

STATE OF SOUTH CAROLINA
COUNTY COUNCIL FOR NEWBERRY COUNTY
ORDINANCE NO. 07-09-19

FILED
NEWBERRY COUNTY
2019 SEP 13 PM 3:26
ELIZABETH P. FOLK
CLERK OF COURT

AN ORDINANCE AUTHORIZING (1) THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT BY AND AMONG NEWBERRY COUNTY, SOUTH CAROLINA (THE "COUNTY"), KRA OPERATIONS, LLC, A COMPANY PREVIOUSLY IDENTIFIED AS PROJECT SAM OPERATING COMPANY, AND KRA REAL ESTATE, LLC, A COMPANY PREVIOUSLY IDENTIFIED AS PROJECT SAM REAL PROPERTY OWNER, EACH ACTING FOR ITSELF, ONE OR MORE AFFILIATES, AND/OR OTHER PROJECT SPONSORS (COLLECTIVELY, THE "COMPANIES"), PURSUANT TO WHICH THE COMPANIES SHALL BE ENTITLED TO CERTAIN NEGOTIATED FEES IN LIEU OF AD VALOREM TAXES WITH RESPECT TO THE ESTABLISHMENT OF CERTAIN FACILITIES IN THE COUNTY (THE "PROJECT"); (2) THE ADDITION OF THE PROJECT TO A MULTI-COUNTY INDUSTRIAL OR BUSINESS PARK; (3) THE PROVISION OF CERTAIN SPECIAL SOURCE REVENUE CREDITS IN CONNECTION WITH THE PROJECT; AND (4) 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 together with Article VIII, Section 13 of the South Carolina Constitution (collectively, "Multi-County Park Act"), 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 payments ("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, 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 Operating Company together with 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 Real Property Owner, each acting for itself, one or more affiliates, and/or other project sponsors (collectively, the "Companies"), desires to establish certain facilities in the County primarily for the manufacture of metal stamped and injection molded products and related activities ("Project"), which, should plans proceed as anticipated, will result in aggregate investment of at least \$11,500,000 in the Project and aggregate job creation of least 61 new, full-time jobs within the County; and

WHEREAS, at the request of the Companies and as an inducement to locate the Project in the County, the County desires to enter into a Fee in Lieu of Tax and Incentive Agreement with the Companies, the form of which is attached hereto as Exhibit A ("Fee Agreement"), pursuant to which the County will provide certain incentives to the Companies with respect to the Project, including (1) providing for Negotiated FILOT Payments, to be calculated as set forth in the Fee Agreement, with respect to the portion of the Project which constitutes economic development property; (2) committing to locate the Project in a Park, to the extent the Project is not already included in the Park; and (3) providing certain Special Source Credits, as described in the Fee Agreement, to assist in paying the costs of certain Special Source Improvements; and

WHEREAS, under the authority provided in the Multi-County Park Act, the County has created a Park with Greenwood County, South Carolina more particularly known as the Greenwood-Newberry Industrial Park ("Newberry-Greenwood Park"); and

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

Section 1. *Statutory Findings.* Based solely on information supplied to the County by the Companies, County Council evaluated the Project based on relevant criteria including, the purposes the Project is to accomplish, the anticipated dollar amount and nature of the investment, employment to be created, and the anticipated costs and benefits to the County, and hereby finds:

(a) The Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally;

(b) The Project gives rise to no pecuniary liability of the County or incorporated municipality or a charge against its general credit or taxing power;

(c) The purposes to be accomplished by the Project are proper governmental and public purposes and the benefits of the Project are greater than the costs.

Section 2. *Approval of Incentives; Authorization to Execute and Deliver Fee Agreement.* The incentives as described in this Ordinance ("Ordinance"), and as more particularly set forth in the Fee Agreement, with respect to the Project are hereby approved. The form, terms and provisions of the Fee Agreement that is before this meeting are approved and all of the Fee Agreement's terms and conditions are incorporated in this Ordinance by reference. The Chair of County Council ("Chair") is authorized and directed to execute the Fee Agreement 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 Fee Agreement and to deliver the Fee Agreement to the Sponsor.

Section 3. *Inclusion within the Park.* To the extent the Project is not already included in a Park, the expansion of the Greenwood-Newberry Park boundaries to include the Project is authorized and approved. The Chair, the County Administrator and the Clerk to County Council are each authorized to execute such documents and take such further actions as may be necessary to complete the expansion of the Newberry-Greenwood Park boundaries to include the Project. Pursuant to the terms of the agreement governing the Newberry-Greenwood Park ("Park Agreement"), the expansion of the Newberry-Greenwood Park's boundaries and the amendment to the Park Agreement is complete on adoption of this Ordinance by County Council and delivery of written notice to Greenwood County of the inclusion of the Project in the Newberry-Greenwood Park. The County will use its best efforts to ensure that the Project will remain within the boundaries of the Newberry-Greenwood Park or another Park during the term of the Fee Agreement on terms, and for a duration, which facilitate the County's provision, and the Companies' receipt, of the Special Source Credits referenced in this Ordinance and described in the Fee Agreement.


Section 4. *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 Sponsor under this Ordinance and the Fee Agreement.

Section 5. *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 6. *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 7. *Effectiveness.* This Ordinance is effective after its third reading and public hearing.

NEWBERRY COUNTY, SOUTH CAROLINA


Chair, Newberry County Council

(SEAL)
ATTEST:


Clerk of Council, Newberry County Council

First Reading: July 3, 2019
Second Reading: August 21, 2019
Public Hearing: September 4, 2019
Third Reading: September 4, 2019

EXHIBIT A

FORM OF FEE AGREEMENT

FILED
JUDICIAL COUNTY
2019 SEP 13 PM 3:26
ELIZABETH P. FOLK
CLERK OF COURT

FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

by and among

NEWBERRY COUNTY, SOUTH CAROLINA,

KRA OPERATIONS, LLC

and

KRA REAL ESTATE, LLC

Dated as of September 4, 2019

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FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

THIS FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT (this "Agreement") dated as of _____, 2019, by and among 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 Operating Company", (the "Operating Company"), 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 Real Property Owner", (the "Real Property Owner"), each acting for itself, one or more affiliates, and/or other project sponsors (each a "Company" as set forth herein and collectively referred to herein as the "Companies").

WITNESSETH:

WHEREAS, the County, acting by and through its County Council (the "Council"), is authorized and empowered under and pursuant to the provisions of the Code of Laws of South Carolina 1976, as amended (the "Code"), particularly Title 12, Chapter 44 of the Code (the "Negotiated FILOT Act") and Title 4, Chapter 1 of the Code (the "Multi-County Park Act" or, as to Section 4-1-175 thereof, and, by incorporation Section 4-29-68 of the Code, the "Special Source Act", and, together with the Negotiated FILOT Act, the "Act") and by Article VIII, Section 13(D) of the South Carolina Constitution: (i) to enter into agreements with certain investors to construct, operate, maintain, and improve certain projects through which the economic development of the State of South Carolina (the "State") will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ the manpower, agricultural products, and natural resources of the State; (ii) to covenant with such investors to accept certain fee in lieu of *ad valorem* tax ("FILOT") payments, including, but not limited to, negotiated FILOT payments made pursuant to the Negotiated FILOT Act, with respect to a project; (iii) to 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 (iv) to 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, the Companies propose to invest in certain facilities at one or more locations in the County (the "Project"); and

WHEREAS, the Companies anticipate that, should their plans proceed as expected, they will invest, or cause to be invested, at least \$11,500,000, in the aggregate, in the Project and will

create, or cause to be created, at least 61 new, full-time jobs, in the aggregate, within the County, as set forth in greater detail herein; and

WHEREAS, the County has determined that the Project will subserve the purposes of the Act and has made certain findings pertaining thereto in accordance with the Act; and

WHEREAS, in accordance with such findings and determinations, and in order to induce the Companies to locate the Project in the County, the Council adopted a Resolution on July 3, 2019 (the "Inducement Resolution"), whereby the County identified the Project as a "project" under the Act and agreed to negotiate an agreement providing for a Negotiated FILOT, the benefits of a multi-county industrial or business park, and certain Special Source Credits, all with respect to the Project, the terms of all of which are set forth in greater detail in this Agreement; and

WHEREAS, the County has determined that it is in the best interests of the County to enter into this Agreement with the Companies, subject to the terms and conditions set forth herein and, by Ordinance No. _____ enacted by the Council on September 4, 2019, approved the form, terms and conditions of this Agreement and ratified all prior actions taken with respect to the Project.

NOW, THEREFORE, in consideration of the premises, the mutual covenants contained herein, the above recitals which are incorporated herein by reference, the potential investment to be made, or caused to be made, and the potential jobs to be created, or caused to be created, by the Companies which contribute to the tax base and the economic welfare of the County, the respective representations and agreements hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the Companies agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. In addition to the words and terms elsewhere defined in this Agreement, the following words and terms as used herein and in the preambles hereto shall have the following meanings unless the context or use indicates another or different meaning or intent.

