (excluding the New Corporate Place Improvements and the New Corporate Place Equipment) in an amount, as determined by the Assessor, the Treasurer and the Trustee, equal to one hundred percent (100%) of the amount of taxes that would have been payable on such property if it were subject to property taxes, except to the extent that a portion of such property is subject to another agreement for payments in lieu of taxes with the City, the County and the Board or another industrial development board or similar entity.

(b) Existing 14th Street Facility. For each of the years 2018 through 2025 (the "Tax Abatement Period"), the Company shall make payments with respect to the Existing 14th Street Facility in an amount equal to 100% of all City and County annual ad valorem property taxes levied in the base year of 2017 (the "Base Year") on the value of the Existing 14th Street Facility. The intent is for the City and County to continue receiving throughout the term of this Agreement all property taxes assessed as to the value of the Existing 14th Street Facility in the Base Year exclusive of the New 14th Street Improvements, which New 14th Street Improvements are subject to the payment in lieu of tax obligations set forth in subsection (c), immediately below.

(c) New Property. After construction of the New Corporate Place Improvements and the New 14th Street Improvements is completed, the acquisition of the New Corporate Place Equipment and the 14th Street Equipment has occurred and the Assessor has assessed the New Corporate Place Improvements, the New 14th Street Improvements, the New Corporate Place Equipment and the 14th Street Equipment (collectively, the "New Property"), the Company shall make In Lieu Payments in the amount required to satisfy the Hamilton County Schools portion of the property taxes that would be due on the New Property if it were subject to taxation (the "School Portion"), which the parties acknowledge and agree equals 24.80% of the amount of the total City and County taxes that would have been payable on the New Property if it were subject to property taxes at 2017 rates. The parties further acknowledge that the percentage of the School's Portion will vary as City and County tax rates change. Additional In Lieu Payments on the New Property will be as follows:

Year	City General Fund	County General Fund	County School Fund
2019	0%	0%	100%
2020	25%	25%	100%
2021	40%	40%	100%
2022	50%	50%	100%
2023	50%	50%	100%
2024	50%	50%	100%
2025	50%	50%	100%

For the avoidance of doubt, the parties intend that the Company shall make (i) In Lieu Payments in an amount equal to 100% of the School's Portion, which the Company and County

acknowledge and agree is equal to 45.22% of the amount of the total County taxes that would have been payable on the New Property if it were subject to property taxes, and (ii) In Lieu Payments in an amount equal to the above graduated amounts for all other ad valorem taxes of the City and the County, excluding the School's Portion of the County ad valorem taxes.

(d) For any property other than the Property that may be leased to the Company under the Leases, the Company shall make In Lieu Payments in an amount, as determined by the Assessor, the Treasurer and the Trustee, equal to 100% of the amount of taxes that would have been payable on such other property if it were subject to property taxes, except to the extent that a portion of such property is subject to another agreement for payments in lieu of taxes with the City, the County and the Board or another industrial development board or similar entity. For the avoidance of doubt, the parties intend that the reduced In Lieu Payments under this Agreement shall only apply to new investment in the Project that is undertaken pursuant to this Agreement.

(e) For any periods before the Tax Abatement Period or after the Tax Abatement Period that the Property is owned by the Board and leased to the Company, the Company shall make In Lieu Payments in an amount, as determined by the Assessor, the Treasurer and the Trustee, equal to 100% of the amount of taxes that would have been payable on the Property if it were subject to property taxes, except to the extent that a portion of such Property is subject to another agreement for payments in lieu of taxes with the City, the County and the Board or another industrial development board or similar entity.

(f) Notwithstanding the above, any amounts assessed as property taxes against the Property shall be credited against any In Lieu Payments due under this Agreement.

5. Penalties and Late Charges. The Company shall make its In Lieu Payments for each year during the term before March 1 of the following year. All In Lieu Payments shall be subject to penalties, late charges, fees and interest charges as follows:

(a) If the Company fails to make its In Lieu Payment when due, and such failure to pay shall continue and not be fully paid within thirty (30) days after written notice of such non-payment has been provided to the Company, then a late charge shall be charged and shall also be immediately due and payable. The late charge shall be in the amount of one and one-half percent (1-1/2%) of the owed amount. Additional late charges of one and one-half percent (1-1/2%) of the amount shall accumulate and become immediately due and payable upon the expiration of each subsequent thirty (30) day period when there remains any outstanding unpaid amount.

