



Hamilton County Board of Commissioners RESOLUTION

No. 207-26

A RESOLUTION TO MAKE CERTAIN FINDINGS RELATING TO THE JARNIGAN ROAD III, LLC/EMJ CORPORATION PROJECT, TO DELEGATE CERTAIN AUTHORITY TO THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF CHATTANOOGA, AND TO AUTHORIZE THE COUNTY MAYOR TO ENTER INTO AND EXECUTE AN AGREEMENT FOR PAYMENTS IN LIEU OF AD VALOREM TAXES.

WHEREAS, pursuant to Tennessee Code Annotated, Section 7-53-305(b) Hamilton County (the "County") is permitted to delegate to The Industrial Development Board of the City of Chattanooga (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 County that such payments are deemed to be in furtherance of the Corporation's public purposes; and,

WHEREAS, Jarnigan Road III, LLC/EMJ Corporation (the "Companies") are contemplating the construction and equipping of an office building in Chattanooga, Hamilton County, and, because of the substantial economic benefits to the City of Chattanooga and the County resulting from the project, has asked the Corporation and the County to approve payments in lieu of ad valorem taxes; and

WHEREAS, the County 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 THIS COMMISSION:

That we do hereby find that the Jarnigan Road III, LLC/EMJ Corporation project referenced above is in the best interest of the County, and that payments in lieu of ad valorem taxes derived therefrom would be in furtherance of the Corporation's public purposes; and,

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 Companies, it being further noted that this delegation is for this purpose and this project only; and,

That the County 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; and,

BE IT FURTHER RESOLVED THAT THIS RESOLUTION TAKE EFFECT FROM AND AFTER ITS PASSAGE, THE PUBLIC WELFARE REQUIRING IT.

MB: 318
PAGE: 250

Approved: [Signature]
CERTIFICATION OF ACTION
 Rejected: _____
County Clerk

Approved: [Signature]
County Mayor
 February 21, 2007
 Vetoed: _____
Date





**HAMILTON COUNTY GOVERNMENT
OFFICE OF THE COUNTY ATTORNEY**

Room 204 County Courthouse
Chattanooga, Tennessee 37402-1956
Telephone (423) 209-6150
Fax (423) 209-6151

Rheubin McGhee Taylor
County Attorney

David Norton
Assistant County Attorney

Mary Neill Southerland
Assistant County Attorney

A handwritten signature in black ink, appearing to be "M. Neill Southerland".

MEMORANDUM

TO: ✓ Debbie Rollins, County Clerk's Office
FROM: Deborah Jefferson, County Attorney's Office
DATE: May 5, 2008
RE: Economic Development Agreement for **National Print Group, Inc./National Posters, Inc.** and **Jarnigan Road III, LLC/EMJ Corporation**
(Pilot Agreements)

For your records, please find the original executed Agreement For Payments in Lieu of Ad Valorem Taxes with respect to National Print Group, Inc., and Jarnigan Road III, LLC/EMJ Corporation, along with a copy of the cost-benefit analysis calculation.

/dj

Cc: Rheubin M. Taylor (File)

Enclosures

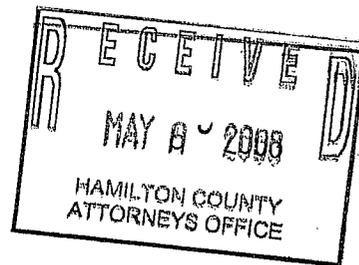
**MILLER
& MARTIN**
PLLC
ATTORNEYS AT LAW

SUITE 1000 VOLUNTEER BUILDING
832 GEORGIA AVENUE
CHATTANOOGA, TENNESSEE 37402-2289
(423) 756-6600
FAX (423) 785-8480

Mark W. Smith
Direct Dial (423) 785-8357
Direct Fax (423) 321-1527
msmith@millermartin.com

May 2, 2008

Tennessee Comptroller of the Treasury
Division of Property Assessments
Suite 1400 (EDA Compliance)
505 Deaderick Street
Nashville, Tennessee 37243-0277



ATTENTION: Barry Monson

Re: Economic Development Agreement for Jarnigan Road III, LLC/EMJ Corporation

Dear Mr. Monson:

Enclosed in accordance with the requirements of T.C.A. §4-17-301 *et seq.* is a copy of an Agreement For Payments in Lieu of Ad Valorem Taxes with respect to Jarnigan Road III, LLC and EMJ Corporation, along with a copy of the cost-benefit analysis calculation.

