



Finance Committee Meeting

Chairman

CHRIS HERVOCHON

Vice Chairman

MARK LAWSON

Committee Members

GERALD DAWSON

STU RODMAN

PAUL SOMMERVILLE

County Administrator

ASHLEY M. JACOBS

Clerk to Council

SARAH W. BROCK

Staff Support

RAYMOND WILLIAMS

Administration Building

Beaufort County Government

Robert Smalls Complex

100 Ribaut Road

Contact

Post Office Drawer 1228

Beaufort, South Carolina 29901-1228

(843) 255-2180

www.beaufortcountysc.gov

Finance Committee Agenda

Monday, October 19, 2020 at 2:00 PM

[This meeting is being held virtually in accordance with Beaufort County Resolution 2020-05]

CITIZEN COMMENTS AND PUBLIC HEARING COMMENTS WILL BE ACCEPTED IN WRITING AT PO DRAWER 1228, BEAUFORT SC 29901 OR BY WAY OF OUR PUBLIC COMMENT FORM AVAILABLE ONLINE AT BEAUFORTCOUNTYSC.GOV.

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE
3. *PUBLIC NOTIFICATION OF THIS MEETING HAS BEEN PUBLISHED, POSTED, AND DISTRIBUTED IN COMPLIANCE WITH THE SOUTH CAROLINA FREEDOM OF INFORMATION ACT*
4. APPROVAL OF AGENDA
5. APPROVAL OF MINUTES - SEPTEMBER 21, 2020
6. INTRODUCTION OF WHITNEY RICHLAND AS THE NEW CFO

ACTION ITEMS

7. PROVIDING BASE FEE-IN-LIEU OF TAX AGREEMENTS TO PROJECT BURGER, PROJECT GARDEN, AND PROJECT GLASS. THIS WILL BRING PROPERTY TAX RATE FROM 10% INDUSTRIAL RATE DOWN TO 6% RATE FOR A 20 YEAR PERIOD.
8. PROVIDING A SPECIAL SOURCE REVENUE CREDIT TO PROJECT STONE - THIS SSRC WILL ACT AS A BASE FILOT EQUIVALENT - ALLOWING THE COMPANY TO PAY THE EQUIVALENT OF A 6% TAX RATE OVER A 20 YEAR PERIOD.
9. PLACING PROJECT BURGER, PROJECT GARDEN, PROJECT GLASS, AND PROJECT STONE INTO EXISTING MULTI COUNTY INDUSTRIAL PARK.
10. CONSIDERATION OF AN ORDINANCE REGARDING A MULTI COUNTY INDUSTRIAL PARK - BURGER, GARDEN, GLASS, STONE
11. CONSIDERATION OF AN ORDINANCE REGARDING A SPECIAL SOURCE REVENUE CREDIT - PROJECT STONE
12. CONSIDERATION OF MULTIPLE ORDINANCES AND INDUCEMENT RESOLUTIONS REGARDING A FEE-IN-LIEU OF PROPERTY TAXES (FILOT) - PROJECT BURGER, PROJECT GARDEN, PROJECT GLASS
13. CONSIDERATION OF AN ORDINANCE BEAUFORT COUNTY BUSINESS LICENSE TAX STANDARDIZATION

DISCUSSION ITEMS

14. UPDATE ON THE INTERNAL AUDITOR

- [15.](#) UPDATE ON STATE ACCOMMODATIONS TAX AWARDS
 - [16.](#) DISCUSSION ON THE RFP FOR STATE ACCOMMODATIONS TAX AND LOCAL ACCOMMODATIONS TAX TO THE DMO'S AND CHAMBERS
 - [17.](#) CAFR AUDIT DISCUSSION
 - [18.](#) UPDATE ON CARRYOVER BUDGET 2021 EXPENDITURES
 - 19. DISCUSSION ON REAL LIFE SAVINGS DUE TO PANDEMIC
-

BOARDS AND COMMISSIONS

- [20.](#) CONSIDERATION OF THE REAPPOINTMENT OF DAN AHERN AND THE APPOINTMENT OF THOMAS SHEAHAN TO THE AIRPORTS BOARD
-

EXECUTIVE SESSION

- 21. LAND ACQUISITION PROPOSAL THROUGH RURAL AND CRITICAL LAND PROGRAM - PROJECT 2020A
MATTERS ARISING OUT OF
-

CITIZEN COMMENTS

- 22. CITIZEN COMMENTS (***EVERY MEMBER OF THE PUBLIC WHO IS RECOGNIZED TO SPEAK SHALL LIMIT COMMENTS TO THREE MINUTES***) CITIZEN COMMENTS AND PUBLIC HEARING COMMENTS WILL BE ACCEPTED IN WRITING AT PO DRAWER 1228, BEAUFORT SC 29901 OR BY WAY OF OUR PUBLIC COMMENT FORM AVAILABLE ONLINE AT BEAUFORTCOUNTYSC.GOV.
- 23. ADJOURNMENT



**County Council of
Beaufort County
Community Services
Committee Meeting**

Chairman

CHRIS HERVOCHON

Vice Chairman

MARK LAWSON

Committee Members

GERALD DAWSON

STU RODMAN

PAUL SOMMERVILLE

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Finance Committee Minutes

Monday, July 13, 2020 at 3:00 PM

[This meeting is being held virtually in accordance with Beaufort County Resolution 2020-05] THIS MEETING WILL BE CLOSED TO THE PUBLIC. CITIZEN COMMENTS AND PUBLIC HEARING COMMENTS WILL BE ACCEPTED IN WRITING VIA EMAIL TO THE CLERK TO COUNCIL AT SBROCK@BCGOV.NET OR PO DRAWER 1228, BEAUFORT SC 29901. CITIZENS MAY ALSO COMMENT DURING THE MEETING DURING FACEBOOK LIVE

CALL TO ORDER

Committee Chairman Hervochon called the meeting to order at 2:00 PM.

PRESENT

- Committee Chairman Hervochon
- Council Member Passiment
- Council Member Sommerville
- Council Member Covert
- Council Member Dawson
- Council Member Rodman
- Council Member Glover
- Council Member Howard
- Council Member McElynn
- Council Member Lawson

ABSENT

- Committee Vice-Chairman Lawson

PLEDGE OF ALLEGIANCE

Committee Chairman Hervochon led the Pledge of Allegiance.

FOIA

Committee Chairman Hervochon noted that the Public Notification of this meeting has been published, posted, and distributed in compliance with the South Carolina Freedom of Information Act.

APPROVAL OF AGENDA

Motion: It was moved by Council Member Flewelling, seconded by Council Member Covert to approve the agenda. The vote: Unanimous without objection. The motion passed. 10:0

APPROVAL OF MINTUES- MAY 28, 2020; JUNE 4, 2020; JULY 13, 2020; AUGUST 17, 2020.

Motion: It was moved by Council Member Sommerville, seconded by Council Member Flewelling to approve the minutes from May 28, 2020; June 4, 2020; July 13, 2020; August 17, 2020. The Vote: Unanimous without objection. The motion passed. 10:0

ACTION ITEMS

Discussion and Action Item to Amend Ordinance 2019 / 56 Penn Center Renovations- Marion Burns, Penn Center

Discussion: Marion Burns with Penn Center stated that the Penn Center is not satisfied with Oceana Design's work and requests an amendment to Ordinance 2019/56 that removes Oceana Design and allows for an RFQ from other architectural firms to be issued in order to complete the necessary renovations at Penn Center.

Ordinance 2019/56 was passed to allocate funds for Phase 1 of the Penn Center Renovations totaling \$822,000.00. The Ordinance specifies Oceana Design as the architect and assigns responsibility to the firm for reviewing and approving invoices. Staff recommends amending the Ordinance to have the Beaufort County Purchasing Department issue an RFQ and award the contract with input and assistance from the Penn Center.

Motion: It was moved by Council Member Flewelling, seconded by Council Member Glover to approve to amend Ordinance 2019/56 Penn Center renovations and forward to Council. The Votes: Unanimous without objection. The motion passed. 10:0

Accommodations Tax/ Hospitality Tax Reserve Fund Ordinance. - Raymond Williams, Interim Chief Financial Officer

Discussion: Mr. Williams explained that Beaufort County wishes to have a method to access A-Tax and H-Tax funds in case of a disaster, pandemic or other occurrences on a case by case basis. This ordinance would allow County Council to approve a resolution to allocate tax and/or tax reserves/ funds for purposes that are permitted under their related statute.

Council Member Rodman stated that the County has reserves as a portion of these funds typically and questioned if these funds were to use elsewhere and if creating new uses is going beyond the intent.

Mr. Hayes responded that there is a statute that limits the spending.

Mr. Rodman asked if instead of going through three readings we those readings be bypassed?

Mr. Taylor, County Attorney stated that this ordinance will allow Council to disperse funds during these circumstances without the application process.

Committee Chairman Hervochon mentioned that paragraph 1 (c) is opening up a broad case for use of these funds.

Mr. Taylor responded that paragraph complements (a) and (b) with the majority of approval by council in an emergency fashion.

Committee Chairman Hervochon stated that he thinks it opens it up to spend on too many uses and could possibly an unintended use.

Motion: It was moved by Council Member Flewelling, seconded by Council Member Passiment to approve the Accommodations Tax/ Hospitality Tax Reserve Fund Ordinance and forward to Council. The Vote: Yea: Committee Chairman Hervochon, Council Member Passiment, Council Member Sommerville, Council Member Covert, Council Member Dawson, Council Member Flewelling, Council Member Glover, Council Member Howard, Council Member McElynn. Nay: Council Member Rodman. The motion passed 9:1.

Professional Services Agreement with Greater Beaufort Port Royal Convention and Visitor's Bureau.

Discussion: Kurt Taylor, County Attorney, explained that Rob Wells, President and CEO of the Greater Beaufort-Port Royal Convention and Visitors Bureau, wishes to enter into a Designated Management Organization (DMO) agreement with the county for the purpose of promoting tourism.

The Greater Beaufort-Port Royal Convention and Visitors Bureau would be designated by county ordinance as a DMO and receive funding each year.

Section 66-29 of the Beaufort County Code and Ordinances provide for funding as follows: To be in compliance with S.C. Code of Law, Title 6 Chapter 4, the state (2%) accommodations tax shall be allocated in the following manner: 1. Be in compliance with the Ordinance No. 89-9; however, first \$25,000.00 of revenues received from the accommodations tax will, by law, be placed in the county's general fund with no restrictions on the expenditures. 2. Five percent of the balance must be allocated to the general fund with no restrictions on expenditures. 3. Thirty percent of the remaining balance is split in half going to the Greater Beaufort-Port Royal Convention and Visitors Bureau and half going to Hilton Head-Bluffton Chamber of Commerce as the council hereby designates the Greater Beaufort-Port Royal Convention and Visitors Bureau and Hilton Head-Bluffton Chamber of Commerce as designated marketing organizations (DMOs).

Council Member Flewelling stated that council just finished approving an ordinance to allow extra funding and wants to make sure that the extra funding is potentially audited in the future. If any changes are necessary to recommend them before sending this to council.

Mr. Taylor stated that whatever funds go to them will be part of the audit requirement.

Council Member Covert asked if this went out for a RFP.

Mr. Taylor responded that it did not.

Council Member Covert recommends that this go back out for a bid for complete transparency.

Mr. Hayes stated that this is set up by statute and he doesn't think it can be set up for an RFP.

Council Member Howard requests a legal opinion on who sets that statute and when was the last time it was set.

Mr. Taylor stated that he will do some research.

Motion: It was moved by Council Member Covert, seconded by Council Member Flewelling to postpone this Item and send back to administration for RFP. The Vote: Yea: Committee Chairman Hervochon, Council Member Passiment, Council Member Sommerville, Council Member Covert, Council Member Dawson, Council Member Flewelling, Council Member Rodman, Council Member Glover, Council Member Howard, Council Member McElynn. The motion passed.
10:0

Distance Learning Grant

Discussion: Chuck Atkinson, Assistant County Administrator explained that it has been established that there are issues related to distance learning. Beaufort County would like to earmark \$200,000 from its general fund balance to award grants to applicants to assist with the problems related to distance learning. The County has contacted Coastal Community Foundation to help develop a fund agreement. The County will need to provide specific criteria for who will be eligible for grant funding and how the funds may be used. Once the agreement is in place and the funds are made available CCG will advertise the program, manage the applications, and disburse the funds. It is subject to a 3% processing fee if they chose to do so and once the funds are gone the grant ends.

Council Member McElynn asked how does this proposal works with his recommendation of moving the 2 applicants from the community services grant and having them moved to qualify for funds from the reserve fund instead of because they are engaged in distance learning and that is what the funds are for.

Mr. Atkinson stated that the idea of moving this forward is to provide structure and give those applying an organized way to process these grants. It allows us to vet and track the funds afterward. One of the 2 groups you are talking about was asking for funds other than distance learning so one got funding and the other didn't. The other group didn't because they are already receiving funds from Beaufort County.

Council Member McElynn asked if by receiving funding from other organizations excludes them from getting grants.

Mr. Atkinson replied no, it was because they were already receiving funds from Beaufort County.

Council Member McElynn would like to know if the applicants aren't getting the sufficient funding from the community grant do they have to apply separately for the distance learning grant.

Mr. Atkinson stated that these grants are to be considered as two separate sources of funding so they could apply for the other for funding.

Council Member McElynn questioned how much money is being considering and where was the money coming from.

Mr. Atkinson sated that they went with the amount suggested, up to \$200K but it could be any amount and the source of funding would be the reserve funds.

Motion: It was moved by Council Member McElynn, seconded by Council Member Covert to approve the distance learning grant and forward to council. The Votes: Yea- Committee Chairman Hervochoon, Council Member Passiment, Council Member Sommerville, Council Member Covert, Council Member Dawson, Council Member Flewelling, Council Member Rodman, Council Member Glover, Council Member Howard, Council Member McElynn. The motion passed. 10:0.

DISCUSSION ITEMS

Status of Internal Auditor- Raymond Williams, Interim Chief Financial Officer.

Discussion: Mr. Williams stated that this is a follow up on the RFP for the Internal Audit of Beaufort County. There were two responses to RFP 082720 for Baker Tilly (fee not to exceed \$190,000.00) and Elliot Davis (provided hourly fees) but will not negotiate a fee until the final scope of the work is agreed upon. The source of funding is from professional services \$75,000.00. Staff recommends to narrow down the internal audit scope to cover the items that are needed from the Council and Finance Committee.

For informational purposes only.

CAFR Timeline Discussion- Raymond Williams, Interim Chief Financial Officer.

Discussion: Mr. Williams explained that There was a discussion with the audit partner for the engagement. Tentatively Mauldin and Jenkins should begin their field work in mid-November. Mauldin and Jenkins project that they best case scenario would be that they could draft an audit report by December 31. There are factors that could cause delays such as staff changes, and unknown COVID 19 issues. Source of funding is professional service \$65,000.00

Budget Book Status Discussion- Ashley Jacobs, County Administrator.

Discussion: Ms. Jacobs stated that in 2020 Beaufort County prepared its first line-item budget. County employees are currently drafting the budget book and it is around 70% complete. Since the approval of the line-item budget, County staff has been in the process of drafting the budget book. During the drafting, there have been continuity issues and staffing issues. Staff is making Council aware of where the process is and the anticipated completion date is October 9, 2020.

Council Member Passiment stated that he would be looking for just replacement pages of changes and asked if administration be drafting a completely new budget book.

Council Member Rodman mentioned that a physical book is not needed, just a computer file that it would be easier to use and easier for staff to prepare.

Council Member Flewelling stated that years ago a form was experimented with and it was never quite narrowed down. Administration would give council a monthly report and maybe that discussion could be resurrected and get a monthly report, just a potential list of problem areas.

Committee Chairman Hervochoch stated that monthly reporting is number one on his priority list and would like to see a trend, months by columns.

Council Member Rodman suggested instead of giving council all the data over and over again, maybe a variance of the budget that can be approved can be given.

Committee Chairman Hervochoch stated that personally he didn't want a physical book that a PDF file or excel would be better. There is a ton of value in the book for the public to see charts and graphs and it would be easier to understand. Asked if the budget was published online for the public to see.

Ms. Jacobs stated that there is a help desk ticket in for that to take place.

Mr. Hayes stated that the budget was posted online.

Council Member Passiment stated that ideally there needs to be an electronic version of the budget. The adopted budget, transfer, updated budget, paid out, balance, line items.

Committee Chairman Hervochoch asked if this book was going to be something that needs to be created each year or something that can just be adjusted.

Ms. Jacobs stated it will be something that could be adjusted each year.

Review and discussion of DMO's and Chambers Submission. Council Member Covert.

Discussion: The County Council and Finance Committee have requested a detailed accounting from the DMO's and Chambers for the expenditures related to their accommodations tax funding. Submissions were made and sent to Council for review.

Council Member Covert stated that the Chambers of Commerce were asked to provide receipts and only Beaufort Chamber of Commerce submitted invoices and receipts.

Ms. Jacobs, stated that they have not received responses from any of the three regarding Council Member Covert's questions which were forwarded. In regards to Beaufort CVB, what they have submitted, they have gone above and beyond and we would be satisfied with what they have submitted to us.

Council Member Covert mentioned that Beaufort Chambers information was palatable and they were amicable with having council looking at whatever they needed. The Bluffton-Hilton Head Chamber and the Black Chamber haven't been cooperating and have not responded with that request.

Council Member Rodman stated that he reviewed the information from the Beaufort Chamber but doesn't remember Council actually approving what we asked for but this comes back to the Ordinance which needs to be revisited so it can be applicable. There could be a requirement we could impose on those organizations when they do their audit which may be more expedient to both organizations and oppose those ordinances and make it part of their annual audit.

Committee Chairman Hervochoch stated that he agreed with Council Member Rodman and should probably do a next-level analysis and there should be something in place in the ordinance.

Council Member Passiment stated that the wealth of information that the DMO gave council is unbelievable. Council needs to know what the DMO was set up to do and take the receipts or have them take the receipts and tell council the vendors and the dollars used and what they got out of it. A new way to get those reports is needed.

Council Member Flewelling explained that the Beaufort Chamber has always been transparent and willing to provide council with anything but wonders how much of that is proprietary and if some of that can be circumvented because it may cause issues with the price they are receiving for fear that it would generate price increases. Council should listen to the professionals if they request that it not be public.

Council Member Covert stated that he understood what Council Member Flewelling was saying and Mr. Well's submission goes way beyond what he was looking for and doesn't want to say any public money is proprietary because that would be a slippery slope.

Council Member Howard mentioned that the City of Beaufort has a spreadsheet that they use by category and it is backed up with receipts to compare the date and the receipts. It would be easy to do, just need to give them a shell to fill in and let them know how council wants it done.

Council Member Flewelling responded to Mr. Coverts comment, for clarity, is not saying that the taxpayer's dollars are proprietary but the reasons they spend those dollars should be.

Council Member Rodman stated he thinks the issue with Bluffton-Hilton Head, which has reached the supreme court, is that they have spent money with a certain firm which may be proprietary, they don't have a problem with sharing that with the council but it may hurt them from a competitive standpoint if made public when they go out for bids and in the long run hurts the county. We need to make sure the public sees what they want to see but just like in executive sessions some things are made to proprietary and should definitely be privy to council.

Council Member Passiment stated that some of the stuff from Beaufort was proprietary but Council needs to put it in a better format and see if it would be beneficial to everyone and see if Bluffton-Hilton Head Chamber would be willing to do the same kind of thing.

Council Member Hervochon agrees with Council Member Passiment. There are two things here, need to figure out how to summarize information like what Mr. Wells provided in a way that is easily digestible for us and the public. The other issue is how does Council provide assurance to the public that Bluffton-Hilton Head Chamber is spending funds in the right way and that it has been verified. The question is do we put that in an ordinance, do we send someone from council to inspect, or have someone from administration to inspect and if someone does how do we make that public knowledge.

Council Member Passiment suggested to take the data that is before us, use it as a baseline and categorize it. The ordinance talks about what a DMO is supposed to do for tourism in this area. It can be deciphered that way and once we have that we can go to other chambers and ask them to do the same thing. If they cannot or will not, we may have to create an ordinance with specificity to outline if they are going to be receiving money this what we are going to do analyze the money given.

Rob Wells, Beaufort Chamber of Commerce, stated that they have the capability of putting their receipts in a consolidated format and are willing to work with Council and get that to them.

Committee Chairman Hervochon asked if it will be possible to receive that in three weeks or so?

Rob Wells- replied Yes, three weeks is plenty and they submitted a memo that went with the expenditures but can diversify that.

Committee Chairman Hervochon would like to add this as an action item at the next council meeting.

2020 GO Bond Projects

Discussion: The original bond was to be issued in 2019, but administration waited until August 2020 so that they could combine this issuance with the issuance for the Rural and Critical lands bond, which was a cost savings. Some of the original projects have changed scope or have been eliminated, so therefore redefining the project list for this issuance. There was over a year between the initial approval and the issuance of the 2020 GO Bond for \$11,775,000.00. Additional costs at the Arthur Horne Building and the Detention Center resulted in a need for reallocation of funds. New projects were also added such as Solid Waste material recovery facility and HVAC repair for the Federal Courthouse.

Ms. Jacobs stated it was previously approved for the issuance of a GO bond and recently that bond was for \$11-Million-dollar bond was sold & back in April. There was discussion of the different types of projects that would be funded and some have had changes.

2020 GO Bond

Original Items to be funded:

Bond Revenue: \$11,775,000.00

Outlays:

Bond Issuance Cost: Original \$100,000.00 Amended \$50,000.00

Technology Equipment: Original \$3,000,000.00 Amended \$2,700,000.00

IT Arthur Horne: Original \$0 Amended \$300,000.00

Courthouse: Original \$0 Amended \$300,000.00

Material Recovery Facility MuRF: Original \$0 Amended \$1,900,000.00

Public Facilities Relocation Renovation: Original \$3,500,000.00 Amended \$0

Detention Center: Original \$1,000,000.00 Amended \$1,575,000.00

Arthur Horne: Original \$3,500,000.00 Amended \$4,775,000.00

TCL-CAI Payments: Original \$500,000.00 Amended \$0

Contingency: Original \$175,000.00 Amended: \$175,000.00

Council Member Rodman wanted to know more about TCL- Culinary Arts Institute, and was it paid from a different fund?

Ms. Jacobs stated that it was paid out of the Buckwalter Multi-County Industrial Park.

Council Member Rodman mentioned that some of them has some sizable increases, will these be coming forward to Council to be approved since it will be an amendment to existing contacts.

Jared Fralix, Assistant County Administrator stated that for the Arthur Horne project there wasn't a change order for the contractor for their scope of work, just the relocation of equipment and demolishing. The demolishing will be brought through PF at a later date. MurF, that is still under development but that will come forward as well.

Council Member Rodman stated that Council has talked about a bond anticipation note and that is something that needs to revisit since the GO bond is detailed to where we spending the money.

COVID-19 RESPONSE GRANT FOR ELECTION OFFICIALS- Marie Smalls, Director Board of Voters of Registration and Elections of Beaufort County

Discussion: Marie Smalls stated that The grant funds we are seeking is from the center for tech and civic life organization which is a public supported 501-C3 non-profit organization and they are offering this grant to local election offices over the country and we thought this would give Beaufort the opportunity to participate and receive additional funds to assist with our COVID efforts to keep our polling location and our poll works safe during elections. We are asking that Beaufort County be the governing body to accept those funds on behalf of The Board of Voters Registration and Elections.

Committee Chairman Hervochon asked what is the amount of the grant?

Ms. Smalls stated that they are proposing to use the funds for cleaning, because sometimes they are required to pay for the facility to be clean after leaving, to fund the satellite office in Hilton Head and also give additional pay to poll workers as hazardous pay.

Link for grant information: <https://www.techandcivicliflife.org/our-work/election-officials/grants>

BOARDS AND COMMISSIONS

Consideration of the appointment of Ian Scott for the Airports Board.

Motion: It was moved by Council Member Passiment, seconded by Council Member Howard to approved the appointment of Ian Scott for the Airports Board. The Vote: Unanimous without objection. The motion passed. 10:0

CITIZEN COMMENTS

There are no citizen comments per Clerk to Council, Sarah Brock.

There are no citizen comments on Facebook Live per Council Member Covert.

ADJOURNMENT

The meeting adjourned at 3:25 pm.

Ratified by Committee:



BEAUFORT COUNTY COUNCIL AGENDA ITEM SUMMARY

Item 6.

ITEM TITLE:
<i>Introduction of Whitney Richland as the new CFO</i>
MEETING NAME AND DATE:
Finance Committee 10/19/2020
PRESENTER INFORMATION:
<i>Ashley Jacobs</i> <i>Five minutes</i>
ITEM BACKGROUND:
<i>Introduction to Whitney Richland as the new CFO for Beaufort County</i>
PROJECT / ITEM NARRATIVE:
FISCAL IMPACT:
<i>None</i>
STAFF RECOMMENDATIONS TO COUNCIL:
<i>N/A</i>
OPTIONS FOR COUNCIL MOTION:
<i>N/A</i>

NOW, THEREFORE, BE IT ORDAINED by the County Council in a meeting duly assembled as follows:

Section 1. In order to promote industry, develop trade, and utilize and employ the manpower, products, and natural resources of the State of South Carolina by assisting the Company to expand or locate an industrial facility in the State of South Carolina, the Fee Agreement is hereby authorized, ratified, and approved.

Section 2. It is hereby found, determined, and declared by the County Council, as follows:

- (a) The Project will constitute a “project” as said term is referred to and defined in the Act, and the County’s actions herein will subserve the purposes and in all respects conform to the provisions and requirements of the Act.
- (b) The Project and the payments in lieu of taxes set forth herein are beneficial to the County, and the County has evaluated the Project based upon all criteria prescribed by law, including the anticipated dollar amount and nature of the investment to be made and the anticipated costs and benefits to the County.
- (c) The Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally.
- (d) 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.
- (e) The purposes to be accomplished by the Project, i.e., economic development, creation of jobs, and addition to the tax base of the County, are proper governmental and public purposes.
- (f) The inducement of the location or expansion of the Project within the County and State is of paramount importance.
- (g) The benefits of the Project to the public will be greater than the costs.

Section 3. The form, terms, and provisions of the Fee Agreement presented to this meeting are hereby approved, and all of the terms, provisions, and conditions thereof are incorporated herein by reference as if the Fee Agreement were set out in this Ordinance in its entirety. The Chairman of the County Council and/or the County Administrator are authorized, empowered, and directed to execute, acknowledge, and deliver the Fee Agreement in the name of and on behalf of the County, and thereupon to cause the Fee Agreement to be delivered to the Company. The Fee Agreement is to be in substantially the form now before this meeting and hereby approved, with such changes therein as shall not be materially adverse to the County and as shall be approved by the officials of the County executing the same, upon the advice of Counsel to the County, such official’s execution thereof to constitute conclusive evidence of

such official's approval of any and all changes or revisions therein from the form of the Fee Agreement now before this meeting.

Section 4. The Chairman of the County Council and/or the County Administrator, for and on behalf of the County, are hereby authorized and directed to do any and all things necessary to effect the execution and delivery of the Fee Agreement and the performance of all obligations of the County under and pursuant to the Fee Agreement.

Section 5. 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 6. All orders, resolutions, ordinances, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed, and this Ordinance shall take effect and be in full force from and after its passage and approval.

(SIGNATURE PAGE TO FOLLOW)

FEE AGREEMENT

Between

BEAUFORT COUNTY, SOUTH CAROLINA

and

PROJECT GLASS

Dated as of _____, 2020

RECAPITULATION OF CONTENTS OF
FEE AGREEMENT PURSUANT TO S.C. CODE §12-44-55(A)

The parties have agreed to waive this requirement pursuant to S.C. Code Ann. § 12-44-55(B).

FEE AGREEMENT

THIS FEE AGREEMENT (the “Fee Agreement”) is made and entered into as of _____, 2020 by and between BEAUFORT COUNTY, SOUTH CAROLINA (the “County”), a body politic and corporate and a political subdivision of the State of South Carolina (the “State”), acting by and through the Beaufort County Council (the “County Council”) as the governing body of the County, and a company currently identified as PROJECT GLASS (the “Company”).

RECITALS

1. Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (the “Act”) authorizes the County (i) to induce industries to locate in the State; (ii) to encourage industries now located in the State to expand their investments and thus make use of and employ manpower, products, and other resources of the State; and (iii) to enter into a fee agreement with entities meeting the requirements of such Act, which identifies certain property of such entities as economic development property.

2. Pursuant to Section 12-44-40(H)(1) of the Act, the County finds that: (a) the Project (as defined herein) is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; (b) the Project gives rise to no pecuniary liability of the County or any incorporated municipality and to no charge against its general credit or taxing power; (c) the purposes to be accomplished by the Project are proper governmental and public purposes; and (d) the benefits of the Project are greater than the costs.

3. The County Council has evaluated the Project based on all relevant criteria that include, but are not limited to, the purposes the Project is to accomplish, the anticipated dollar amount and nature of the investment, and the anticipated costs and benefits to the County.

4. An Ordinance that the County Council adopted on _____, 2020 (the “Fee Ordinance”) authorizes the County and the Company to enter into a Fee Agreement that classifies the Project as Economic Development Property under the Act and provides for the payment of fees in lieu of taxes, all as further described herein.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the respective representations and agreements hereinafter contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 The terms that this Article defines shall for all purposes of this Fee Agreement have the meanings herein specified, unless the context clearly requires otherwise:

“Act” shall mean Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended, and all future acts successor or supplemental thereto or amendatory thereof.

“Act Minimum Investment Requirement” shall mean an investment of at least \$2,500,000 by the Company of property eligible as economic development property under the Act, provided, however, that in the event of a reduction of the minimum investment level in Section 12-44-30(14) or any successor section by legislative action, then the Act Minimum Investment Requirement shall equal such reduced amount.

“Commencement Date” shall mean the last day of the property tax year during which the Project or the first Phase thereof is placed in service, which date must not be later than the last day of the property tax year which is three years from the year in which the County and the Company enter into this Fee Agreement.

“Company” shall mean the company currently identified as Project Glass and any surviving, resulting, or transferee entity in any merger, consolidation, or transfer of assets; or any other person or entity which may succeed to the rights and duties of the Company.

“County” shall mean Beaufort County, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina, its successors and assigns, acting by and through the County Council as the governing body of the County.

“County Council” shall mean the Beaufort County Council, the governing body of the County.

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

“Diminution in Value” in respect of the Project or any Phase of the Project shall mean any reduction in the value using the original fair market value (without regard to depreciation) as determined in Step 1 of Section 4.1(a) of this Fee Agreement, of the items which constitute a part of the Project or such Phase and which are subject to FILOT payments which may be caused by (i) the Company’s removal and/or disposal of equipment pursuant to Section 4.6 of this Fee Agreement; (ii) a casualty to the Project, such Phase of the Project, or any part thereof, described in Section 4.7 of this Fee Agreement; or (iii) a condemnation of the Project, such Phase of the Project, or any part thereof, described in Section 4.8 of this Fee Agreement.

“Economic Development Property” shall mean those items of real and tangible personal property of the Project which are eligible for inclusion as economic development property under the Act, selected and identified by the Company in its annual filing of a SCDOR PT-300S or comparable form with the Department (as such filing may be amended from time to time) for each year within the Investment Period.

“Equipment” shall mean all of the machinery, equipment, furniture, office equipment, and fixtures, together with any and all additions, accessions, replacements, and substitutions thereto or therefor used or to be used in the County by the Company for the purposes described in Section 2.2(b) hereof, provided, however, that repairs, alterations, or modifications to personal property which is not economic development property or property subject to a fee in lieu of taxes prior to this Fee Agreement, are not eligible to become Economic Development Property, except for modifications which constitute an expansion of existing real property improvements.

“Event of Default” shall mean any event of default specified in Section 5.1 of this Fee Agreement.

“Exemption Period” shall mean the period beginning on the first day of the property tax year after the property tax year in which an applicable piece of Economic Development Property is placed in service and ending on the Termination Date. In case there are Phases of the Project, the Exemption Period applies to each year’s investment made during the Investment Period.

“Fee,” “Fee in Lieu of Taxes,” “FILOT,” or “Payments in Lieu of Taxes” shall mean the amount paid or to be paid in lieu of *ad valorem* property taxes as provided herein.

“Fee Agreement” shall mean this Fee Agreement.

“Fee Term” shall mean the period from the date of this Fee Agreement until the Termination Date.

“Improvements” shall mean all improvements to the Real Property, including buildings, building additions, roads, sewer lines, and infrastructure, together with any and all additions, fixtures, accessions, replacements, and substitutions thereto or therefor used or to be used in the County for the purposes described in Section 2.2(b) hereof; provided, however, that repairs, alterations, or modifications to real property which is not economic development property or property subject to a fee in lieu of taxes prior to this Fee Agreement, are not eligible to become Economic Development Property, except for modifications which constitute an expansion of existing real property improvements.

“Industrial Development Park” shall mean the industrial or business park developed by two or more counties as defined in Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended.

“Investment Period” shall mean the period beginning with the first day of any purchase or acquisition of Economic Development Property and ending five years after the Commencement Date, provided that the Company and the County may agree to a later date pursuant to Section 12-44-30(13) of the Act.

“MCIP Act” shall mean Title 4, Chapter 1, Sections 170 et seq. of the Code of Laws of South Carolina, 1976, as amended.

“Phase” or “Phases” in respect of the Project shall mean that the Equipment, Improvements, and/or Real Property of the Project are placed in service during more than one year in the Investment Period, and the word “Phase” shall therefore refer to the applicable portion of the Project placed in service in a given year in the Investment Period.

“Project” shall mean all the Equipment, Improvements, and/or Real Property located on the Real Property in the County and that the Company determines to be necessary, suitable, or useful for the purposes that Section 2.2(b) describes, and first placed in service in calendar year 2020 or thereafter. The Project shall not include existing buildings and improvements on the Real Property, as of the date of the commencement of the Project by the Company, and any

machinery and equipment which have previously been subject to South Carolina *ad valorem* taxation.

“Real Property” shall mean real property that the Company uses or will use in the County for the purposes that Section 2.2(b) describes, and generally located on the land identified on Exhibit A hereto, together with all and singular the rights, members, hereditaments, and appurtenances belonging or in any way incident or appertaining thereto.

“Removed Components” shall mean the following types of components or Phases of the Project or portions thereof which are subject to FILOT payments, all of which the Company shall be entitled to remove from the Project with the result that the same shall no longer be subject to the terms of the Fee Agreement: (a) components or Phases of the Project or portions thereof which the Company, in its sole discretion, determines to be inadequate, obsolete, worn-out, uneconomic, damaged, unsuitable, undesirable, or unnecessary pursuant to Section 4.6 hereof or otherwise; or (b) components or Phases of the Project or portions thereof which the Company in its sole discretion, elects to be treated as removed pursuant to Section 4.7(c) or Section 4.8(b)(iii) of this Fee Agreement.

“Replacement Property” shall mean any property which is placed in service as a replacement for any item of Equipment, any Improvement, or any Real Property previously subject to this Fee Agreement regardless of whether such property serves the same functions as the property it is replacing and regardless of whether more than one piece of property replaces any item of Equipment, any Improvement, or any Real Property, to the fullest extent that the Act permits.

“Sponsor” shall mean an entity that joins with or is an affiliate of, the Company and that participates in the investment in, or financing of, the Project and which meets the requirements under the Act to be entitled to the benefits of this Agreement with respect to its participation in the Project.

“Termination Date” shall mean in case the entire Project is placed in service in one year, the end of the last day of the property tax year which is the 19th year following the first property tax year in which the entire Project is placed in service, or in case there are Phases of the Project, the Termination Date shall mean with respect to each Phase of the Project the end of the last day of the property tax year which is the 19th year following the first property tax year in which such Phase of the Project is placed in service, provided, that the intention of the parties is that the Company will make at least 20 annual FILOT payments under Article IV hereof with respect to each Phase of the Project and provided further, that if this Fee Agreement is terminated earlier in accordance with the terms hereof, the Termination Date is the date of such termination.

Any reference to any agreement or document in this Article I or otherwise in this Fee Agreement shall include any and all amendments, supplements, addenda, and modifications to such agreement or document.

Section 1.2 The term “investment” or “invest” as used herein shall include not only investments made by the Company, but also to the fullest extent permitted by law, those investments made by or for the benefit of the Company in connection with the Project through

federal, state, or local grants, to the extent such investments are subject to *ad valorem* taxes or FILOT payments by the Company.

ARTICLE II

REPRESENTATIONS, WARRANTIES, AND AGREEMENTS

Section 2.1 Representations, Warranties, and Agreements of the County. The County hereby represents, warrants, and agrees as follows:

(a) The County is a body politic and corporate and a political subdivision of the State and acts through the County Council as its governing body. The Act authorizes and empowers the County to enter into the transactions that this Fee Agreement contemplates and to carry out its obligations hereunder. The County has duly authorized the execution and delivery of this Fee Agreement and any and all other agreements described herein or therein and has obtained all consents from third parties and taken all actions necessary or that the law requires to fulfill its obligations hereunder.

(b) Based upon representations by the Company, the Project constitutes a “project” within the meaning of the Act, and the County is a County that the Act authorizes to enter into fee in lieu of tax agreements with companies that satisfy the Act Minimum Investment Requirement within the County.

(c) The County has agreed that each item of real and tangible personal property comprising the Project which is eligible to be economic development property under the Act and that the Company selects shall be considered Economic Development Property and is thereby exempt from *ad valorem* taxation in South Carolina.

(d) The millage rate in Section 4.1 hereof is 286.70 mills, the millage rate in effect with respect to the location of the proposed Project on June 30, 2020, as provided under Section 12-44-50(A)(1)(d) of the Act.

(e) The County will not be in default in any of its obligations (contractual or otherwise), including any violation of its statutory debt limit, as a result of entering into and performing under this Fee Agreement and/or as a result of creating an Industrial Development Park encompassing the Project.

(f) The County will take all reasonable action to include the Project in an Industrial Development Park.

Section 2.2 Representations, Warranties, and Agreements of the Company. The Company hereby represents, warrants, and agrees as follows:

(a) The Company is in good standing under the laws of the State of South Carolina, is duly authorized to transact business in the State of South Carolina, has power to enter into this Fee Agreement, and has duly authorized the execution and delivery of this Fee Agreement.

(b) The Company intends to operate the Project as a “project” within the meaning of the Act as in effect on the date hereof. The Company intends to operate the Project as a manufacturing facility and for such other purposes that the Act permits as the Company may deem appropriate.

(c) The Company will use commercially reasonable efforts to ensure that its investment in Economic Development Property of the Project will exceed the Act Minimum Investment Requirement.

ARTICLE III

COMMENCEMENT AND COMPLETION OF THE PROJECT

Section 3.1 The Project. The Company intends to invest in Equipment, Improvements, and/or Real Property, which together comprise the Project and which are anticipated to create at least the Act Minimum Investment Requirement in eligible Economic Development Property investment subject to Payments in Lieu of Taxes in the County.

The parties hereto agree that, to the extent that applicable law allows or is revised or construed to allow the benefits of the Act, in the form of Payments-in-Lieu-of-Taxes to be made under Article IV hereof, to be applicable to leased assets including, but not limited to a building and/or personal property to be installed in the buildings and leased to but not purchased by the Company from one or more Sponsors under any form of lease, then such property shall, at the election of the Company, be subject to Payments-in-Lieu-of-Taxes to the same extent as the Company’s assets covered by this Fee Agreement, subject, at all times, to the requirement of such applicable law. The parties hereto further agree that this Fee Agreement may be interpreted or modified as may be necessary or appropriate in order to give proper application of this Fee Agreement to such tangible property without such construction or modification constituting an amendment to this Fee Agreement, and thus not requiring any additional action by the County Council. The County Manager, after consulting with the County Attorney, shall be and hereby is authorized to make such modifications, if any, as may be necessary or appropriate in connection therewith. Such leased property shall constitute a part of the Project for all purposes of this Agreement, including the calculation of the Clawback Minimum Requirements, removal, replacement, and termination, and such Sponsor shall be deemed to be a party to this Agreement provided, however, that no Sponsor shall be liable for any payments pursuant to Section 4.2(b) hereof, which shall remain the Company’s liability.

Pursuant to the Act and subject to Section 4.2 hereof, the Company and the County hereby agree that the Company shall identify annually those assets which are eligible for FILOT payments under the Act and which the Company selects for such treatment by listing such assets on the applicable schedule in its annual PT-300 form (or comparable form) to be filed with the Department (as such may be amended from time to time) and that by listing such assets, such assets shall automatically become Economic Development Property and therefore be exempt from all *ad valorem* taxation during the Exemption Period. Anything contained in this Fee Agreement to the contrary notwithstanding, the Company shall not be obligated to complete the acquisition of the Project. However, if the Company does not meet the Act Minimum

Investment Requirement, this Fee Agreement shall be terminated as provided in Section 4.2 hereof.

Section 3.2 Diligent Completion. The Company agrees to use its reasonable efforts to cause the completion of the Project as soon as practicable, but in any event on or prior to the end of the Investment Period.

Section 3.3 Filings and Reports.

(a) Each year during the term of the Fee Agreement, the Company shall deliver to the County, the County Auditor, the County Assessor, and the County Treasurer, a copy of its most recent annual filings with the Department with respect to the Project, not later than 30 days following delivery thereof to the Department.

(b) The Company shall cause the filing of a copy of this Fee Agreement, as well as a copy of the completed Form PT-443 of the Department, to be filed with the County Auditor and the County Assessor of the County and any partner county, when the Project is placed in a joint county industrial and business park, and the Department within 30 days after the date of execution and delivery hereof by all parties hereto.

(c) The Company agrees to maintain complete books and records accounting for the acquisition, financing, construction, and operation of the Project. Such books and records shall (i) permit ready identification of the various Phases and components thereof; (ii) confirm the dates on which each Phase was placed in service; and (iii) include copies of all filings made by the Company in accordance with Section 3.3(a) or (b) above with respect to property placed in service as part of the Project.

(d) Whenever the County shall be required by any governmental or financing entity to file or produce any reports, notices, returns, or other documents related to this transaction while this Fee Agreement is in effect, the Company shall promptly furnish to the County through the County Administrator the completed form of such required documents, to the extent that the Company possesses the information necessary to complete the documents. In the event of a failure or refusal of the Company to comply with this provision, within 30 days after presentation of a statement by the County, the Company shall pay the attorney's fees the County incurs in producing and filing such documents and any fees, penalties, assessments, or damages that the law imposes upon the County by reason of its failure duly to file or produce such documents.

ARTICLE IV

PAYMENTS IN LIEU OF TAXES

Section 4.1 Negotiated Payments.

(a) Pursuant to Section 12-44-50 of the Act, the Company is required to make payments in lieu of *ad valorem* taxes to the County with respect to the Economic Development Property. Inasmuch as the Company anticipates an initial investment of sums sufficient for the Project to qualify for a fee in lieu of tax arrangement under Section 12-44-50(A)(1) of the Act, the County and the Company have negotiated the amount of the Payments in Lieu of Taxes in

accordance therewith. The Company shall make payments in lieu of *ad valorem* taxes on all Economic Development Property which comprises the Project and is placed in service, as follows: the Company shall make payments in lieu of *ad valorem* taxes during the Exemption Period with respect to the Economic Development Property or, if there are Phases of the Economic Development Property, with respect to each Phase of the Economic Development Property, said payments to be made annually and to be due and payable and subject to penalty assessments on the same dates and in the same manner as prescribed by the County for *ad valorem* taxes. The determination of the amount of such annual Payments in Lieu of Taxes shall be in accordance with the following procedure (subject, in any event, to the procedures that the Act requires):

- Step 1: Determine the fair market value of the Economic Development Property (or Phase of the Economic Development Property) placed in service during the Exemption Period using original income tax basis for State income tax purposes for any Real Property and Improvements without regard to depreciation (provided, the fair market value of real property, as the Act defines such term, that the Company obtains by construction or purchase in an arms length transaction is equal to the original income tax basis, and otherwise, the determination of the fair market value is by appraisal) and original income tax basis for State income tax purposes for any personal property less depreciation for each year allowable for property tax purposes, except that no extraordinary obsolescence shall be allowable. The fair market value of the Real Property for the first year of the Fee Term remains the fair market value of the Real Property for the life of the Fee Term. The determination of these values shall take into account all applicable property tax exemptions that State law would allow to the Company if the property were taxable, except those exemptions that Section 12-44-50(A)(2) of the Act specifically disallows.
- Step 2: Apply an assessment ratio of six percent (6%) to the fair market value in Step 1 to establish the taxable value of the Economic Development Property (or each Phase of the Economic Development Property) in the year it is placed in service and in each of the 19 years thereafter or such longer period of years in which the Act permits the Company to make annual fee payments.
- Step 3: Use a fixed millage rate equal to the millage rate in effect on June 30, 2020, which is 286.70 mills, as Section 12-44-50(A)(1)(d) of the Act provides, during the Exemption Period against the taxable value to determine the amount of the Payments in Lieu of Taxes due during the Exemption Period on the payment dates that the County prescribes for such payments or such longer period of years in which the Act permits the Company to make annual fee payments.

(b) In the event that a final order of a court of competent jurisdiction or an agreement of the parties determines that the calculation of the minimum Payment in Lieu of Taxes

applicable to this transaction is to be other than by the procedure herein, the payment shall be reset at the minimum permitted level so determined.

In the event that a final order of a court of competent jurisdiction from which no further appeal is allowable declares the Act and/or the herein-described Payments in Lieu of Taxes invalid or unenforceable, in whole or in part, for any reason, the parties express their intentions to reform such payments so as to effectuate most closely the intent thereof and so as to afford the Company with the benefits to be derived herefrom, the intention of the County being to offer the Company a strong inducement to locate the Project in the County. If the Economic Development Property is deemed to be subject to *ad valorem* taxation, this Fee Agreement shall terminate, and the Company shall pay the County regular *ad valorem* taxes from the date of termination, but with appropriate reductions equivalent to all tax exemptions which are afforded to the Company. Any amount determined to be due and owing to the County from the Company, with respect to a year or years for which the Company previously remitted Payments in Lieu of Taxes to the County hereunder, shall (i) take into account all applicable tax exemptions to which the Company would be entitled if the Economic Development Property was not and had not been Economic Development Property under the Act; and (ii) be reduced by the total amount of Payments in Lieu of Taxes the Company had made with respect to the Project pursuant to the terms hereof. Notwithstanding anything contained herein to the contrary, neither the Company nor any successor in title or interest shall be required to pay FILOT payments and *ad valorem* taxes for the same property over the same period in question.

(c) The County's right to receive FILOT payments hereunder shall have a first priority lien status pursuant to Sections 12-44-90(E) and (F) of the Act and Chapters 4, 49, 51, 53, and 54 of Title 12 of the Code of Laws of South Carolina, 1976, as amended.

(d) In the event the Company should fail to make any of the payments that this Article IV requires, the item or installment so in default shall continue as an obligation of the Company until the Company shall have fully paid the amount, and the Company agrees to pay the same with interest thereon at a rate of 5% per annum, compounded monthly, to accrue from the date on which the payment was due and, in the case of FILOT payments, subject to the penalties the law provides until payment.

Section 4.2 Failure to Achieve Act Minimum Investment Requirement.

(a) In the event that the cost of the Economic Development Property (without regard to depreciation) that the Company acquires does not reach the Act Minimum Investment Requirement by the end of the Investment Period, this Fee Agreement shall terminate as to such entity failing to meet the minimum investment level. In such event, the Company shall pay the County an amount (the "Additional Payment") pursuant to the Act which is equal to the excess, if any, of (i) the total amount of *ad valorem* taxes as would result from taxes levied on the Project by the County, municipality or municipalities, school district or school districts, and other political units as if the items of property comprising the Economic Development Property were not Economic Development Property, but with appropriate reductions equivalent to all tax exemptions and abatements to which the Company would be entitled in such a case, through and including the end of the Investment Period, over (ii) the total amount of FILOT payments the Company has made with respect to the Economic Development Property through and including

the end of the Investment Period. Any amounts determined to be owing pursuant to the foregoing sentence shall be subject to the minimum amount of interest that the Act may require.

(b) The County's right to receive FILOT payments hereunder shall have a first priority lien status pursuant to Sections 12-44-90(E) and (F) of the Act and Chapters 4, 49, 51, 53, and 54 of Title 12 of the Code of Laws of South Carolina, 1976, as amended.

(c) In the event the Company should fail to make any of the payments that this Article IV requires, the item or installment so in default shall continue as an obligation of the Company until the Company shall have fully paid the amount, and the Company agrees to pay the same with interest thereon at a rate of 5% per annum, compounded monthly, to accrue from the date on which the payment was due and, in the case of FILOT payments, subject to the penalties the law provides until payment.

Section 4.3 Payments in Lieu of Taxes on Replacement Property. If the Company elects to replace any Removed Components and to substitute such Removed Components with Replacement Property as a part of the Economic Development Property, or the Company otherwise utilizes Replacement Property, then, pursuant and subject to Section 12-44-60 of the Act, the Company shall make statutory payments in lieu of *ad valorem* taxes with regard to such Replacement Property in accordance with the following:

(i) Replacement Property does not have to serve the same function as the Economic Development Property it is replacing. Replacement Property is deemed to replace the oldest Economic Development Property subject to the Fee, whether real or personal, which is disposed of in the same property tax year in which the Replacement Property is placed in service. Replacement Property qualifies as Economic Development Property only to the extent of the original income tax basis of Economic Development Property which is being disposed of in the same property tax year. More than one piece of property can replace a single piece of Economic Development Property. To the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the Economic Development Property which it is replacing, the excess amount is subject to annual payments calculated as if the exemption for Economic Development Property were not allowable. Replacement Property is entitled to treatment under the Fee Agreement for the period of time remaining during the Exemption Period for the Economic Development Property which it is replacing; and

(ii) The new Replacement Property which qualifies for the Fee shall be recorded using its income tax basis, and the calculation of the Fee shall utilize the millage rate and assessment ratio in effect with regard to the original property subject to the Fee.

Section 4.4 Reductions in Payments of Taxes Upon Removal, Condemnation, or Casualty. In the event of a Diminution in Value of the Economic Development Property or any Phase of the Economic Development Property, the Payment in Lieu of Taxes with regard to the Economic Development Property or that Phase of the Economic Development Property shall be

reduced in the same proportion as the amount of such Diminution in Value bears to the original fair market value of the Economic Development Property or that Phase of the Economic Development Property as determined pursuant to Step 1 of Section 4.1(a) hereof; *provided, however*, that if at any time subsequent to the end of the Investment Period, the total value of the Project based on the original income tax basis of the Equipment, Real Property, and Improvements contained therein, without deduction for depreciation, is less than the Act Minimum Investment Requirement, beginning with the first payment thereafter due hereunder and continuing until the end of the Fee Term, the Company shall no longer be entitled to the incentive provided in Section 4.1, and the Company shall therefore commence to pay regular *ad valorem* taxes on the Economic Development Property part of the Project.

Section 4.5 Place and Allocation of Payments in Lieu of Taxes. The Company shall make the above-described Payments in Lieu of Taxes directly to the County in accordance with applicable law.

