

A RESOLUTION TO MAKE CERTAIN FINDINGS RELATING TO THE IBI, LLC/APPLIED THERMAL COATINGS, 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.

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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, IBI, LLC/Applied Thermal Coatings, Inc. (the "Companies"), are contemplating the construction of improvements to their manufacturing facility in the City and the installation of machinery and equipment therein, 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 THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, That we do hereby find that the IBI, LLC/Applied Thermal Coatings, 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.

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BE IT FURTHER RESOLVED, 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.

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: September 21, 2010

/add

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

**THIS AGREEMENT** is made and entered into as of this 1<sup>st</sup> day of \_\_\_\_\_, 2010, by and among **THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF CHATTANOOGA** (the "Board"); **IBI, LLC**, an Idaho limited liability company ("IBI"); **APPLIED THERMAL COATINGS, INC.**, a Tennessee corporation ("ATC"); 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 M. HULLANDER** 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**, ATC is contemplating the construction of improvements to its manufacturing facility on property located in Chattanooga, Hamilton County, Tennessee, and IBI is contemplating leasing a portion of such facility from ATC, equipping the facility and operating it as a manufacturing business (collectively the "Project"), resulting in an investment of approximately \$2,900,000 in new personal property, and \$2,100,000 in new real property, and creation over a three-year period of approximately 60 jobs at an average annual wage rate equal to or greater than \$46,755 (the "Investment, Jobs and Payroll Projection"), and both companies (collectively the "Companies") have requested the Board's assistance in the financing of the Project; and

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

**WHEREAS**, the Board has agreed to take title to property constituting the Project, as described in Exhibit "A" attached hereto (the "Property"), which Property is to be owned by the Board and leased to the Companies; 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 of Chattanooga 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 Companies 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 Companies have 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 Companies and the Board have agreed that all In Lieu Payments made to the Board by the Companies 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 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 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 Companies 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 Companies 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 its agent to compute the amounts of the In Lieu Payments, to receive such payments from the Companies and to disburse such payments to the City and the County. On or about October 1 of said year, 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 Companies bills for appropriate respective amounts of In Lieu Payments (the "Tax Bills").

3. Payments in Lieu of Taxes. After receipt of the Tax Bills, the Companies shall pay to the Trustee the respective amounts indicated on the Tax Bills in accordance with the amount set forth below in Paragraph 4. The In Lieu Payments shall be made by the Companies 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 Companies. For any period hereunder occurring before January 1, 2011 or after December 31, 2017, and during which the Property is owned by the Board, the Companies shall make In Lieu Payments in an amount, as determined by the Assessor and the Trustee, equal to the taxes that would have been payable on the Property if it were subject to property taxes. For each of the years 2011 through 2017, the Companies shall make In Lieu Payments in an amount equal to 29.2% of the taxes that would have been payable on the Project if it were subject to property taxes.

5. Penalties and Late Charges. The Companies 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 Companies fail 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 Companies 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 recover the In Lieu Payments due, late charges, expenses and costs of collection in addition to reasonable attorneys' fees. If the Companies fail to achieve the Investment, Jobs and Payroll Projections, then the City and the County reserve the right to terminate the benefits of this Agreement for any years remaining hereunder. If the Companies close the Project or move 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. With respect to any period occurring before January 1, 2011 or after December 31, 2017, 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. With respect to each of the years 2011 through 2017, all sums received by the Trustee pursuant to Paragraph 3 shall be disbursed to the general funds of

the County for the County School System. 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 Companies. The Companies 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 Companies contest any such appraisal or assessment, then they shall present evidence to the Assessor in favor of their position. Likewise, if the Companies contest any such computation, they shall present evidence to the Trustee in favor of their position. If the In Lieu Payments being contested shall be or become due and payable, the Companies shall make such payments under protest. The Companies 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 Companies and the Assessor or the Trustee are unable to resolve a dispute, then either of the Companies 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. 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.

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 each of the Companies has made all payments required hereunder, whichever shall later occur.



10. Leasehold Taxation. If the leasehold interest of either of the Companies should be subject to ad valorem taxation, then any amounts assessed as taxes thereon shall be credited against any In Lieu Payments due hereunder.