"*Act*" shall mean, collectively, the Negotiated FILOT Act and the Multi-County Park Act, including, without limitation, the Special Source Act.

"*Administration Expenses*" shall mean the reasonable and necessary expenses incurred by the County in the fulfillment of its obligations under this Agreement and in the implementation of its terms and provisions, including reasonable and necessary attorney's fees, but excluding any expenses incurred by the County in defending either challenges to the incentives provided herein by third parties or suits brought by any Company or any other Co-Investor under **Section 8.04** hereof; provided, however, that no such expense shall be considered

an Administration Expense unless such Company, or other Co-Investor, required to pay such expense hereunder, shall have furnished to such Company, or such other Co-Investor, as the case may be, a general statement of all such expenses incurred.

"Affiliate" shall mean any corporation, limited liability company, partnership or other Person or entity which now or hereafter owns all or part of any Company or any other Co-Investor, as the case may be, or which is now or hereafter owned in whole or in part by any Company or any other Co-Investor, as the case may be, or by any partner, shareholder or owner of any Company or any other Co-Investor, as the case may be, and shall also include any subsidiary, affiliate or other Person, individual, or entity who now or hereafter bears a relationship to any Company or any other Co-Investor, as the case may be, as described in Section 267(b) of the Internal Revenue Code.

"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.

"Code" shall mean the Code of Laws of South Carolina 1976, as amended unless the context clearly requires otherwise.

"Co-Investor" shall mean each Company, any other Sponsor or Sponsor Affiliate within the meaning of Sections 12-44-30(19) and (20) of the Negotiated FILOT Act. As of the date of the original execution and delivery of this Agreement, the Companies are the only Co-Investors.

"Company" shall mean each of (i) the Operating Company and (ii) the Real Property Owner, each with respect to its respective portion of the Project.

"Companies" shall mean the Operating Company and the Real Property Owner, collectively.

"Compliance Period" shall mean the period commencing with the first day that Negotiated FILOT Property is purchased or acquired, whether before or after the date of this Agreement, 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 Project is placed in service, all as specified in Section 12-44-30(13) of the Negotiated FILOT Act. It is presently anticipated, but not required that the initial Negotiated FILOT Property comprising all or a portion of the Project will be placed in service in the Property Tax Year ending on December 31, 2020 and, in such event, the Compliance Period will end on December 31, 2025.

"Council" shall mean the governing body of the County and its successors.

"Credit Eligible Entity" shall have the meaning specified in **Section 3.02(a)** hereof.

"County" shall mean Newberry County, South Carolina, a body politic and corporate and a political subdivision of the State, and its successors and assigns.

"Deficiency Payment" shall have the meaning specified in **Section 5.01(e)** hereof.

“Department of Revenue” shall mean the South Carolina Department of Revenue and any successor thereof.

“Event of Default” shall mean an Event of Default, as set forth in **Section 8.01** hereof.

“Existing Property” shall mean property which will not qualify for the Negotiated FILOT pursuant to Section 12-44-110 of the Negotiated FILOT Act, including without limitation property which has been subject to *ad valorem* taxes in the State prior to commencement of the Investment Period and property included in the Project as part of the repair, alteration, or modification of such previously taxed property; provided, however, that Existing Property shall not include: (a) the Land; (b) property acquired or constructed by or on behalf of any Company or any other Sponsor or Sponsor Affiliate during the Investment Period which has not been placed in service in this State prior to the commencement of the Investment Period notwithstanding that *ad valorem* taxes have heretofore been paid with respect to such property, or property which has been placed in service in the State pursuant to an inducement agreement or other preliminary approval by the County, including the Inducement Resolution, prior to execution of this Agreement pursuant to Section 12-44-40(E) of the Negotiated FILOT Act, which property shall qualify as Negotiated FILOT Property; (c) property purchased by or on behalf of any Company or any other Sponsor or Sponsor Affiliate during the Investment Period in a transaction other than between any of the entities specified in Section 267(b) of the Internal Revenue Code, as defined under Chapter 6 of Title 12 of the Code as of the time of the transfer, to the extent that any Company or such other Sponsor or Sponsor Affiliate invests at least an additional \$45,000,000 in the Project, exclusive of the property identified in this subsection (c); or (d) modifications which constitute an expansion of the real property portion of Existing Property.

“FILOT” shall mean fee in lieu of *ad valorem* property taxes.

“FILOT Payment” or *“FILOT Payments”* shall mean the FILOT payments to be made by each Company and each other Co-Investor with respect to its respective portion of the Project, whether made as Negotiated FILOT Payments pursuant to **Section 5.01** hereof or as FILOT payments made pursuant to the Multi-County Park Act.

“Investment Period” shall mean the period for completion of the Project, which shall be initially equal to the Compliance Period; provided, however, that in the event that the Minimum Contractual Investment Requirement is satisfied by the end of the Compliance Period the Investment Period may be extended, upon approval by Resolution of the Council, by five (5) years beyond the Compliance Period; provided, further, that there shall be no extension of the period for satisfying Minimum Statutory Investment Requirement beyond the Compliance Period, all determined as specified in Section 12-44-30(13) of the Negotiated FILOT Act. In the event that the initial Negotiated FILOT Property comprising all or a portion of the Project is, as presently anticipated, placed in service in the Property Tax Year ending on December 31, 2020, and upon any such extension the Investment Period would end on December 31, 2025.

“Land” shall mean the land upon which the Project has been or will be acquired, constructed and equipped, as described on **Exhibit A** attached hereto, as **Exhibit A** may be revised, modified, or supplemented from time to time in accordance with the provisions hereof.

“Minimum Contractual Investment Requirement” shall mean investment in the Project, within the period commencing on the first day that Project property comprising all or a portion of the Project is purchased or acquired, whether before or after the date of this Agreement, and ending at the end of 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).

“Minimum Jobs Requirement” shall mean the creation at the Project of at least 61 new, full-time jobs in the County by the Companies and all Co-Investors in the aggregate, within the period commencing on January 1, 2019 and ending at the end of the Compliance Period.

“Minimum Statutory Investment Requirement” shall mean investment in the Project of not less than \$2,500,000 within the Compliance Period, as set forth in Section 12-44-30(14) of the Negotiated FILOT Act, which investment amount shall be calculated in accordance with, and subject to, Section 12-44-130 of the Negotiated FILOT Act and **Section 6.02** hereof.

“Multi-County Park” shall mean the multi-county industrial or business park established pursuant to the Multi-County Park Act and the Multi-County Park Agreement, and any multi-county industrial or business park which now or hereafter includes the Project and which is designated by the County as such pursuant to any agreement, which supersedes or replaces the initial Multi-County Park Agreement.

“Multi-County Park Act” shall mean Title 4, Chapter 1 of the Code.

“Multi-County Park Agreement” shall mean that certain Master Agreement Governing the Greenwood-Newberry Industrial Park by and between the County and Greenwood County, South Carolina dated as of December 31, 2012 as supplemented, modified or amended, and, as such agreement may be further supplemented, modified, amended, or replaced from time to time.

“Negotiated FILOT” or “Negotiated FILOT Payments” shall mean the FILOT payments due pursuant to **Section 5.01** hereof with respect to that portion of the Project consisting of Negotiated FILOT Property qualifying under the Negotiated FILOT Act for the negotiated assessment ratio and millage rate or rates described in **Section 5.01(b)(ii)** hereof.

“Negotiated FILOT Act” shall mean Title 12, Chapter 44 of the Code.

“Negotiated FILOT Property” shall mean all Project property qualifying for the Negotiated FILOT as economic development property within the meaning of Section 12-44-30(6) of the Negotiated FILOT Act, including, without limitation, each item of real and tangible personal property comprising the Project which is placed in service during the Investment Period and which meets the requirements of Sections 12-44-30(6) and 12-44-40(C) of the Negotiated FILOT Act, together with all Replacement Property, but excluding any Non-Qualifying Property, and any Released Property.

"Non-Qualifying Property" shall mean that portion of the real and personal property located on the Land, which does not qualify as Negotiated FILOT Property, such Non-Qualifying Property to include: (i) Existing Property; (ii) except as to Replacement Property, property which any Company or any other Sponsor or Sponsor Affiliate places in service after the end of the Investment Period; and (iii) any other property which fails or ceases to qualify for Negotiated FILOT Payments under the Negotiated FILOT Act or under this Agreement, including without limitation property as to which any Company or any other Sponsor or Sponsor Affiliate has terminated the Negotiated FILOT pursuant to **Section 4.01(d)(iii)** hereof.

"Operating Company" shall mean KRA Operations, LLC, a limited liability company organized and existing under the laws of the State of South Carolina, and any surviving, resulting, or transferee entity in any merger, consolidation or transfer of assets permitted under **Sections 4.05** or **6.01** hereof or any other assignee or transferee hereunder which is designated by the Operating Company and approved by the County.

"Person" shall mean and include any individual, association, unincorporated organization, corporation, partnership, limited liability company, joint venture, or government or agency or political subdivision thereof.

