

STATE OF SOUTH CAROLINA  
COUNTY COUNCIL FOR NEWBERRY COUNTY  
ORDINANCE NO. 02-03-21

FILED  
NEWBERRY COUNTY

2021 MAY 13 AM 11:18

ELIZABETH P FOLK  
CLERK OF COURT

**AN ORDINANCE AUTHORIZING (1) THE EXECUTION AND DELIVERY OF A FIRST AMENDMENT TO AN EXISTING FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT (THE "FEE AGREEMENT") BY AND AMONG NEWBERRY COUNTY, SOUTH CAROLINA (THE "COUNTY"), AND KRA OPERATIONS, LLC AND KRA REAL ESTATE, LLC, COMPANIES PREVIOUSLY COLLECTIVELY IDENTIFIED AS PROJECT SAM II, TO PROVIDE FOR (A) THE EXTENSION OF THE APPLICABLE INVESTMENT PERIOD SET FORTH IN THE FEE AGREEMENT AND (B) CERTAIN ADDITIONAL SPECIAL SOURCE REVENUE CREDITS, BOTH IN CONNECTION WITH ADDITIONAL INVESTMENT IN CERTAIN MANUFACTURING AND RELATED FACILITIES IN THE COUNTY; AND (2) OTHER MATTERS RELATING THERETO.**

WHEREAS, Newberry County, South Carolina ("County"), acting by and through its County Council ("County Council") is authorized pursuant to the provisions of the Code of Laws of South Carolina 1976, as amended ("Code"), and particularly Title 12, Chapter 44 of the Code ("Negotiated FILOT Act"), as well as Title 4, Chapter 1 of the Code (the "Multi-County Park Act", and together with the Negotiated FILOT Act, the "Act") and Article VIII, Section 13 of the South Carolina Constitution, to encourage manufacturing and commercial enterprises to locate in the State of South Carolina ("South Carolina" or "State") or to encourage manufacturing and commercial enterprises now located in the State to expand their investments and thus make use of and employ the manpower, products, and other resources of the State by entering into an agreement with one or more investors to (i) accept certain fee in lieu of *ad valorem* tax ("FILOT") payments, including, but not limited to, negotiated FILOT ("Negotiated FILOT") payments made pursuant to the Negotiated FILOT Act, with respect to a project; (ii) permit investors to claim special source revenue credits against their FILOT payments ("Special Source Credits") to reimburse such investors for expenditures in connection with infrastructure serving the County and improved or unimproved real estate and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County ("Special Source Improvements"); and (iii) create, in conjunction with one or more other counties, a multi-county industrial or business park ("Park") in order to afford certain enhanced income tax credits to such investors and to facilitate the grant of Special Source Credits; and

WHEREAS, pursuant to an Ordinance duly enacted by the County Council on September 4, 2019, the County, KRA Operations, LLC, a limited liability company organized and existing under the laws of the State of South Carolina and previously identified as Project Sam II Operating Company, and KRA Real Estate, LLC, a limited liability company organized and existing under the laws of the State of South Carolina and previously identified as Project Sam II Real Property Owner, each acting for itself, one or more affiliates, and/or other project sponsors (collectively, the "Companies", and sometimes referred to collectively as "Project Sam II"), entered into that certain Fee in Lieu of Tax and Incentive Agreement dated as of September 4, 2019 (the "Fee Agreement"), in connection with the establishment of certain manufacturing and related facilities in the County

by the Companies (here and hereinafter, as further defined in the Fee Agreement, the “Project”) whereby the County agreed to provide, amongst other things, certain Negotiated FILOT and Special Source Credit benefits to the Companies with respect to the Project, all as set forth in greater detail in the Fee Agreement; and

WHEREAS, the Companies have committed to make an additional investment in the Project and the creation of additional jobs at the Project, and anticipate that, should their plans proceed as expected, the Companies will invest, or cause to be invested, at least an additional \$23,500,000, in the aggregate, in the Project (the “Expansion Project”) and will create, or cause to be created, at least 120 new, full-time jobs, in the aggregate, at the Project; and

WHEREAS, at the request of the Companies, and in consideration of the Companies’ continued investment and employment in the County, as well as the Expansion Project and additional employment referenced above, and in accordance with the Act, the County has determined to approve certain modifications to the Fee Agreement, the specific terms and conditions of which are set forth in a First Amendment to Fee in Lieu of Tax and Incentive Agreement by and among the County and the Companies, the form of which is attached hereto as Exhibit A (“First Amendment”), pursuant to which the County will provide certain incentives to the Companies with respect to the Project, including (1) a five-year extension of the Investment Period (as defined in the Fee Agreement), and (2) certain additional Special Source Credits with respect to that portion of the Project comprised of the Expansion Project, all as set forth in greater detail in the First Amendment.