(b) If the Company should fail to pay all amounts and late charges due as provided hereinabove, then the Board, the City or the County may bring suit against the Company in the Chancery Court of Hamilton County to seek to recover the In Lieu Payments due, late charges, expenses and costs of collection in addition to reasonable attorneys' fees.

6. Minimum Requirements; Annual Review; Increase in Amount of In Lieu Payments.

(a) Minimum Requirements. The Company must meet at least eighty percent (80%) of the Minimum Job Requirement and the Minimum Investment Requirement by January 1, 2023 (the “Determination Date”) and during each calendar year thereafter during the Tax Abatement Period. For purposes of this Section, the “Minimum Jobs Requirement” equals One Hundred Ten (110) full-time jobs, and the “Minimum Investment Requirement” equals \$42,700,000.

(b) Annual Employment Review. If the Company fails to achieve at least eighty percent (80%) of the Minimum Jobs Requirement during the calendar year in which the Determination Date occurs or during in any calendar year thereafter during the Tax Abatement Period, the City and the County reserve the right but are not obligated to increase the amount of the general fund In Lieu Payments applicable to the Property for the same calendar year in which such failure occurs by a percentage equal to 100% less the “Company’s Job Performance” for such calendar year (the “Job In Lieu Payment Percentage Increase”). The “Company’s Job Performance” for any calendar year means the proportion, expressed as a percentage, that the average number of new full-time jobs actually maintained by the Company bears to 80% of the Minimum Job Requirement. In no event shall the Company’s annual general fund In Lieu Payments exceed one hundred percent (100%) of the general fund taxes that would be assessed against the Property if it were subject to taxation.

Example 1:

Total number of new full-time jobs as of January 1, 2023 = 110
80% of Minimum Job Requirement = 88
No increase in In Lieu Payments for 2023
(80% of Minimum Job Requirement has been exceeded)

Example 2:

Total number of full-time jobs as of January 1, 2023 = 85
80% of Minimum Job Requirement = 88
Company’s Job Performance = 96.59%
Job In Lieu Payment Percentage Increase for 2023 = 3.41%
(In Lieu Payment Percentages for 2023 for City General Fund and County General Fund may each be increased by 3.41%)

(c) Annual Investment Review. If the Company fails to achieve at least eighty percent (80%) of the Minimum Investment Requirement during the calendar year in which the Determination Date occurs or during in any calendar year thereafter during the Tax Abatement Period, the City and the County reserve the right but are not obligated to increase the amount of the general fund In Lieu Payments applicable to the Property for the same calendar year in which such failure occurs by a percentage equal to 100% less the “Company’s Investment Performance” for such calendar year (the “Investment In Lieu Payment Percentage Increase”). The “Company’s Investment Performance” for any calendar year means the proportion, expressed as a percentage, that the actual aggregate capital investment made by the Company through the end of such calendar year, including all capital investment made in the preceding calendar years in connection with the Project or the Property bears to 80% of the

Minimum Investment Requirement. In no event shall the Company's annual general fund In Lieu Payments exceed one hundred percent (100%) of the general fund taxes that would be assessed against the Property if it were subject to taxation..

Example 3:

Total amount of capital investment through January 1, 2023 = \$42,700,000
80% of Minimum Investment Requirement = \$34,160,000
No increase in In Lieu Payments for 2023
(80% of Minimum Investment Requirement has been exceeded)

Example 4:

Total amount of capital investment through January 1, 2023 = \$32,000,000
80% of Minimum Investment Requirement = \$34,160,000
Company's Investment Performance = 93.68%
Investment In Lieu Payment Percentage Increase for 2023 = 6.32%
(In Lieu Payment Percentages for 2023 for City General Fund and County General Fund may each be increased by 6.32%)

Such formula shall be evaluated on an annual basis until 80% of the Minimum Investment Requirement has been met or exceeded, whereupon no further evaluations or increase in the amount of the In Lieu Payments pursuant to this Section 6(c) shall occur.

