
FEE IN LIEU OF TAX AGREEMENT

between

EDGEFIELD COUNTY, SOUTH CAROLINA

and

PROJECT SCOTT

Dated as of _____, 20__

**SUMMARY OF CONTENTS OF
FEE IN LIEU OF TAX AGREEMENT**

As permitted under Section 12-44-55(B), Code of Laws of South Carolina 1976, as amended (the “Code”), the parties have agreed to waive the requirements of Section 12-44-55 of the Code, to the extent that and so long as the Company makes all reports and filings required by the Act, and provides copies thereof to the County as required under Section 4.04, hereof. The following is a summary of the key provisions of this Fee in Lieu of Tax Agreement. This summary is inserted for convenience only and does not constitute a part of this Fee in Lieu of Tax Agreement or a summary compliant with Section 12-44-55 of the Code.

Company Name:	_____	Project Name:	Project Scott
Projected Investment:	\$2,500,000	Projected Jobs:	N/A
Location (street):	_____	Tax Map No.:	
		Tax District	
1. FILOT	Yes		
Required Investment:	\$2,500,000		
Investment Period:	5 years	Ordinance No./Date:	
Assessment Ratio:	6%	Term (years):	30 years
Fixed Millage:	341.21 mils	Net Present Value (if yes, discount rate):	N/A
Clawback information:	Failure to achieve the investment target of \$2,500,000 within the Investment Period, Company must payback difference between incentive and normal taxes plus interest		
2. MCIP	Property to be located in new MCIP with Saluda County		
Included in an MCIP:	Yes		
If yes, Name & Date:	To be provided		
3. SSRC	Yes		
Total Amount:	15%		
No. of Years	10 years		
Yearly Increments:	N/A		
Clawback information:			
4. Other information			

FEE IN LIEU OF TAX AGREEMENT

This **FEE IN LIEU OF TAX AGREEMENT** (this “Agreement”) is dated as of _____, 20____ by and between **EDGEFIELD COUNTY, SOUTH CAROLINA** (the “County”), a body politic and corporate and a political subdivision of the State of South Carolina, and **PROJECT SCOTT** (the “Company”), a Delaware corporation.

WITNESSETH:

WHEREAS, the County, acting by and through its County Council (the “County Council”), is empowered under and pursuant to the provisions of the Code of Laws of South Carolina 1976, as amended (the “Code”) and specifically, Title 12, Chapter 44 of the Code (the “Act”): (i) to assist investors in acquiring, enlarging, improving, and expanding certain types of industrial and commercial projects; (ii) to enter into agreements, including fee-in-lieu of tax agreements for the payment of certain fees-in-lieu of *ad valorem* taxes, with such investors to induce such investors to construct and thereafter operate, maintain, and improve such projects; and (iii) to covenant with such investors to accept certain payments-in-lieu of *ad valorem* taxes with respect to such projects (“FILOT”); through all of which the economic development of the State of South Carolina will be promoted and trade developed by inducing manufacturing and certain other business enterprises to locate in and remain in the State of South Carolina, and thus utilize and employ the manpower and resources of the State of South Carolina; and

WHEREAS, the County, acting by and through County Council, is further authorized by Titles 4 and 12 of the Code to provide special source revenue financing, secured by and payable solely from revenues of the County derived from payments in-lieu of taxes pursuant to Article VIII, Section 13 of the South Carolina Constitution, and Sections 4-1-170 and 12-44-50 of the Code for the purpose of defraying the cost of designing, acquiring, constructing, improving, or expanding (a) the infrastructure serving the County or the Project (as hereinafter defined) or (b) for 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, within the meaning of Section 4-29-68 of the Code (“Infrastructure”); and

WHEREAS, the County intends use its commercially reasonable efforts to cause the site upon which the Project is located, to the extent not already located therein, to be located in a multi-county industrial and business park (the “Park”) established by the County pursuant to a qualifying agreement with Saluda County, which is an adjoining South Carolina county (the “Park Agreement”) pursuant to the provisions of Article VIII, Section 13 of the South Carolina Constitution and Sections 4-1-170, 4-1-172 and 4-1-175 of the Code (the “Joint-County Industrial and Business Park Act”);

WHEREAS, the County is authorized by Section 12-44-70 of the Act and Section 4-1-175 of the Joint-County Industrial and Business Park Act to authorize and issue, for the purposes outlined in Section 4-29-68 of the Code, certain credits against revenues received and retained under Article VIII, Section 13 of the South Carolina Constitution with respect to properties and projects located within a Park (“Infrastructure Improvement Credits”); and

WHEREAS, Project Scott, the code name for a corporation organized and existing under the laws of the State of Delaware (the “Company”), has represented to the County that the Company intends to acquire certain machinery, apparatus, and equipment for use and operation at one existing manufacturing facility in the County (the “Project”); and

WHEREAS, pursuant to provisions of the Park Agreement, the Company is or will be obligated to make or cause to be made payments in-lieu of tax to the County for property it owns or leases which is located within the Park, which payments in-lieu of tax are to be distributed according to the Park Agreement to Saluda County and to the County, in the total amount equivalent to the *ad valorem* property taxes that would have been due and payable but for the location of the property owned or leased by the Company within the Park; and