Section 4.6 Removal of Equipment. Subject, always, to the other terms and provisions hereof, the Company shall be entitled to remove and dispose of components or Phases of the Project from the Project in its sole discretion with the result that said components or Phases shall no longer be considered a part of the Project and, to the extent such constitute Economic Development Property, shall no longer be subject to the terms of this Fee Agreement to the fullest extent allowed by the Act, as amended. Economic Development Property is disposed of only when it is scrapped or sold or it is removed from the Project. If it is removed from the Project, it is subject to *ad valorem* property taxes to the extent the Property remains in the State and is otherwise subject to *ad valorem* property taxes.

Section 4.7 Damage or Destruction of Economic Development Property.

(a) Election to Terminate. In the event the Economic Development Property is damaged by fire, explosion, or any other casualty, the Company shall be entitled to terminate this Fee Agreement. The Company shall only be required to make FILOT payments as to all or any part of the tax year in which the damage or casualty occurs to the extent property subject to *ad valorem* taxes would otherwise have been subject to such taxes under the same circumstances for the period in question.

(b) Election to Rebuild. In the event the Economic Development Property is damaged by fire, explosion, or any other casualty, and if the Company does not elect to terminate this Fee Agreement, the Company may commence to restore the Economic Development Property with such reductions or enlargements in the scope of the Economic Development Property, changes, alterations, and modifications (including the substitution and addition of other property) as may be desired by the Company. All such restorations and replacements shall be considered, to the fullest extent permitted by law and this Fee Agreement, substitutions of the destroyed portions of the Economic Development Property and shall be considered part of the Economic Development Property for all purposes hereof, including, but not limited to, any amounts due by the Company to the County under Section 4.1 hereof.

(c) Election to Remove. In the event the Company elects not to terminate this Fee Agreement pursuant to subsection (a) and elects not to rebuild pursuant to subsection (b), the

damaged portions of the Economic Development Property shall be treated as Removed Components.

Section 4.8 Condemnation.

(a) Complete Taking. If at any time during the Fee Term title to or temporary use of the Economic Development Property should become vested in a public or quasi-public authority by virtue of the exercise of a taking by condemnation, inverse condemnation, or the right of eminent domain; by voluntary transfer under threat of such taking; or by a taking of title to a portion of the Economic Development Property which renders continued use or occupancy of the Economic Development Property commercially unfeasible in the judgment of the Company, the Company shall have the option to terminate this Fee Agreement by sending written notice to the County within a reasonable period of time following such vesting. The Company shall only be required to make FILOT payments as to all or any part of the tax year in which the taking occurs to the extent property subject to *ad valorem* taxes would otherwise have been subject to such taxes under the same circumstances for the period in question.

(b) Partial Taking. In the event of a partial taking of the Economic Development Property or a transfer in lieu thereof, the Company may elect: (i) to terminate this Fee Agreement; (ii) subject to the Act and the terms and provisions of this Fee Agreement, to repair and restore the Economic Development Property, with such reductions or enlargements in the scope of the Economic Development Property, changes, alterations, and modifications (including the substitution and addition of other property) as the Company may desire, and all such changes, alterations, and modifications shall be considered as substitutions of the taken parts of the Economic Development Property; or (iii) to treat the portions of the Economic Development Property so taken as Removed Components.

(c) The Company shall only be required to make FILOT payments as to all or any part of the tax year in which the taking occurs to the extent property subject to *ad valorem* taxes would otherwise have been subject to such taxes under the same circumstances for the period in question.

Section 4.9 Confidentiality/Limitation on Access to Project. The County acknowledges and understands that the Company utilizes confidential and proprietary processes and materials, services, equipment, trade secrets, and techniques (herein “Confidential Information”) and that any disclosure of Confidential Information concerning the Company’s operations may result in substantial harm to the Company and could thereby have a significant detrimental impact on the Company’s employees and also upon the County. The Company acknowledges that the County is subject to the Freedom of Information Act, and, as a result, must disclose certain documents and information on request absent an exemption. For these reasons, the Company shall clearly label all Confidential Information it delivers to the County “Confidential Information.” Therefore, the County agrees that, except as required by law, neither the County nor any employee, agent, or contractor of the County shall (i) request or be entitled to receive any such Confidential Information, or (ii) disclose or otherwise divulge any such Confidential Information to any other person, firm, governmental body or agency, or any other entity unless specifically required to do so by law; provided, however, that the County shall have no less rights concerning information relating to the Project and the Company than

concerning any other property or property taxpayer in the County, and, provided further, that the confidentiality of such confidential or proprietary information is clearly disclosed to the County in writing as previously described. Prior to disclosing any Confidential Information, subject to the requirements of law, the Company may require the execution of reasonable, individual, confidentiality and non-disclosure agreements by any officers, employees, or agents of the County or any supporting or cooperating governmental agencies who would gather, receive, or review such information. In the event that the County is required to disclose any Confidential Information obtained from the Company to any third party, the County agrees to provide the Company with as much advance notice as possible of such requirement before making such disclosure, and to cooperate reasonably with any attempts by the Company to obtain judicial or other relief from such disclosure requirement.

Section 4.10 Assignment. With the prior written consent of the County or a subsequent written ratification by the County, which consent or ratification the County will not unreasonably withhold unless Section 12-44-120 of the Act or any successor provision expressly does not require consent, and in accordance with the Act, the Company may assign this Fee Agreement in whole or in part. The Company agrees to notify the County and the Department of the identity of such transferee within 60 days of the transfer. In case of a transfer, the transferee assumes the transferor's basis in the Project for purposes of calculating the Fee. No approval is required for transfers to sponsor affiliates or other financing related transfers, as defined in the Act.

Section 4.11 No Double Payment; Future Changes in Legislation.

(a) Notwithstanding anything contained herein to the contrary, and except as expressly required by law, neither the Company nor any Sponsor shall ever be required to make a Payment in Lieu of Taxes in addition to a regular property tax payment in the same year over the same piece of property, nor shall the Company or any Sponsor be required to make a Payment in Lieu of Taxes on property in cases where, absent this Fee Agreement, property taxes would otherwise not be due on such property.

In case there is any legislation enacted which provides for more favorable treatment for property to qualify as, or for the calculation of the fee related to, Economic Development Property under Sections 4.4, 4.6, 4.7, 4.8, or the calculation of the Investment Period, the County agrees to give expedient and full consideration to such legislation, with a view to allow for such more favorable treatment or calculation.

Section 4.12 Administration Expenses.

(a) The Company agrees to pay the reasonable and necessary expenses that the County incurs with respect to the execution and administration of this Fee Agreement, including without limitation reasonable and actual attorney's fees (the "Administration Expenses"); provided, however, that no such expense shall be an Administration Expense until the County has furnished to the Company a statement in writing indicating the amount of such expense and the reason for its incurrence.

ARTICLE V

DEFAULT

Section 5.1 Events of Default. The following shall be “Events of Default” under this Fee Agreement, and the term “Events of Default” shall mean, whenever used with reference to this Fee Agreement, any one or more of the following occurrences:

(a) Failure by the Company to make the Payments in Lieu of Taxes described in Section 4.1 hereof, which failure shall not have been cured within 30 days following receipt of written notice thereof from the County; *provided, however*, that the Company shall be entitled to all redemption rights granted by applicable statutes; or

(b) A representation or warranty made by the Company which is deemed materially incorrect when deemed made; or

(c) Failure by the Company to perform any of the terms, conditions, obligations, or covenants hereunder (other than those under (a) above), which failure shall continue for a period of 30 days after written notice from the County to the Company specifying such failure and requesting that it be remedied, unless the Company shall have instituted corrective action within such time period and is diligently pursuing such action until the default is corrected, in which case the 30-day period shall be extended to cover such additional period during which the Company is diligently pursuing corrective action; or

(d) A representation or warranty made by the County which is deemed materially incorrect when deemed made; or

(e) Failure by the County to perform any of the terms, conditions, obligations, or covenants hereunder, which failure shall continue for a period of 30 days after written notice from the Company to the County specifying such failure and requesting that it be remedied, unless the County shall have instituted corrective action within such time period and is diligently pursuing such action until the default is corrected, in which case the 30-day period shall be extended to cover such additional period during which the County is diligently pursuing corrective action; or

(f) A cessation of operations at the Project by the Company.

Section 5.2 Remedies on Default.

(a) Whenever any Event of Default by the Company shall have occurred and shall be continuing, the County may take any one or more of the following remedial actions:

- (1) terminate the Fee Agreement; or
- (2) take whatever action at law or in equity may appear necessary or desirable to collect the amounts due hereunder. In no event shall the Company be liable to the County or otherwise for monetary damages resulting from the Company’s failure to meet the Act Minimum Investment Requirement, other than as expressly set forth herein.

In addition to all other remedies provided herein, the failure to make FILOT payments shall give rise to a lien for tax purposes as Section 12-44-90 of the Act provides. In this regard, and notwithstanding anything in this Fee Agreement to the contrary, the County may exercise the remedies that general law (including Title 12, Chapter 49 of the Code of Laws of South Carolina, 1976, as amended) provides with regard to the enforced collection of *ad valorem* taxes to collect any FILOT payments due hereunder.

(b) Whenever any Event of Default by the County shall have occurred or shall be continuing, the Company may take one or more of the following actions:

- (1) bring an action for specific enforcement;
- (2) terminate the Fee Agreement; or
- (3) in case of a materially incorrect representation or warranty, take such action as is appropriate, including legal action, to recover its damages, to the extent allowed by law.

Section 5.3 Reimbursement of Legal Fees and Expenses and Other Expenses. Upon the occurrence of an Event of Default hereunder, should a party be required to employ attorneys or incur other reasonable expenses for the collection of payments due hereunder or for the enforcement of performance or observance of any obligation or agreement, the successful party shall be entitled, within 30 days of demand therefor, to reimbursement of the reasonable fees of such attorneys and such other reasonable expenses so incurred. The Company further agrees to pay reasonable legal fees and expenses and other expenses of the County.

Section 5.4 No Waiver. No failure or delay on the part of any party hereto in exercising any right, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy hereunder. No waiver of any provision hereof shall be effective unless the same shall be in writing and signed by the waiving party hereto.

ARTICLE VI

MISCELLANEOUS

Section 6.1 Notices. Any notice, election, demand, request, or other communication to be provided under this Fee Agreement shall be effective when delivered to the party named below or when deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed as follows (or addressed to such other address as any party shall have previously furnished in writing to the other party), except where the terms hereof require receipt rather than sending of any notice, in which case such provision shall control:

IF TO THE COMPANY:

Project Glass
Attn: _____

[Insert notice person and address for final reading.]

IF TO THE COUNTY:

Beaufort County, South Carolina
Attn: County Attorney
100 Ribaut Road
Beaufort, SC 29902

WITH A COPY TO:

Haynsworth Sinkler Boyd, P.A.
Attn: William R. Johnson
P.O. Box 11889
Columbia, SC 29211

Section 6.2 Binding Effect. This Fee Agreement and each document contemplated hereby or related hereto shall be binding upon and inure to the benefit of the Company, the County, and their respective successors and assigns. In the event of the dissolution of the County or the consolidation of any part of the County with any other political subdivision or the transfer of any rights of the County to any other such political subdivision, all of the covenants, stipulations, promises, and agreements of this Fee Agreement shall bind and inure to the benefit of the successors of the County from time to time and any entity, officer, board, commission, agency, or instrumentality to whom or to which any power or duty of the County has been transferred.

Section 6.3 Counterparts. This Fee Agreement may be executed in any number of counterparts, and all of the counterparts taken together shall be deemed to constitute one and the same instrument.

Section 6.4 Governing Law. This Fee Agreement and all documents executed in connection herewith shall be construed in accordance with and governed by the laws of the State of South Carolina.

Section 6.5 Headings. The headings of the articles and sections of this Fee Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Fee Agreement.

Section 6.6 Amendments. The provisions of this Fee Agreement may only be modified or amended in writing by any agreement or agreements entered into between the parties.

Section 6.7 Further Assurance. From time to time, and at the expense of the Company, to the extent any expense is incurred, the County agrees to execute and deliver to the Company such additional instruments as the Company may reasonably request and as are authorized by law and reasonably within the purposes and scope of the Act and Fee Agreement to effectuate the purposes of this Fee Agreement.

Section 6.8 Invalidity; Change in Laws. In the event that the inclusion of property as Economic Development Property or any other issue is unclear under this Fee Agreement, the County hereby expresses its intention that the interpretation of this Fee Agreement shall be in a manner that provides for the broadest inclusion of property under the terms of this Fee Agreement and the maximum incentive permissible under the Act, to the extent not inconsistent with any of the explicit terms hereof. If any provision of this Fee Agreement is declared illegal, invalid, or unenforceable for any reason, the remaining provisions hereof shall be unimpaired, and such illegal, invalid, or unenforceable provision shall be reformed to effectuate most closely the legal, valid, and enforceable intent thereof and so as to afford the Company with the maximum benefits to be derived herefrom, it being the intention of the County to offer the Company the strongest inducement possible, within the provisions of the Act, to locate the Project in the County. In case a change in the Act or South Carolina laws eliminates or reduces any of the restrictions or limitations applicable to the Company and the Fee incentive, the parties agree that the County will give expedient and full consideration to reformation of this Fee Agreement, and, if the County Council so decides, to provide the Company with the benefits of such change in the Act or South Carolina laws.

Section 6.9 Force Majeure. The Company shall not be responsible for any delays or non-performance caused in whole or in part, directly or indirectly, by strikes, accidents, freight embargoes, fires, floods, inability to obtain materials, conditions arising from governmental orders or regulations, war or national emergency, acts of God, and any other cause, similar or dissimilar, beyond the Company's reasonable control.

Section 6.10 Termination by Company. The Company is authorized to terminate this Fee Agreement at any time with respect to all or part of the Project upon providing the County with 30 days' notice; *provided, however*, that (i) any monetary obligations existing hereunder and due and owing at the time of termination to a party hereto; and (ii) any provisions which are intended to survive termination shall survive such termination. In the year following such termination, all property shall be subject to ad valorem taxation or such other taxation or fee in lieu of taxation that would apply absent this agreement. The Company's obligation to make fee in lieu of tax payments under this Fee Agreement shall terminate in the year following the year of such termination pursuant to this section.

Section 6.11 Entire Understanding. This Fee Agreement expresses the entire understanding and all agreements of the parties hereto with each other, 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 Fee Agreement or in certificates delivered in connection with the execution and delivery hereof.

Section 6.12 Waiver. Either party may waive compliance by the other party with any term or condition of this Fee Agreement only in a writing signed by the waiving party.

Section 6.13 Business Day. In the event that any action, payment, or notice is, by the terms of this Fee Agreement, required to be taken, made, or given on any day which is a Saturday, Sunday, or legal holiday in the jurisdiction in which the person obligated to act is domiciled, such action, payment, or notice may be taken, made, or given on the following business day with the same effect as if given as required hereby, and no interest shall accrue in the interim.

Section 6.14 Limitation of Liability. Anything herein to the contrary notwithstanding, any financial obligation the County may incur hereunder, including for the payment of money shall not be deemed to constitute a pecuniary liability or a debt or general obligation of the County; provided, however, that nothing herein shall prevent the Company from enforcing its rights hereunder by suit for *mandamus* or specific performance.

ARTICLE VII

INDEMNIFICATION, INDIVIDUAL LIABILITY

Section 7.1 Indemnification Covenants.

(a) Notwithstanding any other provisions in this Fee Agreement or in any other agreements with the County (i) the Company shall agree to indemnify and save the County, its members, officers, employees, servants, and agents (collectively, the “Indemnified Parties”), harmless against and from all claims by or on behalf of any person, firm, or corporation arising from the conduct or management of, or from any work or thing done on the Project during the Fee Term, and, the Company further shall indemnify and save the Indemnified Parties harmless against and from all claims arising during the Fee Term from (A) any condition of the Project, (B) any breach or default on the part of the Company in the performance of any of its obligations under this Fee Agreement, (C) any act of negligence of the Company, or of any agents, contractors, servants, employees, or licensees, (D) except in such cases where the County has released the Company, any act of negligence of any assignee or sublessee of the Company, or of any agents, contractors, servants, employees, or licensees of any assignee or sublessee of Company, and/or (E) any environmental violation, condition, or effect. The Company shall indemnify and save the County harmless from and against all costs and expenses incurred in or in connection with any such claim arising as aforesaid or in connection with any action or proceeding brought thereon, and upon notice from the County, the Company shall defend it in any such action, prosecution, or proceeding.

(b) Notwithstanding the fact that it is the intention of the parties that the Indemnified Parties shall not incur pecuniary liability by reason of the terms of this Fee Agreement, or the undertakings required of the County hereunder, by reason of the granting of the Fee, by reason of the execution of this Fee Agreement, by reason of the performance of any act requested of it by the Company, or by reason of the County’s relationship to the Project or the operation of the Project 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 the County, its agents, officers, or employees should 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, 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, and upon notice, the Company shall defend them in any such action or proceeding; provided, however, that such indemnity shall not apply to the extent that any such claim is attributable to (i) the gross negligent acts or omissions or willful misconduct of the County, its agents, officers, or employees, or (ii) any breach of this Fee Agreement by the County.

(c) The above-referenced indemnification covenants shall be considered included in and incorporated by reference in subsequent documents after the delivery of this Fee Agreement which the County is requested to sign on behalf of the Company with respect to the Project, and any other indemnification covenants in any subsequent documents shall not be construed to reduce or limit the above indemnification covenants.

(d) No termination of this Fee Agreement pursuant to any provision elsewhere in this Fee Agreement shall relieve the Company of its liability and obligations to make the payments required by this Section 7.1, all of which shall survive any such termination.

Section 7.2 No Liability of County Personnel. 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 shall be binding upon any member of the County Council or any officer, agent, servant, or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse shall be had for the payment of any moneys hereunder against any member of the governing body of the County or any officer, agent, servant, or employee of the County, and no recourse shall be had against any member of the County Council or any officer, agent, servant, or employee of the County for the performance of any of the covenants and agreements of the County herein contained or for any claims based thereon except solely in their official capacity.

(Signature Page Follows)

IN WITNESS WHEREOF, the County, acting by and through the County Council, has caused this Fee Agreement to be executed in its name and behalf by the County Administrator and to be attested by the Clerk of the County Council; and the Company has caused this Fee Agreement to be executed by its duly authorized officer, all as of the day and year first above written.

**BEAUFORT COUNTY,
SOUTH CAROLINA**

Signature: _____
Name: Ashley Jacobs
Title: County Administrator

ATTEST:

Signature: _____
Name: Sarah W. Brock
Title: Clerk to County Council

PROJECT GLASS

Signature: _____
Name: _____
Title: _____

EXHIBIT A
Legal Description

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND, SITUATE, LYING AND BEING ON PORT ROYAL ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA, CONSISTING OF 35.68 ACRES, BEING A PART OF LOTS 6, 7, 10, 11, 22 AND 23 IN SECTION 28, TOWNSHIP ONE (1) NORTH, RANGE TWO (2) WEST AND A PART OF LOTS 58 AND 59, IN SECTION 21, TOWNSHIP ONE (1), RANGE TWO (2) WEST, ACCORDING TO THE SURVEY OF UNITED STATES DIRECT TAX COMMISSIONERS FOR THE DISTRICT OF SOUTH CAROLINA, AND HAVING SUCH METES, COURSES, DISTANCES AND BOUNDS AS MORE FULLY SHOWN BY REFERENCES TO A PLAT PREPARED FOR PNEUMO CORPORATION BY R.D. TROGDON, JR., R.L.S., DATED FEBRUARY 9, 1976, AND RECORDED IN THE OFFICE OF THE CLERK OF COURT FOR BEAUFORT COUNTY IN PLAT BOOK 24, AT PAGE 102.

Being the same property conveyed to Parker-Hannifin Corporation by deed from Pneumo Abex Corporation dated April 10, 1996 and recorded April 15, 1996 in Book 850, Page 975 in the Register of Deeds Office for Beaufort County, South Carolina.

PIN # 100 25 170

Tax Map Number/Parcel ID: *R120 025 000 0170 0000*

FEE AGREEMENT

Between

BEAUFORT COUNTY, SOUTH CAROLINA

and

PROJECT BURGER

Dated as of _____, 2020

RECAPITULATION OF CONTENTS OF
FEE AGREEMENT PURSUANT TO S.C. CODE §12-44-55(A)

The parties have agreed to waive this requirement pursuant to S.C. Code Ann. § 12-44-55(B).

FEE AGREEMENT

THIS FEE AGREEMENT (the “Fee Agreement”) is made and entered into as of _____, 2020 by and between BEAUFORT COUNTY, SOUTH CAROLINA (the “County”), a body politic and corporate and a political subdivision of the State of South Carolina (the “State”), acting by and through the Beaufort County Council (the “County Council”) as the governing body of the County, and a company currently identified as PROJECT BURGER (the “Company”).

RECITALS

1. Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (the “Act”) authorizes the County *(i)* to induce industries to locate in the State; *(ii)* to encourage industries now located in the State to expand their investments and thus make use of and employ manpower, products, and other resources of the State; and *(iii)* to enter into a fee agreement with entities meeting the requirements of such Act, which identifies certain property of such entities as economic development property.

2. Pursuant to Section 12-44-40(H)(1) of the Act, the County finds that: (a) the Project (as defined herein) is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; (b) the Project gives rise to no pecuniary liability of the County or any incorporated municipality and to no charge against its general credit or taxing power; (c) the purposes to be accomplished by the Project are proper governmental and public purposes; and (d) the benefits of the Project are greater than the costs.

3. The County Council has evaluated the Project based on all relevant criteria that include, but are not limited to, the purposes the Project is to accomplish, the anticipated dollar amount and nature of the investment, and the anticipated costs and benefits to the County.

4. An Ordinance that the County Council adopted on _____, 2020 (the “Fee Ordinance”) authorizes the County and the Company to enter into a Fee Agreement that classifies the Project as Economic Development Property under the Act and provides for the payment of fees in lieu of taxes, all as further described herein.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the respective representations and agreements hereinafter contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 The terms that this Article defines shall for all purposes of this Fee Agreement have the meanings herein specified, unless the context clearly requires otherwise:

“Act” shall mean Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended, and all future acts successor or supplemental thereto or amendatory thereof.

“Act Minimum Investment Requirement” shall mean an investment of at least \$2,500,000 by the Company of property eligible as economic development property under the Act, provided, however, that in the event of a reduction of the minimum investment level in Section 12-44-30(14) or any successor section by legislative action, then the Act Minimum Investment Requirement shall equal such reduced amount.

“Commencement Date” shall mean the last day of the property tax year during which the Project or the first Phase thereof is placed in service, which date must not be later than the last day of the property tax year which is three years from the year in which the County and the Company enter into this Fee Agreement.

“Company” shall mean the company currently identified as Project Burger and any surviving, resulting, or transferee entity in any merger, consolidation, or transfer of assets; or any other person or entity which may succeed to the rights and duties of the Company.

“County” shall mean Beaufort County, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina, its successors and assigns, acting by and through the County Council as the governing body of the County.

“County Council” shall mean the Beaufort County Council, the governing body of the County.

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

“Diminution in Value” in respect of the Project or any Phase of the Project shall mean any reduction in the value using the original fair market value (without regard to depreciation) as determined in Step 1 of Section 4.1(a) of this Fee Agreement, of the items which constitute a part of the Project or such Phase and which are subject to FILOT payments which may be caused by (i) the Company’s removal and/or disposal of equipment pursuant to Section 4.6 of this Fee Agreement; (ii) a casualty to the Project, such Phase of the Project, or any part thereof, described in Section 4.7 of this Fee Agreement; or (iii) a condemnation of the Project, such Phase of the Project, or any part thereof, described in Section 4.8 of this Fee Agreement.

“Economic Development Property” shall mean those items of real and tangible personal property of the Project which are eligible for inclusion as economic development property under the Act, selected and identified by the Company in its annual filing of a SCDOR PT-300S or comparable form with the Department (as such filing may be amended from time to time) for each year within the Investment Period.

“Equipment” shall mean all of the machinery, equipment, furniture, office equipment, and fixtures, together with any and all additions, accessions, replacements, and substitutions thereto or therefor used or to be used in the County by the Company for the purposes described in Section 2.2(b) hereof, provided, however, that repairs, alterations, or modifications to personal property which is not economic development property or property subject to a fee in lieu of taxes prior to this Fee Agreement, are not eligible to become Economic Development Property, except for modifications which constitute an expansion of existing real property improvements.

“Event of Default” shall mean any event of default specified in Section 5.1 of this Fee Agreement.

“Exemption Period” shall mean the period beginning on the first day of the property tax year after the property tax year in which an applicable piece of Economic Development Property is placed in service and ending on the Termination Date. In case there are Phases of the Project, the Exemption Period applies to each year’s investment made during the Investment Period.

“Fee,” “Fee in Lieu of Taxes,” “FILOT,” or “Payments in Lieu of Taxes” shall mean the amount paid or to be paid in lieu of *ad valorem* property taxes as provided herein.

“Fee Agreement” shall mean this Fee Agreement.

“Fee Term” shall mean the period from the date of this Fee Agreement until the Termination Date.

“Improvements” shall mean all improvements to the Real Property, including buildings, building additions, roads, sewer lines, and infrastructure, together with any and all additions, fixtures, accessions, replacements, and substitutions thereto or therefor used or to be used in the County for the purposes described in Section 2.2(b) hereof; provided, however, that repairs, alterations, or modifications to real property which is not economic development property or property subject to a fee in lieu of taxes prior to this Fee Agreement, are not eligible to become Economic Development Property, except for modifications which constitute an expansion of existing real property improvements.

“Industrial Development Park” shall mean the industrial or business park developed by two or more counties as defined in Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended.

“Investment Period” shall mean the period beginning with the first day of any purchase or acquisition of Economic Development Property and ending five years after the Commencement Date, provided that the Company and the County may agree to a later date pursuant to Section 12-44-30(13) of the Act.

“MCIP Act” shall mean Title 4, Chapter 1, Sections 170 et seq. of the Code of Laws of South Carolina, 1976, as amended.

“Phase” or “Phases” in respect of the Project shall mean that the Equipment, Improvements, and/or Real Property of the Project are placed in service during more than one year in the Investment Period, and the word “Phase” shall therefore refer to the applicable portion of the Project placed in service in a given year in the Investment Period.

“Project” shall mean all the Equipment, Improvements, and/or Real Property located on the Real Property in the County and that the Company determines to be necessary, suitable, or useful for the purposes that Section 2.2(b) describes, and first placed in service in calendar year 2020 or thereafter. The Project shall not include existing buildings and improvements on the Real Property, as of the date of the commencement of the Project by the Company, and any

machinery and equipment which have previously been subject to South Carolina *ad valorem* taxation.

“Real Property” shall mean real property that the Company uses or will use in the County for the purposes that Section 2.2(b) describes, and generally located on the land identified on Exhibit A hereto, together with all and singular the rights, members, hereditaments, and appurtenances belonging or in any way incident or appertaining thereto.

“Removed Components” shall mean the following types of components or Phases of the Project or portions thereof which are subject to FILOT payments, all of which the Company shall be entitled to remove from the Project with the result that the same shall no longer be subject to the terms of the Fee Agreement: (a) components or Phases of the Project or portions thereof which the Company, in its sole discretion, determines to be inadequate, obsolete, worn-out, uneconomic, damaged, unsuitable, undesirable, or unnecessary pursuant to Section 4.6 hereof or otherwise; or (b) components or Phases of the Project or portions thereof which the Company in its sole discretion, elects to be treated as removed pursuant to Section 4.7(c) or Section 4.8(b)(iii) of this Fee Agreement.

“Replacement Property” shall mean any property which is placed in service as a replacement for any item of Equipment, any Improvement, or any Real Property previously subject to this Fee Agreement regardless of whether such property serves the same functions as the property it is replacing and regardless of whether more than one piece of property replaces any item of Equipment, any Improvement, or any Real Property, to the fullest extent that the Act permits.

“Sponsor” shall mean an entity that joins with or is an affiliate of, the Company and that participates in the investment in, or financing of, the Project and which meets the requirements under the Act to be entitled to the benefits of this Agreement with respect to its participation in the Project.

“Termination Date” shall mean in case the entire Project is placed in service in one year, the end of the last day of the property tax year which is the 19th year following the first property tax year in which the entire Project is placed in service, or in case there are Phases of the Project, the Termination Date shall mean with respect to each Phase of the Project the end of the last day of the property tax year which is the 19th year following the first property tax year in which such Phase of the Project is placed in service, provided, that the intention of the parties is that the Company will make at least 20 annual FILOT payments under Article IV hereof with respect to each Phase of the Project and provided further, that if this Fee Agreement is terminated earlier in accordance with the terms hereof, the Termination Date is the date of such termination.

Any reference to any agreement or document in this Article I or otherwise in this Fee Agreement shall include any and all amendments, supplements, addenda, and modifications to such agreement or document.

Section 1.2 The term “investment” or “invest” as used herein shall include not only investments made by the Company, but also to the fullest extent permitted by law, those investments made by or for the benefit of the Company in connection with the Project through

federal, state, or local grants, to the extent such investments are subject to *ad valorem* taxes or FILOT payments by the Company.

ARTICLE II

REPRESENTATIONS, WARRANTIES, AND AGREEMENTS

Section 2.1 Representations, Warranties, and Agreements of the County. The County hereby represents, warrants, and agrees as follows:

(a) The County is a body politic and corporate and a political subdivision of the State and acts through the County Council as its governing body. The Act authorizes and empowers the County to enter into the transactions that this Fee Agreement contemplates and to carry out its obligations hereunder. The County has duly authorized the execution and delivery of this Fee Agreement and any and all other agreements described herein or therein and has obtained all consents from third parties and taken all actions necessary or that the law requires to fulfill its obligations hereunder.

(b) Based upon representations by the Company, the Project constitutes a “project” within the meaning of the Act, and the County is a County that the Act authorizes to enter into fee in lieu of tax agreements with companies that satisfy the Act Minimum Investment Requirement within the County.

(c) The County has agreed that each item of real and tangible personal property comprising the Project which is eligible to be economic development property under the Act and that the Company selects shall be considered Economic Development Property and is thereby exempt from *ad valorem* taxation in South Carolina.

(d) The millage rate in Section 4.1 hereof is 285 mills, the millage rate in effect with respect to the location of the proposed Project on June 30, 2020, as provided under Section 12-44-50(A)(1)(d) of the Act.

(e) The County will not be in default in any of its obligations (contractual or otherwise), including any violation of its statutory debt limit, as a result of entering into and performing under this Fee Agreement and/or as a result of creating an Industrial Development Park encompassing the Project.

(f) The County will take all reasonable action to include the Project in an Industrial Development Park.

Section 2.2 Representations, Warranties, and Agreements of the Company. The Company hereby represents, warrants, and agrees as follows:

(a) The Company is in good standing under the laws of the State of South Carolina, is duly authorized to transact business in the State of South Carolina, has power to enter into this Fee Agreement, and has duly authorized the execution and delivery of this Fee Agreement.

(b) The Company intends to operate the Project as a “project” within the meaning of the Act as in effect on the date hereof. The Company intends to operate the Project as a manufacturing facility and for such other purposes that the Act permits as the Company may deem appropriate.

(c) The Company will use commercially reasonable efforts to ensure that its investment in Economic Development Property of the Project will exceed the Act Minimum Investment Requirement.

ARTICLE III

COMMENCEMENT AND COMPLETION OF THE PROJECT

Section 3.1 The Project. The Company intends to invest in Equipment, Improvements, and/or Real Property, which together comprise the Project and which are anticipated to create at least the Act Minimum Investment Requirement in eligible Economic Development Property investment subject to Payments in Lieu of Taxes in the County.

The parties hereto agree that, to the extent that applicable law allows or is revised or construed to allow the benefits of the Act, in the form of Payments-in-Lieu-of-Taxes to be made under Article IV hereof, to be applicable to leased assets including, but not limited to a building and/or personal property to be installed in the buildings and leased to but not purchased by the Company from one or more Sponsors under any form of lease, then such property shall, at the election of the Company, be subject to Payments-in-Lieu-of-Taxes to the same extent as the Company’s assets covered by this Fee Agreement, subject, at all times, to the requirement of such applicable law. The parties hereto further agree that this Fee Agreement may be interpreted or modified as may be necessary or appropriate in order to give proper application of this Fee Agreement to such tangible property without such construction or modification constituting an amendment to this Fee Agreement, and thus not requiring any additional action by the County Council. The County Manager, after consulting with the County Attorney, shall be and hereby is authorized to make such modifications, if any, as may be necessary or appropriate in connection therewith. Such leased property shall constitute a part of the Project for all purposes of this Agreement, including the calculation of the Clawback Minimum Requirements, removal, replacement, and termination, and such Sponsor shall be deemed to be a party to this Agreement provided, however, that no Sponsor shall be liable for any payments pursuant to Section 4.2(b) hereof, which shall remain the Company’s liability.

Pursuant to the Act and subject to Section 4.2 hereof, the Company and the County hereby agree that the Company shall identify annually those assets which are eligible for FILOT payments under the Act and which the Company selects for such treatment by listing such assets on the applicable schedule in its annual PT-300 form (or comparable form) to be filed with the Department (as such may be amended from time to time) and that by listing such assets, such assets shall automatically become Economic Development Property and therefore be exempt from all *ad valorem* taxation during the Exemption Period. Anything contained in this Fee Agreement to the contrary notwithstanding, the Company shall not be obligated to complete the acquisition of the Project. However, if the Company does not meet the Act Minimum

Investment Requirement, this Fee Agreement shall be terminated as provided in Section 4.2 hereof.

Section 3.2 Diligent Completion. The Company agrees to use its reasonable efforts to cause the completion of the Project as soon as practicable, but in any event on or prior to the end of the Investment Period.

Section 3.3 Filings and Reports.

(a) Each year during the term of the Fee Agreement, the Company shall deliver to the County, the County Auditor, the County Assessor, and the County Treasurer, a copy of its most recent annual filings with the Department with respect to the Project, not later than 30 days following delivery thereof to the Department.

(b) The Company shall cause the filing of a copy of this Fee Agreement, as well as a copy of the completed Form PT-443 of the Department, to be filed with the County Auditor and the County Assessor of the County and any partner county, when the Project is placed in a joint county industrial and business park, and the Department within 30 days after the date of execution and delivery hereof by all parties hereto.

(c) The Company agrees to maintain complete books and records accounting for the acquisition, financing, construction, and operation of the Project. Such books and records shall (i) permit ready identification of the various Phases and components thereof; (ii) confirm the dates on which each Phase was placed in service; and (iii) include copies of all filings made by the Company in accordance with Section 3.3(a) or (b) above with respect to property placed in service as part of the Project.

(d) Whenever the County shall be required by any governmental or financing entity to file or produce any reports, notices, returns, or other documents related to this transaction while this Fee Agreement is in effect, the Company shall promptly furnish to the County through the County Administrator the completed form of such required documents, to the extent that the Company possesses the information necessary to complete the documents. In the event of a failure or refusal of the Company to comply with this provision, within 30 days after presentation of a statement by the County, the Company shall pay the attorney's fees the County incurs in producing and filing such documents and any fees, penalties, assessments, or damages that the law imposes upon the County by reason of its failure duly to file or produce such documents.

ARTICLE IV

PAYMENTS IN LIEU OF TAXES

Section 4.1 Negotiated Payments.

(a) Pursuant to Section 12-44-50 of the Act, the Company is required to make payments in lieu of *ad valorem* taxes to the County with respect to the Economic Development Property. Inasmuch as the Company anticipates an initial investment of sums sufficient for the Project to qualify for a fee in lieu of tax arrangement under Section 12-44-50(A)(1) of the Act, the County and the Company have negotiated the amount of the Payments in Lieu of Taxes in

accordance therewith. The Company shall make payments in lieu of *ad valorem* taxes on all Economic Development Property which comprises the Project and is placed in service, as follows: the Company shall make payments in lieu of *ad valorem* taxes during the Exemption Period with respect to the Economic Development Property or, if there are Phases of the Economic Development Property, with respect to each Phase of the Economic Development Property, said payments to be made annually and to be due and payable and subject to penalty assessments on the same dates and in the same manner as prescribed by the County for *ad valorem* taxes. The determination of the amount of such annual Payments in Lieu of Taxes shall be in accordance with the following procedure (subject, in any event, to the procedures that the Act requires):

- Step 1: Determine the fair market value of the Economic Development Property (or Phase of the Economic Development Property) placed in service during the Exemption Period using original income tax basis for State income tax purposes for any Real Property and Improvements without regard to depreciation (provided, the fair market value of real property, as the Act defines such term, that the Company obtains by construction or purchase in an arms length transaction is equal to the original income tax basis, and otherwise, the determination of the fair market value is by appraisal) and original income tax basis for State income tax purposes for any personal property less depreciation for each year allowable for property tax purposes, except that no extraordinary obsolescence shall be allowable. The fair market value of the Real Property for the first year of the Fee Term remains the fair market value of the Real Property for the life of the Fee Term. The determination of these values shall take into account all applicable property tax exemptions that State law would allow to the Company if the property were taxable, except those exemptions that Section 12-44-50(A)(2) of the Act specifically disallows.
- Step 2: Apply an assessment ratio of six percent (6%) to the fair market value in Step 1 to establish the taxable value of the Economic Development Property (or each Phase of the Economic Development Property) in the year it is placed in service and in each of the 19 years thereafter or such longer period of years in which the Act permits the Company to make annual fee payments.
- Step 3: Use a fixed millage rate equal to the millage rate in effect on June 30, 2020, which is 285 mills, as Section 12-44-50(A)(1)(d) of the Act provides, during the Exemption Period against the taxable value to determine the amount of the Payments in Lieu of Taxes due during the Exemption Period on the payment dates that the County prescribes for such payments or such longer period of years in which the Act permits the Company to make annual fee payments.

(b) In the event that a final order of a court of competent jurisdiction or an agreement of the parties determines that the calculation of the minimum Payment in Lieu of Taxes

applicable to this transaction is to be other than by the procedure herein, the payment shall be reset at the minimum permitted level so determined.

In the event that a final order of a court of competent jurisdiction from which no further appeal is allowable declares the Act and/or the herein-described Payments in Lieu of Taxes invalid or unenforceable, in whole or in part, for any reason, the parties express their intentions to reform such payments so as to effectuate most closely the intent thereof and so as to afford the Company with the benefits to be derived herefrom, the intention of the County being to offer the Company a strong inducement to locate the Project in the County. If the Economic Development Property is deemed to be subject to *ad valorem* taxation, this Fee Agreement shall terminate, and the Company shall pay the County regular *ad valorem* taxes from the date of termination, but with appropriate reductions equivalent to all tax exemptions which are afforded to the Company. Any amount determined to be due and owing to the County from the Company, with respect to a year or years for which the Company previously remitted Payments in Lieu of Taxes to the County hereunder, shall (i) take into account all applicable tax exemptions to which the Company would be entitled if the Economic Development Property was not and had not been Economic Development Property under the Act; and (ii) be reduced by the total amount of Payments in Lieu of Taxes the Company had made with respect to the Project pursuant to the terms hereof. Notwithstanding anything contained herein to the contrary, neither the Company nor any successor in title or interest shall be required to pay FILOT payments and *ad valorem* taxes for the same property over the same period in question.

(c) The County's right to receive FILOT payments hereunder shall have a first priority lien status pursuant to Sections 12-44-90(E) and (F) of the Act and Chapters 4, 49, 51, 53, and 54 of Title 12 of the Code of Laws of South Carolina, 1976, as amended.

(d) In the event the Company should fail to make any of the payments that this Article IV requires, the item or installment so in default shall continue as an obligation of the Company until the Company shall have fully paid the amount, and the Company agrees to pay the same with interest thereon at a rate of 5% per annum, compounded monthly, to accrue from the date on which the payment was due and, in the case of FILOT payments, subject to the penalties the law provides until payment.

Section 4.2 Failure to Achieve Act Minimum Investment Requirement.

(a) In the event that the cost of the Economic Development Property (without regard to depreciation) that the Company acquires does not reach the Act Minimum Investment Requirement by the end of the Investment Period, this Fee Agreement shall terminate as to such entity failing to meet the minimum investment level. In such event, the Company shall pay the County an amount (the "Additional Payment") pursuant to the Act which is equal to the excess, if any, of (i) the total amount of *ad valorem* taxes as would result from taxes levied on the Project by the County, municipality or municipalities, school district or school districts, and other political units as if the items of property comprising the Economic Development Property were not Economic Development Property, but with appropriate reductions equivalent to all tax exemptions and abatements to which the Company would be entitled in such a case, through and including the end of the Investment Period, over (ii) the total amount of FILOT payments the Company has made with respect to the Economic Development Property through and including

the end of the Investment Period. Any amounts determined to be owing pursuant to the foregoing sentence shall be subject to the minimum amount of interest that the Act may require.

(b) The County’s right to receive FILOT payments hereunder shall have a first priority lien status pursuant to Sections 12-44-90(E) and (F) of the Act and Chapters 4, 49, 51, 53, and 54 of Title 12 of the Code of Laws of South Carolina, 1976, as amended.

(c) In the event the Company should fail to make any of the payments that this Article IV requires, the item or installment so in default shall continue as an obligation of the Company until the Company shall have fully paid the amount, and the Company agrees to pay the same with interest thereon at a rate of 5% per annum, compounded monthly, to accrue from the date on which the payment was due and, in the case of FILOT payments, subject to the penalties the law provides until payment.

Section 4.3 Payments in Lieu of Taxes on Replacement Property. If the Company elects to replace any Removed Components and to substitute such Removed Components with Replacement Property as a part of the Economic Development Property, or the Company otherwise utilizes Replacement Property, then, pursuant and subject to Section 12-44-60 of the Act, the Company shall make statutory payments in lieu of *ad valorem* taxes with regard to such Replacement Property in accordance with the following:

(i) Replacement Property does not have to serve the same function as the Economic Development Property it is replacing. Replacement Property is deemed to replace the oldest Economic Development Property subject to the Fee, whether real or personal, which is disposed of in the same property tax year in which the Replacement Property is placed in service. Replacement Property qualifies as Economic Development Property only to the extent of the original income tax basis of Economic Development Property which is being disposed of in the same property tax year. More than one piece of property can replace a single piece of Economic Development Property. To the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the Economic Development Property which it is replacing, the excess amount is subject to annual payments calculated as if the exemption for Economic Development Property were not allowable. Replacement Property is entitled to treatment under the Fee Agreement for the period of time remaining during the Exemption Period for the Economic Development Property which it is replacing; and

(ii) The new Replacement Property which qualifies for the Fee shall be recorded using its income tax basis, and the calculation of the Fee shall utilize the millage rate and assessment ratio in effect with regard to the original property subject to the Fee.

Section 4.4 Reductions in Payments of Taxes Upon Removal, Condemnation, or Casualty. In the event of a Diminution in Value of the Economic Development Property or any Phase of the Economic Development Property, the Payment in Lieu of Taxes with regard to the Economic Development Property or that Phase of the Economic Development Property shall be

reduced in the same proportion as the amount of such Diminution in Value bears to the original fair market value of the Economic Development Property or that Phase of the Economic Development Property as determined pursuant to Step 1 of Section 4.1(a) hereof; *provided, however*, that if at any time subsequent to the end of the Investment Period, the total value of the Project based on the original income tax basis of the Equipment, Real Property, and Improvements contained therein, without deduction for depreciation, is less than the Act Minimum Investment Requirement, beginning with the first payment thereafter due hereunder and continuing until the end of the Fee Term, the Company shall no longer be entitled to the incentive provided in Section 4.1, and the Company shall therefore commence to pay regular *ad valorem* taxes on the Economic Development Property part of the Project.

Section 4.5 Place and Allocation of Payments in Lieu of Taxes. The Company shall make the above-described Payments in Lieu of Taxes directly to the County in accordance with applicable law.

Section 4.6 Removal of Equipment. Subject, always, to the other terms and provisions hereof, the Company shall be entitled to remove and dispose of components or Phases of the Project from the Project in its sole discretion with the result that said components or Phases shall no longer be considered a part of the Project and, to the extent such constitute Economic Development Property, shall no longer be subject to the terms of this Fee Agreement to the fullest extent allowed by the Act, as amended. Economic Development Property is disposed of only when it is scrapped or sold or it is removed from the Project. If it is removed from the Project, it is subject to *ad valorem* property taxes to the extent the Property remains in the State and is otherwise subject to *ad valorem* property taxes.

Section 4.7 Damage or Destruction of Economic Development Property.

(a) Election to Terminate. In the event the Economic Development Property is damaged by fire, explosion, or any other casualty, the Company shall be entitled to terminate this Fee Agreement. The Company shall only be required to make FILOT payments as to all or any part of the tax year in which the damage or casualty occurs to the extent property subject to *ad valorem* taxes would otherwise have been subject to such taxes under the same circumstances for the period in question.

(b) Election to Rebuild. In the event the Economic Development Property is damaged by fire, explosion, or any other casualty, and if the Company does not elect to terminate this Fee Agreement, the Company may commence to restore the Economic Development Property with such reductions or enlargements in the scope of the Economic Development Property, changes, alterations, and modifications (including the substitution and addition of other property) as may be desired by the Company. All such restorations and replacements shall be considered, to the fullest extent permitted by law and this Fee Agreement, substitutions of the destroyed portions of the Economic Development Property and shall be considered part of the Economic Development Property for all purposes hereof, including, but not limited to, any amounts due by the Company to the County under Section 4.1 hereof.

(c) Election to Remove. In the event the Company elects not to terminate this Fee Agreement pursuant to subsection (a) and elects not to rebuild pursuant to subsection (b), the

damaged portions of the Economic Development Property shall be treated as Removed Components.

Section 4.8 Condemnation.

(a) Complete Taking. If at any time during the Fee Term title to or temporary use of the Economic Development Property should become vested in a public or quasi-public authority by virtue of the exercise of a taking by condemnation, inverse condemnation, or the right of eminent domain; by voluntary transfer under threat of such taking; or by a taking of title to a portion of the Economic Development Property which renders continued use or occupancy of the Economic Development Property commercially unfeasible in the judgment of the Company, the Company shall have the option to terminate this Fee Agreement by sending written notice to the County within a reasonable period of time following such vesting. The Company shall only be required to make FILOT payments as to all or any part of the tax year in which the taking occurs to the extent property subject to *ad valorem* taxes would otherwise have been subject to such taxes under the same circumstances for the period in question.

(b) Partial Taking. In the event of a partial taking of the Economic Development Property or a transfer in lieu thereof, the Company may elect: (i) to terminate this Fee Agreement; (ii) subject to the Act and the terms and provisions of this Fee Agreement, to repair and restore the Economic Development Property, with such reductions or enlargements in the scope of the Economic Development Property, changes, alterations, and modifications (including the substitution and addition of other property) as the Company may desire, and all such changes, alterations, and modifications shall be considered as substitutions of the taken parts of the Economic Development Property; or (iii) to treat the portions of the Economic Development Property so taken as Removed Components.

(c) The Company shall only be required to make FILOT payments as to all or any part of the tax year in which the taking occurs to the extent property subject to *ad valorem* taxes would otherwise have been subject to such taxes under the same circumstances for the period in question.

Section 4.9 Confidentiality/Limitation on Access to Project. The County acknowledges and understands that the Company utilizes confidential and proprietary processes and materials, services, equipment, trade secrets, and techniques (herein “Confidential Information”) and that any disclosure of Confidential Information concerning the Company’s operations may result in substantial harm to the Company and could thereby have a significant detrimental impact on the Company’s employees and also upon the County. The Company acknowledges that the County is subject to the Freedom of Information Act, and, as a result, must disclose certain documents and information on request absent an exemption. For these reasons, the Company shall clearly label all Confidential Information it delivers to the County “Confidential Information.” Therefore, the County agrees that, except as required by law, neither the County nor any employee, agent, or contractor of the County shall (i) request or be entitled to receive any such Confidential Information, or (ii) disclose or otherwise divulge any such Confidential Information to any other person, firm, governmental body or agency, or any other entity unless specifically required to do so by law; provided, however, that the County shall have no less rights concerning information relating to the Project and the Company than

concerning any other property or property taxpayer in the County, and, provided further, that the confidentiality of such confidential or proprietary information is clearly disclosed to the County in writing as previously described. Prior to disclosing any Confidential Information, subject to the requirements of law, the Company may require the execution of reasonable, individual, confidentiality and non-disclosure agreements by any officers, employees, or agents of the County or any supporting or cooperating governmental agencies who would gather, receive, or review such information. In the event that the County is required to disclose any Confidential Information obtained from the Company to any third party, the County agrees to provide the Company with as much advance notice as possible of such requirement before making such disclosure, and to cooperate reasonably with any attempts by the Company to obtain judicial or other relief from such disclosure requirement.

Section 4.10 Assignment. With the prior written consent of the County or a subsequent written ratification by the County, which consent or ratification the County will not unreasonably withhold unless Section 12-44-120 of the Act or any successor provision expressly does not require consent, and in accordance with the Act, the Company may assign this Fee Agreement in whole or in part. The Company agrees to notify the County and the Department of the identity of such transferee within 60 days of the transfer. In case of a transfer, the transferee assumes the transferor's basis in the Project for purposes of calculating the Fee. No approval is required for transfers to sponsor affiliates or other financing related transfers, as defined in the Act.

Section 4.11 No Double Payment; Future Changes in Legislation.

(a) Notwithstanding anything contained herein to the contrary, and except as expressly required by law, neither the Company nor any Sponsor shall ever be required to make a Payment in Lieu of Taxes in addition to a regular property tax payment in the same year over the same piece of property, nor shall the Company or any Sponsor be required to make a Payment in Lieu of Taxes on property in cases where, absent this Fee Agreement, property taxes would otherwise not be due on such property.

In case there is any legislation enacted which provides for more favorable treatment for property to qualify as, or for the calculation of the fee related to, Economic Development Property under Sections 4.4, 4.6, 4.7, 4.8, or the calculation of the Investment Period, the County agrees to give expedient and full consideration to such legislation, with a view to allow for such more favorable treatment or calculation.

Section 4.12 Administration Expenses.

(a) The Company agrees to pay the reasonable and necessary expenses that the County incurs with respect to the execution and administration of this Fee Agreement, including without limitation reasonable and actual attorney's fees (the "Administration Expenses"); provided, however, that no such expense shall be an Administration Expense until the County has furnished to the Company a statement in writing indicating the amount of such expense and the reason for its incurrence.

ARTICLE V

DEFAULT

Section 5.1 Events of Default. The following shall be “Events of Default” under this Fee Agreement, and the term “Events of Default” shall mean, whenever used with reference to this Fee Agreement, any one or more of the following occurrences:

(a) Failure by the Company to make the Payments in Lieu of Taxes described in Section 4.1 hereof, which failure shall not have been cured within 30 days following receipt of written notice thereof from the County; *provided, however*, that the Company shall be entitled to all redemption rights granted by applicable statutes; or

(b) A representation or warranty made by the Company which is deemed materially incorrect when deemed made; or

(c) Failure by the Company to perform any of the terms, conditions, obligations, or covenants hereunder (other than those under (a) above), which failure shall continue for a period of 30 days after written notice from the County to the Company specifying such failure and requesting that it be remedied, unless the Company shall have instituted corrective action within such time period and is diligently pursuing such action until the default is corrected, in which case the 30-day period shall be extended to cover such additional period during which the Company is diligently pursuing corrective action; or

(d) A representation or warranty made by the County which is deemed materially incorrect when deemed made; or

(e) Failure by the County to perform any of the terms, conditions, obligations, or covenants hereunder, which failure shall continue for a period of 30 days after written notice from the Company to the County specifying such failure and requesting that it be remedied, unless the County shall have instituted corrective action within such time period and is diligently pursuing such action until the default is corrected, in which case the 30-day period shall be extended to cover such additional period during which the County is diligently pursuing corrective action; or

(f) A cessation of operations at the Project by the Company.