(d) Single Adjustment Regarding Tax Abatement; Issuance of Supplemental Bill to the Company. If both the annual employment review under Section 6(b) and the investment review under Section 6(c) for any calendar year indicate an increase in the In Lieu Payments for the same calendar year in which such failure occurs, and if the City and the County elect to increase the In Lieu Payments for such calendar year, then the City and the County shall determine whether the increase under Section 6(b) or Section 6(c) shall apply, which shall be the sole remedy for a shortfall in the Investment, Jobs and Wage Projection. The increase under Section 6(b) and Section 6(c) shall not be combined. If the City and the County increase the amount of the In Lieu Payments pursuant to the annual employment review under Section 6(b) for any calendar year, then they may not, in the same year, also increase the amount of the In Lieu Payments pursuant to Section 6(c), and vice versa. For example, using Examples 2 and 4 shown above, the City and the County may elect to either (i) increase the amount of the In Lieu Payments to the City General Fund and the County General Fund under Section 6(b) by 3.41% or (ii) increase the amount of the In Lieu Payments to the City General Fund and the County General Fund under Section 6(c) by 6.32%. In accordance with the foregoing and once a determination has been made of the Jobs In Lieu Payment Percentage Increase or the Investment In Lieu Payment Percentage Increase, whichever is determined to be applicable, the Treasurer and the Trustee shall compute the amount of the additional In Lieu Payment resulting therefrom and will issue a supplemental bill to the Company for that payment.

(e) Project Closure. In the event the Corporate Place Facility or the New Facility closes or moves from the County during the Tax Abatement Period, the City and the County reserve the right to immediately terminate the tax abatements provided by this

Agreement and require the full or partial repayment of amounts that would have been payable on the Property during the Tax Abatement Period as if it were subject to property taxes. The provisions of this subsection (e) shall be the sole remedy for a closure or relocation of the Corporate Place Facility or the New Facility.

7. Disbursements by the Treasurer and Trustee. All sums received by the Treasurer pursuant to Section 3 for the benefit of the City general fund shall be disbursed to the general fund of the City in accordance with this paragraph and in accordance with the normal requirements of law governing the settlement and paying over of taxes to counties and municipalities. All sums received by the Trustee pursuant to Section 3 for the benefit of the County general fund shall be disbursed to the general fund of the County in accordance with this paragraph and in accordance with the normal requirements of law governing the settlement and paying over of taxes to counties and municipalities. All such sums received by the Treasurer shall be placed into an account for the use and benefit of the City. All such sums received by the Trustee shall be divided into an account for the use and benefit of the County. The account for the use and benefit of the City shall be funded with the proportionate amount to which the In Lieu Payments are attributable to property taxes which would otherwise be owed to the City, and the account for the use and benefit of the County shall be funded with the proportionate amount to which the In Lieu Payments are attributable to property taxes which would otherwise be owed to the County. All sums received by the Trustee pursuant to Section 3 for the benefit of the County school system shall be disbursed to the County and thereafter deposited into an account for the educational use and benefit of the County schools. The parties acknowledge and agree that all disbursements to the City and County pursuant to this Agreement are in furtherance of the Board's purposes as set forth in Tennessee Code Annotated § 7-53-305.

8. Economic Development Lease Payment

(a) City of Chattanooga. For each calendar year beginning with 2019 in which the In Lieu Payment Percentage as to the City general fund (see chart in Section 4) is less than 100%, an economic development lease payment (an "Economic Development Payment") equal to 15% of the City general fund property taxes that would otherwise be payable for such year on the Property if it were subject to property taxes as calculated by the Treasurer pursuant to Section 2 above shall be computed and collected by the Treasurer; provided, however, in no event shall the total of the Company's annual City general fund In Lieu Payments plus the Economic Development Payment to the City exceed one hundred percent (100%) of City general fund taxes that would be assessed against the Property if it were subject to general fund taxes. Beginning in 2019, this Economic Development Payment will be paid for each year that the Property is owned by the Board through and including 2025 if the In Lieu Payment Percentage as to the City general fund (see chart in Section 4) for such calendar year is less than 100%. If the Board's ownership ceases during any calendar year, then that year's Economic Development Payment will be prorated. The Treasurer shall add the Economic Development Payment as a separate line item on the Tax Bill, and the Company shall pay the Economic Development Payment for each such year during the term before March 1 of the following year. Any failure to pay the Economic Development Payment on or before March 1 shall result in penalties and late charges calculated in the same manner as penalties and late charges are calculated for In Lieu Payments under this Agreement.

