

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION TO MAKE CERTAIN FINDINGS RELATING TO THE PLASTIC OMNIUM AUTO EXTERIORS, LLC 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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BE IT RESOLVED BY THE CITY OF CHATTANOOGA, TENNESSEE, that it is to make certain findings relating to the Plastic Omnium Auto Exteriors, LLC 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.

ADOPTED: \_\_\_\_\_, 2014

/mem

**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 \_\_\_\_\_, 2014, by and among **THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF CHATTANOOGA** (the “Board”); **PLASTIC OMNIUM AUTO EXTERIORS, L.L.C.**, a Delaware limited liability company (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 **WILLIAM C. BENNETT and his successors, acting in the capacity of HAMILTON COUNTY ASSESSOR OF PROPERTY** (the “Assessor”).

**WITNESSETH:**

**WHEREAS**, the Company is contemplating (i) the acquisition of certain real property in Chattanooga, Hamilton County, Tennessee, as more particularly described on Exhibit A attached hereto and incorporated herein (the “Land”); (ii) the construction of a new facility and other real property improvements on the Land (the “Real Property Improvements”) (the Real Property Improvements and the Land shall be collectively referred to as the “Real Property”); and (iii) the acquisition of machinery, equipment and other personal property, as more particularly described on Exhibit B attached hereto and incorporated herein (the “Personal Property”) (the Personal Property and the Real Property shall be collectively referred to as the “Property”) for use as a manufacturing facility and related purposes (the “Project”), resulting in a minimum investment of at least \$50,000,000 (the "Minimum Investment Requirement") with an investment target of \$70,000,000 (the “Capital Investment Target”) and the creation of at least

250 full-time jobs, which jobs shall have an average annual wage (excluding benefits) equal to at least \$44,699 (the "Minimum Job Requirement"), with a jobs target of 300 full-time jobs having an average annual wage (excluding benefits) equal to at least \$44,699 (the "Job Target"), such investment and jobs creation to occur on or before March 1, 2018 ("Determination Date"), and has requested the Board's assistance with 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 Property, together with all additions thereto, replacements thereof, and substitutions therefor and (i) to lease the Real Property to the Company 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 the Personal Property to the Company 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 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 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 as though it were subject to property taxes. 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 (determined in accordance with Section 4 below), 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 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 Payments by the Company. For the period covering and inclusive of calendar years 2014 through 2025 (the "Tax Abatement Period"), the Company shall make In Lieu Payments with respect to the Property in an amount, as determined by the Assessor and the Trustee, equal to the following percentage of the taxes that would have been payable on the Property if it were subject to property taxes for the respective years shown (the "In Lieu Payment Percentages"):

<u>Year</u>	<u>City General Fund</u>	<u>County General Fund</u>	<u>County School Fund</u>
2014*	100%	100%	100%
2015	100%	100%	100%
2016	0%	0%	100%
2017	25%	25%	100%
2018	40%	40%	100%
2019	50%	50%	100%
2020	50%	50%	100%
2021	50%	50%	100%
2022	50%	50%	100%
2023	50%	50%	100%
2024	50%	50%	100%
2025	50%	50%	100%

\*Prorated from date of purchase

For the avoidance of doubt, the parties intend that the Company shall make (i) In Lieu Payments in an amount equal to one hundred percent (100%) of all ad valorem taxes that would be dedicated to the support of the County school system, which the parties acknowledge and agree currently equates to twenty-seven and one tenth percent (27.1%) of the amount of the total City and County taxes that would have been payable on the Property if it were subject to property taxes (the “School Portion”), 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 Portion of the County ad valorem taxes.

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 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.

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 the 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 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 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. Annual Report. The Company will provide, on or before January 31 of each calendar year through and including calendar year 2025, an annual report to the Board, 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 as of December 31 of the preceding calendar year for purposes of analyzing the Company's progress in achieving and maintaining (after the Determination Date) the Minimum Job Requirement and Minimum Investment Requirement.

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

(a) Minimum Requirements. The Company must meet one hundred percent (100%) of the Minimum Job Requirement and the Minimum Investment Requirement by the Determination Date and during each calendar year thereafter during the Tax Abatement Period.

(b) Annual Employment Review. If Company fails to achieve 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 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 full-time jobs actually maintained by the Company bears to the Minimum Job Requirement.

Example 1:

Total number of full-time jobs for 2019 = 280  
Minimum Job Requirement = 250  
No increase in In Lieu Payments for 2019  
(Minimum Job Requirement has been exceeded)

Example 2:

Total number of full-time jobs for 2019 = 200  
Minimum Job Requirement = 250  
Company's Job Performance = 80%  
Job In Lieu Payment Percentage Increase for 2019 = 20%  
(In Lieu Payment Percentages for 2019 for City General Fund and County General Fund may each be increased by 20%)

(c) Annual Investment Review. If the Company fails to achieve 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 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, bears to the Minimum Investment Requirement.

