

RESOLUTION

No. 25296

A RESOLUTION TO MAKE CERTAIN FINDINGS RELATING TO THE NATIONAL PRINT GROUP, INC./NATIONAL POSTERS, INC. PROJECT, TO DELEGATE CERTAIN AUTHORITY TO THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF CHATTANOOGA, AND TO AUTHORIZE THE MAYOR TO ENTER INTO AND EXECUTE AN AGREEMENT FOR PAYMENTS IN LIEU OF AD VALOREM TAXES.

WHEREAS, pursuant to Tennessee Code Annotated, Section 7-53-305(b) the City of Chattanooga (the "City") is permitted to delegate to The Industrial Development Board of the City of Chattanooga (the "Corporation") the authority to negotiate and accept payments in lieu of ad valorem taxes from lessees of the Corporation upon a finding by the City that such payments are deemed to be in furtherance of the Corporation's public purposes; and,

WHEREAS, National Print Group, Inc./National Posters, Inc. (the "Companies") are contemplating the expansion and equipping of the Companies' existing manufacturing facilities in the City, and, because of the substantial economic benefits to the City and Hamilton County resulting from the project, have asked the Corporation and the City Council to approve payments in lieu of ad valorem taxes; and

WHEREAS, the Council has determined that payments in lieu of ad valorem taxes from such a project would be in furtherance of the Corporation's public purposes as set forth within Chapter 53 of Title 7 of the Tennessee Code Annotated;

NOW, THEREFORE, BE IT RESOLVED BY THIS COUNCIL:

That we do hereby find that the National Print Group, Inc./National Posters, Inc. project referenced above is in the best interest of the City, and that payments in lieu of ad valorem taxes derived therefrom would be in furtherance of the Corporation's public purposes; and,

That, having made such a finding in this instance, we do hereby delegate to the Corporation the authority to negotiate and accept payments in lieu of ad valorem taxes from the Companies, it being further noted that this delegation is for this purpose and this project only; and,

That the Mayor is hereby authorized to enter into an Agreement for Payments In Lieu Of Ad Valorem Taxes in the form attached hereto, with such changes thereto as he shall approve; and,

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

ADOPTED: October 9, 2007

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

THIS AGREEMENT is made and entered into as of this the ___ day of _____, 2007, by and among **THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF CHATTANOOGA** (the “Board”); **NATIONAL PRINT GROUP, INC.** and **NATIONAL POSTERS, INC.**, both Tennessee corporations (together, 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 **CARL E. LEVI and his successors, acting in the capacity of HAMILTON COUNTY TRUSTEE** (“Trustee”), and by **WILLIAM C. BENNETT and his successors, acting in the capacity of HAMILTON COUNTY ASSESSOR OF PROPERTY** (“Assessor”).

WITNESSETH:

WHEREAS, the Company is contemplating the construction and equipping of an expansion of its existing operations in Chattanooga, Hamilton County, Tennessee (the “Project”), resulting in a personal property investment of approximately \$6,000,000, a real property investment of approximately \$3,200,000 and an increase of 35 jobs within three (3) years of the date hereof, which jobs shall have an average annual wage (excluding benefits) equal to at least \$42,500 (collectively the “Investment, Jobs and Wage Projection”), and has requested the Board’s assistance in the financing of the Project; and

WHEREAS, substantial economic benefits to the City and County economies will be derived from the Project; and

WHEREAS, the Board has agreed to take title to certain real property constituting a part of the Project, as described in Exhibit “A” attached hereto (the “Real

