
TAX AGREEMENT

THIS TAX AGREEMENT (sometimes herein this **“Agreement”**) is made and entered into as of the ____ day of October, 2015, by and between **THE INDUSTRIAL DEVELOPMENT BOARD OF WILLIAMSON COUNTY** (the **“Issuer”**), a public, non-profit corporation organized and existing under and by virtue of the laws of the State of Tennessee, **LEEKO III PROJECT, LLC**, a Tennessee limited liability company (the **“Company”**) and **LEE COMPANY** (**“Lee Co”**), a Tennessee for profit corporation.

WITNESSETH:

WHEREAS, the Issuer is a public, nonprofit corporation and a public instrumentality of Williamson County, Tennessee and is authorized under Chapter 53, Title 7, Tennessee Code Annotated, as amended (the **“Act”**), to enter into lease agreements with manufacturing, industrial, commercial, and financial enterprises with respect to one or more projects for such payments and upon such terms and conditions as the Board of Directors of the Issuer may deem advisable in accordance with the provisions of the Act in order to maintain and increase employment opportunities by inducing such enterprises to locate in or to remain in the State of Tennessee (the **“State”**); and

WHEREAS, the Issuer desires to induce the Company to acquire real property and construct improvements to the property located in Berry Farms in Williamson County, Tennessee (the **“Property”**) (the land and buildings, structures, improvements and fixtures located on the land being referred to as the **“Facility”**), that the Company has leased to Lee Co pursuant to a sublease (the **“Lee Co Lease”**) and to induce Lee Co to locate its regional headquarters operations therein, which Facility is to be acquired and owned by the Issuer and leased by the Issuer to the Company pursuant to that certain Facility Lease Agreement, of even date herewith (the **“Facility Lease”**); and

WHEREAS, the Board of Directors of the Issuer, pursuant to Section 7-53-102 of the Act, has found and determined that the agreement by the Issuer to acquire, improve, equip and lease such office facility will develop trade and commerce in and adjacent to Williamson County, Tennessee, will contribute to the general welfare, will alleviate conditions of unemployment and, has induced or will induce the Company to improve the Facility, lease the Facility to Lee Co, and has induced or will induce Lee Co to locate its operations in Williamson County, Tennessee; and

WHEREAS, the Issuer has not made and does not intend to make any profit by reason of its business or venture in which it may engage or by reason of its entering into this Lease, and no part of the Issuer’s net earnings, if any, will ever inure to the benefit of any person, firm or corporation except Williamson County, Tennessee; and,

WHEREAS, the Issuer is authorized by law and has deemed it necessary to borrow money for the purpose of acquiring and improving the Facility, and the Issuer has authorized, if requested by Company and Lee Co, the issuance of its Industrial Development Revenue Note, Series A, not exceeding Twenty-Four Million and No/100 Dollars (\$24,000,000.00) (**Lee Co Project**) (the **“Series A Note”**), the proceeds of which shall be used for the acquisition, construction, improving the Facility and other Costs of the Facility under and pursuant to the Facility Lease; and

WHEREAS, the Issuer has executed a certain Collateral Assignment of Facility Lease (the **“Assignment of Facility Lease”**) and a certain Deed of Trust, Assignment of Leases and Security Agreement (Facility) (the **“Facility Deed of Trust”**) to secure, inter alia, the loan of the indebtedness (the **“Facility Loan”**) evidenced by the Series A Note; and

WHEREAS, the Issuer is authorized by law and has deemed it necessary to acquire and improve the Facility (the Facility as so improved being sometimes referred to as the **“Project”**) as aforesaid, which acquisition of the Facility has occurred of even date herewith; and

WHEREAS, the Issuer, the Company and Lee Co now desire to enter into this Agreement with respect to the payment of ad valorem and in lieu of ad valorem taxes with respect to the Facility Lease.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto agree as follows:

1. **Term.** This Agreement shall become effective on the date that the Issuer obtains title to the Facility and shall continue, for so long as the Issuer holds title to any of the Facility the Company has made all payments required hereunder, whichever shall later occur.