WHEREAS, based on representations by the Company that the Project will represent a capital investment in the County of not less than Two Million Five Hundred Thousand Dollars (\$2,500,000) during the period beginning with the first day that real or personal property comprising the Project is purchased or acquired and ending five (5) years after the last day of the property tax year during which the Project is first placed in service, in order to enhance the economic development of the County, the County desires to assist the Company in locating the Project within the County;

WHEREAS, pursuant to certain negotiations heretofore undertaken between the County and the Company with respect to the Project (i) the County agreed to enter into a FILOT arrangement with the Company, and to provide certain Infrastructure Improvement Credits to the Company for qualifying investment in infrastructure pursuant to Section 12-44-70 of the Act and Section 4-1-175 of the Joint-County Industrial and Business Park Act for the purposes outlined in Section 4-29-68 of the Code for the Project; and (ii) the Company agreed to make payments-in-lieu of tax to the County (“FILOT Payments”) with respect to the Project in the Park as authorized in the Act; and

WHEREAS, the County has given due consideration to the economic development impact of the Project, has found that the Project and the payments-in-lieu of taxes would be directly and substantially beneficial to the County, the taxing entities of the County, and the citizens and residents of the County, and that the Project would directly and indirectly benefit the general public welfare and serve a public purpose of the County by providing services, employment, recreation, promotion of tourism, or other public benefits not otherwise provided locally; and, that the Project gives rise to no pecuniary liability of the County or any incorporated municipality, or a charge against the general credit or taxing power of either; and, that the purposes to be accomplished by the Project, i.e., economic development and welfare, creation of jobs, promotion of tourism, and addition to the tax base of the County, are proper governmental and public purposes and that the inducement of the location of the Project within the County and State is of paramount importance and that the benefits of the Project will be greater than the cost; and

WHEREAS, the County and the Company have agreed to the specific terms and conditions of such FILOT arrangement and special source revenue financing as set forth in this Agreement;

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained, and the sum of \$10.00 in hand, duly paid by the Company to the County,

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.

“Administration Expenses” shall mean the reasonable and necessary expenses including reasonable attorneys’ fees, incurred by the County with respect to the Project and this Agreement; provided, however, that no such expense shall be considered an Administration Expense unless the County furnishes to the Company a statement in writing indicating the reason such expense has been or will be incurred and either estimating the amount of such expense or stating the basis on which the expense has been or will be computed.

“Agreement” shall mean this Agreement as originally executed and from time to time supplemented or amended as permitted herein.

“Authorized Company Representative” shall mean any person or persons at the time designated to act on behalf of the Company by written certificate furnished to the County containing the specimen signature of each such person and signed on behalf of the Company by its Secretary, Assistant Secretary or by any other person to whom the Company has delegated authority to administer this Agreement.

“Code” shall mean the Code of Laws of South Carolina, 1976, as amended through the date hereof unless the context clearly requires otherwise.

“Commencement Date” shall mean the last day of the property tax year during which real or personal property comprising the Project is first placed in service.

“Company” shall mean Project Scott, the code name for a Delaware corporation authorized to transact business in the State of South Carolina, and any surviving, resulting, or transferee entity in any merger, consolidation, or transfer of assets permitted under Article IX hereof; or any assignee hereunder which is designated by the Company and approved by the County.

“Cost” shall mean the cost of acquiring, by construction and purchase, the Project, including any Infrastructure, and shall be deemed to include, whether incurred prior to or after the date of this Agreement: (a) obligations incurred for labor, materials, and other expenses to contractors, builders, and materialmen in connection with the acquisition, construction, and installation of the Project; (b) the cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of construction of the Project which are 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 therefor, 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 Project; (d) compensation for legal, accounting, financial, and printing expenses, fees, and all other expenses incurred in connection with the Project; (e) all other costs which the Company shall be required to pay under the terms of any contract or contracts for the acquisition, construction, and installation of the Project, including without limitation, development fees, interest expense and professional engineering costs; and (f) any sums required to reimburse the Company for advances made for any of the above items, or for any other work done and costs incurred by the Company which are for the acquisition of land or property of a character subject to the allowance for depreciation provided for under Section 167 of the Internal Revenue Code of 1986, as amended, and included in the Project; provided, however, such term shall include expenditures by the Company with respect to the Project only to the extent made during the Investment Period.

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

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

“*Department of Revenue*” shall mean the South Carolina Department of Revenue.

“*Economic Development Property*” shall mean each item of real and tangible personal property comprising a project within the meaning of Sections 12-44-30(6) or 12-44-40(C) of the Code. Economic Development Property shall include all items of property purchased or acquired during the Investment Period and for which the Company has made a return to the Department of Revenue as reflected in an applicable Form PT-300 Schedule S.

“*Equipment*” shall mean all machinery, equipment, furnishings, and other personal property purchased or acquired by the Company and installed as part of the Project during the Investment Period in accordance with this Agreement.

“*Event of Default*” shall mean an Event of Default as defined in Section 11.01 hereof.