Property”), and to certain personal property constituting a part of the Project, as described in Exhibit “B” attached hereto (the “Personal Property”) (collectively referred to herein as the “Property”), which Property is to be owned by the Board and leased to the Company pursuant to a Lease Agreement dated as of _____, 2007 (the “Lease”) between the Board and the Company; 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., all such 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 Trustee, who shall disburse such amounts to the general funds of 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 Trustee as its agent 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 Trustee, the City Treasurer, 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 and to disburse such payments to the City and the County. On or about October 1 of each year during the term of this agreement, 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 bills for appropriate amounts 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 amounts indicated on the Tax Bill in accordance with the amount set forth below in Paragraph 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 Payments by the Company. For each of the years 2008-2014, the Company shall make In Lieu Payments with respect to the Property in amounts, as determined by the Assessor and the Trustee, equal to the following percentages of the amount of the taxes that would have been payable on the Property if it were subject to property taxes:

<u>Years</u>	<u>Percentages</u>
2008	0%
2009	25%
2010	40%
2011 – 2014	50%

For any periods before or after such seven (7) year period (2008-2014) that the Property is owned by the Board, the Company shall make In Lieu Payments in an amount, as determined by the Assessor and the Trustee, equal to one hundred percent (100%) of the amount of taxes that would have been payable on the Property if it were subject to property taxes.

5. Penalties and Late Charges. The Company shall make the In Lieu Payments for each year before March 1 of the following year. Except as otherwise provided in

Paragraph 19, all In Lieu Payments shall be subject to penalties, late charges, fees and interest charges as follows:

(a) If the Company fails to make any 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, 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 ½ %) of the owed amount, for each month that each payment has been unpaid. Such one and one-half percent (1 ½ %) per month late charge amount shall accumulate each month and be payable so long as 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 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. If the Company fails to achieve the Investment, Jobs and Wage Projection, then the City and the County reserve the right to terminate the benefits of this Agreement for any years remaining hereunder. If the Company closes the Project or moves it from the County during the term hereof, the City and the County reserve the right to require the partial repayment of amounts that would have been payable on the Property if it were subject to property taxes.

6. Disbursements by Trustee. All sums received by the Trustee pursuant to Paragraph 3 shall be disbursed to the general funds of the City and 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 sums received shall be divided into two (2) accounts, one for the use and benefit of the City and the other 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 disbursements to the general funds of the City and County shall be made by the Trustee subject to the requirement that all funds disbursed may be used by the City and the County only in furtherance of the public purposes of the Board, as described in Tennessee Code Annotated § 7-53-102.

7. Contest by the Company. The Company shall have the right to contest the appraisal or assessment of the Property by the Assessor and the computation by the Trustee of the amount of the In Lieu Payment. If the Company contests any such appraisal or assessment, then it shall present evidence to the Assessor in favor of its position. Likewise, if the Company contests any such computation, it shall present evidence to the Trustee in favor of its position. If the In Lieu Payments being contested shall be or become due and payable, the Company shall make such payments under protest. The Company and the Assessor or the Trustee, as the case may be, shall negotiate in good faith to resolve any disputes as to appraisal, assessment or computation. If the Company and the Assessor or the Trustee 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.

8. Lien on Property. Subject to Paragraph 19, 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. Notwithstanding the foregoing or anything else seemingly to the contrary contained within this Agreement or the Lease, the In Lieu Payments or any other amounts payable under this Agreement or the Lease, shall not be deemed or construed as property taxes or any other payment to or for the benefit of a governmental or quasi-governmental body for lien purposes, including, without limitation, for the purpose of establishing the priority thereof, but shall instead be treated, and afforded the same priority, as a payment due a third party, private lender.

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

10. Leasehold Taxation. If the leasehold interest of the Company should be subject to ad valorem taxation, then any amounts assessed as taxes thereon shall be credited against any In Lieu Payments due hereunder. The Company agree to cooperate fully with the Assessor in supplying information for completion of leasehold taxation questionnaires with respect to the Property.

11. Stormwater Fees. The Company shall be responsible for all stormwater fees assessed by the City of Chattanooga against the Real Property.

12. 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, if to the Board or to the City, c/o Mr. Randall L. Nelson, Suite 400, Pioneer Building, Chattanooga, Tennessee 37402; if to the County, c/o Mr. Rheubin M. Taylor, County Attorney, Hamilton County Government, Room 204, County Courthouse,

Chattanooga, Tennessee 37402-1956; if to the Company, P.O. Box 5968, Chattanooga, Tennessee 37406, Attention: Mr. Phil Harris, with a copy to Madison Capital Funding LLC, 30 S. Wacker, Chicago, Illinois 60606; if to the Trustee, at his address at Hamilton County Courthouse, Chattanooga, Tennessee 37402; and if to the Assessor, at his address at Hamilton County Courthouse, Chattanooga, Tennessee 37402; or, as to each party, at such other address as shall be designated by such party in a written notice to the other party. All such notices and communications shall, when mailed by registered and certified 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.

13. 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.

14. 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.

15. 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.

16. Binding Effect. Except as otherwise set forth in Paragraph 19, 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.

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

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

19. Subordination and Lender Protections.

(a) This Agreement and the lien for any In Lieu Payments or any other amounts payable under this Agreement or the Lease shall be subject and subordinate to the lien of any bona fide security interest, including the Madison Deeds of Trust referred to below or any other mortgage or deed of trust, now or hereafter placed upon the Property on any interest therein (each a "Security Instrument"). The sale or transfer of the Property or any interest therein (including, without limitation, a leasehold interest) pursuant to a judicial or nonjudicial foreclosure, trustee's or sheriff's sale, power of sale, a deed-in-lieu thereof, or any other remedy exercised under a Security Instrument shall extinguish the lien of such In Lieu Payments or other amounts payable under this Agreement or the Lease which became due, accrued or otherwise relate to a period prior to such sale or transfer, including penalties, late charges, fees, and interest related to such amounts and any required repayments of amounts that would have been payable

on the Property if it were subject to property taxes as permitted under Paragraph 5(b) of this Agreement.

(b) No default, breach or violation of any covenants, terms or provisions of this Agreement shall defeat, render invalid, diminish or impair the lien of a Security Instrument.

(c) In addition to the other rights and remedies set forth in this Agreement for the benefit of any mortgagee, beneficiary or other security interest holder (each a “Lender” and collectively, “Lenders”) under a Security Instrument, during the continuance of any Security Instrument made for the benefit of a Lender, such Lender shall have the following rights and be afforded such protections:

(i) Any Lender shall have the right, but not the obligation, and without payment of any penalties, late charges, fees, and interest, to pay all or any part of the amounts due under this Agreement and to do any act or thing required of the Company hereunder to prevent a default under this Agreement. All payments so made and all things so done and performed by a Lender shall be effective to prevent a default hereunder as the same would have been if made, done and/or performed by the Company instead of by a Lender.

(ii) A copy of any notice delivered to the Company hereunder shall simultaneously be delivered to any Lender which has provided its address to the Board (each a “Notice Lender”).

(iii) After receipt by the Company and any Notice Lender of a notice of default hereunder and the expiration of any applicable grace or cure period, an additional, second notice shall be sent to each Notice Lender specifying the default and stating that the Company’s grace or cure period has expired. Any Lender shall have sixty (60) days

after its receipt of such additional notice to cure the default, or if the default reasonably requires more than sixty (60) days to cure, such Lender shall have such additional time as is reasonably necessary to cure the default provided the Lender commences to cure such default within the initial sixty (60) day period and thereafter diligently prosecutes the same to completion. If a Lender timely and fully cures the default set forth in the additional notice, no remedies shall be pursued against the Company.

(iv) Any Lender, or purchaser claiming by, through or under such Lender, that obtains the Property or any interest therein pursuant to a judicial or nonjudicial foreclosure, trustee's or sheriff's sale, power of sale, a deed-in-lieu thereof, or any other remedy exercised under its Security Instrument shall take title to the Property or such interest in accordance with Paragraph 19(a), above, and if such interest is a fee interest in the Property, this Agreement shall automatically be deemed terminated, and if such interest is a leasehold interest, the party acquiring the same shall have the right to terminate this Agreement and the Lease, and upon any such termination neither party shall have any further obligations to the other hereunder or thereunder (including any payment for required payments of amounts that would have been payable on the Property if it were subject to property taxes as permitted under Paragraph 5(b) of this Agreement), provided that the acquiring party may still exercise the Company's purchase option under Section 11.02 of the Lease without liability for or subject to the liens set forth in Section 11.03(c) of the Lease.