"Project" shall mean, in the aggregate: (i) the Land and all buildings, structures, fixtures and other real property improvements now or hereafter constructed on the Land; (ii) all machinery, equipment, furnishings and other personal property now or hereafter acquired by or on behalf of any Company or any other Co-Investors for use on or about the Land; and (iii) any Replacement Property; provided, however, except as to Replacement Property, the term Project shall be deemed to include any such real property improvements and personal property, whether now existing or hereafter constructed, improved, acquired or equipped, only to the extent placed in service within the Investment Period.

"Property Tax Year" shall mean the annual period which is equal to the fiscal year of the Companies, or any other Co-Investor, as the case may be, *i.e.*, with respect to the Companies, the annual period ending on December 31 of each year.

"Real Property Owner" shall mean KRA Real Estate, LLC, a limited liability company organized and existing under the laws of the State of South Carolina, and any surviving, resulting, or transferee entity in any merger, consolidation or transfer of assets permitted under **Sections 4.05** or **6.01** hereof or any other assignee or transferee hereunder which is designated by the Real Property Owner and approved by the County.

"Released Property" shall include property which was initially Negotiated FILOT Property but which is scrapped, sold, disposed of, or released from this Agreement by any Company or any other Sponsor or Sponsor Affiliate pursuant to **Section 4.01(d)** hereof and Section 12-44-50(B) of the Negotiated FILOT Act, any portion of the Negotiated FILOT Property constituting infrastructure which any Company or any other Sponsor or Sponsor Affiliate dedicates to the public use within the meaning of Section 12-6-3420(C) of the Code, or property which is damaged, destroyed, or taken by process of eminent domain and not restored or replaced.

"Replacement Property" shall mean all property placed in service on the Land in substitution of, or as replacement for, any Negotiated FILOT Property which becomes Released Property, regardless of whether such property serves the same function as the property it replaces and regardless of whether more than one piece of such property replaces a single piece of the Negotiated FILOT Property, to the maximum extent that such property may be included in the calculation of the Negotiated FILOT pursuant to **Section 5.01(d)** hereof and Section 12-44-60 of the Negotiated FILOT Act.

"Special Source Act" shall mean Section 4-1-175 of the Code.

"Special Source Credits" shall mean the special source revenue credits described in **Section 3.02** hereof.

"Special Source Improvements" shall mean to the extent paid for by any Company or any other Co-Investor, any infrastructure serving the economic development of the County and any improved or unimproved real property, buildings, structural components of buildings, fixtures, or other real property improvements and, upon the written election of any Company to the County, (effective as of the election date set forth in the written election, whether before or after the date of the written election) 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, all as set forth in the Special Source Act. For purposes of this Agreement, Special Source Improvements shall initially be deemed to include, without limitation, all roadwork, water, sewer, drainage, power and utility facilities serving the Project, as well as the Land, the buildings, fixtures and other real property improvements on the Land, and any additions or improvements to any of the foregoing. Notwithstanding anything in this Agreement to the contrary, the County, the Operating Company, and the Real Property Owner hereby agree that, to the maximum extent permitted by law, aggregate expenditures made by either the Operating Company or the Real Property Owner in Special Source Improvements, shall be jointly allocated to the Operating Company and the Real Property Owner for purposes of receiving the Special Source Credits; provided, however, in the event that a court of competent jurisdiction holds that such allocation provisions are invalid or unenforceable in any material respect, or should the Operating Company or the Real Property Owner determine that there is reasonable doubt as to the validity or enforceability of such allocation provision and provide written notice to the County of such determination, any such entity with insufficient expenditures in Special Source Improvements, as initially delineated above, to offset any Special Source Credits such entity has theretofore received, or will receive, shall be hereby automatically deemed to have elected, on behalf of itself and as set forth above, to include personal property, including machinery and equipment, as Special Source Improvements as of the earlier of (i) effective date of any such holding of invalidity or unenforceability or (ii) the date of any such written notice, as the case may be, subject to, and in accordance with, any applicable provisions of Section 4-29-68(A)(2)(ii) of the Code in the event that personal property is removed from the Project.

"Sponsor" and *"Sponsor Affiliate"* shall mean an entity whose investment with respect to the Project will qualify for the Negotiated FILOT pursuant to **Section 6.02** hereof and

Sections 12-44-30(19) or (20) and Section 12-44-130 of the Negotiated FILOT Act if the statutory investment requirements are met and if such entity has been approved as a Sponsor or Sponsor Affiliate by Resolution of the Council, to the extent required by **Section 6.02** hereof. As of the original execution and delivery of the Agreement, the only Sponsors are the Companies and there are no Sponsor Affiliates.

“*State*” shall mean the State of South Carolina.

“*Term*” shall mean the term of this Agreement, as set forth in **Section 7.01** hereof.

“*Transfer Provisions*” shall mean the provisions of Section 12-44-120 of the Negotiated FILOT Act.

Section 1.02. References to Agreement. The words “hereof”, “herein”, “hereunder”, and other words of similar import refer to this Agreement as a whole.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.01. Representations and Warranties by County. The County makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) The County is a body politic and corporate and a political subdivision of the State and is authorized and empowered by the provisions of the Act to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. By proper action by the Council, the County has duly authorized the execution and delivery of this Agreement and has duly approved the Negotiated FILOT, the Special Source Credits, and the inclusion and maintenance of the Project in the Multi-County Park, all as set forth herein, as well as any and all actions reasonably necessary and appropriate to consummate the transactions contemplated hereby.

(b) Based solely on information supplied to it by the Companies, the County has determined the Project will subserve the purposes of the Act and has made all other findings of fact required by the Act in connection with the undertaking of the arrangements set forth herein.

(c) This Agreement has been duly authorized, executed and delivered on behalf of the County. The authorization, execution, and delivery of this Agreement and the performance by the County of its obligations hereunder will not, to the best knowledge of the County, conflict with or constitute a breach of, or a default under, any South Carolina law, court or administrative regulation, decree, order, provision of the Constitution or laws of the State relating to the establishment of the County or its affairs, or any material agreement, mortgage, lease, or other instrument to which the County is subject or by which it is bound, nor, to the best knowledge of the County, any existing law or the provisions of the Constitution of the State.

(d) To the best knowledge of the County, no actions, suits, proceedings, inquiries, or investigations are pending or threatened against or affecting the County in any court or before any governmental authority or arbitration board or tribunal, any of which to the best knowledge of the County could materially adversely affect this Agreement or which could, in any way, adversely affect the validity or enforceability of this Agreement or the transactions contemplated hereby.

Section 2.02. Representations and Warranties by the Operating Company. The Operating Company makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) The Operating Company is a limited liability company validly existing and in good standing under the laws of the State of South Carolina; has all requisite power to enter into this Agreement and to carry out its obligations hereunder; and by proper action has been duly authorized to execute and deliver this Agreement. The Operating Company's fiscal year end is December 31 and the Operating Company will notify the County of any changes in the fiscal year of the Operating Company.

(b) The Operating Company presently intends to operate its portion of the Project as facilities primarily for the manufacture of metal stamped and injection molded products and for activities related thereto.

(c) The agreements with the County with respect to the Negotiated FILOT, the Special Source Credits, and the Multi-County Park, as set forth herein, were factors in inducing the Operating Company to locate its portion of the Project within the County and the State.

(d) To the best knowledge of the Operating Company, no actions, suits, proceedings, inquiries, or investigations are pending or threatened against or affecting the Operating Company in any court or before any governmental authority or arbitration board or tribunal, which would materially adversely affect this Agreement or which would, in any way, adversely affect the validity or enforceability of this Agreement, or the transactions contemplated hereby.

(e) The Operating Company has retained legal counsel to confirm, or has had a reasonable opportunity to consult legal counsel to confirm, its eligibility for the Negotiated FILOT and other incentives granted by this Agreement and has not relied on the County, its officials, employees or legal representatives with respect to any question of eligibility or applicability of the FILOT and other incentives granted by this Agreement.

Section 2.03. Representations and Warranties by the Real Property Owner. The Real Property Owner makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) The Real Property Owner is a limited liability company validly existing and in good standing under the laws of the State of South Carolina; has all requisite power to enter into this Agreement and to carry out its obligations hereunder; and by proper action has been duly authorized to execute and deliver this Agreement. The Real Property Owner's fiscal year end is December 31 and the Real Property Owner will notify the County of any changes in the fiscal year of the Real Property Owner.

(b) The Real Property Owner presently intends that the Project be operated as facilities primarily for the manufacture of metal stamped and injection molded products and for activities related thereto.

(c) The agreements with the County with respect to the Negotiated FILOT, the Special Source Credits, and the Multi-County Park, as set forth herein, were factors in inducing the Real Property Owner to locate its portion of the Project within the County and the State.

(d) To the best knowledge of the Real Property Owner, no actions, suits, proceedings, inquiries, or investigations are pending or threatened against or affecting the Real Property Owner in any court or before any governmental authority or arbitration board or tribunal, which would materially adversely affect this Agreement or which would, in any way, adversely affect the validity or enforceability of this Agreement, or the transactions contemplated hereby.

(e) The Real Property Owner has retained legal counsel to confirm, or has had a reasonable opportunity to consult legal counsel to confirm, its eligibility for the Negotiated FILOT and other incentives granted by this Agreement and has not relied on the County, its officials, employees or legal representatives with respect to any question of eligibility or applicability of the FILOT and other incentives granted by this Agreement.

ARTICLE III

COVENANTS OF COUNTY

Section 3.01. Agreement to Accept Negotiated FILOT Payments. The County hereby agrees to accept Negotiated FILOT Payments in accordance with the provisions of **Section 5.01** hereof in lieu of *ad valorem* taxes with respect to that portion of the Project consisting of Negotiated FILOT Property until this Agreement expires or is sooner terminated.

Section 3.02. Special Source Credits.

(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 Credits against each FILOT Payment due from each such Credit Eligible Entity with respect to the Project for a period of thirty (30) consecutive tax years, commencing with the tax year for which the initial Negotiated FILOT

payment is due with respect to the Project as follows: (i) for the first such tax year, in an amount equal to 100% of such FILOT Payment; and (ii) for the remaining twenty-nine (29) such tax years, in an annual amount equal to forty percent (40%) of each such FILOT Payment; provided, however, in the event that aggregate investment in the Project exceeds \$12,500,000 (without regard to depreciation or other diminution in value) within the Investment Period, such percentage shall increase from forty percent (40%) to fifty percent (50%) commencing with the tax year corresponding to the Property Tax Year in which such investment level is initially achieved. In accordance with the Special Source Act, the Special Source Credits authorized herein shall not, in the aggregate, exceed the aggregate cost of Special Source Improvements funded from time to time in connection with the Project by the Companies and all other Credit Eligible Entities.

(b) The Special Source Credits to which a Credit Eligible Entity is entitled for each tax year of the period set forth in **Section 3.02(a)** hereof shall be reflected by the County on each bill sent by the County to such Credit Eligible Entity for each FILOT Payment due from such Credit Eligible Entity with respect to each such tax year, by reducing the total original FILOT Payment amount otherwise due from such Credit Eligible Entity for such tax year by the amount of Special Source Credits to which such Credit Eligible Entity is entitled for such tax year.

Section 3.03. Multi-County Park Designation. The County agrees to designate the Project as part of a Multi-County Park, if not already so designated, and agrees to use its best, commercially reasonable efforts to maintain the Project within the boundaries of the Multi-County Park, or another multi-county industrial or business park created pursuant to the Multi-County Park Act, for the duration of this Agreement pursuant to the provisions of the Multi-County Park Act and Article VIII, Section 13(D) of the State Constitution. The County hereby further agrees to take such further actions as may be necessary to effect any such initial or continued Multi-County Park designation under and pursuant to the Multi-County Park Agreement.

Section 3.04. Commensurate Benefits. The parties acknowledge the intent of this Agreement, in part, is to afford the Companies and each other Co-Investor the benefits specified in this Article III in consideration of the Companies' decision to locate the Project within the County, and this Agreement has been entered into in reliance upon the enactment of the Act and the County's compliance with the requirements thereof. In the event that a court of competent jurisdiction holds that the Act is, in whole or in part, unconstitutional or this Agreement, the Multi-County Park Agreement, or agreements similar in nature to this Agreement or the Multi-County Park Agreement are invalid or unenforceable in any material respect, or should the Companies determine there is a reasonable doubt as to the validity or enforceability of this Agreement or the Multi-County Park Agreement in any material respect, then at the request of the Companies, the County agrees to use its best efforts, and to take such other steps as may be reasonably necessary, to extend to the Companies and each other Co-Investor the intended benefits of this Agreement, including, but not limited to, the Negotiated FILOT and the Special Source Credits and agrees, if requested by any Company, to enter into a lease purchase agreement with such Company and each other Co-Investor pursuant to Section

12-44-160 of the Negotiated FILOT Act and Title 4, Chapter 29 or Title 4, Chapter 12 of the Code, as applicable, the terms of which shall be mutually agreeable to the County and the Companies. In furtherance of this covenant, the County also agrees that, in the event that, for any reason, the Multi-County Park is declared by a court of competent jurisdiction to be invalid or unenforceable in whole or in part, the Companies and the County express their intentions that tax or FILOT payments be reformed so as to best afford the Companies and each other Co-Investor benefits commensurate with, but not in excess of, those intended under this Agreement, including, but not limited to, the Special Source Credits, as then permitted by law, including, without limitation, any benefits afforded under Title 12, Chapter 6, Title 4, Chapter 1 and Title 4, Chapter 29 of the Code, as applicable, to the extent allowed by law.

Section 3.05. County Transfer of Title to Certain Land to the Real Property Owner. The County hereby agrees to, at no cost to the Real Property Owner, transfer title to the Land, as identified in **Exhibit A** hereto as of the execution and delivery of this Agreement, to the Real Property Owner on or before December 31, 2019. Such transfer of title to the Real Property Owner shall be further set forth and effected in one or more deeds, agreements, instruments or other documents to be entered into by the County and the Real Property Owner, which documents shall be in form and substance mutually agreeable to the County and the Real Property Owner. The County hereby acknowledges and agrees that, upon such transfer of title to such land to the Real Property Owner, such land shall automatically comprise the Land without further action, consent or approval of the County, in the sole discretion of the Real Property Owner.

ARTICLE IV

COVENANTS OF COMPANY

Section 4.01. Investment in Project.

(a) Each Company hereby agrees to acquire, construct, equip, or improve or cause to be acquired, constructed, equipped, or improved, its respective portion of the Project, as the same shall be determined from time to time by each such Company in its sole discretion. As required by Section 12-44-30(2) of the Negotiated FILOT Act, at least a portion of the Negotiated FILOT Property comprising the Project shall be placed in service no later than the end of the Property Tax Year which is three years from the year in which this Agreement is entered, *i.e.*, the Property Tax Year ending on December 31, 2022.

(b) Notwithstanding anything herein to the contrary, and to the maximum extent permitted by law, investment in the Project and job creation in the County by any and all other permitted Co-Investors shall together with investment in the Project and job creation in the County by the Companies, count toward all investment and job creation requirements, thresholds, and levels set forth in this Agreement, including, without limitation, the Minimum Contractual Investment Requirement, the Minimum Jobs Requirement, and to the full extent permitted by the Negotiated FILOT Act, the Minimum Statutory Investment Requirement. Aggregate investment shall generally be determined by reference to the property tax returns of

each Company and each other Co-Investor filed with respect to the Project, including without limitation, each such entity's investment listed on a SCDOR PT-300 or such comparable forms, as the Department of Revenue may provide in connection with projects under the Act, without regard to depreciation or other diminution in value.

(c) To encourage increased investment in the Project, the County hereby agrees that in the event the Minimum Contractual Investment Requirement is satisfied by the end of Compliance Period, the County may, in its sole discretion, which the County will not unreasonably withhold, approve a resolution extending the Investment Period by five (5) years.

(d) Subject to the provision of **Sections 4.05 and 6.01** hereof, each Company and each other Co-Investor shall, retain title to, or other property rights in, its respective portion of the Project throughout the Term of this Agreement, and each Company and each other Co-Investor shall have full right to mortgage, lease, or encumber all or any portion of the Project, including without limitation, in connection with any financing transactions, all without the consent of the County.

(e) Each Company and each other Co-Investor shall have the right at any time and from time to time during the Term hereof to undertake any of the following:

(i) Each Company and each other Co-Investor may, at its own expense, add to the Project all such real and personal property as such Company, or such other Co-Investor, in its discretion deems useful or desirable, including, without limitation, Negotiated FILOT Property, without any limit as to the amount thereof.

(ii) Subject to the provisions of **Section 5.01(f)(ii)** hereof, in any instance when any Company or any other Co-Investor, in its discretion, determines any property included in the Project, including without limitation, any Negotiated FILOT Property, has become inadequate, obsolete, worn out, unsuitable, undesirable, or unnecessary for operations at the Project, such Company or such other Co-Investor may remove such property from the Project and sell, trade in, exchange, or otherwise dispose of them as a whole or in part without the consent of the County.

(iii) Each Company and each other Co-Investor may, at any time and in its discretion by written notice to the County, remove any Project property including, but not limited to, Negotiated FILOT Property, real or personal, from the Project or from the provisions of this Agreement including, but not limited to, the Negotiated FILOT arrangement set forth in this Agreement and retain such property for use as part of its operations in the County, whether or not such property remains as part of the Project, and effective as of the date of any such removal, such property will be subject to *ad valorem* taxes, or to FILOT payments pursuant to the Multi-County Park Act, as the case may be; provided, that, any such notice requirement may be, but shall not be required to be, satisfied by property tax returns filed with respect to the Project and any other such property, including without limitation, such entity's SCDOR PT-300 or such comparable forms, as the Department of Revenue may provide in connection with projects under the

Act, and in such event, any such removal reflected by any such return shall be deemed to be effective as of the date of such removal.

