

**DORCHESTER COUNTY
ORDINANCE NO. 24-02**

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 (THE "COUNTY") AND DORCHESTER COMMERCE, LLC, A COMPANY PREVIOUSLY IDENTIFIED AS PROJECT COMMERCE, ACTING FOR ITSELF, ONE OR MORE AFFILIATES, AND/OR OTHER PROJECT SPONSORS (COLLECTIVELY, THE "COMPANY"), PURSUANT TO WHICH THE COUNTY SHALL COVENANT TO ACCEPT CERTAIN NEGOTIATED FEES IN LIEU OF AD VALOREM TAXES WITH RESPECT TO THE ESTABLISHMENT AND/OR EXPANSION OF CERTAIN FACILITIES IN THE COUNTY (THE "PROJECT"); (2) THE BENEFITS OF A MULTI-COUNTY INDUSTRIAL OR BUSINESS PARK TO BE MADE AVAILABLE TO THE COMPANY AND THE PROJECT; (3) CERTAIN SPECIAL SOURCE REVENUE CREDITS IN CONNECTION WITH THE PROJECT; AND (4) OTHER MATTERS RELATING THERETO.

WHEREAS, Dorchester County, South Carolina (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") (collectively, 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 or 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, Dorchester Commerce, LLC, a South Carolina limited liability company previously identified as Project Commerce, acting for itself, one or more affiliates, and/or other project sponsors (collectively, the "Company"), is considering the establishment of certain facilities at one or more locations in the County (the "Project"); and

WHEREAS, on the basis of the information supplied to it by the Company, the County has determined, *inter alia*, 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 is enacting this Ordinance, which Ordinance is also intended to serve as an “inducement resolution” for the purposes of Section 12-44-30(11) of the Negotiated FILOT Act; and

WHEREAS, the County and the Company have agreed to the specific terms and conditions of such arrangements as set forth herein and in a Fee in Lieu of Tax and Incentive Agreement by and between the County and the Company with respect to the Project (the “Incentive Agreement”), the form of which Incentive Agreement is presented to this meeting, and which Incentive Agreement is to be dated as of January 8, 2024, or such other date as the parties thereto may agree; and

WHEREAS, it appears that the Incentive Agreement now before this meeting is in appropriate form and is an appropriate instrument to be executed and delivered by the County for the purposes intended.

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

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

(a) The Project will constitute a “project” within the meaning of the Negotiated FILOT Act; and

(b) The Project, and the County’s actions herein, will subserve the purposes of the Negotiated FILOT 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 adequately provided locally; and

(d) The Project gives rise to no pecuniary liability of the County or incorporated municipality or a charge against its general credit or taxing power; 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 Incentive Agreement with the Company, which agreement shall be in the form of a fee agreement, pursuant to the Negotiated FILOT Act, and whereby the Company will agree to satisfy, or cause to be satisfied, certain investment requirements with respect to the Project within certain prescribed time periods in accordance with the Negotiated FILOT Act and the County, under certain conditions set forth in the Incentive Agreement, will agree to accept certain negotiated fee in lieu of *ad valorem* tax (“Negotiated FILOT”) payments with respect to the Project, as set forth in Section 2(b) hereof and in accordance with the terms of the Incentive Agreement.

(b) Subject to adjustment as set forth in the Incentive Agreement, the Negotiated FILOT shall be calculated each year in accordance with the following provisions:

(i) The Negotiated FILOT shall be determined using: (1) an assessment ratio of 6%; (2) the lowest millage rate or rates allowed with respect to the Project pursuant to Section 12-44-50(A)(1)(d) of the Negotiated FILOT Act, 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 which millage rate, based on the site or sites comprising the Land (as defined in the Incentive Agreement) as of the original execution and delivery of this Agreement, the parties believe to be 360.9 mills (*i.e.*, the millage rate applicable to the Project site as of June 30, 2023); (3) the fair market value of the Project, determined in accordance with the Negotiated FILOT Act; and (4) and such other terms and conditions as will be specified in the Incentive Agreement, including, without limitation, that the Company, in its sole discretion, may dispose of property and replace property subject to Negotiated FILOT payments to the maximum extent permitted by the Negotiated FILOT Act.

(ii) The Negotiated FILOT shall be calculated as provided in this Section 2(b) for all Negotiated FILOT Property (as defined in the Incentive Agreement) placed in service during the Negotiated FILOT Investment Period (as defined in the Incentive Agreement). For each annual increment of investment in Negotiated FILOT Property, the annual Negotiated FILOT payments shall be payable for a payment period of forty (40) years, which payment is comprised of an initial period of thirty (30) years together with an automatic extension of ten (10) years to such period.

Section 3. The County agrees to designate the Project, including, but not limited to, the Land (as defined in the Incentive Agreement) as part of a multi-county industrial or business park pursuant to the provisions of the Multi-County Park Act and Article VIII, Section 13(D) of the State Constitution, if not already so designated, and agrees to maintain the Project, including, but not limited to, the Land, within the boundaries of such a multi-county industrial or business park on terms on terms, and for a duration, which facilitate the Special Source Credits set forth in Section 4 hereof, all in accordance with the terms of the Incentive Agreement.

Section 4. As an additional incentive to induce the Company to locate the Project in the County, and as reimbursement for investment in Special Source Improvements, and subject to the requirements of the Special Source Act, the County does hereby agree that each Negotiated FILOT Special Source Credits Eligible Entity or Alternative Special Source Credits Eligible Entity (as such terms are defined in the Incentive Agreement), as applicable, shall be entitled to receive, and the County shall provide, Special Source Credits in accordance with, and as detailed in, the Incentive Agreement.

Section 5. The form, provisions, terms, and conditions of the Incentive Agreement presented to this meeting and filed with the Clerk to the Council are hereby approved, and all of the provisions, terms, and conditions thereof are hereby incorporated herein by reference as if the Incentive Agreement was set out in this Ordinance in its entirety. The Chairman of the Council is hereby authorized, empowered, and directed to execute the Incentive Agreement in the name and on behalf of the County; the Clerk to the Council is hereby authorized, empowered and directed to attest the same; and the Chairman of the Council is further authorized, empowered, and directed to deliver the Incentive Agreement to the Company. The Incentive Agreement is 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 Incentive Agreement now before this meeting.

Section 6. The Chairman of the Council, the County Administrator of the County, and the Clerk to the 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 Incentive Agreement.

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.

[End of Ordinance]

Enacted and approved, in meeting duly assembled, this 8th day of January 8, 2024.

DORCHESTER COUNTY, SOUTH CAROLINA



By: S. Todd Friddle
S. Todd Friddle, Chairman, County Council
Dorchester County, South Carolina

ATTEST:

Tracey L. Langley
Tracey L. Langley, Clerk to County Council
Dorchester County, South Carolina

First Reading: October 16, 2023
Second Reading: November 20, 2023
Public Hearing: January 8, 2024
Third Reading: January 8, 2024

FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

by and among

DORCHESTER COUNTY, SOUTH CAROLINA,

and

DORCHESTER COMMERCE, LLC

Dated as of January 8, 2024

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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 January 8, 2024, by and among DORCHESTER COUNTY, SOUTH CAROLINA (the “County”), a body politic and corporate and a political subdivision of the State of South Carolina, and DORCHESTER COMMERCE, LLC, a South Carolina limited liability company, and a company previously identified as PROJECT COMMERCE, acting for itself, one or more affiliates, and/or other project sponsors (the “Company”).

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, the “Special Source Act”, and, together with the Negotiated FILOT Act, collectively, 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 to reimburse such investors for expenditures in connection with infrastructure serving the County or 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; 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 revenue credits; and

WHEREAS, the Company is considering the establishment and/or expansion of certain facilities for commercial and/or industrial uses in the County, by itself and/or one or more other future investors in real and/or personal property, at one or more locations in the County (the “Project”); 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, the County has determined that it is in the best interests of the County to enter into this Agreement with the Company, subject to the terms and conditions set forth herein, and, by an Ordinance No. 24-02 enacted by the Council on January 8, 2024, approved the form, terms and conditions of this Agreement and ratified all prior actions taken with respect to the

Project, which ordinance is also intended to serve as an “inducement resolution” for the purposes of Section 12-44-30(11) of the Negotiated FILOT Act.

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 Company, 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 Company 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 at the hourly rates which are standard for the applicable legal services to the County, but excluding any expenses incurred by the County in defending either challenges to the incentives provided herein by third parties or suits brought by the Company or any other Co-Investor under **Section 8.04** hereof; provided, however, that no such expense shall be considered an Administration Expense unless the Company, or other Co-Investor required to pay such expense hereunder, shall have first agreed, prior to the County incurring such expense, as to the maximum amount thereof or as to the basis for which such expenses will be incurred, and the County shall have furnished to the Company or such other Co-Investor, as the case may be, an itemized statement of all such expenses incurred.

“*Affiliate*” shall mean, with respect to the Company or any other Co-Investor, any corporation, limited liability company, partnership or other Person or entity which now or hereafter owns all or part of the Company or such other Co-Investor, as the case may be, or which is now or hereafter owned in whole or in part by the Company or such other Co-Investor, as the case may be, or by any partner, shareholder or owner of the Company or such 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 the Company or such 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 the Company, any other Sponsor or Sponsor Affiliate within the meaning of Sections 12-44-30(19) and (20) of the Negotiated FILOT Act, any Affiliate of the Company or of any such other Sponsor or Sponsor Affiliate, any developer in a build-to-suit arrangement or other leasing arrangement with respect to the Project, any lessor of equipment or other property comprising a part of the Project, and any financing entity or other third party investing in, or providing funds for, or creating new, full-time jobs at, the Project. The Company shall notify the County in writing of the identity of any other Sponsor, Sponsor Affiliate or other Co-Investor and shall, to the extent the Company and any such other Sponsor, Sponsor Affiliate, or other Co-Investor intend to extend the benefits of the Negotiated FILOT to property owned by any Sponsor, Sponsor Affiliate, or such other Co-Investor pursuant to **Section 6.02** hereof, comply with any additional notice requirements, or other applicable provisions, of the Negotiated FILOT Act. As of the date of the original execution and delivery of this Agreement, the Company is the only Co-Investor.

“*Company*” shall mean a company identified for the time being as Project Commerce, and any surviving, resulting, or transferee entity in any merger, consolidation or transfer of assets (and any subsequent such entities), or any successor, assignee, or transferee hereunder, in whole or in part, permitted under **Sections 4.04** or **6.01** hereof (and any subsequent such entities) or any other assignee or transferee hereunder which is designated by the Company, including, without limitation, any future owners, investors, and/or developers of all or any portion of the Project.

“*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 as set forth 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, 2027, and, in such event, the Compliance Period will end on December 31, 2032.

“*County*” shall mean Dorchester County, South Carolina, a body politic and corporate and a political subdivision of the State, and its successors and assigns.

“*Council*” shall mean the governing body of the County and its successors.

“*Cost of Special Source Improvements*” shall mean all of the costs of designing, acquiring, constructing, improving, equipping or expanding the Special Source Improvements, whether incurred prior to or after the date of this Agreement, and shall be deemed to include, but not be limited to: (a) obligations incurred for labor, materials, and other expenses to builders and

materialmen in connection with the acquisition, construction, and installation of the Special Source Improvements; (b) the cost of construction bonds and of insurance of all kinds that may be required or necessary during the course of construction and installation of the Special Source Improvements, which is not paid by the contractor or contractors or otherwise provided for; (c) the expenses for test borings, surveys, test and pilot operations, estimates, plans and specifications and preliminary investigations therefore, and for supervising construction, as well as for the performance of all other duties required by or reasonably necessary in connection with the acquisition, construction, and installation of the Special Source Improvements; (d) all other costs which shall be required under the terms of any contract for, or incurred in connection with, the designing, acquisition, construction, equipping, and installation of Special Source Improvements; and (e) as to that portion of the Special Source Improvements comprised of the Tier 2 Special Source Improvements, construction-related costs, including, but not limited to, financing fees, interest expense, permits, quality control inspections, and start-up expenses.

“*Cost of Tier 2 Special Source Improvements*” shall mean that portion of the Cost of Special Source Improvements attributable to the Tier 2 Special Source Improvements, to the extent such costs are incurred by the Company during the period beginning on January 1, 2021 and ending on the last day of the Compliance Period; provided, however, that, for purposes of the County’s provision to, and the Company’s receipt of, the Tier 2 Special Source Credits as reimbursement for the Cost of Tier 2 Special Improvements, such reimbursement of Cost of Tier 2 Special Source Improvements shall not exceed \$8,200,000.

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

“*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 be required to include: (a) the Land; (b) property acquired or constructed by or on behalf of the 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 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 the 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 the Company or such other Sponsor or Sponsor Affiliate invest 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 the Company or any 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 initially mean the period commencing on the first day that Negotiated FILOT Property is purchased or acquired, whether before or after the date of this Agreement, and ending on the eighth (8th) anniversary of the end of the Property Tax Year in which the initial Negotiated FILOT Property comprising all or a portion of the Project is placed in service, which such period shall be comprised of the Compliance Period together with an automatic extension of three (3) years to such period, which such extension is hereby approved by the County and shall require no further actions or proceedings of the County or the Council, all in accordance with Section 12-44-30(13) of the Negotiated FILOT Act and subject to any further extension of such period as provided in **Section 4.01(c)** hereof. 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, 2027, the Investment Period (absent any extension of such period as provided in **Section 4.01(c)** hereof) will end on December 31, 2035.

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

“*Minimum Investment Period Extension Requirement*” shall mean investment in the Project within the Investment Period by the Company together with all Co-Investors, in the aggregate, of at least \$25,000,000 (without regard to depreciation or other diminution in value).

“*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 Amended and Restated Agreement for Development of Joint County Industrial Park (Dorchester Commerce, LLC) by and between the County and Orangeburg County, South Carolina dated as of [January 8, 2024], 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 from each such entity with respect to each such entity’s 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 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 the 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 the Company or any other Sponsor or Sponsor Affiliate has terminated the Negotiated FILOT pursuant to **Section 4.01(e)(iii)** hereof.

“*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: (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 the Company or any other Co-Investor 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 during the Investment Period.

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

"Released Property" shall include property which was initially Negotiated FILOT Property but which is scrapped, sold, disposed of, or released from this Agreement by the Company or any other Sponsor or Sponsor Affiliate pursuant to **Section 4.01(e)** hereof and Section 12-44-50(B) of the Negotiated FILOT Act, any portion of the Negotiated FILOT Property constituting infrastructure which the 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, collectively, the Tier 1 Special Source Credits and the Tier 2 Special Source Credits.

"Special Source Improvements" shall mean to the extent paid for by the 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 the 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, whether paid for by the Company or any other Co-Investor directly or through lease payments.

"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. As of the original execution and delivery of the Agreement, the only Sponsor is the Company 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.

“*Tier 1 Special Source Credits*” shall have the meaning ascribed thereto in **Section 3.02(a)(i)** hereof.

“*Tier 2 Special Source Credits*” shall have the meaning ascribed thereto in **Section 3.02(a)(ii)** hereof.

“*Tier 2 Special Source Improvements*” shall mean that portion of the Special Source Improvements comprised of (i) an off-site, shared roadway providing paved road access and connection to Old Orangeburg Road for the benefit of the Land and certain adjacent real property, and (ii) an on-site pump station, together with a force main providing connection to an existing gravity line located within Greyback Road, which such Tier 2 Special Source Improvements shall be dedicated to the County following completion of construction, together with all roadwork, water, sewer, drainage, power and utility facilities serving all such improvements.

“*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

Section 1.03 Nature of the Project. The Project is presently intended to be operated primarily as a mixed use development comprised of commercial, warehouse, distribution, and/or industrial facilities and, if Project plans proceed as presently contemplated, the Project is expected to be comprised, in part, of approximately 1.5 million square feet of such facilities as part of a newly developed business park in support of the economic development of the County, and as initially conceptualized in the Concept Plan attached hereto as **Exhibit B** attached hereto. The Company presently anticipates that multiple facilities, including, without limitation, commercial, warehouse, distribution, and/or manufacturing facilities will be located, acquired, constructed, and/or equipped on the Land as a part of the Project by the Company or, upon sale and/or other transfer of certain parcels comprising the Land, one or more other Persons, including future owners, investors, and/or developers, which future owners investors, and/or developers shall each be subject to the assignment and transfer provisions contained in **Section 6.01** hereof, considered a Company and a Sponsor hereunder, with respect to Project property so acquired by such Person, and the rights, duties and obligations contained in this Agreement with respect to such Project property assigned, conveyed, or transferred to such Person, and, in such event, which Person may designate additional Sponsors or Sponsor Affiliates with respect to such Person’s acquired Project property, in accordance with **Section 6.02** hereof.

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 and Special Source Credits, and the inclusion and maintenance of the Project in the Multi-County Park, all as set forth herein, and any and all actions reasonably necessary and appropriate to consummate the transactions contemplated hereby.

(b) On the basis of information supplied to it by the Company, 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.

(e) During the Term, Negotiated FILOT Property shall not be subject to rollback taxes (as such term is defined in Section 12-43-220(d)(4) of the Code), all pursuant to, and in accordance with, Section 12-43-220(d)(6) of the Code.

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

(a) The Company is a limited liability company validly existing and in good standing under the laws 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 Company's fiscal year end is December 31st and it will notify the County of any changes in its fiscal year.

(b) The Company intends that the Project consist of commercial, warehouse, distribution, and/or industrial uses.

(c) The agreements with the County with respect to the Negotiated FILOT, the Special Source Credits, and the Multi-County Park, including, without limitation, the provisions for the total or partial assignment, conveyance, or transfer of such incentives to future owners, investors, and/or developers of all or any portion of the Land and the Project, were factors in inducing the Company to locate the Project within the County and the State.

(d) To the best knowledge of the Company, no actions, suits, proceedings, inquiries, or investigations are pending or threatened against or affecting the 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.

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 the Cost of Special Source Improvements, and subject to the requirements of the Special Source Act, the County hereby agrees as follows:

(i) The Company and each other Co-Investor (each, a "Credit Eligible Entity") shall be entitled to receive, and the County shall provide, special source revenue credits against each Negotiated FILOT Payment

due from each such Credit Eligible Entity with respect to the Project, for the entire Negotiated FILOT Payment period set forth in **Section 5.01(b)(i)** hereof, as follows (“Tier 1 Special Source Credits”): upon satisfaction, during the Term of this Agreement, of each corresponding new, full-time job creation threshold set forth below, Special Source Credits in the corresponding percentage amounts set forth below, commencing with any and all Negotiated FILOT Payments due with respect to the first Property Tax Year in which such job creation threshold has been satisfied:

Job Creation Thresholds	Percentage of Negotiated FILOT Payments Provided as Special Source Credits
43	11%
85	22%
125	33%

(ii) The Company shall be entitled to receive, and the County shall provide, special source revenue credits against each Negotiated FILOT Payment due from the Company with respect to the Project, in an annual amount sufficient to reduce the amount of each such Negotiated FILOT Payment, after application of any Tier 1 Special Source Credits, so that the resulting net Negotiated FILOT Payment due from the Company equals One Hundred Thousand and No/100 Dollars (\$100,000.00) (“Tier 2 Special Source Credits”), commencing with the tax year for which the initial Negotiated FILOT Payment is due hereunder from the Company with respect to the Project and ending with the tax year in which the aggregate amount of Tier 2 Special Source Credits previously received by the Company equals the Cost of Tier 2 Special Source Improvements.

(b) As a condition to the Special Source Credit benefit provided herein, the Company agrees to provide the County with a written certification as to annual investment and job creation with respect to the Project. Such certification shall be in substantially the form attached hereto as **Exhibit C**, and shall be due no later than the May 1 following the immediately preceding December 31 of each year during the Investment Period.

(c) In accordance with the Special Source Act, the Special Source Credits authorized herein shall not, in the aggregate, exceed the Cost of the Special Source

Improvements funded from time to time in connection with the Project by all Credit Eligible Entities.

(d) The Special Source Credits to which a Credit Eligible Entity is entitled for each tax year of the periods 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.

(e) THE SPECIAL SOURCE CREDITS AUTHORIZED HEREIN SHALL NOT CONSTITUTE A GENERAL OBLIGATION OF THE COUNTY, BUT SHALL BE A LIMITED OBLIGATION OF THE COUNTY PAYABLE SOLELY FROM THE FILOT PAYMENTS RECEIVED BY THE COUNTY HEREUNDER WITH RESPECT TO THE PROJECT.

Section 3.03 Multi-County Park Designation. The County agrees to locate the Project and the Land within the boundaries of the Multi-County Park, if not already so designated, and agrees to maintain the Project and the Land within the boundaries of the Multi-County Park pursuant to the provisions of the Multi-County Park Act and Article VIII, Section 13(D) of the State Constitution on terms which provide for all jobs created at the Project within the Investment Period, any additional jobs tax credits afforded by the laws of the State for projects located within multi-county industrial or business parks, and on terms, and for a duration, which facilitate the Special Source Credits set forth in **Section 3.02** hereof.

Section 3.04 Commensurate Benefits. The parties acknowledge the intent of this Agreement, in part, is to afford the Company and each other Co-Investor the benefits specified in this Article III in consideration of the Company's 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 Company 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 Company, the County agrees to use its best efforts, and to take such other steps as may be necessary, to extend to the Company 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 the Company, to enter into a lease purchase agreement with the Company and each other Sponsor or Sponsor Affiliate 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. In furtherance of this covenant, the County also agrees that, in the event that, for any reason, the Multi-County Park or the Multi-County Park Agreement is declared by a court of competent

jurisdiction to be invalid or unenforceable in whole or in part, the Company and the County express their intentions that tax or FILOT payments be reformed so as to best afford the Company 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. The Company acknowledges, if a court of competent jurisdiction holds all or part of the Negotiated FILOT Act is unconstitutional or otherwise illegal, the Negotiated FILOT Act currently provides that the Company and each other Sponsor or Sponsor Affiliate must transfer their respective portion of the Negotiated FILOT Property to the County within one hundred eighty (180) days following such determination in order for the Negotiated FILOT benefits to continue to apply to such property. In any such lease purchase agreement referenced above, the County, upon the conveyance of title to the Project to the County at the expense of the Company or any other Sponsor or Sponsor Affiliate, as the case may be, agrees to lease such entity's portion of the Project to the Company or any such other Sponsor or Sponsor Affiliate, as the case may be. At the end of the term of any such lease purchase agreement, and upon payment of all outstanding obligations incurred under such lease purchase agreement, the Company and each such other Sponsor or Sponsor Affiliate shall have the option to purchase its respective portion of the Project from the County for Ten and No/100 Dollars (\$10.00).

ARTICLE IV

COVENANTS OF THE COMPANIES

Section 4.01 Investment in Project.

(a) The Company and each Co-Investor shall 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 such entity 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, 2027.

(b) Notwithstanding anything herein to the contrary, and to the maximum extent permitted by law, investment and job creation by any and all other Co-Investors shall together with investment and job creation by the Company, count toward all investment and job creation requirements, thresholds, and levels set forth in this Agreement, including, without limitation, for the purposes of **Section 3.02(a)(i)** hereof, 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 the Company and each other Co-Investor filed with respect to the Project, including without limitation, each such entity's 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) The County hereby agrees that, in the event the Minimum Investment Period Extension Requirement is satisfied by the end of the Investment Period, the Investment Period shall be automatically extended, without further action or proceedings of the County or the County, by five (5) additional years such that, upon such extension, the Investment Period would end on the thirteenth (13th) 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, and the County hereby agrees to such extension. 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, 2027, the Investment Period (upon extension of such period as provided in this **Section 4.01(c)**) will end on December 31, 2040.

(d) Subject to the provisions of **Sections 4.04** and **6.01** hereof, the Company and each other Co-Investor shall, retain title to, or other property rights in, its respective portion of the Project throughout the Term, and the 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) The 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) The Company and each other Co-Investor may, at its own expense, add to the Project all such land and real property improvements, as well as personal property, as the Company, or such other Co-Investor, in its sole 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 the 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, the 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) The Company and any other Co-Investor may, at any time and in its discretion by written notice to the County, remove any of its 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) The Company or any other Co-Investor may add to the Land, or sell, lease, or otherwise dispose of any portion of the Land, or remove 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, provided, however, that the 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; provided, further, 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 Payment of Administration Expenses. The Company and each 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 the Company or such other Co-Investor, respectively, and, as the case may be, 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 the County anticipates no out of pocket expenses, including, but not limited to attorneys' fees, to be Administration Expenses hereunder for review of this Agreement and all resolutions, ordinances and other documentation related thereto or the transactions authorized hereby.

Section 4.03 Use of Project for Lawful Activities. During the Term, the Company and each other Co-Investor may use its respective portion of the Project as it deems fit for any lawful purpose.

Section 4.04 Maintenance of Existence. Except in the event the resulting, surviving or transferee entity is the Company or an Affiliate of the 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, the Company covenants that it will maintain its separate existence and will not dissolve or consolidate with, merge into or transfer, or otherwise dispose of all or 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) the Company shall be the continuing business entity, or the business entity formed by such consolidation or into which the Company is merged or the entity which acquires by conveyance or transfer all or substantially all of the 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 the 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 the Company herein and the performance of every covenant of this Agreement on the part of the Company to be performed or observed;

(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) the Company shall have delivered to the County (i) a certificate of a duly authorized officer of the Company, accompanied by financial statements of the surviving company (if other than the Company) showing compliance with the net worth requirements specified in paragraph (a) above and (ii) an opinion of counsel for the Company and/or counsel to the transferee company, 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 the Company's assets in accordance with this Section, the successor entity formed by such consolidation or into which the 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 the Company under this Agreement with the same effect as if such successor entity had been named as a Sponsor herein, and thereafter the 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.

The 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 the Company with the Transfer Provisions.

Section 4.05 Records and Reports. The 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 the Company and any other Sponsor or Sponsor Affiliate that support the Negotiated FILOT returns of the Company or such other Sponsor or Sponsor Affiliate as may be reasonably necessary to verify the calculations of the Negotiated FILOT Payments by the 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, the Company and each other Sponsor or Sponsor Affiliate shall deliver to 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 its respective portion of the Project at the same time as delivery thereof to the Department of Revenue.

(c) The Company 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 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, the 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 the Company or such other Co-Investor believes contains proprietary, confidential, or trade secret matters. The County shall comply with all reasonable, written requests made by the Company or any other Co-Investor with respect to maintaining the confidentiality of such designated segments. Except to the extent required by law, and unless the County has provided at least fifteen (15) days advance written notice to the Company or other Co-Investor, as the case may be, of such proposed release, the County shall not knowingly and voluntarily release any Filing, documents, or other information provided to the County by the Company or such other Co-Investor in connection with the Project, whether or not such information has been designated as confidential or proprietary by the Company or such other Co-Investor.

Section 4.06 Funding for Special Source Improvements The Company and each other Co-Investor shall provide, or cause the provision of, funding for the Special Source Improvements related to the Project.

Section 4.07 Indemnification The Company releases the County, including the members of the governing body of the County, and the employees, officers, attorneys and agents of the County (herein collectively referred to as the "Indemnified Parties") from, agrees that the Indemnified Parties shall not be liable for, and agrees to hold the Indemnified Parties harmless (severally, but not jointly) against, any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Company's performance of its obligations pursuant to this Agreement, except for that occasioned by grossly negligent, willful or intentional acts of an Indemnified Party, or by a breach of this Agreement by the County. The Company further agrees to indemnify and hold harmless Indemnified Parties (severally, but not jointly) against and from any and all costs, liabilities, expenses, and claims arising from any breach or default on the part of the Company in the performance of any covenant or agreement on the part of the Company to be performed pursuant to the terms of this Agreement or arising from any act or negligence of, or negligent failure to act where there is a duty to do so, by the Company, and from and against all cost, liability, and expenses incurred in or in connection with any such claim or action or proceeding brought thereon; provided, that the Company shall have no obligation to indemnify or hold harmless any Indemnified Party to the extent that any such breach or default were occasioned by grossly negligent, willful or intentional acts of such Indemnified Party, or by a breach of this Agreement by the County.

All covenants, stipulations, promises, agreements, and obligations of the County contained herein shall be deemed to be covenants, stipulations, promises, agreements, and obligations of the County and not of any member of the County Council or any officer, agent, attorney, servant, or employee of the County in his or her individual capacity, and, absent bad faith, no recourse shall be had for the payment of any moneys hereunder or the performance of any of the covenants and agreements of the County herein contained or for any claims based thereon against any member of the governing body of the County or any officer, attorney, agent, servant, or employee of the County.

Notwithstanding the fact that it is the intention of the Indemnified Parties hereto that none of them shall incur any pecuniary liability by reason of the terms of this Agreement, any related agreements or the undertakings required of the County hereunder by reason of the performance of any act requested of the County by the Company, including all claims, liabilities, or losses arising in connection with the violation of any statutes or regulations pertaining to the foregoing, nevertheless, if any Indemnified Party shall incur any such pecuniary liability, then in such event the Company shall indemnify and hold them harmless (severally, but not jointly) against all claims by or on behalf of any Person, firm, or corporation or other legal entity arising out of the same and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon, provided, however, that nothing herein shall absolve the Indemnified Parties from, or entitle the Indemnified Parties to indemnification from, any obligation such Indemnified Party has specifically agreed to undertake (including, without limitation, the obligation to place and maintain the Land within the Multi-County Park). If any action, suit, or proceeding is brought against any Indemnified Party to which such Indemnified Party is entitled to indemnification, such Indemnified Party shall promptly notify the Company, and the Company shall have the sole right and duty to assume, and shall assume, the defense thereof, at its expense, with full power to litigate, compromise, or settle the same in its sole discretion; provided the Company shall obtain the prior written consent of the County (such consent not to be unreasonably withheld, conditioned or delayed) to settle any such claim unless such claim is for monetary damages for which the Company has the ability to, and do, pay. Notwithstanding the foregoing, if the Indemnified Party is the County, in the event the County reasonably believes there are defenses available to it that are not being pursued or that the counsel engaged by the Company reasonably determines that a conflict of interest exists between the County and the Company, the County may hire independent counsel to pursue its own defense, and the Company shall be liable for the reasonable cost of such counsel.

The indemnity specified in this Section shall be in addition to any heretofore extended by the Company to any Indemnified Party and shall survive the termination of this Agreement with respect to liability arising out of any event or act occurring prior to such termination.

ARTICLE V

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, that there shall be due annually with respect to that portion of the Project constituting Negotiated FILOT Property, whether owned by the Company or by any other Sponsor or Sponsor Affiliate, a Negotiated FILOT Payment calculated as set forth in this Section, 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 January 15, 2029. If the Company designates any other Sponsor or Sponsor Affiliates pursuant to **Section 6.02** hereof, the 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, the 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 an aggregate payment period of forty (40) years, which period shall be comprised of an initial period of thirty (30) years together with an automatic extension of ten (10) years to such period, all in accordance with the Negotiated FILOT Act. 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 an aggregate payment period of forty (40) years, up to an aggregate of forty-eight (48) years or, if the Investment Period is extended as set forth in **Section 4.01(c)** hereof, up to an aggregate of fifty-three (53) years.

(ii) The Negotiated FILOT shall be determined using (1) an assessment ratio of 6%; (2) a millage rate of 360.9 mills, which millage or millage rate shall be fixed pursuant to Section 12-44-50(A)(1)(b)(i) of the Negotiated FILOT Act for the entire 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 the Company or any other Sponsor or Sponsor Affiliate and the County may agree at a later date to amend this Agreement as to Negotiated FILOT Property owned by the 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.

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

(c) The Negotiated FILOT Payments are to be recalculated:

(i) to reduce such payments in the event the 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(e)(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 the Company or any other Sponsor or Sponsor Affiliate;

(iii) to increase such payments in the event the 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 the Company or any other Sponsor or Sponsor Affiliate elects to convert any portion of its 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(e)(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) The Company and each 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 Company and the County express their intentions that such payments be reformed so as to afford the 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 Company 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, the Company and each 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 the 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 the Company and each 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 by such entity 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 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, 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. In the event that the aggregate investment in the Project by all Sponsors and Sponsor Affiliates does not exceed \$5,000,000 by the end of the Compliance Period and any Sponsor or Sponsor Affiliate does not satisfy the Minimum Statutory Investment Requirement solely through its own direct investment in the Project, then the Negotiated FILOT Payments with respect to that portion of the Project owned by such non-qualifying Sponsor or Sponsor Affiliate 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 such Sponsor or Sponsor Affiliate shall owe a Deficiency Payment with respect to Negotiated FILOT Payments theretofore made as to such portion of the Project. To the extent necessary to collect a Deficiency Payment under this sub-paragraph (i) 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.

(ii) 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

investment level set forth in the Minimum Statutory Investment 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.

(iii) 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 the Company or any other Co-Investor as part of the Project, whether owned by the Company or any other Co-Investor outright or utilized by the Company or any other Co-Investor pursuant to any financing agreement or any lease or other arrangement with the Company or any other Co-Investor and whether or not subject to this Agreement, 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 from the Company or any other Sponsor or Sponsor Affiliate under this **Section 5.01** as a Deficiency Payment or other retroactive payment shall be paid by such entity within one hundred eighty (180) days following receipt by such entity 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 the 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 the Company or any other Co-Investor or operates such assets for the Company or any other Co-Investor or is leasing all or a portion of the Project in question from the Company or any other Co-Investor. In the event of any such transfer, lease, financing, or other transaction described above, as to all of which transfers and other transactions the County hereby preapproves and consents pursuant to and in accordance with the Transfer Provisions, the rights and interests of the 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, automatically, without further action or proceedings of the County, subject to the following provisions: (i) except when a financing entity which is the income tax owner of all or part of the Project property is the transferee pursuant to clause (b) above and such financing entity assumes in writing the obligations of the Company or any such other Co-Investor hereunder, or when the transfer relates to Released Property pursuant to **Section 4.01(e)** hereof, no such transfer shall affect or reduce any of the obligations of the Company or any such other Co-Investor hereunder; (ii) to the extent the transferee or financing entity shall become obligated to make Negotiated FILOT payments hereunder, the transferee shall assume the then current basis of the Company or any such other Co-Investor (or prior transferee) in the Negotiated FILOT Property transferred; (iii) the Company or any such other Co-Investor, transferee or financing entity shall, within sixty (60) days thereof, furnish or cause to be furnished to the County and the Department of Revenue notice of any such transfer agreement, which may, but shall not be required to be, in substantially the form attached hereto as **Exhibit D**; and (iv) the Company or any such other Co-Investor and the transferee shall comply with all other requirements of the Transfer Provisions in order to preserve the benefits of the Negotiated FILOT.

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

The 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 Company or any other Co-Investor with the Transfer Provisions.

Section 6.02 Sponsors and Sponsor Affiliates. The 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 Sponsors or Sponsor Affiliates shall be Persons who join with the Company and make investments with respect to the Project, or who participate in the financing of such investments, who agree to be bound by the terms and provisions of this Agreement, provided, such Person must deliver to the County and the Department of Revenue a joinder agreement in the form attached hereto as

Exhibit E. To the extent that a Sponsor or Sponsor Affiliate invests an amount equal to the Minimum Statutory Investment Requirement at the Project by the end of the Compliance Period all investment by such Sponsor or Sponsor Affiliate shall qualify for the Negotiated FILOT payable under **Section 5.01** hereof (subject to the other conditions set forth therein) in accordance with Section 12-44-30(19) of the Negotiated FILOT Act. To the extent that the aggregate investment in the Project by the end of the Compliance Period by the Company, all Sponsors and Sponsor Affiliates and, to the extent provided by law, other Co-Investors, exceeds \$5,000,000, to the extent permitted by, Section 12-44-30(19) of the Negotiated FILOT Act, all investment by such Sponsors and Sponsor Affiliates during the Investment Period shall qualify for the Negotiated FILOT pursuant to **Section 5.01** of this Agreement (subject to the other conditions set forth therein) regardless of whether each such entity invested amounts equal to the Minimum Statutory Investment Requirement by the end of the Compliance Period. The Company shall provide the County and the Department of Revenue with written notice of any Sponsor or Sponsor Affiliate designated by the Company 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, provided that delivery of the joinder agreement described above shall satisfy such notice requirement.

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 Company executes 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 Company may jointly agree to terminate this Agreement at any time, or the Company, may, at its option, unilaterally terminate this Agreement at any time, with respect to all, or any part, of the Project in which event the Project, or such portion of the Project, as the case may be, 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 the Company or any other 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; or

(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.

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 or adjust certain benefits hereunder or obligate the Company or any other Co-Investors, as the case may be, to make certain additional payments to the County, all as set forth in **Section 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) the County may terminate this Agreement by delivery of written notice to the Defaulting Entity not less than sixty (60) days prior to the termination date specified therein;

(b) the County may 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) the County may 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 the 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, the 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 the 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 the 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 the 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 Company, which consent may be provided by the 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 Company 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 facsimile transmission or 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) As to the County:

Dorchester County
Attn: County Administrator
201 Johnston Street
St. George, South Carolina 29477
Fax: 843-563-0137
Email: wardj@dorchestercountysc.gov

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

Dorchester County
Attn: County Attorney
201 Johnston Street
St. George, South Carolina 29477
Fax: 843-563-0137
Email: jframpton@dorchestercountysc.gov

(b) As to the Company:

Dorchester Commerce, LLC
Attn: Matthew J. Myers
Sweeny, Wingate & Barrow, P.A.
1515 Lady Street
Columbia, SC 29201
Fax: 803-256-9177

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

Maynard Nexsen PC
Attn: Tushar V. Chikhliker
1230 Main Street, Suite 700 (29201)
P.O. Drawer 2426
Columbia, South Carolina 29202
Fax: (803) 727-1469
Email: tushar@maynardnexsen.com

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 all 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.

[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.



DORCHESTER COUNTY, SOUTH CAROLINA

By: S. Todd Friddle
S. Todd Friddle, Chairman, County Council
Dorchester County, South Carolina

[SEAL]

ATTEST:

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

DORCHESTER COMMERCE, LLC

By: _____

Name: _____

Its: _____

EXHIBIT A
LAND DESCRIPTION

ALL that tract, piece, or parcel of land situated, lying, and being in the Jedburg area of Dorchester County, South Carolina, on the northeastern side of Green Bay Branch approximately 1,053' northwest of Old Orangeburg Road (S-18-22), which is shown as a 128.11 acre tract on the May 24, 1996, plat by W.D. Bozard, PLS, entitled in part "Boundary Survey for Thomas Walker Messervy...", which is recorded in Plat Cabinet J at slide 61 in the office of the RMC of Dorchester County. The Property has the located, dimensions, and butts and bounds shown on the plat.

TMS # 121-00-00-007.000

EXHIBIT B CONCEPT PLAN

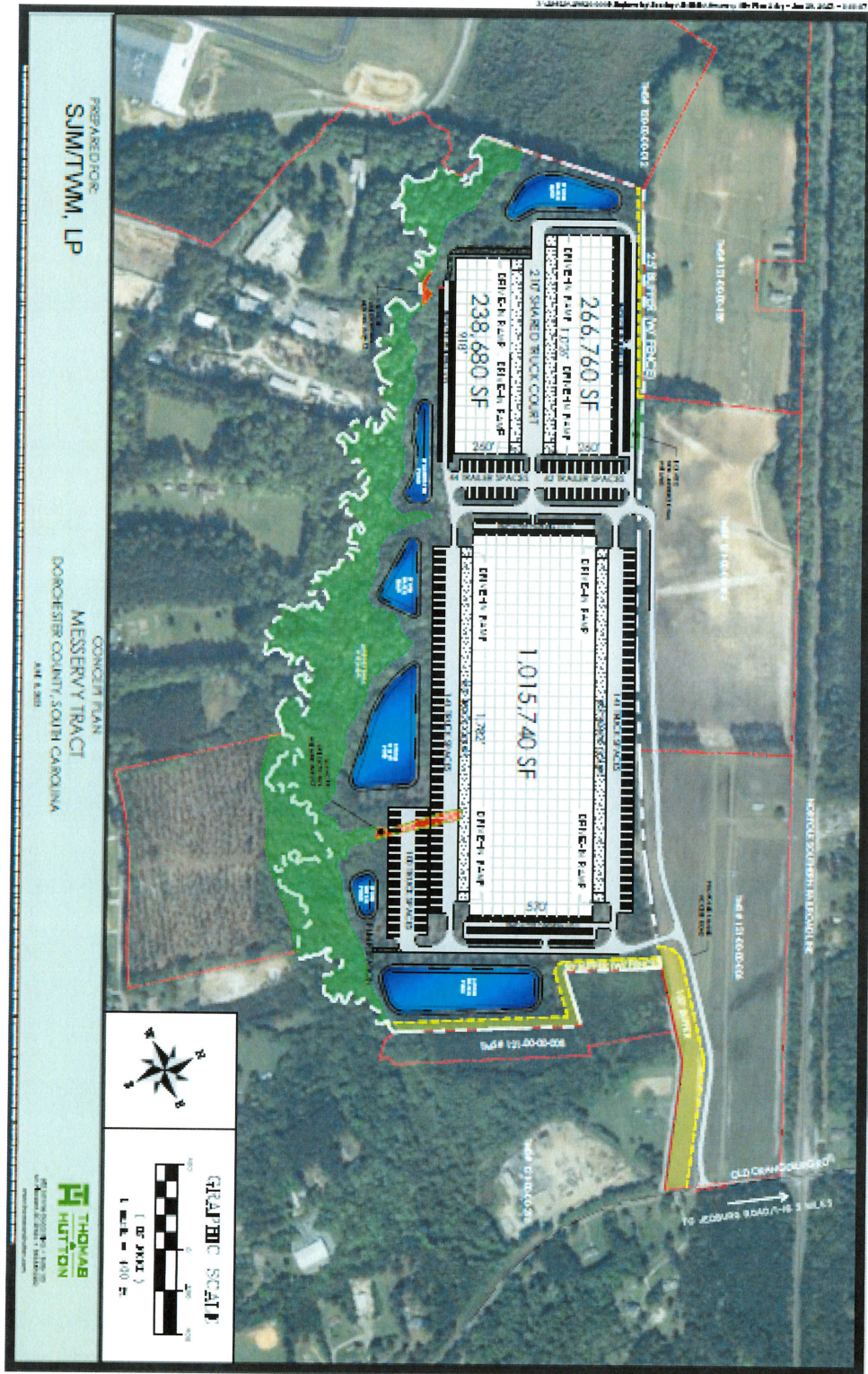


EXHIBIT C

FORM OF ANNUAL INVESTMENT AND JOB CREATION CERTIFICATION

ANNUAL INVESTMENT AND JOB CREATION CERTIFICATION

I _____, the _____ of a company identified for the time being as Project Commerce (the "Company"), do hereby certify in connection with Section 3.02(b) of the Fee in Lieu of Tax and Incentive Agreement, dated as of January, 8 2024, by and between Dorchester County, South Carolina and the Company (the "Agreement"), as follows:

(1) As of December 31, 20__, the aggregate amount of Special Source Credits previously received by the Company and all other Co-Investors, as applicable, is as follows:

- | | | |
|-----|--|----------|
| (a) | Tier 1 Special Source Credits received by the Company | \$ _____ |
| | + | |
| | Tier 1 Special Source Credits received by other Sponsors or Sponsor Affiliates | \$ _____ |
| | = | |
| | Total Tier 1 Special Source Credits received | \$ _____ |
| | + | |
| (b) | Tier 2 Special Source Credits received by the Company | \$ _____ |
| | = | |
| (c) | Total Special Source Credits received | \$ _____ |

(2) As of December 31, 20__, the total amount of investment by the Company and any other Co-Investors in Cost of Special Source Improvements is \$ _____.

(3) Of the amount listed in Section 3 above, the total amount of investment by the Company in Cost of Tier 2 Special Source Improvements during the Compliance Period is \$ _____.

(3) As of December 31, 20__, the total number of new, full-time jobs created and maintained by the Company and any other Co-Investors during the Compliance Period is _____.

All capitalized terms used but not defined herein shall have the meaning set forth in the Agreement.

IN WITNESS WHEREOF, I have set my hand this _____ day of _____, 20__.

DORCHESTER COMMERCE, LLC

By: _____
Name: _____
Its: _____

IN WITNESS WHEREOF, the undersigned has executed this Joinder Agreement to be effective as of the date set forth below.

_____ Date

[Name of Entity]

By: _____

Name: _____

Its: _____

IN WITNESS WHEREOF, the Sponsor consents to the addition of the above-named entity as a [Sponsor] / [Sponsor Affiliate] under the Fee Agreement effective as of the date set forth above.

DORCHESTER COMMERCE, LLC

By: _____

Name: _____

Its: _____

EXHIBIT D

FORM OF AGREEMENT AS TO PARTIAL ASSIGNMENT AND ASSUMPTION OF FEE AGREEMENT

AGREEMENT AS TO PARTIAL ASSIGNMENT AND ASSUMPTION OF FEE AGREEMENT

This **AGREEMENT AS TO PARTIAL ASSIGNMENT AND ASSUMPTION OF FEE AGREEMENT** (this “Agreement”) is made and entered into to be effective as of _____, 20__ by and between Dorchester Commerce, LLC a company previously identified as Project Commerce (“Assignor”), and _____, a _____ organized and existing under the laws of the State of _____ (“Assignee”).

WHEREAS, 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 and Title 4, Chapter 1 of the Code (the “Multi-County Park Act”), Dorchester County, South Carolina (the “County”), acting by and through its County Council, previously entered into that certain Fee in Lieu of Tax and Incentive Agreement dated as of January 8, 2024 (the “Fee Agreement”) in connection with the establishment and/or expansion of certain _____ facilities, as set forth in greater detail in the Fee Agreement the (the “Project”), to be located on land located in the County, as described on **Exhibit A** to the Fee Agreement (the “Project Site”), under which Assignor has agreed to make certain fee in lieu of *ad valorem* tax payments including, without limitation, Negotiated FILOT Payments (as defined in the Fee Agreement) with respect to the Project and the County has agreed, *inter alia*: (i) to accept the Negotiated FILOT Payments; (ii) to provide certain special source revenue credits against certain Negotiated FILOT Payments (the “Special Source Credits”); and (iii) to designate and maintain the Project, including, without limitation, the Project Site, as part of a multi-county industrial or business park pursuant to the Multi-County Park Act, all as set forth in greater detail, and subject to the limitations contained, in the Fee Agreement; and

WHEREAS, Assignor and Assignee have previously entered into, or will hereafter enter into one or more agreements (the “Property Transfer Documentation”) providing for the sale, transfer, and conveyance, as of _____, 20__ (the “Transfer Date”), by Assignor to Assignee of all of Assignor’s right, title, and interest in _____ acres of the Land, as described on **Exhibit A** attached hereto, and any real and/or personal property located thereon (collectively, the “Transfer Property”); and

WHEREAS, Assignor desires to hereby assign, transfer, convey, and set over to Assignee all of Assignor’s right, title and interest in, to, and under the Fee Agreement with respect to the Transfer Property, and Assignee desires to hereby assume all of Assignor’s duties, obligations, and liabilities under the Fee Agreement with respect to the Transfer Property, all as set forth in greater detail in this Agreement.