(d) So long as either of the Deeds of Trust encumber any interest in the Property, Madison Capital Funding LLC shall be a Lender and Notice Lender for purposes of this Agreement.

(e) The Board acknowledges that it has taken title to the Property subject to the prior lien of that certain Deed of Trust, Security Agreement, Assignment of Leases and Rents and Financing Statement, dated _____, 2007, made by National Posters, Inc., as grantor, to _____, as trustee, for the benefit of Madison Capital Funding LLC, as agent and beneficiary, recorded at Book ____, Page ____, in the Register's Office of Hamilton County (as amended, supplemented or modified, the "Madison Fee Deed of Trust"). The Board further acknowledges and agrees that the Company's leasehold interest in the Property is or will be encumbered by a certain Leasehold Deed of Trust, Security Agreement, Assignment of Leases and Rents and Financing Statement, dated _____, 2007, made by the Company, as grantor, to _____, as trustee, for the benefit of Madison Capital Funding LLC, as agent and beneficiary (as amended, modified or supplemented, the "Madison Leasehold Deed of Trust," and together with the Madison Fee Deed of Trust, the "Madison Deeds of Trust.") Finally, in further and conformation of the terms and provisions of this Paragraph 19, and without limiting the generality of thereof, the Madison Deeds of Trust, the liens and security interests created thereby, and the rights and remedies of Madison Capital Funding LLC thereunder shall at all times be prior and superior to any lien, right or remedy created by or under this Agreement.

(f) In the event of any conflict or inconsistency between this Paragraph 19 and any other paragraph of this Agreement, this Paragraph 19 shall govern and control.

(g) The Board, the City and the County derive indirect benefits from the making of the loans secured by the Madison Deeds of Trust, the receipt and adequacy of which are hereby acknowledged, and in consideration therefor, have agreed to this Paragraph 19,

including the Board's acquisition of the Property subject to the Madison Fee Deed of Trust. This Paragraph 19 is a material inducement to Madison Capital Funding LLC and the Lenders (as defined in the Madison Deeds of Trust) allowing the Company to enter into this Agreement and participate in the transactions contemplated hereby.

(h) The parties agree to consider, in good faith, any reasonable amendments or changes to this Agreement that may be required by a Lender.

20. Annual Report. On or before March 1 of each year that this Agreement is in effect, the Company shall provide a report to the Mayor of the City and to the Mayor of the County summarizing the Company's progress in achieving the Investment, Jobs and Wage Projection.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and date first above written.

ATTEST:

**THE INDUSTRIAL DEVELOPMENT BOARD
OF THE CITY OF CHATTANOOGA**

By: _____
Secretary

By: _____
Chairman

NATIONAL PRINT GROUP, INC.

By: _____
Title: _____

NATIONAL POSTERS, INC.

By: _____
Title: _____

CITY OF CHATTANOOGA, TENNESSEE

By: _____
Mayor

HAMILTON COUNTY, TENNESSEE

By: _____
County Mayor

CARL E. LEVI

By: _____
Hamilton County Trustee

WILLIAM C. BENNETT

By: _____
Hamilton County Assessor of Property

EXHIBIT "A"
TO PILOT AGREEMENT FOR
NATIONAL PRINT GROUP, INC.

REAL PROPERTY

EXHIBIT "B"
TO PILOT AGREEMENT FOR
NATIONAL PRINT GROUP, INC

PERSONAL PROPERTY

All newly acquired personal property used by the Company in connection with the facility on the real property described in the foregoing **Exhibit "A"** or in connection with the Project at any other facility of the Company within the City of Chattanooga and/or Hamilton County in connection with the Company's 2007-2009 expansion.