“*FILOT*” shall mean the fee in lieu of taxes which the Company is obligated to pay to the County pursuant to Section 5.01 hereof.

“*FILOT Payments*” shall mean the payments to be made by the Company pursuant to Section 5.01 hereof.

“*FILOT Revenues*” shall mean the revenues received by the County from the Company’s payment of the FILOT.

“*Infrastructure*” shall mean, to the extent provided in Section 4-29-68 of the Code, infrastructure serving the County and improved or unimproved real estate and personal property including machinery and equipment used in the operation of the Project.

“Infrastructure Costs” shall mean the costs of designing, acquiring, constructing, improving, or expanding the Infrastructure serving, or used in the operation of, the Project.

“Infrastructure Improvement Credit” shall mean the credit in the amount set forth in Section 5.02 hereof against the FILOT Payments as authorized by Section 12-44-70 of the Act and Section 4-1-175 of the Joint-County Industrial and Business Park Act to reimburse the Company for Costs of the Infrastructure.

“Investment Maintenance Requirement” shall mean maintenance by the Company of investment in the Project by the Company of at least Two Million Five Hundred Thousand Dollars (\$2,500,000) (without regard to depreciation) in Economic Development Property subject (non-exempt) to *ad valorem* taxation (in the absence of this Agreement).

“Investment Period” shall mean the period beginning with the first day that real or personal property comprising the Project is purchased or acquired and ending on the Threshold Date.

“Land” shall mean the real estate upon which any part of the Project is to be constructed and expanded, as described in EXHIBIT “A” attached hereto.

“Minimum Investment Requirement” shall mean investment by the Company of at least Two Million Five Hundred Thousand Dollars (\$2,500,000) in Economic Development Property subject (non-exempt) to *ad valorem* taxation (in the absence of this Agreement).

“Negotiated FILOT Payment” shall mean the FILOT due pursuant to Section 5.01(b)(ii) hereof with respect to that portion of the Project qualifying for the 6% assessment ratio and the millage rate described in subsection 5.01(c) of this Agreement.

“Non-Economic Development Property” shall mean that portion of the Project consisting of: (i) property as to which the Company incurred expenditures prior to the Investment Period or, except as to Replacement Property, after the end of the Investment Period; (ii) property not placed in service during the Investment Period; and (iii) any other property which fails or ceases to qualify for Negotiated FILOT Payments.

“Park Agreement” shall mean the Agreement for the Development of a Joint County Industrial and Business Park to be entered into between the County and Saluda County, South Carolina with respect to the Land and the Project.

“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, to the extent such items are either placed in service during the Investment Period or qualify as Replacement Property: the Equipment which now exists or which is to be installed in the existing manufacturing facility on the Land in whole or in part during the Investment Period, together with the acquisition, construction, installation, design and engineering thereof which are eligible for inclusion as Economic Development Property under the Act and

become subject to this Agreement. The Project property shall consist of Economic Development Property so identified by the Company in connection with its annual return to the Department of Revenue on a Form PT-300, or comparable form, and with such schedules as the Department of Revenue may provide in connection with projects subject to the Act (as such filing may be amended or supplemented from time to time) for each year within the Investment Period.

“*Released Property*” shall mean any portion of the Project removed, scrapped, traded in, sold, or otherwise disposed of pursuant to Section 4.03 hereof, any portion of the Project stolen, damaged, destroyed, or taken by condemnation, or eminent domain proceedings as described in Article VII hereof.

“*Replaced Property*” shall mean any Released Property for which the Company has substituted Replacement Property during the term hereof pursuant to Section 5.01(e) hereof.

“*Replacement Property*” shall mean any portion of the Project substituted for Released Property pursuant to Section 5.01(e) hereof.

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

“*Term*” shall mean have the meaning ascribed to such term as set forth in Section 10.01 hereof.

“*Threshold Date*” shall mean the date that is five years after the Commencement Date.

“*Transfer Provisions*” shall mean the provisions of Section 12-44-120 of the Code, as amended.

SECTION 1.02. References to Agreement. The words “hereof,” “herein,” “hereunder” and other words of similar import refer to this Agreement as a whole, unless the context clearly requires otherwise.

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 of South Carolina 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.

(b) The County has determined that 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 Project.

(c) By proper action by the County Council, the County has duly authorized the execution and delivery of this Agreement and any and all actions necessary and appropriate to consummate the transactions contemplated hereby.

(d) This Agreement has been duly executed and delivered on behalf of the County.

(e) No actions, suits, proceedings, inquiries, or investigations known to the undersigned representatives of the County are pending or threatened against or affecting the County in any court or before any governmental authority which would materially adversely affect the validity or enforceability of this Agreement; provided, however, that no representation is made by or on behalf of the County as to the validity or enforceability of this Agreement.

No representation of the County is hereby made with regard to compliance by the Project or any Person with laws regulating (i) the construction or acquisition of the Project, (ii) environmental matters pertaining to the Project, (iii) the offer or sale of any securities, or (iv) the marketability of title to any property, including the Land.