(iv) If any Company or any other Co-Investor sells, leases, or otherwise disposes of any portion of, or adds to, the Land, or removes any portion of the Land from the Project while retaining such property for use as part of its operations in the County, all as permitted herein, such Company or such Co-Investor shall deliver to the County a revised **Exhibit A** to this Agreement or supplements to **Exhibit A** reflecting any such addition, disposal or removal and such revised or supplemented **Exhibit A** shall, effective as of the date of any such transaction, addition, disposal, or removal, be automatically made a part of this Agreement without further action or proceedings by the County or the Council; provided, that any requirement to provide such schedules or supplements to the County may be satisfied by property tax returns filed with respect to the Project and any other such property, including without limitation, such entity's SCDOR PT-300 or such comparable forms, as the Department of Revenue may provide in connection with projects under the Negotiated FILOT Act, and in such event, any such addition, disposal, or removal reflected by any such return, shall be automatically deemed effective as of the date of any such addition, disposal, or removal.

(v) All Negotiated FILOT Property sold or otherwise disposed of under this Section shall be deemed Released Property for purposes of this Agreement.

Section 4.02. Failure to Satisfy Minimum Contractual Investment Requirement and/or Minimum Jobs Requirement. If either or both of the Minimum Contractual Investment Requirement and the Minimum 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 any 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 Special Source Credits under **Section 3.02(a)** hereof and for which a FILOT Payment has been, or will be, due to be paid without penalty with respect to the 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 Project (without regard to depreciation or other diminution in value) within the period set forth in the Minimum Contractual Investment Requirement at any time during the such period (the "Actual Project Investment"), as compared to the Minimum Contractual Investment Requirement, (ii) the highest number of new, full-time jobs created, in the aggregate, in the County within the period set forth in the Minimum Jobs Requirement at any time during such period (the "Actual Project

Jobs”), as compared to the Minimum Jobs Requirement, and (iii) a weighting of 1/2 investment and 1/2 jobs, all as further detailed and illustrated in the formula and examples set forth below:

Formula:

1. Actual Project Investment / \$11,500,000 = Investment Satisfaction Percentage [ISP]
2. 100% - ISP = Investment Satisfaction Factor [ISF] (may not exceed 100%)
3. Actual Project Jobs / 61 new, full time jobs = Jobs Satisfaction Percentage [JSP]
4. 100% - JSP = Jobs Satisfaction Factor [JSF] (may not exceed 100%)
5. ISF + JSF / 2 = 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 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 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 Special Source Credits against each FILOT Payment due from such Credit Eligible Entity with respect to the Project for the remaining tax years of the period set forth in **Section 3.02(a)** 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 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.

Section 4.03. Payment of Administration Expenses. Each Company or any other Co-Investor will reimburse, or cause reimbursement of, the County from time to time for the County’s Administration Expenses incurred in the fulfillment of its obligations hereunder, or in the implementation of this Agreement’s terms and provisions, with respect to such Company or such other Co-Investor, respectively, promptly upon written request therefor, but in no event later than ninety (90) days after receiving written notice from the County specifying the nature of such expense and requesting the payment of the same. The County acknowledges that it imposes

no charges in the nature of impact fees or recurring fees in connection with the Project or the incentives authorized by this Agreement, and, aside from the attorneys' fees set forth below, the County anticipates no out of pocket expenses in connection with this Agreement and the transactions authorized hereby. The parties understand that the County has incurred, and will incur, legal fees and other expenses for review of the Inducement Resolution, this Agreement, the Multi-County Park Agreement 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 \$10,000.

Section 4.04. Use of Project for Lawful Activities. During the Term of this Agreement, each Company and each other Co-Investor may use the Project as it deems fit for any lawful purpose.

Section 4.05. Maintenance of Existence. Except in the event the resulting, surviving or transferee entity is any Company or an Affiliate of any Company, as to which such consolidation, merger, or transfer, the County hereby preapproves and consents, unless the County shall provide prior consent or subsequent ratification otherwise, which consent or ratification shall not be unreasonably withheld, conditioned, or delayed, each Company covenants that it will maintain its separate existence and will not dissolve or consolidate with, merge into or transfer, or otherwise dispose of substantially all of its property to any other entity or permit one or more other entities to consolidate with or merge into it or purchase substantially all of its property unless:

(a) such Company shall be the continuing business entity, or the business entity formed by such consolidation or into which such Company is merged or the entity which acquires by conveyance or transfer all or substantially all of such Company's assets shall (i) be an entity organized and existing under the laws of the United States of America or any state thereof or the District of Columbia and qualified to do business in the State; (ii) have a net worth equal to or greater than the net worth of such Company immediately preceding the date of such merger, consolidation or transfer; and (iii) expressly and unconditionally assume, by written agreement supplemental hereto and acceptable to the County as to form and content, in its reasonable discretion, every payment obligation of such Company herein and the performance of every covenant of this Agreement on the part of such Company to be performed or observed; and

(b) immediately after giving effect to such transaction, no Event of Default, and no event, which, after notice or lapse of time or both, would become an Event of Default, shall have happened and be continuing; and

(c) such Company shall have delivered to the County (i) a certificate of a duly authorized officer of such Company, accompanied by financial statements of the surviving company (if other than such Company) showing compliance with the net worth requirements specified in paragraph (a) above and (ii) an opinion of counsel for such Company and/or counsel to the transferee company, each stating that such consolidation, merger, conveyance or transfer and such supplement to this Agreement comply with this Section and that all conditions precedent herein provided for relating to such transaction have been complied with.

Upon any consolidation or merger or any conveyance or transfer of all or substantially all of any Company's assets in accordance with this **Section 4.05**, the successor entity formed by such consolidation or into which any Company is merged or to which such conveyance or transfer is made, shall succeed to, and be substituted for, and may exercise every right and power of any Company under this Agreement with the same effect as if such successor entity had been named as a Company herein, and thereafter such Company shall be relieved of all obligations and covenants under this Agreement.

If a consolidation, merger or conveyance or transfer is made as permitted by this Section, the provisions of this Section shall continue in full force and effect and no further consolidation, merger or conveyance or transfer shall be made except in compliance with the provisions of this **Section 4.05**.

Each Company acknowledges transfers of this Agreement or the Negotiated FILOT Property may cause the Negotiated FILOT Property to become ineligible for a Negotiated FILOT or result in penalties under the Act absent compliance by any such Company or any Co-Investor with the Transfer Provisions.

Section 4.06. Records and Reports. Each Company and each other Co-Investor will maintain, or cause to be maintained, such books and records with respect to its respective portion of the Project as will permit the identification of those portions of the Project it places in service during the Investment Period, the amount of investment with respect thereto, and any computations of Negotiated FILOT Payments made by such entity hereunder, and will comply with all reporting requirements of the State and the County applicable to Negotiated FILOT Property under the Negotiated FILOT Act, including without limitation the reports required by 12-44-90 of the Negotiated FILOT Act (collectively, "Filings"); provided, however, that the parties hereby waive in its entirety the requirement under Section 12-44-55 of the Negotiated FILOT Act for a recapitulation of the terms of this Agreement. In addition, the following records shall be provided to the County:

(a) Upon direction of the governing body of the County, a County Official may request and obtain such financial books and records from any Company and any other Sponsor or Sponsor Affiliate that support the Negotiated FILOT returns of such Company or such other Sponsor or Sponsor Affiliate as may be reasonably necessary to verify the calculations of the Negotiated FILOT Payments by such Company or such other Sponsor or Sponsor Affiliate. For purposes of this Agreement, the term "County Official" shall include the Administrator, Auditor, Assessor, or Treasurer of the County.

(b) Each year during the Term hereof, each Company and each other Sponsor or Sponsor Affiliate shall deliver to the County Administrator, the County Auditor, the County Assessor and the County Treasurer a copy of any form or return it files with the Department of Revenue with respect to the Project at the same time as delivery thereof to the Department of Revenue.

(c) The Companies shall cause a copy of this Agreement, as well as a copy of the completed Form PT-443 required by the Department of Revenue, to be filed within thirty (30) days after the date of original execution and delivery hereof with the County Administrator, the County Auditor, the County Assessor and the County Treasurer of the County and of each other county which is a party to the Multi-County Park Agreement, and with the Department of Revenue and shall update such Form PT-443 from time to time to the extent that the information therein is no longer accurate.

Notwithstanding any other provision of this Section, each Company and each other Co-Investor may, by clear, written designation, conspicuously marked, designate with respect to any Filings or other documents or information delivered to the County segments thereof that such Company or such other Co-Investor believes contains proprietary, confidential, or trade secret matters ("Confidential Information"). Each Company and each other Co-Investor acknowledges that the County is subject to the South Carolina Freedom of Information Act, and, as a result, must disclose certain documents and information on request, absent an exemption. Unless otherwise required to disclose the Confidential Information, the County agrees to comply with all reasonable, written requests made by such Company or any such other Co-Investor with respect to maintaining the confidentiality of the Confidential Information. Except to the extent required by law, and unless the County has provided at least ten (10) days advance written notice to such Company or such other Co-Investor of such proposed release, the County shall not knowingly and voluntarily release any Confidential Information. Notwithstanding anything herein to the contrary, in the event that the County is required to disclose any Confidential Information obtained from any Company or any other Co-Investor to any third party, the County agrees to provide such Company and such Co-Investor with as much advance notice as is reasonably possible of such requirement before making such disclosure, and to cooperate reasonably with any attempts by such Company and such Co-Investor to obtain judicial or other relief from such disclosure requirement.