Section 5.2 Remedies on Default.

(a) Whenever any Event of Default by the Company shall have occurred and shall be continuing, the County may take any one or more of the following remedial actions:

- (1) terminate the Fee Agreement; or
- (2) take whatever action at law or in equity may appear necessary or desirable to collect the amounts due hereunder. In no event shall the Company be liable to the County or otherwise for monetary damages resulting from the Company’s failure to meet the Act Minimum Investment Requirement, other than as expressly set forth herein.

In addition to all other remedies provided herein, the failure to make FILOT payments shall give rise to a lien for tax purposes as Section 12-44-90 of the Act provides. In this regard, and notwithstanding anything in this Fee Agreement to the contrary, the County may exercise the remedies that general law (including Title 12, Chapter 49 of the Code of Laws of South Carolina, 1976, as amended) provides with regard to the enforced collection of *ad valorem* taxes to collect any FILOT payments due hereunder.

(b) Whenever any Event of Default by the County shall have occurred or shall be continuing, the Company may take one or more of the following actions:

- (1) bring an action for specific enforcement;
- (2) terminate the Fee Agreement; or
- (3) in case of a materially incorrect representation or warranty, take such action as is appropriate, including legal action, to recover its damages, to the extent allowed by law.

Section 5.3 Reimbursement of Legal Fees and Expenses and Other Expenses. Upon the occurrence of an Event of Default hereunder, should a party be required to employ attorneys or incur other reasonable expenses for the collection of payments due hereunder or for the enforcement of performance or observance of any obligation or agreement, the successful party shall be entitled, within 30 days of demand therefor, to reimbursement of the reasonable fees of such attorneys and such other reasonable expenses so incurred. The Company further agrees to pay reasonable legal fees and expenses and other expenses of the County.

Section 5.4 No Waiver. No failure or delay on the part of any party hereto in exercising any right, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy hereunder. No waiver of any provision hereof shall be effective unless the same shall be in writing and signed by the waiving party hereto.

ARTICLE VI

MISCELLANEOUS

Section 6.1 Notices. Any notice, election, demand, request, or other communication to be provided under this Fee Agreement shall be effective when delivered to the party named below or when deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed as follows (or addressed to such other address as any party shall have previously furnished in writing to the other party), except where the terms hereof require receipt rather than sending of any notice, in which case such provision shall control:

IF TO THE COMPANY:

Project Burger
Attn: _____

[Insert notice person and address for final reading.]

IF TO THE COUNTY:

Beaufort County, South Carolina
Attn: County Attorney
100 Ribaut Road
Beaufort, SC 29902

WITH A COPY TO:

Haynsworth Sinkler Boyd, P.A.
Attn: William R. Johnson
P.O. Box 11889
Columbia, SC 29211

Section 6.2 Binding Effect. This Fee Agreement and each document contemplated hereby or related hereto shall be binding upon and inure to the benefit of the Company, the County, and their respective successors and assigns. In the event of the dissolution of the County or the consolidation of any part of the County with any other political subdivision or the transfer of any rights of the County to any other such political subdivision, all of the covenants, stipulations, promises, and agreements of this Fee Agreement shall bind and inure to the benefit of the successors of the County from time to time and any entity, officer, board, commission, agency, or instrumentality to whom or to which any power or duty of the County has been transferred.

Section 6.3 Counterparts. This Fee Agreement may be executed in any number of counterparts, and all of the counterparts taken together shall be deemed to constitute one and the same instrument.

Section 6.4 Governing Law. This Fee Agreement and all documents executed in connection herewith shall be construed in accordance with and governed by the laws of the State of South Carolina.

Section 6.5 Headings. The headings of the articles and sections of this Fee Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Fee Agreement.

Section 6.6 Amendments. The provisions of this Fee Agreement may only be modified or amended in writing by any agreement or agreements entered into between the parties.

Section 6.7 Further Assurance. From time to time, and at the expense of the Company, to the extent any expense is incurred, the County agrees to execute and deliver to the Company such additional instruments as the Company may reasonably request and as are authorized by law and reasonably within the purposes and scope of the Act and Fee Agreement to effectuate the purposes of this Fee Agreement.

Section 6.8 Invalidity; Change in Laws. In the event that the inclusion of property as Economic Development Property or any other issue is unclear under this Fee Agreement, the County hereby expresses its intention that the interpretation of this Fee Agreement shall be in a manner that provides for the broadest inclusion of property under the terms of this Fee Agreement and the maximum incentive permissible under the Act, to the extent not inconsistent with any of the explicit terms hereof. If any provision of this Fee Agreement is declared illegal, invalid, or unenforceable for any reason, the remaining provisions hereof shall be unimpaired, and such illegal, invalid, or unenforceable provision shall be reformed to effectuate most closely the legal, valid, and enforceable intent thereof and so as to afford the Company with the maximum benefits to be derived herefrom, it being the intention of the County to offer the Company the strongest inducement possible, within the provisions of the Act, to locate the Project in the County. In case a change in the Act or South Carolina laws eliminates or reduces any of the restrictions or limitations applicable to the Company and the Fee incentive, the parties agree that the County will give expedient and full consideration to reformation of this Fee Agreement, and, if the County Council so decides, to provide the Company with the benefits of such change in the Act or South Carolina laws.

Section 6.9 Force Majeure. The Company shall not be responsible for any delays or non-performance caused in whole or in part, directly or indirectly, by strikes, accidents, freight embargoes, fires, floods, inability to obtain materials, conditions arising from governmental orders or regulations, war or national emergency, acts of God, and any other cause, similar or dissimilar, beyond the Company's reasonable control.

Section 6.10 Termination by Company. The Company is authorized to terminate this Fee Agreement at any time with respect to all or part of the Project upon providing the County with 30 days' notice; *provided, however*, that (i) any monetary obligations existing hereunder and due and owing at the time of termination to a party hereto; and (ii) any provisions which are intended to survive termination shall survive such termination. In the year following such termination, all property shall be subject to ad valorem taxation or such other taxation or fee in lieu of taxation that would apply absent this agreement. The Company's obligation to make fee in lieu of tax payments under this Fee Agreement shall terminate in the year following the year of such termination pursuant to this section.

Section 6.11 Entire Understanding. This Fee Agreement expresses the entire understanding and all agreements of the parties hereto with each other, 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 Fee Agreement or in certificates delivered in connection with the execution and delivery hereof.

Section 6.12 Waiver. Either party may waive compliance by the other party with any term or condition of this Fee Agreement only in a writing signed by the waiving party.

Section 6.13 Business Day. In the event that any action, payment, or notice is, by the terms of this Fee Agreement, required to be taken, made, or given on any day which is a Saturday, Sunday, or legal holiday in the jurisdiction in which the person obligated to act is domiciled, such action, payment, or notice may be taken, made, or given on the following business day with the same effect as if given as required hereby, and no interest shall accrue in the interim.

Section 6.14 Limitation of Liability. Anything herein to the contrary notwithstanding, any financial obligation the County may incur hereunder, including for the payment of money shall not be deemed to constitute a pecuniary liability or a debt or general obligation of the County; provided, however, that nothing herein shall prevent the Company from enforcing its rights hereunder by suit for *mandamus* or specific performance.

ARTICLE VII

INDEMNIFICATION, INDIVIDUAL LIABILITY

Section 7.1 Indemnification Covenants.

(a) Notwithstanding any other provisions in this Fee Agreement or in any other agreements with the County (i) the Company shall agree to indemnify and save the County, its members, officers, employees, servants, and agents (collectively, the “Indemnified Parties”), harmless against and from all claims by or on behalf of any person, firm, or corporation arising from the conduct or management of, or from any work or thing done on the Project during the Fee Term, and, the Company further shall indemnify and save the Indemnified Parties harmless against and from all claims arising during the Fee Term from (A) any condition of the Project, (B) any breach or default on the part of the Company in the performance of any of its obligations under this Fee Agreement, (C) any act of negligence of the Company, or of any agents, contractors, servants, employees, or licensees, (D) except in such cases where the County has released the Company, any act of negligence of any assignee or sublessee of the Company, or of any agents, contractors, servants, employees, or licensees of any assignee or sublessee of Company, and/or (E) any environmental violation, condition, or effect. The Company shall indemnify and save the County harmless from and against all costs and expenses incurred in or in connection with any such claim arising as aforesaid or in connection with any action or proceeding brought thereon, and upon notice from the County, the Company shall defend it in any such action, prosecution, or proceeding.

(b) Notwithstanding the fact that it is the intention of the parties that the Indemnified Parties shall not incur pecuniary liability by reason of the terms of this Fee Agreement, or the undertakings required of the County hereunder, by reason of the granting of the Fee, by reason of the execution of this Fee Agreement, by reason of the performance of any act requested of it by the Company, or by reason of the County’s relationship to the Project or the operation of the Project 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 the County, its agents, officers, or employees should 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, 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, and upon notice, the Company shall defend them in any such action or proceeding; provided, however, that such indemnity shall not apply to the extent that any such claim is attributable to (i) the gross negligent acts or omissions or willful misconduct of the County, its agents, officers, or employees, or (ii) any breach of this Fee Agreement by the County.

(c) The above-referenced indemnification covenants shall be considered included in and incorporated by reference in subsequent documents after the delivery of this Fee Agreement which the County is requested to sign on behalf of the Company with respect to the Project, and any other indemnification covenants in any subsequent documents shall not be construed to reduce or limit the above indemnification covenants.

(d) No termination of this Fee Agreement pursuant to any provision elsewhere in this Fee Agreement shall relieve the Company of its liability and obligations to make the payments required by this Section 7.1, all of which shall survive any such termination.

Section 7.2 No Liability of County Personnel. 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 shall be binding upon any member of the County Council or any officer, agent, servant, or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse shall be had for the payment of any moneys hereunder against any member of the governing body of the County or any officer, agent, servant, or employee of the County, and no recourse shall be had against any member of the County Council or any officer, agent, servant, or employee of the County for the performance of any of the covenants and agreements of the County herein contained or for any claims based thereon except solely in their official capacity.

(Signature Page Follows)

IN WITNESS WHEREOF, the County, acting by and through the County Council, has caused this Fee Agreement to be executed in its name and behalf by the County Administrator and to be attested by the Clerk of the County Council; and the Company has caused this Fee Agreement to be executed by its duly authorized officer, all as of the day and year first above written.

**BEAUFORT COUNTY,
SOUTH CAROLINA**

Signature: _____
Name: Ashley Jacobs
Title: County Administrator

ATTEST:

Signature: _____
Name: Sarah W. Brock
Title: Clerk to County Council

PROJECT BURGER

Signature: _____
Name: _____
Title: _____

EXHIBIT A
LEGAL DESCRIPTION

ALL that certain piece, parcel or tract of land, with improvements thereon, situate, lying and being in the Town of Port Royal, Beaufort County, South Carolina, containing 0.59 acres, more or less, and being more particularly shown as Parcel "F" on that certain plat prepared by David E. Gasque, R.L.S., dated October 14, 2019, and recorded in Plat Book 152 at Page 181 in the Office of the Register of Deeds for Beaufort County, South Carolina (this plat supersedes that plat dated September 20, 2019, and recorded in Plat Book 152 at Page 150 in the Office of the Register of Deeds for Beaufort County, South Carolina). For a more complete description as to metes, courses, distances and bounds of said property, reference may be had to the aforementioned plat.

This is a portion of the same property conveyed to the Grantor by deed from the South Carolina Department of Administration, Division of General Services, recorded in Book 3607 at Page 2615 in the Office of the Register of Deeds for Beaufort County, South Carolina, and by deed from the Town of Port Royal recorded in Book 3629 at Page 159 in the Office of the Register of Deeds for Beaufort County, South Carolina.

Portion of R113 010 000 0075 0000

NOW, THEREFORE, BE IT ORDAINED by the County Council in a meeting duly assembled as follows:

Section 1. In order to promote industry, develop trade, and utilize and employ the manpower, products, and natural resources of the State of South Carolina by assisting the Company to expand or locate an industrial facility in the State of South Carolina, the Fee Agreement is hereby authorized, ratified, and approved.

Section 2. It is hereby found, determined, and declared by the County Council, as follows:

- (a) The Project will constitute a “project” as said term is referred to and defined in the Act, and the County’s actions herein will subserve the purposes and in all respects conform to the provisions and requirements of the Act.
- (b) The Project and the payments in lieu of taxes set forth herein are beneficial to the County, and the County has evaluated the Project based upon all criteria prescribed by law, including the anticipated dollar amount and nature of the investment to be made and the anticipated costs and benefits to the County.
- (c) The Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally.
- (d) 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.
- (e) The purposes to be accomplished by the Project, i.e., economic development, creation of jobs, and addition to the tax base of the County, are proper governmental and public purposes.
- (f) The inducement of the location or expansion of the Project within the County and State is of paramount importance.
- (g) The benefits of the Project to the public will be greater than the costs.

Section 3. The form, terms, and provisions of the Fee Agreement presented to this meeting are hereby approved, and all of the terms, provisions, and conditions thereof are incorporated herein by reference as if the Fee Agreement were set out in this Ordinance in its entirety. The Chairman of the County Council and/or the County Administrator are authorized, empowered, and directed to execute, acknowledge, and deliver the Fee Agreement in the name of and on behalf of the County, and thereupon to cause the Fee Agreement to be delivered to the Company. The Fee Agreement is to be in substantially the form now before this meeting and hereby approved, with such changes therein as shall not be materially adverse to the County and as shall be approved by the officials of the County executing the same, upon the advice of Counsel to the County, such official’s execution thereof to constitute conclusive evidence of

such official's approval of any and all changes or revisions therein from the form of the Fee Agreement now before this meeting.

Section 4. The Chairman of the County Council and/or the County Administrator, for and on behalf of the County, are hereby authorized and directed to do any and all things necessary to effect the execution and delivery of the Fee Agreement and the performance of all obligations of the County under and pursuant to the Fee Agreement.

Section 5. 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 6. All orders, resolutions, ordinances, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed, and this Ordinance shall take effect and be in full force from and after its passage and approval.

(SIGNATURE PAGE TO FOLLOW)

Section 2. The County hereby agrees to enter into a fee in lieu of tax arrangement with the Company under the Act. The County agrees to provide for a fee in lieu of *ad valorem* taxes (“FILOT”) for a period of 20 years for each component of the Project that is eligible for the FILOT pursuant to the Act and that is placed in service during the investment period (the “FILOT Term”) under the Act. The FILOT shall be calculated using a 6% assessment ratio and a fixed millage rate equal to the lowest millage rate allowable under the Act for a period of 20 years.

Section 3. The further details of the FILOT shall be prescribed by subsequent ordinance of the County to be adopted in accordance with South Carolina law and the rules and procedures of the County.

Section 4. This resolution shall constitute an inducement resolution for this Project within the meaning of the Act.

Section 5. This resolution shall constitute “preliminary approval” pursuant to Section 12-44-110(2) of the Act by which property may be placed in service prior to the execution of a FILOT agreement but still constitute economic development property under the Act.

Section 6. All orders, resolutions, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed. This resolution shall take effect and be in full force from and after its passage by the County Council.

Adopted this ____ day of _____, 2020.

BEAUFORT COUNTY, SOUTH CAROLINA

Signature: _____
Name: Ashley Jacobs
Title: County Administrator

(SEAL)

ATTEST:

Signature: _____
Name: Sarah W. Brock
Title: Clerk to County Council

STATE OF SOUTH CAROLINA)
) RESOLUTION NO.: _____
COUNTY OF BEAUFORT)

**INDUCEMENT RESOLUTION PROVIDING FOR A
FEE IN LIEU OF TAX AGREEMENT
BETWEEN BEAUFORT COUNTY AND PROJECT BURGER**

WHEREAS, Beaufort County, South Carolina (the “County”), acting by and through its County Council (the “County Council”) is authorized and empowered under and pursuant to the provisions of Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (the “Act”), to enter into a fee in lieu of tax agreement (the “Fee Agreement”) with respect to a project which requires the industry to make a payment of a fee in lieu of taxes, through which powers the industrial development of the State of South Carolina and the County will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State of South Carolina and the County and thus to utilize and employ the manpower, products, and natural resources of the State of South Carolina to benefit the general public welfare of the County by providing services, employment, and other public benefits not otherwise provided locally; and

WHEREAS, a company currently identified as Project Burger, on its own or together with one or more of its subsidiaries, affiliates, successors, assigns, sponsors, lessors, and others (collectively, the “Company”), desires to invest capital in the County in order to establish a manufacturing facility in the County (the “Project”), provided that approvals of various incentives contemplated for the Project are formalized by the State and/or County; and

WHEREAS, the Project is anticipated to result in an investment of at least \$4,496,000 and the creation of approximately 43 new, full-time jobs; and

WHEREAS, the Company has requested that the County enter into a Fee Agreement, thereby providing for a fee in lieu of tax (“FILOT”) with respect to the Project; and

WHEREAS, the County has determined on the basis of the information supplied to it by the Company that the Project would be a “project” and “economic development property” as such terms are defined in the Act and that the Project would serve the purposes of the Act.

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

Section 1. The County Council hereby finds that: (i) the Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; (ii) the Project gives rise to no pecuniary liability of the County or a charge against its general credit or taxing power; (iii) the purposes to be accomplished by the Project are proper governmental and public purposes and the inducement of the location of the Project within South Carolina is of paramount importance and the benefits of the Project to the public are greater than the cost (which latter finding has been made using an appropriate cost-benefit analysis); and (iv) it has evaluated the Project considering all relevant and required factors, including, but not limited to, the anticipated dollar amount and nature of the investment to be made and the anticipated costs and benefits to the County, and all other criteria prescribed by law.

Section 2. The County hereby agrees to enter into a fee in lieu of tax arrangement with the Company under the Act. The County agrees to provide for a fee in lieu of *ad valorem* taxes (“FILOT”) for a period of 20 years for each component of the Project that is eligible for the FILOT pursuant to the Act and that is placed in service during the investment period (the “FILOT Term”) under the Act. The FILOT shall be calculated using a 6% assessment ratio and a fixed millage rate equal to the lowest millage rate allowable under the Act for a period of 20 years.

Section 3. The further details of the FILOT shall be prescribed by subsequent ordinance of the County to be adopted in accordance with South Carolina law and the rules and procedures of the County.

Section 4. This resolution shall constitute an inducement resolution for this Project within the meaning of the Act.

Section 5. This resolution shall constitute “preliminary approval” pursuant to Section 12-44-110(2) of the Act by which property may be placed in service prior to the execution of a FILOT agreement but still constitute economic development property under the Act.

Section 6. All orders, resolutions, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed. This resolution shall take effect and be in full force from and after its passage by the County Council.

Adopted this ____ day of _____, 2020.

BEAUFORT COUNTY, SOUTH CAROLINA

Signature: _____
Name: Ashley Jacobs
Title: County Administrator

(SEAL)

ATTEST:

Signature: _____
Name: Sarah W. Brock
Title: Clerk to County Council

NOW, THEREFORE, BE IT ORDAINED by the County Council in a meeting duly assembled as follows:

Section 1. In order to promote industry, develop trade, and utilize and employ the manpower, products, and natural resources of the State of South Carolina by assisting the Company to expand or locate an industrial facility in the State of South Carolina, the Fee Agreement is hereby authorized, ratified, and approved.

Section 2. It is hereby found, determined, and declared by the County Council, as follows:

- (a) The Project will constitute a “project” as said term is referred to and defined in the Act, and the County’s actions herein will subserve the purposes and in all respects conform to the provisions and requirements of the Act.
- (b) The Project and the payments in lieu of taxes set forth herein are beneficial to the County, and the County has evaluated the Project based upon all criteria prescribed by law, including the anticipated dollar amount and nature of the investment to be made and the anticipated costs and benefits to the County.
- (c) The Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally.
- (d) 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.
- (e) The purposes to be accomplished by the Project, i.e., economic development, creation of jobs, and addition to the tax base of the County, are proper governmental and public purposes.
- (f) The inducement of the location or expansion of the Project within the County and State is of paramount importance.
- (g) The benefits of the Project to the public will be greater than the costs.

Section 3. The form, terms, and provisions of the Fee Agreement presented to this meeting are hereby approved, and all of the terms, provisions, and conditions thereof are incorporated herein by reference as if the Fee Agreement were set out in this Ordinance in its entirety. The Chairman of the County Council and/or the County Administrator are authorized, empowered, and directed to execute, acknowledge, and deliver the Fee Agreement in the name of and on behalf of the County, and thereupon to cause the Fee Agreement to be delivered to the Company. The Fee Agreement is to be in substantially the form now before this meeting and hereby approved, with such changes therein as shall not be materially adverse to the County and as shall be approved by the officials of the County executing the same, upon the advice of Counsel to the County, such official’s execution thereof to constitute conclusive evidence of

such official's approval of any and all changes or revisions therein from the form of the Fee Agreement now before this meeting.

Section 4. The Chairman of the County Council and/or the County Administrator, for and on behalf of the County, are hereby authorized and directed to do any and all things necessary to effect the execution and delivery of the Fee Agreement and the performance of all obligations of the County under and pursuant to the Fee Agreement.

Section 5. 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 6. All orders, resolutions, ordinances, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed, and this Ordinance shall take effect and be in full force from and after its passage and approval.

(SIGNATURE PAGE TO FOLLOW)

FEE AGREEMENT

Between

BEAUFORT COUNTY, SOUTH CAROLINA

and

PROJECT GARDEN

Dated as of _____, 2020

RECAPITULATION OF CONTENTS OF
FEE AGREEMENT PURSUANT TO S.C. CODE §12-44-55(A)

The parties have agreed to waive this requirement pursuant to S.C. Code Ann. § 12-44-55(B).

FEE AGREEMENT

THIS FEE AGREEMENT (the “Fee Agreement”) is made and entered into as of _____, 2020 by and between BEAUFORT COUNTY, SOUTH CAROLINA (the “County”), a body politic and corporate and a political subdivision of the State of South Carolina (the “State”), acting by and through the Beaufort County Council (the “County Council”) as the governing body of the County, and a company currently identified as PROJECT GARDEN (the “Company”).

RECITALS

1. Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (the “Act”) authorizes the County (i) to induce industries to locate in the State; (ii) to encourage industries now located in the State to expand their investments and thus make use of and employ manpower, products, and other resources of the State; and (iii) to enter into a fee agreement with entities meeting the requirements of such Act, which identifies certain property of such entities as economic development property.

2. Pursuant to Section 12-44-40(H)(1) of the Act, the County finds that: (a) the Project (as defined herein) is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; (b) the Project gives rise to no pecuniary liability of the County or any incorporated municipality and to no charge against its general credit or taxing power; (c) the purposes to be accomplished by the Project are proper governmental and public purposes; and (d) the benefits of the Project are greater than the costs.

3. The County Council has evaluated the Project based on all relevant criteria that include, but are not limited to, the purposes the Project is to accomplish, the anticipated dollar amount and nature of the investment, and the anticipated costs and benefits to the County.

4. An Ordinance that the County Council adopted on _____, 2020 (the “Fee Ordinance”) authorizes the County and the Company to enter into a Fee Agreement that classifies the Project as Economic Development Property under the Act and provides for the payment of fees in lieu of taxes, all as further described herein.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the respective representations and agreements hereinafter contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 The terms that this Article defines shall for all purposes of this Fee Agreement have the meanings herein specified, unless the context clearly requires otherwise:

“Act” shall mean Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended, and all future acts successor or supplemental thereto or amendatory thereof.

“Act Minimum Investment Requirement” shall mean an investment of at least \$2,500,000 by the Company of property eligible as economic development property under the Act, provided, however, that in the event of a reduction of the minimum investment level in Section 12-44-30(14) or any successor section by legislative action, then the Act Minimum Investment Requirement shall equal such reduced amount.

“Commencement Date” shall mean the last day of the property tax year during which the Project or the first Phase thereof is placed in service, which date must not be later than the last day of the property tax year which is three years from the year in which the County and the Company enter into this Fee Agreement.

“Company” shall mean the company currently identified as Project Garden and any surviving, resulting, or transferee entity in any merger, consolidation, or transfer of assets; or any other person or entity which may succeed to the rights and duties of the Company.

“County” shall mean Beaufort County, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina, its successors and assigns, acting by and through the County Council as the governing body of the County.

“County Council” shall mean the Beaufort County Council, the governing body of the County.

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

“Diminution in Value” in respect of the Project or any Phase of the Project shall mean any reduction in the value using the original fair market value (without regard to depreciation) as determined in Step 1 of Section 4.1(a) of this Fee Agreement, of the items which constitute a part of the Project or such Phase and which are subject to FILOT payments which may be caused by (i) the Company’s removal and/or disposal of equipment pursuant to Section 4.6 of this Fee Agreement; (ii) a casualty to the Project, such Phase of the Project, or any part thereof, described in Section 4.7 of this Fee Agreement; or (iii) a condemnation of the Project, such Phase of the Project, or any part thereof, described in Section 4.8 of this Fee Agreement.

“Economic Development Property” shall mean those items of real and tangible personal property of the Project which are eligible for inclusion as economic development property under the Act, selected and identified by the Company in its annual filing of a SCDOR PT-300S or comparable form with the Department (as such filing may be amended from time to time) for each year within the Investment Period.

“Equipment” shall mean all of the machinery, equipment, furniture, office equipment, and fixtures, together with any and all additions, accessions, replacements, and substitutions thereto or therefor used or to be used in the County by the Company for the purposes described in Section 2.2(b) hereof, provided, however, that repairs, alterations, or modifications to personal property which is not economic development property or property subject to a fee in lieu of taxes prior to this Fee Agreement, are not eligible to become Economic Development Property, except for modifications which constitute an expansion of existing real property improvements.

“Event of Default” shall mean any event of default specified in Section 5.1 of this Fee Agreement.

“Exemption Period” shall mean the period beginning on the first day of the property tax year after the property tax year in which an applicable piece of Economic Development Property is placed in service and ending on the Termination Date. In case there are Phases of the Project, the Exemption Period applies to each year’s investment made during the Investment Period.

“Fee,” “Fee in Lieu of Taxes,” “FILOT,” or “Payments in Lieu of Taxes” shall mean the amount paid or to be paid in lieu of *ad valorem* property taxes as provided herein.

“Fee Agreement” shall mean this Fee Agreement.

“Fee Term” shall mean the period from the date of this Fee Agreement until the Termination Date.

“Improvements” shall mean all improvements to the Real Property, including buildings, building additions, roads, sewer lines, and infrastructure, together with any and all additions, fixtures, accessions, replacements, and substitutions thereto or therefor used or to be used in the County for the purposes described in Section 2.2(b) hereof; provided, however, that repairs, alterations, or modifications to real property which is not economic development property or property subject to a fee in lieu of taxes prior to this Fee Agreement, are not eligible to become Economic Development Property, except for modifications which constitute an expansion of existing real property improvements.

“Industrial Development Park” shall mean the industrial or business park developed by two or more counties as defined in Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended.

“Investment Period” shall mean the period beginning with the first day of any purchase or acquisition of Economic Development Property and ending five years after the Commencement Date, provided that the Company and the County may agree to a later date pursuant to Section 12-44-30(13) of the Act.

“MCIP Act” shall mean Title 4, Chapter 1, Sections 170 et seq. of the Code of Laws of South Carolina, 1976, as amended.

“Phase” or “Phases” in respect of the Project shall mean that the Equipment, Improvements, and/or Real Property of the Project are placed in service during more than one year in the Investment Period, and the word “Phase” shall therefore refer to the applicable portion of the Project placed in service in a given year in the Investment Period.

“Project” shall mean all the Equipment, Improvements, and/or Real Property located on the Real Property in the County and that the Company determines to be necessary, suitable, or useful for the purposes that Section 2.2(b) describes, and first placed in service in calendar year 2020 or thereafter. The Project shall not include existing buildings and improvements on the Real Property, as of the date of the commencement of the Project by the Company, and any

machinery and equipment which have previously been subject to South Carolina *ad valorem* taxation.

“Real Property” shall mean real property that the Company uses or will use in the County for the purposes that Section 2.2(b) describes, and generally located on the land identified on Exhibit A hereto, together with all and singular the rights, members, hereditaments, and appurtenances belonging or in any way incident or appertaining thereto.

“Removed Components” shall mean the following types of components or Phases of the Project or portions thereof which are subject to FILOT payments, all of which the Company shall be entitled to remove from the Project with the result that the same shall no longer be subject to the terms of the Fee Agreement: (a) components or Phases of the Project or portions thereof which the Company, in its sole discretion, determines to be inadequate, obsolete, worn-out, uneconomic, damaged, unsuitable, undesirable, or unnecessary pursuant to Section 4.6 hereof or otherwise; or (b) components or Phases of the Project or portions thereof which the Company in its sole discretion, elects to be treated as removed pursuant to Section 4.7(c) or Section 4.8(b)(iii) of this Fee Agreement.

“Replacement Property” shall mean any property which is placed in service as a replacement for any item of Equipment, any Improvement, or any Real Property previously subject to this Fee Agreement regardless of whether such property serves the same functions as the property it is replacing and regardless of whether more than one piece of property replaces any item of Equipment, any Improvement, or any Real Property, to the fullest extent that the Act permits.

“Sponsor” shall mean an entity that joins with or is an affiliate of, the Company and that participates in the investment in, or financing of, the Project and which meets the requirements under the Act to be entitled to the benefits of this Agreement with respect to its participation in the Project.

“Termination Date” shall mean in case the entire Project is placed in service in one year, the end of the last day of the property tax year which is the 19th year following the first property tax year in which the entire Project is placed in service, or in case there are Phases of the Project, the Termination Date shall mean with respect to each Phase of the Project the end of the last day of the property tax year which is the 19th year following the first property tax year in which such Phase of the Project is placed in service, provided, that the intention of the parties is that the Company will make at least 20 annual FILOT payments under Article IV hereof with respect to each Phase of the Project and provided further, that if this Fee Agreement is terminated earlier in accordance with the terms hereof, the Termination Date is the date of such termination.

Any reference to any agreement or document in this Article I or otherwise in this Fee Agreement shall include any and all amendments, supplements, addenda, and modifications to such agreement or document.

Section 1.2 The term “investment” or “invest” as used herein shall include not only investments made by the Company, but also to the fullest extent permitted by law, those investments made by or for the benefit of the Company in connection with the Project through

federal, state, or local grants, to the extent such investments are subject to *ad valorem* taxes or FILOT payments by the Company.

ARTICLE II

REPRESENTATIONS, WARRANTIES, AND AGREEMENTS

Section 2.1 Representations, Warranties, and Agreements of the County. The County hereby represents, warrants, and agrees as follows:

(a) The County is a body politic and corporate and a political subdivision of the State and acts through the County Council as its governing body. The Act authorizes and empowers the County to enter into the transactions that this Fee Agreement contemplates and to carry out its obligations hereunder. The County has duly authorized the execution and delivery of this Fee Agreement and any and all other agreements described herein or therein and has obtained all consents from third parties and taken all actions necessary or that the law requires to fulfill its obligations hereunder.

(b) Based upon representations by the Company, the Project constitutes a “project” within the meaning of the Act, and the County is a County that the Act authorizes to enter into fee in lieu of tax agreements with companies that satisfy the Act Minimum Investment Requirement within the County.

(c) The County has agreed that each item of real and tangible personal property comprising the Project which is eligible to be economic development property under the Act and that the Company selects shall be considered Economic Development Property and is thereby exempt from *ad valorem* taxation in South Carolina.

(d) The millage rate in Section 4.1 hereof is 286.7 mills, the millage rate in effect with respect to the location of the proposed Project on June 30, 2020, as provided under Section 12-44-50(A)(1)(d) of the Act.

(e) The County will not be in default in any of its obligations (contractual or otherwise), including any violation of its statutory debt limit, as a result of entering into and performing under this Fee Agreement and/or as a result of creating an Industrial Development Park encompassing the Project.

(f) The County will take all reasonable action to include the Project in an Industrial Development Park.

Section 2.2 Representations, Warranties, and Agreements of the Company. The Company hereby represents, warrants, and agrees as follows:

(a) The Company is in good standing under the laws of the State of South Carolina, is duly authorized to transact business in the State of South Carolina, has power to enter into this Fee Agreement, and has duly authorized the execution and delivery of this Fee Agreement.

(b) The Company intends to operate the Project as a “project” within the meaning of the Act as in effect on the date hereof. The Company intends to operate the Project as a manufacturing facility and for such other purposes that the Act permits as the Company may deem appropriate.

(c) The Company will use commercially reasonable efforts to ensure that its investment in Economic Development Property of the Project will exceed the Act Minimum Investment Requirement.

ARTICLE III

COMMENCEMENT AND COMPLETION OF THE PROJECT

Section 3.1 The Project. The Company intends to invest in Equipment, Improvements, and/or Real Property, which together comprise the Project and which are anticipated to create at least the Act Minimum Investment Requirement in eligible Economic Development Property investment subject to Payments in Lieu of Taxes in the County.

The parties hereto agree that, to the extent that applicable law allows or is revised or construed to allow the benefits of the Act, in the form of Payments-in-Lieu-of-Taxes to be made under Article IV hereof, to be applicable to leased assets including, but not limited to a building and/or personal property to be installed in the buildings and leased to but not purchased by the Company from one or more Sponsors under any form of lease, then such property shall, at the election of the Company, be subject to Payments-in-Lieu-of-Taxes to the same extent as the Company’s assets covered by this Fee Agreement, subject, at all times, to the requirement of such applicable law. The parties hereto further agree that this Fee Agreement may be interpreted or modified as may be necessary or appropriate in order to give proper application of this Fee Agreement to such tangible property without such construction or modification constituting an amendment to this Fee Agreement, and thus not requiring any additional action by the County Council. The County Manager, after consulting with the County Attorney, shall be and hereby is authorized to make such modifications, if any, as may be necessary or appropriate in connection therewith. Such leased property shall constitute a part of the Project for all purposes of this Agreement, including the calculation of the Clawback Minimum Requirements, removal, replacement, and termination, and such Sponsor shall be deemed to be a party to this Agreement provided, however, that no Sponsor shall be liable for any payments pursuant to Section 4.2(b) hereof, which shall remain the Company’s liability.

Pursuant to the Act and subject to Section 4.2 hereof, the Company and the County hereby agree that the Company shall identify annually those assets which are eligible for FILOT payments under the Act and which the Company selects for such treatment by listing such assets on the applicable schedule in its annual PT-300 form (or comparable form) to be filed with the Department (as such may be amended from time to time) and that by listing such assets, such assets shall automatically become Economic Development Property and therefore be exempt from all *ad valorem* taxation during the Exemption Period. Anything contained in this Fee Agreement to the contrary notwithstanding, the Company shall not be obligated to complete the acquisition of the Project. However, if the Company does not meet the Act Minimum

Investment Requirement, this Fee Agreement shall be terminated as provided in Section 4.2 hereof.

Section 3.2 Diligent Completion. The Company agrees to use its reasonable efforts to cause the completion of the Project as soon as practicable, but in any event on or prior to the end of the Investment Period.

Section 3.3 Filings and Reports.

(a) Each year during the term of the Fee Agreement, the Company shall deliver to the County, the County Auditor, the County Assessor, and the County Treasurer, a copy of its most recent annual filings with the Department with respect to the Project, not later than 30 days following delivery thereof to the Department.

(b) The Company shall cause the filing of a copy of this Fee Agreement, as well as a copy of the completed Form PT-443 of the Department, to be filed with the County Auditor and the County Assessor of the County and any partner county, when the Project is placed in a joint county industrial and business park, and the Department within 30 days after the date of execution and delivery hereof by all parties hereto.

(c) The Company agrees to maintain complete books and records accounting for the acquisition, financing, construction, and operation of the Project. Such books and records shall (i) permit ready identification of the various Phases and components thereof; (ii) confirm the dates on which each Phase was placed in service; and (iii) include copies of all filings made by the Company in accordance with Section 3.3(a) or (b) above with respect to property placed in service as part of the Project.

(d) Whenever the County shall be required by any governmental or financing entity to file or produce any reports, notices, returns, or other documents related to this transaction while this Fee Agreement is in effect, the Company shall promptly furnish to the County through the County Administrator the completed form of such required documents, to the extent that the Company possesses the information necessary to complete the documents. In the event of a failure or refusal of the Company to comply with this provision, within 30 days after presentation of a statement by the County, the Company shall pay the attorney's fees the County incurs in producing and filing such documents and any fees, penalties, assessments, or damages that the law imposes upon the County by reason of its failure duly to file or produce such documents.

ARTICLE IV

PAYMENTS IN LIEU OF TAXES

Section 4.1 Negotiated Payments.

(a) Pursuant to Section 12-44-50 of the Act, the Company is required to make payments in lieu of *ad valorem* taxes to the County with respect to the Economic Development Property. Inasmuch as the Company anticipates an initial investment of sums sufficient for the Project to qualify for a fee in lieu of tax arrangement under Section 12-44-50(A)(1) of the Act, the County and the Company have negotiated the amount of the Payments in Lieu of Taxes in

accordance therewith. The Company shall make payments in lieu of *ad valorem* taxes on all Economic Development Property which comprises the Project and is placed in service, as follows: the Company shall make payments in lieu of *ad valorem* taxes during the Exemption Period with respect to the Economic Development Property or, if there are Phases of the Economic Development Property, with respect to each Phase of the Economic Development Property, said payments to be made annually and to be due and payable and subject to penalty assessments on the same dates and in the same manner as prescribed by the County for *ad valorem* taxes. The determination of the amount of such annual Payments in Lieu of Taxes shall be in accordance with the following procedure (subject, in any event, to the procedures that the Act requires):

- Step 1: Determine the fair market value of the Economic Development Property (or Phase of the Economic Development Property) placed in service during the Exemption Period using original income tax basis for State income tax purposes for any Real Property and Improvements without regard to depreciation (provided, the fair market value of real property, as the Act defines such term, that the Company obtains by construction or purchase in an arms length transaction is equal to the original income tax basis, and otherwise, the determination of the fair market value is by appraisal) and original income tax basis for State income tax purposes for any personal property less depreciation for each year allowable for property tax purposes, except that no extraordinary obsolescence shall be allowable. The fair market value of the Real Property for the first year of the Fee Term remains the fair market value of the Real Property for the life of the Fee Term. The determination of these values shall take into account all applicable property tax exemptions that State law would allow to the Company if the property were taxable, except those exemptions that Section 12-44-50(A)(2) of the Act specifically disallows.
- Step 2: Apply an assessment ratio of six percent (6%) to the fair market value in Step 1 to establish the taxable value of the Economic Development Property (or each Phase of the Economic Development Property) in the year it is placed in service and in each of the 19 years thereafter or such longer period of years in which the Act permits the Company to make annual fee payments.
- Step 3: Use a fixed millage rate equal to the millage rate in effect on June 30, 2020, which is 286.7 mills, as Section 12-44-50(A)(1)(d) of the Act provides, during the Exemption Period against the taxable value to determine the amount of the Payments in Lieu of Taxes due during the Exemption Period on the payment dates that the County prescribes for such payments or such longer period of years in which the Act permits the Company to make annual fee payments.

(b) In the event that a final order of a court of competent jurisdiction or an agreement of the parties determines that the calculation of the minimum Payment in Lieu of Taxes

applicable to this transaction is to be other than by the procedure herein, the payment shall be reset at the minimum permitted level so determined.

In the event that a final order of a court of competent jurisdiction from which no further appeal is allowable declares the Act and/or the herein-described Payments in Lieu of Taxes invalid or unenforceable, in whole or in part, for any reason, the parties express their intentions to reform such payments so as to effectuate most closely the intent thereof and so as to afford the Company with the benefits to be derived herefrom, the intention of the County being to offer the Company a strong inducement to locate the Project in the County. If the Economic Development Property is deemed to be subject to *ad valorem* taxation, this Fee Agreement shall terminate, and the Company shall pay the County regular *ad valorem* taxes from the date of termination, but with appropriate reductions equivalent to all tax exemptions which are afforded to the Company. Any amount determined to be due and owing to the County from the Company, with respect to a year or years for which the Company previously remitted Payments in Lieu of Taxes to the County hereunder, shall (i) take into account all applicable tax exemptions to which the Company would be entitled if the Economic Development Property was not and had not been Economic Development Property under the Act; and (ii) be reduced by the total amount of Payments in Lieu of Taxes the Company had made with respect to the Project pursuant to the terms hereof. Notwithstanding anything contained herein to the contrary, neither the Company nor any successor in title or interest shall be required to pay FILOT payments and *ad valorem* taxes for the same property over the same period in question.

(c) The County's right to receive FILOT payments hereunder shall have a first priority lien status pursuant to Sections 12-44-90(E) and (F) of the Act and Chapters 4, 49, 51, 53, and 54 of Title 12 of the Code of Laws of South Carolina, 1976, as amended.

(d) In the event the Company should fail to make any of the payments that this Article IV requires, the item or installment so in default shall continue as an obligation of the Company until the Company shall have fully paid the amount, and the Company agrees to pay the same with interest thereon at a rate of 5% per annum, compounded monthly, to accrue from the date on which the payment was due and, in the case of FILOT payments, subject to the penalties the law provides until payment.

Section 4.2 Failure to Achieve Act Minimum Investment Requirement.

(a) In the event that the cost of the Economic Development Property (without regard to depreciation) that the Company acquires does not reach the Act Minimum Investment Requirement by the end of the Investment Period, this Fee Agreement shall terminate as to such entity failing to meet the minimum investment level. In such event, the Company shall pay the County an amount (the "Additional Payment") pursuant to the Act which is equal to the excess, if any, of (i) the total amount of *ad valorem* taxes as would result from taxes levied on the Project by the County, municipality or municipalities, school district or school districts, and other political units as if the items of property comprising the Economic Development Property were not Economic Development Property, but with appropriate reductions equivalent to all tax exemptions and abatements to which the Company would be entitled in such a case, through and including the end of the Investment Period, over (ii) the total amount of FILOT payments the Company has made with respect to the Economic Development Property through and including

the end of the Investment Period. Any amounts determined to be owing pursuant to the foregoing sentence shall be subject to the minimum amount of interest that the Act may require.

(b) The County's right to receive FILOT payments hereunder shall have a first priority lien status pursuant to Sections 12-44-90(E) and (F) of the Act and Chapters 4, 49, 51, 53, and 54 of Title 12 of the Code of Laws of South Carolina, 1976, as amended.

(c) In the event the Company should fail to make any of the payments that this Article IV requires, the item or installment so in default shall continue as an obligation of the Company until the Company shall have fully paid the amount, and the Company agrees to pay the same with interest thereon at a rate of 5% per annum, compounded monthly, to accrue from the date on which the payment was due and, in the case of FILOT payments, subject to the penalties the law provides until payment.

(d) Notwithstanding the foregoing language, if the Company fails to meet the Act Minimum Investment Requirement but meets and maintains total capital expenditures placed in service in the County (based on gross cost without regard to depreciation) of at least \$2,000,000 as of the end of the Investment Period, the Company shall not be required to make any retroactive payments and shall be entitled to special source revenue credits (SSRCs) pursuant to Sections 4-29-68 and Title 4, Chapter 1, Sections 170 through 175 of the Code of Laws of South Carolina, 1976, as amended. The SSRCs shall equal the Additional Payment as described above. Further, for each subsequent year, so long as the company maintains at least \$2,000,000 of capital expenditures placed in service in the County within the Investment Period, the Company shall be entitled to SSRCs equal to the difference between (1) the *ad valorem* taxes or payments in lieu of taxes that would be due with respect to such investments in the absence of this Fee Agreement and (2) the FILOT payments that would be due as if such investments qualified for this Fee Agreement. If the SSRCs in this paragraph are triggered, the Company and the County agree to work in good faith to establish a certification procedure whereby the Company must remit a detailed annual certification to the County in order to be entitled to the SSRCs described herein.

Section 4.3 Payments in Lieu of Taxes on Replacement Property. If the Company elects to replace any Removed Components and to substitute such Removed Components with Replacement Property as a part of the Economic Development Property, or the Company otherwise utilizes Replacement Property, then, pursuant and subject to Section 12-44-60 of the Act, the Company shall make statutory payments in lieu of *ad valorem* taxes with regard to such Replacement Property in accordance with the following:

(i) Replacement Property does not have to serve the same function as the Economic Development Property it is replacing. Replacement Property is deemed to replace the oldest Economic Development Property subject to the Fee, whether real or personal, which is disposed of in the same property tax year in which the Replacement Property is placed in service. Replacement Property qualifies as Economic Development Property only to the extent of the original income tax basis of Economic Development Property which is being disposed of in the same property tax year. More than one piece of property can replace a single piece of Economic Development Property. To the extent that the income

tax basis of the Replacement Property exceeds the original income tax basis of the Economic Development Property which it is replacing, the excess amount is subject to annual payments calculated as if the exemption for Economic Development Property were not allowable. Replacement Property is entitled to treatment under the Fee Agreement for the period of time remaining during the Exemption Period for the Economic Development Property which it is replacing; and

(ii) The new Replacement Property which qualifies for the Fee shall be recorded using its income tax basis, and the calculation of the Fee shall utilize the millage rate and assessment ratio in effect with regard to the original property subject to the Fee.

Section 4.4 Reductions in Payments of Taxes Upon Removal, Condemnation, or Casualty. In the event of a Diminution in Value of the Economic Development Property or any Phase of the Economic Development Property, the Payment in Lieu of Taxes with regard to the Economic Development Property or that Phase of the Economic Development Property shall be reduced in the same proportion as the amount of such Diminution in Value bears to the original fair market value of the Economic Development Property or that Phase of the Economic Development Property as determined pursuant to Step 1 of Section 4.1(a) hereof; *provided, however,* that if at any time subsequent to the end of the Investment Period, the total value of the Project based on the original income tax basis of the Equipment, Real Property, and Improvements contained therein, without deduction for depreciation, is less than the Act Minimum Investment Requirement, beginning with the first payment thereafter due hereunder and continuing until the end of the Fee Term, the Company shall no longer be entitled to the incentive provided in Section 4.1, and the Company shall therefore commence to pay regular *ad valorem* taxes on the Economic Development Property part of the Project.

Section 4.5 Place and Allocation of Payments in Lieu of Taxes. The Company shall make the above-described Payments in Lieu of Taxes directly to the County in accordance with applicable law.

Section 4.6 Removal of Equipment. Subject, always, to the other terms and provisions hereof, the Company shall be entitled to remove and dispose of components or Phases of the Project from the Project in its sole discretion with the result that said components or Phases shall no longer be considered a part of the Project and, to the extent such constitute Economic Development Property, shall no longer be subject to the terms of this Fee Agreement to the fullest extent allowed by the Act, as amended. Economic Development Property is disposed of only when it is scrapped or sold or it is removed from the Project. If it is removed from the Project, it is subject to *ad valorem* property taxes to the extent the Property remains in the State and is otherwise subject to *ad valorem* property taxes.

Section 4.7 Damage or Destruction of Economic Development Property.

(a) Election to Terminate. In the event the Economic Development Property is damaged by fire, explosion, or any other casualty, the Company shall be entitled to terminate this Fee Agreement. The Company shall only be required to make FILOT payments as to all or any

part of the tax year in which the damage or casualty occurs to the extent property subject to *ad valorem* taxes would otherwise have been subject to such taxes under the same circumstances for the period in question.

(b) Election to Rebuild. In the event the Economic Development Property is damaged by fire, explosion, or any other casualty, and if the Company does not elect to terminate this Fee Agreement, the Company may commence to restore the Economic Development Property with such reductions or enlargements in the scope of the Economic Development Property, changes, alterations, and modifications (including the substitution and addition of other property) as may be desired by the Company. All such restorations and replacements shall be considered, to the fullest extent permitted by law and this Fee Agreement, substitutions of the destroyed portions of the Economic Development Property and shall be considered part of the Economic Development Property for all purposes hereof, including, but not limited to, any amounts due by the Company to the County under Section 4.1 hereof.

(c) Election to Remove. In the event the Company elects not to terminate this Fee Agreement pursuant to subsection (a) and elects not to rebuild pursuant to subsection (b), the damaged portions of the Economic Development Property shall be treated as Removed Components.

Section 4.8 Condemnation

(a) Complete Taking. If at any time during the Fee Term title to or temporary use of the Economic Development Property should become vested in a public or quasi-public authority by virtue of the exercise of a taking by condemnation, inverse condemnation, or the right of eminent domain; by voluntary transfer under threat of such taking; or by a taking of title to a portion of the Economic Development Property which renders continued use or occupancy of the Economic Development Property commercially unfeasible in the judgment of the Company, the Company shall have the option to terminate this Fee Agreement by sending written notice to the County within a reasonable period of time following such vesting. The Company shall only be required to make FILOT payments as to all or any part of the tax year in which the taking occurs to the extent property subject to *ad valorem* taxes would otherwise have been subject to such taxes under the same circumstances for the period in question.

(b) Partial Taking. In the event of a partial taking of the Economic Development Property or a transfer in lieu thereof, the Company may elect: (i) to terminate this Fee Agreement; (ii) subject to the Act and the terms and provisions of this Fee Agreement, to repair and restore the Economic Development Property, with such reductions or enlargements in the scope of the Economic Development Property, changes, alterations, and modifications (including the substitution and addition of other property) as the Company may desire, and all such changes, alterations, and modifications shall be considered as substitutions of the taken parts of the Economic Development Property; or (iii) to treat the portions of the Economic Development Property so taken as Removed Components.

(c) The Company shall only be required to make FILOT payments as to all or any part of the tax year in which the taking occurs to the extent property subject to *ad valorem* taxes

would otherwise have been subject to such taxes under the same circumstances for the period in question.

Section 4.9 Confidentiality/Limitation on Access to Project. The County acknowledges and understands that the Company utilizes confidential and proprietary processes and materials, services, equipment, trade secrets, and techniques (herein “Confidential Information”) and that any disclosure of Confidential Information concerning the Company’s operations may result in substantial harm to the Company and could thereby have a significant detrimental impact on the Company’s employees and also upon the County. The Company acknowledges that the County is subject to the Freedom of Information Act, and, as a result, must disclose certain documents and information on request absent an exemption. For these reasons, the Company shall clearly label all Confidential Information it delivers to the County “Confidential Information.” Therefore, the County agrees that, except as required by law, neither the County nor any employee, agent, or contractor of the County shall (i) request or be entitled to receive any such Confidential Information, or (ii) disclose or otherwise divulge any such Confidential Information to any other person, firm, governmental body or agency, or any other entity unless specifically required to do so by law; provided, however, that the County shall have no less rights concerning information relating to the Project and the Company than concerning any other property or property taxpayer in the County, and, provided further, that the confidentiality of such confidential or proprietary information is clearly disclosed to the County in writing as previously described. Prior to disclosing any Confidential Information, subject to the requirements of law, the Company may require the execution of reasonable, individual, confidentiality and non-disclosure agreements by any officers, employees, or agents of the County or any supporting or cooperating governmental agencies who would gather, receive, or review such information. In the event that the County is required to disclose any Confidential Information obtained from the Company to any third party, the County agrees to provide the Company with as much advance notice as possible of such requirement before making such disclosure, and to cooperate reasonably with any attempts by the Company to obtain judicial or other relief from such disclosure requirement.

