

NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA,
That we do hereby find that the Project 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: June 23, 2009

/add

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

THIS 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 CITY OF CHATTANOOGA** (the "Board"); **CHATTEM, INC.**, a Tennessee corporation (the "Company"); 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, the Company manufactures branded consumer products at its production facilities located at 3350 Broad Street, Chattanooga, Tennessee, which land is more particularly described on Exhibit A, attached hereto and incorporated herein (the "Broad Street Site"), and at 1715 West 38th Street, Chattanooga Tennessee, which land is more particularly described on Exhibit B, attached hereto and incorporated herein (the "West 38th Street Site"); and

WHEREAS, the Company is contemplating the expansion of its Chattanooga, Tennessee operations to include (i) the construction of a new production facility and other real property improvements on the Broad Street Site, (ii) the construction of certain real property improvements on the West 38th Street Site, and (iii) the acquisition and installation of certain machinery, equipment, and other personal property for use in the Company's Chattanooga, Tennessee operations (collectively, the "Project"), resulting in a real property investment of

approximately \$10,800,000, a personal property investment of approximately \$24,700,000, and the creation of approximately 60 full-time positions, on or before December 31, 2012, with an average annual wage (excluding benefits) of approximately \$29,000 (collectively, the "PILOT Projections"), and, accordingly, 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 all real and personal property constituting a part of the Project together with all additions thereto, replacements thereof, and substitutions therefor (collectively, the "Property"), which Property is to be owned by the Board and leased to the Company pursuant to a Lease Agreement of even date herewith (the "Lease"); 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 all 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 all 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 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, 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 to 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 Project were subject to property taxes. The Assessor shall give the Trustee, the City Treasurer, the Board, and the Company 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 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 as if the Property 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 respective amounts of In Lieu Payments (the "Tax Bills").

3. Payments in Lieu of Taxes. After receipt of the Tax Bills, the Company 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 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 hereunder occurring before January 1, 2011 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 Phase I Property as if it were subject to property taxes. For each of the years 2011 through 2018, the Company shall make In Lieu Payments in an amount determined by the Assessor and the Trustee equal to the following percentages 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>
2011 - 2018	29.2%

The parties acknowledge that the amount of real property taxes to support County schools currently represents twenty-nine and two-tenths 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 acknowledge that one hundred percent (100%) of such In Lieu Payments for years 2011 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 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 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 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 to the City and County for each calendar year during the term of this Agreement, on a form reasonably acceptable to the City and County, documentation of the PILOT Projections.

(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 closes the Project or moves the Project 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 Property if it were subject to property taxes.

7. Disbursements by Trustee. All sums received by the Trustee pursuant to Paragraph 3 hereof 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 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 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, 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.

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 Property and shall continue for so long as the Board holds title to any of the Property or until the Company has made all payments required hereunder, whichever shall later occur.

11. 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.

12. Notices. 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. Michael A. McMahan
City Attorney
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. Michael A. McMahan
City Attorney
Suite 400, Pioneer Bank Building
Chattanooga, Tennessee 37402

If to the Company: Chattem, Inc.
1715 West 38th Street
Chattanooga, Tennessee 37409
Attention: Mr. Robert Bosworth

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 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 CITY OF CHATTANOOGA

By: _____
Chairman

CHATTEM, 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

BROAD STREET SITE

A tract of land situated in Chattanooga, Hamilton County, Tennessee.

To find the True Point of Beginning, begin at the remote point of beginning which is the Southeast intersection of Broad Street and 33rd Street; thence with and along the West line of WDEF Broadcasting Company property South 23 degrees 00 minutes 00 seconds West 380.50 feet to the Southwest corner of Lot 1, Double Cola Subdivision recorded in the Register's Office of Hamilton County, Plat Book 36, Page 30 which is the True Point of Beginning of said tract; thence with and along the South line of said Lot 1, Double Cola Subdivision South 68 degrees 34 minutes 30 seconds East 214.01 feet to an iron pin found; thence North 23 degrees 15 minutes 00 seconds East 10.02 feet to a point; thence South 64 degrees 59 minutes 00 seconds East 5.52 feet to a point; thence with and along the East line of said Lot 1, Double Cola Subdivision and Roy H. Park Broadcasting of Tennessee, Inc., North 22 degrees 54 minutes 00 seconds East 169.44 feet to a fence post; thence North 65 degrees 25 minutes 00 seconds West 19.18 feet to a fence post; thence with and along the East line of WDEF Broadcasting Company North 23 degrees 00 minutes 00 seconds East 200.0 feet to a fence post; thence with and along the South line of 33rd Street 402.07 feet to an iron pin set and the North terminus of the Agreed Line between Chattem, Inc., and Chattanooga Christian School, Inc.; thence with and along the Agreed Line South 22 degrees 29 minutes West 780.67 feet to the South terminus of the agreed line an iron pin set; thence with and along the North line of the Chattanooga Christian School, Inc., North 67 degrees 06 minutes 06 seconds West 276.84 feet to an iron pin set; thence with and along the East line of Lot 2, Double Cola Subdivision as recorded in the Register's Office of Hamilton County in Plat Book 36, Page 92 North 23 degrees East 108.11 feet to an iron pin found; thence with and along said Lot 2, Double Cola Subdivision North 66 degrees 55 minutes 54 seconds West 131.22 feet to an iron pin; thence North 24 degrees 10 minutes 12 seconds East 6.89 feet to an iron pin found; thence continuing with and along said North line of Lot 2, Double Cola Subdivision North 66 degrees 58 minutes 20 seconds West 201.09 feet to an iron pin found; thence with and along the East right-of-way line of South Broad Street North 23 degrees 00 minutes 00 seconds East 270.85 feet to the True Point of Beginning, said tract contains 8.075 acres and this description was prepared by David L. Hopkins, Jr., Registered Land Surveyor #120.

EXHIBIT B

WEST 38TH STREET SITE

That certain real property located in Chattanooga, Hamilton County, Tennessee: