

**ORDINANCE NO. 19-23**

AN ORDINANCE AUTHORIZING (1) THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT BY AND BETWEEN DORCHESTER COUNTY, SOUTH CAROLINA, FILOLI SOUTH LLC, A COMPANY FORMERLY KNOWN TO THE COUNTY AS PROJECT LUMINOUS, ACTING FOR ITSELF, ONE OR MORE SUBSIDIARIES, AFFILIATES, SUCCESSORS, ASSIGNS, LESSORS OR OTHER PROJECT SPONSORS, AND JULIAN A. MCDERMOTT CORPORATION, INC., AS SPONSOR AFFILIATE, PURSUANT TO WHICH THE COUNTY SHALL COVENANT TO ACCEPT CERTAIN NEGOTIATED PAYMENTS IN LIEU OF AD VALOREM TAXES WITH RESPECT TO CERTAIN FACILITIES IN THE COUNTY; (2) THE BENEFITS OF A MULTI-COUNTY INDUSTRIAL OR BUSINESS PARK TO BE MADE AVAILABLE TO THE COMPANY AND THE PROJECT; AND (3) OTHER MATTERS RELATING THERETO.

**WHEREAS**, the County Council of Dorchester County (the “*County Council*”), the governing body of Dorchester County, South Carolina (the “*County*”), 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 “*Fee Act*”) and Title 4, Chapter 1 of the Code (the “*Multi-County Park 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 fees in lieu of *ad valorem* tax (“*FILOT*”) payments, including, but not limited to, negotiated FILOT payments made pursuant to the Fee Act, with respect to a project; and (iii) 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

**WHEREAS**, Filoli South LLC, formerly known to the County as Project Luminous, on its own or together with one or more of its subsidiaries, affiliates, successors, assigns, sponsors, lessors, sponsor affiliates, including Julian A. McDermott Corporation, Inc., and others (collectively, the “*Company*”) proposes to acquire, lease, construct, purchase, or install certain real property, real property improvements and machinery, equipment, and other personal property in order to establish or expand a manufacturing facility within the County (the “*Project*”) at a site further described in **Exhibit A** hereof, and anticipates that, should its plans proceed as expected, it will invest, or cause to be invested, at least \$5,000,000 in the Project, and create 30 new full-time jobs over five years in connection with the Company’s operations in the County.

**WHEREAS**, based on information provided to the County by the Company, the County Council has determined that the Project would 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 Company to locate the Project in the County, the County Council adopted a Resolution on June 17<sup>th</sup>, 2019, whereby the County agreed to provide the benefits of a negotiated fee in lieu of *ad valorem* tax with respect to the Project and a multi-county industrial or business park with respect to Project; and

**WHEREAS**, the County and the Company have agreed to the specific terms and conditions of such arrangements in a Fee in Lieu of Tax and Incentive Agreement (the “**FILOT Agreement**”) by and between the County and the Company with respect to the Project, the form of which is attached hereto as **Exhibit B**; and

**WHEREAS**, pursuant to the authority of the Multi-County Park Act and Article VIII, Section 13(D) of the South Carolina Constitution, the County agrees to use its best efforts to ensure that the Project is located in a multi-county industrial and business park (the “**Park**”) established pursuant to an Agreement for Development of Joint County Industrial Park, dated September 1<sup>st</sup>, 1995, by and between the County and Orangeburg County, South Carolina, as amended, supplemented, or replaced from time to time by the County (the “**Park Agreement**”) , or a successor multi-county industrial and business park created in accordance with the Multi-County Park Act; and

**WHEREAS**, it appears that the Agreements now before this meeting are in appropriate form and are appropriate instruments to be executed and delivered by the County for the purposes intended.

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

Section 1. As contemplated by Section 12-44-40(I) of the Fee Act, based on information provided to the County by the Company with respect to the Project, the County makes the following findings and determinations:

- (a) The Project will constitute a “project” within the meaning of the Fee Act; and
- (b) The Project, and the County’s actions herein, will subserve the purposes of the Fee Act; and
- (c) The Project is anticipated to benefit the general public welfare of the State and the County by providing services, employment, recreation, or other public benefits not otherwise provided locally; and
- (d) The Project gives rise to no pecuniary liability or charge against the general credit or taxing power of the County or any incorporated municipality; and
- (e) The purposes to be accomplished by the Project are proper governmental and public purposes; and
- (f) The benefits of the Project are greater than the costs.

Section 2.

- (a) The County hereby agrees to enter into the FILOT Agreement. The FILOT Agreement shall be in the form of a FILOT agreement, pursuant to the Fee Act, whereby the Company will agree to satisfy, or cause to be satisfied, certain investment and job creation requirements with respect to the Project within certain prescribed time periods and the County will agree to accept certain negotiated FILOT payments with respect to the

Project (“*Negotiated Payments-in-Lieu-of-Taxes*”), as set forth in Section 2(b) hereof and in accordance with the terms of the FILOT Agreement.

(b) The Negotiated Payments-in-Lieu-of-Taxes shall be determined using: (i) an assessment ratio of 6%, (ii) the lowest millage rate allowed with respect to the Project pursuant to Section 12-44-50(A)(1)(d) of the Fee Act, as set forth in greater detail in the FILOT Agreement, which millage rate shall be fixed pursuant to Section 12-44-50(A)(1)(b)(i) of the Fee Act for the full term of the Negotiated Payments-in-Lieu-of-Taxes; (iii) the fair market value of the Project, as determined in accordance with Section 12-44-50(A)(1)(c) of the Fee Act; and (iv) and such other terms and conditions as will be specified in the FILOT Agreement. During the first ten years of the Fee Term, the Negotiated Payments-in-Lieu-of-Taxes shall be reduced by a 20% Special Source Revenue Credit as specified in the FILOT Agreement.