2. **Definitions.**

(a) **“Applicable Ad Valorem Taxes”** shall mean the sum of the City Applicable Ad Valorem Taxes and the County Applicable Ad Valorem Taxes.

(b) **“City Applicable Ad Valorem Taxes”** shall mean any ad valorem taxes that, but for ownership of the Facility by the IDB, would have been due and payable to the City pursuant to T.C.A. § 67-5-103 by Leeko.

(c) **“County Applicable Ad Valorem Taxes”** shall mean any ad valorem taxes that, but for ownership of the Facility by the IDB, would have been due and payable to the County pursuant to T.C.A. § 67-5-102 by Leeko.

(d) **“County Education Tax”** shall mean the amount of County Applicable Ad Valorem Taxes specifically earmarked for education.

(e) **“County Standard Tax”** shall mean the amount of County Applicable Ad Valorem Taxes not specifically earmarked for education.

(f) **“Effective Date”** shall mean the date of the PILOT Agreement.

(g) **“Pilot Expiration Date”** means December 31, 2021.

(h) **“Qualifying Employees”** means full-time equivalent employees employed by the Lee Company at the Facility hired for a minimum of 35 hours per week.

(i) **“Tax Year”** means the period between January 1 and December 31 of each year between 2017 and 2021.

3. **In Lieu of Tax Payments.** The Company shall make with respect to the property leased under the Facility Lease (and Lee Co has agreed under the Lee Co Lease to provide the funds for the same), in addition to any and all other payments required under the Lease, in lieu of ad valorem tax payments to Williamson County, Tennessee (the **“County”**) and to the City of Franklin, Tennessee (the **“City”**) (the **“In Lieu of Tax Payments”**), for each year beginning January 1 and ending December 31 in an amount equal to the percentage of the Applicable Ad Valorem Taxes for such year set forth below:

Applicable Year:	Percentage of County Standard Tax:	Percentage of County Education Tax:	Percentage of City Applicable Ad Valorem Taxes:
Effective Date through December 31, 2016	100%	100%	100%
January 1, 2017 through December 31, 2021	0%	100%	0%
January 1, 2022 and thereafter	100%	100%	100%

(a) Notwithstanding the foregoing:

- 1) Once the total County Applicable Ad Valorem Taxes after calendar year 2016 exceeds the total In Lieu of Tax Payments to the County by \$422,786.00, with the result that Leeko by reason of its leasehold interest has received \$422,786.00 in tax reductions as a result of this transaction, the In Lieu of Tax Payments required hereunder to the County shall become 100% of the County Applicable Ad Valorem Taxes; and
- 2) Once the total City Applicable Ad Valorem Taxes after calendar year 2016 exceeds the total In Lieu of Tax Payments to the City by \$80,248.00, with the result that Leeko by reason of its leasehold interest has received \$80,248.00 in tax reductions as a result of the transaction, the In Lieu of Tax Payments required hereunder to the City shall become 100% of the City Applicable Ad Valorem Taxes.

(b) Prior to January 1, 2017, the Company shall be obligated to make In Lieu Payments to the County equal to the ad valorem taxes which would be due on the Project were it privately owned ("**Estimated Taxes**")

(c) In Lieu of Tax Payments for any partial year shall be prorated on a per diem basis.

(d) After receipt of any tax bills from the Trustee (the "**Tax Bills**"), as required in **Section 6(c)** herein, the Company shall pay to the Trustee, before March 1 of the year following the year the Tax Bills are sent to the Company, the respective amounts indicated on the Tax Bills in accordance with the percentages set forth in this **Section 3**. The obligation to make any In Lieu of Tax Payment with respect to any Tax Year shall survive the termination of this Agreement. Additionally, the Company will be responsible for the payment of any and all roll back taxes that are assessed against the Property.