Example 3:

Total amount of capital investment through 2019 = \$70,000,000  
Minimum Investment Requirement = \$50,000,000  
No increase in In Lieu Payments for 2020 (Minimum Investment Requirement has been exceeded)

Example 4:

Total amount of capital investment through 2019 = \$45,000,000  
Minimum Investment Requirement = \$50,000,000  
Company's Investment Performance = 90%  
Investment In Lieu Payment Percentage Increase for 2019 = 10%  
(In Lieu Payment Percentages for 2019 for City General Fund and County  
General Fund may each be increased by 10%)

Such formula shall be evaluated on an annual basis until 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 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. 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 20% 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 10%. 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 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) Disbursements by Trustee. All sums received by the Trustee pursuant to Section 3 for the benefit of the City and County general funds 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 such 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 (the "City Portion"), 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 (the "County Portion"). All sums received by the Trustee pursuant to Section 3 for the School Portion shall be disbursed to the County and thereafter deposited into an account for the educational use and benefit of the County schools. 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.

8. Economic Development Fee. For each calendar year beginning with 2016 in which the In Lieu Payment Percentage as to the City and County General Fund (see chart in Section 4) is less than 100%, an economic development fee (an "Economic Development Fee")

equal to 15% of the difference between (1) the 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, and (2) the amount of the School Portion with respect to the Property for such year as calculated pursuant to Section 4 above, shall be computed and collected by the Trustee. Beginning in 2016, this Economic Development Fee 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 and 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 Fee will be prorated. The Trustee shall add the Economic Development Fee as a separate line item on the Tax Bill, and the Company shall pay the Economic Development Fee for each such year during the term before March 1 of the following year.

The Trustee shall not deduct any part of the Economic Development Fee from the School Portion of the In Lieu Payments. The Trustee shall prorate the Economic Development Fee between the County Portion and the City Portion of the In Lieu Payments and disburse the Economic Development Fee to the Board. The Board shall hold such funds to be used for economic development purposes, as directed by the City and the County in accordance with the following sentence. The City may, acting by and through its Mayor, direct the use of the proportionate amount of the Economic Development Fee that is attributable to property taxes which would otherwise be owed to the City, and the County may, acting by and through its Mayor, direct the use of the proportionate amount of the Economic Development Fee that is attributable to property taxes which would otherwise be owed to the County. Upon direction of

the City and County, the Board shall thereafter disburse such funds for the specified economic development purposes.

9. Contest by the Company. The Company shall have the right to contest the appraisal or assessment of the Property by the Assessor, the computation by the Trustee of the amount of the In Lieu Payments and the calculation of the Economic Development Fee. 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 Fee, as applicable, 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 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 Fee, as applicable. If the Company and the Assessor or the Trustee, as the case may be, are unable to resolve a dispute and notwithstanding that said negotiations may be ongoing, 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, or take such other action as is permitted by law and may be considered appropriate by the Company.

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 enters into the Leases with 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 Trustee and the Assessor acknowledge and agree that the Company's personal property leasehold interest in the Personal Property under the Lease shall not be subject to assessment for ad valorem tax purposes. The Board, the City, the County, the Trustee and the Assessor further acknowledge and agree that the Company's real property leasehold interest in the Real Property under the Lease 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 Real Property Lease, 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 Real Property Lease would, at the present time, be considered as rent payable under the Real Property Lease for purposes of determining the value of the Company's leasehold interest. As a result, the actual or imputed rent for the Real 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 Fees paid under this Agreement and carried forward from year to year until fully so 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 industrial 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 in writing and mailed via U.S. certified mail, return receipt requested, or delivered via overnight courier or hand delivery, addressed as follows:

Board or to the City:	Wade A. Hinton City Attorney City of Chattanooga Suite 200, 100 E. 11 <sup>th</sup> Street Chattanooga, Tennessee 37402
The County:	Rheubin M. Taylor County Attorney Hamilton County Government Room 204, County Courthouse Chattanooga, Tennessee 37402
Company:	Plastic Omnium Auto Exteriors, L.L.C. 5100 Old Pearman Dairy Road Anderson, South Carolina 29625 Attention: _____
With a Copy to:	Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C. 1800 Republic Centre 633 Chestnut Street Chattanooga, Tennessee 37450 Attention: Louann Prater Smith, Esquire
The Trustee:	Hamilton County Trustee Hamilton County Courthouse Chattanooga, Tennessee 37402

The Assessor

Hamilton County Assessor of Property  
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 U.S. certified mail, return receipt requested, three days after deposit in the U.S. mail, in each case 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 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 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.

ATTEST:

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

By: \_\_\_\_\_  
Secretary

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

**PLASTIC OMNIUM AUTO EXTERIORS, L.L.C., a Delaware limited liability company**

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

Name: \_\_\_\_\_

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

**CITY OF CHATTANOOGA, TENNESSEE**

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

**HAMILTON COUNTY, TENNESSEE**

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

**WILLIAM F. HULLANDER**

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

**WILLIAM C. BENNETT**

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

**EXHIBIT "A"**  
**TO PILOT AGREEMENT**

**REAL PROPERTY**

The following real property (and all buildings, improvements, fixtures and upgrades now or hereafter constructed, acquired and installed on such real property or made to the buildings and improvements located thereon, together with replacements thereof and substitutions therefor):

Land lying and being in Hamilton County, Tennessee, described as follows:

**EXHIBIT “B”**  
**TO PILOT AGREEMENT**

**PERSONAL PROPERTY**

All machinery, equipment and other tangible personal property that is installed or otherwise now or hereafter located on or about or used in connection with the real property described in Exhibit A, together with replacements thereof and substitutions therefor, in connection with the Company’s manufacturing facility and other operations on such real property. The personal property may include one or more distribution, delivery or other vehicles used in connection with the Project.