The Treasurer shall disburse the City's Economic Development Payment to the City of Chattanooga's Industrial Development Board. The City of Chattanooga's Industrial Development Board shall hold such funds to be used for economic development purposes, as directed by the Mayor of the City.

(b) Hamilton County. For each calendar year beginning with 2019 in which the In Lieu Payment Percentage as to the County general fund (see chart in Section 4) is less than 100%, an Economic Development Payment to the County equal to 15% of the County general fund property taxes that would otherwise be payable for such year on the Property if it were subject to property taxes as calculated by the Trustee pursuant to Section 2 above, shall be computed and collected by the Trustee; provided, however, in no event shall the total of the Company's annual County General Fund In Lieu Payments plus the Economic Development Payment to the County exceed one hundred percent (100%) of the County general fund taxes that would be assessed against the Property if it were subject to general fund taxes. Beginning in 2019, this Economic Development Payment will be paid for each year that the Property is owned by the Board through and including 2025 if the In Lieu Payment Percentage as to the County general fund (see chart in Section 4) for such calendar year is less than 100%. If the Board's ownership ceases during any calendar year, then that year's Economic Development Payment will be prorated. The Trustee shall add the Economic Development Payment as a separate line item on the Tax Bill, and the Company shall pay the Economic Development Payment for each such year during the term before March 1 of the following year. Any failure to pay the Economic Development Payment on or before March 1 shall result in penalties and late charges calculated in the same manner as penalties and late charges are calculated for In Lieu Payments under this Agreement.

The Trustee shall not deduct any part of the Economic Development Payment from the School Portion of the In Lieu Payments. The Trustee shall disburse the County's Economic Development Payment to the County, and the County shall hold such funds to be used for economic development purposes as directed by the Mayor of the County.

9. Contest by the Company. The Company shall each have the right to contest the appraisal or assessment of the Property by the Assessor, the computation by the Treasurer and the Trustee of the amount of the In Lieu Payment and the calculation of the Economic Development Payments. If the Company contests any such appraisal or assessment, then it shall present evidence to the Assessor in favor of its position. If the In Lieu Payments, or the Economic Development Payments, as applicable, being contested shall be or become due and payable, the Company shall make such payments under protest. The Company and the Assessor, the Treasurer or the Trustee, as the case may be, shall negotiate in good faith for a period not to exceed sixty (60) days to resolve any disputes as to appraisal, assessment or computation of the In Lieu Payment or the Economic Development Payments, as applicable. If the Company and the Assessor, the Treasurer or the Trustee, as the case may be, are unable to resolve a dispute, then the Company may file suit in the Chancery Court of Hamilton County to ask that the provisions of this Agreement, including those covering appraisal, assessment and computation, be construed or applied to the relevant facts by the Chancery Court in order to resolve such dispute.

10. Lien on the Property. Any amounts which remain payable under this Agreement shall become a lien on the Property, and such lien shall be enforceable against the Property in the event that any payment owing hereunder is not timely made in accordance with this Agreement.

11. Term. This Agreement shall become effective on the date that the Board leases the Property to the Company and shall continue for so long as the Board holds title to any of the Property and leases such property to the Company or the Company has made all payments required hereunder, whichever shall later occur.