Section 4.10 Assignment. With the prior written consent of the County or a subsequent written ratification by the County, which consent or ratification the County will not unreasonably withhold unless Section 12-44-120 of the Act or any successor provision expressly does not require consent, and in accordance with the Act, the Company may assign this Fee Agreement in whole or in part. The Company agrees to notify the County and the Department of the identity of such transferee within 60 days of the transfer. In case of a transfer, the transferee assumes the transferor’s basis in the Project for purposes of calculating the Fee. No approval is required for transfers to sponsor affiliates or other financing related transfers, as defined in the Act.

Section 4.11 No Double Payment; Future Changes in Legislation.

(a) Notwithstanding anything contained herein to the contrary, and except as expressly required by law, neither the Company nor any Sponsor shall ever be required to make a Payment in Lieu of Taxes in addition to a regular property tax payment in the same year over the same piece of property, nor shall the Company or any Sponsor be required to make a Payment in Lieu of Taxes on property in cases where, absent this Fee Agreement, property taxes would otherwise not be due on such property.

In case there is any legislation enacted which provides for more favorable treatment for property to qualify as, or for the calculation of the fee related to, Economic Development Property under Sections 4.4, 4.6, 4.7, 4.8, or the calculation of the Investment Period, the County agrees to give expedient and full consideration to such legislation, with a view to allow for such more favorable treatment or calculation.

Section 4.12 Administration Expenses.

(a) The Company agrees to pay the reasonable and necessary expenses that the County incurs with respect to the execution and administration of this Fee Agreement, including without limitation reasonable and actual attorney's fees (the "Administration Expenses"); provided, however, that no such expense shall be an Administration Expense until the County has furnished to the Company a statement in writing indicating the amount of such expense and the reason for its incurrence.

ARTICLE V

DEFAULT

Section 5.1 Events of Default. The following shall be "Events of Default" under this Fee Agreement, and the term "Events of Default" shall mean, whenever used with reference to this Fee Agreement, any one or more of the following occurrences:

(a) Failure by the Company to make the Payments in Lieu of Taxes described in Section 4.1 hereof, which failure shall not have been cured within 30 days following receipt of written notice thereof from the County; *provided, however*, that the Company shall be entitled to all redemption rights granted by applicable statutes; or

(b) A representation or warranty made by the Company which is deemed materially incorrect when deemed made; or

(c) Failure by the Company to perform any of the terms, conditions, obligations, or covenants hereunder (other than those under (a) above), which failure shall continue for a period of 30 days after written notice from the County to the Company specifying such failure and requesting that it be remedied, unless the Company shall have instituted corrective action within such time period and is diligently pursuing such action until the default is corrected, in which case the 30-day period shall be extended to cover such additional period during which the Company is diligently pursuing corrective action; or

(d) A representation or warranty made by the County which is deemed materially incorrect when deemed made; or

(e) Failure by the County to perform any of the terms, conditions, obligations, or covenants hereunder, which failure shall continue for a period of 30 days after written notice from the Company to the County specifying such failure and requesting that it be remedied, unless the County shall have instituted corrective action within such time period and is diligently pursuing such action until the default is corrected, in which case the 30-day period shall be

extended to cover such additional period during which the County is diligently pursuing corrective action; or

- (f) A cessation of operations at the Project by the Company.

Section 5.2 Remedies on Default.

(a) Whenever any Event of Default by the Company shall have occurred and shall be continuing, the County may take any one or more of the following remedial actions:

- (1) terminate the Fee Agreement; or
- (2) take whatever action at law or in equity may appear necessary or desirable to collect the amounts due hereunder. In no event shall the Company be liable to the County or otherwise for monetary damages resulting from the Company's failure to meet the Act Minimum Investment Requirement, other than as expressly set forth herein.

In addition to all other remedies provided herein, the failure to make FILOT payments shall give rise to a lien for tax purposes as Section 12-44-90 of the Act provides. In this regard, and notwithstanding anything in this Fee Agreement to the contrary, the County may exercise the remedies that general law (including Title 12, Chapter 49 of the Code of Laws of South Carolina, 1976, as amended) provides with regard to the enforced collection of *ad valorem* taxes to collect any FILOT payments due hereunder.

(b) Whenever any Event of Default by the County shall have occurred or shall be continuing, the Company may take one or more of the following actions:

- (1) bring an action for specific enforcement;
- (2) terminate the Fee Agreement; or
- (3) in case of a materially incorrect representation or warranty, take such action as is appropriate, including legal action, to recover its damages, to the extent allowed by law.

Section 5.3 Reimbursement of Legal Fees and Expenses and Other Expenses. Upon the occurrence of an Event of Default hereunder, should a party be required to employ attorneys or incur other reasonable expenses for the collection of payments due hereunder or for the enforcement of performance or observance of any obligation or agreement, the successful party shall be entitled, within 30 days of demand therefor, to reimbursement of the reasonable fees of such attorneys and such other reasonable expenses so incurred. The Company further agrees to pay reasonable legal fees and expenses and other expenses of the County.

Section 5.4 No Waiver. No failure or delay on the part of any party hereto in exercising any right, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy hereunder. No waiver of any provision hereof shall be effective unless the same shall be in writing and signed by the waiving party hereto.

ARTICLE VI

MISCELLANEOUS

Section 6.1 Notices. Any notice, election, demand, request, or other communication to be provided under this Fee Agreement shall be effective when delivered to the party named below or when deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed as follows (or addressed to such other address as any party shall have previously furnished in writing to the other party), except where the terms hereof require receipt rather than sending of any notice, in which case such provision shall control:

IF TO THE COMPANY:

Project Garden
Attn: _____

[Insert notice person and address for final reading.]

IF TO THE COUNTY:

Beaufort County, South Carolina
Attn: County Attorney
100 Ribaut Road
Beaufort, SC 29902

WITH A COPY TO:

Haynsworth Sinkler Boyd, P.A.
Attn: William R. Johnson
P.O. Box 11889
Columbia, SC 29211

Section 6.2 Binding Effect. This Fee Agreement and each document contemplated hereby or related hereto shall be binding upon and inure to the benefit of the Company, the County, and their respective successors and assigns. In the event of the dissolution of the County or the consolidation of any part of the County with any other political subdivision or the transfer of any rights of the County to any other such political subdivision, all of the covenants, stipulations, promises, and agreements of this Fee Agreement shall bind and inure to the benefit of the successors of the County from time to time and any entity, officer, board, commission, agency, or instrumentality to whom or to which any power or duty of the County has been transferred.

Section 6.3 Counterparts. This Fee Agreement may be executed in any number of counterparts, and all of the counterparts taken together shall be deemed to constitute one and the same instrument.

Section 6.4 Governing Law. This Fee Agreement and all documents executed in connection herewith shall be construed in accordance with and governed by the laws of the State of South Carolina.

Section 6.5 Headings. The headings of the articles and sections of this Fee Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Fee Agreement.

Section 6.6 Amendments. The provisions of this Fee Agreement may only be modified or amended in writing by any agreement or agreements entered into between the parties.

Section 6.7 Further Assurance. From time to time, and at the expense of the Company, to the extent any expense is incurred, the County agrees to execute and deliver to the Company such additional instruments as the Company may reasonably request and as are authorized by law and reasonably within the purposes and scope of the Act and Fee Agreement to effectuate the purposes of this Fee Agreement.

Section 6.8 Invalidity; Change in Laws. In the event that the inclusion of property as Economic Development Property or any other issue is unclear under this Fee Agreement, the County hereby expresses its intention that the interpretation of this Fee Agreement shall be in a manner that provides for the broadest inclusion of property under the terms of this Fee Agreement and the maximum incentive permissible under the Act, to the extent not inconsistent with any of the explicit terms hereof. If any provision of this Fee Agreement is declared illegal, invalid, or unenforceable for any reason, the remaining provisions hereof shall be unimpaired, and such illegal, invalid, or unenforceable provision shall be reformed to effectuate most closely the legal, valid, and enforceable intent thereof and so as to afford the Company with the maximum benefits to be derived herefrom, it being the intention of the County to offer the Company the strongest inducement possible, within the provisions of the Act, to locate the Project in the County. In case a change in the Act or South Carolina laws eliminates or reduces any of the restrictions or limitations applicable to the Company and the Fee incentive, the parties agree that the County will give expedient and full consideration to reformation of this Fee Agreement, and, if the County Council so decides, to provide the Company with the benefits of such change in the Act or South Carolina laws.

Section 6.9 Force Majeure. The Company shall not be responsible for any delays or non-performance caused in whole or in part, directly or indirectly, by strikes, accidents, freight embargoes, fires, floods, inability to obtain materials, conditions arising from governmental orders or regulations, war or national emergency, acts of God, and any other cause, similar or dissimilar, beyond the Company's reasonable control.

Section 6.10 Termination by Company. The Company is authorized to terminate this Fee Agreement at any time with respect to all or part of the Project upon providing the County with 30 days' notice; *provided, however*, that (i) any monetary obligations existing hereunder and due and owing at the time of termination to a party hereto; and (ii) any provisions which are intended to survive termination shall survive such termination. In the year following such termination, all property shall be subject to ad valorem taxation or such other taxation or fee in

lieu of taxation that would apply absent this agreement. The Company's obligation to make fee in lieu of tax payments under this Fee Agreement shall terminate in the year following the year of such termination pursuant to this section.

Section 6.11 Entire Understanding. This Fee Agreement expresses the entire understanding and all agreements of the parties hereto with each other, 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 Fee Agreement or in certificates delivered in connection with the execution and delivery hereof.

Section 6.12 Waiver. Either party may waive compliance by the other party with any term or condition of this Fee Agreement only in a writing signed by the waiving party.

Section 6.13 Business Day. In the event that any action, payment, or notice is, by the terms of this Fee Agreement, required to be taken, made, or given on any day which is a Saturday, Sunday, or legal holiday in the jurisdiction in which the person obligated to act is domiciled, such action, payment, or notice may be taken, made, or given on the following business day with the same effect as if given as required hereby, and no interest shall accrue in the interim.

Section 6.14 Limitation of Liability. Anything herein to the contrary notwithstanding, any financial obligation the County may incur hereunder, including for the payment of money shall not be deemed to constitute a pecuniary liability or a debt or general obligation of the County; provided, however, that nothing herein shall prevent the Company from enforcing its rights hereunder by suit for *mandamus* or specific performance.

ARTICLE VII

INDEMNIFICATION, INDIVIDUAL LIABILITY

Section 7.1 Indemnification Covenants.

(a) Notwithstanding any other provisions in this Fee Agreement or in any other agreements with the County (i) the Company shall agree to indemnify and save the County, its members, officers, employees, servants, and agents (collectively, the "Indemnified Parties"), harmless against and from all claims by or on behalf of any person, firm, or corporation arising from the conduct or management of, or from any work or thing done on the Project during the Fee Term, and, the Company further shall indemnify and save the Indemnified Parties harmless against and from all claims arising during the Fee Term from (A) any condition of the Project, (B) any breach or default on the part of the Company in the performance of any of its obligations under this Fee Agreement, (C) any act of negligence of the Company, or of any agents, contractors, servants, employees, or licensees, (D) except in such cases where the County has released the Company, any act of negligence of any assignee or sublessee of the Company, or of any agents, contractors, servants, employees, or licensees of any assignee or sublessee of Company, and/or (E) any environmental violation, condition, or effect. The Company shall indemnify and save the County harmless from and against all costs and expenses incurred in or in connection with any such claim arising as aforesaid or in connection with any action or

proceeding brought thereon, and upon notice from the County, the Company shall defend it in any such action, prosecution, or proceeding.

(b) Notwithstanding the fact that it is the intention of the parties that the Indemnified Parties shall not incur pecuniary liability by reason of the terms of this Fee Agreement, or the undertakings required of the County hereunder, by reason of the granting of the Fee, by reason of the execution of this Fee Agreement, by reason of the performance of any act requested of it by the Company, or by reason of the County’s relationship to the Project or the operation of the Project 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 the County, its agents, officers, or employees should 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, 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, and upon notice, the Company shall defend them in any such action or proceeding; provided, however, that such indemnity shall not apply to the extent that any such claim is attributable to (i) the gross negligent acts or omissions or willful misconduct of the County, its agents, officers, or employees, or (ii) any breach of this Fee Agreement by the County.

(c) The above-referenced indemnification covenants shall be considered included in and incorporated by reference in subsequent documents after the delivery of this Fee Agreement which the County is requested to sign on behalf of the Company with respect to the Project, and any other indemnification covenants in any subsequent documents shall not be construed to reduce or limit the above indemnification covenants.

(d) No termination of this Fee Agreement pursuant to any provision elsewhere in this Fee Agreement shall relieve the Company of its liability and obligations to make the payments required by this Section 7.1, all of which shall survive any such termination.

Section 7.2 No Liability of County Personnel. 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 shall be binding upon any member of the County Council or any officer, agent, servant, or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse shall be had for the payment of any moneys hereunder against any member of the governing body of the County or any officer, agent, servant, or employee of the County, and no recourse shall be had against any member of the County Council or any officer, agent, servant, or employee of the County for the performance of any of the covenants and agreements of the County herein contained or for any claims based thereon except solely in their official capacity.

(Signature Page Follows)

IN WITNESS WHEREOF, the County, acting by and through the County Council, has caused this Fee Agreement to be executed in its name and behalf by the County Administrator and to be attested by the Clerk of the County Council; and the Company has caused this Fee Agreement to be executed by its duly authorized officer, all as of the day and year first above written.

**BEAUFORT COUNTY,
SOUTH CAROLINA**

Signature: _____
Name: Ashley Jacobs
Title: County Administrator

ATTEST:

Signature: _____
Name: Sarah W. Brock
Title: Clerk to County Council

PROJECT GARDEN

Signature: _____
Name: _____
Title: _____

EXHIBIT A
LEGAL DESCRIPTION

That certain parcel of real property located in the County of Beaufort, State of South Carolina, containing 3.00 acres, and shown as Beaufort County tax map parcel R120-024-0000-00445, Lot 15 in the Beaufort Commerce Park.

Section 2. The County hereby agrees to enter into a fee in lieu of tax arrangement with the Company under the Act. The County agrees to provide for a fee in lieu of *ad valorem* taxes (“FILOT”) for a period of 20 years for each component of the Project that is eligible for the FILOT pursuant to the Act and that is placed in service during the investment period (the “FILOT Term”) under the Act. The FILOT shall be calculated using a 6% assessment ratio and a fixed millage rate equal to the lowest millage rate allowable under the Act for a period of 20 years.

Section 3. The further details of the FILOT shall be prescribed by subsequent ordinance of the County to be adopted in accordance with South Carolina law and the rules and procedures of the County.

Section 4. This resolution shall constitute an inducement resolution for this Project within the meaning of the Act.

Section 5. This resolution shall constitute “preliminary approval” pursuant to Section 12-44-110(2) of the Act by which property may be placed in service prior to the execution of a FILOT agreement but still constitute economic development property under the Act.

Section 6. All orders, resolutions, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed. This resolution shall take effect and be in full force from and after its passage by the County Council.

Adopted this ____ day of _____, 2020.

BEAUFORT COUNTY, SOUTH CAROLINA

Signature: _____
Name: Ashley Jacobs
Title: County Administrator

(SEAL)

ATTEST:

Signature: _____
Name: Sarah W. Brock
Title: Clerk to County Council



BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

Fee-in-Lieu of Property Taxes (FILOT) - Project Burger, Project Garden, Project Glass

Council Committee:

Finance Committee

Meeting Date:

October 19, 2020

Committee Presenter (Name and Title):

John O'Toole, Executive Director, Beaufort County Economic Development Corporation

Issues for Consideration:

Providing base fee-in-lieu of tax agreements to Project Burger, Project Garden, and Project Glass. This will bring property tax rate from 10% industrial rate down to 6% rate for a 20 year period.

Points to Consider:

The BCEDC's position on FILOT agreements is to take a conservative approach while recruiting prospect companies and offer the 'base FILOT.' The South Carolina economic development climate is one that promotes FILOT agreements for industrial projects and taxing industry on par with the commercial rate. Using these FILOT agreements as a recruiting tool allows the BCEDC to level the playing field with other SC Counties and recruit job creating and tax base diversifying companies to Beaufort County. See below the expected investment and job creation of each company:
Project Burger - \$4.496 million investment, 43 newly created jobs
Project Garden - \$3.19 million investment, 26 newly created jobs
Project Glass - \$15.15 million investment, 55 newly created jobs
Total: \$22.836 million investment, 124 newly created jobs

Funding & Liability Factors:

Companies will be assessed at 6% tax rate for a 20 year period.

Council Options:

Recommend FILOT agreements to full County Council for approval.

Recommendation:

The BCEDC recommends moving forward with FILOT agreements for Project Burger, Project Garden, and Project Glass

SPECIAL SOURCE REVENUE CREDIT AGREEMENT

by and between

PROJECT STONE

and

BEAUFORT COUNTY, SOUTH CAROLINA

_____, 2020

SPECIAL SOURCE REVENUE CREDIT AGREEMENT

This SPECIAL SOURCE REVENUE CREDIT AGREEMENT (“Credit Agreement”) is made and entered into as of _____, 2020, by and among BEAUFORT COUNTY, SOUTH CAROLINA (“County”), a body politic and corporate and a political subdivision of the State of South Carolina (“State”), acting by and through the Beaufort County Council (“County Council”) as the governing body of the County and a company currently identified as PROJECT STONE (“Company”).

WITNESSETH:

WHEREAS, pursuant to Title 4, Section 1, Code of Laws of South Carolina, 1976, as amended (“MCIP Act”), the County is authorized to develop multi-county industrial parks with other qualifying counties and, in its discretion, include within the boundaries of such parks the property of qualifying industries. The County has created or will create with Jasper County, South Carolina a multi-county industrial park (“Park”) pursuant to a multi-county industrial park agreement (“Park Agreement”) entered into pursuant to the terms of the MCIP Act; and

WHEREAS, in accordance with Article VIII, Section 13 of the South Carolina Constitution, real and personal property having a situs in a multi county industrial park, are exempt from all ad valorem taxation, however, the owners or lessees of such real and personal property are obligated to make, or cause to be made, annual payments in lieu of taxes to the County in the total amount equivalent to the ad valorem property taxes or other fee-in-lieu-of-taxes that would have been due and payable with respect to such real and personal property but for the location of such real and personal property within such park (each, a “Fee Payment”); and

WHEREAS, the County, acting by and through its County Council is authorized by Title 4, Chapter 1 of the Code of Laws of South Carolina 1976, as amended, including Sections 4-1-170 and 4-1-175 thereof, and Title 4, Chapter 29 of the Code of Laws of South Carolina 1976, as amended, including Section 4-29-68 (collectively, the “SSRC Act”), and Article VIII, Section 13 of the South Carolina Constitution (i) to provide credits (“Special Source Revenue Credits” (“SSRC”)) for the purpose of defraying certain costs, including, without limitation, the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the County or the Project (defined herein) and for improved and unimproved real estate and personal property, including machinery and equipment, used in the operation of a manufacturing facility or commercial enterprise, all to enhance the economic development of the County; and (ii) to expand, in conjunction with one or more other counties, a multi-county industrial park in order to facilitate the grant of SSRCs; and

WHEREAS, the Company is planning an investment consisting of the expenditure of approximately \$3,200,000 in taxable investment (“Investment”) in connection with the acquisition by construction, lease, and/or purchase of certain land, buildings, furnishings, fixtures, and/or equipment and the creation of approximately 21 new, full-time jobs for the purpose of expanding a manufacturing facility in the County (collectively, the “Project”); and

WHEREAS, the Project will comprise a portion of real property located entirely in the County of Beaufort, with improvements thereon, which is described more fully in Exhibit A, attached hereto (“Project Site”); and

WHEREAS, the County Council has determined that the Credit Agreement is an appropriate instrument to induce the Company to invest in the Project and create jobs in the County.

NOW, THEREFORE, IN CONSIDERATION of the respective representations and agreements contained in this Credit Agreement, the parties agree to the following:

Section 1. Representations of the Company and County.

Section 1.1 The Company makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) The Company is a corporation duly organized, validly existing, and in good standing, under the laws of the State of South Carolina, has power to enter into this Credit Agreement, and by proper corporate action has been duly authorized to execute and deliver this Credit Agreement.

(b) The Company is or intends to become the owner of the Project Site.

(c) This Credit Agreement has been duly executed and delivered by the Company and constitutes the legal, valid, and binding obligation of the Company, enforceable in accordance with its terms except as enforcement thereof may be limited by bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally.

(d) Neither the execution and delivery of this Credit Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Credit Agreement, will result in a material breach of any of the terms, conditions, or provisions of any corporate restriction or any agreement or instrument to which the Company is now a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of the Company, other than as may be created or permitted by this Credit Agreement.

(e) The agreement of the County to enter into this Credit Agreement and provide the SSRCs has been instrumental in inducing the Company to make the Investment in the Project.

Section 1.2 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 which acts through the County Council as its governing body and by the provision of the Act is authorized and empowered to enter into the transactions contemplated by the Credit Agreement

and to carry out its obligations hereunder. The County has duly authorized the execution and delivery of this Credit Agreement and any and all other agreements described herein or therein.

(b) Neither the execution and delivery of this Credit Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Credit Agreement, will result in a material breach of any of the terms, conditions, or provisions of any agreement or instrument to which the County is now a party or by which it is bound, or will constitute a default under any of the foregoing

Section 2. Fee Payments and SSRCs.

The County grants an annual SSRC to the Company, for a period of twenty (20) years (“Credit Period”) against each annual Fee Payment due for Investment made in the Project that has been placed into service beginning in 2020 and by December 31, 2025 (“Investment Period”). Any SSRC provided under this Credit Agreement shall be used to reimburse the Company for eligible expenditures, as permitted by the SSRC Act, which includes the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the Project and Project Site, for improved or unimproved real estate, or for machinery and equipment. In no event shall the aggregate amount of SSRCs received as of any point in time exceed the amount of the Company’s aggregate amount of expenses toward such eligible expenditures as of such time. The SSRCs shall be calculated as follows:

Real Property Ad Valorem Tax Payment calculated as a standard property tax without regard to this Credit Agreement	Real Property Ad Valorem Tax Payment
Personal Property Ad Valorem Tax Payment calculated as a standard property tax without regard to this Credit Agreement	Personal Property Ad Valorem Tax Payment
Real Property Value (as it would be defined in Section 12-44-50 using gross cost as the applicable fair market value) x 6% Assessment Ratio x Fixed Millage Rate of 0.2731 =	Real Property FILOT Tax Payment
Personal Property Value (as it would be defined in Section 12-44-50 including the applicable statutory depreciation) x 6% Assessment Ratio x Fixed Millage Rate of 0.2731 =	Personal Property FILOT Tax Payment
(Real Property Ad Valorem Tax Payment + Personal Property Ad Valorem Tax Payment) – (Real Property FILOT Tax Payment + Personal Property FILOT Tax Payment) =	Annual SSRC

In calculating the Real Property Ad Valorem Tax Payment and Personal Property Ad Valorem Tax Payment, the Company agrees to waive Section 3(g) of Article X of the South Carolina Constitution as well as Section 12-37-220 (B)(32) and (34) of the Code of Laws of South Carolina. **[NOTE TO COUNTY AUDITOR: IN PREPARING OR REVIEWING ANNUAL CALCULATIONS, APPLY THE FULL MILLAGE RATE, WITHOUT REDUCTION FOR ANY ABATEMENT, TO BOTH THE “EXEMPT” AND “NON-EXEMPT” AMOUNTS CERTIFIED BY DOR IN CALCULATION THE AD VALOREM TAX AMOUNTS.]**

In order to assist the County in preparing the annual tax bills, the Company shall file an annual certification with the County Auditor on or before August 1 of each year in the form attached

hereto as Exhibit B. Further, the Company shall file a separate schedule with its annual PT-300 filing (or successor form) with the South Carolina Department of Revenue to include only assets placed in service in the Investment Period described above. This separate schedule should be clearly and unambiguously designated as “BEAUFORT COUNTY 2020 SSRC ASSETS,” and a copy of the schedule should be provided to the County Auditor each year in connection with the filing of Exhibit B. Failure to file Exhibit B shall constitute a waiver of the SSRC for the applicable year.

The County shall credit the annual SSRC against the Fee Payment of the corresponding year to result in a “Net Fee Payment” to be due to the County from the Company.

Section 3. Minimum Investment

(a) In the event the Company does not make a capitalized investment in the County of at least \$2.5 million in the Project within and as of the end of the Investment Period, the SSRC as described in Section 2 above shall terminate both prospectively and retroactively, and the Company shall repay to the County any shortfall in the Net Fee Payments made under this Credit Agreement and the payments that would have been due and payable had this Credit Agreement not been in effect. In the event the Company makes a capitalized investment in the County of at least \$2.5 million in the Project within and as of the end of the Investment Period, but fails to maintain at least \$2.5 million of capitalized investment in the County within and as of the last day of any property tax year following the end of the Investment Period, the SSRC as described in Section 2 above shall terminate prospectively only. This repayment obligation is a contractual obligation, and the Company hereby waives any statute of limitations defense that would in any way reduce the amount of this obligation. For purposes of this paragraph, capitalized investments shall be calculated based on gross cost without regard to depreciation.

(b) Any amounts determined to be owing pursuant to this Section 3 shall be subject to interest at the rates in effect for the late payment of ad valorem taxes and shall be due within 90 days after the last day of the Investment Period.

Section 4. Project Shall Remain in the Park. The County shall use its best efforts to ensure that the Project, once placed in the Park, will remain in the Park for a period not less than 20 years. If, for any reason, the Park Agreement is modified to exclude the Project, or is otherwise terminated, then the County will use its best efforts to ensure that the Project shall be immediately placed into another multi-county park arrangement to which the County is party and that would enable the Company to receive the SSRCs set forth in this Credit Agreement.

Section 5. Administration Expenses. The Company shall pay the County’s legal fees incurred with the review and preparation of this Agreement. Such fees shall be paid within thirty (30) days of the Company’s receipt of an invoice for such legal fees.

Section 6. Notices. Any notice, election, demand, request, or other communication to be provided under this Credit Agreement shall be effective when delivered to the party named below or three business days after deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed as follows (or addressed to such other address

as any party may subsequently furnish, in writing to the other party), except where the terms hereof require receipt rather than sending of any notice, in which case such provision shall control:

AS TO THE COUNTY: Beaufort County, South Carolina
Attn: County Attorney
100 Ribaut Road
Beaufort, SC 29902

WITH A COPY TO: Haynsworth Sinkler Boyd, P.A.
Attn: William R. Johnson
P.O. Box 11889
Columbia, SC 29211-1889

AS TO THE COMPANY: Project Stone
[Insert company name and contact for final reading.]

Section 7. Binding Effect. This Credit Agreement is binding, in accordance with its terms, upon and inure to the benefit of the Company and its respective successors and assigns. In the event of the dissolution of the County or the consolidation of any part of the County with any other political subdivision or the transfer of any rights of the County to any other such political subdivision, all of the covenants, stipulations, promises, and agreements of this Credit Agreement shall bind and inure to the benefit of the successors of the County from time to time and any entity, officer, board, commission, agency, or instrumentality to whom or to which any power or duty of the County has been transferred.

Section 8. Counterparts. The parties may execute this Credit Agreement in any number of counterparts, in original or by facsimile or electronic means, and all of the counterparts taken together shall be deemed to constitute one and the same instrument.

Section 9. Governing Law. This Credit Agreement and all documents executed in connection with this Agreement are construed in accordance with and governed by the laws of the State of South Carolina. To the extent of any conflict between the provisions of this Credit Agreement and the SSRC Act, the SSRC Act controls.

Section 10. Amendments. The parties may modify or amend this Credit Agreement only in a writing signed by the parties.

Section 11. Further Assurance. From time to time the County shall execute and deliver to the Company any additional instruments as the Company reasonably requests to evidence or effectuate the purposes of this Credit Agreement, subject to any approvals required to be obtained from County Council.

Section 12. Severability. If any provision of this Credit Agreement is illegal, invalid, or unenforceable for any reason, the remaining provisions remain unimpaired and any illegal, invalid, or unenforceable provision are reformed to effectuate most closely the legal, valid, and enforceable intent and to afford the Company with the maximum benefits to be derived under this Credit Agreement and the SSRC Act, it being the intention of the County to offer the Company

the strongest inducement possible to encourage the Company to proceed with the Project in the County.

Section 13. Assignment. This Credit Agreement may be assigned in whole or in part only with the prior written consent or subsequent written ratification of the County.

Section 14. Limited Obligation. THIS CREDIT AGREEMENT AND THE SPECIAL SOURCE REVENUE CREDITS BECOMING DUE HEREUNDER ARE LIMITED OBLIGATIONS OF THE COUNTY PROVIDED BY THE COUNTY SOLELY FROM THE FEE PAYMENTS RECEIVED BY THE COUNTY FOR THE PROJECT PURSUANT TO THE PARK AGREEMENT, AND DO NOT AND SHALL NEVER CONSTITUTE A GENERAL OBLIGATION OR AN INDEBTEDNESS OF THE COUNTY OR ANY MUNICIPALITY WITHIN THE MEANING OF ANY CONSTITUTIONAL PROVISION (OTHER THAN THE PROVISIONS OF ARTICLE X, SECTION 14(10) OF THE SOUTH CAROLINA CONSTITUTION) OR STATUTORY LIMITATION AND DO NOT AND SHALL NEVER CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE COUNTY OR ANY MUNICIPALITY OR A CHARGE AGAINST THEIR GENERAL CREDIT OR TAXING POWER. THE FULL FAITH, CREDIT, AND TAXING POWER OF THE COUNTY OR ANY MUNICIPALITY ARE NOT PLEDGED FOR THE SPECIAL SOURCE REVENUE CREDITS.

Section 15. Indemnification.

(a) The Company shall and agrees to indemnify and save the County harmless against and from all claims by or on behalf of any person, firm or corporation arising from the conduct or management of, or from any work or thing done on, the Project during the term of this Credit Agreement, and Company further, shall indemnify and save the County harmless from all claims arising during the term of this Credit Agreement from (i) any condition of the Project, (ii) any breach or default on the part of the Company in the performance of any of its obligations under this Credit Agreement, (iii) any act of negligence of the Company or any of its agents, contractors, servants, employees or licensees related to the Project, (iv) any act of negligence related to the Project of any assignee of the Company, or of any agents, contractors, servants, employees or licensees of any assignee of the Company, or (v) any environmental violation, condition, or effect related to the Project. The Company shall indemnify and save the County harmless from and against all costs and expenses incurred in or in connection with any such claim arising as aforesaid or in connection with any action or proceeding brought thereon, and upon notice from the County, the Company shall defend the County in any such action, prosecution or proceeding.

(b) Notwithstanding the fact that it is the intention of the parties that the County, its agents, officers, or employees, shall not incur pecuniary liability by reason of the terms of this Credit Agreement, or the undertakings required of the County hereunder, or by reason of the performance of any act requested of it 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, should the County, its agents, officers or employers incur any such pecuniary liability other than as a result of their own negligence or willful or intentional misconduct, the Company shall indemnify and hold them harmless against all claims by or on behalf of any person, firm or corporation, 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, and upon notice, the Company shall defend them in any such action, prosecution or proceeding.

(c) These indemnification covenants shall be considered included in and incorporated by reference in any subsequent documents related to the Project or this Credit Agreement that the Company requests the County sign, and any other indemnification covenants in any subsequent documents shall not be construed to reduce or limit the above indemnification covenants.

IN WITNESS WHEREOF, the County, acting by and through the County Council, has caused this Credit Agreement to be executed in its name and on its behalf by the Chair of County Council and to be attested by the Clerk to County Council as of the day and year first above written.

BEAUFORT COUNTY, SOUTH CAROLINA

Signature: _____
Name: Ashley Jacobs
Title: County Administrator

(SEAL)
ATTEST:

Signature: _____
Name: Sarah W. Brock
Title: Clerk to County Council

IN WITNESS WHEREOF, the Company has caused this Credit Agreement to be executed in its name and on its behalf by its authorized officer as of the day and year first above written.

PROJECT STONE

Signature: _____
Name: _____
Title: _____

EXHIBIT "A"
LEGAL DESCRIPTION

All that certain piece, parcel or tract of land, situate, lying and being in Beaufort County, South Carolina, containing 3.70 acres as shown on that certain plat prepared by David E. Gasque, RLS, dated May 2, 2001, entitled "Boundary Survey & Lot Line Revision, Portion of Tax Parcel 100-031-017C and Parcel 100-031-0167 prepared for Henry J. Lee Distributors, Inc., and recorded in Plat Book 80 at Page 2 in the office of the Register of Deeds for Beaufort County, South Carolina. For a more complete description as to metes, bounds, courses and distances reference may be had to aforementioned plat of record.

-ALSO-

All that certain piece, parcel or tract of land situate, lying and being on Port Royal Island, Beaufort County, State of South Carolina containing 4.01 acres as shown on that certain plat prepared by David E. Gasque, R.L.S., dated October 6, 1988 and entitled "Plat showing 4.01 acres, located on S.C. Highway 170, survey at the Request of Harold E. Trask" a copy of which is recorded in the Office of the RMC for Beaufort County, S.C. in Plat Book 35 at page 361. For a more detailed description as to metes and bounds, courses and distances reference is craved to the above referred to plat of record.

BEING the same property conveyed to DJL Land Company, LLC (predecessor by name change to LONE OAK – SOUTH CAROLINA, L.L.C.) by deed of Dennis J. Lee dated March 1, 2004 and recorded March 16, 2004 in Record Book 1923, Page 882, Register of Deeds for Beaufort County, S.C.

EXHIBIT B
ANNUAL CERTIFICATION

PROJECT STONE

Real Property Value (as it would be defined in Section 12-44-50 using gross cost as the applicable fair market value) = \$ _____

Real Property FILOT Tax Payment = Real Property Value x 6% x .2731 = \$ _____

Personal Property Value (as it would be defined in Section 12-44-50 including the applicable statutory depreciation) = \$ _____

Personal Property FILOT Tax Payment = Personal Property Value x 6% x .2731 = \$ _____

Total FILOT Tax Payment = Real Property FILOT Tax Payment + Personal Property FILOT Tax Payment = \$ _____

Compliance Notes to County Auditor:

The SSRCs should be determined by first calculating the ad valorem taxes that would be due based upon the DOR certification issued directly to the County (but applying the full millage rate to all amounts, whether designed as “exempt” or “non-exempt” by DOR). The SSRCs under Section 2 of the Special Source Revenue Credit Agreement dated _____, 2020 between Beaufort County, South Carolina and Project Stone (the “Credit Agreement”) should be determined by subtracting the Total FILOT Tax Payment above from the ad valorem taxes that would be due based upon the ad valorem tax calculations as described in this paragraph. The difference in these figures is the Net Fee Payment, as defined in Section 2 of the Credit Agreement. The Net Fee Payment should equal the “Total FILOT Tax Payment” as defined above.

The County Auditor should check the calculation of the Total FILOT Tax Payment by determining the gross cost of all land, buildings, and building improvements listed in the Company’s applicable PT-300 filing, multiplying that total by 6% and a millage rate of .2731. This figure should match the Real Property FILOT Tax Payment described above. The County Auditor should then take the depreciated value of all machinery and equipment from the DOR certification (whether it is listed as exempt or non-exempt) and multiply that total by 6% and a millage rate of .2731. This figure should match the Personal Property FILOT Tax Payment described above. It may be helpful for the County Auditor to provide copies of the DOR certification to the Company upon receipt in order to avoid any confusion with the calculations.

Note to Company: A copy of a separate PT-300 schedule filed with SCDOR listing only assets placed in service in the Investment Period, as defined in the Credit Agreement must be included with this filing.

THIS CERTIFICATION SHALL BE FILED ANNUALLY WITH THE
BEAUFORT COUNTY AUDITOR, 100 RIBAUT RD BEAUFORT, SC 29902

ON OR BEFORE AUGUST 1 OF EACH YEAR.

(b) The purposes to be accomplished by the Project are proper governmental and public purposes;

(c) It is anticipated that the cost of planning, designing, acquiring, constructing and completing the Project will require expenditures of not less than \$3,200,000;

(d) The benefits of the Project to the public are greater than the costs to the public;

(e) Neither the Project nor any documents or agreements entered into by the County in connection therewith will give rise to any pecuniary liability of the County or incorporated municipality or to any charge against its general credit or taxing power.

Section 2. In order to promote industry, develop trade and utilize the manpower, products, and natural resources of the State of South Carolina, the form, terms, and provisions of the SSRC Agreement which is attached hereto are hereby approved, and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if the SSRC Agreement was set out in this Ordinance in its entirety. The Chairman of County Council and the Clerk to County Council are hereby authorized, empowered and directed to execute, acknowledge and deliver the SSRC Agreement to the Company, together with such changes as are not materially adverse to the County.

Section 3. The Chair of County Council and the Clerk to County Council, for and on behalf of the County, are hereby each authorized and directed to do any and all things necessary to effect the execution and delivery of the SSRC Agreement and the performance of all obligations of the County under and pursuant to the SSRC Agreement.

Section 4. The consummation of all transactions contemplated by the SSRC Agreement is hereby approved.

Section 5. This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina.

Section 6. 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 7. All orders, resolutions, ordinances and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed and this Ordinance shall take effect and be in full force from and after its passage and approval.

(SIGNATURE PAGE TO FOLLOW)

EXHIBIT A
SSRC AGREEMENT



BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

Special Source Revenue Credit - Project Stone

Council Committee:

Finance Committee

Meeting Date:

Finance Committee October 19, 2020

Committee Presenter (Name and Title):

John O'Toole, Executive Director, Beaufort County Economic Development Corporation

Issues for Consideration:

Providing a Special Source Revenue Credit to Project Stone - this SSRC will act as a base FILOT equivalent - allowing the company to pay the equivalent of a 6% tax rate over a 20 year period.

Points to Consider:

Project Stone is moving into an existing 37,000 sq. ft. facility in Port Royal. Due to the facility being existing versus new construction, they are not eligible for a FILOT agreement. In order to offer benefits on par with a base FILOT, the BCEDC would like to pursue a special source revenue credit that is the tax equivalent to a base FILOT - 6% tax rate over a 20 year period. The company is expected to invest \$3.2 million and create 21 new jobs.

Funding & Liability Factors:

Company will be offered equivalent to base FILOT - 6% over 20 year period.

Council Options:

Recommend SSRC agreement to full County Council for approval.

Recommendation:

The BCEDC recommends moving forward with SSRC for Project Stone.

(c) Notwithstanding the provisions of subsection (a) of this Section 2, the Council Chair is authorized to execute the Park Agreement only upon the public announcement, including revelation of the company name, by the Company of its intentions to locate and develop the project on the property described in the Park Agreement.

Section 3. Payment of Fee in Lieu of Tax.

The businesses and industries located in the Park must pay a fee in lieu of *ad valorem* taxes as provided for in the Park Agreement. With respect to properties located in the Beaufort County portion of the Park, the fee paid in lieu of *ad valorem* taxes shall be paid to the Treasurer of Beaufort County and the portion of fee in lieu of *ad valorem* taxes allocated pursuant to the Park Agreement to Jasper County shall be thereafter paid by the Treasurer of Beaufort County to the Treasurer of Jasper County within forty-five (45) business days of receipt for distribution in accordance with the Park Agreement. With respect to properties located in the Jasper County portion of the Park, the fee paid in lieu of *ad valorem* taxes shall be paid to the Treasurer of Jasper County and the portion of the fee in lieu of *ad valorem* taxes allocated pursuant to the Park Agreement to Beaufort County shall thereafter be paid by the Treasurer of Jasper County to the Treasurer of Beaufort County within forty-five (45) business days of receipt for distribution in accordance with the Park Agreement. The provisions of Section 12-2-90, Code of Laws of South Carolina 1976, as amended, or any successor statutes or provisions, apply to the collection and enforcement of the fee in lieu of *ad valorem* taxes.

Section 4. Applicable Ordinances and Regulations.

Any applicable ordinances and regulations of Beaufort County concerning zoning, health and safety, and building code requirements shall apply to the Park properties in Beaufort County unless the properties are within the boundaries of a municipality in which case the municipality's applicable ordinances and regulations shall apply. Any applicable ordinances and regulations of Jasper County concerning zoning, health and safety, and building code requirements shall apply to the Park properties in Jasper County unless the properties are within the boundaries of a municipality in which case the municipality's applicable ordinances and regulations shall apply.

Section 5. Law Enforcement Jurisdiction.

Jurisdiction to make arrests and exercise all authority and power within the boundaries of the Park properties in Beaufort County is vested with the Sheriff's Department of Beaufort County. Jurisdiction to make arrests and exercise all authority and power within the boundaries of the Park properties in Jasper County is vested with the Sheriff's Department of Jasper County. If any of the Park properties located in either Beaufort County or Jasper County are within the boundaries of a municipality, then jurisdiction to make arrests and exercise law enforcement jurisdiction is vested with the law enforcement officials of the municipality.

Section 6. Distribution of Revenue.

(a) Revenues generated from industries or businesses located in the Jasper County portion of the Park to be retained by Jasper County shall be distributed within Jasper County in

accordance with this subsection:

(1) First, unless Jasper County elects to pay or credit the same from only those revenues which Jasper County would otherwise be entitled to receive as provided under item (3) below, to pay annual debt service on any special source revenue bonds issued by Jasper County pursuant to, or to be utilized as a credit in the manner provided in Section 4-1-175, Code of Laws of South Carolina 1976, as amended;

(2) Second, at the option of Jasper County, to reimburse Jasper County for any expenses incurred by it in the administration, development, operation, maintenance and promotion of the Park or the industries and businesses located therein or for other economic development purposes of Jasper County; and

(3) Third, to those taxing entities in which the property is located, in the same manner and proportion that the millage levied for the taxing entities would be distributed if the property were taxable for that year.

(b) Notwithstanding any other provision of this section:

(1) all taxing entities which overlap the applicable properties within the Park shall receive at least some portion of the revenues generated from such properties; and

(2) all revenues receivable by a taxing entity in a fiscal year shall be allocated to operations and maintenance and to debt service as determined by the governing body of the taxing entity.

(c) Revenues generated from industries or businesses located in the Beaufort County portion of the Park shall be retained by Jasper County.

Section 7. Conflicting Provisions.

To the extent this ordinance contains provisions that conflict with provisions contained elsewhere in the Jasper County Code or other Jasper County orders, resolutions and ordinances, the provisions contained in this ordinance supersede all other provisions and this ordinance is controlling.

Section 8. Severability.

If any section of this ordinance is, for any reason, determined to be void or invalid by a court of competent jurisdiction, it shall not affect the validity of any other section of this ordinance which is not itself void or invalid.

Section 9. Effective Date.

This ordinance is effective upon third reading.

SIGNATURES FOLLOW ON NEXT PAGE.

DONE this ___ day of _____ 2020.

COUNTY COUNCIL OF JASPER COUNTY

By: _____
Henry Etheridge, Chair

ATTEST:

Wanda Simmons, Clerk to Council

First Reading: _____, 2020
Second Reading: _____, 2020
Public Hearing: _____, 2020
Third and Final Reading: _____, 2020

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Exhibit A to Ordinance No. 2020/ _____

**Multi-County Park Agreement
(Projects Stone, Garden, Glass and Burger)
between
Beaufort County, South Carolina and Jasper County, South Carolina**

See attached.

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**MULTI-COUNTY PARK AGREEMENT
(Projects Stone, Garden, Glass, and Burger)**

between

BEAUFORT COUNTY, SOUTH CAROLINA

and

JASPER COUNTY, SOUTH CAROLINA

Dated as of _____, 2020

**Multi-County Park Agreement
(Projects Stone, Garden, and Burger)**

This MULTI-COUNTY PARK AGREEMENT (PROJECTS STONE, GARDEN, GLASS AND BURGER PROPERTY) is made and entered into as of the ___ day of _____, 2020, by and between BEAUFORT COUNTY, SOUTH CAROLINA (“Beaufort County”) and JASPER COUNTY, SOUTH CAROLINA (“Jasper County”) (collectively, Beaufort County and Jasper County are the “Parties”), each a body politic and corporate, a political subdivision of the State of South Carolina (“Park Agreement”).

In consideration of the mutual agreements, representations and benefits contained in this Park Agreement and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Beaufort County and Jasper County agree as follows:

1. Effective Date. This Park Agreement is effective at 12:00 a.m. (midnight), December 31, 2020 (the “Effective Date”).

2. Authorization. Article VIII, section 13(D) of the South Carolina Constitution and Sections 4-1-170, -172, and -175 of the Code of Laws of South Carolina 1976, as amended (the “MCP Law”), authorizes contiguous counties to jointly develop industrial and business parks within the geographical boundaries of one or more of the participating counties. Beaufort County authorized and approved this Park Agreement by passage of Ordinance No. 2020/___ and Jasper County authorized and approved this Park Agreement by passage of Ordinance No. ___ - ___.

3. Purpose. The purpose of this Park Agreement is to (i) provide for the establishment of a multi-county park in accordance with the MCP Law and (ii) encourage the investment of capital and the creation of jobs in Beaufort County and Jasper County.

4. Agreement to Develop Park. The Parties agree to jointly develop an industrial and business park in accordance with the MCP Law and the terms and conditions of this Park Agreement (the “Park”).

5. The Park. (A) Location. The Park consists of certain property located in Beaufort County as further identified in Exhibit A (Beaufort County) to this Park Agreement, and property located in Jasper County, as further identified in Exhibit B (Jasper County), to this Park Agreement. The Park may consist of non-contiguous properties within each county. The Parties acknowledge that on the Effective Date, the Park does not contain any property located in Jasper County.

(B) Addition and Removal of Property.

(1) County Action. Property may be added to or removed from the Park by ordinance of the county in which the subject property is located, provided that the host county shall provide notice to the non-host county as well as revised exhibits pursuant to subsection (2) below.

(2) Revised Exhibits. If property is added to or removed from the Park, this Park Agreement is deemed amended and a revised Exhibit A (Beaufort County) or Exhibit B (Jasper County), as applicable, shall be prepared by the county in which the added or removed property is located. The revised exhibit must contain a description or other identification of the properties included in the Park, after the addition or removal. A copy of the revised exhibit shall be provided to the Administrator, Clerk to Council, Assessor, Auditor and Treasurer of Beaufort County and Jasper County.

(3) Public Hearings and Notice. Prior to the adoption by either county of an ordinance authorizing the removal of property from the Park, the county council in the county in which the

property to be removed is located, shall hold a public hearing. The county that will conduct the public hearing must give notice of the public hearing by publication in a newspaper of general circulation in the county in which the public hearing will be held at least once and not less than fifteen (15) days prior to the public hearing. Notice of the public hearing shall also be served in the manner of service of process at least fifteen (15) days prior to the public hearing upon the owner of the real property and, if applicable and known, the lessee of any real property which would be removed from the Park.

6. Fee in Lieu of Taxes. Pursuant to article VIII, section 13(D), of the South Carolina Constitution, all property located in the Park is exempt from all *ad valorem* taxation. The owners or lessees of any property situated in the Park shall pay in accordance with this Park Agreement and the MCP Law an amount equivalent to the *ad valorem* property taxes or other in-lieu-of payments that would have been due and payable but for the location of the property within the Park (“Fee in Lieu of Taxes” or “FILOT”).

7. Allocation of Expenses. Beaufort County and Jasper County shall bear the expenses for the development, operation, maintenance and promotion of the Park and the cost of providing public services, in the following proportions:

If property is in the Beaufort County portion of the Park:

- (1) Beaufort County 100%
- (2) Jasper County 0%

If property is in the Jasper County portion of the Park:

- (1) Beaufort County 0%
- (2) Jasper County 100%

8. Allocation of Revenues. Beaufort County and Jasper County shall receive an allocation of revenue generated by the Park through payment of Fee in Lieu of Taxes (net of any special source revenue bond payments or special source revenue credits) in the following proportions:

If property is in the Beaufort County portion of the Park:

- (1) Beaufort County 99%
- (2) Jasper County 1%

If property is in the Jasper County portion of the Park:

- (1) Beaufort County 1%
- (2) Jasper County 99%

9. Revenue Allocation Within Each County.

(A) *Host County.* Revenues generated by the Park through the payment of Fee in Lieu of Taxes shall be distributed to Beaufort County and to Jasper County, as applicable, according to the proportions established by Paragraph 8 of this Park Agreement. With respect to revenues allocable to Beaufort County or Jasper County by way of FILOT generated within the respective county (the “Host County”), such revenue shall be distributed within the Host County in the manner provided by ordinance of the council of the Host County; provided, that (i) all taxing districts which overlap the applicable revenue-generating portion of the Park shall receive at least some portion of the revenues generated from such portion, and (ii) with respect to amounts received in any fiscal year by a taxing entity, the governing body

of the taxing entity shall allocate the revenues received between operations and debt service of the taxing entity. Each Host County is specifically authorized to use a portion of the revenue for economic development purposes as permitted by law and as established by ordinance of the council of the Host County.

(B) *Non-Host County*. Revenues allocable to Beaufort County by way of FILOT generated within Jasper County shall be distributed solely to Beaufort County. Revenues allocated to Jasper County by way of FILOT generated within Beaufort County shall be distributed solely to Jasper County.

10. Fees In Lieu of Taxes Pursuant to Title 4 and Title 12 Code of Laws of South Carolina. The Parties agree that the entry by Beaufort County into any one or more fee in lieu of tax agreements pursuant to Title 4 or Title 12 of the Code of Laws of South Carolina 1976, as amended (“Negotiated Fee-in-Lieu of Tax Agreements”), with respect to property located within the Beaufort County portion of the Park and the terms of those agreements shall be at the sole discretion of Beaufort County. The Parties further agree that entry by Jasper County into any one or more Negotiated Fee-in-Lieu of Tax Agreements with respect to property located within the Jasper County portion of the Park and the terms of those agreements shall be at the sole discretion of Jasper County.

11. Assessed Valuation. For the purpose of calculating the bonded indebtedness limitation and for the purpose of computing the index of taxpaying ability pursuant to Section 59-20-20(3) of the Code of Laws of South Carolina 1976, as amended, allocation of the assessed value of property within the Park to Beaufort County and Jasper County and to each of the taxing entities within the participating counties shall be identical to the allocation of revenue received and retained by each of the counties and by each of the taxing entities within the participating counties, pursuant to Paragraphs 8 and 9 of this Park Agreement.