11. 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 City, c/o Mr. Michael A. McMahan, Suite 200, 100 E. 11<sup>th</sup> Street, Chattanooga, Tennessee 37402; if to the County, Mr. Rheubin M. Taylor, County Attorney, Hamilton County Government, Room 204, County Courthouse, Chattanooga, Tennessee 37402; if to the Board, c/o Mr. Michael A. McMahan, Suite 200, 100 E. 11<sup>th</sup> Street, Chattanooga, Tennessee 37402; if to IBI, c/o Mr. Jack Sample, 200 Compress Street, Chattanooga, Tennessee 37402; if to ATC, c/o Mr. Jack Sample, 200 Compress Street, Chattanooga, Tennessee 37402; 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, or facsimile, be effective when deposited in the mails or if sent upon facsimile transmission, confirmed electronically, respectively, addressed as aforesaid.

12. 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.

13. 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.

14. 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.

15. 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.

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

17. 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.

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 CITY OF CHATTANOOGA

By: \_\_\_\_\_  
Chairman

IBI, LLC

By: \_\_\_\_\_  
Title: \_\_\_\_\_

APPLIED THERMAL COATINGS, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

CITY OF CHATTANOOGA, TENNESSEE

By: \_\_\_\_\_  
Mayor

HAMILTON COUNTY, TENNESSEE

By: \_\_\_\_\_  
County Mayor

WILLIAM M. HULLANDER

By: \_\_\_\_\_  
Hamilton County Trustee

WILLIAM C. BENNETT

By: \_\_\_\_\_  
Hamilton County Assessor of  
Property

EXHIBIT "A"  
TO PILOT AGREEMENT FOR  
IBI, LLC AND  
APPLIED THERMAL COATINGS, INC.

REAL PROPERTY

IN THE CITY OF CHATTANOOGA, HAMILTON COUNTY, TENNESSEE:

Beginning at a corner marked by a concrete monument, at the point of intersection of the Northern line of Manufacturers Road, with the Eastern line of Compress Street, as established in Deed from Eclipse Lookout Co. to State of Tennessee for use and benefit of the Department of Transportation, under Deed recorded in Book 2227, Page 298, in the Register's Office of Hamilton County, Tennessee; thence along the Eastern line of Compress Street, North 27°42' West, 68.77 feet, and North 18°56' West, 359.93 feet to the Southwest corner of property of Southern Champion Tray Company; thence along the Southern line of said property, North 71°4' East 671.6 feet to a corner in the Western line of the main spur track of Chattanooga Traction Company leading to Somerville Iron Works; thence with the Western line of Chattanooga Traction Company, South 24°44'46" West, 528.89 feet to a corner in the original Northern line of Manufacturers Road; thence with and along the Northern line of original Manufacturers Road, South 62°22' West, 299.41 feet to the point of beginning.

Together with all right, title and interest which may be appurtenant thereto in and to the triangular strip of land lying between the Northern right of way of Manufacturers Road and the new Northern line of Manufacturers Road, as now located.

Being the same property conveyed to Applied Thermal Coatings, Inc., a Tennessee corporation, by deed of record in Book 5733, Page 719, said Register's Office.

PERSONAL PROPERTY

All new personal property used by IBI in connection with its manufacturing facility located on the real property described above.

# Cost Versus Benefit Analysis for Payment In Lieu of Ad Valorem Tax

Date

9/14/2010

Lessor

The Industrial Development Board of the City of Chattanooga

Lessee

IBJ LLC

Person Completing Form: Alfred Smith

Title: Attorney

Lease Term

Term Beginning Date January 1, 2011

Total Term Ending Date December 31, 2017

Step 1

Number of New Jobs

Average Annual Company

Step 1

Direct Income

See Note 1

Direct & Indirect Income

Step 2

Indirect Income

See Note 1

Step 2

Number Indirect Jobs

New Total Annual State Tax

See Note 1

Step 3

Direct & Indirect Income

See Note 1

Step 3

New Annual State Sales Tax

See Note 1

New Annual Local Sales Tax

**Calculation Summary:**

Additional comments and information about costs or benefits associated with the project may be attached.

Total of New and Indirect Jobs

140.6

Total of Direct and Indirect Income

\$5,610,600

Total of New Annual State Sales Tax and New Annual Local Sales Tax

\$497,949

Market Value of Leased Real Property Improvements

\$21,000,000

Market Value of Leased Machinery & Equipment

\$2,900,000

Market Value of Leased Land

Total Appraised Value:

\$5,000,000

Total Assessed Value:

\$1,710,000

First Year PILOT Payment County: 22,127  
 First year PILOT Payment City: 22,127  
 Total First Year PILOT: 22,127

To be completed by Comptroller of Treasury


Note 1

Economic factors and multipliers provided by University of Tennessee for Business and Economic Research