NOW THEREFORE, BE IT ORDAINED, by the County Council as follows:

**Section 1. *Approval of Incentives; Authorization to Execute and Deliver First Amendment.***

The incentives as described in this Ordinance (“Ordinance”), and as more particularly set forth in the First Amendment, with respect to the Project are hereby approved. The form, terms and provisions of the First Amendment that is before this meeting are approved and all of the First Amendment’s terms and conditions are incorporated in this Ordinance by reference. The Chair of County Council (“Chair”) is authorized and directed to execute the First Amendment in the name of and on behalf of the County, subject to the approval of any revisions or changes as are not materially adverse to the County by the County Administrator and counsel to the County, and the Clerk to County Council is hereby authorized and directed to attest the First Amendment and to deliver the First Amendment to the Companies.

**Section 2. *Further Assurances.*** The County Council confirms the authority of the Chair, the County Administrator, the Director of Economic Development, the Clerk to County Council, and various other County officials and staff, acting at the direction of the Chair, the County Administrator, the Director of Economic Development or Clerk to County Council, as appropriate, to take whatever further action and to negotiate, execute and deliver whatever further documents as may be appropriate to effect the intent of this Ordinance and the incentives offered to the Companies under this Ordinance and the First Amendment.

**Section 3. *Savings Clause.*** The provisions of this Ordinance are separable. If any part of this Ordinance is, for any reason, unenforceable then the validity of the remainder of this Ordinance is unaffected.

**Section 4. *General Repealer.*** Any prior ordinance, resolution, or order, the terms of which are

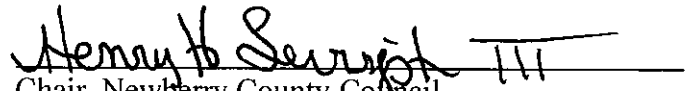
in conflict with this Ordinance, is, only to the extent of that conflict, repealed.

**Section 5. *Effectiveness.*** This Ordinance is effective after its third reading and public hearing.


[End of Ordinance]

Enacted and approved, in meeting duly assembled, this 7th day of April, 2021.

NEWBERRY COUNTY, SOUTH CAROLINA

  
Chair, Newberry County Council

(SEAL)  
ATTEST:

  
Clerk of Council, Newberry County Council

First Reading: February 3, 2021  
Second Reading: March 17, 2021  
Public Hearing: April 7, 2021  
Third Reading: April 7, 2021

**EXHIBIT A**

**FORM OF FIRST AMENDMENT TO FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT**

**FIRST AMENDMENT TO  
FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT**

**by and among**

**NEWBERRY COUNTY, SOUTH CAROLINA**

**and**

**KRA OPERATIONS, LLC**

**and**

**KRA REAL ESTATE, LLC**

**Dated as of April 7, 2021**

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**This First Amendment pertains to that certain Fee in Lieu of Tax and Incentive Agreement, dated as of September 4, 2019, by and among Newberry County, South Carolina, KRA Operations, LLC, and KRA Real Estate, LLC.**

## FIRST AMENDMENT TO FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

THIS FIRST AMENDMENT TO FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT (this “First Amendment”), dated as of April 7, 2021 (the “Effective Date”), by and between **NEWBERRY COUNTY, SOUTH CAROLINA** (the “County”), a body politic and corporate and a political subdivision of the State of South Carolina, **KRA OPERATIONS, LLC**, a limited liability company organized and existing under the laws of the State of South Carolina and previously identified as Project Sam II Operating Company, and **KRA REAL ESTATE, LLC**, a limited liability company organized and existing under the laws of the State of South Carolina and previously identified as Project Sam II Real Property Owner, each acting for itself, one or more affiliates and/or other project sponsors (collectively, the “Companies”, and sometimes referred to collectively as “Project Sam II”).