12. Applicable Regulations. Any applicable ordinances and regulations of Jasper County concerning zoning, health and safety, and building code requirements shall apply to the Park properties in Jasper County unless the properties are within the boundaries of a municipality in which case the municipality’s applicable ordinances and regulations shall apply. Any applicable ordinances and regulations of Beaufort County concerning zoning, health and safety, and building code requirements shall apply to the Park properties in Beaufort County unless the properties are within the boundaries of a municipality in which case the municipality’s applicable ordinances and regulations shall apply.

13. Law Enforcement Jurisdiction. Jurisdiction to make arrests and exercise all authority and power within the boundaries of the Park properties in Jasper County is vested with the Sheriff’s Department of Jasper County. Jurisdiction to make arrests and exercise all authority and power within the boundaries of the Park properties in Beaufort County is vested with the Sheriff’s Department of Beaufort County. If any of the Park properties located in either Jasper County or Beaufort County are within the boundaries of a municipality, then jurisdiction to make arrests and exercise law enforcement jurisdiction is vested with the law enforcement officials of the municipality.

14. Severability. If any provision or any part of a provision of this Park Agreement is held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable the remainder of that provision or any other provision or part of a provision of this Park Agreement.

15. Amendments. The provisions of this Park Agreement may be modified or amended only in a writing signed by the Parties.

16. Headings and Catch Lines. The headings of the paragraphs and subparagraphs of this Park Agreement are inserted for convenience only and do not constitute a part of this Park Agreement.

17. Governing Law. This Park Agreement, and all documents executed in connection with it, shall be construed in accordance with and governed by the laws of the State of South Carolina.

18. Counterparts. This Park Agreement may be executed in any number of counterparts, and all of the counterparts taken together constitute one and the same instrument.

19. Binding Agreement. This Park Agreement is binding upon and shall inure to the benefit of the respective Parties.

20. Merger. This Park Agreement, and all documents executed in connection with it, express the entire understanding and all agreements of the Parties with each other, and neither Beaufort County nor Jasper County has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth in this Park Agreement.

21. Waiver. Either party may waive compliance by the other party with any term or condition of this Park Agreement only in a writing signed by the waiving party. The failure or delay on the part of any party hereto in exercising any right, power, or remedy hereunder shall not operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy hereunder. No waiver of any provision hereof shall be effective unless the same shall be in writing and signed by the waiving party hereto.

22. Termination.

(A) *Duration and Renewal.* This Park Agreement commences on the Effective Date and shall continue until at least December 31, 2045.

(B) *Mutual Termination.* Notwithstanding the provisions of subparagraph (A) of this Paragraph 22, the Parties may mutually agree to terminate this Park Agreement at any time upon passage of an ordinance to that effect by each county and after conducting a public hearing and giving notice as set forth in subparagraph (B)(3) of Paragraph 5 of this Park Agreement.

SIGNATURES FOLLOW ON NEXT PAGE.

WITNESS our hands and seals as of the date first above written.

BEAUFORT COUNTY, SOUTH CAROLINA

By: _____
Joseph Passiment, Chair, County Council

ATTEST:

Sarah W. Brock, Clerk to Council

JASPER COUNTY, SOUTH CAROLINA

By: _____
Henry Etheridge, Chair, County Council

ATTEST:

Tisha L. Williams, Acting Clerk to Council

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EXHIBIT A (Beaufort County)

**Beaufort County Property
December 31, 2020
PROJECTS STONE, GARDEN, GLASS BURGER**

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PROJECT STONE
LEGAL DESCRIPTION

All that certain piece, parcel or tract of land, situate, lying and being in Beaufort County, South Carolina, containing 3.70 acres as shown on that certain plat prepared by David E. Gasque, RLS, dated May 2, 2001, entitled "Boundary Survey & Lot Line Revision, Portion of Tax Parcel 100-031-017C and Parcel 100-031-0167 prepared for Henry J. Lee Distributors, Inc., and recorded in Plat Book 80 at Page 2 in the office of the Register of Deeds for Beaufort County, South Carolina. For a more complete description as to metes, bounds, courses and distances reference may be had to aforementioned plat of record.

-ALSO-

All that certain piece, parcel or tract of land situate, lying and being on Port Royal Island, Beaufort County, State of South Carolina containing 4.01 acres as shown on that certain plat prepared by David E. Gasque, R.L.S., dated October 6, 1988 and entitled "Plat showing 4.01 acres, located on S.C. Highway 170, survey at the Request of Harold E. Trask" a copy of which is recorded in the Office of the RMC for Beaufort County, S.C. in Plat Book 35 at page 361. For a more detailed description as to metes and bounds, courses and distances reference is craved to the above referred to plat of record.

BEING the same property conveyed to DJL Land Company, LLC (predecessor by name change to LONE OAK – SOUTH CAROLINA, L.L.C.) by deed of Dennis J. Lee dated March 1, 2004 and recorded March 16, 2004 in Record Book 1923, Page 882, Register of Deeds for Beaufort County, S.C.

PROJECT GARDEN
LEGAL DESCRIPTION

That certain parcel of real property located in the County of Beaufort, State of South Carolina, containing 3.00 acres, and shown as Beaufort County tax map parcel R120-024-0000-00445, Lot 15 in the Beaufort Commerce Park.

PROJECT GLASS
LEGAL DESCRIPTION

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND, SITUATE, LYING AND BEING ON PORT ROYAL ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA, CONSISTING OF 35.68 ACRES, BEING A PART OF LOTS 6, 7, 10, 11, 22 AND 23 IN SECTION 28, TOWNSHIP ONE (1) NORTH, RANGE TWO (2) WEST AND A PART OF LOTS 58 AND 59, IN SECTION 21, TOWNSHIP ONE (1), RANGE TWO (2) WEST, ACCORDING TO THE SURVEY OF UNITED STATES DIRECT TAX COMMISSIONERS FOR THE DISTRICT OF SOUTH CAROLINA, AND HAVING SUCH METES, COURSES, DISTANCES AND BOUNDS AS MORE FULLY SHOWN BY REFERENCES TO A PLAT PREPARED FOR PNEUMO CORPORATION BY R.D. TROGDON, JR., R.L.S., DATED FEBRUARY 9, 1976, AND RECORDED IN THE OFFICE OF THE CLERK OF COURT FOR BEAUFORT COUNTY IN PLAT BOOK 24, AT PAGE 102.

Being the same property conveyed to Parker-Hannifin Corporation by deed from Pneumo Abex Corporation dated April 10, 1996 and recorded April 15, 1996 in Book 850, Page 975 in the Register of Deeds Office for Beaufort County, South Carolina.

PIN # 100 25 170

Tax Map Number/Parcel ID: *R120 025 000 0170 0000*

PROJECT BURGER
LEGAL DESCRIPTION

ALL that certain piece, parcel or tract of land, with improvements thereon, situate, lying and being in the Town of Port Royal, Beaufort County, South Carolina, containing 0.59 acres, more or less, and being more particularly shown as Parcel "F" on that certain plat prepared by David E. Gasque, R.L.S., dated October 14, 2019, and recorded in Plat Book 152 at Page 181 in the Office of the Register of Deeds for Beaufort County, South Carolina (this plat supersedes that plat dated September 20, 2019, and recorded in Plat Book 152 at Page 150 in the Office of the Register of Deeds for Beaufort County, South Carolina). For a more complete description as to metes, courses, distances and bounds of said property, reference may be had to the aforementioned plat.

This is a portion of the same property conveyed to the Grantor by deed from the South Carolina Department of Administration, Division of General Services, recorded in Book 3607 at Page 2615 in the Office of the Register of Deeds for Beaufort County, South Carolina, and by deed from the Town of Port Royal recorded in Book 3629 at Page 159 in the Office of the Register of Deeds for Beaufort County, South Carolina.

Portion of R113 010 000 0075 0000

EXHIBIT B (Jasper County)

**Jasper County Property
December 31, 2020**

NONE

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BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

Multi County Industrial Park - Burger, Garden, Glass, Stone

Council Committee:

Finance Committee

Meeting Date:

Finance Committee October 19, 2020

Committee Presenter (Name and Title):

John O'Toole, Executive Director, Beaufort County Economic Development Corporation

Issues for Consideration:

Placing Project Burger, Project Garden, Project Glass, and Project Stone into existing Multi County Industrial Park.

Points to Consider:

Placing projects in MCIP will allow companies to take advantage of an additional \$1,000 job tax credit per net new job . These credits can be used towards the company's corporate income tax over a five year period as long as the jobs are maintained.
Project Burger - \$4.496 million investment, 43 newly created jobs
Project Garden - \$3.19 million investment, 26 newly created jobs
Project Glass - \$15.15 million investment, 55 newly created jobs
Project Stone - \$3.2 million investment, 21 newly created jobs

Funding & Liability Factors:

Allocation of revenue would be 99% to Beaufort County and 1% to Jasper County in the Beaufort County portion of the park and 99% to Jasper County and 1% to Beaufort County in the Jasper County portion of the park. This project would fall within the Beaufort County portion of the park.

Council Options:

Recommend MCIP agreement between Beaufort County and Jasper County to full County Council.

Recommendation:

The BCEDC recommends moving forward with MCIP for Project Burger, Project Garden, Project Glass and Project Stone.

(c) Notwithstanding the provisions of subsection (a) of this Section 2, the Council Chair is authorized to execute the Park Agreement only upon the public announcement, including revelation of the company name, by the Company of its intentions to locate and develop the project on the property described in the Park Agreement.

Section 3. Payment of Fee in Lieu of Tax.

The businesses and industries located in the Park must pay a fee in lieu of *ad valorem* taxes as provided for in the Park Agreement. With respect to properties located in the Beaufort County portion of the Park, the fee paid in lieu of *ad valorem* taxes shall be paid to the Treasurer of Beaufort County and the portion of fee in lieu of *ad valorem* taxes allocated pursuant to the Park Agreement to Jasper County shall be thereafter paid by the Treasurer of Beaufort County to the Treasurer of Jasper County within forty-five (45) business days of receipt for distribution in accordance with the Park Agreement. With respect to properties located in the Jasper County portion of the Park, the fee paid in lieu of *ad valorem* taxes shall be paid to the Treasurer of Jasper County and the portion of the fee in lieu of *ad valorem* taxes allocated pursuant to the Park Agreement to Beaufort County shall thereafter be paid by the Treasurer of Jasper County to the Treasurer of Beaufort County within forty-five (45) business days of receipt for distribution in accordance with the Park Agreement. The provisions of Section 12-2-90, Code of Laws of South Carolina 1976, as amended, or any successor statutes or provisions, apply to the collection and enforcement of the fee in lieu of *ad valorem* taxes.

Section 4. Applicable Ordinances and Regulations.

Any applicable ordinances and regulations of Beaufort County concerning zoning, health and safety, and building code requirements shall apply to the Park properties in Beaufort County unless the properties are within the boundaries of a municipality in which case the municipality's applicable ordinances and regulations shall apply. Any applicable ordinances and regulations of Jasper County concerning zoning, health and safety, and building code requirements shall apply to the Park properties in Jasper County unless the properties are within the boundaries of a municipality in which case the municipality's applicable ordinances and regulations shall apply.

Section 5. Law Enforcement Jurisdiction.

Jurisdiction to make arrests and exercise all authority and power within the boundaries of the Park properties in Beaufort County is vested with the Sheriff's Department of Beaufort County. Jurisdiction to make arrests and exercise all authority and power within the boundaries of the Park properties in Jasper County is vested with the Sheriff's Department of Jasper County. If any of the Park properties located in either Beaufort County or Jasper County are within the boundaries of a municipality, then jurisdiction to make arrests and exercise law enforcement jurisdiction is vested with the law enforcement officials of the municipality.

Section 6. Distribution of Revenue.

(a) Revenues generated from industries or businesses located in the Beaufort County portion of the Park to be retained by Beaufort County shall be distributed within Beaufort

County in accordance with this subsection:

(1) First, unless Beaufort County elects to pay or credit the same from only those revenues which Beaufort County would otherwise be entitled to receive as provided under item (3) below, to pay annual debt service on any special source revenue bonds issued by Beaufort County pursuant to, or to be utilized as a credit in the manner provided in Section 4-1-175, Code of Laws of South Carolina 1976, as amended;

(2) Second, at the option of Beaufort County, to reimburse Beaufort County for any expenses incurred by it in the administration, development, operation, maintenance and promotion of the Park or the industries and businesses located therein or for other economic development purposes of Beaufort County; and

(3) Third, to those taxing entities in which the property is located, in the same manner and proportion that the millage levied for the taxing entities would be distributed if the property were taxable for that year.

(b) Notwithstanding any other provision of this section:

(1) all taxing entities which overlap the applicable properties within the Park shall receive at least some portion of the revenues generated from such properties; and

(2) all revenues receivable by a taxing entity in a fiscal year shall be allocated to operations and maintenance and to debt service as determined by the governing body of the taxing entity.

(c) Revenues generated from industries or businesses located in the Jasper County portion of the Park shall be retained by Beaufort County.

Section 7. Conflicting Provisions.

To the extent this ordinance contains provisions that conflict with provisions contained elsewhere in the Beaufort County Code or other Beaufort County orders, resolutions and ordinances, the provisions contained in this ordinance supersede all other provisions and this ordinance is controlling.

Section 8. Severability.

If any section of this ordinance is, for any reason, determined to be void or invalid by a court of competent jurisdiction, it shall not affect the validity of any other section of this ordinance which is not itself void or invalid.

Section 9. Effective Date.

This ordinance is effective upon third reading.

SIGNATURES FOLLOW ON NEXT PAGE.

DONE this ___ day of _____ 2020.

COUNTY COUNCIL OF BEAUFORT COUNTY

By: _____
Joseph Passiment, Chair

ATTEST:

Sarah W. Brock, Clerk to Council

First Reading: _____, 2020
Second Reading: _____, 2020
Public Hearing: _____, 2020
Third and Final Reading: _____, 2020

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Exhibit A to Ordinance No. 2020/ _____

**Multi-County Park Agreement
(Projects Stone, Garden, Glass and Burger)
between
Beaufort County, South Carolina and Jasper County, South Carolina**

See attached.

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BEAUFORT COUNTY COUNCIL

Agenda Item Summary**Item Title:**

Multi County Industrial Park - Burger, Garden, Glass, Stone

Council Committee:

Finance Committee

Meeting Date:

September 21, 2020

Committee Presenter (Name and Title):

John O'Toole, Executive Director, Beaufort County Economic Development Corporation

Issues for Consideration:

Placing Project Burger, Project Garden, Project Glass, and Project Stone into existing Multi County Industrial Park.

Points to Consider:

Placing projects in MCIP will allow companies to take advantage of an additional \$1,000 job tax credit per net new job . These credits can be used towards the company's corporate income tax over a five year period as long as the jobs are maintained.

Project Burger - \$4.496 million investment, 43 newly created jobs
Project Garden - \$3.19 million investment, 26 newly created jobs
Project Glass - \$15.15 million investment, 55 newly created jobs
Project Stone - \$3.2 million investment, 21 newly created jobs

Funding & Liability Factors:

Allocation of revenue would be 99% to Beaufort County and 1% to Jasper County in the Beaufort County portion of the park and 99% to Jasper County and 1% to Beaufort County in the Jasper County portion of the park. This project would fall within the Beaufort County portion of the park.

Council Options:

Recommend MCIP agreement between Beaufort County and Jasper County to full County Council.

Recommendation:

The BCEDC recommends moving forward with MCIP for Project Burger, Project Garden, Project Glass and Project Stone.

**MULTI-COUNTY PARK AGREEMENT
(Projects Stone, Garden, Glass, and Burger)**

between

BEAUFORT COUNTY, SOUTH CAROLINA

and

JASPER COUNTY, SOUTH CAROLINA

Dated as of _____, 2020

**Multi-County Park Agreement
(Projects Stone, Garden, and Burger)**

This MULTI-COUNTY PARK AGREEMENT (PROJECTS STONE, GARDEN, GLASS AND BURGER PROPERTY) is made and entered into as of the ___ day of _____, 2020, by and between BEAUFORT COUNTY, SOUTH CAROLINA (“Beaufort County”) and JASPER COUNTY, SOUTH CAROLINA (“Jasper County”) (collectively, Beaufort County and Jasper County are the “Parties”), each a body politic and corporate, a political subdivision of the State of South Carolina (“Park Agreement”).

In consideration of the mutual agreements, representations and benefits contained in this Park Agreement and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Beaufort County and Jasper County agree as follows:

1. Effective Date. This Park Agreement is effective at 12:00 a.m. (midnight), December 31, 2020 (the “Effective Date”).

2. Authorization. Article VIII, section 13(D) of the South Carolina Constitution and Sections 4-1-170, -172, and -175 of the Code of Laws of South Carolina 1976, as amended (the “MCP Law”), authorizes contiguous counties to jointly develop industrial and business parks within the geographical boundaries of one or more of the participating counties. Beaufort County authorized and approved this Park Agreement by passage of Ordinance No. 2020/___ and Jasper County authorized and approved this Park Agreement by passage of Ordinance No. ___-___.

3. Purpose. The purpose of this Park Agreement is to (i) provide for the establishment of a multi-county park in accordance with the MCP Law and (ii) encourage the investment of capital and the creation of jobs in Beaufort County and Jasper County.

4. Agreement to Develop Park. The Parties agree to jointly develop an industrial and business park in accordance with the MCP Law and the terms and conditions of this Park Agreement (the “Park”).

5. The Park. (A) Location. The Park consists of certain property located in Beaufort County as further identified in Exhibit A (Beaufort County) to this Park Agreement, and property located in Jasper County, as further identified in Exhibit B (Jasper County), to this Park Agreement. The Park may consist of non-contiguous properties within each county. The Parties acknowledge that on the Effective Date, the Park does not contain any property located in Jasper County.

(B) *Addition and Removal of Property.*

(1) County Action. Property may be added to or removed from the Park by ordinance of the county in which the subject property is located, provided that the host county shall provide notice to the non-host county as well as revised exhibits pursuant to subsection (2) below.

(2) Revised Exhibits. If property is added to or removed from the Park, this Park Agreement is deemed amended and a revised Exhibit A (Beaufort County) or Exhibit B (Jasper County), as applicable, shall be prepared by the county in which the added or removed property is located. The revised exhibit must contain a description or other identification of the properties included in the Park, after the addition or removal. A copy of the revised exhibit shall be provided to the Administrator, Clerk to Council, Assessor, Auditor and Treasurer of Beaufort County and Jasper County.

(3) Public Hearings and Notice. Prior to the adoption by either county of an ordinance authorizing the removal of property from the Park, the county council in the county in which the

property to be removed is located, shall hold a public hearing. The county that will conduct the public hearing must give notice of the public hearing by publication in a newspaper of general circulation in the county in which the public hearing will be held at least once and not less than fifteen (15) days prior to the public hearing. Notice of the public hearing shall also be served in the manner of service of process at least fifteen (15) days prior to the public hearing upon the owner of the real property and, if applicable and known, the lessee of any real property which would be removed from the Park.

6. Fee in Lieu of Taxes. Pursuant to article VIII, section 13(D), of the South Carolina Constitution, all property located in the Park is exempt from all *ad valorem* taxation. The owners or lessees of any property situated in the Park shall pay in accordance with this Park Agreement and the MCP Law an amount equivalent to the *ad valorem* property taxes or other in-lieu-of payments that would have been due and payable but for the location of the property within the Park (“Fee in Lieu of Taxes” or “FILOT”).

7. Allocation of Expenses. Beaufort County and Jasper County shall bear the expenses for the development, operation, maintenance and promotion of the Park and the cost of providing public services, in the following proportions:

If property is in the Beaufort County portion of the Park:

- | | | |
|-----|-----------------|------|
| (1) | Beaufort County | 100% |
| (2) | Jasper County | 0% |

If property is in the Jasper County portion of the Park:

- | | | |
|-----|-----------------|------|
| (1) | Beaufort County | 0% |
| (2) | Jasper County | 100% |

8. Allocation of Revenues. Beaufort County and Jasper County shall receive an allocation of revenue generated by the Park through payment of Fee in Lieu of Taxes (net of any special source revenue bond payments or special source revenue credits) in the following proportions:

If property is in the Beaufort County portion of the Park:

- | | | |
|-----|-----------------|-----|
| (1) | Beaufort County | 99% |
| (2) | Jasper County | 1% |

If property is in the Jasper County portion of the Park:

- | | | |
|-----|-----------------|-----|
| (1) | Beaufort County | 1% |
| (2) | Jasper County | 99% |

9. Revenue Allocation Within Each County.

(A) *Host County.* Revenues generated by the Park through the payment of Fee in Lieu of Taxes shall be distributed to Beaufort County and to Jasper County, as applicable, according to the proportions established by Paragraph 8 of this Park Agreement. With respect to revenues allocable to Beaufort County or Jasper County by way of FILOT generated within the respective county (the “Host County”), such revenue shall be distributed within the Host County in the manner provided by ordinance of the council of the Host County; provided, that (i) all taxing districts which overlap the applicable revenue-generating portion of the Park shall receive at least some portion of the revenues generated from such portion, and (ii) with respect to amounts received in any fiscal year by a taxing entity, the governing body

of the taxing entity shall allocate the revenues received between operations and debt service of the taxing entity. Each Host County is specifically authorized to use a portion of the revenue for economic development purposes as permitted by law and as established by ordinance of the council of the Host County.

(B) *Non-Host County*. Revenues allocable to Beaufort County by way of FILOT generated within Jasper County shall be distributed solely to Beaufort County. Revenues allocated to Jasper County by way of FILOT generated within Beaufort County shall be distributed solely to Jasper County.

10. Fees In Lieu of Taxes Pursuant to Title 4 and Title 12 Code of Laws of South Carolina. The Parties agree that the entry by Beaufort County into any one or more fee in lieu of tax agreements pursuant to Title 4 or Title 12 of the Code of Laws of South Carolina 1976, as amended (“Negotiated Fee-in-Lieu of Tax Agreements”), with respect to property located within the Beaufort County portion of the Park and the terms of those agreements shall be at the sole discretion of Beaufort County. The Parties further agree that entry by Jasper County into any one or more Negotiated Fee-in-Lieu of Tax Agreements with respect to property located within the Jasper County portion of the Park and the terms of those agreements shall be at the sole discretion of Jasper County.

11. Assessed Valuation. For the purpose of calculating the bonded indebtedness limitation and for the purpose of computing the index of taxpaying ability pursuant to Section 59-20-20(3) of the Code of Laws of South Carolina 1976, as amended, allocation of the assessed value of property within the Park to Beaufort County and Jasper County and to each of the taxing entities within the participating counties shall be identical to the allocation of revenue received and retained by each of the counties and by each of the taxing entities within the participating counties, pursuant to Paragraphs 8 and 9 of this Park Agreement.

12. Applicable Regulations. Any applicable ordinances and regulations of Jasper County concerning zoning, health and safety, and building code requirements shall apply to the Park properties in Jasper County unless the properties are within the boundaries of a municipality in which case the municipality’s applicable ordinances and regulations shall apply. Any applicable ordinances and regulations of Beaufort County concerning zoning, health and safety, and building code requirements shall apply to the Park properties in Beaufort County unless the properties are within the boundaries of a municipality in which case the municipality’s applicable ordinances and regulations shall apply.

13. Law Enforcement Jurisdiction. Jurisdiction to make arrests and exercise all authority and power within the boundaries of the Park properties in Jasper County is vested with the Sheriff’s Department of Jasper County. Jurisdiction to make arrests and exercise all authority and power within the boundaries of the Park properties in Beaufort County is vested with the Sheriff’s Department of Beaufort County. If any of the Park properties located in either Jasper County or Beaufort County are within the boundaries of a municipality, then jurisdiction to make arrests and exercise law enforcement jurisdiction is vested with the law enforcement officials of the municipality.

14. Severability. If any provision or any part of a provision of this Park Agreement is held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable the remainder of that provision or any other provision or part of a provision of this Park Agreement.

15. Amendments. The provisions of this Park Agreement may be modified or amended only in a writing signed by the Parties.

16. Headings and Catch Lines. The headings of the paragraphs and subparagraphs of this Park Agreement are inserted for convenience only and do not constitute a part of this Park Agreement.

17. Governing Law. This Park Agreement, and all documents executed in connection with it, shall be construed in accordance with and governed by the laws of the State of South Carolina.

18. Counterparts. This Park Agreement may be executed in any number of counterparts, and all of the counterparts taken together constitute one and the same instrument.

19. Binding Agreement. This Park Agreement is binding upon and shall inure to the benefit of the respective Parties.

20. Merger. This Park Agreement, and all documents executed in connection with it, express the entire understanding and all agreements of the Parties with each other, and neither Beaufort County nor Jasper County has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth in this Park Agreement.

21. Waiver. Either party may waive compliance by the other party with any term or condition of this Park Agreement only in a writing signed by the waiving party. The failure or delay on the part of any party hereto in exercising any right, power, or remedy hereunder shall not operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy hereunder. No waiver of any provision hereof shall be effective unless the same shall be in writing and signed by the waiving party hereto.

22. Termination.

(A) *Duration and Renewal.* This Park Agreement commences on the Effective Date and shall continue until at least December 31, 2045.

(B) *Mutual Termination.* Notwithstanding the provisions of subparagraph (A) of this Paragraph 22, the Parties may mutually agree to terminate this Park Agreement at any time upon passage of an ordinance to that effect by each county and after conducting a public hearing and giving notice as set forth in subparagraph (B)(3) of Paragraph 5 of this Park Agreement.

SIGNATURES FOLLOW ON NEXT PAGE.

WITNESS our hands and seals as of the date first above written.

BEAUFORT COUNTY, SOUTH CAROLINA

By: _____
Joseph Passiment, Chair, County Council

ATTEST:

Sarah W. Brock, Clerk to Council

JASPER COUNTY, SOUTH CAROLINA

By: _____
Henry Etheridge, Chair, County Council

ATTEST:

Tisha L. Williams, Acting Clerk to Council

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EXHIBIT A (Beaufort County)

**Beaufort County Property
December 31, 2020
PROJECTS STONE, GARDEN, GLASS BURGER**

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PROJECT STONE
LEGAL DESCRIPTION

All that certain piece, parcel or tract of land, situate, lying and being in Beaufort County, South Carolina, containing 3.70 acres as shown on that certain plat prepared by David E. Gasque, RLS, dated May 2, 2001, entitled "Boundary Survey & Lot Line Revision, Portion of Tax Parcel 100-031-017C and Parcel 100-031-0167 prepared for Henry J. Lee Distributors, Inc., and recorded in Plat Book 80 at Page 2 in the office of the Register of Deeds for Beaufort County, South Carolina. For a more complete description as to metes, bounds, courses and distances reference may be had to aforementioned plat of record.

-ALSO-

All that certain piece, parcel or tract of land situate, lying and being on Port Royal Island, Beaufort County, State of South Carolina containing 4.01 acres as shown on that certain plat prepared by David E. Gasque, R.L.S., dated October 6, 1988 and entitled "Plat showing 4.01 acres, located on S.C. Highway 170, survey at the Request of Harold E. Trask" a copy of which is recorded in the Office of the RMC for Beaufort County, S.C. in Plat Book 35 at page 361. For a more detailed description as to metes and bounds, courses and distances reference is craved to the above referred to plat of record.

BEING the same property conveyed to DJL Land Company, LLC (predecessor by name change to LONE OAK – SOUTH CAROLINA, L.L.C.) by deed of Dennis J. Lee dated March 1, 2004 and recorded March 16, 2004 in Record Book 1923, Page 882, Register of Deeds for Beaufort County, S.C.

PROJECT GARDEN
LEGAL DESCRIPTION

That certain parcel of real property located in the County of Beaufort, State of South Carolina, containing 3.00 acres, and shown as Beaufort County tax map parcel R120-024-0000-00445, Lot 15 in the Beaufort Commerce Park.

PROJECT GLASS
LEGAL DESCRIPTION

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND, SITUATE, LYING AND BEING ON PORT ROYAL ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA, CONSISTING OF 35.68 ACRES, BEING A PART OF LOTS 6, 7, 10, 11, 22 AND 23 IN SECTION 28, TOWNSHIP ONE (1) NORTH, RANGE TWO (2) WEST AND A PART OF LOTS 58 AND 59, IN SECTION 21, TOWNSHIP ONE (1), RANGE TWO (2) WEST, ACCORDING TO THE SURVEY OF UNITED STATES DIRECT TAX COMMISSIONERS FOR THE DISTRICT OF SOUTH CAROLINA, AND HAVING SUCH METES, COURSES, DISTANCES AND BOUNDS AS MORE FULLY SHOWN BY REFERENCES TO A PLAT PREPARED FOR PNEUMO CORPORATION BY R.D. TROGDON, JR., R.L.S., DATED FEBRUARY 9, 1976, AND RECORDED IN THE OFFICE OF THE CLERK OF COURT FOR BEAUFORT COUNTY IN PLAT BOOK 24, AT PAGE 102.

Being the same property conveyed to Parker-Hannifin Corporation by deed from Pneumo Abex Corporation dated April 10, 1996 and recorded April 15, 1996 in Book 850, Page 975 in the Register of Deeds Office for Beaufort County, South Carolina.

PIN # 100 25 170

Tax Map Number/Parcel ID: *R120 025 000 0170 0000*

PROJECT BURGER
LEGAL DESCRIPTION

ALL that certain piece, parcel or tract of land, with improvements thereon, situate, lying and being in the Town of Port Royal, Beaufort County, South Carolina, containing 0.59 acres, more or less, and being more particularly shown as Parcel "F" on that certain plat prepared by David E. Gasque, R.L.S., dated October 14, 2019, and recorded in Plat Book 152 at Page 181 in the Office of the Register of Deeds for Beaufort County, South Carolina (this plat supersedes that plat dated September 20, 2019, and recorded in Plat Book 152 at Page 150 in the Office of the Register of Deeds for Beaufort County, South Carolina). For a more complete description as to metes, courses, distances and bounds of said property, reference may be had to the aforementioned plat.

This is a portion of the same property conveyed to the Grantor by deed from the South Carolina Department of Administration, Division of General Services, recorded in Book 3607 at Page 2615 in the Office of the Register of Deeds for Beaufort County, South Carolina, and by deed from the Town of Port Royal recorded in Book 3629 at Page 159 in the Office of the Register of Deeds for Beaufort County, South Carolina.

Portion of R113 010 000 0075 0000

EXHIBIT B (Jasper County)

**Jasper County Property
December 31, 2020**

NONE

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(c) Notwithstanding the provisions of subsection (a) of this Section 2, the Council Chair is authorized to execute the Park Agreement only upon the public announcement, including revelation of the company name, by the Company of its intentions to locate and develop the project on the property described in the Park Agreement.

Section 3. Payment of Fee in Lieu of Tax.

The businesses and industries located in the Park must pay a fee in lieu of *ad valorem* taxes as provided for in the Park Agreement. With respect to properties located in the Beaufort County portion of the Park, the fee paid in lieu of *ad valorem* taxes shall be paid to the Treasurer of Beaufort County and the portion of fee in lieu of *ad valorem* taxes allocated pursuant to the Park Agreement to Jasper County shall be thereafter paid by the Treasurer of Beaufort County to the Treasurer of Jasper County within forty-five (45) business days of receipt for distribution in accordance with the Park Agreement. With respect to properties located in the Jasper County portion of the Park, the fee paid in lieu of *ad valorem* taxes shall be paid to the Treasurer of Jasper County and the portion of the fee in lieu of *ad valorem* taxes allocated pursuant to the Park Agreement to Beaufort County shall thereafter be paid by the Treasurer of Jasper County to the Treasurer of Beaufort County within forty-five (45) business days of receipt for distribution in accordance with the Park Agreement. The provisions of Section 12-2-90, Code of Laws of South Carolina 1976, as amended, or any successor statutes or provisions, apply to the collection and enforcement of the fee in lieu of *ad valorem* taxes.

Section 4. Applicable Ordinances and Regulations.

Any applicable ordinances and regulations of Beaufort County concerning zoning, health and safety, and building code requirements shall apply to the Park properties in Beaufort County unless the properties are within the boundaries of a municipality in which case the municipality's applicable ordinances and regulations shall apply. Any applicable ordinances and regulations of Jasper County concerning zoning, health and safety, and building code requirements shall apply to the Park properties in Jasper County unless the properties are within the boundaries of a municipality in which case the municipality's applicable ordinances and regulations shall apply.

Section 5. Law Enforcement Jurisdiction.

Jurisdiction to make arrests and exercise all authority and power within the boundaries of the Park properties in Beaufort County is vested with the Sheriff's Department of Beaufort County. Jurisdiction to make arrests and exercise all authority and power within the boundaries of the Park properties in Jasper County is vested with the Sheriff's Department of Jasper County. If any of the Park properties located in either Beaufort County or Jasper County are within the boundaries of a municipality, then jurisdiction to make arrests and exercise law enforcement jurisdiction is vested with the law enforcement officials of the municipality.

Section 6. Distribution of Revenue.

(a) Revenues generated from industries or businesses located in the Beaufort County portion of the Park to be retained by Beaufort County shall be distributed within Beaufort

County in accordance with this subsection:

(1) First, unless Beaufort County elects to pay or credit the same from only those revenues which Beaufort County would otherwise be entitled to receive as provided under item (3) below, to pay annual debt service on any special source revenue bonds issued by Beaufort County pursuant to, or to be utilized as a credit in the manner provided in Section 4-1-175, Code of Laws of South Carolina 1976, as amended;

(2) Second, at the option of Beaufort County, to reimburse Beaufort County for any expenses incurred by it in the administration, development, operation, maintenance and promotion of the Park or the industries and businesses located therein or for other economic development purposes of Beaufort County; and

(3) Third, to those taxing entities in which the property is located, in the same manner and proportion that the millage levied for the taxing entities would be distributed if the property were taxable for that year.

(b) Notwithstanding any other provision of this section:

(1) all taxing entities which overlap the applicable properties within the Park shall receive at least some portion of the revenues generated from such properties; and

(2) all revenues receivable by a taxing entity in a fiscal year shall be allocated to operations and maintenance and to debt service as determined by the governing body of the taxing entity.

(c) Revenues generated from industries or businesses located in the Jasper County portion of the Park shall be retained by Beaufort County.

Section 7. Conflicting Provisions.

To the extent this ordinance contains provisions that conflict with provisions contained elsewhere in the Beaufort County Code or other Beaufort County orders, resolutions and ordinances, the provisions contained in this ordinance supersede all other provisions and this ordinance is controlling.

Section 8. Severability.

If any section of this ordinance is, for any reason, determined to be void or invalid by a court of competent jurisdiction, it shall not affect the validity of any other section of this ordinance which is not itself void or invalid.

Section 9. Effective Date.

This ordinance is effective upon third reading.

SIGNATURES FOLLOW ON NEXT PAGE.

DONE this ___ day of _____ 2020.

COUNTY COUNCIL OF BEAUFORT COUNTY

By: _____
Joseph Passiment, Chair

ATTEST:

Sarah W. Brock, Clerk to Council

First Reading: _____, 2020
Second Reading: _____, 2020
Public Hearing: _____, 2020
Third and Final Reading: _____, 2020

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Exhibit A to Ordinance No. 2020/ _____

**Multi-County Park Agreement
(Projects Stone, Garden, Glass and Burger)
between
Beaufort County, South Carolina and Jasper County, South Carolina**

See attached.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

(c) Notwithstanding the provisions of subsection (a) of this Section 2, the Council Chair is authorized to execute the Park Agreement only upon the public announcement, including revelation of the company name, by the Company of its intentions to locate and develop the project on the property described in the Park Agreement.

Section 3. Payment of Fee in Lieu of Tax.

The businesses and industries located in the Park must pay a fee in lieu of *ad valorem* taxes as provided for in the Park Agreement. With respect to properties located in the Beaufort County portion of the Park, the fee paid in lieu of *ad valorem* taxes shall be paid to the Treasurer of Beaufort County and the portion of fee in lieu of *ad valorem* taxes allocated pursuant to the Park Agreement to Jasper County shall be thereafter paid by the Treasurer of Beaufort County to the Treasurer of Jasper County within forty-five (45) business days of receipt for distribution in accordance with the Park Agreement. With respect to properties located in the Jasper County portion of the Park, the fee paid in lieu of *ad valorem* taxes shall be paid to the Treasurer of Jasper County and the portion of the fee in lieu of *ad valorem* taxes allocated pursuant to the Park Agreement to Beaufort County shall thereafter be paid by the Treasurer of Jasper County to the Treasurer of Beaufort County within forty-five (45) business days of receipt for distribution in accordance with the Park Agreement. The provisions of Section 12-2-90, Code of Laws of South Carolina 1976, as amended, or any successor statutes or provisions, apply to the collection and enforcement of the fee in lieu of *ad valorem* taxes.

Section 4. Applicable Ordinances and Regulations.

Any applicable ordinances and regulations of Beaufort County concerning zoning, health and safety, and building code requirements shall apply to the Park properties in Beaufort County unless the properties are within the boundaries of a municipality in which case the municipality's applicable ordinances and regulations shall apply. Any applicable ordinances and regulations of Jasper County concerning zoning, health and safety, and building code requirements shall apply to the Park properties in Jasper County unless the properties are within the boundaries of a municipality in which case the municipality's applicable ordinances and regulations shall apply.

Section 5. Law Enforcement Jurisdiction.

Jurisdiction to make arrests and exercise all authority and power within the boundaries of the Park properties in Beaufort County is vested with the Sheriff's Department of Beaufort County. Jurisdiction to make arrests and exercise all authority and power within the boundaries of the Park properties in Jasper County is vested with the Sheriff's Department of Jasper County. If any of the Park properties located in either Beaufort County or Jasper County are within the boundaries of a municipality, then jurisdiction to make arrests and exercise law enforcement jurisdiction is vested with the law enforcement officials of the municipality.

Section 6. Distribution of Revenue.

(a) Revenues generated from industries or businesses located in the Jasper County portion of the Park to be retained by Jasper County shall be distributed within Jasper County in

accordance with this subsection:

(1) First, unless Jasper County elects to pay or credit the same from only those revenues which Jasper County would otherwise be entitled to receive as provided under item (3) below, to pay annual debt service on any special source revenue bonds issued by Jasper County pursuant to, or to be utilized as a credit in the manner provided in Section 4-1-175, Code of Laws of South Carolina 1976, as amended;

(2) Second, at the option of Jasper County, to reimburse Jasper County for any expenses incurred by it in the administration, development, operation, maintenance and promotion of the Park or the industries and businesses located therein or for other economic development purposes of Jasper County; and

(3) Third, to those taxing entities in which the property is located, in the same manner and proportion that the millage levied for the taxing entities would be distributed if the property were taxable for that year.

(b) Notwithstanding any other provision of this section:

(1) all taxing entities which overlap the applicable properties within the Park shall receive at least some portion of the revenues generated from such properties; and

(2) all revenues receivable by a taxing entity in a fiscal year shall be allocated to operations and maintenance and to debt service as determined by the governing body of the taxing entity.

(c) Revenues generated from industries or businesses located in the Beaufort County portion of the Park shall be retained by Jasper County.

Section 7. Conflicting Provisions.

To the extent this ordinance contains provisions that conflict with provisions contained elsewhere in the Jasper County Code or other Jasper County orders, resolutions and ordinances, the provisions contained in this ordinance supersede all other provisions and this ordinance is controlling.

Section 8. Severability.

If any section of this ordinance is, for any reason, determined to be void or invalid by a court of competent jurisdiction, it shall not affect the validity of any other section of this ordinance which is not itself void or invalid.

Section 9. Effective Date.

This ordinance is effective upon third reading.

SIGNATURES FOLLOW ON NEXT PAGE.

DONE this ___ day of _____ 2020.

COUNTY COUNCIL OF JASPER COUNTY

By: _____
Henry Etheridge, Chair

ATTEST:

Wanda Simmons, Clerk to Council

First Reading: _____, 2020
Second Reading: _____, 2020
Public Hearing: _____, 2020
Third and Final Reading: _____, 2020

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Exhibit A to Ordinance No. 2020/ _____

**Multi-County Park Agreement
(Projects Stone, Garden, Glass and Burger)
between
Beaufort County, South Carolina and Jasper County, South Carolina**

See attached.

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BEAUFORT COUNTY COUNCIL

Agenda Item Summary**Item Title:**

Special Source Revenue Credit - Project Stone

Council Committee:

Finance Committee

Meeting Date:

September 21, 2020

Committee Presenter (Name and Title):

John O'Toole, Executive Director, Beaufort County Economic Development Corporation

Issues for Consideration:

Providing a Special Source Revenue Credit to Project Stone - this SSRC will act as a base FILOT equivalent - allowing the company to pay the equivalent of a 6% tax rate over a 20 year period.

Points to Consider:

Project Stone is moving into an existing 37,000 sq. ft. facility in Port Royal. Due to the facility being existing versus new construction, they are not eligible for a FILOT agreement. In order to offer benefits on par with a base FILOT, the BCEDC would like to pursue a special source revenue credit that is the tax equivalent to a base FILOT - 6% tax rate over a 20 year period. The company is expected to invest \$3.2 million and create 21 new jobs.

Funding & Liability Factors:

Company will be offered equivalent to base FILOT - 6% over 20 year period.

Council Options:

Recommend SSRC agreement to full County Council for approval.

Recommendation:

The BCEDC recommends moving forward with SSRC for Project Stone.

SPECIAL SOURCE REVENUE CREDIT AGREEMENT

by and between

PROJECT STONE

and

BEAUFORT COUNTY, SOUTH CAROLINA

_____, 2020

SPECIAL SOURCE REVENUE CREDIT AGREEMENT

This SPECIAL SOURCE REVENUE CREDIT AGREEMENT (“Credit Agreement”) is made and entered into as of _____, 2020, by and among BEAUFORT COUNTY, SOUTH CAROLINA (“County”), a body politic and corporate and a political subdivision of the State of South Carolina (“State”), acting by and through the Beaufort County Council (“County Council”) as the governing body of the County and a company currently identified as PROJECT STONE (“Company”).

WITNESSETH:

WHEREAS, pursuant to Title 4, Section 1, Code of Laws of South Carolina, 1976, as amended (“MCIP Act”), the County is authorized to develop multi-county industrial parks with other qualifying counties and, in its discretion, include within the boundaries of such parks the property of qualifying industries. The County has created or will create with Jasper County, South Carolina a multi-county industrial park (“Park”) pursuant to a multi-county industrial park agreement (“Park Agreement”) entered into pursuant to the terms of the MCIP Act; and

WHEREAS, in accordance with Article VIII, Section 13 of the South Carolina Constitution, real and personal property having a situs in a multi county industrial park, are exempt from all ad valorem taxation, however, the owners or lessees of such real and personal property are obligated to make, or cause to be made, annual payments in lieu of taxes to the County in the total amount equivalent to the ad valorem property taxes or other fee-in-lieu-of-taxes that would have been due and payable with respect to such real and personal property but for the location of such real and personal property within such park (each, a “Fee Payment”); and

WHEREAS, the County, acting by and through its County Council is authorized by Title 4, Chapter 1 of the Code of Laws of South Carolina 1976, as amended, including Sections 4-1-170 and 4-1-175 thereof, and Title 4, Chapter 29 of the Code of Laws of South Carolina 1976, as amended, including Section 4-29-68 (collectively, the “SSRC Act”), and Article VIII, Section 13 of the South Carolina Constitution (i) to provide credits (“Special Source Revenue Credits” (“SSRC”)) for the purpose of defraying certain costs, including, without limitation, the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the County or the Project (defined herein) and for improved and unimproved real estate and personal property, including machinery and equipment, used in the operation of a manufacturing facility or commercial enterprise, all to enhance the economic development of the County; and (ii) to expand, in conjunction with one or more other counties, a multi-county industrial park in order to facilitate the grant of SSRCs; and

WHEREAS, the Company is planning an investment consisting of the expenditure of approximately \$3,200,000 in taxable investment (“Investment”) in connection with the acquisition by construction, lease, and/or purchase of certain land, buildings, furnishings, fixtures, and/or equipment and the creation of approximately 21 new, full-time jobs for the purpose of expanding a manufacturing facility in the County (collectively, the “Project”); and

WHEREAS, the Project will comprise a portion of real property located entirely in the County of Beaufort, with improvements thereon, which is described more fully in Exhibit A, attached hereto (“Project Site”); and

WHEREAS, the County Council has determined that the Credit Agreement is an appropriate instrument to induce the Company to invest in the Project and create jobs in the County.

NOW, THEREFORE, IN CONSIDERATION of the respective representations and agreements contained in this Credit Agreement, the parties agree to the following:

Section 1. Representations of the Company and County.

Section 1.1 The Company makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) The Company is a corporation duly organized, validly existing, and in good standing, under the laws of the State of South Carolina, has power to enter into this Credit Agreement, and by proper corporate action has been duly authorized to execute and deliver this Credit Agreement.

(b) The Company is or intends to become the owner of the Project Site.

(c) This Credit Agreement has been duly executed and delivered by the Company and constitutes the legal, valid, and binding obligation of the Company, enforceable in accordance with its terms except as enforcement thereof may be limited by bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally.

(d) Neither the execution and delivery of this Credit Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Credit Agreement, will result in a material breach of any of the terms, conditions, or provisions of any corporate restriction or any agreement or instrument to which the Company is now a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of the Company, other than as may be created or permitted by this Credit Agreement.

(e) The agreement of the County to enter into this Credit Agreement and provide the SSRCs has been instrumental in inducing the Company to make the Investment in the Project.

Section 1.2 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 which acts through the County Council as its governing body and by the provision of the Act is authorized and empowered to enter into the transactions contemplated by the Credit Agreement

and to carry out its obligations hereunder. The County has duly authorized the execution and delivery of this Credit Agreement and any and all other agreements described herein or therein.

(b) Neither the execution and delivery of this Credit Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Credit Agreement, will result in a material breach of any of the terms, conditions, or provisions of any agreement or instrument to which the County is now a party or by which it is bound, or will constitute a default under any of the foregoing

Section 2. Fee Payments and SSRCs.

The County grants an annual SSRC to the Company, for a period of twenty (20) years (“Credit Period”) against each annual Fee Payment due for Investment made in the Project that has been placed into service beginning in 2020 and by December 31, 2025 (“Investment Period”). Any SSRC provided under this Credit Agreement shall be used to reimburse the Company for eligible expenditures, as permitted by the SSRC Act, which includes the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the Project and Project Site, for improved or unimproved real estate, or for machinery and equipment. In no event shall the aggregate amount of SSRCs received as of any point in time exceed the amount of the Company’s aggregate amount of expenses toward such eligible expenditures as of such time. The SSRCs shall be calculated as follows:

Real Property Ad Valorem Tax Payment calculated as a standard property tax without regard to this Credit Agreement	Real Property Ad Valorem Tax Payment
Personal Property Ad Valorem Tax Payment calculated as a standard property tax without regard to this Credit Agreement	Personal Property Ad Valorem Tax Payment
Real Property Value (as it would be defined in Section 12-44-50 using gross cost as the applicable fair market value) x 6% Assessment Ratio x Fixed Millage Rate of 0.2731 =	Real Property FILOT Tax Payment
Personal Property Value (as it would be defined in Section 12-44-50 including the applicable statutory depreciation) x 6% Assessment Ratio x Fixed Millage Rate of 0.2731 =	Personal Property FILOT Tax Payment
(Real Property Ad Valorem Tax Payment + Personal Property Ad Valorem Tax Payment) – (Real Property FILOT Tax Payment + Personal Property FILOT Tax Payment) =	Annual SSRC

In calculating the Real Property Ad Valorem Tax Payment and Personal Property Ad Valorem Tax Payment, the Company agrees to waive Section 3(g) of Article X of the South Carolina Constitution as well as Section 12-37-220 (B)(32) and (34) of the Code of Laws of South Carolina. **[NOTE TO COUNTY AUDITOR: IN PREPARING OR REVIEWING ANNUAL CALCULATIONS, APPLY THE FULL MILLAGE RATE, WITHOUT REDUCTION FOR ANY ABATEMENT, TO BOTH THE “EXEMPT” AND “NON-EXEMPT” AMOUNTS CERTIFIED BY DOR IN CALCULATION THE AD VALOREM TAX AMOUNTS.]**

In order to assist the County in preparing the annual tax bills, the Company shall file an annual certification with the County Auditor on or before August 1 of each year in the form attached

hereto as Exhibit B. Further, the Company shall file a separate schedule with its annual PT-300 filing (or successor form) with the South Carolina Department of Revenue to include only assets placed in service in the Investment Period described above. This separate schedule should be clearly and unambiguously designated as “BEAUFORT COUNTY 2020 SSRC ASSETS,” and a copy of the schedule should be provided to the County Auditor each year in connection with the filing of Exhibit B. Failure to file Exhibit B shall constitute a waiver of the SSRC for the applicable year.

The County shall credit the annual SSRC against the Fee Payment of the corresponding year to result in a “Net Fee Payment” to be due to the County from the Company.

Section 3. Minimum Investment

(a) In the event the Company does not make a capitalized investment in the County of at least \$2.5 million in the Project within and as of the end of the Investment Period, the SSRC as described in Section 2 above shall terminate both prospectively and retroactively, and the Company shall repay to the County any shortfall in the Net Fee Payments made under this Credit Agreement and the payments that would have been due and payable had this Credit Agreement not been in effect. In the event the Company makes a capitalized investment in the County of at least \$2.5 million in the Project within and as of the end of the Investment Period, but fails to maintain at least \$2.5 million of capitalized investment in the County within and as of the last day of any property tax year following the end of the Investment Period, the SSRC as described in Section 2 above shall terminate prospectively only. This repayment obligation is a contractual obligation, and the Company hereby waives any statute of limitations defense that would in any way reduce the amount of this obligation. For purposes of this paragraph, capitalized investments shall be calculated based on gross cost without regard to depreciation.

(b) Any amounts determined to be owing pursuant to this Section 3 shall be subject to interest at the rates in effect for the late payment of ad valorem taxes and shall be due within 90 days after the last day of the Investment Period.

Section 4. Project Shall Remain in the Park. The County shall use its best efforts to ensure that the Project, once placed in the Park, will remain in the Park for a period not less than 20 years. If, for any reason, the Park Agreement is modified to exclude the Project, or is otherwise terminated, then the County will use its best efforts to ensure that the Project shall be immediately placed into another multi-county park arrangement to which the County is party and that would enable the Company to receive the SSRCs set forth in this Credit Agreement.

Section 5. Administration Expenses. The Company shall pay the County’s legal fees incurred with the review and preparation of this Agreement. Such fees shall be paid within thirty (30) days of the Company’s receipt of an invoice for such legal fees.

Section 6. Notices. Any notice, election, demand, request, or other communication to be provided under this Credit Agreement shall be effective when delivered to the party named below or three business days after deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed as follows (or addressed to such other address

as any party may subsequently furnish, in writing to the other party), except where the terms hereof require receipt rather than sending of any notice, in which case such provision shall control:

AS TO THE COUNTY: Beaufort County, South Carolina
Attn: County Attorney
100 Ribaut Road
Beaufort, SC 29902

WITH A COPY TO: Haynsworth Sinkler Boyd, P.A.
Attn: William R. Johnson
P.O. Box 11889
Columbia, SC 29211-1889

AS TO THE COMPANY: Project Stone
[Insert company name and contact for final reading.]