(e) If Leeko is required to pay ad valorem taxes by reason of its leasehold interests in the Facility ("**Leasehold Taxes**"), then the amount of Leasehold Taxes actually paid by Leeko shall be deducted from the In Lieu of Tax Payments next due from Leeko with respect to the Facility until such time as the full amount of Leasehold Taxes actually paid by Leeko during the term of the Facility Lease shall have been deducted from In Lieu of Tax Payments.

4. Performance Criteria. On or before January 31, 2018, Lee Co shall provide written notice to the IDB stating the number of Qualifying Employees employed as of December 31, 2017 ("**Reported Jobs**"), as required in **Section 6(d)** herein. If the number of Reported Jobs in any given year is lower than 61 (being ninety percent (90%) of the Anticipated Number of Jobs), then Leeko shall make an additional In Lieu of Tax Payment (the "**Additional Payment**") for that year in an amount of the Applicable Ad Valorem Taxes proportionate to the amount by which 61 exceeds the number of Reported Jobs. Specifically, the Additional Payment shall be the amount determined by (i) subtracting (A) the quotient obtained by dividing the number of Reported Jobs by 61 from (B) 1, rounded to the nearest percentage point, and (ii) multiplied by the Applicable Ad Valorem Taxes. By way of example, if the number of Reported Jobs as of December 31, 2017 is 23, the Additional Payment would be 37.7% of the Applicable Ad Valorem Taxes [$1 - (23/61) = 0.3770 = 37.7\%$]. In no event shall the Additional Payment plus the In Lieu of Tax Payment exceed 100% of the Applicable Ad Valorem Taxes.

5. Permitted Contests. It is agreed and understood that Lee Co, or any other person, may, in good faith at its own expense, contest the Applicable Ad Valorem Taxes, or the amount of any In Lieu of Tax Payments based thereon, after paying the contested amounts under protest. In the event of any such contest, Lee Co or such other person, as applicable, may permit the taxes or the In Lieu of Tax Payments so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Issuer shall notify Lee Co or such other person as applicable, that by non-payment of such items the Facility, or any part thereof, may be imminently subject to loss or forfeiture, in which event such taxes, In Lieu of Tax Payments, assessments or charges shall be promptly paid or secured by posting a bond in form and substance satisfactory to the Issuer. The Issuer shall, if requested by Lee Co or such other person, as applicable, and provided that the Issuer shall be indemnified and held harmless by Lee Co against and from all costs and expenses (including attorneys' fees) which may be reasonably incurred by the Issuer in connection therewith, cooperate fully with Lee Co or such other person, as applicable, in any such contest.

6. Reports and Document Filing.

(a) **Annual Report Pursuant to the Act.** Annually, the Company's tenant shall file the report required to be filed pursuant to Section 7-53-305(e) of the Act on or before October 1 of each year with respect to the Facility. A copy of this report shall also be filed with the County Assessor of Property. This form can be filed online at <http://www.comptroller.tn.gov/IDBHED/>, if desired.

(b) **Cost Versus Benefits Analysis.** The Company and Lee Co hereby submit the "Cost Versus Benefits Analysis For Payment In Lieu of Ad Valorem Tax" form attached hereto as **Schedule 6(b)** and incorporated herein by this reference as required by T.C.A. Section 7-53-305(b) of the Act.

(c) **Tax Bill to be Sent by County.** Issuer shall endeavor in good faith to cause the Williamson County Trustee to send a bill for the In Lieu of Tax Payments to the Company, Lee Co and Issuer on or before the first (1st) day of November of each year, and the payment thereof shall be made by the Company or Lee Co, as applicable, on or before the last day of February for In Lieu of Tax Payments for the immediately preceding year.

(d) **Company Certification.** On or before January 31, 2018, and on or before January 31 of each year thereafter through January 31, 2021, Lee Co. shall certify to the Issuer the number of Reported Jobs as of the end of each month as of December 31 each year beginning with year 2017.