### WITNESSETH:

WHEREAS, the County, acting by and through its County Council (the “County Council”), is authorized pursuant to the provisions of the Code of Laws of South Carolina 1976, as amended (the “Code”), and particularly Title 12, Chapter 44 of the Code (the “Negotiated FILOT Act”), as well as Title 4, Chapter 1 of the Code (the “Multi-County Park Act”, and together with the Negotiated FILOT Act, the “Act”), and Article VIII, Section 13 of the South Carolina Constitution, to encourage manufacturing and commercial enterprises to locate in the State of South Carolina (“South Carolina” or “State”) or to encourage manufacturing and commercial enterprises now located in the State to expand their investments and thus make use of and employ the manpower, products, and other resources of the State by entering into an agreement with one or more investors to: (i) accept certain fee in lieu of *ad valorem* tax (“FILOT”) payments, including, but not limited to, negotiated FILOT (“Negotiated FILOT”) payments made pursuant to the Negotiated FILOT Act, with respect to a project; (ii) permit investors to claim special source revenue credits against their FILOT payments (“Special Source Credits”) to reimburse such investors for expenditures in connection with infrastructure serving the County and improved or unimproved real estate and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County (“Special Source Improvements”); and (iii) create, in conjunction with one or more other counties, a multi-county industrial or business park in order to afford certain enhanced income tax credits to such investors and to facilitate the grant of Special Source Credits; and

WHEREAS, pursuant to an Ordinance duly enacted by the County Council on September 4, 2019, the County and the Companies entered into that certain Fee in Lieu of Tax and Incentive Agreement, dated as of September 4, 2019 (the “Fee Agreement”), in connection with the establishment of certain manufacturing and related facilities in the County by the Companies (here and hereinafter, as further defined in the Fee Agreement, the “Project”) whereby the County agreed to provide, amongst other things, certain Negotiated FILOT and Special Source Credit benefits to the Companies with respect to the Project, all as set forth in greater detail in the Fee Agreement; and

WHEREAS, the Companies have committed to make an additional investment in the Project and the creation of additional jobs at the Project, and anticipate that, should their plans proceed as expected, the Companies will invest, or cause to be invested, at least an additional \$23,500,000, in

the aggregate, in the Project (the “Expansion Project”) and will create, or cause to be created, at least 120 new, full-time jobs, in the aggregate, at the Project; and

WHEREAS, at the request of the Companies, and in consideration of the Companies’ continued investment and employment in the County, as well as the Expansion Project and the additional employment referenced above, and in accordance with the Act, the County has determined to approve certain modifications to the Fee Agreement, the specific terms and conditions of which are set forth in this First Amendment, pursuant to which the County will provide certain incentives to the Companies with respect to the Project, including (1) a five-year extension of the Investment Period (as defined in the Fee Agreement), and (2) certain additional Special Source Credits with respect to that portion of the Project comprised of the Expansion Project, all as memorialized, ratified and detailed more particularly herein; and

WHEREAS, the County Council authorized the modifications to the Fee Agreement referenced above and set forth in this First Amendment, and authorized the execution and delivery of this First Amendment, pursuant to an Ordinance duly enacted by the County Council on April 7, 2021.

NOW, THEREFORE, in consideration of the foregoing recitals which are incorporated herein by reference and other lawful consideration, and respective representations and agreements hereinafter contained, the receipt and sufficiency of which are hereby acknowledged, the County and the Companies agree as follows:

Section 1. Definitions. Defined terms utilized herein and not otherwise defined herein shall have the meanings ascribed to them in the Fee Agreement.

Section 2. Amendment of Fee Agreement. The Fee Agreement is hereby amended as follows:

(a) Section 1.01 is hereby amended as follows:

- i. The definition of “Agreement” is hereby deleted in its entirety and the following is substituted therefor:

*“Agreement”* shall mean this Fee in Lieu of Tax and Incentive Agreement, as originally executed and from time to time supplemented or amended as permitted herein, including, without limitation, as amended by that certain First Amendment to Fee in Lieu of Tax and Incentive Agreement, dated as of April 7, 2021, by and among the County and the Companies.