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 Delaware corporation, validly existing and authorized to transact business in the State of South Carolina; has all requisite power to enter into this Agreement; and by proper action has been duly authorized to execute and deliver this Agreement.

(b) The Company intends to operate the Project primarily for the purposes of acquiring certain machinery, apparatus, and equipment for use and operation at one existing manufacturing facility in the County.

(c) The agreements of the County with respect to the FILOT have been instrumental in inducing the Company to locate and maintain the Project within the County and the State.

(d) No actions, suits, proceedings, inquiries, or investigations known to the undersigned representatives of the Company are pending or threatened against or affecting the Company in any court or before any governmental authority or arbitration board or tribunal, which could materially adversely affect the transactions contemplated by this Agreement or which could, in any way, adversely affect the validity or enforceability of this Agreement.

(e) The Company warrants to expend not less than the Minimum Investment Requirement for Costs of the Project prior to the Threshold Date.

ARTICLE III

UNDERTAKINGS OF COUNTY

SECTION 3.01. Agreement to Accept FILOT Payments. The County hereby agrees to accept FILOT Payments made by the Company in accordance with Section 5.01 hereof in lieu of *ad valorem* taxes with respect to the Project until this Agreement expires or is sooner terminated.

SECTION 3.02. No Warranties by County. The County makes no warranty, either express or implied, as to title to any part of the Project or any encumbrances (or lack thereof) or the design, capabilities, or condition of the Project or that it will be suitable for the Company's purposes or needs or as to the state of title to the Project.

SECTION 3.03. Actions by County. The County hereby authorizes and directs that any actions required or permitted to be taken by the County under this Agreement, and any documents to be executed on behalf of the County which are necessary or useful in order to undertake such actions, shall be undertaken, executed, and/or delivered by the then-current Chair of County Council or County Administrator, in their respective capacities.

ARTICLE IV

INVESTMENT BY COMPANY IN PROJECT; MAINTENANCE AND MODIFICATION OF PROJECT

SECTION 4.01. Acquisition by Construction and Purchase of Project.

(a) The Company hereby agrees to expend upon the Cost of the Project the sum of not less than the Minimum Investment Requirement prior to the Threshold Date. The Company shall use its best efforts to cause such acquisition as promptly as is, in the Company's sole judgment, practicable.

(b) The Company shall retain title to the Project throughout the Term of this Agreement.

SECTION 4.02. Maintenance of Project. The Company at its own expense during the Term of this Agreement will keep and maintain the Project in good operating condition. The Company will promptly make, or cause to be made, all repairs, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, that are necessary to keep the Project in good and lawful order and in good operating condition (wear and tear from reasonable use excepted) whether or not such repairs are due to any laws, rules, regulations, or ordinances hereafter enacted which involve a change of policy on the part of the government body enacting the same.

SECTION 4.03. Modification of Project.

(a) As long as no event of default exists hereunder, the Company 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 may, at its own expense, add to the Project all such real and personal property as the Company in its discretion deems useful or desirable.

(ii) In any instance where the Company in its discretion determines that any items included in the Project have become inadequate, obsolete, worn out, unsuitable, undesirable, or unnecessary for operations at the Project, the Company may remove such items or portions 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, subject, always, to the provisions of Section 5.01(f) hereof.

(b) No release of Project property effected under the provisions of Section 7.01 or 7.02 hereof or of this Section 4.03 shall entitle the Company to any abatement or diminution of the amounts payable by the Company hereunder except the FILOT Payments as specified in Section 5.01(d) hereof.

SECTION 4.04. Records and Reports. The Company agrees to maintain such books and records with respect to the Project as will permit the identification of those portions of the Project placed in service in each property tax year during the Investment Period, the amount of investment with respect thereto and its computations of all FILOT Payments made hereunder, the number of full-time equivalent jobs, with benefits, in the County, created during the Investment Period and as will comply with all reporting requirements of the State and the County applicable to property subject to FILOT Payments under the Act, including without limitation the reports, and copies thereof to be filed with the specified County officials, required by Section 12-44-90 of the Code and this Agreement (collectively, "Filings"). Notwithstanding any other provision of this Agreement, and without limitation, the Company shall make all reports and filings required by the Act and shall provide copies thereof to the County Auditor, Treasurer, and Assessor within one (1) month of making such filings or reports.

Notwithstanding any other provision of this Section 4.04, the Company may designate with respect to any Filings delivered to the County segments thereof that the Company or such Sponsor Affiliate believes contain proprietary, confidential, or trade secret matters. The County shall use its commercially reasonable efforts to conform with all reasonable, lawful, written requests made by the Company with respect to maintaining the confidentiality of such designated and clearly identified segments, to the extent allowed by law, recognizing that the County is subject to the South Carolina Freedom of Information Act.

ARTICLE V

PAYMENTS IN LIEU OF TAXES; FUNDING FOR INFRASTRUCTURE PROJECT

SECTION 5.01. Payments in Lieu of Taxes.

(a) In accordance with the Act, the parties hereby agree that, during the Term of this Agreement, the Company shall pay with respect to the Project annually a FILOT Payment in the amount calculated as set forth in paragraph (b) below, on or before January 15 of each year following the first calendar year after the close of the accounting period regularly employed by the Company for income tax purposes and in which accounting period a portion of the Project was first placed in service, and 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.

(b) The FILOT Payment due with respect to each property tax year shall equal the sum of (i) with respect to any portion of the Project consisting of Non-Economic Development Property, a payment equal to the taxes that would otherwise be due on such Non-Economic Development Property were it taxable; (ii) with respect to those portions of the Project (other than Non-Economic Development Property) placed in service during the Investment Period, for each of the thirty (30) consecutive years following the year in which such portion of the Project is placed in service, a Negotiated FILOT Payment calculated each year as set forth in paragraphs (c) through (e) below; and (iii) with respect to increments of the Project constituting Economic Development Property after such 30-year period, a payment equal to the *ad valorem* taxes that would otherwise be due on such property were it taxable, with appropriate reductions with respect to the property described in clauses (i) and (ii) above, similar to the tax exemption, if any, which would be afforded to the Company if *ad valorem* taxes were paid, only to the extent permitted by the Act for Economic Development Property. For the purposes of clause (ii) above, there shall be excluded any Released Property and any other portion of the Project which ceases to qualify for a FILOT hereunder or under the Act.

(c) (i) The Negotiated FILOT Payment with respect to any property tax year shall be calculated in accordance with subparagraph (c)(ii) below.

(ii) The Negotiated FILOT Payments shall be calculated with respect to each property tax year based on (1) the fair market value of the Equipment included within the Project theretofore placed in service (less depreciation allowable for property tax purposes), (2) a fixed millage rate for all taxing entities at the Project side, on June 30, 2018, which the Parties hereto believe to be: with respect to the Project site known as the _____, 341.21 mils, and (3) a fixed assessment ratio of 6%. Such fair market value must be that determined in accordance with Section 12-44-50(A)(1)(c)(i) (excluding the last sentence of that paragraph, which is not included as part of this Agreement) of the Act. All such calculations shall take into account all deductions for depreciation or diminution in value allowed by the Code or by the tax laws generally (excluding the last sentence of Section 12-44-50(A)(1)(c)(i), which is not included as part of this Agreement), as well as tax exemptions which would have been applicable if such

property were subject to *ad valorem* taxes, except the exemption allowed pursuant to Section 3(g) of Article X of the Constitution of the State of South Carolina and the exemption allowed pursuant to Sections 12-37-220(B)(32) and (34) of the Code. The assessment ratio and millage rate set forth herein shall remain fixed for the duration of this Agreement.

(d) The Negotiated FILOT Payments are to be recalculated (i) to reduce such payments in the event the Company disposes of any part of the Project within the meaning of Section 12-44-50(B) of the Code, as provided in Section 4.03, by the amount thereof applicable to the Released Property; provided, however, that any disposal of Released Property need not result in a recalculation of the Negotiated FILOT Payments unless the Company so elects, and further provided that no such disposal shall reduce the value of the Project property subject to payments under Section 5.01(b), thereof, to less than the Investment Maintenance Requirement, without regard to depreciation; or (ii) to increase such payments in the event the Company adds property (other than Replacement Property) to the Project.

(e) Upon the Company's installation of any Replacement Property for any portion of the Project removed under Section 4.03 hereof and sold, scrapped, or disposed of by the Company, such Replacement Property shall become subject to Negotiated FILOT Payments, in the manner and to the extent permitted by the Act.

(f) In the event that the Company has not invested at least the Minimum Investment Requirement in new, taxable (fee in lieu of tax) investment in the Project before the Threshold Date, the portions of the Project previously subject to Negotiated FILOT Payments shall revert retroactively to normal *ad valorem* tax treatment, and the Company shall pay the difference between the fees actually paid (taking into account any Infrastructure Improvement Credit enjoyed by the Company) and normal *ad valorem* tax payments which would have been paid, if any (a "Deficiency"), which such Deficiency shall be subject to interest as provided in Section 12-54-25 of the Code. To the extent permitted by applicable law, with respect to personal property, the Deficiency shall be calculated based on the assumption that the Deficiency in the capital investment consists of equipment which is subject to depreciation at the rate of eleven percent (11%) per annum with a salvage value of ten percent (10%) throughout the term of this Agreement. Notwithstanding any other provision hereof to the contrary, in the event that the Company's investment in the Project based on an income tax basis without regard to depreciation at any time falls below the Investment Maintenance Requirement, the Project shall thereafter, and prospectively, only, be subject to normal *ad valorem* tax treatment.

(g) Any amounts due to the County under this Section 5.01 by virtue of the retroactive application of Section 5.01(f) hereof shall be paid within 90 days following written notice thereof from the County to the Company, or at the time of the next regularly scheduled tax payment by the Company to the County, whichever occurs earlier.

(h) If taxes on real and personal property shall be replaced, in whole or in part, with an alternate revenue source, or abolished in the County or in the State, the Company may terminate this Agreement immediately without further obligation, except for obligations already incurred and outstanding.

SECTION 5.02. Infrastructure Improvement Credit.