Section 4.07. Funding for Special Source Improvements. The Companies and each other Co-Investor shall provide, or cause the provision of, funding for the Special Source Improvements related to its respective portion of the Project.

ARTICLE V

NEGOTIATED FEES IN LIEU OF TAXES

Section 5.01. Payment of Fees in Lieu of Ad Valorem Taxes.

(a) In accordance with the Negotiated FILOT Act, the parties hereby agree, during the Term hereof, that there shall be due annually with respect to that portion of the Project constituting Negotiated FILOT Property, whether owned by any Company or by any other Sponsor or Sponsor Affiliate, a Negotiated FILOT Payment calculated as set forth in this **Section 5.01**, at the places, in the manner and subject to the penalty assessments prescribed by the County or the Department of Revenue for *ad valorem* taxes. It is presently anticipated, but not required, that the initial Negotiated FILOT Payment, which shall be due under current Code requirements on the January 15 following the year in which the County adds the initial Negotiated FILOT Property to its tax rolls, will be due on or about January 15, 2022. If any

Company designates any other Sponsor or Sponsor Affiliates, as the same shall have been consented to by the County, if such consent is required pursuant to **Section 6.02** hereof, such Company must notify the County in writing at the time of such designation as to whether such additional Sponsor or Sponsor Affiliate shall be primarily liable for the Negotiated FILOT Payments due hereunder with respect to such Sponsor or Sponsor Affiliate's respective portion of the Negotiated FILOT Property. Unless and until such additional notification is received, such Company shall be primarily liable for all Negotiated FILOT Payments due with respect to such Negotiated FILOT Property.

(b) Subject to adjustment pursuant to the provisions of this **Section 5.01**, the Negotiated FILOT shall be calculated each year in accordance with the following provisions:

(i) For each annual increment of investment in Negotiated FILOT Property, the annual Negotiated FILOT Payments shall initially be payable for a payment period of thirty (30) years. Accordingly, if such Negotiated FILOT Property is placed in service during more than one year, each year's investment during the Investment Period shall be subject to the Negotiated FILOT for a payment period of thirty (30) years.

(ii) The Negotiated FILOT shall be determined using: (1) an assessment ratio of 6%; (2) a millage rate of 382.0 mills, which millage rate or millage rates shall be fixed pursuant to Section 12-44-50(A)(1)(b)(i) of the Negotiated FILOT Act for the full term of the Negotiated FILOT; and (3) the fair market value of such Negotiated FILOT Property as determined in accordance with Section 12-44-50(A)(1)(c) of the Negotiated FILOT Act, which, for typical arm's length construction or acquisition, uses the original income tax basis for any real property without regard to depreciation or reassessment and the original income tax basis for any personal property less allowable depreciation (except depreciation due to extraordinary obsolescence); provided, however, that any Company or any other Sponsor or Sponsor Affiliate and the County may agree, only in a writing approved by the Council, at a later date to amend this Agreement as to Negotiated FILOT property owned by such Company or such other Sponsor or Sponsor Affiliate so as to determine the fair market value of any such real property in accordance with any other method permitted by the Negotiated FILOT Act.

(iii) All such calculations shall take into account all deductions for depreciation or other diminution in value allowed by the Code or by the tax laws generally, as well as tax exemptions which would have been applicable if such property were subject to *ad valorem* taxes, except the five-year exemption from County taxes allowed for certain manufacturing, distribution, corporate headquarters and research and development facilities pursuant to Section 3(g) of Article X of the Constitution of the State and Sections 12-37-220(B)(32) and (34) of the Code; provided, however, any Company or any other Sponsor or Sponsor Affiliate shall not be entitled to extraordinary obsolescence with respect to Negotiated FILOT Property as set forth in Section 12-44-50(A)(1)(c)(ii) of the Negotiated FILOT Act.

(iv) For purposes of calculating the Negotiated FILOT, the Negotiated FILOT Property shall not include any Released Property or Non-Qualifying Property.

(c) To the extent not prohibited by the Department of Revenue, Negotiated FILOT Payments are to be recalculated (subject, always to the continuing requirements of **Section 5.01(f)**, hereof):

(i) to reduce such payments in the event any Company or any other Sponsor or Sponsor Affiliate disposes of any part of the Negotiated FILOT Property within the meaning of Section 12-44-50(B) of the Negotiated FILOT Act and as provided in **Section 4.01(d)(ii)** hereof, by the amount applicable to the Released Property;

(ii) to reduce such payments in the event that the Negotiated FILOT Property or any portion thereof is damaged or destroyed, lost or stolen, or the subject of condemnation proceedings or otherwise removed from the Project as a result of circumstances beyond the control of any Company or any other Sponsor or Sponsor Affiliate;

(iii) to increase such payments in the event any Company or any other Sponsor or Sponsor Affiliate adds any Negotiated FILOT Property (other than Replacement Property) to the Project; or

(iv) to adjust such payments if any Company or any other Sponsor or Sponsor Affiliate elects to convert any portion of the Negotiated FILOT Property from the Negotiated FILOT to *ad valorem* taxes or to FILOT payments pursuant to the Multi-County Park Act, as the case may be, as permitted by **Section 4.01(d)(iii)**.

(d) Upon installation or placing in service of any Replacement Property for any Released Property, such Replacement Property shall become subject to Negotiated FILOT Payments to the fullest extent allowed by the Negotiated FILOT Act, subject to the following rules:

(i) Such Replacement Property does not have to serve the same function as the Released Property it is replacing. Replacement Property is deemed to replace the oldest property subject to the Negotiated FILOT, whether real or personal, which is disposed of in the same Property Tax Year as the Replacement Property is placed in service. Replacement Property qualifies for Negotiated FILOT Payments up to the original income tax basis of the Released Property which it is replacing in the same Property Tax Year. More than one piece of property can replace a single piece of property. To the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the Released Property which it is replacing, the excess amount is subject to payments equal to the *ad valorem* taxes, or to the FILOT payments pursuant to the Multi-County Park Act, as the case may be, which would have been paid on such property but for this Agreement. Replacement Property is entitled to the Negotiated FILOT Payments for the remaining portion of the Negotiated FILOT Payment period set forth in **Section 5.01(b)(i)** hereof applicable to the Released Property

(ii) Each Company or any other Sponsor or Sponsor Affiliate shall maintain, or cause to be maintained, records sufficient to identify all Replacement Property it places in service, and the Negotiated FILOT Payments with respect thereto shall be calculated using the millage rate and assessment ratio provided on the property it is replacing.

(e) In the event that, for any reason, the Negotiated FILOT Act and/or the Negotiated FILOT or any portion thereof is, by a court of competent jurisdiction following allowable appeals, declared invalid or unenforceable in whole or in part, or the portion of the Project consisting of Negotiated FILOT Property is deemed not to be eligible for a Negotiated FILOT pursuant to the Act in whole or in part, the Companies and the County express their intentions that such payments be reformed so as to afford each Company and each other Sponsor or Sponsor Affiliate benefits commensurate with those intended under this Agreement as then permitted by law, including without limitation any benefits afforded under Title 4, Chapter 12 and Title 4, Chapter 29 of the Code, as applicable, to the extent allowed by law. Absent the legal authorization to effect such reformation, the Companies and the County agree that there shall be due hereunder with respect to the portion of the Negotiated FILOT Property affected by such circumstances *ad valorem* taxes or FILOT payments pursuant to the Multi-County Park Act, as the case may be, and that, to the extent permitted by law, each Company and any other Sponsor or Sponsor Affiliate shall be entitled: (1) to enjoy the five-year exemption from *ad valorem* taxes, or from FILOT payments pursuant to the Multi-County Park Act, as the case may be, provided by Article X, Section 3 of the Constitution of the State, and any other exemption allowed by law; (2) to enjoy all allowable depreciation; and (3) to receive all other tax credits which would be due if each Company and each other Sponsor or Sponsor Affiliate were obligated to pay *ad valorem* taxes, or make FILOT payments pursuant to the Multi-County Park Act, as the case may be, hereunder. To the extent that under such circumstances the Negotiated FILOT Payments hereunder are subject to retroactive adjustment, then there shall be due and payable from each Company and any other Sponsor or Sponsor Affiliate, as the case may be, with respect to such entity's portion of the Negotiated FILOT Property in question, an amount equal to the difference between the Negotiated FILOT Payments theretofore actually paid and the amount which would have been paid as *ad valorem* taxes, or as FILOT payments pursuant to the Multi-County Park Act, as the case may be, together with interest on such deficiency as provided in Section 12-54-25(D) of the Code (a "Deficiency Payment").