Abatement Year	Employment As Of	Reported by
2017	12/31/2017	1/31/2018
2018	12/31/2018	1/31/2019
2019	12/31/2019	1/31/2020
2020	12/31/2020	1/31/2021
2021	12/31/2021	1/31/2022

- 1) Lee Co shall submit the employment information outlined above in the form attached hereto as **Schedule 6(d)** (the "**Employment Certification Form**").
- 2) Lee Co hereby agrees the Issuer shall have the right to audit and examine records of Lee Co in order to verify the employment information required by this Agreement furnished by Lee Co to the Issuer.

7. Penalties and Late Charges. The Company or Lee Co shall make the In Lieu Payments for each year before March 1 of the following year, provided that the Company shall have received from the Trustee a written notice therefor at least thirty (30) days prior to such due date. All In Lieu Payments shall be subject to penalties, late charges, fees and interest charges as follows:

(a) If the Company or Lee Co 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 to the Company and Lee Co (the "**Written Notice**"), 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. If any failure to pay shall continue and not be fully paid within sixty (60) days after the Written Notice of such non-payment has been provided to the Company and Lee Co, then the Issuer may terminate this Agreement in addition to any remedies in law or equity.

(b) If the Company should fail to pay all amounts and late charges due as provided hereinabove, then the Issuer may bring suit in the Chancery Court of Williamson County to recover the In Lieu Payments due, late charges, expenses and costs of collection in addition to reasonable attorneys' fees. Notwithstanding the terms and

conditions of this **Section 7(b)**, The Company agrees that it shall be liable for all In Lieu Payments that the Issuer seeks to recover pursuant to this **Section 7(b)**.

8. Termination of the Agreement.

(a) In addition to all other provisions herein regarding the termination of this Agreement, this Agreement shall automatically terminate, if the Company or Lee Co:

- 1) ceases to lease the Facility from the Issuer or its assignee or sublessee;
- 2) ceases to operate the Project;
- 3) subleases the Facility or Project to any third party, or
- 4) does not comply with covenants contained herein, including but not limited to **Section 9**.

(b) Upon any automatic termination of this Agreement:

- 1) The Issuer shall provide written notice of such termination to the Company and Lee Co,
- 2) Within fifteen (15) days of receiving said notice, the Company shall sign all required documents to transfer the Facility from the Issuer to the Company, and
- 3) The Applicable Ad Valorem Taxes on the Property shall become assessed and paid at one hundred percent (100%).

9. Covenants of the Company. The Company and Lee Co, in consideration of the agreements of the Issuer herein contained, covenants and agrees as follows:

(a) To cause the Facility to be developed and constructed on the Property in accordance with applicable zoning and other regulatory limitations and regulatory approvals of Williamson County and the City of Franklin;

(b) to convey to the Issuer all real property upon which improvements and/or structures are constructed and to enter into an agreement to make payments for lease of such property in lieu of ad valorem taxes in accordance with the payment schedule as set out in this Agreement;

(c) Upon the request of the IDB or Company, reacquire the Facility (including the Property) conveyed to the IDB for a nominal amount upon the expiration or termination of the PILOT Agreement with the IDB, to sign such documentation reasonably necessary to complete the transfer to the Company;

(d) to comply with all regulations of the City of Franklin; and

(e) to not discriminate on the basis of race, color, creed, sex, handicap or national origin in the course of doing business, or in the construction of the Project.

In the event that the Company or Lee Co fail to comply with any of the covenants contained in this Agreement, the County In Lieu of Tax Payments shall both become 100% of the ad valorem taxes which would be due on the Project were it privately owned.

10. Lien on Facility. Any amounts which remain payable after their applicable date under this Agreement shall become a lien on the Facility, and such lien shall be enforceable against the Facility in the event that any payment owing hereunder is not timely made in accordance with this Agreement.

11. Miscellaneous.

(a) **Counterparts.** This Agreement may be executed in counterparts each of which shall be deemed an original and which together shall constitute one and the same agreement.

(b) **Notices, Etc.** All notices, certificates or other communications hereunder shall be in writing and shall be deemed given sufficiently when delivered or mailed by one or more of the following: first class United States certified mail, postage prepaid; return receipt requested; hand delivery or courier service with receipt acknowledged or refused; or overnight delivery service with receipt acknowledged or refused, to the following addresses:

if to the Issuer
**INDUSTRIAL DEVELOPMENT BOARD OF
WILLIAMSON COUNTY, TENNESSEE**
Attn: Mrs. Gayle Moyer Harris
306 Public Square
Franklin, TN 37064

if to the Company
LEEKO III, LLC.