- ii. The definition of “Expansion Project” is hereby included and inserted to read as follows:

*“Expansion Project”* shall mean that portion of the Project placed in service during the Investment Period following commencement of the Expansion Project Compliance Period.

- iii. The definition of “Expansion Project Compliance Period” is hereby



included and inserted to read as follows:

*“Expansion Project Compliance Period”* shall mean that portion of the Investment Period beginning with the first day that Negotiated FILOT Property comprising all or a portion of the Expansion Project is purchased or acquired and ending on the fifth anniversary of the end of the Property Tax Year in which the initial Negotiated FILOT Property comprising all or a portion of the Expansion Project is placed in service. It is presently anticipated, but not required, that initial Negotiated FILOT Property comprising all or a portion of the Expansion Project will be placed in service in the Property Tax Year ending on December 31, 2021 and, in such event, the Expansion Project Compliance Period will end on December 31, 2026.

- iv. The definition of “Expansion Project Special Source Credits” is hereby included and inserted to read as follows:

*“Expansion Project Special Source Credits”* shall mean the special source revenue credits described in **Section 3.02(a)(ii)** hereof.

- v. The definition of “Initial Project” is hereby included and inserted to read as follows:

*“Initial Project”* shall mean that portion of the Project placed in service during the Investment Period prior to the Expansion Project Compliance Period.

- vi. The definition of “Initial Project Special Source Credits” is hereby included and inserted to read as follows:

*“Initial Project Special Source Credits”* shall mean the special source revenue credits described in **Section 3.02(a)(i)** hereof.

- vii. The definition of “Investment Period” is hereby deleted in its entirety and the following is substituted therefor:

*“Investment Period”* shall mean the period for completion of the Project, which shall be equal to the period commencing on the first day that Negotiated FILOT Property is purchased or acquired, whether before or after the date of this Agreement, and ending on the tenth (10<sup>th</sup>) anniversary of the end of the Property Tax Year in which the initial Negotiated FILOT Property comprising all or a portion of the Project is placed in service, which period the parties hereto agree shall end on December 31, 2030.

- viii. The definition of “Minimum Contractual Investment Requirement” is hereby deleted in its entirety and the following is substituted therefor:

*“Minimum Contractual Investment Requirement”* shall mean, collectively, the (i) Minimum Initial Project Contractual Investment Requirement and

(ii) Minimum Expansion Project Contractual Investment Requirement.

- ix. The definition of “Minimum Expansion Project Contractual Investment Requirement” is hereby included and inserted to read as follows

“*Minimum Expansion Project Contractual Investment Requirement*” shall mean investment in the Expansion Project, within the Expansion Project Compliance Period, by the Companies and all Co-Investors, in the aggregate, of at least \$23,500,000 (without regard to depreciation or other diminution in value).

- x. The definition of “Minimum Initial Project Contractual Investment Requirement” is hereby included and inserted to read as follows

“*Minimum Initial Project Contractual Investment Requirement*” shall mean investment in the Initial Project, within the Compliance Period, by the Companies and all Co-Investors, in the aggregate, of at least \$11,500,000 (without regard to depreciation or other diminution in value).

- xi. The definition of “Minimum Expansion Project Jobs Requirement” is hereby included and inserted to read as follows:

“*Minimum Expansion Project Jobs Requirement*” shall mean the creation at the Project of at least an additional 120 new, full-time jobs, in excess of the job level set forth in the Minimum Initial Project Jobs Requirement, in the County by the Companies, all Co-Investors, and all third party workforce hiring and staffing agencies, in the aggregate, within the Expansion Project Compliance Period.

- xii. The definition of “Minimum Initial Project Jobs Requirement” is hereby included and inserted to read as follows:

“*Minimum Initial Project Jobs Requirement*” shall mean the creation at the Project of at least 57 new, full-time jobs in the County by the Companies, all Co-Investors, and all third party workforce hiring and staffing agencies, in the aggregate, within the period commencing on January 1, 2019 and ending at the end of the Compliance Period.

- xiii. The definition of “Minimum Jobs Requirement” is hereby deleted in its entirety and the following is substituted therefor:

“*Minimum Jobs Requirement*” shall mean, collectively, the (ii) Minimum Initial Project Jobs Requirement and (ii) Minimum Expansion Project Jobs Requirement.