NOW, THEREFORE, for and in consideration of the premises and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby covenant and agree as follows:

1. Partial Assignment and Assumption. Assignor does hereby assign, transfer, convey and set over to Assignee, its successors and assigns, all of Assignor's right, title and interest in, to, and under the Fee Agreement with respect to the Transfer Property accruing on or after 12:00 a.m. on the Transfer Date including, without limitation, all rights to: (i) make future investment in property eligible for Negotiated FILOT Payments at the Transfer Property; (ii) make Negotiated FILOT Payments with respect to the Transfer Property and such additional investment thereon; and (iii) claim Tier 1 Special Source Credits (as defined in the Fee Agreement) against such Negotiated FILOT Payments; all in accordance with the terms and provisions of the Fee Agreement. Assignee does hereby assume and agrees to perform, in full, all of Assignor's duties, obligations, and liabilities under the Fee Agreement with respect to the Transfer Property accruing on or after 12:00 a.m. on the Transfer Date, including, without limitation, all obligations to make Negotiated FILOT Payments with respect to the Transfer Property.

2. Release of Assignor.

3. Acknowledgements by Assignee.

(a) Assignee hereby acknowledges and agrees that Assignor is hereby released from any and all duties, obligations, and liabilities under the Fee Agreement with respect to the Transfer Property, accruing on or after 12:00 a.m. on the Transfer Date.

(b) Assignee acknowledges receipt of the Fee Agreement and all Exhibits thereto and agrees to be bound by the terms thereof, including, without limitation, with respect to the Transfer Property and any additional investment made by the Assignee at the Transfer Property as well as Section 6.01 thereof.

4. Requisite Power and Due Authorization. Each of the parties hereto represents that it 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.

5. Notices. All notices given hereunder shall be in writing by either party to the other, shall be sent by registered or certified mail, postage prepaid, return receipt requested or prepaid by nationally recognized overnight courier, and shall be addressed as follows:

If to Assignor: DORCHESTER COMMERCE, LLC

Attn.: _____

If to Assignee:

Attn.: _____

or to such other addresses as either party shall designate in a notice to the other given in accordance with the provisions of this Section 5.

6. Severability. In the event that any term, covenant or provision of this Agreement should be determined to be illegal, invalid or unenforceable, that term, covenant or provision shall be severed and removed herefrom and this Agreement shall be construed as if such term, covenant or provision had never been contained herein.

7. Governing Law. This Agreement and all matters relating thereto shall be governed by and construed and interpreted in accordance with the laws of the State of South Carolina.

8. Entire Agreement. This Agreement (including any Exhibits hereto and the other agreements and instruments contemplated herein) embodies the entire Agreement and understanding between the parties hereto as to the matters herein addressed and supersedes all prior agreements and understandings (whether oral or written) relating to the subject matter hereof.

9. Amendment. No provision of this Agreement or any document or instrument relating to the Agreement may be amended, modified, supplemented, changed, waived, discharged, or terminated unless all of the parties hereto consent thereto in writing.

10. Successor and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

11. 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.

[Remainder of page intentionally left blank]

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto, each after due authorization, have executed this Agreement as to Partial Assignment and Assumption of Fee Agreement to be effective as of the date first written above.

ASSIGNOR:

DORCHESTER COMMERCE, LLC

By: _____

Name: _____

Title: _____

ASSIGNEE:

By: _____

Name: _____

Title: _____

EXHIBIT E

FORM OF JOINDER AGREEMENT

JOINDER AGREEMENT

Reference is hereby made to that certain Fee in Lieu of Tax and Incentive Agreement, dated as of January 8, 2024 (“Fee Agreement”), by and between Dorchester County, South Carolina (“County”) and a company identified for the time being as Project Commerce (“Sponsor”).

1. Joinder to Fee Agreement.

_____, a _____ organized and existing under the laws of the State of _____ (the “Company”), hereby: (a) joins as a party to, and agrees to be bound by and subject to all of the terms and conditions of, the Fee Agreement with respect to its portion of the Project, as a [Sponsor] / [Sponsor Affiliate] thereunder; and (b) acknowledges and agrees that (i) in accordance with the Fee Agreement, the Company has been designated as a [Sponsor] / [Sponsor Affiliate] by the Sponsor for purposes of the Project and such designation has been previously consented to by the County in the Fee Agreement in accordance with the Negotiated FILOT Act, but only to the extent that the Negotiated FILOT Act requires the County’s consent, (ii) the Company qualifies or will qualify as a [Sponsor] / [Sponsor Affiliate] under the Fee Agreement and Sections [12-44-30(19)] / [12-44-30(20)] and 12-44-130 of the Negotiated FILOT Act upon the execution and delivery to the County and the Department of Revenue of this Joinder Agreement, and (iii) the Company shall have all of the rights and obligations of a [Sponsor] / [Sponsor Affiliate] as set forth in the Fee Agreement with respect to its portion of the Project.

2. Capitalized Terms.

All capitalized terms used but not defined in this Joinder Agreement shall have the meanings set forth in the Fee Agreement.

3. Representations.

The Company, as a [Sponsor] / [Sponsor Affiliate] under the Fee Agreement, represents and warrants to the County as follows:

- (a) The Company is a _____ validly existing and in good standing under the laws of the State of _____ and is, or will be prior to operation of the Project, authorized to do business in the State of South Carolina, has all requisite power to enter into this Joinder Agreement and to carry out its obligations hereunder and under the Fee Agreement, and by proper action has been duly authorized to execute and deliver this Joinder Agreement. The Company’s fiscal year end is _____ and the Company will notify the County of any changes in the fiscal year of the Company.

- (b) The Company intends that its respective portion of the Project be operated for _____ and related activities.
- (c) To the best knowledge of the Company, no actions, suits, proceedings, inquiries or investigations are pending or threatened against or affecting the Company in any court or before any governmental authority or arbitration board or tribunal, which would materially adversely affect this Joinder Agreement or which would, in any way, adversely affect the validity or enforceability of this Joinder Agreement, or the transactions contemplated hereby.

4. Governing Law.

This Joinder Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina, without regard to any principles of choice of law that would refer the governance of this Joinder Agreement to the laws of any other jurisdiction.

5. Notice.

Notices under Section 9.03 of the Fee Agreement with respect to the Company shall be sent to:

Dorchester Commerce, LLC
Attn: Matthew J. Myers
Sweeny, Wingate & Barrow, P.A.
1515 Lady Street
Columbia, SC 29201
Fax: 803-256-9177

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

Maynard Nexsen PC
Attn: Tushar V. Chikhliker
1230 Main Street, Suite 700 (29201)
P.O. Drawer 2426
Columbia, South Carolina 29202
Fax: (803) 727-1469
Email: tushar@maynardnexsen.com

6. Multiple Counterparts.

This Joinder Agreement may be executed in multiple counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has executed this Joinder Agreement to be effective as of the date set forth below.

_____ Date

[Name of Entity]

By: _____
Name: _____
Its: _____

IN WITNESS WHEREOF, the Sponsor consents to the addition of the above-named entity as a [Sponsor] / [Sponsor Affiliate] under the Fee Agreement effective as of the date set forth above.

DORCHESTER COMMERCE, LLC

By: _____
Name: _____
Its: _____