(f)

(i) In the event that the Minimum Contractual Investment Requirement is not satisfied by the end of the Compliance Period, but the Minimum Statutory Investment Requirement is nevertheless satisfied by the end of the Compliance Period, then the Project shall continue to be eligible for Negotiated FILOT Payments as set forth in **Section 5.01** hereof.

(ii) In the event that the Minimum Statutory Investment Requirement is not satisfied by the end of the Compliance Period, then all Negotiated FILOT Payments shall revert retroactively to *ad valorem* taxes, or to FILOT payments pursuant

to the Multi-County Park Act, as the case may be, calculated as set forth in paragraph (e) above, and a Deficiency Payment from each such owing entity shall be due and payable with respect to Negotiated FILOT Payments theretofore made. To the extent necessary to collect a Deficiency Payment under this clause (ii) due to failure to satisfy the Minimum Statutory Investment Requirement, Section 12-44-140(D) of the Negotiated FILOT Act provides that any statute of limitations that might apply pursuant to Section 12-54-85 of the Code is suspended.

(iii) In the event that the Minimum Statutory Investment Requirement is satisfied by the end of the Compliance Period, but following the Compliance Period, investment in the Project, without regard to depreciation or other diminution in value, falls below the lowest investment level set forth in the Minimum Statutory Requirement, then the Project shall prospectively be subject to *ad valorem* taxes, or to FILOT payments pursuant to the Multi-County Park Act, as the case may be, calculated as set forth in paragraph (e) above, in accordance with Section 12-44-140(C) of the Negotiated FILOT Act commencing with any Negotiated FILOT Payments due with respect to Project property placed in service as of the end of the Property Tax Year in which such deficiency occurs.

(iv) In accordance with the provisions of **Sections 4.01(b) and 6.02** hereof, except for Existing Property, the investment in all property utilized by any Company or any other Co-Investor at the Land, whether owned by such Company or any other Co-Investor outright or utilized by such Company or any other Co-Investor pursuant to any financing agreement or any lease or other arrangement with any Company or any other Co-Investor, which qualify as Negotiated FILOT Property shall be counted toward all investment obligations under this Agreement, including, to the extent permitted by law, investment obligations under the Negotiated FILOT Act.

(g) Except as otherwise set forth in this Agreement or as otherwise required by the Act, any amounts due to the County under this **Section 5.01** as a Deficiency Payment or other retroactive payment shall be paid within sixty (60) days following receipt by any Company or any other Sponsor or Sponsor Affiliate of notice from the County that such a Deficiency Payment or other retroactive payment is due from such entity.

Section 5.02. Statutory Lien. The parties acknowledge the County's right to receive Negotiated FILOT Payments hereunder and that the County is entitled to and shall have a statutory lien with respect to the Project pursuant to Section 12-44-90(E) of the Negotiated FILOT Act and Title 12, Chapter 54 of the Code relating to the collection and enforcement of *ad valorem* property taxes.

ARTICLE VI

THIRD PARTY ARRANGEMENTS

Section 6.01. Conveyance of Liens and Interests; Assignment. The County agrees that each Company and each other Co-Investor may at any time (a) transfer all or any of its rights and

interests hereunder or with respect to all or any part of the Project to any Person; or (b) enter into any lending, financing, leasing, security, or similar arrangement or succession of such arrangements with any financing entity or other Person with respect to this Agreement or all or any part of the Project, including without limitation any sale-leaseback, equipment lease, build-to-suit lease, synthetic lease, nordic lease, defeased tax benefit or transfer lease, assignment, sublease or similar arrangement or succession of such arrangements, regardless of the identity of the income tax owner of such portion of the Project, whereby the transferee in any such arrangement leases the portion of the Project in question to any Company or any other Co-Investor or operates such assets for any Company or any other Co-Investor or is leasing all or a portion of the Project in question from any Company or any other Co-Investor. In the event of any such transfer, lease, financing, or other transaction described above, the rights and interests of such Company or such other Co-Investor under this Agreement, including, without limitation, the benefits of the Negotiated FILOT and the Special Source Credits, with respect to any Project property so transferred, leased, financed, or otherwise affected shall be so transferred and preserved upon written approval of the County, which approval may take the form of a resolution or ordinance of the Council.

Subject to County consent when required under this **Section 6.01**, and at the expense of such Company or any such other Co-Investor, the County agrees to take such further action and execute such further agreements, documents, and instruments as may be reasonably required to effectuate the assumption by any such transferee of all or part of the rights of such Company or any other Co-Investor under this Agreement and/or any release of such Company or any other Co-Investor pursuant to this **Section 6.01**.

Each Company acknowledges that any transfer of an interest under this Agreement or in the Negotiated FILOT Property may cause all or part of the Negotiated FILOT Property to become ineligible for a Negotiated FILOT or result in penalties under the Negotiated FILOT Act absent compliance by the Companies or any such Co-Investor with the Transfer Provisions.

Section 6.02. Sponsors and Sponsor Affiliates. Each Company may designate from time to time other Sponsors or Sponsor Affiliates pursuant to the provisions of Sections 12-44-30(19) or (20), respectively, and Section 12-44-130 of the Negotiated FILOT Act, which, in each case, must agree to be bound by the terms of this Agreement and, with the exception of Affiliates of such Company, must be approved by resolution of the Council. Such Company shall provide the County and the Department of Revenue with written notice of any Sponsor or Sponsor Affiliate designated pursuant to this **Section 6.02** within ninety (90) days after the end of the calendar year during which any such Sponsor or Sponsor Affiliate has placed in service Negotiated FILOT Property to be used in connection with the Project, all in accordance with Section 12-44-130(B) of the Negotiated FILOT Act.

ARTICLE VII

TERM; TERMINATION

Section 7.01. Term. Unless sooner terminated pursuant to the terms and provisions herein contained, this Agreement shall be and remain in full force and effect for a term commencing on the date on which the Companies execute this Agreement, and ending at midnight on the later of (i) the day the last Negotiated FILOT Payment is made hereunder or (ii) the day that all Special Source Credits due from the County hereunder have been fully provided by the County.

Section 7.02. Termination. In addition to the termination rights of the County under **Section 8.02(a)** hereof, the County and the Companies may jointly agree to terminate this Agreement at any time, and either of the Companies, may, at its option, unilaterally terminate this Agreement at any time, with respect to all, or any portion, of its respective portion of the Project in which event the Project, or such portion of the Project, shall be subject to *ad valorem* taxes, or to FILOT payments under the Multi-County Park Act, as the case may be, from the date of termination. Notwithstanding termination of this Agreement, the County shall have the same rights to receive payment for any retroactive *ad valorem* taxes, Deficiency Payments, interest or penalties, and the same enforcement rights with respect to such obligations as it would have with respect to *ad valorem* taxes, and the County's rights arising under **Section 5.01** prior to the time of such termination shall survive any such termination.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

Section 8.01. Events of Default. Any one or more of the following events (herein called an "Event of Default", or collectively "Events of Default") shall constitute an Event of Default by any Company or any Co-Investor (the "Defaulting Entity") but only with respect to such Defaulting Entity's rights, duties, and obligations contained herein:

(a) if default shall be made in the due and punctual payment of any Negotiated FILOT Payments, which default shall not have been cured within sixty (60) days following receipt of written notice of such default from the County;

(b) if default shall be made in the due performance of or compliance with any of the terms hereof, other than those referred to in the foregoing **paragraph (a)**, and such default shall continue for ninety (90) days after the County shall have given the Defaulting Entity written notice of such default; provided, the County may, in its discretion, grant the Defaulting Entity a longer period of time as necessary to cure such default if the Defaulting Entity proceeds with due diligence to cure such default; provided however, that no Event of Default shall exist under this Agreement during any period when there is pending, before any judicial or administrative tribunal having jurisdiction, any proceeding in which the Defaulting Entity has contested the occurrence of such default; or

(c) if a Cessation of Operations occurs after the Compliance Period. For purposes of this Agreement, a "Cessation of Operations" means (i) a publicly announced closure made by the Companies of the Companies' facilities in the County, including, but not limited to, the Project, (ii) a layoff, termination, or reduction in force, within a thirty (30) day period, resulting in less than ten (10) full-time jobs at the Project, or (iii) a complete cessation of manufacturing and related activities at the Project that continues for a period of twelve (12) consecutive months.

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 and 5.01(f)** hereof.

Section 8.02. Remedies on Event of Default. Upon the occurrence of any Event of Default, the following remedies may be exercised by the County only as to the Defaulting Entity:

(a) terminate this Agreement by delivery of written notice to the Defaulting Entity not less than thirty (30) days prior to the termination date specified therein;

(b) have access to and inspect, examine, and make copies of the books and records of the Defaulting Entity pertaining to the construction, acquisition, or maintenance of the Project or calculation of the Negotiated FILOT as provided in **Section 4.06** hereof;

(c) take whatever action at law or in equity as may appear necessary or desirable to collect the amount then due or enforce the County's rights hereunder, it being the express intent of the parties that the County, without limitation, shall have the same remedies available by law to collect Negotiated FILOT Payments as if they were delinquent *ad valorem* tax payments, including execution upon the lien referred to in **Section 5.02** hereof.