(a) The Company agrees to pay, or cause to be paid, all Infrastructure Costs as and when due. The Company agrees that, as of any date during the term of this Agreement, the cumulative dollar amount expended by the Company on Infrastructure Costs shall equal or exceed the cumulative dollar amount of the Infrastructure Improvement Credit received by the Company. Prior to the first year's Infrastructure Improvement Credit to be credited against the Company's FILOT Payments as provided in Section 5.02(b) hereto, the Company shall certify the cumulative total amount of Infrastructure Costs incurred as of December 31 of the year to which such FILOT Payments relate. For example, should the Company elect to apply the Infrastructure Improvement Credit against its 2019 fee in lieu of tax bill (which would be due and payable on or before January 15, 2020), the Company shall certify the cumulative total amount of Infrastructures Costs as of December 31, 2019. The form of such certification is attached hereto as Exhibit "B". The Company shall re-certify the cumulative amount of Infrastructure Costs incurred if, in any year in which an Infrastructure Improvement Credit is to be applied, the cumulative amount of Infrastructure Improvement Credits will exceed the cumulative Infrastructure Costs incurred as previously certified. The Company agrees to complete the acquisition and construction of the Infrastructure pursuant to the plans and specifications approved by the Company. The plans and specifications for the Infrastructure may be modified from time to time as deemed necessary by the Company.

(b) Pursuant to Section 12-44-70 of the Act, the County authorizes and grants the Company an Infrastructure Improvement Credit in an annual amount equal to fifteen percent (15%) of the FILOT payments for the Project in the Park, but only with respect to and to the extent of the FILOT payments made on behalf of the Project in the Park, for the first ten (10) years of FILOT payments on behalf of the Project in the Park. The Treasurer of the County shall display and subtract the Infrastructure Improvement Credit from the FILOT Payment statement sent to the Company for the duration of the Infrastructure Improvement Credit.

ARTICLE VI

PAYMENT OF EXPENSES BY COMPANY

SECTION 6.01. Payment of Administration Expenses. The Company will pay to the County from time to time amounts equal to the Administration Expenses of the County promptly upon written request therefor, but in no event later than 45 days after receiving written notice from the County specifying the nature of such expenses and requesting payment of the same.

SECTION 6.02. Defaulted Payments. In the event the Company should fail to make any of the payments required under this Agreement, the item or installment so in default shall continue as an obligation of the Company until the amount in default shall have been fully paid. If any such default relates to its obligations to make FILOT Payments or payments of Administration Expenses hereunder, the Company agrees to 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 or for non-payment of FILOT Payments.

ARTICLE VII

CASUALTY AND CONDEMNATION

SECTION 7.01. Damage and Destruction. If all or any part of the Project shall be lost, stolen, destroyed, or damaged, the Company in its discretion may repair or replace the same. If the Company shall determine to repair or replace the Project, the Company shall forthwith proceed with such rebuilding, repairing, or restoring and shall notify the County upon the completion thereof. In the event any insurance proceeds are not sufficient to pay in full the costs of such rebuilding, repair, or restoration, the County shall not have any responsibility to complete the work thereof or pay that portion of the costs thereof in excess of the amount of said proceeds. Except as set forth in Section 7.03 hereof, the Company shall not by reason of any such damages or destruction or the payment of any excess costs be entitled to any reimbursement from the County or any abatement or diminution of the amounts payable hereunder.

SECTION 7.02. Condemnation. In the event that title to or the temporary use of the Project, or any part thereof, shall be taken in condemnation or by the exercise of the power of eminent domain, there shall be no abatement or reduction in the payments required to be made by the Company hereunder except as set forth in Section 7.03 hereof. The Company shall promptly notify the County, as to the nature and extent of such taking and, as soon as practicable thereafter, notify the County whether it has elected to restore the Project. If it shall be determined to restore the Project, the Company shall forthwith proceed with such restoration, and shall notify the County, upon the completion thereof.

SECTION 7.03. Adjustments in the Event of Damage and Destruction or Condemnation. In the event that the Project or any portion thereof is damaged or destroyed, lost or stolen, or the subject of condemnation proceedings, which damage, destruction, loss, theft and/or condemnation would substantially impair the operating ability of the Project or such portion thereof, the parties hereto agree that the FILOT Payments required pursuant to Section 5.01 hereof shall be abated in the same manner and in the same proportion as if *ad valorem* taxes were payable with respect to the Project, subject, always, to the requirements of Section 5.01 hereof.

ARTICLE VIII

PARTICULAR COVENANTS AND AGREEMENTS

SECTION 8.01. Use of Project for Lawful Activities. The Company is hereby granted and shall have the right during the Term of this Agreement to occupy and use the Project for any lawful purpose authorized pursuant to the Act.

SECTION 8.02. Right to Inspect. The Company agrees that the County and its authorized agents shall have the right at all reasonable times and upon prior reasonable notice to enter upon and examine and inspect the Project and to have access to and examine and inspect all

the Company's books and records pertaining to the Project. The County and its authorized agents shall also be permitted, at all reasonable times and upon prior reasonable notice, to examine the plans and specifications of the Company with respect to the Project. The aforesaid rights of examination and inspection shall be exercised only upon such reasonable and necessary terms and conditions as the Company shall prescribe, which conditions shall be deemed to include, but not be limited to, those necessary to protect the Company's trade secrets and proprietary rights. In no way shall this requirement of confidentiality be deemed to apply to or restrict the rights of the United States Government and the State of South Carolina or its political subdivisions in the exercise of their respective sovereign duties and powers.

