

RESOLUTION NO. 26093

A RESOLUTION TO MAKE CERTAIN FINDINGS RELATING TO THE AKI, 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 County of Hamilton, Tennessee (the "Board") the authority to negotiate and accept payments in lieu of ad valorem taxes from lessees of the Board upon a finding by the City that such payments are deemed to be in furtherance of the Board's public purposes; and,

WHEREAS, AKI, Inc. (the "Company") is contemplating the relocation of its manufacturing facilities currently located in Chattanooga, Hamilton County, Tennessee and in Baltimore, Maryland to a new location in Chattanooga, Hamilton County, Tennessee, which relocation will require the acquisition of real property and improvements in Chattanooga, Hamilton County, Tennessee (the "New Facility"), the acquisition and installation of machinery and equipment at the New Facility and the construction and installation of real property improvements at the New Facility, and, because of the substantial economic benefits to the City and Hamilton County resulting from the project, has asked the Board and the City Council to approve payments in lieu of ad valorem taxes; and

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

NOW, THEREFORE,

BE IT RESOLVED BY CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, that we do hereby find that the AKI, 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 Board's public purposes.

BE IT FURTHER RESOLVED, that, having made such a finding in this instance, we do hereby delegate to the Board the authority to negotiate and accept payments in lieu of ad valorem taxes from the Company, it being further noted that this delegation is for this purpose and this project only.

BE IT FURTHER RESOLVED, 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.

ADOPTED: October 6 2009.

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

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2009, by and among THE INDUSTRIAL DEVELOPMENT BOARD OF THE COUNTY OF HAMILTON, TENNESSEE (the "Board"); AKI, INC., a Delaware 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 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 acquisition of certain real property and improvements in Chattanooga, Hamilton County, Tennessee at which its current manufacturing operations in Chattanooga, Hamilton County, Tennessee and in Baltimore, Maryland will be consolidated (the "New Facility"), the acquisition and installation of machinery and equipment at the New Facility and the construction and installation of new real property improvements at the New Facility (collectively, the "Project"); and

WHEREAS, the Project will result in (i) a total capital investment of approximately \$[15,000,000] over the term of this Agreement, including an investment of equipment and other personal property relocated from the Baltimore, Maryland facility having an original cost of approximately \$[10,000,000] and new equipment and other personal property having an original cost of approximately \$[4,000,000], and an investment of approximately \$[1,000,000] for new

real property improvements, and (ii) the retention of 210 existing jobs and an increase of approximately fifty (50) new jobs during the period between January 1, 2010 and December 31, 2012 which jobs shall have an average annual salary (excluding benefits) equal to at least \$44,000 (collectively the "PILOT Projections"), and the Company has requested the Board's assistance with 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 the equipment and other personal property constituting a part of the Project, as described in attached Exhibit "A" (the "Personal Property"), and to the new real property improvements constituting a part of the Project, as described in attached Exhibit "B" (the "New Improvements"); and

WHEREAS, the Board agrees to lease the Personal Property and the New Improvements (collectively, the "Property") to 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., 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 (the "In Lieu Payments"); and

WHEREAS, the Company has agreed to make 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, under certain circumstances, 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 a bill 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 which amounts shall be determined in accordance with the provisions 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 any period occurring before January 1, 2010 or after December 31, 2018, and during which 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. For each of the years 2010 through 2018, the Company shall make In Lieu Payments in an amount determined by the Assessor and

the Trustee equal to the following percentage of the taxes that would have been payable on the Property as if it were subject to property taxes for the respective years shown:

<u>Year</u>	<u>Percentage</u>
2010	29.2%
2011	29.2%
2012	29.2%
2013	29.2%
2014	29.2%
2015	29.2%
2016	29.2%
2017	29.2%
2018	29.2%

The parties acknowledge that the amount of personal property taxes to support the County schools currently represents twenty-nine and 20/100 percent (29.2%) of the total amount of the property taxes that would have been payable on the Property if the Property were subject to property taxes and further acknowledges that one hundred percent (100%) of such In Lieu Payments for years 2010 through 2018 shall be directed by the Trustee to support the County school system.

5. Penalties and Late Charges. The Company shall make the In Lieu Payments for each year 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 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 (1-1/2%) of the owed amount, for each month that each payment has been unpaid. Such one and one-half percent (1-1/2%) 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, and/or fails to comply with the terms of this Agreement, 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.

6. PILOT Projections Reporting.

(a) In order to determine the extent to which the Company achieves the PILOT Projections upon which the In Lieu Payments have been calculated, the Company shall complete and deliver for each calendar year during the term of this Agreement an Annual Report in the form attached hereto as Exhibit "C", commencing after completion of the first full calendar year during which In Lieu Payments are paid by the Company.

(b) If the Company fails to achieve the PILOT Projections, then the City and the County reserve the right to terminate the benefits of this Agreement for any years remaining hereunder.

(c) If the Company moves the Project from the County during the term hereof, the City and 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.

7. 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

If to the Company: AKI, Inc.
357 Main Street
Armonk, New York 10504
Attention: Marie D. Hlavaty, Esquire
Rodney Buckwalter, Esquire

With a copy to: Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.
1800 Republic Centre
633 Chestnut Street
Chattanooga, Tennessee 37450
Attention: Louann P. Smith, Esquire

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

If to the Assessor Assessor
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 be deemed delivered as follows, (i) when delivered via hand delivery or overnight courier service, upon the date of delivery, and (ii) when mailed by registered and certified mail, return receipt requested, three days after deposit in the mails, in each case 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. 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. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[Signatures on following page.]

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

THE INDUSTRIAL DEVELOPMENT BOARD
OF THE COUNTY OF HAMILTON,
TENNESSEE

By: _____
Title: _____

AKI, INC.

BY: _____
Title: _____

CITY OF CHATTANOOGA, TENNESSEE

BY: _____
Mayor

HAMILTON COUNTY, TENNESSEE

BY: _____
County Mayor

CARLE E. LEVI

BY: _____
Hamilton County Trustee

WILLIAM C. BENNETT

BY: _____
Hamilton County Assessor of
Property

EXHIBIT "A"
TO PILOT AGREEMENT FOR
AKI, INC.

Personal Property

All equipment and other personal property to be installed at the manufacturing facility to be acquired by AKI, Inc. at 3800 Amnicola Highway, Chattanooga, Tennessee during the term of the PILOT Agreement, other than equipment or other personal property which was previously used at the AKI, Inc. manufacturing facilities located on East Main Street, Chattanooga.

EXHIBIT "B"
TO PILOT AGREEMENT FOR
AKI, INC.

New Improvements

All real property improvements to be constructed, acquired and installed at the manufacturing facility to be acquired by AKI at 3800 Amnicola Highway, Chattanooga, Tennessee after AKI, Inc acquires title to such manufacturing facility.

EXHIBIT "C"
TO PILOT AGREEMENT FOR
AKI, INC.

PILOT Annual Report

[attached]