(c) The Negotiated Payments-in-Lieu-of-Taxes shall be calculated as provided in Section 2(b) for all Economic Development Property placed in service during the Investment Period. For each annual increment of investment in Economic Development Property, the annual Negotiated Payments-in-Lieu-of-Taxes shall be payable for a payment period of thirty (30) years. Accordingly, if such Economic Development Property is placed in service during more than one year, each year’s investment during the Investment Period shall be subject to the Negotiated Payments-in-Lieu-of-Taxes for a payment period of thirty (30) years.

Section 3. [Reserved]

Section 4. The County will use its best efforts to insure that the Project will be included, and will remain, within the boundaries of the Park (or a successor park) pursuant to the provisions of the Multi-County Park Act and Article VIII, Section 13(D) of the State Constitution and the Park Agreement (or successor park agreement) on terms which provide the Company and the Project with additional jobs creation tax credits afforded by the laws of the State for projects located within multi-county industrial or business parks.

Section 5. The form, provisions, terms, and conditions of the Agreements presented to this meeting and filed with the Clerk to the County Council are hereby approved, and all of the provisions, terms, and conditions thereof are hereby incorporated herein by reference as if the Agreements were set out in this Ordinance in their entirety. The Chairman of the County Council is hereby authorized, empowered, and directed to execute the Agreements in the name and on behalf of the County; the Clerk to the County Council is hereby authorized, empowered and directed to attest the same; and the Chairman of the County Council is further authorized, empowered, and directed to deliver the Agreements to the Company. The Agreements are to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall not materially adversely affect the rights of the County thereunder and as shall be approved by the official or officials of the County executing the same, upon the advice of counsel, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of the Agreements now before this meeting.

Section 6. The Chairman of the County Council, the County Administrator of the County, and the Clerk to the County Council, for and on behalf of the County, are hereby each authorized, empowered, and directed to do any and all things necessary or proper to effect the performance of all obligations of the County under and pursuant to Agreements. The Chairman

of the County Council and the County Administrator, or either one of them acting alone, are hereby authorized to execute and deliver on behalf of the County all deeds and other certificates and documents as they deem necessary, upon advice of counsel, to accomplish the foregoing.

Section 7. The provisions of this Ordinance are hereby declared to be separable and if any section, phrase, or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases, and provisions hereunder.

Section 8. All orders, ordinances, resolutions, and parts thereof in conflict herewith are to the extent of such conflict hereby repealed. This Ordinance shall take effect and be in full force from and after its passage and approval.

[Remainder of Page Left Blank]

Enacted and approved, in meeting duly assembled, this 12<sup>th</sup> day of August, 2019.

DORCHESTER COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
George H. Bailey, Chairman, County Council

[SEAL]

Attest:

By: \_\_\_\_\_  
Tracey L. Langley, Clerk to Council  
Dorchester County, South Carolina

First Reading: 06/03/2019  
Second Reading: 06/17/2019  
Public Hearing: 08/12/2019  
Third Reading: 08/12/2019

**STATE OF SOUTH CAROLINA** )  
 )  
**COUNTY OF DORCHESTER** )

I, the undersigned, Clerk to County Council of Dorchester County, South Carolina (“County Council”), DO HEREBY CERTIFY:

That the foregoing constitutes a true, correct, and verbatim copy of an Ordinance adopted by the County Council. The Ordinance was read and received a favorable vote at three public meetings of the County Council on June 03, 2019, June 17, 2019, and August 12, 2019. At least one day passed between first and second reading, and at least seven days passed between second and third readings. A public hearing was held on August 12, 2019, and notice of the public hearing was published in the \_\_\_\_\_ on \_\_\_\_\_, 2019. At each meeting, a quorum of County Council was present and remained present throughout the meeting.

Attached hereto are excerpts of the minutes of the meetings of the County Council. The County Council complied with the Freedom of Information Act, Chapter 4, Title 30 of the S.C. Code of Laws 1976, in connection with said meetings of County Council.

The Ordinance is now in full force and effect.

**IN WITNESS WHEREOF**, I have hereunto set my Hand and the Seal of Dorchester County Council, South Carolina, as of this 12<sup>th</sup> day of August, 2019.

By: \_\_\_\_\_  
Tracey L. Langley, Clerk to County Council,  
Dorchester County, South Carolina

## **EXHIBIT A**

### **DESCRIPTION OF SITE**

All that certain piece, parcel, or lot of land shown and designated as “TRACT 3 7.476 ACRES” on that certain plat of survey entitled ‘A SUBDIVISION PLAT OF TRACT 1 OWNED BY DORCHESTER COUNTY DEVELOPMENT CORPORATION TO CREATE TRACT 3 (7.476 ACRES) SOUTHWEST OF SUMMERVILLE DORCHESTER COUNTY, SOUTH CAROLINA prepared for McDERMOTT LIGHT & SIGNAL” prepared by F. Elliotte Quinn III, dated July 29, 2019, said property having such size, shape, dimensions, buttings and boundings, boundaries, metes, courses, and distances as shown on said plat, reference to which is hereby made for a more complete description

A portion of Dorchester County TMS # 150-00-00-199

**EXHIBIT B**  
**DRAFT OF FILOT AGREEMENT**