Section 7. Binding Effect. This Credit Agreement is binding, in accordance with its terms, upon and inure to the benefit of the Company and its respective successors and assigns. In the event of the dissolution of the County or the consolidation of any part of the County with any other political subdivision or the transfer of any rights of the County to any other such political subdivision, all of the covenants, stipulations, promises, and agreements of this Credit Agreement shall bind and inure to the benefit of the successors of the County from time to time and any entity, officer, board, commission, agency, or instrumentality to whom or to which any power or duty of the County has been transferred.

Section 8. Counterparts. The parties may execute this Credit Agreement in any number of counterparts, in original or by facsimile or electronic means, and all of the counterparts taken together shall be deemed to constitute one and the same instrument.

Section 9. Governing Law. This Credit Agreement and all documents executed in connection with this Agreement are construed in accordance with and governed by the laws of the State of South Carolina. To the extent of any conflict between the provisions of this Credit Agreement and the SSRC Act, the SSRC Act controls.

Section 10. Amendments. The parties may modify or amend this Credit Agreement only in a writing signed by the parties.

Section 11. Further Assurance. From time to time the County shall execute and deliver to the Company any additional instruments as the Company reasonably requests to evidence or effectuate the purposes of this Credit Agreement, subject to any approvals required to be obtained from County Council.

Section 12. Severability. If any provision of this Credit Agreement is illegal, invalid, or unenforceable for any reason, the remaining provisions remain unimpaired and any illegal, invalid, or unenforceable provision are reformed to effectuate most closely the legal, valid, and enforceable intent and to afford the Company with the maximum benefits to be derived under this Credit Agreement and the SSRC Act, it being the intention of the County to offer the Company

the strongest inducement possible to encourage the Company to proceed with the Project in the County.

Section 13. Assignment. This Credit Agreement may be assigned in whole or in part only with the prior written consent or subsequent written ratification of the County.

Section 14. Limited Obligation. THIS CREDIT AGREEMENT AND THE SPECIAL SOURCE REVENUE CREDITS BECOMING DUE HEREUNDER ARE LIMITED OBLIGATIONS OF THE COUNTY PROVIDED BY THE COUNTY SOLELY FROM THE FEE PAYMENTS RECEIVED BY THE COUNTY FOR THE PROJECT PURSUANT TO THE PARK AGREEMENT, AND DO NOT AND SHALL NEVER CONSTITUTE A GENERAL OBLIGATION OR AN INDEBTEDNESS OF THE COUNTY OR ANY MUNICIPALITY WITHIN THE MEANING OF ANY CONSTITUTIONAL PROVISION (OTHER THAN THE PROVISIONS OF ARTICLE X, SECTION 14(10) OF THE SOUTH CAROLINA CONSTITUTION) OR STATUTORY LIMITATION AND DO NOT AND SHALL NEVER CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE COUNTY OR ANY MUNICIPALITY OR A CHARGE AGAINST THEIR GENERAL CREDIT OR TAXING POWER. THE FULL FAITH, CREDIT, AND TAXING POWER OF THE COUNTY OR ANY MUNICIPALITY ARE NOT PLEDGED FOR THE SPECIAL SOURCE REVENUE CREDITS.

Section 15. Indemnification.

(a) The Company shall and agrees to indemnify and save the County harmless against and from all claims by or on behalf of any person, firm or corporation arising from the conduct or management of, or from any work or thing done on, the Project during the term of this Credit Agreement, and Company further, shall indemnify and save the County harmless from all claims arising during the term of this Credit Agreement from (i) any condition of the Project, (ii) any breach or default on the part of the Company in the performance of any of its obligations under this Credit Agreement, (iii) any act of negligence of the Company or any of its agents, contractors, servants, employees or licensees related to the Project, (iv) any act of negligence related to the Project of any assignee of the Company, or of any agents, contractors, servants, employees or licensees of any assignee of the Company, or (v) any environmental violation, condition, or effect related to the Project. The Company shall indemnify and save the County harmless from and against all costs and expenses incurred in or in connection with any such claim arising as aforesaid or in connection with any action or proceeding brought thereon, and upon notice from the County, the Company shall defend the County in any such action, prosecution or proceeding.

(b) Notwithstanding the fact that it is the intention of the parties that the County, its agents, officers, or employees, shall not incur pecuniary liability by reason of the terms of this Credit Agreement, or the undertakings required of the County hereunder, or by reason of the performance of any act requested of it 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, should the County, its agents, officers or employers incur any such pecuniary liability other than as a result of their own negligence or willful or intentional misconduct, the Company shall indemnify and hold them harmless against all claims by or on behalf of any person, firm or corporation, 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, and upon notice, the Company shall defend them in any such action, prosecution or proceeding.

(c) These indemnification covenants shall be considered included in and incorporated by reference in any subsequent documents related to the Project or this Credit Agreement that the Company requests the County sign, and any other indemnification covenants in any subsequent documents shall not be construed to reduce or limit the above indemnification covenants.

IN WITNESS WHEREOF, the County, acting by and through the County Council, has caused this Credit Agreement to be executed in its name and on its behalf by the Chair of County Council and to be attested by the Clerk to County Council as of the day and year first above written.

BEAUFORT COUNTY, SOUTH CAROLINA

Signature: _____
Name: Ashley Jacobs
Title: County Administrator

(SEAL)
ATTEST:

Signature: _____
Name: Sarah W. Brock
Title: Clerk to County Council

IN WITNESS WHEREOF, the Company has caused this Credit Agreement to be executed in its name and on its behalf by its authorized officer as of the day and year first above written.

PROJECT STONE

Signature: _____
Name: _____
Title: _____

EXHIBIT "A"
LEGAL DESCRIPTION

All that certain piece, parcel or tract of land, situate, lying and being in Beaufort County, South Carolina, containing 3.70 acres as shown on that certain plat prepared by David E. Gasque, RLS, dated May 2, 2001, entitled "Boundary Survey & Lot Line Revision, Portion of Tax Parcel 100-031-017C and Parcel 100-031-0167 prepared for Henry J. Lee Distributors, Inc., and recorded in Plat Book 80 at Page 2 in the office of the Register of Deeds for Beaufort County, South Carolina. For a more complete description as to metes, bounds, courses and distances reference may be had to aforementioned plat of record.

-ALSO-

All that certain piece, parcel or tract of land situate, lying and being on Port Royal Island, Beaufort County, State of South Carolina containing 4.01 acres as shown on that certain plat prepared by David E. Gasque, R.L.S., dated October 6, 1988 and entitled "Plat showing 4.01 acres, located on S.C. Highway 170, survey at the Request of Harold E. Trask" a copy of which is recorded in the Office of the RMC for Beaufort County, S.C. in Plat Book 35 at page 361. For a more detailed description as to metes and bounds, courses and distances reference is craved to the above referred to plat of record.

BEING the same property conveyed to DJL Land Company, LLC (predecessor by name change to LONE OAK – SOUTH CAROLINA, L.L.C.) by deed of Dennis J. Lee dated March 1, 2004 and recorded March 16, 2004 in Record Book 1923, Page 882, Register of Deeds for Beaufort County, S.C.

EXHIBIT B
ANNUAL CERTIFICATION

PROJECT STONE

Real Property Value (as it would be defined in Section 12-44-50 using gross cost as the applicable fair market value) = \$ _____

Real Property FILOT Tax Payment = Real Property Value x 6% x .2731 = \$ _____

Personal Property Value (as it would be defined in Section 12-44-50 including the applicable statutory depreciation) = \$ _____

Personal Property FILOT Tax Payment = Personal Property Value x 6% x .2731 = \$ _____

Total FILOT Tax Payment = Real Property FILOT Tax Payment + Personal Property FILOT Tax Payment = \$ _____

Compliance Notes to County Auditor:

The SSRCs should be determined by first calculating the ad valorem taxes that would be due based upon the DOR certification issued directly to the County (but applying the full millage rate to all amounts, whether designed as “exempt” or “non-exempt” by DOR). The SSRCs under Section 2 of the Special Source Revenue Credit Agreement dated _____, 2020 between Beaufort County, South Carolina and Project Stone (the “Credit Agreement”) should be determined by subtracting the Total FILOT Tax Payment above from the ad valorem taxes that would be due based upon the ad valorem tax calculations as described in this paragraph. The difference in these figures is the Net Fee Payment, as defined in Section 2 of the Credit Agreement. The Net Fee Payment should equal the “Total FILOT Tax Payment” as defined above.

The County Auditor should check the calculation of the Total FILOT Tax Payment by determining the gross cost of all land, buildings, and building improvements listed in the Company’s applicable PT-300 filing, multiplying that total by 6% and a millage rate of .2731. This figure should match the Real Property FILOT Tax Payment described above. The County Auditor should then take the depreciated value of all machinery and equipment from the DOR certification (whether it is listed as exempt or non-exempt) and multiply that total by 6% and a millage rate of .2731. This figure should match the Personal Property FILOT Tax Payment described above. It may be helpful for the County Auditor to provide copies of the DOR certification to the Company upon receipt in order to avoid any confusion with the calculations.

Note to Company: A copy of a separate PT-300 schedule filed with SCDOR listing only assets placed in service in the Investment Period, as defined in the Credit Agreement must be included with this filing.

THIS CERTIFICATION SHALL BE FILED ANNUALLY WITH THE
BEAUFORT COUNTY AUDITOR, 100 RIBAUT RD BEAUFORT, SC 29902

ON OR BEFORE AUGUST 1 OF EACH YEAR.

(b) The purposes to be accomplished by the Project are proper governmental and public purposes;

(c) It is anticipated that the cost of planning, designing, acquiring, constructing and completing the Project will require expenditures of not less than \$3,200,000;

(d) The benefits of the Project to the public are greater than the costs to the public;

(e) Neither the Project nor any documents or agreements entered into by the County in connection therewith will give rise to any pecuniary liability of the County or incorporated municipality or to any charge against its general credit or taxing power.

Section 2. In order to promote industry, develop trade and utilize the manpower, products, and natural resources of the State of South Carolina, the form, terms, and provisions of the SSRC Agreement which is attached hereto are hereby approved, and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if the SSRC Agreement was set out in this Ordinance in its entirety. The Chairman of County Council and the Clerk to County Council are hereby authorized, empowered and directed to execute, acknowledge and deliver the SSRC Agreement to the Company, together with such changes as are not materially adverse to the County.

Section 3. The Chair of County Council and the Clerk to County Council, for and on behalf of the County, are hereby each authorized and directed to do any and all things necessary to effect the execution and delivery of the SSRC Agreement and the performance of all obligations of the County under and pursuant to the SSRC Agreement.

Section 4. The consummation of all transactions contemplated by the SSRC Agreement is hereby approved.

Section 5. This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina.

Section 6. 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 7. All orders, resolutions, ordinances and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed and this Ordinance shall take effect and be in full force from and after its passage and approval.

(SIGNATURE PAGE TO FOLLOW)

EXHIBIT A
SSRC AGREEMENT



BEAUFORT COUNTY COUNCIL

Agenda Item Summary

Item Title:

Fee-in-Lieu of Property Taxes (FILOT) - Project Burger, Project Garden, Project Glass

Council Committee:

Finance Committee

Meeting Date:

September 21, 2020

Committee Presenter (Name and Title):

John O'Toole, Executive Director, Beaufort County Economic Development Corporation

Issues for Consideration:

Providing base fee-in-lieu of tax agreements to Project Burger, Project Garden, and Project Glass. This will bring property tax rate from 10% industrial rate down to 6% rate for a 20 year period.

Points to Consider:

The BCEDC's position on FILOT agreements is to take a conservative approach while recruiting prospect companies and offer the 'base FILOT.' The South Carolina economic development climate is one that promotes FILOT agreements for industrial projects and taxing industry on par with the commercial rate. Using these FILOT agreements as a recruiting tool allows the BCEDC to level the playing field with other SC Counties and recruit job creating and tax base diversifying companies to Beaufort County. See below the expected investment and job creation of each company:
Project Burger - \$4.496 million investment, 43 newly created jobs
Project Garden - \$3.19 million investment, 26 newly created jobs
Project Glass - \$15.15 million investment, 55 newly created jobs
Total: \$22.836 million investment, 124 newly created jobs

Funding & Liability Factors:

Companies will be assessed at 6% tax rate for a 20 year period.

Council Options:

Recommend FILOT agreements to full County Council for approval.

Recommendation:

The BCEDC recommends moving forward with FILOT agreements for Project Burger, Project Garden, and Project Glass

FEE AGREEMENT

Between

BEAUFORT COUNTY, SOUTH CAROLINA

and

PROJECT GLASS

Dated as of _____, 2020

RECAPITULATION OF CONTENTS OF
FEE AGREEMENT PURSUANT TO S.C. CODE §12-44-55(A)

The parties have agreed to waive this requirement pursuant to S.C. Code Ann. § 12-44-55(B).

FEE AGREEMENT

THIS FEE AGREEMENT (the “Fee Agreement”) is made and entered into as of _____, 2020 by and between BEAUFORT COUNTY, SOUTH CAROLINA (the “County”), a body politic and corporate and a political subdivision of the State of South Carolina (the “State”), acting by and through the Beaufort County Council (the “County Council”) as the governing body of the County, and a company currently identified as PROJECT GLASS (the “Company”).

RECITALS

1. Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (the “Act”) authorizes the County (i) to induce industries to locate in the State; (ii) to encourage industries now located in the State to expand their investments and thus make use of and employ manpower, products, and other resources of the State; and (iii) to enter into a fee agreement with entities meeting the requirements of such Act, which identifies certain property of such entities as economic development property.

2. Pursuant to Section 12-44-40(H)(1) of the Act, the County finds that: (a) the Project (as defined herein) is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; (b) the Project gives rise to no pecuniary liability of the County or any incorporated municipality and to no charge against its general credit or taxing power; (c) the purposes to be accomplished by the Project are proper governmental and public purposes; and (d) the benefits of the Project are greater than the costs.

3. The County Council has evaluated the Project based on all relevant criteria that include, but are not limited to, the purposes the Project is to accomplish, the anticipated dollar amount and nature of the investment, and the anticipated costs and benefits to the County.

4. An Ordinance that the County Council adopted on _____, 2020 (the “Fee Ordinance”) authorizes the County and the Company to enter into a Fee Agreement that classifies the Project as Economic Development Property under the Act and provides for the payment of fees in lieu of taxes, all as further described herein.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the respective representations and agreements hereinafter contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 The terms that this Article defines shall for all purposes of this Fee Agreement have the meanings herein specified, unless the context clearly requires otherwise:

“Act” shall mean Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended, and all future acts successor or supplemental thereto or amendatory thereof.

“Act Minimum Investment Requirement” shall mean an investment of at least \$2,500,000 by the Company of property eligible as economic development property under the Act, provided, however, that in the event of a reduction of the minimum investment level in Section 12-44-30(14) or any successor section by legislative action, then the Act Minimum Investment Requirement shall equal such reduced amount.

“Commencement Date” shall mean the last day of the property tax year during which the Project or the first Phase thereof is placed in service, which date must not be later than the last day of the property tax year which is three years from the year in which the County and the Company enter into this Fee Agreement.

“Company” shall mean the company currently identified as Project Glass and any surviving, resulting, or transferee entity in any merger, consolidation, or transfer of assets; or any other person or entity which may succeed to the rights and duties of the Company.

“County” shall mean Beaufort County, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina, its successors and assigns, acting by and through the County Council as the governing body of the County.

“County Council” shall mean the Beaufort County Council, the governing body of the County.

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

“Diminution in Value” in respect of the Project or any Phase of the Project shall mean any reduction in the value using the original fair market value (without regard to depreciation) as determined in Step 1 of Section 4.1(a) of this Fee Agreement, of the items which constitute a part of the Project or such Phase and which are subject to FILOT payments which may be caused by (i) the Company’s removal and/or disposal of equipment pursuant to Section 4.6 of this Fee Agreement; (ii) a casualty to the Project, such Phase of the Project, or any part thereof, described in Section 4.7 of this Fee Agreement; or (iii) a condemnation of the Project, such Phase of the Project, or any part thereof, described in Section 4.8 of this Fee Agreement.

“Economic Development Property” shall mean those items of real and tangible personal property of the Project which are eligible for inclusion as economic development property under the Act, selected and identified by the Company in its annual filing of a SCDOR PT-300S or comparable form with the Department (as such filing may be amended from time to time) for each year within the Investment Period.

“Equipment” shall mean all of the machinery, equipment, furniture, office equipment, and fixtures, together with any and all additions, accessions, replacements, and substitutions thereto or therefor used or to be used in the County by the Company for the purposes described in Section 2.2(b) hereof, provided, however, that repairs, alterations, or modifications to personal property which is not economic development property or property subject to a fee in lieu of taxes prior to this Fee Agreement, are not eligible to become Economic Development Property, except for modifications which constitute an expansion of existing real property improvements.

“Event of Default” shall mean any event of default specified in Section 5.1 of this Fee Agreement.

“Exemption Period” shall mean the period beginning on the first day of the property tax year after the property tax year in which an applicable piece of Economic Development Property is placed in service and ending on the Termination Date. In case there are Phases of the Project, the Exemption Period applies to each year’s investment made during the Investment Period.

“Fee,” “Fee in Lieu of Taxes,” “FILOT,” or “Payments in Lieu of Taxes” shall mean the amount paid or to be paid in lieu of *ad valorem* property taxes as provided herein.

“Fee Agreement” shall mean this Fee Agreement.

“Fee Term” shall mean the period from the date of this Fee Agreement until the Termination Date.

“Improvements” shall mean all improvements to the Real Property, including buildings, building additions, roads, sewer lines, and infrastructure, together with any and all additions, fixtures, accessions, replacements, and substitutions thereto or therefor used or to be used in the County for the purposes described in Section 2.2(b) hereof; provided, however, that repairs, alterations, or modifications to real property which is not economic development property or property subject to a fee in lieu of taxes prior to this Fee Agreement, are not eligible to become Economic Development Property, except for modifications which constitute an expansion of existing real property improvements.

“Industrial Development Park” shall mean the industrial or business park developed by two or more counties as defined in Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended.

“Investment Period” shall mean the period beginning with the first day of any purchase or acquisition of Economic Development Property and ending five years after the Commencement Date, provided that the Company and the County may agree to a later date pursuant to Section 12-44-30(13) of the Act.

“MCIP Act” shall mean Title 4, Chapter 1, Sections 170 et seq. of the Code of Laws of South Carolina, 1976, as amended.

“Phase” or “Phases” in respect of the Project shall mean that the Equipment, Improvements, and/or Real Property of the Project are placed in service during more than one year in the Investment Period, and the word “Phase” shall therefore refer to the applicable portion of the Project placed in service in a given year in the Investment Period.

“Project” shall mean all the Equipment, Improvements, and/or Real Property located on the Real Property in the County and that the Company determines to be necessary, suitable, or useful for the purposes that Section 2.2(b) describes, and first placed in service in calendar year 2020 or thereafter. The Project shall not include existing buildings and improvements on the Real Property, as of the date of the commencement of the Project by the Company, and any

machinery and equipment which have previously been subject to South Carolina *ad valorem* taxation.

“Real Property” shall mean real property that the Company uses or will use in the County for the purposes that Section 2.2(b) describes, and generally located on the land identified on Exhibit A hereto, together with all and singular the rights, members, hereditaments, and appurtenances belonging or in any way incident or appertaining thereto.

“Removed Components” shall mean the following types of components or Phases of the Project or portions thereof which are subject to FILOT payments, all of which the Company shall be entitled to remove from the Project with the result that the same shall no longer be subject to the terms of the Fee Agreement: (a) components or Phases of the Project or portions thereof which the Company, in its sole discretion, determines to be inadequate, obsolete, worn-out, uneconomic, damaged, unsuitable, undesirable, or unnecessary pursuant to Section 4.6 hereof or otherwise; or (b) components or Phases of the Project or portions thereof which the Company in its sole discretion, elects to be treated as removed pursuant to Section 4.7(c) or Section 4.8(b)(iii) of this Fee Agreement.

“Replacement Property” shall mean any property which is placed in service as a replacement for any item of Equipment, any Improvement, or any Real Property previously subject to this Fee Agreement regardless of whether such property serves the same functions as the property it is replacing and regardless of whether more than one piece of property replaces any item of Equipment, any Improvement, or any Real Property, to the fullest extent that the Act permits.

“Sponsor” shall mean an entity that joins with or is an affiliate of, the Company and that participates in the investment in, or financing of, the Project and which meets the requirements under the Act to be entitled to the benefits of this Agreement with respect to its participation in the Project.

“Termination Date” shall mean in case the entire Project is placed in service in one year, the end of the last day of the property tax year which is the 19th year following the first property tax year in which the entire Project is placed in service, or in case there are Phases of the Project, the Termination Date shall mean with respect to each Phase of the Project the end of the last day of the property tax year which is the 19th year following the first property tax year in which such Phase of the Project is placed in service, provided, that the intention of the parties is that the Company will make at least 20 annual FILOT payments under Article IV hereof with respect to each Phase of the Project and provided further, that if this Fee Agreement is terminated earlier in accordance with the terms hereof, the Termination Date is the date of such termination.

Any reference to any agreement or document in this Article I or otherwise in this Fee Agreement shall include any and all amendments, supplements, addenda, and modifications to such agreement or document.

Section 1.2 The term “investment” or “invest” as used herein shall include not only investments made by the Company, but also to the fullest extent permitted by law, those investments made by or for the benefit of the Company in connection with the Project through

federal, state, or local grants, to the extent such investments are subject to *ad valorem* taxes or FILOT payments by the Company.

ARTICLE II

REPRESENTATIONS, WARRANTIES, AND AGREEMENTS

Section 2.1 Representations, Warranties, and Agreements of the County. The County hereby represents, warrants, and agrees as follows:

(a) The County is a body politic and corporate and a political subdivision of the State and acts through the County Council as its governing body. The Act authorizes and empowers the County to enter into the transactions that this Fee Agreement contemplates and to carry out its obligations hereunder. The County has duly authorized the execution and delivery of this Fee Agreement and any and all other agreements described herein or therein and has obtained all consents from third parties and taken all actions necessary or that the law requires to fulfill its obligations hereunder.

(b) Based upon representations by the Company, the Project constitutes a “project” within the meaning of the Act, and the County is a County that the Act authorizes to enter into fee in lieu of tax agreements with companies that satisfy the Act Minimum Investment Requirement within the County.

(c) The County has agreed that each item of real and tangible personal property comprising the Project which is eligible to be economic development property under the Act and that the Company selects shall be considered Economic Development Property and is thereby exempt from *ad valorem* taxation in South Carolina.

(d) The millage rate in Section 4.1 hereof is 286.70 mills, the millage rate in effect with respect to the location of the proposed Project on June 30, 2020, as provided under Section 12-44-50(A)(1)(d) of the Act.

(e) The County will not be in default in any of its obligations (contractual or otherwise), including any violation of its statutory debt limit, as a result of entering into and performing under this Fee Agreement and/or as a result of creating an Industrial Development Park encompassing the Project.

(f) The County will take all reasonable action to include the Project in an Industrial Development Park.

Section 2.2 Representations, Warranties, and Agreements of the Company. The Company hereby represents, warrants, and agrees as follows:

(a) The Company is in good standing under the laws of the State of South Carolina, is duly authorized to transact business in the State of South Carolina, has power to enter into this Fee Agreement, and has duly authorized the execution and delivery of this Fee Agreement.

(b) The Company intends to operate the Project as a “project” within the meaning of the Act as in effect on the date hereof. The Company intends to operate the Project as a manufacturing facility and for such other purposes that the Act permits as the Company may deem appropriate.

(c) The Company will use commercially reasonable efforts to ensure that its investment in Economic Development Property of the Project will exceed the Act Minimum Investment Requirement.

ARTICLE III

COMMENCEMENT AND COMPLETION OF THE PROJECT

Section 3.1 The Project. The Company intends to invest in Equipment, Improvements, and/or Real Property, which together comprise the Project and which are anticipated to create at least the Act Minimum Investment Requirement in eligible Economic Development Property investment subject to Payments in Lieu of Taxes in the County.

The parties hereto agree that, to the extent that applicable law allows or is revised or construed to allow the benefits of the Act, in the form of Payments-in-Lieu-of-Taxes to be made under Article IV hereof, to be applicable to leased assets including, but not limited to a building and/or personal property to be installed in the buildings and leased to but not purchased by the Company from one or more Sponsors under any form of lease, then such property shall, at the election of the Company, be subject to Payments-in-Lieu-of-Taxes to the same extent as the Company’s assets covered by this Fee Agreement, subject, at all times, to the requirement of such applicable law. The parties hereto further agree that this Fee Agreement may be interpreted or modified as may be necessary or appropriate in order to give proper application of this Fee Agreement to such tangible property without such construction or modification constituting an amendment to this Fee Agreement, and thus not requiring any additional action by the County Council. The County Manager, after consulting with the County Attorney, shall be and hereby is authorized to make such modifications, if any, as may be necessary or appropriate in connection therewith. Such leased property shall constitute a part of the Project for all purposes of this Agreement, including the calculation of the Clawback Minimum Requirements, removal, replacement, and termination, and such Sponsor shall be deemed to be a party to this Agreement provided, however, that no Sponsor shall be liable for any payments pursuant to Section 4.2(b) hereof, which shall remain the Company’s liability.

Pursuant to the Act and subject to Section 4.2 hereof, the Company and the County hereby agree that the Company shall identify annually those assets which are eligible for FILOT payments under the Act and which the Company selects for such treatment by listing such assets on the applicable schedule in its annual PT-300 form (or comparable form) to be filed with the Department (as such may be amended from time to time) and that by listing such assets, such assets shall automatically become Economic Development Property and therefore be exempt from all *ad valorem* taxation during the Exemption Period. Anything contained in this Fee Agreement to the contrary notwithstanding, the Company shall not be obligated to complete the acquisition of the Project. However, if the Company does not meet the Act Minimum

Investment Requirement, this Fee Agreement shall be terminated as provided in Section 4.2 hereof.

Section 3.2 Diligent Completion. The Company agrees to use its reasonable efforts to cause the completion of the Project as soon as practicable, but in any event on or prior to the end of the Investment Period.

Section 3.3 Filings and Reports.

(a) Each year during the term of the Fee Agreement, the Company shall deliver to the County, the County Auditor, the County Assessor, and the County Treasurer, a copy of its most recent annual filings with the Department with respect to the Project, not later than 30 days following delivery thereof to the Department.

(b) The Company shall cause the filing of a copy of this Fee Agreement, as well as a copy of the completed Form PT-443 of the Department, to be filed with the County Auditor and the County Assessor of the County and any partner county, when the Project is placed in a joint county industrial and business park, and the Department within 30 days after the date of execution and delivery hereof by all parties hereto.

(c) The Company agrees to maintain complete books and records accounting for the acquisition, financing, construction, and operation of the Project. Such books and records shall (i) permit ready identification of the various Phases and components thereof; (ii) confirm the dates on which each Phase was placed in service; and (iii) include copies of all filings made by the Company in accordance with Section 3.3(a) or (b) above with respect to property placed in service as part of the Project.

(d) Whenever the County shall be required by any governmental or financing entity to file or produce any reports, notices, returns, or other documents related to this transaction while this Fee Agreement is in effect, the Company shall promptly furnish to the County through the County Administrator the completed form of such required documents, to the extent that the Company possesses the information necessary to complete the documents. In the event of a failure or refusal of the Company to comply with this provision, within 30 days after presentation of a statement by the County, the Company shall pay the attorney's fees the County incurs in producing and filing such documents and any fees, penalties, assessments, or damages that the law imposes upon the County by reason of its failure duly to file or produce such documents.

ARTICLE IV

PAYMENTS IN LIEU OF TAXES

Section 4.1 Negotiated Payments.

(a) Pursuant to Section 12-44-50 of the Act, the Company is required to make payments in lieu of *ad valorem* taxes to the County with respect to the Economic Development Property. Inasmuch as the Company anticipates an initial investment of sums sufficient for the Project to qualify for a fee in lieu of tax arrangement under Section 12-44-50(A)(1) of the Act, the County and the Company have negotiated the amount of the Payments in Lieu of Taxes in

accordance therewith. The Company shall make payments in lieu of *ad valorem* taxes on all Economic Development Property which comprises the Project and is placed in service, as follows: the Company shall make payments in lieu of *ad valorem* taxes during the Exemption Period with respect to the Economic Development Property or, if there are Phases of the Economic Development Property, with respect to each Phase of the Economic Development Property, said payments to be made annually and to be due and payable and subject to penalty assessments on the same dates and in the same manner as prescribed by the County for *ad valorem* taxes. The determination of the amount of such annual Payments in Lieu of Taxes shall be in accordance with the following procedure (subject, in any event, to the procedures that the Act requires):

- Step 1: Determine the fair market value of the Economic Development Property (or Phase of the Economic Development Property) placed in service during the Exemption Period using original income tax basis for State income tax purposes for any Real Property and Improvements without regard to depreciation (provided, the fair market value of real property, as the Act defines such term, that the Company obtains by construction or purchase in an arms length transaction is equal to the original income tax basis, and otherwise, the determination of the fair market value is by appraisal) and original income tax basis for State income tax purposes for any personal property less depreciation for each year allowable for property tax purposes, except that no extraordinary obsolescence shall be allowable. The fair market value of the Real Property for the first year of the Fee Term remains the fair market value of the Real Property for the life of the Fee Term. The determination of these values shall take into account all applicable property tax exemptions that State law would allow to the Company if the property were taxable, except those exemptions that Section 12-44-50(A)(2) of the Act specifically disallows.
- Step 2: Apply an assessment ratio of six percent (6%) to the fair market value in Step 1 to establish the taxable value of the Economic Development Property (or each Phase of the Economic Development Property) in the year it is placed in service and in each of the 19 years thereafter or such longer period of years in which the Act permits the Company to make annual fee payments.
- Step 3: Use a fixed millage rate equal to the millage rate in effect on June 30, 2020, which is 286.70 mills, as Section 12-44-50(A)(1)(d) of the Act provides, during the Exemption Period against the taxable value to determine the amount of the Payments in Lieu of Taxes due during the Exemption Period on the payment dates that the County prescribes for such payments or such longer period of years in which the Act permits the Company to make annual fee payments.

(b) In the event that a final order of a court of competent jurisdiction or an agreement of the parties determines that the calculation of the minimum Payment in Lieu of Taxes

applicable to this transaction is to be other than by the procedure herein, the payment shall be reset at the minimum permitted level so determined.

In the event that a final order of a court of competent jurisdiction from which no further appeal is allowable declares the Act and/or the herein-described Payments in Lieu of Taxes invalid or unenforceable, in whole or in part, for any reason, the parties express their intentions to reform such payments so as to effectuate most closely the intent thereof and so as to afford the Company with the benefits to be derived herefrom, the intention of the County being to offer the Company a strong inducement to locate the Project in the County. If the Economic Development Property is deemed to be subject to *ad valorem* taxation, this Fee Agreement shall terminate, and the Company shall pay the County regular *ad valorem* taxes from the date of termination, but with appropriate reductions equivalent to all tax exemptions which are afforded to the Company. Any amount determined to be due and owing to the County from the Company, with respect to a year or years for which the Company previously remitted Payments in Lieu of Taxes to the County hereunder, shall (i) take into account all applicable tax exemptions to which the Company would be entitled if the Economic Development Property was not and had not been Economic Development Property under the Act; and (ii) be reduced by the total amount of Payments in Lieu of Taxes the Company had made with respect to the Project pursuant to the terms hereof. Notwithstanding anything contained herein to the contrary, neither the Company nor any successor in title or interest shall be required to pay FILOT payments and *ad valorem* taxes for the same property over the same period in question.

(c) The County's right to receive FILOT payments hereunder shall have a first priority lien status pursuant to Sections 12-44-90(E) and (F) of the Act and Chapters 4, 49, 51, 53, and 54 of Title 12 of the Code of Laws of South Carolina, 1976, as amended.

(d) In the event the Company should fail to make any of the payments that this Article IV requires, the item or installment so in default shall continue as an obligation of the Company until the Company shall have fully paid the amount, and the Company agrees to pay the same with interest thereon at a rate of 5% per annum, compounded monthly, to accrue from the date on which the payment was due and, in the case of FILOT payments, subject to the penalties the law provides until payment.

Section 4.2 Failure to Achieve Act Minimum Investment Requirement.

(a) In the event that the cost of the Economic Development Property (without regard to depreciation) that the Company acquires does not reach the Act Minimum Investment Requirement by the end of the Investment Period, this Fee Agreement shall terminate as to such entity failing to meet the minimum investment level. In such event, the Company shall pay the County an amount (the "Additional Payment") pursuant to the Act which is equal to the excess, if any, of (i) the total amount of *ad valorem* taxes as would result from taxes levied on the Project by the County, municipality or municipalities, school district or school districts, and other political units as if the items of property comprising the Economic Development Property were not Economic Development Property, but with appropriate reductions equivalent to all tax exemptions and abatements to which the Company would be entitled in such a case, through and including the end of the Investment Period, over (ii) the total amount of FILOT payments the Company has made with respect to the Economic Development Property through and including

the end of the Investment Period. Any amounts determined to be owing pursuant to the foregoing sentence shall be subject to the minimum amount of interest that the Act may require.

(b) The County's right to receive FILOT payments hereunder shall have a first priority lien status pursuant to Sections 12-44-90(E) and (F) of the Act and Chapters 4, 49, 51, 53, and 54 of Title 12 of the Code of Laws of South Carolina, 1976, as amended.

(c) In the event the Company should fail to make any of the payments that this Article IV requires, the item or installment so in default shall continue as an obligation of the Company until the Company shall have fully paid the amount, and the Company agrees to pay the same with interest thereon at a rate of 5% per annum, compounded monthly, to accrue from the date on which the payment was due and, in the case of FILOT payments, subject to the penalties the law provides until payment.

Section 4.3 Payments in Lieu of Taxes on Replacement Property. If the Company elects to replace any Removed Components and to substitute such Removed Components with Replacement Property as a part of the Economic Development Property, or the Company otherwise utilizes Replacement Property, then, pursuant and subject to Section 12-44-60 of the Act, the Company shall make statutory payments in lieu of *ad valorem* taxes with regard to such Replacement Property in accordance with the following:

(i) Replacement Property does not have to serve the same function as the Economic Development Property it is replacing. Replacement Property is deemed to replace the oldest Economic Development Property subject to the Fee, whether real or personal, which is disposed of in the same property tax year in which the Replacement Property is placed in service. Replacement Property qualifies as Economic Development Property only to the extent of the original income tax basis of Economic Development Property which is being disposed of in the same property tax year. More than one piece of property can replace a single piece of Economic Development Property. To the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the Economic Development Property which it is replacing, the excess amount is subject to annual payments calculated as if the exemption for Economic Development Property were not allowable. Replacement Property is entitled to treatment under the Fee Agreement for the period of time remaining during the Exemption Period for the Economic Development Property which it is replacing; and

(ii) The new Replacement Property which qualifies for the Fee shall be recorded using its income tax basis, and the calculation of the Fee shall utilize the millage rate and assessment ratio in effect with regard to the original property subject to the Fee.

Section 4.4 Reductions in Payments of Taxes Upon Removal, Condemnation, or Casualty. In the event of a Diminution in Value of the Economic Development Property or any Phase of the Economic Development Property, the Payment in Lieu of Taxes with regard to the Economic Development Property or that Phase of the Economic Development Property shall be

reduced in the same proportion as the amount of such Diminution in Value bears to the original fair market value of the Economic Development Property or that Phase of the Economic Development Property as determined pursuant to Step 1 of Section 4.1(a) hereof; *provided, however*, that if at any time subsequent to the end of the Investment Period, the total value of the Project based on the original income tax basis of the Equipment, Real Property, and Improvements contained therein, without deduction for depreciation, is less than the Act Minimum Investment Requirement, beginning with the first payment thereafter due hereunder and continuing until the end of the Fee Term, the Company shall no longer be entitled to the incentive provided in Section 4.1, and the Company shall therefore commence to pay regular *ad valorem* taxes on the Economic Development Property part of the Project.

Section 4.5 Place and Allocation of Payments in Lieu of Taxes. The Company shall make the above-described Payments in Lieu of Taxes directly to the County in accordance with applicable law.

Section 4.6 Removal of Equipment. Subject, always, to the other terms and provisions hereof, the Company shall be entitled to remove and dispose of components or Phases of the Project from the Project in its sole discretion with the result that said components or Phases shall no longer be considered a part of the Project and, to the extent such constitute Economic Development Property, shall no longer be subject to the terms of this Fee Agreement to the fullest extent allowed by the Act, as amended. Economic Development Property is disposed of only when it is scrapped or sold or it is removed from the Project. If it is removed from the Project, it is subject to *ad valorem* property taxes to the extent the Property remains in the State and is otherwise subject to *ad valorem* property taxes.

Section 4.7 Damage or Destruction of Economic Development Property.

(a) Election to Terminate. In the event the Economic Development Property is damaged by fire, explosion, or any other casualty, the Company shall be entitled to terminate this Fee Agreement. The Company shall only be required to make FILOT payments as to all or any part of the tax year in which the damage or casualty occurs to the extent property subject to *ad valorem* taxes would otherwise have been subject to such taxes under the same circumstances for the period in question.

(b) Election to Rebuild. In the event the Economic Development Property is damaged by fire, explosion, or any other casualty, and if the Company does not elect to terminate this Fee Agreement, the Company may commence to restore the Economic Development Property with such reductions or enlargements in the scope of the Economic Development Property, changes, alterations, and modifications (including the substitution and addition of other property) as may be desired by the Company. All such restorations and replacements shall be considered, to the fullest extent permitted by law and this Fee Agreement, substitutions of the destroyed portions of the Economic Development Property and shall be considered part of the Economic Development Property for all purposes hereof, including, but not limited to, any amounts due by the Company to the County under Section 4.1 hereof.

(c) Election to Remove. In the event the Company elects not to terminate this Fee Agreement pursuant to subsection (a) and elects not to rebuild pursuant to subsection (b), the

damaged portions of the Economic Development Property shall be treated as Removed Components.

Section 4.8 Condemnation.

(a) Complete Taking. If at any time during the Fee Term title to or temporary use of the Economic Development Property should become vested in a public or quasi-public authority by virtue of the exercise of a taking by condemnation, inverse condemnation, or the right of eminent domain; by voluntary transfer under threat of such taking; or by a taking of title to a portion of the Economic Development Property which renders continued use or occupancy of the Economic Development Property commercially unfeasible in the judgment of the Company, the Company shall have the option to terminate this Fee Agreement by sending written notice to the County within a reasonable period of time following such vesting. The Company shall only be required to make FILOT payments as to all or any part of the tax year in which the taking occurs to the extent property subject to *ad valorem* taxes would otherwise have been subject to such taxes under the same circumstances for the period in question.

(b) Partial Taking. In the event of a partial taking of the Economic Development Property or a transfer in lieu thereof, the Company may elect: (i) to terminate this Fee Agreement; (ii) subject to the Act and the terms and provisions of this Fee Agreement, to repair and restore the Economic Development Property, with such reductions or enlargements in the scope of the Economic Development Property, changes, alterations, and modifications (including the substitution and addition of other property) as the Company may desire, and all such changes, alterations, and modifications shall be considered as substitutions of the taken parts of the Economic Development Property; or (iii) to treat the portions of the Economic Development Property so taken as Removed Components.

(c) The Company shall only be required to make FILOT payments as to all or any part of the tax year in which the taking occurs to the extent property subject to *ad valorem* taxes would otherwise have been subject to such taxes under the same circumstances for the period in question.

Section 4.9 Confidentiality/Limitation on Access to Project. The County acknowledges and understands that the Company utilizes confidential and proprietary processes and materials, services, equipment, trade secrets, and techniques (herein “Confidential Information”) and that any disclosure of Confidential Information concerning the Company’s operations may result in substantial harm to the Company and could thereby have a significant detrimental impact on the Company’s employees and also upon the County. The Company acknowledges that the County is subject to the Freedom of Information Act, and, as a result, must disclose certain documents and information on request absent an exemption. For these reasons, the Company shall clearly label all Confidential Information it delivers to the County “Confidential Information.” Therefore, the County agrees that, except as required by law, neither the County nor any employee, agent, or contractor of the County shall (i) request or be entitled to receive any such Confidential Information, or (ii) disclose or otherwise divulge any such Confidential Information to any other person, firm, governmental body or agency, or any other entity unless specifically required to do so by law; provided, however, that the County shall have no less rights concerning information relating to the Project and the Company than

concerning any other property or property taxpayer in the County, and, provided further, that the confidentiality of such confidential or proprietary information is clearly disclosed to the County in writing as previously described. Prior to disclosing any Confidential Information, subject to the requirements of law, the Company may require the execution of reasonable, individual, confidentiality and non-disclosure agreements by any officers, employees, or agents of the County or any supporting or cooperating governmental agencies who would gather, receive, or review such information. In the event that the County is required to disclose any Confidential Information obtained from the Company to any third party, the County agrees to provide the Company with as much advance notice as possible of such requirement before making such disclosure, and to cooperate reasonably with any attempts by the Company to obtain judicial or other relief from such disclosure requirement.

Section 4.10 Assignment. With the prior written consent of the County or a subsequent written ratification by the County, which consent or ratification the County will not unreasonably withhold unless Section 12-44-120 of the Act or any successor provision expressly does not require consent, and in accordance with the Act, the Company may assign this Fee Agreement in whole or in part. The Company agrees to notify the County and the Department of the identity of such transferee within 60 days of the transfer. In case of a transfer, the transferee assumes the transferor's basis in the Project for purposes of calculating the Fee. No approval is required for transfers to sponsor affiliates or other financing related transfers, as defined in the Act.

Section 4.11 No Double Payment; Future Changes in Legislation.

(a) Notwithstanding anything contained herein to the contrary, and except as expressly required by law, neither the Company nor any Sponsor shall ever be required to make a Payment in Lieu of Taxes in addition to a regular property tax payment in the same year over the same piece of property, nor shall the Company or any Sponsor be required to make a Payment in Lieu of Taxes on property in cases where, absent this Fee Agreement, property taxes would otherwise not be due on such property.

In case there is any legislation enacted which provides for more favorable treatment for property to qualify as, or for the calculation of the fee related to, Economic Development Property under Sections 4.4, 4.6, 4.7, 4.8, or the calculation of the Investment Period, the County agrees to give expedient and full consideration to such legislation, with a view to allow for such more favorable treatment or calculation.

Section 4.12 Administration Expenses.

(a) The Company agrees to pay the reasonable and necessary expenses that the County incurs with respect to the execution and administration of this Fee Agreement, including without limitation reasonable and actual attorney's fees (the "Administration Expenses"); provided, however, that no such expense shall be an Administration Expense until the County has furnished to the Company a statement in writing indicating the amount of such expense and the reason for its incurrence.

ARTICLE V

DEFAULT

Section 5.1 Events of Default. The following shall be “Events of Default” under this Fee Agreement, and the term “Events of Default” shall mean, whenever used with reference to this Fee Agreement, any one or more of the following occurrences:

(a) Failure by the Company to make the Payments in Lieu of Taxes described in Section 4.1 hereof, which failure shall not have been cured within 30 days following receipt of written notice thereof from the County; *provided, however*, that the Company shall be entitled to all redemption rights granted by applicable statutes; or

(b) A representation or warranty made by the Company which is deemed materially incorrect when deemed made; or

(c) Failure by the Company to perform any of the terms, conditions, obligations, or covenants hereunder (other than those under (a) above), which failure shall continue for a period of 30 days after written notice from the County to the Company specifying such failure and requesting that it be remedied, unless the Company shall have instituted corrective action within such time period and is diligently pursuing such action until the default is corrected, in which case the 30-day period shall be extended to cover such additional period during which the Company is diligently pursuing corrective action; or

(d) A representation or warranty made by the County which is deemed materially incorrect when deemed made; or

(e) Failure by the County to perform any of the terms, conditions, obligations, or covenants hereunder, which failure shall continue for a period of 30 days after written notice from the Company to the County specifying such failure and requesting that it be remedied, unless the County shall have instituted corrective action within such time period and is diligently pursuing such action until the default is corrected, in which case the 30-day period shall be extended to cover such additional period during which the County is diligently pursuing corrective action; or

(f) A cessation of operations at the Project by the Company.

Section 5.2 Remedies on Default.

(a) Whenever any Event of Default by the Company shall have occurred and shall be continuing, the County may take any one or more of the following remedial actions:

- (1) terminate the Fee Agreement; or
- (2) take whatever action at law or in equity may appear necessary or desirable to collect the amounts due hereunder. In no event shall the Company be liable to the County or otherwise for monetary damages resulting from the Company’s failure to meet the Act Minimum Investment Requirement, other than as expressly set forth herein.

In addition to all other remedies provided herein, the failure to make FILOT payments shall give rise to a lien for tax purposes as Section 12-44-90 of the Act provides. In this regard, and notwithstanding anything in this Fee Agreement to the contrary, the County may exercise the remedies that general law (including Title 12, Chapter 49 of the Code of Laws of South Carolina, 1976, as amended) provides with regard to the enforced collection of *ad valorem* taxes to collect any FILOT payments due hereunder.

(b) Whenever any Event of Default by the County shall have occurred or shall be continuing, the Company may take one or more of the following actions:

- (1) bring an action for specific enforcement;
- (2) terminate the Fee Agreement; or
- (3) in case of a materially incorrect representation or warranty, take such action as is appropriate, including legal action, to recover its damages, to the extent allowed by law.

Section 5.3 Reimbursement of Legal Fees and Expenses and Other Expenses. Upon the occurrence of an Event of Default hereunder, should a party be required to employ attorneys or incur other reasonable expenses for the collection of payments due hereunder or for the enforcement of performance or observance of any obligation or agreement, the successful party shall be entitled, within 30 days of demand therefor, to reimbursement of the reasonable fees of such attorneys and such other reasonable expenses so incurred. The Company further agrees to pay reasonable legal fees and expenses and other expenses of the County.

Section 5.4 No Waiver. No failure or delay on the part of any party hereto in exercising any right, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy hereunder. No waiver of any provision hereof shall be effective unless the same shall be in writing and signed by the waiving party hereto.

ARTICLE VI

MISCELLANEOUS

Section 6.1 Notices. Any notice, election, demand, request, or other communication to be provided under this Fee Agreement shall be effective when delivered to the party named below or when deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed as follows (or addressed to such other address as any party shall have previously furnished in writing to the other party), except where the terms hereof require receipt rather than sending of any notice, in which case such provision shall control:

IF TO THE COMPANY:

Project Glass
Attn: _____

[Insert notice person and address for final reading.]

IF TO THE COUNTY:

Beaufort County, South Carolina
Attn: County Attorney
100 Ribaut Road
Beaufort, SC 29902

WITH A COPY TO:

Haynsworth Sinkler Boyd, P.A.
Attn: William R. Johnson
P.O. Box 11889
Columbia, SC 29211

Section 6.2 Binding Effect. This Fee Agreement and each document contemplated hereby or related hereto shall be binding upon and inure to the benefit of the Company, the County, and their respective successors and assigns. In the event of the dissolution of the County or the consolidation of any part of the County with any other political subdivision or the transfer of any rights of the County to any other such political subdivision, all of the covenants, stipulations, promises, and agreements of this Fee Agreement shall bind and inure to the benefit of the successors of the County from time to time and any entity, officer, board, commission, agency, or instrumentality to whom or to which any power or duty of the County has been transferred.

Section 6.3 Counterparts. This Fee Agreement may be executed in any number of counterparts, and all of the counterparts taken together shall be deemed to constitute one and the same instrument.

Section 6.4 Governing Law. This Fee Agreement and all documents executed in connection herewith shall be construed in accordance with and governed by the laws of the State of South Carolina.

Section 6.5 Headings. The headings of the articles and sections of this Fee Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Fee Agreement.

Section 6.6 Amendments. The provisions of this Fee Agreement may only be modified or amended in writing by any agreement or agreements entered into between the parties.

Section 6.7 Further Assurance. From time to time, and at the expense of the Company, to the extent any expense is incurred, the County agrees to execute and deliver to the Company such additional instruments as the Company may reasonably request and as are authorized by law and reasonably within the purposes and scope of the Act and Fee Agreement to effectuate the purposes of this Fee Agreement.

Section 6.8 Invalidity; Change in Laws. In the event that the inclusion of property as Economic Development Property or any other issue is unclear under this Fee Agreement, the County hereby expresses its intention that the interpretation of this Fee Agreement shall be in a manner that provides for the broadest inclusion of property under the terms of this Fee Agreement and the maximum incentive permissible under the Act, to the extent not inconsistent with any of the explicit terms hereof. If any provision of this Fee Agreement is declared illegal, invalid, or unenforceable for any reason, the remaining provisions hereof shall be unimpaired, and such illegal, invalid, or unenforceable provision shall be reformed to effectuate most closely the legal, valid, and enforceable intent thereof and so as to afford the Company with the maximum benefits to be derived herefrom, it being the intention of the County to offer the Company the strongest inducement possible, within the provisions of the Act, to locate the Project in the County. In case a change in the Act or South Carolina laws eliminates or reduces any of the restrictions or limitations applicable to the Company and the Fee incentive, the parties agree that the County will give expedient and full consideration to reformation of this Fee Agreement, and, if the County Council so decides, to provide the Company with the benefits of such change in the Act or South Carolina laws.

Section 6.9 Force Majeure. The Company shall not be responsible for any delays or non-performance caused in whole or in part, directly or indirectly, by strikes, accidents, freight embargoes, fires, floods, inability to obtain materials, conditions arising from governmental orders or regulations, war or national emergency, acts of God, and any other cause, similar or dissimilar, beyond the Company's reasonable control.

Section 6.10 Termination by Company. The Company is authorized to terminate this Fee Agreement at any time with respect to all or part of the Project upon providing the County with 30 days' notice; *provided, however*, that (i) any monetary obligations existing hereunder and due and owing at the time of termination to a party hereto; and (ii) any provisions which are intended to survive termination shall survive such termination. In the year following such termination, all property shall be subject to ad valorem taxation or such other taxation or fee in lieu of taxation that would apply absent this agreement. The Company's obligation to make fee in lieu of tax payments under this Fee Agreement shall terminate in the year following the year of such termination pursuant to this section.

Section 6.11 Entire Understanding. This Fee Agreement expresses the entire understanding and all agreements of the parties hereto with each other, 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 Fee Agreement or in certificates delivered in connection with the execution and delivery hereof.

Section 6.12 Waiver. Either party may waive compliance by the other party with any term or condition of this Fee Agreement only in a writing signed by the waiving party.

Section 6.13 Business Day. In the event that any action, payment, or notice is, by the terms of this Fee Agreement, required to be taken, made, or given on any day which is a Saturday, Sunday, or legal holiday in the jurisdiction in which the person obligated to act is domiciled, such action, payment, or notice may be taken, made, or given on the following business day with the same effect as if given as required hereby, and no interest shall accrue in the interim.

Section 6.14 Limitation of Liability. Anything herein to the contrary notwithstanding, any financial obligation the County may incur hereunder, including for the payment of money shall not be deemed to constitute a pecuniary liability or a debt or general obligation of the County; provided, however, that nothing herein shall prevent the Company from enforcing its rights hereunder by suit for *mandamus* or specific performance.