12. Leasehold Taxation. The Board, the City, the County, the Treasurer, the Trustee and the Assessor acknowledge and agree that the Company's personal property leasehold interest in the New Corporate Place Equipment and the 14th Street Equipment under the Leases shall not be subject to assessment for ad valorem tax purposes. The Board, the City, the County, the Treasurer, the Trustee and the Assessor further acknowledge and agree that the Company's real property leasehold interests in the New Corporate Place Improvements, the Existing 14th Street Real Property and the New 14th Street Improvements under the Leases is not expected to be subject to assessment for ad valorem tax purposes, as all amounts paid by the Company, including without limitation, rent under the Leases, costs for maintenance, insurance, utilities, infrastructure, site preparation, acquisition, construction, and other costs for or in connection with the Project, cost of capital for or in connection with the Project, and obligations of the Company under the Leases would, at the present time, be considered as rent payable under the Leases for purposes of determining the Company's leasehold interests. As a result, the actual or imputed rent for the real property portion of the Property is expected to equal or exceed the fair market rent for purposes of Tenn. Code Ann. § 67-5-605. If the leasehold interest of the Company in the Property should be subject to ad valorem taxation for any year hereunder, then any amounts assessed as taxes thereon shall be credited against any In Lieu of Tax Payments and Economic Development Payments paid under this Agreement and carried forward from year to year until fully utilized. Additionally, in the event the Company determines, in the exercise of reasonable discretion, that there is a possibility, notwithstanding the foregoing agreement, of a positive taxable leasehold interest in the Property, the Company shall have the continuing option to require the Board take all reasonable steps, at no additional cost to the Board, to restructure this Agreement and the related Lease to eliminate the positive leasehold value and to deliver the same economic benefit to the Company as is contemplated under this Agreement without the imposition of any ad valorem taxes on such leasehold value. Such options may include, but are not limited to, an arrangement by which the Board issues and the Company purchases revenue bonds to finance all or a portion of the Property, provided that such bonds shall be limited obligations of the Board and non-recourse to the City and the County.

13. Notices, etc. All notices and other communications provided for hereunder shall be written (including facsimile transmission and telex), and mailed or sent via facsimile transmission or delivered addressed as follows:

If to the Board: c/o Ross I Schram, Esquire
Suite 1900
633 Chestnut Street
Chattanooga, Tennessee 37450

If to the City: Wade A. Hinton, Esquire
City Attorney
City of Chattanooga
Suite 200, 100 E. 11th Street
Chattanooga, Tennessee 37402

If to the County: Rheubin M. Taylor, Esquire
County Attorney
Hamilton County Government
Room 204, County Courthouse
Chattanooga, Tennessee 37402

If to the Company: M & M Industries, Inc.
316 Corporate Place
Chattanooga, Tennessee 37419
Attn: _____

With a copy to: Baker, Donelson, Bearman, Caldwell &
Berkowitz, P.C.
Suite 1900
633 Chestnut Street
Chattanooga, Tennessee 37450
Attn: Susan Rich. Esquire

If to the Assessor Hamilton County Assessor of Property
Hamilton County Courthouse
Chattanooga, Tennessee 37402

If to the Treasurer: City of Chattanooga Treasurer
101 East 11th Street
Chattanooga, TN 37402

If to the Trustee: Hamilton County Trustee
Hamilton County Courthouse
Chattanooga, Tennessee 37402

Any such person may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communication shall be sent. All such notices and communications shall, when mailed by registered or certified U.S. mail, return receipt requested, Express Mail, or facsimile, be effective when deposited in the mails or if sent upon facsimile transmission, confirmed electronically, respectively, addressed as aforesaid.

14. No Waiver; Remedies. No failure on the part of any party hereto, and no delay in exercising any right under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right. The remedies provided in this Agreement are cumulative and are not exclusive of any remedies provided by law.

15. Severability. In the event that any clause or provision of this Agreement shall be held to be invalid by any court or jurisdiction, the invalidity of any such clause or provision shall not affect any of the remaining provisions of this Agreement.

16. No Liability of Board's Officers. No recourse under or upon any obligation, covenant or agreement contained in this Agreement shall be had against any incorporator, member, director or officer, as such, of the Board, whether past, present or future, either directly or through the Board. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, member, director or officer, as such, is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.

17. Binding Effect. This Agreement shall be binding upon and inure to the benefit of each of the parties and signatories hereto and to their respective successors and assigns.

18. Governing Law. The Agreement shall be governed by, and construed in accordance with, the internal laws of the State of Tennessee.