Section 8.03. Defaulted Payments. In the event any Company or any other Co-Investor should fail to make any of the payments required to be made by such entity under this Agreement, the item or installment so in default shall continue as an obligation of such entity until the amount in default shall have been fully paid. If any such default relates to its obligations to make Negotiated FILOT Payments hereunder, such entity shall pay the same with interest thereon at the rate per annum provided by the Code for late payment of *ad valorem* taxes together with any penalties provided by the Code for late payment of *ad valorem* taxes, all as provided in Section 12-44-90 of the Negotiated FILOT Act.

Section 8.04. Default by County. Upon the default of the County in the performance of any of its obligations hereunder, any Company and any other Co-Investor may take whatever action at law or in equity as may appear necessary or desirable to enforce its rights under this Agreement, including without limitation a suit for *mandamus* or specific performance.

ARTICLE IX

MISCELLANEOUS

Section 9.01. Rights and Remedies Cumulative. Each right, power, and remedy of the County or of any Company or any other Co-Investor provided for in this Agreement shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy provided for in this Agreement or now or hereafter existing at law or in equity, in any jurisdiction where such rights, powers, and remedies are sought to be enforced; and the exercise by the County or by any Company or any other Co-Investor of any one or more of the rights, powers, or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the County or by any Company or any other Co-Investor of any or all such other rights, powers, or remedies.

Section 9.02. Successors and Assigns. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, any Co-Investor hereof, and their respective successors and assigns as permitted hereunder; provided, however, that notwithstanding anything herein to the contrary, the County may not assign any or all of its rights, duties, and obligations in, to, and under this Agreement without the written consent of the Companies, which consent may be provided by any Company in its sole discretion.

Section 9.03. Notices; Demands; Requests. All notices, demands, and requests to be given or made hereunder to or by the County or the Companies shall be in writing and shall be deemed to be properly given or made if sent by United States first class mail, postage prepaid, or via reputable courier service, to the following persons and addresses or to such other persons and places as may be designated in writing by such party.

(a) if to the County:

Newberry County
Attn.: County Administrator
P.O. Box 156
1309 College Street (29108)
Newberry, South Carolina 29108-0156

(b) with a copy (which shall not constitute notice) to:

Newberry County Attorney
Attn: A.J. Tothacer, Jr., Esquire
P.O. Box 156
1309 College Street (29108)
Newberry, South Carolina 29108-0156

(c) with a copy (which shall not constitute notice) to:

Parker Poe Adams & Bernstein LLP
Attn: Ray Jones, Esquire
1221 Main Street, Suite 1100
Columbia, South Carolina 29201

(d) As to Operating Company:

KRA Operations, LLC
Attn: _____

(e) with a copy (which shall not constitute notice) to:

Nexsen Pruet, LLC
Attn: Tushar V. Chikhliker, Esq.
1230 Main Street, Suite 700
Columbia, South Carolina 29201

(f) As to Real Property Owner:

KRA Real Estate, LLC
Attn: _____

(g) with a copy (which shall not constitute notice) to:

Nexsen Pruet, LLC
Attn: Tushar V. Chikhliker, Esq.
1230 Main Street, Suite 700
Columbia, South Carolina 29201

(h) with a copy (which shall not constitute notice) to:

Nexsen Pruet, LLC
Attn: Tushar V. Chikhliker, Esq.
1230 Main Street, Suite 700 (29201)
P.O. Drawer 2426
Columbia, South Carolina 29202

Section 9.04. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State. To the extent of any conflict between the provisions of this Agreement and the Act, the Act controls.

Section 9.05. Entire Understanding. This Agreement expresses the entire understanding and all agreements of the parties hereto with each other and supersedes all prior and contemporaneous discussions of the parties, whether oral or written, and neither party hereto has made or shall be bound by any agreement or any warranty or representation to the other party which is not expressly set forth in this Agreement or in certificates delivered in connection with the execution and delivery hereof. Unless as otherwise expressly set forth herein, this Agreement will not confer any rights or remedies upon any Person other than the parties hereto and their respective successors and assigns as permitted hereunder.

Section 9.06. Severability. In the event that any clause or provisions of this Agreement 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 9.07. Headings and Table of Contents; References. The headings of the Agreement and any Table of Contents annexed hereto are for convenience of reference only and shall not define or limit the provisions hereof or affect the meaning or interpretation hereof. All references in this Agreement to particular articles or Sections or paragraphs of this Agreement are references to the designated articles or Sections or paragraphs of this Agreement.

Section 9.08. Multiple Counterparts. This Agreement 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 9.09. Amendments. Subject to the limitations set forth in Section 12-44-40(K)(2) of the Negotiated FILOT Act, this Agreement may be amended, or the rights and interest of the parties hereunder surrendered, only by a writing signed by both parties.

Section 9.10. Waiver. Any party may waive compliance by any other party with any term or condition of this Agreement only in a writing signed by the waiving party.

Section 9.11. Further Proceedings. The parties intend any action to be taken hereinafter by the County pursuant to the express provisions of this Agreement may be undertaken by the Chairman of the Council without necessity of further proceedings. To the extent additional proceedings are required by law, however, the County agrees to undertake all such steps as may be reasonably required or appropriate to effectuate the intent of this Agreement.

Section 9.12. No Liability of County Personnel. All covenants, stipulations, promises, agreements and obligations of the County contained in this Agreement are binding on members of the Council or any elected official, officer, agent, servant or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse for the payment of any moneys under this Agreement may be had against any member of the Council or any elected or appointed official, officer, agent, servant or employee of the County and no recourse for the payment of any moneys or performance of any of the covenants and agreements under this Agreement or for any claims based on this Agreement may be had against

any member of Council or any elected or appointed official, officer, agent, servant or employee of the County except solely in their official capacity.

Section 9.13. Limitation of Liability. The County is not liable to the Companies for any costs, expenses, losses, damages, claims or actions in connection with this Agreement, except from amounts received by the County from the Companies under this Agreement. Notwithstanding anything in this Agreement to the contrary, any financial obligation the County may incur under this Agreement is deemed not to constitute a pecuniary liability or a debt or general obligation of the County.

Section 9.14. Indemnification Covenants.

(a) Except as provided in paragraph (d) below, the Companies shall both indemnify and save the County, its employees, elected officials, officers and agents (each, an ***“Indemnified Party”***) harmless against and from all liability or claims arising from the County’s execution of this Agreement, performance of the County’s obligations under this Agreement or the administration of its duties pursuant to this Agreement, or otherwise by virtue of the County having entered into this Agreement.

(b) The County is entitled to use counsel of its choice and the Companies shall reimburse the County for all of its reasonable costs, including reasonable attorneys’ fees, incurred in connection with the response to or defense against such liability or claims as described in paragraph (a), above. The County shall provide a statement of the costs incurred in the response or defense, and the Companies shall pay the County within 30 days of receipt of the statement. The Companies may request reasonable documentation evidencing the costs shown on the statement. However, the County is not required to provide any documentation which are privileged or confidential to evidence the costs.

(c) The County may request the Companies to resist or defend against any such liability claims as described in paragraph (a) above on behalf of an Indemnified Party. On such request, the Companies shall resist or defend against such claim on behalf of the Indemnified Party, at the Companies’ expense. The Companies are entitled to use counsel of their choice, manage and control the defense of or response to such claims for the Indemnified Party; provided the Companies are not entitled to settle any such claim without the consent of that Indemnified Party, which consent shall not be unreasonably conditioned, withheld or delayed.

(d) Notwithstanding anything in this Section or this Agreement to the contrary, the Companies are not required to indemnify any Indemnified Party against or reimburse any Indemnified Party for costs arising from any claim or liability (i) occasioned by the acts of that Indemnified Party, which are unrelated to the execution of this Agreement, performance of the County’s obligations under this Agreement, or the administration of its duties under this Agreement, or otherwise by virtue of the County having entered into this Agreement; or (ii) resulting from that Indemnified Party’s own negligence, bad faith, fraud, deceit, or willful misconduct.

(e) An Indemnified Party may not avail itself of the indemnification or reimbursement of costs provided in this Section unless it provides the Companies with prompt notice, reasonable under the circumstances, of the existence or threat of any claim or liability, including, without limitation, copies of any citations, orders, fines, charges, remediation requests, or other claims or threats of claims, in order to afford the Companies notice, reasonable under the circumstances, within which to defend or otherwise respond to a claim.

[Execution Pages to Follow]

IN WITNESS WHEREOF, the parties hereto, each after due authorization, have executed this Fee in Lieu of Tax and Incentive Agreement to be effective as of the date first written above.

NEWBERRY COUNTY, SOUTH CAROLINA

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

[SEAL]

ATTEST:

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

KRA OPERATONS, LLC

By: _____
Name: _____
Its: _____

KRA REAL ESTATE, LLC

By: _____
Name: _____
Its: _____

EXHIBIT A
LAND DESCRIPTION

[To be inserted]