ARTICLE VII

INDEMNIFICATION, INDIVIDUAL LIABILITY

Section 7.1 Indemnification Covenants.

(a) Notwithstanding any other provisions in this Fee Agreement or in any other agreements with the County (i) the Company shall agree to indemnify and save the County, its members, officers, employees, servants, and agents (collectively, the “Indemnified Parties”), harmless against and from all claims by or on behalf of any person, firm, or corporation arising from the conduct or management of, or from any work or thing done on the Project during the Fee Term, and, the Company further shall indemnify and save the Indemnified Parties harmless against and from all claims arising during the Fee Term from (A) any condition of the Project, (B) any breach or default on the part of the Company in the performance of any of its obligations under this Fee Agreement, (C) any act of negligence of the Company, or of any agents, contractors, servants, employees, or licensees, (D) except in such cases where the County has released the Company, any act of negligence of any assignee or sublessee of the Company, or of any agents, contractors, servants, employees, or licensees of any assignee or sublessee of Company, and/or (E) any environmental violation, condition, or effect. The Company shall indemnify and save the County harmless from and against all costs and expenses incurred in or in connection with any such claim arising as aforesaid or in connection with any action or proceeding brought thereon, and upon notice from the County, the Company shall defend it in any such action, prosecution, or proceeding.

(b) Notwithstanding the fact that it is the intention of the parties that the Indemnified Parties shall not incur pecuniary liability by reason of the terms of this Fee Agreement, or the undertakings required of the County hereunder, by reason of the granting of the Fee, by reason of the execution of this Fee Agreement, by reason of the performance of any act requested of it by the Company, or by reason of the County’s relationship to the Project or the operation of the Project 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 the County, its agents, officers, or employees should 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, 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, and upon notice, the Company shall defend them in any such action or proceeding; provided, however, that such indemnity shall not apply to the extent that any such claim is attributable to (i) the gross negligent acts or omissions or willful misconduct of the County, its agents, officers, or employees, or (ii) any breach of this Fee Agreement by the County.

(c) The above-referenced indemnification covenants shall be considered included in and incorporated by reference in subsequent documents after the delivery of this Fee Agreement which the County is requested to sign on behalf of the Company with respect to the Project, and any other indemnification covenants in any subsequent documents shall not be construed to reduce or limit the above indemnification covenants.

(d) No termination of this Fee Agreement pursuant to any provision elsewhere in this Fee Agreement shall relieve the Company of its liability and obligations to make the payments required by this Section 7.1, all of which shall survive any such termination.

Section 7.2 No Liability of County Personnel. 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 shall be binding upon any member of the County Council or any officer, agent, servant, or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse shall be had for the payment of any moneys hereunder against any member of the governing body of the County or any officer, agent, servant, or employee of the County, and no recourse shall be had against any member of the County Council or any officer, agent, servant, or employee of the County for the performance of any of the covenants and agreements of the County herein contained or for any claims based thereon except solely in their official capacity.

(Signature Page Follows)

IN WITNESS WHEREOF, the County, acting by and through the County Council, has caused this Fee Agreement to be executed in its name and behalf by the County Administrator and to be attested by the Clerk of the County Council; and the Company has caused this Fee Agreement to be executed by its duly authorized officer, all as of the day and year first above written.

**BEAUFORT COUNTY,
SOUTH CAROLINA**

Signature: _____
Name: Ashley Jacobs
Title: County Administrator

ATTEST:

Signature: _____
Name: Sarah W. Brock
Title: Clerk to County Council

PROJECT GLASS

Signature: _____
Name: _____
Title: _____

EXHIBIT A
Legal Description

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND, SITUATE, LYING AND BEING ON PORT ROYAL ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA, CONSISTING OF 35.68 ACRES, BEING A PART OF LOTS 6, 7, 10, 11, 22 AND 23 IN SECTION 28, TOWNSHIP ONE (1) NORTH, RANGE TWO (2) WEST AND A PART OF LOTS 58 AND 59, IN SECTION 21, TOWNSHIP ONE (1), RANGE TWO (2) WEST, ACCORDING TO THE SURVEY OF UNITED STATES DIRECT TAX COMMISSIONERS FOR THE DISTRICT OF SOUTH CAROLINA, AND HAVING SUCH METES, COURSES, DISTANCES AND BOUNDS AS MORE FULLY SHOWN BY REFERENCES TO A PLAT PREPARED FOR PNEUMO CORPORATION BY R.D. TROGDON, JR., R.L.S., DATED FEBRUARY 9, 1976, AND RECORDED IN THE OFFICE OF THE CLERK OF COURT FOR BEAUFORT COUNTY IN PLAT BOOK 24, AT PAGE 102.

Being the same property conveyed to Parker-Hannifin Corporation by deed from Pneumo Abex Corporation dated April 10, 1996 and recorded April 15, 1996 in Book 850, Page 975 in the Register of Deeds Office for Beaufort County, South Carolina.

PIN # 100 25 170

Tax Map Number/Parcel ID: *R120 025 000 0170 0000*

Section 2. The County hereby agrees to enter into a fee in lieu of tax arrangement with the Company under the Act. The County agrees to provide for a fee in lieu of *ad valorem* taxes (“FILOT”) for a period of 20 years for each component of the Project that is eligible for the FILOT pursuant to the Act and that is placed in service during the investment period (the “FILOT Term”) under the Act. The FILOT shall be calculated using a 6% assessment ratio and a fixed millage rate equal to the lowest millage rate allowable under the Act for a period of 20 years.

Section 3. The further details of the FILOT shall be prescribed by subsequent ordinance of the County to be adopted in accordance with South Carolina law and the rules and procedures of the County.

Section 4. This resolution shall constitute an inducement resolution for this Project within the meaning of the Act.

Section 5. This resolution shall constitute “preliminary approval” pursuant to Section 12-44-110(2) of the Act by which property may be placed in service prior to the execution of a FILOT agreement but still constitute economic development property under the Act.

Section 6. All orders, resolutions, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed. This resolution shall take effect and be in full force from and after its passage by the County Council.

Adopted this ____ day of _____, 2020.

BEAUFORT COUNTY, SOUTH CAROLINA

Signature: _____
Name: Ashley Jacobs
Title: County Administrator

(SEAL)

ATTEST:

Signature: _____
Name: Sarah W. Brock
Title: Clerk to County Council

FEE AGREEMENT

Between

BEAUFORT COUNTY, SOUTH CAROLINA

and

PROJECT BURGER

Dated as of _____, 2020

RECAPITULATION OF CONTENTS OF
FEE AGREEMENT PURSUANT TO S.C. CODE §12-44-55(A)

The parties have agreed to waive this requirement pursuant to S.C. Code Ann. § 12-44-55(B).

FEE AGREEMENT

THIS FEE AGREEMENT (the “Fee Agreement”) is made and entered into as of _____, 2020 by and between BEAUFORT COUNTY, SOUTH CAROLINA (the “County”), a body politic and corporate and a political subdivision of the State of South Carolina (the “State”), acting by and through the Beaufort County Council (the “County Council”) as the governing body of the County, and a company currently identified as PROJECT BURGER (the “Company”).

RECITALS

1. Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (the “Act”) authorizes the County *(i)* to induce industries to locate in the State; *(ii)* to encourage industries now located in the State to expand their investments and thus make use of and employ manpower, products, and other resources of the State; and *(iii)* to enter into a fee agreement with entities meeting the requirements of such Act, which identifies certain property of such entities as economic development property.

2. Pursuant to Section 12-44-40(H)(1) of the Act, the County finds that: (a) the Project (as defined herein) is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; (b) the Project gives rise to no pecuniary liability of the County or any incorporated municipality and to no charge against its general credit or taxing power; (c) the purposes to be accomplished by the Project are proper governmental and public purposes; and (d) the benefits of the Project are greater than the costs.

3. The County Council has evaluated the Project based on all relevant criteria that include, but are not limited to, the purposes the Project is to accomplish, the anticipated dollar amount and nature of the investment, and the anticipated costs and benefits to the County.

4. An Ordinance that the County Council adopted on _____, 2020 (the “Fee Ordinance”) authorizes the County and the Company to enter into a Fee Agreement that classifies the Project as Economic Development Property under the Act and provides for the payment of fees in lieu of taxes, all as further described herein.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the respective representations and agreements hereinafter contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 The terms that this Article defines shall for all purposes of this Fee Agreement have the meanings herein specified, unless the context clearly requires otherwise:

“Act” shall mean Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended, and all future acts successor or supplemental thereto or amendatory thereof.

“Act Minimum Investment Requirement” shall mean an investment of at least \$2,500,000 by the Company of property eligible as economic development property under the Act, provided, however, that in the event of a reduction of the minimum investment level in Section 12-44-30(14) or any successor section by legislative action, then the Act Minimum Investment Requirement shall equal such reduced amount.

“Commencement Date” shall mean the last day of the property tax year during which the Project or the first Phase thereof is placed in service, which date must not be later than the last day of the property tax year which is three years from the year in which the County and the Company enter into this Fee Agreement.

“Company” shall mean the company currently identified as Project Burger and any surviving, resulting, or transferee entity in any merger, consolidation, or transfer of assets; or any other person or entity which may succeed to the rights and duties of the Company.

“County” shall mean Beaufort County, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina, its successors and assigns, acting by and through the County Council as the governing body of the County.

“County Council” shall mean the Beaufort County Council, the governing body of the County.

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

“Diminution in Value” in respect of the Project or any Phase of the Project shall mean any reduction in the value using the original fair market value (without regard to depreciation) as determined in Step 1 of Section 4.1(a) of this Fee Agreement, of the items which constitute a part of the Project or such Phase and which are subject to FILOT payments which may be caused by (i) the Company’s removal and/or disposal of equipment pursuant to Section 4.6 of this Fee Agreement; (ii) a casualty to the Project, such Phase of the Project, or any part thereof, described in Section 4.7 of this Fee Agreement; or (iii) a condemnation of the Project, such Phase of the Project, or any part thereof, described in Section 4.8 of this Fee Agreement.

“Economic Development Property” shall mean those items of real and tangible personal property of the Project which are eligible for inclusion as economic development property under the Act, selected and identified by the Company in its annual filing of a SCDOR PT-300S or comparable form with the Department (as such filing may be amended from time to time) for each year within the Investment Period.

“Equipment” shall mean all of the machinery, equipment, furniture, office equipment, and fixtures, together with any and all additions, accessions, replacements, and substitutions thereto or therefor used or to be used in the County by the Company for the purposes described in Section 2.2(b) hereof, provided, however, that repairs, alterations, or modifications to personal property which is not economic development property or property subject to a fee in lieu of taxes prior to this Fee Agreement, are not eligible to become Economic Development Property, except for modifications which constitute an expansion of existing real property improvements.

“Event of Default” shall mean any event of default specified in Section 5.1 of this Fee Agreement.

“Exemption Period” shall mean the period beginning on the first day of the property tax year after the property tax year in which an applicable piece of Economic Development Property is placed in service and ending on the Termination Date. In case there are Phases of the Project, the Exemption Period applies to each year’s investment made during the Investment Period.

“Fee,” “Fee in Lieu of Taxes,” “FILOT,” or “Payments in Lieu of Taxes” shall mean the amount paid or to be paid in lieu of *ad valorem* property taxes as provided herein.

“Fee Agreement” shall mean this Fee Agreement.

“Fee Term” shall mean the period from the date of this Fee Agreement until the Termination Date.

“Improvements” shall mean all improvements to the Real Property, including buildings, building additions, roads, sewer lines, and infrastructure, together with any and all additions, fixtures, accessions, replacements, and substitutions thereto or therefor used or to be used in the County for the purposes described in Section 2.2(b) hereof; provided, however, that repairs, alterations, or modifications to real property which is not economic development property or property subject to a fee in lieu of taxes prior to this Fee Agreement, are not eligible to become Economic Development Property, except for modifications which constitute an expansion of existing real property improvements.

“Industrial Development Park” shall mean the industrial or business park developed by two or more counties as defined in Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended.

“Investment Period” shall mean the period beginning with the first day of any purchase or acquisition of Economic Development Property and ending five years after the Commencement Date, provided that the Company and the County may agree to a later date pursuant to Section 12-44-30(13) of the Act.

“MCIP Act” shall mean Title 4, Chapter 1, Sections 170 et seq. of the Code of Laws of South Carolina, 1976, as amended.

“Phase” or “Phases” in respect of the Project shall mean that the Equipment, Improvements, and/or Real Property of the Project are placed in service during more than one year in the Investment Period, and the word “Phase” shall therefore refer to the applicable portion of the Project placed in service in a given year in the Investment Period.

“Project” shall mean all the Equipment, Improvements, and/or Real Property located on the Real Property in the County and that the Company determines to be necessary, suitable, or useful for the purposes that Section 2.2(b) describes, and first placed in service in calendar year 2020 or thereafter. The Project shall not include existing buildings and improvements on the Real Property, as of the date of the commencement of the Project by the Company, and any

machinery and equipment which have previously been subject to South Carolina *ad valorem* taxation.

“Real Property” shall mean real property that the Company uses or will use in the County for the purposes that Section 2.2(b) describes, and generally located on the land identified on Exhibit A hereto, together with all and singular the rights, members, hereditaments, and appurtenances belonging or in any way incident or appertaining thereto.

“Removed Components” shall mean the following types of components or Phases of the Project or portions thereof which are subject to FILOT payments, all of which the Company shall be entitled to remove from the Project with the result that the same shall no longer be subject to the terms of the Fee Agreement: (a) components or Phases of the Project or portions thereof which the Company, in its sole discretion, determines to be inadequate, obsolete, worn-out, uneconomic, damaged, unsuitable, undesirable, or unnecessary pursuant to Section 4.6 hereof or otherwise; or (b) components or Phases of the Project or portions thereof which the Company in its sole discretion, elects to be treated as removed pursuant to Section 4.7(c) or Section 4.8(b)(iii) of this Fee Agreement.

“Replacement Property” shall mean any property which is placed in service as a replacement for any item of Equipment, any Improvement, or any Real Property previously subject to this Fee Agreement regardless of whether such property serves the same functions as the property it is replacing and regardless of whether more than one piece of property replaces any item of Equipment, any Improvement, or any Real Property, to the fullest extent that the Act permits.

“Sponsor” shall mean an entity that joins with or is an affiliate of, the Company and that participates in the investment in, or financing of, the Project and which meets the requirements under the Act to be entitled to the benefits of this Agreement with respect to its participation in the Project.

“Termination Date” shall mean in case the entire Project is placed in service in one year, the end of the last day of the property tax year which is the 19th year following the first property tax year in which the entire Project is placed in service, or in case there are Phases of the Project, the Termination Date shall mean with respect to each Phase of the Project the end of the last day of the property tax year which is the 19th year following the first property tax year in which such Phase of the Project is placed in service, provided, that the intention of the parties is that the Company will make at least 20 annual FILOT payments under Article IV hereof with respect to each Phase of the Project and provided further, that if this Fee Agreement is terminated earlier in accordance with the terms hereof, the Termination Date is the date of such termination.

Any reference to any agreement or document in this Article I or otherwise in this Fee Agreement shall include any and all amendments, supplements, addenda, and modifications to such agreement or document.

Section 1.2 The term “investment” or “invest” as used herein shall include not only investments made by the Company, but also to the fullest extent permitted by law, those investments made by or for the benefit of the Company in connection with the Project through

federal, state, or local grants, to the extent such investments are subject to *ad valorem* taxes or FILOT payments by the Company.

ARTICLE II

REPRESENTATIONS, WARRANTIES, AND AGREEMENTS

Section 2.1 Representations, Warranties, and Agreements of the County. The County hereby represents, warrants, and agrees as follows:

(a) The County is a body politic and corporate and a political subdivision of the State and acts through the County Council as its governing body. The Act authorizes and empowers the County to enter into the transactions that this Fee Agreement contemplates and to carry out its obligations hereunder. The County has duly authorized the execution and delivery of this Fee Agreement and any and all other agreements described herein or therein and has obtained all consents from third parties and taken all actions necessary or that the law requires to fulfill its obligations hereunder.

(b) Based upon representations by the Company, the Project constitutes a “project” within the meaning of the Act, and the County is a County that the Act authorizes to enter into fee in lieu of tax agreements with companies that satisfy the Act Minimum Investment Requirement within the County.

(c) The County has agreed that each item of real and tangible personal property comprising the Project which is eligible to be economic development property under the Act and that the Company selects shall be considered Economic Development Property and is thereby exempt from *ad valorem* taxation in South Carolina.

(d) The millage rate in Section 4.1 hereof is 285 mills, the millage rate in effect with respect to the location of the proposed Project on June 30, 2020, as provided under Section 12-44-50(A)(1)(d) of the Act.

(e) The County will not be in default in any of its obligations (contractual or otherwise), including any violation of its statutory debt limit, as a result of entering into and performing under this Fee Agreement and/or as a result of creating an Industrial Development Park encompassing the Project.

(f) The County will take all reasonable action to include the Project in an Industrial Development Park.

Section 2.2 Representations, Warranties, and Agreements of the Company. The Company hereby represents, warrants, and agrees as follows:

(a) The Company is in good standing under the laws of the State of South Carolina, is duly authorized to transact business in the State of South Carolina, has power to enter into this Fee Agreement, and has duly authorized the execution and delivery of this Fee Agreement.

(b) The Company intends to operate the Project as a “project” within the meaning of the Act as in effect on the date hereof. The Company intends to operate the Project as a manufacturing facility and for such other purposes that the Act permits as the Company may deem appropriate.

(c) The Company will use commercially reasonable efforts to ensure that its investment in Economic Development Property of the Project will exceed the Act Minimum Investment Requirement.

ARTICLE III

COMMENCEMENT AND COMPLETION OF THE PROJECT

Section 3.1 The Project. The Company intends to invest in Equipment, Improvements, and/or Real Property, which together comprise the Project and which are anticipated to create at least the Act Minimum Investment Requirement in eligible Economic Development Property investment subject to Payments in Lieu of Taxes in the County.

The parties hereto agree that, to the extent that applicable law allows or is revised or construed to allow the benefits of the Act, in the form of Payments-in-Lieu-of-Taxes to be made under Article IV hereof, to be applicable to leased assets including, but not limited to a building and/or personal property to be installed in the buildings and leased to but not purchased by the Company from one or more Sponsors under any form of lease, then such property shall, at the election of the Company, be subject to Payments-in-Lieu-of-Taxes to the same extent as the Company’s assets covered by this Fee Agreement, subject, at all times, to the requirement of such applicable law. The parties hereto further agree that this Fee Agreement may be interpreted or modified as may be necessary or appropriate in order to give proper application of this Fee Agreement to such tangible property without such construction or modification constituting an amendment to this Fee Agreement, and thus not requiring any additional action by the County Council. The County Manager, after consulting with the County Attorney, shall be and hereby is authorized to make such modifications, if any, as may be necessary or appropriate in connection therewith. Such leased property shall constitute a part of the Project for all purposes of this Agreement, including the calculation of the Clawback Minimum Requirements, removal, replacement, and termination, and such Sponsor shall be deemed to be a party to this Agreement provided, however, that no Sponsor shall be liable for any payments pursuant to Section 4.2(b) hereof, which shall remain the Company’s liability.

Pursuant to the Act and subject to Section 4.2 hereof, the Company and the County hereby agree that the Company shall identify annually those assets which are eligible for FILOT payments under the Act and which the Company selects for such treatment by listing such assets on the applicable schedule in its annual PT-300 form (or comparable form) to be filed with the Department (as such may be amended from time to time) and that by listing such assets, such assets shall automatically become Economic Development Property and therefore be exempt from all *ad valorem* taxation during the Exemption Period. Anything contained in this Fee Agreement to the contrary notwithstanding, the Company shall not be obligated to complete the acquisition of the Project. However, if the Company does not meet the Act Minimum

Investment Requirement, this Fee Agreement shall be terminated as provided in Section 4.2 hereof.

Section 3.2 Diligent Completion. The Company agrees to use its reasonable efforts to cause the completion of the Project as soon as practicable, but in any event on or prior to the end of the Investment Period.

Section 3.3 Filings and Reports.

(a) Each year during the term of the Fee Agreement, the Company shall deliver to the County, the County Auditor, the County Assessor, and the County Treasurer, a copy of its most recent annual filings with the Department with respect to the Project, not later than 30 days following delivery thereof to the Department.

(b) The Company shall cause the filing of a copy of this Fee Agreement, as well as a copy of the completed Form PT-443 of the Department, to be filed with the County Auditor and the County Assessor of the County and any partner county, when the Project is placed in a joint county industrial and business park, and the Department within 30 days after the date of execution and delivery hereof by all parties hereto.

(c) The Company agrees to maintain complete books and records accounting for the acquisition, financing, construction, and operation of the Project. Such books and records shall (i) permit ready identification of the various Phases and components thereof; (ii) confirm the dates on which each Phase was placed in service; and (iii) include copies of all filings made by the Company in accordance with Section 3.3(a) or (b) above with respect to property placed in service as part of the Project.

(d) Whenever the County shall be required by any governmental or financing entity to file or produce any reports, notices, returns, or other documents related to this transaction while this Fee Agreement is in effect, the Company shall promptly furnish to the County through the County Administrator the completed form of such required documents, to the extent that the Company possesses the information necessary to complete the documents. In the event of a failure or refusal of the Company to comply with this provision, within 30 days after presentation of a statement by the County, the Company shall pay the attorney's fees the County incurs in producing and filing such documents and any fees, penalties, assessments, or damages that the law imposes upon the County by reason of its failure duly to file or produce such documents.

ARTICLE IV

PAYMENTS IN LIEU OF TAXES

Section 4.1 Negotiated Payments.

(a) Pursuant to Section 12-44-50 of the Act, the Company is required to make payments in lieu of *ad valorem* taxes to the County with respect to the Economic Development Property. Inasmuch as the Company anticipates an initial investment of sums sufficient for the Project to qualify for a fee in lieu of tax arrangement under Section 12-44-50(A)(1) of the Act, the County and the Company have negotiated the amount of the Payments in Lieu of Taxes in

accordance therewith. The Company shall make payments in lieu of *ad valorem* taxes on all Economic Development Property which comprises the Project and is placed in service, as follows: the Company shall make payments in lieu of *ad valorem* taxes during the Exemption Period with respect to the Economic Development Property or, if there are Phases of the Economic Development Property, with respect to each Phase of the Economic Development Property, said payments to be made annually and to be due and payable and subject to penalty assessments on the same dates and in the same manner as prescribed by the County for *ad valorem* taxes. The determination of the amount of such annual Payments in Lieu of Taxes shall be in accordance with the following procedure (subject, in any event, to the procedures that the Act requires):

- Step 1: Determine the fair market value of the Economic Development Property (or Phase of the Economic Development Property) placed in service during the Exemption Period using original income tax basis for State income tax purposes for any Real Property and Improvements without regard to depreciation (provided, the fair market value of real property, as the Act defines such term, that the Company obtains by construction or purchase in an arms length transaction is equal to the original income tax basis, and otherwise, the determination of the fair market value is by appraisal) and original income tax basis for State income tax purposes for any personal property less depreciation for each year allowable for property tax purposes, except that no extraordinary obsolescence shall be allowable. The fair market value of the Real Property for the first year of the Fee Term remains the fair market value of the Real Property for the life of the Fee Term. The determination of these values shall take into account all applicable property tax exemptions that State law would allow to the Company if the property were taxable, except those exemptions that Section 12-44-50(A)(2) of the Act specifically disallows.
- Step 2: Apply an assessment ratio of six percent (6%) to the fair market value in Step 1 to establish the taxable value of the Economic Development Property (or each Phase of the Economic Development Property) in the year it is placed in service and in each of the 19 years thereafter or such longer period of years in which the Act permits the Company to make annual fee payments.
- Step 3: Use a fixed millage rate equal to the millage rate in effect on June 30, 2020, which is 285 mills, as Section 12-44-50(A)(1)(d) of the Act provides, during the Exemption Period against the taxable value to determine the amount of the Payments in Lieu of Taxes due during the Exemption Period on the payment dates that the County prescribes for such payments or such longer period of years in which the Act permits the Company to make annual fee payments.

(b) In the event that a final order of a court of competent jurisdiction or an agreement of the parties determines that the calculation of the minimum Payment in Lieu of Taxes

applicable to this transaction is to be other than by the procedure herein, the payment shall be reset at the minimum permitted level so determined.

In the event that a final order of a court of competent jurisdiction from which no further appeal is allowable declares the Act and/or the herein-described Payments in Lieu of Taxes invalid or unenforceable, in whole or in part, for any reason, the parties express their intentions to reform such payments so as to effectuate most closely the intent thereof and so as to afford the Company with the benefits to be derived herefrom, the intention of the County being to offer the Company a strong inducement to locate the Project in the County. If the Economic Development Property is deemed to be subject to *ad valorem* taxation, this Fee Agreement shall terminate, and the Company shall pay the County regular *ad valorem* taxes from the date of termination, but with appropriate reductions equivalent to all tax exemptions which are afforded to the Company. Any amount determined to be due and owing to the County from the Company, with respect to a year or years for which the Company previously remitted Payments in Lieu of Taxes to the County hereunder, shall (i) take into account all applicable tax exemptions to which the Company would be entitled if the Economic Development Property was not and had not been Economic Development Property under the Act; and (ii) be reduced by the total amount of Payments in Lieu of Taxes the Company had made with respect to the Project pursuant to the terms hereof. Notwithstanding anything contained herein to the contrary, neither the Company nor any successor in title or interest shall be required to pay FILOT payments and *ad valorem* taxes for the same property over the same period in question.

(c) The County's right to receive FILOT payments hereunder shall have a first priority lien status pursuant to Sections 12-44-90(E) and (F) of the Act and Chapters 4, 49, 51, 53, and 54 of Title 12 of the Code of Laws of South Carolina, 1976, as amended.

(d) In the event the Company should fail to make any of the payments that this Article IV requires, the item or installment so in default shall continue as an obligation of the Company until the Company shall have fully paid the amount, and the Company agrees to pay the same with interest thereon at a rate of 5% per annum, compounded monthly, to accrue from the date on which the payment was due and, in the case of FILOT payments, subject to the penalties the law provides until payment.

Section 4.2 Failure to Achieve Act Minimum Investment Requirement.

(a) In the event that the cost of the Economic Development Property (without regard to depreciation) that the Company acquires does not reach the Act Minimum Investment Requirement by the end of the Investment Period, this Fee Agreement shall terminate as to such entity failing to meet the minimum investment level. In such event, the Company shall pay the County an amount (the "Additional Payment") pursuant to the Act which is equal to the excess, if any, of (i) the total amount of *ad valorem* taxes as would result from taxes levied on the Project by the County, municipality or municipalities, school district or school districts, and other political units as if the items of property comprising the Economic Development Property were not Economic Development Property, but with appropriate reductions equivalent to all tax exemptions and abatements to which the Company would be entitled in such a case, through and including the end of the Investment Period, over (ii) the total amount of FILOT payments the Company has made with respect to the Economic Development Property through and including

the end of the Investment Period. Any amounts determined to be owing pursuant to the foregoing sentence shall be subject to the minimum amount of interest that the Act may require.

(b) The County’s right to receive FILOT payments hereunder shall have a first priority lien status pursuant to Sections 12-44-90(E) and (F) of the Act and Chapters 4, 49, 51, 53, and 54 of Title 12 of the Code of Laws of South Carolina, 1976, as amended.

(c) In the event the Company should fail to make any of the payments that this Article IV requires, the item or installment so in default shall continue as an obligation of the Company until the Company shall have fully paid the amount, and the Company agrees to pay the same with interest thereon at a rate of 5% per annum, compounded monthly, to accrue from the date on which the payment was due and, in the case of FILOT payments, subject to the penalties the law provides until payment.

Section 4.3 Payments in Lieu of Taxes on Replacement Property. If the Company elects to replace any Removed Components and to substitute such Removed Components with Replacement Property as a part of the Economic Development Property, or the Company otherwise utilizes Replacement Property, then, pursuant and subject to Section 12-44-60 of the Act, the Company shall make statutory payments in lieu of *ad valorem* taxes with regard to such Replacement Property in accordance with the following:

(i) Replacement Property does not have to serve the same function as the Economic Development Property it is replacing. Replacement Property is deemed to replace the oldest Economic Development Property subject to the Fee, whether real or personal, which is disposed of in the same property tax year in which the Replacement Property is placed in service. Replacement Property qualifies as Economic Development Property only to the extent of the original income tax basis of Economic Development Property which is being disposed of in the same property tax year. More than one piece of property can replace a single piece of Economic Development Property. To the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the Economic Development Property which it is replacing, the excess amount is subject to annual payments calculated as if the exemption for Economic Development Property were not allowable. Replacement Property is entitled to treatment under the Fee Agreement for the period of time remaining during the Exemption Period for the Economic Development Property which it is replacing; and

(ii) The new Replacement Property which qualifies for the Fee shall be recorded using its income tax basis, and the calculation of the Fee shall utilize the millage rate and assessment ratio in effect with regard to the original property subject to the Fee.

Section 4.4 Reductions in Payments of Taxes Upon Removal, Condemnation, or Casualty. In the event of a Diminution in Value of the Economic Development Property or any Phase of the Economic Development Property, the Payment in Lieu of Taxes with regard to the Economic Development Property or that Phase of the Economic Development Property shall be

reduced in the same proportion as the amount of such Diminution in Value bears to the original fair market value of the Economic Development Property or that Phase of the Economic Development Property as determined pursuant to Step 1 of Section 4.1(a) hereof; *provided, however*, that if at any time subsequent to the end of the Investment Period, the total value of the Project based on the original income tax basis of the Equipment, Real Property, and Improvements contained therein, without deduction for depreciation, is less than the Act Minimum Investment Requirement, beginning with the first payment thereafter due hereunder and continuing until the end of the Fee Term, the Company shall no longer be entitled to the incentive provided in Section 4.1, and the Company shall therefore commence to pay regular *ad valorem* taxes on the Economic Development Property part of the Project.

Section 4.5 Place and Allocation of Payments in Lieu of Taxes. The Company shall make the above-described Payments in Lieu of Taxes directly to the County in accordance with applicable law.

Section 4.6 Removal of Equipment. Subject, always, to the other terms and provisions hereof, the Company shall be entitled to remove and dispose of components or Phases of the Project from the Project in its sole discretion with the result that said components or Phases shall no longer be considered a part of the Project and, to the extent such constitute Economic Development Property, shall no longer be subject to the terms of this Fee Agreement to the fullest extent allowed by the Act, as amended. Economic Development Property is disposed of only when it is scrapped or sold or it is removed from the Project. If it is removed from the Project, it is subject to *ad valorem* property taxes to the extent the Property remains in the State and is otherwise subject to *ad valorem* property taxes.

Section 4.7 Damage or Destruction of Economic Development Property.

(a) Election to Terminate. In the event the Economic Development Property is damaged by fire, explosion, or any other casualty, the Company shall be entitled to terminate this Fee Agreement. The Company shall only be required to make FILOT payments as to all or any part of the tax year in which the damage or casualty occurs to the extent property subject to *ad valorem* taxes would otherwise have been subject to such taxes under the same circumstances for the period in question.

(b) Election to Rebuild. In the event the Economic Development Property is damaged by fire, explosion, or any other casualty, and if the Company does not elect to terminate this Fee Agreement, the Company may commence to restore the Economic Development Property with such reductions or enlargements in the scope of the Economic Development Property, changes, alterations, and modifications (including the substitution and addition of other property) as may be desired by the Company. All such restorations and replacements shall be considered, to the fullest extent permitted by law and this Fee Agreement, substitutions of the destroyed portions of the Economic Development Property and shall be considered part of the Economic Development Property for all purposes hereof, including, but not limited to, any amounts due by the Company to the County under Section 4.1 hereof.

(c) Election to Remove. In the event the Company elects not to terminate this Fee Agreement pursuant to subsection (a) and elects not to rebuild pursuant to subsection (b), the

damaged portions of the Economic Development Property shall be treated as Removed Components.

Section 4.8 Condemnation.

(a) Complete Taking. If at any time during the Fee Term title to or temporary use of the Economic Development Property should become vested in a public or quasi-public authority by virtue of the exercise of a taking by condemnation, inverse condemnation, or the right of eminent domain; by voluntary transfer under threat of such taking; or by a taking of title to a portion of the Economic Development Property which renders continued use or occupancy of the Economic Development Property commercially unfeasible in the judgment of the Company, the Company shall have the option to terminate this Fee Agreement by sending written notice to the County within a reasonable period of time following such vesting. The Company shall only be required to make FILOT payments as to all or any part of the tax year in which the taking occurs to the extent property subject to *ad valorem* taxes would otherwise have been subject to such taxes under the same circumstances for the period in question.

(b) Partial Taking. In the event of a partial taking of the Economic Development Property or a transfer in lieu thereof, the Company may elect: (i) to terminate this Fee Agreement; (ii) subject to the Act and the terms and provisions of this Fee Agreement, to repair and restore the Economic Development Property, with such reductions or enlargements in the scope of the Economic Development Property, changes, alterations, and modifications (including the substitution and addition of other property) as the Company may desire, and all such changes, alterations, and modifications shall be considered as substitutions of the taken parts of the Economic Development Property; or (iii) to treat the portions of the Economic Development Property so taken as Removed Components.

(c) The Company shall only be required to make FILOT payments as to all or any part of the tax year in which the taking occurs to the extent property subject to *ad valorem* taxes would otherwise have been subject to such taxes under the same circumstances for the period in question.

Section 4.9 Confidentiality/Limitation on Access to Project. The County acknowledges and understands that the Company utilizes confidential and proprietary processes and materials, services, equipment, trade secrets, and techniques (herein “Confidential Information”) and that any disclosure of Confidential Information concerning the Company’s operations may result in substantial harm to the Company and could thereby have a significant detrimental impact on the Company’s employees and also upon the County. The Company acknowledges that the County is subject to the Freedom of Information Act, and, as a result, must disclose certain documents and information on request absent an exemption. For these reasons, the Company shall clearly label all Confidential Information it delivers to the County “Confidential Information.” Therefore, the County agrees that, except as required by law, neither the County nor any employee, agent, or contractor of the County shall (i) request or be entitled to receive any such Confidential Information, or (ii) disclose or otherwise divulge any such Confidential Information to any other person, firm, governmental body or agency, or any other entity unless specifically required to do so by law; provided, however, that the County shall have no less rights concerning information relating to the Project and the Company than

concerning any other property or property taxpayer in the County, and, provided further, that the confidentiality of such confidential or proprietary information is clearly disclosed to the County in writing as previously described. Prior to disclosing any Confidential Information, subject to the requirements of law, the Company may require the execution of reasonable, individual, confidentiality and non-disclosure agreements by any officers, employees, or agents of the County or any supporting or cooperating governmental agencies who would gather, receive, or review such information. In the event that the County is required to disclose any Confidential Information obtained from the Company to any third party, the County agrees to provide the Company with as much advance notice as possible of such requirement before making such disclosure, and to cooperate reasonably with any attempts by the Company to obtain judicial or other relief from such disclosure requirement.

Section 4.10 Assignment. With the prior written consent of the County or a subsequent written ratification by the County, which consent or ratification the County will not unreasonably withhold unless Section 12-44-120 of the Act or any successor provision expressly does not require consent, and in accordance with the Act, the Company may assign this Fee Agreement in whole or in part. The Company agrees to notify the County and the Department of the identity of such transferee within 60 days of the transfer. In case of a transfer, the transferee assumes the transferor's basis in the Project for purposes of calculating the Fee. No approval is required for transfers to sponsor affiliates or other financing related transfers, as defined in the Act.

Section 4.11 No Double Payment; Future Changes in Legislation.

(a) Notwithstanding anything contained herein to the contrary, and except as expressly required by law, neither the Company nor any Sponsor shall ever be required to make a Payment in Lieu of Taxes in addition to a regular property tax payment in the same year over the same piece of property, nor shall the Company or any Sponsor be required to make a Payment in Lieu of Taxes on property in cases where, absent this Fee Agreement, property taxes would otherwise not be due on such property.

In case there is any legislation enacted which provides for more favorable treatment for property to qualify as, or for the calculation of the fee related to, Economic Development Property under Sections 4.4, 4.6, 4.7, 4.8, or the calculation of the Investment Period, the County agrees to give expedient and full consideration to such legislation, with a view to allow for such more favorable treatment or calculation.

Section 4.12 Administration Expenses.

(a) The Company agrees to pay the reasonable and necessary expenses that the County incurs with respect to the execution and administration of this Fee Agreement, including without limitation reasonable and actual attorney's fees (the "Administration Expenses"); provided, however, that no such expense shall be an Administration Expense until the County has furnished to the Company a statement in writing indicating the amount of such expense and the reason for its incurrence.

ARTICLE V

DEFAULT

Section 5.1 Events of Default. The following shall be “Events of Default” under this Fee Agreement, and the term “Events of Default” shall mean, whenever used with reference to this Fee Agreement, any one or more of the following occurrences:

(a) Failure by the Company to make the Payments in Lieu of Taxes described in Section 4.1 hereof, which failure shall not have been cured within 30 days following receipt of written notice thereof from the County; *provided, however*, that the Company shall be entitled to all redemption rights granted by applicable statutes; or

(b) A representation or warranty made by the Company which is deemed materially incorrect when deemed made; or

(c) Failure by the Company to perform any of the terms, conditions, obligations, or covenants hereunder (other than those under (a) above), which failure shall continue for a period of 30 days after written notice from the County to the Company specifying such failure and requesting that it be remedied, unless the Company shall have instituted corrective action within such time period and is diligently pursuing such action until the default is corrected, in which case the 30-day period shall be extended to cover such additional period during which the Company is diligently pursuing corrective action; or

(d) A representation or warranty made by the County which is deemed materially incorrect when deemed made; or

(e) Failure by the County to perform any of the terms, conditions, obligations, or covenants hereunder, which failure shall continue for a period of 30 days after written notice from the Company to the County specifying such failure and requesting that it be remedied, unless the County shall have instituted corrective action within such time period and is diligently pursuing such action until the default is corrected, in which case the 30-day period shall be extended to cover such additional period during which the County is diligently pursuing corrective action; or

(f) A cessation of operations at the Project by the Company.

Section 5.2 Remedies on Default.

(a) Whenever any Event of Default by the Company shall have occurred and shall be continuing, the County may take any one or more of the following remedial actions:

- (1) terminate the Fee Agreement; or
- (2) take whatever action at law or in equity may appear necessary or desirable to collect the amounts due hereunder. In no event shall the Company be liable to the County or otherwise for monetary damages resulting from the Company’s failure to meet the Act Minimum Investment Requirement, other than as expressly set forth herein.

In addition to all other remedies provided herein, the failure to make FILOT payments shall give rise to a lien for tax purposes as Section 12-44-90 of the Act provides. In this regard, and notwithstanding anything in this Fee Agreement to the contrary, the County may exercise the remedies that general law (including Title 12, Chapter 49 of the Code of Laws of South Carolina, 1976, as amended) provides with regard to the enforced collection of *ad valorem* taxes to collect any FILOT payments due hereunder.

(b) Whenever any Event of Default by the County shall have occurred or shall be continuing, the Company may take one or more of the following actions:

- (1) bring an action for specific enforcement;
- (2) terminate the Fee Agreement; or
- (3) in case of a materially incorrect representation or warranty, take such action as is appropriate, including legal action, to recover its damages, to the extent allowed by law.

Section 5.3 Reimbursement of Legal Fees and Expenses and Other Expenses. Upon the occurrence of an Event of Default hereunder, should a party be required to employ attorneys or incur other reasonable expenses for the collection of payments due hereunder or for the enforcement of performance or observance of any obligation or agreement, the successful party shall be entitled, within 30 days of demand therefor, to reimbursement of the reasonable fees of such attorneys and such other reasonable expenses so incurred. The Company further agrees to pay reasonable legal fees and expenses and other expenses of the County.

Section 5.4 No Waiver. No failure or delay on the part of any party hereto in exercising any right, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy hereunder. No waiver of any provision hereof shall be effective unless the same shall be in writing and signed by the waiving party hereto.

ARTICLE VI

MISCELLANEOUS

Section 6.1 Notices. Any notice, election, demand, request, or other communication to be provided under this Fee Agreement shall be effective when delivered to the party named below or when deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed as follows (or addressed to such other address as any party shall have previously furnished in writing to the other party), except where the terms hereof require receipt rather than sending of any notice, in which case such provision shall control:

IF TO THE COMPANY:

Project Burger
Attn: _____

[Insert notice person and address for final reading.]

IF TO THE COUNTY:

Beaufort County, South Carolina
Attn: County Attorney
100 Ribaut Road
Beaufort, SC 29902

WITH A COPY TO:

Haynsworth Sinkler Boyd, P.A.
Attn: William R. Johnson
P.O. Box 11889
Columbia, SC 29211

Section 6.2 Binding Effect. This Fee Agreement and each document contemplated hereby or related hereto shall be binding upon and inure to the benefit of the Company, the County, and their respective successors and assigns. In the event of the dissolution of the County or the consolidation of any part of the County with any other political subdivision or the transfer of any rights of the County to any other such political subdivision, all of the covenants, stipulations, promises, and agreements of this Fee Agreement shall bind and inure to the benefit of the successors of the County from time to time and any entity, officer, board, commission, agency, or instrumentality to whom or to which any power or duty of the County has been transferred.

Section 6.3 Counterparts. This Fee Agreement may be executed in any number of counterparts, and all of the counterparts taken together shall be deemed to constitute one and the same instrument.

Section 6.4 Governing Law. This Fee Agreement and all documents executed in connection herewith shall be construed in accordance with and governed by the laws of the State of South Carolina.

Section 6.5 Headings. The headings of the articles and sections of this Fee Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Fee Agreement.

Section 6.6 Amendments. The provisions of this Fee Agreement may only be modified or amended in writing by any agreement or agreements entered into between the parties.

Section 6.7 Further Assurance. From time to time, and at the expense of the Company, to the extent any expense is incurred, the County agrees to execute and deliver to the Company such additional instruments as the Company may reasonably request and as are authorized by law and reasonably within the purposes and scope of the Act and Fee Agreement to effectuate the purposes of this Fee Agreement.

Section 6.8 Invalidity; Change in Laws. In the event that the inclusion of property as Economic Development Property or any other issue is unclear under this Fee Agreement, the County hereby expresses its intention that the interpretation of this Fee Agreement shall be in a manner that provides for the broadest inclusion of property under the terms of this Fee Agreement and the maximum incentive permissible under the Act, to the extent not inconsistent with any of the explicit terms hereof. If any provision of this Fee Agreement is declared illegal, invalid, or unenforceable for any reason, the remaining provisions hereof shall be unimpaired, and such illegal, invalid, or unenforceable provision shall be reformed to effectuate most closely the legal, valid, and enforceable intent thereof and so as to afford the Company with the maximum benefits to be derived herefrom, it being the intention of the County to offer the Company the strongest inducement possible, within the provisions of the Act, to locate the Project in the County. In case a change in the Act or South Carolina laws eliminates or reduces any of the restrictions or limitations applicable to the Company and the Fee incentive, the parties agree that the County will give expedient and full consideration to reformation of this Fee Agreement, and, if the County Council so decides, to provide the Company with the benefits of such change in the Act or South Carolina laws.

Section 6.9 Force Majeure. The Company shall not be responsible for any delays or non-performance caused in whole or in part, directly or indirectly, by strikes, accidents, freight embargoes, fires, floods, inability to obtain materials, conditions arising from governmental orders or regulations, war or national emergency, acts of God, and any other cause, similar or dissimilar, beyond the Company's reasonable control.

Section 6.10 Termination by Company. The Company is authorized to terminate this Fee Agreement at any time with respect to all or part of the Project upon providing the County with 30 days' notice; *provided, however*, that (i) any monetary obligations existing hereunder and due and owing at the time of termination to a party hereto; and (ii) any provisions which are intended to survive termination shall survive such termination. In the year following such termination, all property shall be subject to ad valorem taxation or such other taxation or fee in lieu of taxation that would apply absent this agreement. The Company's obligation to make fee in lieu of tax payments under this Fee Agreement shall terminate in the year following the year of such termination pursuant to this section.

Section 6.11 Entire Understanding. This Fee Agreement expresses the entire understanding and all agreements of the parties hereto with each other, 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 Fee Agreement or in certificates delivered in connection with the execution and delivery hereof.

Section 6.12 Waiver. Either party may waive compliance by the other party with any term or condition of this Fee Agreement only in a writing signed by the waiving party.

Section 6.13 Business Day. In the event that any action, payment, or notice is, by the terms of this Fee Agreement, required to be taken, made, or given on any day which is a Saturday, Sunday, or legal holiday in the jurisdiction in which the person obligated to act is domiciled, such action, payment, or notice may be taken, made, or given on the following business day with the same effect as if given as required hereby, and no interest shall accrue in the interim.

Section 6.14 Limitation of Liability. Anything herein to the contrary notwithstanding, any financial obligation the County may incur hereunder, including for the payment of money shall not be deemed to constitute a pecuniary liability or a debt or general obligation of the County; provided, however, that nothing herein shall prevent the Company from enforcing its rights hereunder by suit for *mandamus* or specific performance.

ARTICLE VII

INDEMNIFICATION, INDIVIDUAL LIABILITY

Section 7.1 Indemnification Covenants.

(a) Notwithstanding any other provisions in this Fee Agreement or in any other agreements with the County (i) the Company shall agree to indemnify and save the County, its members, officers, employees, servants, and agents (collectively, the “Indemnified Parties”), harmless against and from all claims by or on behalf of any person, firm, or corporation arising from the conduct or management of, or from any work or thing done on the Project during the Fee Term, and, the Company further shall indemnify and save the Indemnified Parties harmless against and from all claims arising during the Fee Term from (A) any condition of the Project, (B) any breach or default on the part of the Company in the performance of any of its obligations under this Fee Agreement, (C) any act of negligence of the Company, or of any agents, contractors, servants, employees, or licensees, (D) except in such cases where the County has released the Company, any act of negligence of any assignee or sublessee of the Company, or of any agents, contractors, servants, employees, or licensees of any assignee or sublessee of Company, and/or (E) any environmental violation, condition, or effect. The Company shall indemnify and save the County harmless from and against all costs and expenses incurred in or in connection with any such claim arising as aforesaid or in connection with any action or proceeding brought thereon, and upon notice from the County, the Company shall defend it in any such action, prosecution, or proceeding.

(b) Notwithstanding the fact that it is the intention of the parties that the Indemnified Parties shall not incur pecuniary liability by reason of the terms of this Fee Agreement, or the undertakings required of the County hereunder, by reason of the granting of the Fee, by reason of the execution of this Fee Agreement, by reason of the performance of any act requested of it by the Company, or by reason of the County’s relationship to the Project or the operation of the Project 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 the County, its agents, officers, or employees should 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, 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, and upon notice, the Company shall defend them in any such action or proceeding; provided, however, that such indemnity shall not apply to the extent that any such claim is attributable to (i) the gross negligent acts or omissions or willful misconduct of the County, its agents, officers, or employees, or (ii) any breach of this Fee Agreement by the County.

(c) The above-referenced indemnification covenants shall be considered included in and incorporated by reference in subsequent documents after the delivery of this Fee Agreement which the County is requested to sign on behalf of the Company with respect to the Project, and any other indemnification covenants in any subsequent documents shall not be construed to reduce or limit the above indemnification covenants.

(d) No termination of this Fee Agreement pursuant to any provision elsewhere in this Fee Agreement shall relieve the Company of its liability and obligations to make the payments required by this Section 7.1, all of which shall survive any such termination.

Section 7.2 No Liability of County Personnel. 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 shall be binding upon any member of the County Council or any officer, agent, servant, or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse shall be had for the payment of any moneys hereunder against any member of the governing body of the County or any officer, agent, servant, or employee of the County, and no recourse shall be had against any member of the County Council or any officer, agent, servant, or employee of the County for the performance of any of the covenants and agreements of the County herein contained or for any claims based thereon except solely in their official capacity.

(Signature Page Follows)

IN WITNESS WHEREOF, the County, acting by and through the County Council, has caused this Fee Agreement to be executed in its name and behalf by the County Administrator and to be attested by the Clerk of the County Council; and the Company has caused this Fee Agreement to be executed by its duly authorized officer, all as of the day and year first above written.

**BEAUFORT COUNTY,
SOUTH CAROLINA**

Signature: _____
Name: Ashley Jacobs
Title: County Administrator

ATTEST:

Signature: _____
Name: Sarah W. Brock
Title: Clerk to County Council

PROJECT BURGER

Signature: _____
Name: _____
Title: _____

EXHIBIT A
LEGAL DESCRIPTION

ALL that certain piece, parcel or tract of land, with improvements thereon, situate, lying and being in the Town of Port Royal, Beaufort County, South Carolina, containing 0.59 acres, more or less, and being more particularly shown as Parcel "F" on that certain plat prepared by David E. Gasque, R.L.S., dated October 14, 2019, and recorded in Plat Book 152 at Page 181 in the Office of the Register of Deeds for Beaufort County, South Carolina (this plat supersedes that plat dated September 20, 2019, and recorded in Plat Book 152 at Page 150 in the Office of the Register of Deeds for Beaufort County, South Carolina). For a more complete description as to metes, courses, distances and bounds of said property, reference may be had to the aforementioned plat.

This is a portion of the same property conveyed to the Grantor by deed from the South Carolina Department of Administration, Division of General Services, recorded in Book 3607 at Page 2615 in the Office of the Register of Deeds for Beaufort County, South Carolina, and by deed from the Town of Port Royal recorded in Book 3629 at Page 159 in the Office of the Register of Deeds for Beaufort County, South Carolina.

Portion of R113 010 000 0075 0000

NOW, THEREFORE, BE IT ORDAINED by the County Council in a meeting duly assembled as follows:

Section 1. In order to promote industry, develop trade, and utilize and employ the manpower, products, and natural resources of the State of South Carolina by assisting the Company to expand or locate an industrial facility in the State of South Carolina, the Fee Agreement is hereby authorized, ratified, and approved.

Section 2. It is hereby found, determined, and declared by the County Council, as follows:

- (a) The Project will constitute a “project” as said term is referred to and defined in the Act, and the County’s actions herein will subserve the purposes and in all respects conform to the provisions and requirements of the Act.
- (b) The Project and the payments in lieu of taxes set forth herein are beneficial to the County, and the County has evaluated the Project based upon all criteria prescribed by law, including the anticipated dollar amount and nature of the investment to be made and the anticipated costs and benefits to the County.
- (c) The Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally.
- (d) 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.
- (e) The purposes to be accomplished by the Project, i.e., economic development, creation of jobs, and addition to the tax base of the County, are proper governmental and public purposes.
- (f) The inducement of the location or expansion of the Project within the County and State is of paramount importance.
- (g) The benefits of the Project to the public will be greater than the costs.