19. Amendments. This Agreement may be amended only in writing, signed by each of the parties hereto, except that the Treasurer, the Trustee and the Assessor shall not be required to join in amendments unless such amendments affect their respective duties hereunder.

20. Annual Report. On or before January 31 of each year this Agreement is in effect, the Company shall provide a report to the Mayor of the City and the Mayor of the County summarizing its investment in the Property and the development and operation of the Project for purposes of analyzing the Company's progress in achieving the Investment, Jobs and Wage Projection. An independent audit of the annual report may occur, but no more than once annually, if requested by the City or County during any calendar year of this Agreement.

21. Stormwater Fees. The Company shall be responsible for all stormwater fees assessed by the City against the Property.

22. Compliance with Laws. The Company understands the relevant and applicable federal and state laws that apply to the terms and conditions of this Agreement and agrees to comply with these relevant and applicable federal and state laws.

[Signature Pages Follow]

[The Industrial Development Board of the County of Hamilton, Tennessee - Signature Page to Agreement for Payments in Lieu of Ad Valorem Taxes]

IN WITNESS WHEREOF, The Industrial Development Board of the County of Hamilton, Tennessee has executed this Agreement as of the day and date first above written.

ATTEST:

**THE INDUSTRIAL DEVELOPMENT BOARD
OF THE COUNTY OF HAMILTON,
TENNESSEE**

By: _____
Secretary

By: _____
Chairman

[M & M Industries, Inc. - Signature Page to Agreement for Payments in Lieu of Ad Valorem Taxes]

IN WITNESS WHEREOF, M & M Industries, Inc. has executed this Agreement as of the day and date first above written.

M & M INDUSTRIES, INC.,
a Tennessee corporation

By: _____
Name: _____
Title: _____

[City of Chattanooga, Tennessee - Signature Page to Agreement for
Payments in Lieu of Ad Valorem Taxes]

IN WITNESS WHEREOF, the City of Chattanooga, Tennessee has executed this Agreement as of the day and date first above written.

CITY OF CHATTANOOGA, TENNESSEE

By: _____
Mayor

[Hamilton County, Tennessee - Signature Page to Agreement for Payments in Lieu of Ad
Valorem Taxes]

IN WITNESS WHEREOF, Hamilton County, Tennessee, the Hamilton County Trustee and the Hamilton County Tax Assessor have executed this Agreement as of the day and date first above written.

HAMILTON COUNTY, TENNESSEE

By: _____
County Mayor

WILLIAM F. HULLANDER

By: _____
Hamilton County Trustee

MARTY HAYNES

By: _____
Hamilton County Assessor of Property

EXHIBIT "A"
TO PILOT AGREEMENT

CORPORATE PLACE LAND

Being a tract of land located in the City of Chattanooga, Hamilton County, Tennessee, being more particularly described as follows:

[Insert legal description]

The source of the Board's interest is a deed recorded at Book _____, Page _____, in the Register's Office of Hamilton County, Tennessee.

EXHIBIT “B”
TO PILOT AGREEMENT

NEW CORPORATE PLACE EQUIPMENT

The New Corporate Place Equipment shall include all machinery, equipment and other tangible personal property that is installed or otherwise located on or about or used in connection with the real property described in Exhibit A attached to this Agreement from January 1, 2017 through expiration of the term of this Agreement, together with replacements thereof and substitutions therefor, in connection with the Company’s operations on such property.

EXHIBIT "C"
TO PILOT AGREEMENT

14TH STREET LAND

Being a tract of land located in the City of Chattanooga, Hamilton County, Tennessee, being more particularly described as follows:

[Insert legal description]

The source of the Board's interest is a deed recorded at Book _____, Page _____, in the Register's Office of Hamilton County, Tennessee.

EXHIBIT “D”
TO PILOT AGREEMENT

14TH STREET EQUIPMENT

The 14th Street Equipment shall include all machinery, equipment and other tangible personal property that is installed or otherwise located on or about or used in connection with the real property described in Exhibit C attached to this Agreement from January 1, 2017 through the expiration of the term of this Agreement, together with replacements thereof and substitutions therefor, in connection with the Company’s operations on such property.