Sincerely,

Mark W. Smith

MWS:cbm

Enclosure

cc: Stan W. Hildebrand, Esq. (w/enc. – copy of PILOT and Original of Lease)
J. Christopher Hall, Esq. (w/enc. – copy of PILOT and Lease)
Honorable Claude T. Ramsey, County Mayor (w/enc. – copy of PILOT)
Honorable Ron Littlefield, Mayor (w/enc. – copy of PILOT)
Ms. Susan Bedwell (w/enc. – copy of PILOT)
Honorable William C. Bennett (w/enc. – copy of PILOT)
Mr. James Gattis (w/enc. – copy of PILOT)
Mr. Louis Wright (w/enc. – copy of PILOT)
Ms. Daisy Madison (w/enc. – copy of PILOT)
Randall L. Nelson, Esq. (w/enc. – original PILOTS for City and IDB)
Rheubin M. Taylor, Esq. (w/enc. – original PILOT for County) ✓
Mr. Steve Hiatt (w/enc. – copy of PILOT)
Mr. Alfred E. Smith, Jr.

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

THIS AGREEMENT (the "Agreement") is made and entered into as of this the 23rd day of April, 2008, by and among **THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF CHATTANOOGA** (the "Board"); **JARNIGAN ROAD III, LLC**, a Tennessee limited liability company ("Jarnigan III"); **EMJ CORPORATION**, a Tennessee corporation ("EMJ"); 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, Jarnigan III and EMJ (together the "Companies") are contemplating the construction and equipping of an office building in Chattanooga, Hamilton County, Tennessee (the "Project"), resulting in a personal property investment by EMJ of approximately \$1,000,000, a real property investment by Jarnigan III of approximately \$10,000,000 and an increase of 104 jobs by CBL & Associates Management, Inc. and EMJ within three (3) years of the date hereof, which jobs shall have an average annual wage (excluding benefits) equal to at least \$56,500 (collectively the "Investment, Jobs and Wage Projection"), and has 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 certain real property constituting a part of the Project, as described in Exhibit "A" attached hereto (the "Real Property"), and to certain personal property constituting a part of the Project, as described in Exhibit "B" attached hereto (the "Personal Property") (collectively referred to herein as the "Property"), which Personal Property is to be owned by the Board and leased to EMJ, and which Real Property is to be owned by the Board and leased to Jarnigan Road II, LLC, a Tennessee limited liability company ("Jarnigan II"), and, in turn, subleased by Jarnigan II to Jarnigan III; 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 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 their respective portions of 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 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. 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 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 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 as 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 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 Companies bills for appropriate amounts of In Lieu Payments (the "Tax Bill").

3. Payments in Lieu of Taxes. After receipt of the Tax Bill, the Companies 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 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 each of the years 2008-2020, the Companies shall make In Lieu Payments with respect to the Property in amounts, as determined by the Assessor and the Trustee, equal to the following percentages of the amount of the taxes that would have been payable on the Property if it were subject to property taxes:

<u>Years</u>	<u>Percentages</u>
2008	0%
2009	25%
2010	40%
2011-2020	50%

For any periods before or after such thirteen (13) year period (2008-2020) that the Property 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 one hundred percent (100%) of the amount of taxes that would have been payable on the Property if it were subject to property taxes. The In

Lieu Payments shall be apportioned between Jarnigan III and EMJ in accordance with the share of the Property that Jarnigan II and EMJ, respectively, lease from the Board.

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 seek 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 Wage Projection, 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, provided, however, that the repayment obligation will not constitute a lien upon nor be enforceable against any property not benefited by this Agreement.

6. 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.

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 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 the Companies have made all payments required hereunder, whichever shall later occur.

10. Leasehold Taxation. If the leasehold interest 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. The Companies agree to cooperate fully with the Assessor in supplying information for completion of leasehold taxation questionnaires with respect to the Property.

11. Stormwater Fees. Jarnigan III shall be responsible for all stormwater fees assessed by the City of Chattanooga against the Real Property.