SECTION 8.03. Limitation of Pecuniary Liability for County. Anything herein to the contrary notwithstanding: (a) **neither the Project nor the Infrastructure Improvement Credits shall give rise to any pecuniary liability of the County or charge against its general credit or taxing powers (it being intended that all Infrastructure Improvement Credits herein shall be payable from FILOT Payments for the Project in the Park, only);** and (b) the County may require as a condition to the participation by it with the Company in any contests or in obtaining any license or permits or other legal approvals a deposit by the Company of such amount as reasonably determined by the County to be appropriate to assure the reimbursement to the County of the costs incurred by it in such participation, with any amount of such deposit in excess of such costs to be returned to the Company; provided, however, that nothing herein shall prevent the Company from enforcing its rights hereunder by suit for *mandamus* or specific performance or any other remedy available at law or in equity.

SECTION 8.04. Indemnification. The Company releases the County including the members of the governing body of the County, and the employees, officers, and agents of the County (herein collectively referred to as the "Indemnified Parties") from, agrees that Indemnified Parties shall not be liable for, and agrees to hold Indemnified Parties harmless against, any loss or damage to property or any injury to or death of any person or any liability whatsoever, including without limitation, liability under any environmental or other regulatory laws, that may be occasioned by any cause whatsoever pertaining to this Agreement, the Project, or the use thereof except for that occasioned by grossly negligent or intentional acts of an Indemnified Party. The Company further agrees to indemnify and save harmless Indemnified Parties against and from any and all costs, liabilities, expenses, including, but not limited to, attorney's fees, and claims arising from the performance of an Indemnified Party of any obligations of the County under this Agreement or 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 failure to act by, the Company, or any of its agents, contractors, servants, employees, or licensees, and from and against all cost, liability, and expenses, including, but not limited to, attorney's fees, incurred in or in connection with any such claim or action or proceeding brought thereon.

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, servant, or employee of the County in his individual capacity, and, absent actionable bad faith on the part of the individual in question, 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, 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, if any Indemnified Party shall incur any such pecuniary liability, then in such event the Company shall indemnify and hold them harmless 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, including, but not limited to, attorney's fees, incurred in connection with any such claim or in connection with any action or proceeding brought thereon. If any action, suit, or proceeding is brought against any Indemnified Party, such Indemnified Party shall promptly notify the Company and the Company shall have the duty to assume, and shall assume, all at the sole option of the Indemnified Party in question, and with counsel reasonably acceptable to such Indemnified Party, 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 to settle any such claim unless such claim is for monetary damages for which the Company has the ability to, and does, pay, in complete settlement. 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, in its sole discretion, 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 8.04 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 IX

TRANSFERS; FINANCING ARRANGEMENTS

SECTION 9.01. Transfers of Interest in Agreement and Economic Development Property; Transfers of Equity Interests; Financing Arrangements. The Transfer Provisions shall apply to this Agreement and the Economic Development Property, except as otherwise provided in this Agreement. Pursuant to the Transfer Provisions, the County's prior approval or subsequent ratification of the transfer of this Agreement or any Economic Development Property to which this Agreement relates may be evidenced by a letter or other writing of the County Administrator. To the extent permitted by the Act, the County approves that equity interests in the Company may be transferred (directly or through merger, consolidation or other reorganization) to another Person at any time, with or without notice to the County; provided, however, that in the event of such a transfer, the Company shall maintain its corporate existence and duly perform and

comply with the terms of this Agreement. Pursuant to the Transfer Provisions, the Company may enter into lending, financing, security, leasing, or similar arrangements, or succession of such arrangements, with a financing entity concerning all or part of the Project at any time. Any release of liability of the Company in connection with any transfer shall be subject to the County's consent, not to be unreasonably withheld, and the County's consent to such release may be evidenced by a resolution adopted by the County Council of the County to that effect.

SECTION 9.02. Relative Rights of County and Financing Entities as Secured Parties.

The parties acknowledge that the County's right to receive FILOT Revenues hereunder shall have a first priority lien status pursuant to Section 12-44-90 of the Code, and Chapters 4 and 54 of Title 12 of the Code. The County consents and agrees that, to the extent allowed by law, its rights under this Agreement, except for its rights to receive FILOT Revenues, Administration Expenses and Indemnification pursuant to Section 8.04, shall be subordinate to the rights of the secured party or parties under any financing arrangements undertaken by the Company with respect to the Project pursuant to Section 9.01 hereof, such subordination to be effective without any additional consent or action on the part of the County; provided, however, that the County hereby agrees to execute, at the sole expense of the Company, such agreements, documents, and instruments as may be helpful or reasonably required by such secured party or parties to effectuate or document such subordination. The County hereby authorizes the then-current County Administrator to execute such agreements, documents, and instruments as necessary or useful therefor, upon the advice of the County Attorney or legal counsel to the County.

