

RESOLUTION NO. 26357

A RESOLUTION AUTHORIZING THE EXECUTION OF A
PAYMENT IN LIEU OF TAX AGREEMENT WITH LJT
TENNESSEE, LLC AND STEEL WAREHOUSE OF
TENNESSEE, LLC.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA,
TENNESSEE, That it hereby authorizes the execution of a Payment in Lieu of Tax Agreement
with LJT Tennessee, LLC and Steel Warehouse of Tennessee, LLC.

ADOPTED: July 6, 2010.

/mms

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

THIS AGREEMENT is made and entered into as of this ___ day of _____, 2010, by and among **THE INDUSTRIAL DEVELOPMENT BOARD OF THE COUNTY OF HAMILTON, TENNESSEE** (the "Board"); **STEEL WAREHOUSE OF TENNESSEE, LLC**, a Tennessee limited liability company ("Steel Warehouse"); **LJT TENNESSEE, LLC**, a Tennessee limited liability company ("LJT"); the **CITY OF CHATTANOOGA** (the "City"); and **HAMILTON COUNTY** (the "County") and is joined in, for purposes of evidencing their acceptance of the agency relationship established herein, by **CARL E. LEVI** and his successors, acting in the capacity of **HAMILTON COUNTY TRUSTEE** ("Trustee"), and by **WILLIAM C. BENNETT** and his successors, acting in the capacity of **HAMILTON COUNTY ASSESSOR OF PROPERTY** ("Assessor").

WITNESSETH:

WHEREAS, LJT and Steel Warehouse (collectively, the "Companies") are contemplating the construction of improvements to their respective manufacturing facilities and the installation of additional machinery and equipment therein on property located in Chattanooga, Hamilton County, Tennessee (collectively the "Project"), resulting in (a) an investment of at least \$9.0 million in personal property and at least \$1.8 million in real property and (b) creation over a three-year period of at least 80 new, full-time jobs at an average annual wage rate of at least \$42,862 (the "Investment, Jobs and Payroll Projection"), and the Companies have requested the Board's assistance in 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 property constituting the Project, as described in Exhibit "A" attached hereto, which property (collectively, the "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 Project 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 Project 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. The Companies agree to file annual reports with the Mayors of the City and the County in order to substantiate their compliance with the Investment, Jobs and Payroll Projection.

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. 11th 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. Ross I. Schram III, Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., 633 Chestnut Street, Suite 1800, Chattanooga, Tennessee 37450; if to Steel Warehouse or LJT, Attention: Mr. Michael Donnelly, Vice President and General Manager, 600 River Terminal Road, Chattanooga, Tennessee 37406 (with a copy in either case to Mr. Alfred E. Smith, Jr., Miller & Martin PLLC, Suite 1000, Volunteer Building, 832 Georgia Avenue; 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 COUNTY OF HAMILTON,
TENNESSEE

By: _____
Chairman

STEEL WAREHOUSE OF TENNESSEE, LLC

By: _____
Title: _____

LJT TENNESSEE, LLC

By: _____
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"
TO PILOT AGREEMENT FOR
STEEL WAREHOUSE OF TENNESSEE, LLC
AND
LJT TENNESSEE, LLC

DESCRIPTION OF THE PROPERTY CONSTITUTING THE PROJECT

REAL PROPERTY

IN THE CITY OF CHATTANOOGA, HAMILTON COUNTY, TENNESSEE:

Improvements made by the Companies to that certain real property described as Lot Thirty-three (33) Revised Centre South Riverport Industrial Park, Plat Book 78, Page 162 in the Register's Office of Hamilton County in connection with the 2010-2012 expansion.

PERSONAL PROPERTY

All new personal property installed by the Companies on the Real Property described above in connection with the 2010-2012 expansion located on the Real Property described above.

