

RESOLUTION NO. 25436

A RESOLUTION TO MAKE CERTAIN FINDINGS RELATING TO THE SCANNELL PROPERTIES #86, LLC AND FEDEX FREIGHT EAST, INC. PROJECT, TO DELEGATE CERTAIN AUTHORITY TO THE INDUSTRIAL DEVELOPMENT BOARD OF THE COUNTY OF HAMILTON, TENNESSEE, 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 County of Hamilton, Tennessee (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, Scannell Properties #86, LLC is contemplating the acquisition of certain land and the construction of a building and other real property improvements to be located thereon for lease to FedEx Freight East, Inc. in connection with the operation of a package handling and distribution facility in Chattanooga, Hamilton County, Tennessee (collectively the "Project"); and

WHEREAS, because of the substantial economic benefits to the City and Hamilton County resulting from the Project, Scannell Properties #86, LLC and FedEx Freight East, Inc. 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 the 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, TENNESSEE, That we do hereby find that the Project is in the best interest of the City and that the payments in lieu of ad valorem taxes derived therefrom would be in furtherance of the Corporation's public purposes.

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 Scannell Properties #86, LLC and FedEx Freight East, Inc., 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: February 26, 2008

**AGREEMENT FOR PAYMENTS IN LIEU**  
**OF AD VALOREM TAXES**  
**(Real Property)**

**THIS AGREEMENT FOR PAYMENTS IN LIEU OF AD VALOREM TAXES** (this "Agreement") is made and entered into as of this \_\_\_ day of \_\_\_\_\_, 2008, by and among **THE INDUSTRIAL DEVELOPMENT BOARD OF THE COUNTY OF HAMILTON, TENNESSEE** (the "Board"); **SCANNELL PROPERTIES #86, LLC**, an Indiana limited liability company duly registered in Tennessee ("Scannell"); **FEDEX FREIGHT EAST, INC.** ("FedEx Freight"), an Arkansas corporation, the **CITY OF CHATTANOOGA, TENNESSEE** (the "City"); and **HAMILTON COUNTY, TENNESSEE** (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**, Scannell has acquired certain land located at 4256 Shallowford Road, in Chattanooga, Hamilton County, Tennessee, as more particularly described on "Exhibit A" attached hereto and incorporated herein (the "Property"), and is leasing the Property to FedEx Freight to enable the construction and equipping of a package handling and distribution facility and certain other real property improvements thereon (collectively, the "Project"), resulting in (a) an investment of approximately \$8.4 million in real property and (b) the creation over a three-year period ending on December 31, 2011 of approximately 17 full-time employees with an average wage of approximately \$38,000 (collectively, the "PILOT Projections"), and Scannell and FedEx Freight have requested the Board's assistance in connection with the Project; and

**WHEREAS**, in connection with Scannell's acquisition of the Property, Scannell has granted a mortgage or deed of trust (the "Fee Mortgage") to or for the benefit of Key Bank, National Association ("the Lender");

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

**WHEREAS**, FedEx Freight joins as a signatory to this Agreement to confirm that FedEx Freight is leasing the Property from Scannell (the "FedEx Freight Lease"); and

**WHEREAS**, the Board has agreed to take title to the Project, subject to the FedEx Freight Lease and subject to the Fee Mortgage, which Property is to be owned by the Board and leased to Scannell; and

**WHEREAS**, because the Project 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 Project will be exempt from all ad valorem property taxes ("property taxes") normally paid to the City and to the County, so long as the Project 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 Scannell make certain payments to the Board in lieu of the payment of all property taxes that would otherwise be payable on the Project; and

**WHEREAS**, Scannell has agreed to make such payments to the Board in lieu of all 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**, Scannell and the Board have agreed that all In Lieu Payments made to the Board by Scannell 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 Project and to 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 Project. The Board hereby designates the Assessor as its agent to appraise and assess the Project. The Assessor shall appraise and assess the Project in accordance with the Constitution and laws of the State of Tennessee as though the Project were subject to property taxes. The Assessor shall give the Trustee, the City Treasurer, the Board, Scannell and FedEx Freight notice of any changes in appraisals of the Project in the same manner that notices are given to owners of taxable property. The Assessor shall make available to the Board and Scannell all records relating to the appraisal and assessment of the Project.

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 Scannell 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 Project as if the Project 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, Scannell and FedEx Freight bills for appropriate respective amounts of In Lieu Payments (the "Tax Bills").

3. Payments in Lieu of Taxes. After receipt of the Tax Bills, Scannell (or FedEx Freight, pursuant to the FedEx Freight Lease) shall pay to the Trustee the respective amounts indicated on the Tax Bills in accordance with the amounts set forth below in Paragraph 4. The In Lieu Payments shall be made by Scannell (or FedEx Freight, as applicable) in lieu of the property taxes which would otherwise be payable on the Project if it were subject to property taxes.

4. Amount of Payments. For any period hereunder occurring before January 1, 2009 or after December 31, 2012, and during which the Project is owned by the Board, Scannell or FedEx Freight, as applicable, 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 Project if it were subject to property taxes. For each of the years 2009 through 2012, Scannell shall make In Lieu Payments in an amount equal to the following percentages of the taxes that would have been payable on the Project if it were subject to property taxes for the respective years shown:

<u>Years</u>	<u>Percentage</u>
2009	29.2%
2010	29.2%
2011	29.2%
2012	29.2%

5. Penalties and Late Charges. Scannell or FedEx Freight, as applicable, 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 Scannell (or FedEx Freight, as applicable) 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 nonpayment 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 (1.5%) of the owed amount, for each month that each payment has been unpaid. Such one and one-half percent (1.5%) per month late charge amount shall accumulate each month and be payable so long as there remains any outstanding unpaid amount.

(b) If Scannell (or FedEx Freight, as applicable) 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.

6. PILOT Projections Reporting.

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

(b) If Scannell and FedEx Freight fail 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 FedEx Freight closes the Project or moves it from the County during the term hereof, the City and/or the County reserve the right to require the partial repayment of amounts that would have been payable on the Project 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.

8. Contest. Either Scannell or FedEx Freight each shall have the right to contest the appraisal or assessment of the Project by the Assessor and the computation by the Trustee of the amount of the In Lieu Payment. If Scannell or FedEx Freight contests any such appraisal or assessment, then such contesting party shall present evidence to the Assessor in favor of its position. Likewise, if Scannell or FedEx Freight contests any such payment 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, Scannell (or FedEx Freight, as applicable) shall make such payments under protest. Scannell, FedEx Freight, 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 Scannell, FedEx Freight and the Assessor or the Trustee are unable to resolve a dispute, then Scannell and FedEx Freight 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.

9. 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.

10. Term. This Agreement shall become effective on the date that the Board attains title to the Project and shall continue for so long as the Board holds title to any of the Project or until Scannell or FedEx Freight, as applicable, has made all payments required hereunder, whichever shall later occur.

11. Leasehold Taxation. If the leasehold interest of Scannell or FedEx Freight should be subject to ad valorem taxation, then any amounts assessed as taxes thereon shall be credited against any In Lieu Payments due hereunder.

12. Notices. etc. All notices and other communications provided for hereunder shall be written, and mailed via registered or certified mail or delivered via overnight express carrier, to the following addresses:

If to the City: Mr. Randall L. Nelson  
Suite 400, Pioneer Bank Building  
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: Mr. Ross I. Schram III  
Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.  
633 Chestnut Street, Suite 1800  
Chattanooga, Tennessee 37450

If to Scannell: Scannell Properties #85, LLC  
800 East 96<sup>th</sup> Street  
Suite 175  
Indianapolis, Indiana 46240  
Attention: James C. Carlino

With Copy to: Grant, Konvalinka & Harrison, P.C.  
Ninth Floor, Republic Centre  
633 Chestnut Street  
Chattanooga, Tennessee 37450  
Attention: John R. Anderson, Esq.

If to FedEx Freight: FedEx Freight East, Inc.  
2200 Forward Drive  
Harrison, Arkansas 72601  
Attention: Greg K. Satterfield, VP Finance

With a Copy to: FedEx Freight East, Inc.  
2200 Forward Drive  
Harrison, Arkansas 72601  
Attention: James E. Gresham, Esq.

With a Copy to: FedEx Corporation  
942 Shady Grove Road  
Memphis, Tennessee 38120  
Attention: Vice President, Tax

With a Copy to: Brian L. Eftink, Esq.  
Miller & Martin PLLC  
Suite 1000, Volunteer Building  
832 Georgia Avenue  
Chattanooga, Tennessee 37402-2289

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 parties. All such notices and communications shall be deemed delivered as follows:

(i) when mailing via Federal Express or other overnight courier service, one business day after mailing, and (ii) when depositing in the United States mail by registered or certified mail, postage prepaid, return receipt requested, three days after deposit.

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.

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

SCANNELL PROPERTIES #86, LLC

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

FEDEX FREIGHT EAST, INC.

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
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**

**REAL PROPERTY**

IN THE CITY OF CHATTANOOGA, HAMILTON COUNTY, TENNESSEE:

(Insert Legal Description)

**EXHIBIT "B"**



**CHATTANOOGA**  
AREA CHAMBER OF COMMERCE

**Annual Report for Payment-In-Lieu-of-Tax (PILOT) Program  
for Chattanooga and Hamilton County Tennessee**

**Company Information**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City and Zip: \_\_\_\_\_  
Company Contact: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
E-mail: \_\_\_\_\_  
Fax: \_\_\_\_\_

**Company Investment Data**

Real Property Investment Amount: \_\_\_\_\_  
Personal Property Investment Amount: \_\_\_\_\_  
Number of Net New Jobs: \_\_\_\_\_  
Average Wages per New Job: \_\_\_\_\_

**Capital Investment as of December 31, 20**

Real Property Investment Amount: \_\_\_\_\_  
Personal Property Investment Amount: \_\_\_\_\_

PILOT Annual Report  
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(Number of jobs at beginning of PILOT: \_\_\_\_\_)

No. of Net New Jobs Created: \_\_\_\_\_



Average Wages of New Jobs Above<sup>1</sup>: \_\_\_\_\_

<sup>1</sup> Wages may include overtime, but must exclude benefits.



Mr. J. Steven Hiatt, Director of Existing Business  
Chattanooga Area Chamber of Commerce  
811 Broad Street, Suite 100 • Chattanooga, TN 37402  
FAX: (423) 763-4044  
EMAIL: [shiatt@chattanoogachamber.com](mailto:shiatt@chattanoogachamber.com)

I certify that the information and attachments provided are true and accurate to the best of my knowledge and belief:

\_\_\_\_\_

Print name and title of authorized representative of applicant

\_\_\_\_\_

Signature	Date
_____	_____
Phone	Fax
_____	_____