

RESOLUTION NO. 26441

A RESOLUTION TO MAKE CERTAIN FINDINGS RELATING TO THE WM. WRIGLEY JR. COMPANY 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, The Wm. Wrigley Jr. Company or an affiliate entity thereto (the "Company") is contemplating the expansion and equipping of improvements to its manufacturing facility in the City, and, because of the substantial economic benefits to the City and Hamilton County resulting from the project, has 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 Wm. Wrigley Jr. Company 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.

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 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: 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 COUNTY OF HAMILTON, TENNESSEE** (the "Board"); **WRIGLEY MANUFACTURING COMPANY, LLC**, a Delaware limited liability company ("Wrigley"); the **CITY OF CHATTANOOGA** (the "City"); and **HAMILTON COUNTY** (the "County") and is joined in, for, among other reasons, the 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**, Wrigley is contemplating the expansion and equipping of improvements to its manufacturing plant on property located in Chattanooga, Hamilton County, Tennessee (the "Project"), resulting in (a) an investment of approximately \$18.8 million in personal property and \$4.3 million in real property and (b) an increase of employment of approximately 54 new, full time jobs having an average annual total compensation as stated on each employee's federal W-2 statement (including 401k but excluding benefits) of at least \$69,500.00, over a three-year period from July 1, 2010 (the "Investment and Jobs Projection"), and has 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 certain real and personal property, as described in Exhibit "A" attached hereto (the "Property"), which Property is to be owned by the Board and leased to Wrigley; 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, the County and any other taxing bodies, 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 Wrigley make certain payments to the Board in lieu of the payment of property taxes that would otherwise be payable on the Property; and

**WHEREAS**, Wrigley 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**, Wrigley and the Board have agreed that all In Lieu Payments made to the Board by Wrigley 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, but shall not, in accordance with Section 10 of this Agreement, create a leasehold assessment for the Property so long as the Board owns the Property. The Assessor shall give the Trustee, the City Treasurer, the Board, and Wrigley 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 Wrigley 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 Wrigley and to disburse such payments to the City and the County. On or about October 1<sup>st</sup> 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, not later than December 31, send the Board and Wrigley a bill for appropriate amounts of In Lieu Payments (the "Tax Bill").

3. Payments in Lieu of Taxes. After receipt of the Tax Bill but no later than March 1 of the year following the year to which the Tax Bill pertains, Wrigley shall pay to the Trustee the amounts indicated on the Tax Bill in accordance with the amount set forth below in Paragraph 4. The In Lieu Payments shall be made by Wrigley 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 Wrigley. For any period hereunder occurring before January 1, 2011 or after December 31, 2023, with respect to the real and personal property described in Exhibit A", and, in each case, during which the Property is owned by the Board, Wrigley 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.

With respect to that portion of the Property as described in Exhibit "A" that constitutes the "Project" (being the personal property installed in connection with its 2010-2013 expansion and the 2010-2012 expansion to its manufacturing building), Wrigley shall make In Lieu Payments in an amount equal to 29.2% of the taxes that would have been payable on the Property if it were subject to property taxes.

With respect to the portion of Property other than what is described above as the "Project," Wrigley shall make In Lieu Payments for the years 2011-2023 in an amount equal to the taxes that would have been payable on said portion of the Property if it were subject to property taxes.

Anything herein to the contrary notwithstanding, Wrigley shall continue to receive the benefit of the PILOT arrangement with respect to its 2005-2008 expansion.

5. Penalties and Late Charges. Wrigley 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 Wrigley 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, 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 Wrigley should fail to pay all amounts and late charges due as provided hereinabove, then the Board, the City or the County must, in order to enforce a lien against the Property as contemplated in Paragraph 8, 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 Wrigley fails to achieve the Investment and Jobs Projections, then the City and the County reserve the right, after providing to Wrigley written notice and an opportunity to cure, to terminate the benefits of this Agreement for any years remaining hereunder. If Wrigley closes the Project for twelve (12) months or longer or moves 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 less all In Lieu Payments actually paid. Such repayment requirement, if

implemented, shall be proportionate to the time period during the term during which the Project was closed or relocated.

6. Disbursements by Trustee. With respect to any periods occurring before January 1, 2011 or after December 31, 2023 and with respect to sums received during the period 2011 to 2023 for those portions of the Property that do not constitute the Project, 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 2023, all sums received by the Trustee pursuant to Paragraph 3 with respect to that portion of the Property that constitutes the Project 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 Wrigley. Wrigley 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 Wrigley contests any such appraisal or assessment, then it shall present



evidence to the Assessor in favor of its position. Likewise, if Wrigley contests any such 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, Wrigley shall make such payments under protest. Wrigley and the Assessor or the Trustee, as the case may be, shall negotiate in good faith and with best efforts to resolve within sixty (60) days any disputes as to appraisal, assessment or computation. If Wrigley and the Assessor or the Trustee are unable to resolve a dispute within such sixty (60) day period (as such period may be extended by the mutual written agreement of the parties), then Wrigley 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. If a court of competent and final jurisdiction finds in favor of Wrigley and such judgment results in a lower appraisal, assessment or computation, Wrigley shall be entitled to a refund of In Lieu Payments as appropriate under the circumstances, with interest paid on such refund as if such refund were a refund of property taxes, in accordance with the Constitution, the laws of the State of Tennessee and any applicable local ordinances. If such a refund, including interest, is owed to Wrigley, Wrigley, at its option, may elect to forego the refund and take a credit in the amount of the refund (plus interest) against the next subsequent In Lieu payment due.