12. 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 Board or to the City, c/o Mr. Randall L. Nelson, Suite 400, Pioneer Building, Chattanooga, Tennessee 37402; if to the County, c/o Mr. Rheubin M. Taylor, County Attorney, Hamilton County Government, Room 204, County Courthouse,

Chattanooga, Tennessee 37402-1956; if to Jarnigan III, 2030 Hamilton Place Blvd., Suite 500, Chattanooga, Tennessee 37421-6000, Attention: Chief Financial Officer; if to EMJ, 2200 Hamilton Place Blvd., Chattanooga, Tennessee 37421, Attention: Chief Financial Officer; 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, Express Mail, or facsimile, be effective when deposited in the mails or if sent upon facsimile transmission, confirmed electronically, respectively, addressed as aforesaid.

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. Several Liability of the Companies. The rights and obligations of each of the Companies under this Agreement are several and not joint and relate solely to the share of the Property leased from the Board by EMJ and Jarnigan II (as sublessor to Jarnigan III), respectively. EMJ shall have no rights or obligations under this Agreement with respect to the Real Property, and Jarnigan III shall have no rights or obligations under this Agreement with respect to the Personal Property.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and date first above written.

ATTEST:

By: *R. Adams*
Secretary

THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF CHATTANOOGA

By: *J. Smith*
Chairman

JARNIGAN ROAD III, LLC

By: **Jarnigan Road Limited Partnership, its Sole Member and Chief Manager**
By: **Development Options, Inc., its Sole General Partner**

By: *Farzana K. Mitchell*
Name: Farzana K. Mitchell
Title: Sr Vice President - Finance

EMJ CORPORATION

By: *J. Estlin*
Title: CEO

CITY OF CHATTANOOGA, TENNESSEE

By: *[Signature]*
Mayor

HAMILTON COUNTY, TENNESSEE

By: *[Signature]*
County Mayor

CARL E. LEVI

By: *Carl E. Levi*
Hamilton County Trustee

WILLIAM C. BENNETT

By: *William C Bennett*
Hamilton County Assessor of Property

EXHIBIT "A"
TO PILOT AGREEMENT FOR
JARNIGAN III AND EMJ

REAL PROPERTY

Lot 2, CBL's Addition to the Hamilton Place Area Subdivision as recorded in Plat Book 84, Page 174, in the Register's Office of Hamilton County, Tennessee.

EXHIBIT "B"
TO PILOT AGREEMENT FOR
JARNIGAN III AND EMJ

PERSONAL PROPERTY

All new personal property used by EMJ in connection with the office building located on the real property described in the foregoing Exhibit "A".

Cost Versus Benefit Analysis for Payment In Lieu of Ad Valorem Tax

Date: 3/1/07

Person Completing Form: Mark Stephens

Title: Property Tax Administrator

Lessor: CBL & Associates Management, Inc.

Lessee: Industrial Development Board of Chattanooga, Tennessee

Lease Term	Term Beginning Date	1/1/08	Total Term Ending Date	12/31/20									
Step 1		x		=		x	2.0	=		11,710,400			
	Number of New Jobs	104	Average Annual Company	5,855,200	Direct Income		See Note 1	Direct & Indirect Income					
Step 2		+	\$ 34,784.00	=									
	Indirect Income	5,855,200	See Note 1	168	Number Indirect Jobs								
Step 3		x	0.107	=		x	0.647	=	810,699	x	0.282	=	228,617
	Direct & Indirect Income	11,710,400	See Note 1	1,253,013	New Total Annual State Tax		See Note 1	New Annual State Sales Tax		See Note 1	New Annual Local Sales Tax		228,617

Calculation Summary:

Additional comments and information about costs or benefits associated with the project may be attached.

Total of New and Indirect Jobs	<u>272</u>	
Total of Direct and Indirect Income	<u>11,710,400</u>	
Total of New Annual State Sales Tax and New Annual Local Sales Tax	<u>1,039,316</u>	
Market Value of Leased Real Property Improvements	<u>10,000,000</u>	
Market Value of Leased Machinery & Equipment	<u>1,000,000</u>	
Market Value of Leased Land	<u>0</u>	
Total Appraised Value:	0	
Total Assessed Value:	0	

First Year PILOT Payment County:	<u>0</u>
First year PILOT Payment City:	<u>0</u>
Total First Year PILOT:	<u>0</u>

To be completed by Comptroller of Treasury

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