Attn: _____

with a copy to ,
BUERGER, MOSELEY & CARSON, PLC
Attn: Kenneth J. Young
306 Public Square
Franklin, Tennessee 37064

with a copy to
ADAMS AND REESE LLP
Attn: Russell Harwell
424 Church Street, Suite 2700
Nashville, Tennessee 37219

if to the Trustee,
WILLIAMSON COUNTY TRUSTEE
Williamson County Administrative Complex
1320 West Main Street
Franklin, Tennessee 37064

if to the Assessor,
WILLIAMSON COUNTY PROPERTY ASSESSOR
Williamson County Administrative Complex
1320 West Main Street
Franklin, Tennessee 37064

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.

(c) **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.

(d) **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.

(e) **No Liability of Issuer'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 Issuer, whether past, present or future, either directly or through the Issuer. 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.

(f) **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.

(g) **Governing Law.** The Agreement shall be governed by, and construed in accordance with, the laws of the State of Tennessee. An action, suit, or other proceeding concerning this Agreement must be brought and maintained only in a state court of competent jurisdiction sitting in Williamson County, Tennessee.

(h) **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.

(i) **Transfer or Assignment.** The Company may transfer or assign its rights and obligations hereunder to another entity or other entities subject to the consent and approval of the Issuer. At such time as the Company transfers its rights and obligations hereunder to another entity, the Company shall be released from all obligations under this Agreement, except for those obligations accruing before the date of transfer, and the buyer or assignee shall agree in writing to be liable for all remaining obligations hereunder before the Company is released from any obligations hereunder.

(j) **Third Party Beneficiaries.** The parties acknowledge and agree that the City and the County are third party beneficiaries of this Agreement. Except for the City and the County, the terms and provisions of this Agreement are intended solely for the benefit of the Company, the Issuer and their permitted successors and assigns.

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

**THE INDUSTRIAL DEVELOPMENT BOARD OF
WILLIAMSON COUNTY**, a Tennessee non-profit
corporation

ATTEST:

Secretary

By: _____
Name: _____
Title: _____

LEEKO III PROJECT, LLC, a Tennessee Limited Liability
Company

By: _____
Name: _____
Title: _____

LEE COMPANY, a Tennessee for profit company

By: _____
Title: _____

**THE WILLIAMSON COUNTY TRUSTEE AND WILLIAMSON COUNTY PROPERTY ASSESSOR ARE
ONLY SIGNING THIS AGREEMENT TO ACKNOWLEDGE THE TERMS AND RECEIPT OF THIS
AGREEMENT.**

TRUSTEE:

ASSESSOR:

Karen Paris, Williamson County Trustee

Brad Coleman, Williamson County Property Assessor

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SCHEDULE 6(b)

COST VERSUS BENEFIT ANALYSIS FOR PAYMENT IN LIEU OF AD VALOREM TAX FORM

[see attached]

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SCHEDULE 6(d)
“EMPLOYMENT CERTIFICATION FORM”

MONTHLY EMPLOYMENT REPORT
FOR THE YEAR JANUARY 1, ____ TO DECEMBER 31, ____

For the period and as of the dates described, the following total full time equivalent employees have been employed.

Total Full Time Equivalent Employees as of:	Employees
January 31, _____	_____
February 28/29, _____	_____
March 31, _____	_____
April 30, _____	_____
May 31, _____	_____
June 30, _____	_____
July 31, _____	_____
August 31, _____	_____
September 30, _____	_____
October 31, _____	_____
November 30, _____	_____
December 31, _____	_____

I hereby certify on behalf of LEE COMPANY that the above information is true and correct as of the date hereof.

LEE COMPANY

By: _____

Name (Please Print)

Title (Please Print)

Date