ARTICLE X

TERM; TERMINATION

SECTION 10.01. 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 last day of the property tax year in which the last Negotiated FILOT Payment is due hereunder (the "Term"). The County's rights to receive indemnification and payment of Administration Expenses pursuant hereto shall survive the expiration or termination of this Agreement.

SECTION 10.02. Termination. The Company may terminate this Agreement at any time, in which event the Project may be subject to *ad valorem* taxes from the date of termination. This Agreement shall automatically terminate (subject to the provisions of Section 5.01(f) hereof) if the Company fails to invest at least the Minimum Investment Requirement in new, taxable (fee in lieu of tax) investment in the Project by the Threshold Date of if the investment in the Project is not maintained in accordance with Section 5.01(f), hereof, or if the Act and/or the FILOT thereof are declared invalid or unenforceable.

ARTICLE XI

EVENTS OF DEFAULT AND REMEDIES

SECTION 11.01. Events of Default by Company. 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:

(a) if default shall be made in the due and punctual payment of any FILOT Payments, indemnification payments under Section 8.04, or Administration Expenses or any other amount payable hereunder, which default shall not have been cured within 30 days following receipt of written notice thereof from the County; or

(b) if default shall be made by the Company in the due performance of or compliance with any of the terms hereof, including payment, other than those referred to in the foregoing paragraph (a), and such default shall continue for 90 days after the County shall have given the Company written notice of such default, the Company shall fail to proceed promptly to cure the same.

SECTION 11.02. Remedies on Event of Default by Company. Subject to Section 11.01 hereof, upon the occurrence of any Event of Default, the County may exercise any one or more of the following remedies, any of which may be exercised at any time during the periods permitted under the following clauses:

(i) declare immediately due and payable FILOT Payments, Administration Expenses, or any other amounts due hereunder;

(ii) terminate this Agreement by delivery of written notice to the Company not less than 30 days prior to the termination date specified therein;

(iii) have access to and inspect, examine, and make copies of the books, records, and accounts of the Company pertaining to the construction, acquisition, or maintenance of the Project; or

(iv) take whatever action at law or in equity as may appear necessary or desirable to collect the amounts then due and thereafter to become due or to enforce observance or performance of any covenant, condition, or agreement of the Company under this Agreement.

SECTION 11.03. Application of Moneys Upon Enforcement of Remedies. Any moneys received by the County upon enforcement of its rights hereunder shall be applied as follows: first, to the reasonable costs associated with such enforcement proceedings; second, to pay Administration Expenses; and third, to pay the FILOT.

SECTION 11.04. Default by County. Upon the default of the County in the performance of any of its obligations hereunder, the Company 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 XII

MISCELLANEOUS

SECTION 12.01. Rights and Remedies Cumulative. Each right, power, and remedy of the County or of the Company 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 or the failure to exercise by the County or by the Company of any one or more of the rights, powers, or remedies provided for in this Agreement or now or hereafter existing by law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the County or by the Company of any or all such other rights, powers, or remedies.

SECTION 12.02. Successors and Assigns. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns as permitted hereunder.

SECTION 12.03. 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, addressed as follows or to such other persons and places as may be designated in writing by such party.

(a) As to County:

Edgefield County, South Carolina
Attn: County Administrator
124 Courthouse Square
Edgefield, South Carolina 29824

(b) As to Company:

Project Scott

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

James I. Warren III, Esquire
Nexsen Pruet, LLC
55 East Camperdown Way, Suite 400
Greenville, South Carolina 29601

SECTION 12.04. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

SECTION 12.05. Entire Understanding. This Agreement expresses the entire understanding and all agreements of the parties hereto with each other as to its subject matter, and neither party hereto has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth in this Agreement or in certificates delivered in connection with the execution and delivery hereof.

SECTION 12.06. Severability. In the event that any clause or provision 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 12.07. Headings and Table of Contents: References. The headings of the Agreement and any Table of Contents or Index 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 subdivisions of this Agreement are references to the designated Articles or Sections or subdivisions of this Agreement.

SECTION 12.08. 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. Facsimile signatures may be relied upon as if originals.

SECTION 12.09. Amendments. Subject to the limitations set forth in the Act, this Agreement may be amended, or the rights and interests of the parties hereunder surrendered, only by a writing signed by both parties.

SECTION 12.10. Waiver. Either party may waive compliance by the other party with any term or condition of this Agreement only in writing signed by the waiving party.

[EXECUTION PAGES FOLLOW]

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first above written.

EDGEFIELD COUNTY, SOUTH CAROLINA

By _____
Chairman of County Council
Edgefield County, South Carolina

By _____
County Administrator
Edgefield County, South Carolina

(SEAL)

ATTEST:

Clerk to County Council
Edgefield County, South Carolina

IN WITNESS THEREOF, the undersigned has executed this Agreement as of the date first above written.

PROJECT SCOTT

By: _____

Its: _____

EXHIBIT "A"

LAND DESCRIPTION

Tax Map Number: _____