8. Lien on Property and Right of Redemption. 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 (i) there has been a judicial finding by a court of competent and final jurisdiction in accordance with Section 5(b) of this Agreement that such payment is owed and has not been timely made in accordance with this Agreement; and (ii) a court of

competent and final jurisdiction has issued a ruling allowing for such enforcement of the lien against the Property. The City, County, Trustee and Assessor acknowledge and agree that if a lien is enforced against the Property in accordance with this Section, Wrigley or the Board, as the case may be, shall be re-vested with title to the Property affected by the lien if Wrigley repays the amount of the lien plus 10% interest no later than one (1) year from the date such lien is enforced.

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 Wrigley has made all payments required hereunder, whichever shall later occur.

10. Leasehold Taxation. The parties hereto acknowledge and agree that the acquisition by Wrigley of a leasehold interest in the Property as is contemplated by this Agreement is not appropriate for the creation of a leasehold assessment in accordance with the Constitution, the laws of Tennessee and any applicable local ordinances. If the leasehold interest of Wrigley should be subject to ad valorem taxation, then any amounts assessed as taxes thereon shall be credited against any In Lieu Payments due hereunder or, if no such In Lieu Payments are due, then Wrigley shall be entitled to a refund of any prior In Lieu Payments paid in an amount equal to the ad valorem taxation due attributable to such leasehold assessment.

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. Ross I. Schram III, Baker, Donelson, Bearman,

Caldwell & Berkowitz PC, Suite 1800, 633 Chestnut Street, Chattanooga, Tennessee 37450; if to Wrigley, c/o Wm. Wrigley Jr. Company, Attention: General Counsel, 410 N. Michigan Avenue, Chicago, Illinois 60611, with copies to Controller, Wrigley Manufacturing Company, LLC, 3002 Jersey Pike, Chattanooga, Tennessee 37421, and 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.

**[Signature Page Follows]**

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

**WRIGLEY MANUFACTURING COMPANY,  
LLC**

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**  
**WRIGLEY MANUFACTURING COMPANY, LLC**

**REAL PROPERTY**

IN THE CITY OF CHATTANOOGA, HAMILTON COUNTY, TENNESSEE; A tract or parcel of land at or near Chickamauga, particularly described as follows; BEGINNING at a PK nail in the centerline of Jersey Pike, said nail also being in the Northwest corner of 19.51 acre tract of land conveyed to Red Warehouse Realty, Inc., by the Grantor, by Deed dated October 24, 1968; thence North 23 degrees 22 minutes East, along said centerline of Jersey Pike a distance of seventy-nine and five-tenths (79.5) feet to a PK nail; thence North 23 degrees 49 minutes East continuing along said centerline of Jersey Pike four hundred ninety-nine and forty-two hundredths (499.42) feet to a nail, said nail being in the Southwest corner of a twelve and forty eight hundredths (12.48) acres tract of land conveyed to Century Co., Inc., by the Tennessee Property Co., by Deed dated April 25, 1961; thence South 89 degrees 48 minutes East along the property line between the Grantor and Century Co., Inc., a distance of one thousand eighty-eight and seventy-seven hundredths (1088.77) feet, to an iron pipe in the West line of a sixty (60) foot future road, thence South 5 degrees 59 minutes East along the West line of said sixty (60) foot future road, a distance of five hundred seventy-two and fifteen hundredths (572.15) feet, to a concrete monument in the Northeast corner of said tract of land conveyed to Red Warehouse Realty, Inc.; thence North 88 degrees 13 minutes West along the North line of said tract of land conveyed to Red Warehouse Realty, Inc., a distance of thirteen hundred eighty-two and thirty-three hundredths (1382.33) feet to the point of beginning, containing fifteen and six hundred twenty-nine thousandths (15.629) acres, more or less, and being the same land conveyed to Grantor herein by the Kraft Foods Global, Inc., a Delaware corporation in Deed dated June 26, 2005, recorded in Book 7591, page 51, in the Register's Office of Hamilton County, Tennessee. Description is the same as prior deed.

**PERSONAL PROPERTY**

All personal property installed by Wrigley on the real property described above in connection with its 2010-2013 expansion.

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

Date: 9/14/2010

Person Completing Form: Alfred Smith

Title: Attorney

Lessor: The Industrial Development Board of the County of Hamilton, Tennessee

Lessee: Wrigley Manufacturing Company, LLC

Lease Term	Term Beginning Date	January 1, 2011	Total Term Ending Date	December 31, 2023		Direct Income	See Note 1	Direct & Indirect Income
Step 1	1/1/54	X	69,500	=	\$3,753,000	X	2.0	\$7,506,000
Step 2		÷	34,784.00	=				
Step 3		X	0.107	=	\$803,142	X	0.647	\$519,633
			See Note 1	=	New Total Annual State Tax		See Note 1	New Annual State Sales Tax
				=	107.9 Number Indirect Jobs			\$146,536 New Annual Local Sales Tax

**Calculation Summary:**

Total of New and Indirect Jobs	161.9	Additional comments and information about costs or benefits associated with the project may be attached.
Total of Direct and Indirect Income	\$7,506,000	First Year PILOT Payment County: 91,901
Total of New Annual State Sales Tax and New Annual Local Sales Tax	\$666,169	First year PILOT Payment City: 91,901
Market Value of Leased Real Property Improvements	\$4,300,000	Total First Year PILOT: 91,901
Market Value of Leased Machinery & Equipment	\$1,600,000	To be completed by Comptroller of Treasury
Market Value of Leased Land		
Total Appraised Value:	\$23,100,000	
Total Assessed Value:	\$7,360,000	

Note 1 Economic factors and multipliers provided by University of Tennessee for Business and Economic Research