- xiv. The definition of “Special Source Credits” is hereby deleted in its entirety and the following is substituted therefor:

“*Special Source Credits*” shall mean the Initial Project Special Source Credits and the Expansion Project Special Source Credits, collectively.

(b) Subsection (a) of Section 3.02 is hereby deleted in its entirety and the following is substituted therefor:

(a) As reimbursement for investment in Special Source Improvements and subject to the requirements of the Special Source Act, the County hereby agrees that each Company and each other Co-Investor (each, a “Credit Eligible Entity”) shall be entitled to receive, and the County shall provide, special source revenue credits against FILOT Payments due from each such Credit Eligible Entity with respect to the Project in an amount, and for a duration, as set forth below:

(i) With respect to FILOT Payments due with respect to the Initial Project, for a period of thirty (30) consecutive tax years, commencing with the tax year for which the initial Negotiated FILOT payment is due as follows: (1) for the first such tax year, in an amount equal to one hundred percent (100%) of such FILOT Payment; (2) for the second such tax year, in an amount equal to sixty-six percent (66%) of such FILOT Payment; and (3) for the remaining twenty-eight (28) such tax years in an annual amount equal to fifty percent (50%) of each such FILOT Payment; and

(ii) With respect to FILOT Payments due with respect to the Expansion Project, for a period of thirty (30) consecutive tax years, commencing with the tax year for which the initial Negotiated FILOT payment is due as follows: (1) for the first two (2) such tax years, in an amount equal to one hundred percent (100%) of such FILOT Payment; and (2) for the remaining twenty-eight (28) such tax years, in an annual amount equal to fifty percent (50%) of each such FILOT Payment.

(c) Section 3.06 is hereby included and inserted to read as follows:

Section 3.06. County Grant. As further incentive to the Companies to induce the completion of the Expansion Project in the County, the County hereby agrees to provide the County with a one-time cash grant in the amount of \$300,000 (“County Grant”) as reimbursement to the Companies for costs incurred by the Companies in connection with site-related engineering services with respect to the Expansion Project. Within thirty (30) days of submission by one or both of the Companies to the County of invoices and proof of payment reflecting the incurrence of such eligible costs of at least \$300,000, the County shall provide such grant, in full, to the Companies by check or electronic funds transfer, the details of which shall be provided by the Companies to the County prior to such transfer of funds.

(d) Subsection (c) of Section 4.01 is hereby deleted in its entirety and the following is substituted therefor:

Intentionally omitted.

- (e) Section 4.02 is hereby deleted in its entirety and the following is substituted therefor:

Section 4.02 Failure to Satisfy Minimum Initial Project Contractual Investment Requirement and/or Minimum Initial Project Jobs Requirement. If either or both of the Minimum Initial Project Contractual Investment Requirement and/or the Minimum Initial Project Jobs Requirement are not satisfied by the end of the Compliance Period, each of the following subsections (a) – (c) shall apply:

(a) Each Company and each other Sponsor or Sponsor Affiliate shall continue to be eligible for the Negotiated FILOT described in **Section 5.01** hereof so long as the Minimum Statutory Investment Requirement is satisfied by the end of the Compliance Period, as applicable under and pursuant to **Section 5.01** hereof.

(b) Each Credit Eligible Entity shall, to the extent required by the below provisions of this **Section 4.02(b)**, reimburse the County for a portion of any Initial Project Special Source Credits previously received, or to be received (upon actual receipt), by such Credit Eligible Entity for each tax year for which such Credit Eligible Entity is entitled to receive Initial Project Special Source Credits under **Section 3.02(a)(i)** hereof and for which a FILOT Payment has been, or will be, due to be paid without penalty with respect to the Initial Project on or before the January 15 immediately following the end of the Compliance Period (collectively, the “Compliance Period Special Source Credits”), taking into account (i) the highest level of aggregate investment in the Initial Project (without regard to depreciation or other diminution in value) within the period set forth in the Minimum Initial Project Contractual Investment Requirement at any time during the such period (the “Actual Initial Project Investment”), as compared to the Minimum Initial Project Contractual Investment Requirement, (ii) the highest number of new, full-time jobs created, in the aggregate, at the Project in the County within the period set forth in the Minimum Initial Project Jobs Requirement at any time during such period (the “Actual Initial Project Jobs”), as compared to the Minimum Initial Project Jobs Requirement, and (iii) a weighting of 1/2 investment and 1/2 jobs, all as further detailed and illustrated in the formula set forth below:

Formula:

1.  $\text{Actual Initial Project Investment} / \$11,500,000 = \text{Investment Satisfaction Percentage [ISP]}$
2.  $100\% - \text{ISP} = \text{Investment Satisfaction Factor [ISF]}$  (may not exceed 100%)
3.  $\text{Actual Initial Project Jobs} / 57 \text{ new, full time jobs} = \text{Jobs Satisfaction Percentage [JSP]}$

4.  $100\% - \text{JSP} = \text{Jobs Satisfaction Factor [JSF]}$  (may not exceed 100%)

5.  $\text{ISF} + \text{JSF} / 2 = \text{Final Satisfaction Factor [FSF]}$

6. In the event that determination of the Final Satisfaction Factor results in a positive percentage figure, the Final Satisfaction Factor shall be applied to the Compliance Period Special Source Credits received, or to be received (upon actual receipt), by each Credit Eligible Entity, as set forth above to determine reimbursement amounts due to the County, if any, from each such Credit Eligible Entity. Any such amounts shall be due to be paid by a Credit Eligible Entity on or before the date by which such Credit Eligible Entity is required, under applicable law, to make its FILOT Payment due with respect to the Initial Project for the tax year corresponding to the final Property Tax Year of the Compliance Period (*i.e.*, the FILOT Payment due with respect to Initial Project property placed in service as of the end of the final Property Tax Year within the Compliance Period).

(c) Each Credit Eligible Entity shall continue to be eligible for Initial Special Source Credits against each FILOT Payment due from such Credit Eligible Entity with respect to the Initial Project for the remaining tax years of the period set forth in **Section 3.02(a)(i)** hereof; provided, however, in the event that determination of the Final Satisfaction Factor pursuant to **Section 4.02(b)** hereof results in a positive percentage figure, the annual Initial Special Source Credits amount to which each Credit Eligible Entity would otherwise be due shall be reduced for the remaining such tax years by the percentage equal to such Final Satisfaction Factor.

(f) Section 4.08 is hereby included and inserted to read as follows:

Section 4.08. Failure to Satisfy Minimum Expansion Project Contractual Investment Requirement and/or Minimum Expansion Project Jobs Requirement. If either or both of the Minimum Expansion Project Contractual Investment Requirement and/or the Minimum Expansion Project Jobs Requirement are not satisfied by the end of the Expansion Project Compliance Period, each of the following subsections (a) – (c) shall apply:

(a) Notwithstanding anything contained herein to the contrary, each Company and each other Sponsor or Sponsor Affiliate shall continue to be eligible for (i) the Negotiated FILOT described in **Section 5.01** hereof so long as the Minimum Statutory Investment Requirement is satisfied by the end of the Compliance Period, as applicable under and pursuant to **Section 5.01** hereof, and (ii) the Initial Project Special Source Credits, subject to the provisions of **Sections 4.02(b) and 4.02(c)** hereof.

(b) Each Credit Eligible Entity shall, to the extent required by the below provisions of this **Section 4.08(b)**, reimburse the County for a portion of the County Grant and for a portion of any Expansion Project Special Source

Credits previously received, or to be received (upon actual receipt), by such Credit Eligible Entity for each tax year for which such Credit Eligible Entity is entitled to receive Expansion Project Special Source Credits under **Section 3.02(a)(ii)** hereof and for which a FILOT Payment has been, or will be, due to be paid without penalty with respect to the Expansion Project on or before the January 15 immediately following the end of the Expansion Project Compliance Period (collectively, the “Expansion Project Compliance Period Special Source Credits”), taking into account (i) the highest level of aggregate investment in the Expansion Project (without regard to depreciation or other diminution in value) within the Expansion Project Compliance Period at any time during the such period (the “Actual Expansion Project Investment”), as compared to the Minimum Expansion Project Contractual Investment Requirement, (ii) the highest number of new, full-time jobs created, in the aggregate, at the Project in the County within the Expansion Project Compliance Period at any time during such period (the “Actual Expansion Project Jobs”), as compared to Minimum Expansion Project Jobs Requirement, and (iii) a weighting of 1/2 such investment and 1/2 such jobs, all as further detailed and illustrated in the formula set forth below:

Formula:

1.  $\text{Actual Expansion Project Investment} / \$23,500,000 = \text{Investment Satisfaction Percentage [ISP]}$
2.  $100\% - \text{ISP} = \text{Investment Satisfaction Factor [ISF]}$  (may not exceed 100%)
3.  $\text{Actual Expansion Project Jobs} / 120 \text{ new, full time jobs} = \text{Jobs Satisfaction Percentage [JSP]}$
4.  $100\% - \text{JSP} = \text{Jobs Satisfaction Factor [JSF]}$  (may not exceed 100%)
5.  $\text{ISF} + \text{JSF} / 2 = \text{Final Satisfaction Factor [FSF]}$
6. In the event that determination of the Final Satisfaction Factor results in a positive percentage figure, the Final Satisfaction Factor shall be applied to the County Grant and the Expansion Project Compliance Period Special Source Credits received, or to be received (upon actual receipt), by each Credit Eligible Entity, as set forth above to determine reimbursement amounts due to the County, if any, from each such Credit Eligible Entity. Any such amounts shall be due to be paid by a Credit Eligible Entity on or before the date by which such Credit Eligible Entity is required, under applicable law, to make its FILOT Payment due with respect to the Expansion Project for the tax year corresponding to the final Property Tax Year of the Expansion Project Compliance Period (*i.e.*,

the FILOT Payment due with respect to Expansion Project property placed in service as of the end of the final Property Tax Year within the Expansion Project Compliance Period).

(c) Each Credit Eligible Entity shall continue to be eligible for Expansion Project Special Source Credits against each FILOT Payment due from such Credit Eligible Entity with respect to the Expansion Project for the remaining tax years of the period set forth in **Section 3.02(a)(ii)** hereof; provided, however, in the event that determination of the Final Satisfaction Factor pursuant to **Section 4.08(b)** hereof results in a positive percentage figure, the annual Expansion Project Special Source Credits amount to which each Credit Eligible Entity would otherwise be due shall be reduced for the remaining such tax years by the percentage equal to such Final Satisfaction Factor.

(g) The last sentence of Section 8.01 is hereby deleted in its entirety and the following is substituted therefor:

Notwithstanding anything herein to the contrary, failure to meet any investment or job creation requirements, thresholds, or levels set forth in this Agreement shall not be deemed to be an Event of Default under this Agreement, but may terminate certain benefits hereunder or obligate the Companies or other Co-Investors, as the case may be, to make certain additional payments to the County, all as set forth in **Sections 4.02, 4.08, and 5.01(f)** hereof.

Section 3. Remaining Terms and Provisions. Except as expressly amended hereby, the terms and provisions of the Fee Agreement shall remain unchanged and in full force and effect.

Section 4. Entire Understanding. The Fee Agreement, as amended by this First Amendment, expresses the entire understanding and all agreements of the parties hereto pertaining to the matters set forth herein and therein and neither party hereto has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth in the Fee Agreement, as amended by this First Amendment, or in certificates delivered in connection with the execution and delivery hereof.

Section 5. Severability. In the event that any clause or provision of this First Amendment shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.

Section 6. Multiple Counterparts. This First Amendment may be executed in multiple counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument.

Section 7. Administration Expenses. The parties hereto understand that the County has incurred, and will incur, legal fees and other expenses for review of this First Amendment and all resolutions, ordinances and other documentation related thereto, and the Companies agree to reimburse the County for all such reasonable legal fees and other expenses incurred by the County, in an amount not to exceed \$3,500.

[Remainder of Page Intentionally Blank]



IN WITNESS THEREOF, the parties hereto, each after due authorization, have executed this First Amendment to Fee in Lieu of Tax and Incentive Agreement to be effective as of the Effective Date.

**NEWBERRY COUNTY, SOUTH CAROLINA**

(SEAL)

By: Henry H. Livingston III  
Henry H. Livingston, III, Chairman, County  
Council, Newberry County, South Carolina

**ATTEST:**

By: Susan C. Fellers  
Susan C. Fellers, Clerk to County Council  
Newberry County, South Carolina

**KRA OPERATIONS, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**KRA REAL ESTATE, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_