Section 3. The form, terms, and provisions of the Fee Agreement presented to this meeting are hereby approved, and all of the terms, provisions, and conditions thereof are incorporated herein by reference as if the Fee Agreement were set out in this Ordinance in its entirety. The Chairman of the County Council and/or the County Administrator are authorized, empowered, and directed to execute, acknowledge, and deliver the Fee Agreement in the name of and on behalf of the County, and thereupon to cause the Fee Agreement to be delivered to the Company. The Fee Agreement is to be in substantially the form now before this meeting and hereby approved, with such changes therein as shall not be materially adverse to the County and as shall be approved by the officials of the County executing the same, upon the advice of Counsel to the County, such official’s execution thereof to constitute conclusive evidence of

such official's approval of any and all changes or revisions therein from the form of the Fee Agreement now before this meeting.

Section 4. The Chairman of the County Council and/or the County Administrator, for and on behalf of the County, are hereby authorized and directed to do any and all things necessary to effect the execution and delivery of the Fee Agreement and the performance of all obligations of the County under and pursuant to the Fee Agreement.

Section 5. 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 6. All orders, resolutions, ordinances, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed, and this Ordinance shall take effect and be in full force from and after its passage and approval.

(SIGNATURE PAGE TO FOLLOW)

NOW, THEREFORE, BE IT ORDAINED by the County Council in a meeting duly assembled as follows:

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- (b) The Project and the payments in lieu of taxes set forth herein are beneficial to the County, and the County has evaluated the Project based upon all criteria prescribed by law, including the anticipated dollar amount and nature of the investment to be made and the anticipated costs and benefits to the County.
- (c) The Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally.
- (d) 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.
- (e) The purposes to be accomplished by the Project, i.e., economic development, creation of jobs, and addition to the tax base of the County, are proper governmental and public purposes.
- (f) The inducement of the location or expansion of the Project within the County and State is of paramount importance.
- (g) The benefits of the Project to the public will be greater than the costs.

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such official's approval of any and all changes or revisions therein from the form of the Fee Agreement now before this meeting.

Section 4. The Chairman of the County Council and/or the County Administrator, for and on behalf of the County, are hereby authorized and directed to do any and all things necessary to effect the execution and delivery of the Fee Agreement and the performance of all obligations of the County under and pursuant to the Fee Agreement.

Section 5. 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 6. All orders, resolutions, ordinances, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed, and this Ordinance shall take effect and be in full force from and after its passage and approval.

(SIGNATURE PAGE TO FOLLOW)

FEE AGREEMENT

Between

BEAUFORT COUNTY, SOUTH CAROLINA

and

PROJECT GARDEN

Dated as of _____, 2020

RECAPITULATION OF CONTENTS OF
FEE AGREEMENT PURSUANT TO S.C. CODE §12-44-55(A)

The parties have agreed to waive this requirement pursuant to S.C. Code Ann. § 12-44-55(B).

FEE AGREEMENT

THIS FEE AGREEMENT (the “Fee Agreement”) is made and entered into as of _____, 2020 by and between BEAUFORT COUNTY, SOUTH CAROLINA (the “County”), a body politic and corporate and a political subdivision of the State of South Carolina (the “State”), acting by and through the Beaufort County Council (the “County Council”) as the governing body of the County, and a company currently identified as PROJECT GARDEN (the “Company”).

RECITALS

1. Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (the “Act”) authorizes the County (i) to induce industries to locate in the State; (ii) to encourage industries now located in the State to expand their investments and thus make use of and employ manpower, products, and other resources of the State; and (iii) to enter into a fee agreement with entities meeting the requirements of such Act, which identifies certain property of such entities as economic development property.

2. Pursuant to Section 12-44-40(H)(1) of the Act, the County finds that: (a) the Project (as defined herein) is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; (b) the Project gives rise to no pecuniary liability of the County or any incorporated municipality and to no charge against its general credit or taxing power; (c) the purposes to be accomplished by the Project are proper governmental and public purposes; and (d) the benefits of the Project are greater than the costs.

3. The County Council has evaluated the Project based on all relevant criteria that include, but are not limited to, the purposes the Project is to accomplish, the anticipated dollar amount and nature of the investment, and the anticipated costs and benefits to the County.

4. An Ordinance that the County Council adopted on _____, 2020 (the “Fee Ordinance”) authorizes the County and the Company to enter into a Fee Agreement that classifies the Project as Economic Development Property under the Act and provides for the payment of fees in lieu of taxes, all as further described herein.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the respective representations and agreements hereinafter contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 The terms that this Article defines shall for all purposes of this Fee Agreement have the meanings herein specified, unless the context clearly requires otherwise:

“Act” shall mean Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended, and all future acts successor or supplemental thereto or amendatory thereof.

“Act Minimum Investment Requirement” shall mean an investment of at least \$2,500,000 by the Company of property eligible as economic development property under the Act, provided, however, that in the event of a reduction of the minimum investment level in Section 12-44-30(14) or any successor section by legislative action, then the Act Minimum Investment Requirement shall equal such reduced amount.

“Commencement Date” shall mean the last day of the property tax year during which the Project or the first Phase thereof is placed in service, which date must not be later than the last day of the property tax year which is three years from the year in which the County and the Company enter into this Fee Agreement.

“Company” shall mean the company currently identified as Project Garden and any surviving, resulting, or transferee entity in any merger, consolidation, or transfer of assets; or any other person or entity which may succeed to the rights and duties of the Company.

“County” shall mean Beaufort County, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina, its successors and assigns, acting by and through the County Council as the governing body of the County.

“County Council” shall mean the Beaufort County Council, the governing body of the County.

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

“Diminution in Value” in respect of the Project or any Phase of the Project shall mean any reduction in the value using the original fair market value (without regard to depreciation) as determined in Step 1 of Section 4.1(a) of this Fee Agreement, of the items which constitute a part of the Project or such Phase and which are subject to FILOT payments which may be caused by (i) the Company’s removal and/or disposal of equipment pursuant to Section 4.6 of this Fee Agreement; (ii) a casualty to the Project, such Phase of the Project, or any part thereof, described in Section 4.7 of this Fee Agreement; or (iii) a condemnation of the Project, such Phase of the Project, or any part thereof, described in Section 4.8 of this Fee Agreement.

“Economic Development Property” shall mean those items of real and tangible personal property of the Project which are eligible for inclusion as economic development property under the Act, selected and identified by the Company in its annual filing of a SCDOR PT-300S or comparable form with the Department (as such filing may be amended from time to time) for each year within the Investment Period.

“Equipment” shall mean all of the machinery, equipment, furniture, office equipment, and fixtures, together with any and all additions, accessions, replacements, and substitutions thereto or therefor used or to be used in the County by the Company for the purposes described in Section 2.2(b) hereof, provided, however, that repairs, alterations, or modifications to personal property which is not economic development property or property subject to a fee in lieu of taxes prior to this Fee Agreement, are not eligible to become Economic Development Property, except for modifications which constitute an expansion of existing real property improvements.

“Event of Default” shall mean any event of default specified in Section 5.1 of this Fee Agreement.

“Exemption Period” shall mean the period beginning on the first day of the property tax year after the property tax year in which an applicable piece of Economic Development Property is placed in service and ending on the Termination Date. In case there are Phases of the Project, the Exemption Period applies to each year’s investment made during the Investment Period.

“Fee,” “Fee in Lieu of Taxes,” “FILOT,” or “Payments in Lieu of Taxes” shall mean the amount paid or to be paid in lieu of *ad valorem* property taxes as provided herein.

“Fee Agreement” shall mean this Fee Agreement.

“Fee Term” shall mean the period from the date of this Fee Agreement until the Termination Date.

“Improvements” shall mean all improvements to the Real Property, including buildings, building additions, roads, sewer lines, and infrastructure, together with any and all additions, fixtures, accessions, replacements, and substitutions thereto or therefor used or to be used in the County for the purposes described in Section 2.2(b) hereof; provided, however, that repairs, alterations, or modifications to real property which is not economic development property or property subject to a fee in lieu of taxes prior to this Fee Agreement, are not eligible to become Economic Development Property, except for modifications which constitute an expansion of existing real property improvements.

“Industrial Development Park” shall mean the industrial or business park developed by two or more counties as defined in Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended.

“Investment Period” shall mean the period beginning with the first day of any purchase or acquisition of Economic Development Property and ending five years after the Commencement Date, provided that the Company and the County may agree to a later date pursuant to Section 12-44-30(13) of the Act.

“MCIP Act” shall mean Title 4, Chapter 1, Sections 170 et seq. of the Code of Laws of South Carolina, 1976, as amended.

“Phase” or “Phases” in respect of the Project shall mean that the Equipment, Improvements, and/or Real Property of the Project are placed in service during more than one year in the Investment Period, and the word “Phase” shall therefore refer to the applicable portion of the Project placed in service in a given year in the Investment Period.

“Project” shall mean all the Equipment, Improvements, and/or Real Property located on the Real Property in the County and that the Company determines to be necessary, suitable, or useful for the purposes that Section 2.2(b) describes, and first placed in service in calendar year 2020 or thereafter. The Project shall not include existing buildings and improvements on the Real Property, as of the date of the commencement of the Project by the Company, and any

machinery and equipment which have previously been subject to South Carolina *ad valorem* taxation.

“Real Property” shall mean real property that the Company uses or will use in the County for the purposes that Section 2.2(b) describes, and generally located on the land identified on Exhibit A hereto, together with all and singular the rights, members, hereditaments, and appurtenances belonging or in any way incident or appertaining thereto.

“Removed Components” shall mean the following types of components or Phases of the Project or portions thereof which are subject to FILOT payments, all of which the Company shall be entitled to remove from the Project with the result that the same shall no longer be subject to the terms of the Fee Agreement: (a) components or Phases of the Project or portions thereof which the Company, in its sole discretion, determines to be inadequate, obsolete, worn-out, uneconomic, damaged, unsuitable, undesirable, or unnecessary pursuant to Section 4.6 hereof or otherwise; or (b) components or Phases of the Project or portions thereof which the Company in its sole discretion, elects to be treated as removed pursuant to Section 4.7(c) or Section 4.8(b)(iii) of this Fee Agreement.

“Replacement Property” shall mean any property which is placed in service as a replacement for any item of Equipment, any Improvement, or any Real Property previously subject to this Fee Agreement regardless of whether such property serves the same functions as the property it is replacing and regardless of whether more than one piece of property replaces any item of Equipment, any Improvement, or any Real Property, to the fullest extent that the Act permits.

“Sponsor” shall mean an entity that joins with or is an affiliate of, the Company and that participates in the investment in, or financing of, the Project and which meets the requirements under the Act to be entitled to the benefits of this Agreement with respect to its participation in the Project.

“Termination Date” shall mean in case the entire Project is placed in service in one year, the end of the last day of the property tax year which is the 19th year following the first property tax year in which the entire Project is placed in service, or in case there are Phases of the Project, the Termination Date shall mean with respect to each Phase of the Project the end of the last day of the property tax year which is the 19th year following the first property tax year in which such Phase of the Project is placed in service, provided, that the intention of the parties is that the Company will make at least 20 annual FILOT payments under Article IV hereof with respect to each Phase of the Project and provided further, that if this Fee Agreement is terminated earlier in accordance with the terms hereof, the Termination Date is the date of such termination.

Any reference to any agreement or document in this Article I or otherwise in this Fee Agreement shall include any and all amendments, supplements, addenda, and modifications to such agreement or document.

Section 1.2 The term “investment” or “invest” as used herein shall include not only investments made by the Company, but also to the fullest extent permitted by law, those investments made by or for the benefit of the Company in connection with the Project through

federal, state, or local grants, to the extent such investments are subject to *ad valorem* taxes or FILOT payments by the Company.

ARTICLE II

REPRESENTATIONS, WARRANTIES, AND AGREEMENTS

Section 2.1 Representations, Warranties, and Agreements of the County. The County hereby represents, warrants, and agrees as follows:

(a) The County is a body politic and corporate and a political subdivision of the State and acts through the County Council as its governing body. The Act authorizes and empowers the County to enter into the transactions that this Fee Agreement contemplates and to carry out its obligations hereunder. The County has duly authorized the execution and delivery of this Fee Agreement and any and all other agreements described herein or therein and has obtained all consents from third parties and taken all actions necessary or that the law requires to fulfill its obligations hereunder.

(b) Based upon representations by the Company, the Project constitutes a “project” within the meaning of the Act, and the County is a County that the Act authorizes to enter into fee in lieu of tax agreements with companies that satisfy the Act Minimum Investment Requirement within the County.

(c) The County has agreed that each item of real and tangible personal property comprising the Project which is eligible to be economic development property under the Act and that the Company selects shall be considered Economic Development Property and is thereby exempt from *ad valorem* taxation in South Carolina.

(d) The millage rate in Section 4.1 hereof is 286.7 mills, the millage rate in effect with respect to the location of the proposed Project on June 30, 2020, as provided under Section 12-44-50(A)(1)(d) of the Act.

(e) The County will not be in default in any of its obligations (contractual or otherwise), including any violation of its statutory debt limit, as a result of entering into and performing under this Fee Agreement and/or as a result of creating an Industrial Development Park encompassing the Project.

(f) The County will take all reasonable action to include the Project in an Industrial Development Park.

Section 2.2 Representations, Warranties, and Agreements of the Company. The Company hereby represents, warrants, and agrees as follows:

(a) The Company is in good standing under the laws of the State of South Carolina, is duly authorized to transact business in the State of South Carolina, has power to enter into this Fee Agreement, and has duly authorized the execution and delivery of this Fee Agreement.

(b) The Company intends to operate the Project as a “project” within the meaning of the Act as in effect on the date hereof. The Company intends to operate the Project as a manufacturing facility and for such other purposes that the Act permits as the Company may deem appropriate.

(c) The Company will use commercially reasonable efforts to ensure that its investment in Economic Development Property of the Project will exceed the Act Minimum Investment Requirement.

ARTICLE III

COMMENCEMENT AND COMPLETION OF THE PROJECT

Section 3.1 The Project. The Company intends to invest in Equipment, Improvements, and/or Real Property, which together comprise the Project and which are anticipated to create at least the Act Minimum Investment Requirement in eligible Economic Development Property investment subject to Payments in Lieu of Taxes in the County.

The parties hereto agree that, to the extent that applicable law allows or is revised or construed to allow the benefits of the Act, in the form of Payments-in-Lieu-of-Taxes to be made under Article IV hereof, to be applicable to leased assets including, but not limited to a building and/or personal property to be installed in the buildings and leased to but not purchased by the Company from one or more Sponsors under any form of lease, then such property shall, at the election of the Company, be subject to Payments-in-Lieu-of-Taxes to the same extent as the Company’s assets covered by this Fee Agreement, subject, at all times, to the requirement of such applicable law. The parties hereto further agree that this Fee Agreement may be interpreted or modified as may be necessary or appropriate in order to give proper application of this Fee Agreement to such tangible property without such construction or modification constituting an amendment to this Fee Agreement, and thus not requiring any additional action by the County Council. The County Manager, after consulting with the County Attorney, shall be and hereby is authorized to make such modifications, if any, as may be necessary or appropriate in connection therewith. Such leased property shall constitute a part of the Project for all purposes of this Agreement, including the calculation of the Clawback Minimum Requirements, removal, replacement, and termination, and such Sponsor shall be deemed to be a party to this Agreement provided, however, that no Sponsor shall be liable for any payments pursuant to Section 4.2(b) hereof, which shall remain the Company’s liability.

Pursuant to the Act and subject to Section 4.2 hereof, the Company and the County hereby agree that the Company shall identify annually those assets which are eligible for FILOT payments under the Act and which the Company selects for such treatment by listing such assets on the applicable schedule in its annual PT-300 form (or comparable form) to be filed with the Department (as such may be amended from time to time) and that by listing such assets, such assets shall automatically become Economic Development Property and therefore be exempt from all *ad valorem* taxation during the Exemption Period. Anything contained in this Fee Agreement to the contrary notwithstanding, the Company shall not be obligated to complete the acquisition of the Project. However, if the Company does not meet the Act Minimum

Investment Requirement, this Fee Agreement shall be terminated as provided in Section 4.2 hereof.

Section 3.2 Diligent Completion. The Company agrees to use its reasonable efforts to cause the completion of the Project as soon as practicable, but in any event on or prior to the end of the Investment Period.

Section 3.3 Filings and Reports.

(a) Each year during the term of the Fee Agreement, the Company shall deliver to the County, the County Auditor, the County Assessor, and the County Treasurer, a copy of its most recent annual filings with the Department with respect to the Project, not later than 30 days following delivery thereof to the Department.

(b) The Company shall cause the filing of a copy of this Fee Agreement, as well as a copy of the completed Form PT-443 of the Department, to be filed with the County Auditor and the County Assessor of the County and any partner county, when the Project is placed in a joint county industrial and business park, and the Department within 30 days after the date of execution and delivery hereof by all parties hereto.

(c) The Company agrees to maintain complete books and records accounting for the acquisition, financing, construction, and operation of the Project. Such books and records shall (i) permit ready identification of the various Phases and components thereof; (ii) confirm the dates on which each Phase was placed in service; and (iii) include copies of all filings made by the Company in accordance with Section 3.3(a) or (b) above with respect to property placed in service as part of the Project.

(d) Whenever the County shall be required by any governmental or financing entity to file or produce any reports, notices, returns, or other documents related to this transaction while this Fee Agreement is in effect, the Company shall promptly furnish to the County through the County Administrator the completed form of such required documents, to the extent that the Company possesses the information necessary to complete the documents. In the event of a failure or refusal of the Company to comply with this provision, within 30 days after presentation of a statement by the County, the Company shall pay the attorney’s fees the County incurs in producing and filing such documents and any fees, penalties, assessments, or damages that the law imposes upon the County by reason of its failure duly to file or produce such documents.

ARTICLE IV

PAYMENTS IN LIEU OF TAXES

Section 4.1 Negotiated Payments.

(a) Pursuant to Section 12-44-50 of the Act, the Company is required to make payments in lieu of *ad valorem* taxes to the County with respect to the Economic Development Property. Inasmuch as the Company anticipates an initial investment of sums sufficient for the Project to qualify for a fee in lieu of tax arrangement under Section 12-44-50(A)(1) of the Act, the County and the Company have negotiated the amount of the Payments in Lieu of Taxes in

accordance therewith. The Company shall make payments in lieu of *ad valorem* taxes on all Economic Development Property which comprises the Project and is placed in service, as follows: the Company shall make payments in lieu of *ad valorem* taxes during the Exemption Period with respect to the Economic Development Property or, if there are Phases of the Economic Development Property, with respect to each Phase of the Economic Development Property, said payments to be made annually and to be due and payable and subject to penalty assessments on the same dates and in the same manner as prescribed by the County for *ad valorem* taxes. The determination of the amount of such annual Payments in Lieu of Taxes shall be in accordance with the following procedure (subject, in any event, to the procedures that the Act requires):

- Step 1: Determine the fair market value of the Economic Development Property (or Phase of the Economic Development Property) placed in service during the Exemption Period using original income tax basis for State income tax purposes for any Real Property and Improvements without regard to depreciation (provided, the fair market value of real property, as the Act defines such term, that the Company obtains by construction or purchase in an arms length transaction is equal to the original income tax basis, and otherwise, the determination of the fair market value is by appraisal) and original income tax basis for State income tax purposes for any personal property less depreciation for each year allowable for property tax purposes, except that no extraordinary obsolescence shall be allowable. The fair market value of the Real Property for the first year of the Fee Term remains the fair market value of the Real Property for the life of the Fee Term. The determination of these values shall take into account all applicable property tax exemptions that State law would allow to the Company if the property were taxable, except those exemptions that Section 12-44-50(A)(2) of the Act specifically disallows.
- Step 2: Apply an assessment ratio of six percent (6%) to the fair market value in Step 1 to establish the taxable value of the Economic Development Property (or each Phase of the Economic Development Property) in the year it is placed in service and in each of the 19 years thereafter or such longer period of years in which the Act permits the Company to make annual fee payments.
- Step 3: Use a fixed millage rate equal to the millage rate in effect on June 30, 2020, which is 286.7 mills, as Section 12-44-50(A)(1)(d) of the Act provides, during the Exemption Period against the taxable value to determine the amount of the Payments in Lieu of Taxes due during the Exemption Period on the payment dates that the County prescribes for such payments or such longer period of years in which the Act permits the Company to make annual fee payments.

(b) In the event that a final order of a court of competent jurisdiction or an agreement of the parties determines that the calculation of the minimum Payment in Lieu of Taxes

applicable to this transaction is to be other than by the procedure herein, the payment shall be reset at the minimum permitted level so determined.

In the event that a final order of a court of competent jurisdiction from which no further appeal is allowable declares the Act and/or the herein-described Payments in Lieu of Taxes invalid or unenforceable, in whole or in part, for any reason, the parties express their intentions to reform such payments so as to effectuate most closely the intent thereof and so as to afford the Company with the benefits to be derived herefrom, the intention of the County being to offer the Company a strong inducement to locate the Project in the County. If the Economic Development Property is deemed to be subject to *ad valorem* taxation, this Fee Agreement shall terminate, and the Company shall pay the County regular *ad valorem* taxes from the date of termination, but with appropriate reductions equivalent to all tax exemptions which are afforded to the Company. Any amount determined to be due and owing to the County from the Company, with respect to a year or years for which the Company previously remitted Payments in Lieu of Taxes to the County hereunder, shall (i) take into account all applicable tax exemptions to which the Company would be entitled if the Economic Development Property was not and had not been Economic Development Property under the Act; and (ii) be reduced by the total amount of Payments in Lieu of Taxes the Company had made with respect to the Project pursuant to the terms hereof. Notwithstanding anything contained herein to the contrary, neither the Company nor any successor in title or interest shall be required to pay FILOT payments and *ad valorem* taxes for the same property over the same period in question.

(c) The County's right to receive FILOT payments hereunder shall have a first priority lien status pursuant to Sections 12-44-90(E) and (F) of the Act and Chapters 4, 49, 51, 53, and 54 of Title 12 of the Code of Laws of South Carolina, 1976, as amended.

(d) In the event the Company should fail to make any of the payments that this Article IV requires, the item or installment so in default shall continue as an obligation of the Company until the Company shall have fully paid the amount, and the Company agrees to pay the same with interest thereon at a rate of 5% per annum, compounded monthly, to accrue from the date on which the payment was due and, in the case of FILOT payments, subject to the penalties the law provides until payment.

Section 4.2 Failure to Achieve Act Minimum Investment Requirement.

(a) In the event that the cost of the Economic Development Property (without regard to depreciation) that the Company acquires does not reach the Act Minimum Investment Requirement by the end of the Investment Period, this Fee Agreement shall terminate as to such entity failing to meet the minimum investment level. In such event, the Company shall pay the County an amount (the "Additional Payment") pursuant to the Act which is equal to the excess, if any, of (i) the total amount of *ad valorem* taxes as would result from taxes levied on the Project by the County, municipality or municipalities, school district or school districts, and other political units as if the items of property comprising the Economic Development Property were not Economic Development Property, but with appropriate reductions equivalent to all tax exemptions and abatements to which the Company would be entitled in such a case, through and including the end of the Investment Period, over (ii) the total amount of FILOT payments the Company has made with respect to the Economic Development Property through and including

the end of the Investment Period. Any amounts determined to be owing pursuant to the foregoing sentence shall be subject to the minimum amount of interest that the Act may require.

(b) The County's right to receive FILOT payments hereunder shall have a first priority lien status pursuant to Sections 12-44-90(E) and (F) of the Act and Chapters 4, 49, 51, 53, and 54 of Title 12 of the Code of Laws of South Carolina, 1976, as amended.

(c) In the event the Company should fail to make any of the payments that this Article IV requires, the item or installment so in default shall continue as an obligation of the Company until the Company shall have fully paid the amount, and the Company agrees to pay the same with interest thereon at a rate of 5% per annum, compounded monthly, to accrue from the date on which the payment was due and, in the case of FILOT payments, subject to the penalties the law provides until payment.

(d) Notwithstanding the foregoing language, if the Company fails to meet the Act Minimum Investment Requirement but meets and maintains total capital expenditures placed in service in the County (based on gross cost without regard to depreciation) of at least \$2,000,000 as of the end of the Investment Period, the Company shall not be required to make any retroactive payments and shall be entitled to special source revenue credits (SSRCs) pursuant to Sections 4-29-68 and Title 4, Chapter 1, Sections 170 through 175 of the Code of Laws of South Carolina, 1976, as amended. The SSRCs shall equal the Additional Payment as described above. Further, for each subsequent year, so long as the company maintains at least \$2,000,000 of capital expenditures placed in service in the County within the Investment Period, the Company shall be entitled to SSRCs equal to the difference between (1) the *ad valorem* taxes or payments in lieu of taxes that would be due with respect to such investments in the absence of this Fee Agreement and (2) the FILOT payments that would be due as if such investments qualified for this Fee Agreement. If the SSRCs in this paragraph are triggered, the Company and the County agree to work in good faith to establish a certification procedure whereby the Company must remit a detailed annual certification to the County in order to be entitled to the SSRCs described herein.

Section 4.3 Payments in Lieu of Taxes on Replacement Property. If the Company elects to replace any Removed Components and to substitute such Removed Components with Replacement Property as a part of the Economic Development Property, or the Company otherwise utilizes Replacement Property, then, pursuant and subject to Section 12-44-60 of the Act, the Company shall make statutory payments in lieu of *ad valorem* taxes with regard to such Replacement Property in accordance with the following:

(i) Replacement Property does not have to serve the same function as the Economic Development Property it is replacing. Replacement Property is deemed to replace the oldest Economic Development Property subject to the Fee, whether real or personal, which is disposed of in the same property tax year in which the Replacement Property is placed in service. Replacement Property qualifies as Economic Development Property only to the extent of the original income tax basis of Economic Development Property which is being disposed of in the same property tax year. More than one piece of property can replace a single piece of Economic Development Property. To the extent that the income

tax basis of the Replacement Property exceeds the original income tax basis of the Economic Development Property which it is replacing, the excess amount is subject to annual payments calculated as if the exemption for Economic Development Property were not allowable. Replacement Property is entitled to treatment under the Fee Agreement for the period of time remaining during the Exemption Period for the Economic Development Property which it is replacing; and

(ii) The new Replacement Property which qualifies for the Fee shall be recorded using its income tax basis, and the calculation of the Fee shall utilize the millage rate and assessment ratio in effect with regard to the original property subject to the Fee.

Section 4.4 Reductions in Payments of Taxes Upon Removal, Condemnation, or Casualty. In the event of a Diminution in Value of the Economic Development Property or any Phase of the Economic Development Property, the Payment in Lieu of Taxes with regard to the Economic Development Property or that Phase of the Economic Development Property shall be reduced in the same proportion as the amount of such Diminution in Value bears to the original fair market value of the Economic Development Property or that Phase of the Economic Development Property as determined pursuant to Step 1 of Section 4.1(a) hereof; *provided, however,* that if at any time subsequent to the end of the Investment Period, the total value of the Project based on the original income tax basis of the Equipment, Real Property, and Improvements contained therein, without deduction for depreciation, is less than the Act Minimum Investment Requirement, beginning with the first payment thereafter due hereunder and continuing until the end of the Fee Term, the Company shall no longer be entitled to the incentive provided in Section 4.1, and the Company shall therefore commence to pay regular *ad valorem* taxes on the Economic Development Property part of the Project.

Section 4.5 Place and Allocation of Payments in Lieu of Taxes. The Company shall make the above-described Payments in Lieu of Taxes directly to the County in accordance with applicable law.

Section 4.6 Removal of Equipment. Subject, always, to the other terms and provisions hereof, the Company shall be entitled to remove and dispose of components or Phases of the Project from the Project in its sole discretion with the result that said components or Phases shall no longer be considered a part of the Project and, to the extent such constitute Economic Development Property, shall no longer be subject to the terms of this Fee Agreement to the fullest extent allowed by the Act, as amended. Economic Development Property is disposed of only when it is scrapped or sold or it is removed from the Project. If it is removed from the Project, it is subject to *ad valorem* property taxes to the extent the Property remains in the State and is otherwise subject to *ad valorem* property taxes.

Section 4.7 Damage or Destruction of Economic Development Property.

(a) Election to Terminate. In the event the Economic Development Property is damaged by fire, explosion, or any other casualty, the Company shall be entitled to terminate this Fee Agreement. The Company shall only be required to make FILOT payments as to all or any

part of the tax year in which the damage or casualty occurs to the extent property subject to *ad valorem* taxes would otherwise have been subject to such taxes under the same circumstances for the period in question.

(b) Election to Rebuild. In the event the Economic Development Property is damaged by fire, explosion, or any other casualty, and if the Company does not elect to terminate this Fee Agreement, the Company may commence to restore the Economic Development Property with such reductions or enlargements in the scope of the Economic Development Property, changes, alterations, and modifications (including the substitution and addition of other property) as may be desired by the Company. All such restorations and replacements shall be considered, to the fullest extent permitted by law and this Fee Agreement, substitutions of the destroyed portions of the Economic Development Property and shall be considered part of the Economic Development Property for all purposes hereof, including, but not limited to, any amounts due by the Company to the County under Section 4.1 hereof.

(c) Election to Remove. In the event the Company elects not to terminate this Fee Agreement pursuant to subsection (a) and elects not to rebuild pursuant to subsection (b), the damaged portions of the Economic Development Property shall be treated as Removed Components.

Section 4.8 Condemnation.

(a) Complete Taking. If at any time during the Fee Term title to or temporary use of the Economic Development Property should become vested in a public or quasi-public authority by virtue of the exercise of a taking by condemnation, inverse condemnation, or the right of eminent domain; by voluntary transfer under threat of such taking; or by a taking of title to a portion of the Economic Development Property which renders continued use or occupancy of the Economic Development Property commercially unfeasible in the judgment of the Company, the Company shall have the option to terminate this Fee Agreement by sending written notice to the County within a reasonable period of time following such vesting. The Company shall only be required to make FILOT payments as to all or any part of the tax year in which the taking occurs to the extent property subject to *ad valorem* taxes would otherwise have been subject to such taxes under the same circumstances for the period in question.

(b) Partial Taking. In the event of a partial taking of the Economic Development Property or a transfer in lieu thereof, the Company may elect: (i) to terminate this Fee Agreement; (ii) subject to the Act and the terms and provisions of this Fee Agreement, to repair and restore the Economic Development Property, with such reductions or enlargements in the scope of the Economic Development Property, changes, alterations, and modifications (including the substitution and addition of other property) as the Company may desire, and all such changes, alterations, and modifications shall be considered as substitutions of the taken parts of the Economic Development Property; or (iii) to treat the portions of the Economic Development Property so taken as Removed Components.

(c) The Company shall only be required to make FILOT payments as to all or any part of the tax year in which the taking occurs to the extent property subject to *ad valorem* taxes

would otherwise have been subject to such taxes under the same circumstances for the period in question.

Section 4.9 Confidentiality/Limitation on Access to Project. The County acknowledges and understands that the Company utilizes confidential and proprietary processes and materials, services, equipment, trade secrets, and techniques (herein “Confidential Information”) and that any disclosure of Confidential Information concerning the Company’s operations may result in substantial harm to the Company and could thereby have a significant detrimental impact on the Company’s employees and also upon the County. The Company acknowledges that the County is subject to the Freedom of Information Act, and, as a result, must disclose certain documents and information on request absent an exemption. For these reasons, the Company shall clearly label all Confidential Information it delivers to the County “Confidential Information.” Therefore, the County agrees that, except as required by law, neither the County nor any employee, agent, or contractor of the County shall (i) request or be entitled to receive any such Confidential Information, or (ii) disclose or otherwise divulge any such Confidential Information to any other person, firm, governmental body or agency, or any other entity unless specifically required to do so by law; provided, however, that the County shall have no less rights concerning information relating to the Project and the Company than concerning any other property or property taxpayer in the County, and, provided further, that the confidentiality of such confidential or proprietary information is clearly disclosed to the County in writing as previously described. Prior to disclosing any Confidential Information, subject to the requirements of law, the Company may require the execution of reasonable, individual, confidentiality and non-disclosure agreements by any officers, employees, or agents of the County or any supporting or cooperating governmental agencies who would gather, receive, or review such information. In the event that the County is required to disclose any Confidential Information obtained from the Company to any third party, the County agrees to provide the Company with as much advance notice as possible of such requirement before making such disclosure, and to cooperate reasonably with any attempts by the Company to obtain judicial or other relief from such disclosure requirement.

Section 4.10 Assignment. With the prior written consent of the County or a subsequent written ratification by the County, which consent or ratification the County will not unreasonably withhold unless Section 12-44-120 of the Act or any successor provision expressly does not require consent, and in accordance with the Act, the Company may assign this Fee Agreement in whole or in part. The Company agrees to notify the County and the Department of the identity of such transferee within 60 days of the transfer. In case of a transfer, the transferee assumes the transferor’s basis in the Project for purposes of calculating the Fee. No approval is required for transfers to sponsor affiliates or other financing related transfers, as defined in the Act.

Section 4.11 No Double Payment; Future Changes in Legislation.

(a) Notwithstanding anything contained herein to the contrary, and except as expressly required by law, neither the Company nor any Sponsor shall ever be required to make a Payment in Lieu of Taxes in addition to a regular property tax payment in the same year over the same piece of property, nor shall the Company or any Sponsor be required to make a Payment in Lieu of Taxes on property in cases where, absent this Fee Agreement, property taxes would otherwise not be due on such property.

In case there is any legislation enacted which provides for more favorable treatment for property to qualify as, or for the calculation of the fee related to, Economic Development Property under Sections 4.4, 4.6, 4.7, 4.8, or the calculation of the Investment Period, the County agrees to give expedient and full consideration to such legislation, with a view to allow for such more favorable treatment or calculation.

Section 4.12 Administration Expenses.

(a) The Company agrees to pay the reasonable and necessary expenses that the County incurs with respect to the execution and administration of this Fee Agreement, including without limitation reasonable and actual attorney's fees (the "Administration Expenses"); provided, however, that no such expense shall be an Administration Expense until the County has furnished to the Company a statement in writing indicating the amount of such expense and the reason for its incurrence.

ARTICLE V

DEFAULT

Section 5.1 Events of Default. The following shall be "Events of Default" under this Fee Agreement, and the term "Events of Default" shall mean, whenever used with reference to this Fee Agreement, any one or more of the following occurrences:

(a) Failure by the Company to make the Payments in Lieu of Taxes described in Section 4.1 hereof, which failure shall not have been cured within 30 days following receipt of written notice thereof from the County; *provided, however*, that the Company shall be entitled to all redemption rights granted by applicable statutes; or

(b) A representation or warranty made by the Company which is deemed materially incorrect when deemed made; or

(c) Failure by the Company to perform any of the terms, conditions, obligations, or covenants hereunder (other than those under (a) above), which failure shall continue for a period of 30 days after written notice from the County to the Company specifying such failure and requesting that it be remedied, unless the Company shall have instituted corrective action within such time period and is diligently pursuing such action until the default is corrected, in which case the 30-day period shall be extended to cover such additional period during which the Company is diligently pursuing corrective action; or

(d) A representation or warranty made by the County which is deemed materially incorrect when deemed made; or

(e) Failure by the County to perform any of the terms, conditions, obligations, or covenants hereunder, which failure shall continue for a period of 30 days after written notice from the Company to the County specifying such failure and requesting that it be remedied, unless the County shall have instituted corrective action within such time period and is diligently pursuing such action until the default is corrected, in which case the 30-day period shall be

extended to cover such additional period during which the County is diligently pursuing corrective action; or

- (f) A cessation of operations at the Project by the Company.

Section 5.2 Remedies on Default.

(a) Whenever any Event of Default by the Company shall have occurred and shall be continuing, the County may take any one or more of the following remedial actions:

- (1) terminate the Fee Agreement; or
- (2) take whatever action at law or in equity may appear necessary or desirable to collect the amounts due hereunder. In no event shall the Company be liable to the County or otherwise for monetary damages resulting from the Company's failure to meet the Act Minimum Investment Requirement, other than as expressly set forth herein.

In addition to all other remedies provided herein, the failure to make FILOT payments shall give rise to a lien for tax purposes as Section 12-44-90 of the Act provides. In this regard, and notwithstanding anything in this Fee Agreement to the contrary, the County may exercise the remedies that general law (including Title 12, Chapter 49 of the Code of Laws of South Carolina, 1976, as amended) provides with regard to the enforced collection of *ad valorem* taxes to collect any FILOT payments due hereunder.

(b) Whenever any Event of Default by the County shall have occurred or shall be continuing, the Company may take one or more of the following actions:

- (1) bring an action for specific enforcement;
- (2) terminate the Fee Agreement; or
- (3) in case of a materially incorrect representation or warranty, take such action as is appropriate, including legal action, to recover its damages, to the extent allowed by law.

Section 5.3 Reimbursement of Legal Fees and Expenses and Other Expenses. Upon the occurrence of an Event of Default hereunder, should a party be required to employ attorneys or incur other reasonable expenses for the collection of payments due hereunder or for the enforcement of performance or observance of any obligation or agreement, the successful party shall be entitled, within 30 days of demand therefor, to reimbursement of the reasonable fees of such attorneys and such other reasonable expenses so incurred. The Company further agrees to pay reasonable legal fees and expenses and other expenses of the County.

Section 5.4 No Waiver. No failure or delay on the part of any party hereto in exercising any right, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy hereunder. No waiver of any provision hereof shall be effective unless the same shall be in writing and signed by the waiving party hereto.

ARTICLE VI

MISCELLANEOUS

Section 6.1 Notices. Any notice, election, demand, request, or other communication to be provided under this Fee Agreement shall be effective when delivered to the party named below or when deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed as follows (or addressed to such other address as any party shall have previously furnished in writing to the other party), except where the terms hereof require receipt rather than sending of any notice, in which case such provision shall control:

IF TO THE COMPANY:

Project Garden
Attn: _____

[Insert notice person and address for final reading.]

IF TO THE COUNTY:

Beaufort County, South Carolina
Attn: County Attorney
100 Ribaut Road
Beaufort, SC 29902

WITH A COPY TO:

Haynsworth Sinkler Boyd, P.A.
Attn: William R. Johnson
P.O. Box 11889
Columbia, SC 29211

Section 6.2 Binding Effect. This Fee Agreement and each document contemplated hereby or related hereto shall be binding upon and inure to the benefit of the Company, the County, and their respective successors and assigns. In the event of the dissolution of the County or the consolidation of any part of the County with any other political subdivision or the transfer of any rights of the County to any other such political subdivision, all of the covenants, stipulations, promises, and agreements of this Fee Agreement shall bind and inure to the benefit of the successors of the County from time to time and any entity, officer, board, commission, agency, or instrumentality to whom or to which any power or duty of the County has been transferred.

Section 6.3 Counterparts. This Fee Agreement may be executed in any number of counterparts, and all of the counterparts taken together shall be deemed to constitute one and the same instrument.

Section 6.4 Governing Law. This Fee Agreement and all documents executed in connection herewith shall be construed in accordance with and governed by the laws of the State of South Carolina.

Section 6.5 Headings. The headings of the articles and sections of this Fee Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Fee Agreement.

Section 6.6 Amendments. The provisions of this Fee Agreement may only be modified or amended in writing by any agreement or agreements entered into between the parties.

Section 6.7 Further Assurance. From time to time, and at the expense of the Company, to the extent any expense is incurred, the County agrees to execute and deliver to the Company such additional instruments as the Company may reasonably request and as are authorized by law and reasonably within the purposes and scope of the Act and Fee Agreement to effectuate the purposes of this Fee Agreement.

Section 6.8 Invalidity; Change in Laws. In the event that the inclusion of property as Economic Development Property or any other issue is unclear under this Fee Agreement, the County hereby expresses its intention that the interpretation of this Fee Agreement shall be in a manner that provides for the broadest inclusion of property under the terms of this Fee Agreement and the maximum incentive permissible under the Act, to the extent not inconsistent with any of the explicit terms hereof. If any provision of this Fee Agreement is declared illegal, invalid, or unenforceable for any reason, the remaining provisions hereof shall be unimpaired, and such illegal, invalid, or unenforceable provision shall be reformed to effectuate most closely the legal, valid, and enforceable intent thereof and so as to afford the Company with the maximum benefits to be derived herefrom, it being the intention of the County to offer the Company the strongest inducement possible, within the provisions of the Act, to locate the Project in the County. In case a change in the Act or South Carolina laws eliminates or reduces any of the restrictions or limitations applicable to the Company and the Fee incentive, the parties agree that the County will give expedient and full consideration to reformation of this Fee Agreement, and, if the County Council so decides, to provide the Company with the benefits of such change in the Act or South Carolina laws.

Section 6.9 Force Majeure. The Company shall not be responsible for any delays or non-performance caused in whole or in part, directly or indirectly, by strikes, accidents, freight embargoes, fires, floods, inability to obtain materials, conditions arising from governmental orders or regulations, war or national emergency, acts of God, and any other cause, similar or dissimilar, beyond the Company's reasonable control.

Section 6.10 Termination by Company. The Company is authorized to terminate this Fee Agreement at any time with respect to all or part of the Project upon providing the County with 30 days' notice; *provided, however*, that (i) any monetary obligations existing hereunder and due and owing at the time of termination to a party hereto; and (ii) any provisions which are intended to survive termination shall survive such termination. In the year following such termination, all property shall be subject to ad valorem taxation or such other taxation or fee in

lieu of taxation that would apply absent this agreement. The Company's obligation to make fee in lieu of tax payments under this Fee Agreement shall terminate in the year following the year of such termination pursuant to this section.

Section 6.11 Entire Understanding. This Fee Agreement expresses the entire understanding and all agreements of the parties hereto with each other, 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 Fee Agreement or in certificates delivered in connection with the execution and delivery hereof.

Section 6.12 Waiver. Either party may waive compliance by the other party with any term or condition of this Fee Agreement only in a writing signed by the waiving party.

Section 6.13 Business Day. In the event that any action, payment, or notice is, by the terms of this Fee Agreement, required to be taken, made, or given on any day which is a Saturday, Sunday, or legal holiday in the jurisdiction in which the person obligated to act is domiciled, such action, payment, or notice may be taken, made, or given on the following business day with the same effect as if given as required hereby, and no interest shall accrue in the interim.

Section 6.14 Limitation of Liability. Anything herein to the contrary notwithstanding, any financial obligation the County may incur hereunder, including for the payment of money shall not be deemed to constitute a pecuniary liability or a debt or general obligation of the County; provided, however, that nothing herein shall prevent the Company from enforcing its rights hereunder by suit for *mandamus* or specific performance.

ARTICLE VII

INDEMNIFICATION, INDIVIDUAL LIABILITY

Section 7.1 Indemnification Covenants.

(a) Notwithstanding any other provisions in this Fee Agreement or in any other agreements with the County (i) the Company shall agree to indemnify and save the County, its members, officers, employees, servants, and agents (collectively, the "Indemnified Parties"), harmless against and from all claims by or on behalf of any person, firm, or corporation arising from the conduct or management of, or from any work or thing done on the Project during the Fee Term, and, the Company further shall indemnify and save the Indemnified Parties harmless against and from all claims arising during the Fee Term from (A) any condition of the Project, (B) any breach or default on the part of the Company in the performance of any of its obligations under this Fee Agreement, (C) any act of negligence of the Company, or of any agents, contractors, servants, employees, or licensees, (D) except in such cases where the County has released the Company, any act of negligence of any assignee or sublessee of the Company, or of any agents, contractors, servants, employees, or licensees of any assignee or sublessee of Company, and/or (E) any environmental violation, condition, or effect. The Company shall indemnify and save the County harmless from and against all costs and expenses incurred in or in connection with any such claim arising as aforesaid or in connection with any action or

proceeding brought thereon, and upon notice from the County, the Company shall defend it in any such action, prosecution, or proceeding.

(b) Notwithstanding the fact that it is the intention of the parties that the Indemnified Parties shall not incur pecuniary liability by reason of the terms of this Fee Agreement, or the undertakings required of the County hereunder, by reason of the granting of the Fee, by reason of the execution of this Fee Agreement, by reason of the performance of any act requested of it by the Company, or by reason of the County's relationship to the Project or the operation of the Project 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 the County, its agents, officers, or employees should 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, 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, and upon notice, the Company shall defend them in any such action or proceeding; provided, however, that such indemnity shall not apply to the extent that any such claim is attributable to (i) the gross negligent acts or omissions or willful misconduct of the County, its agents, officers, or employees, or (ii) any breach of this Fee Agreement by the County.

(c) The above-referenced indemnification covenants shall be considered included in and incorporated by reference in subsequent documents after the delivery of this Fee Agreement which the County is requested to sign on behalf of the Company with respect to the Project, and any other indemnification covenants in any subsequent documents shall not be construed to reduce or limit the above indemnification covenants.

(d) No termination of this Fee Agreement pursuant to any provision elsewhere in this Fee Agreement shall relieve the Company of its liability and obligations to make the payments required by this Section 7.1, all of which shall survive any such termination.

Section 7.2 No Liability of County Personnel. 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 shall be binding upon any member of the County Council or any officer, agent, servant, or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse shall be had for the payment of any moneys hereunder against any member of the governing body of the County or any officer, agent, servant, or employee of the County, and no recourse shall be had against any member of the County Council or any officer, agent, servant, or employee of the County for the performance of any of the covenants and agreements of the County herein contained or for any claims based thereon except solely in their official capacity.

(Signature Page Follows)

IN WITNESS WHEREOF, the County, acting by and through the County Council, has caused this Fee Agreement to be executed in its name and behalf by the County Administrator and to be attested by the Clerk of the County Council; and the Company has caused this Fee Agreement to be executed by its duly authorized officer, all as of the day and year first above written.

**BEAUFORT COUNTY,
SOUTH CAROLINA**

Signature: _____
Name: Ashley Jacobs
Title: County Administrator

ATTEST:

Signature: _____
Name: Sarah W. Brock
Title: Clerk to County Council

PROJECT GARDEN

Signature: _____
Name: _____
Title: _____

EXHIBIT A
LEGAL DESCRIPTION

That certain parcel of real property located in the County of Beaufort, State of South Carolina, containing 3.00 acres, and shown as Beaufort County tax map parcel R120-024-0000-00445, Lot 15 in the Beaufort Commerce Park.

Section 2. The County hereby agrees to enter into a fee in lieu of tax arrangement with the Company under the Act. The County agrees to provide for a fee in lieu of *ad valorem* taxes (“FILOT”) for a period of 20 years for each component of the Project that is eligible for the FILOT pursuant to the Act and that is placed in service during the investment period (the “FILOT Term”) under the Act. The FILOT shall be calculated using a 6% assessment ratio and a fixed millage rate equal to the lowest millage rate allowable under the Act for a period of 20 years.

Section 3. The further details of the FILOT shall be prescribed by subsequent ordinance of the County to be adopted in accordance with South Carolina law and the rules and procedures of the County.

Section 4. This resolution shall constitute an inducement resolution for this Project within the meaning of the Act.

Section 5. This resolution shall constitute “preliminary approval” pursuant to Section 12-44-110(2) of the Act by which property may be placed in service prior to the execution of a FILOT agreement but still constitute economic development property under the Act.

Section 6. All orders, resolutions, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed. This resolution shall take effect and be in full force from and after its passage by the County Council.

Adopted this ____ day of _____, 2020.

BEAUFORT COUNTY, SOUTH CAROLINA

Signature: _____
Name: Ashley Jacobs
Title: County Administrator

(SEAL)

ATTEST:

Signature: _____
Name: Sarah W. Brock
Title: Clerk to County Council

STATE OF SOUTH CAROLINA)
) RESOLUTION NO.: _____
COUNTY OF BEAUFORT)

**INDUCEMENT RESOLUTION PROVIDING FOR A
FEE IN LIEU OF TAX AGREEMENT
BETWEEN BEAUFORT COUNTY AND PROJECT GLASS**

WHEREAS, Beaufort County, South Carolina (the “County”), acting by and through its County Council (the “County Council”) is authorized and empowered under and pursuant to the provisions of Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (the “Act”), to enter into a fee in lieu of tax agreement (the “Fee Agreement”) with respect to a project which requires the industry to make a payment of a fee in lieu of taxes, through which powers the industrial development of the State of South Carolina and the County will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State of South Carolina and the County and thus to utilize and employ the manpower, products, and natural resources of the State of South Carolina to benefit the general public welfare of the County by providing services, employment, and other public benefits not otherwise provided locally; and

WHEREAS, a company currently identified as Project Glass, on its own or together with one or more of its subsidiaries, affiliates, successors, assigns, sponsors, lessors, and others (collectively, the “Company”), desires to invest capital in the County in order to establish a manufacturing facility in the County (the “Project”), provided that approvals of various incentives contemplated for the Project are formalized by the State and/or County; and

WHEREAS, the Project is anticipated to result in an investment of at least \$15,150,000 and the creation of approximately 55 new, full-time jobs; and

WHEREAS, the Company has requested that the County enter into a Fee Agreement, thereby providing for a fee in lieu of tax (“FILOT”) with respect to the Project; and

WHEREAS, the County has determined on the basis of the information supplied to it by the Company that the Project would be a “project” and “economic development property” as such terms are defined in the Act and that the Project would serve the purposes of the Act.

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

Section 1. The County Council hereby finds that: (i) the Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; (ii) the Project gives rise to no pecuniary liability of the County or a charge against its general credit or taxing power; (iii) the purposes to be accomplished by the Project are proper governmental and public purposes and the inducement of the location of the Project within South Carolina is of paramount importance and the benefits of the Project to the public are greater than the cost (which latter finding has been made using an appropriate cost-benefit analysis); and (iv) it has evaluated the Project considering all relevant and required factors, including, but not limited to, the anticipated dollar amount and nature of the investment to be made and the anticipated costs and benefits to the County, and all other criteria prescribed by law.

Section 2. The County hereby agrees to enter into a fee in lieu of tax arrangement with the Company under the Act. The County agrees to provide for a fee in lieu of *ad valorem* taxes (“FILOT”) for a period of 20 years for each component of the Project that is eligible for the FILOT pursuant to the Act and that is placed in service during the investment period (the “FILOT Term”) under the Act. The FILOT shall be calculated using a 6% assessment ratio and a fixed millage rate equal to the lowest millage rate allowable under the Act for a period of 20 years.

Section 3. The further details of the FILOT shall be prescribed by subsequent ordinance of the County to be adopted in accordance with South Carolina law and the rules and procedures of the County.

Section 4. This resolution shall constitute an inducement resolution for this Project within the meaning of the Act.

Section 5. This resolution shall constitute “preliminary approval” pursuant to Section 12-44-110(2) of the Act by which property may be placed in service prior to the execution of a FILOT agreement but still constitute economic development property under the Act.

Section 6. All orders, resolutions, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed. This resolution shall take effect and be in full force from and after its passage by the County Council.

Adopted this ____ day of _____, 2020.

BEAUFORT COUNTY, SOUTH CAROLINA

Signature: _____
Name: Ashley Jacobs
Title: County Administrator

(SEAL)

ATTEST:

Signature: _____
Name: Sarah W. Brock
Title: Clerk to County Council

NOW, THEREFORE, BE IT ORDAINED by the County Council in a meeting duly assembled as follows:

Section 1. In order to promote industry, develop trade, and utilize and employ the manpower, products, and natural resources of the State of South Carolina by assisting the Company to expand or locate an industrial facility in the State of South Carolina, the Fee Agreement is hereby authorized, ratified, and approved.

Section 2. It is hereby found, determined, and declared by the County Council, as follows:

- (a) The Project will constitute a “project” as said term is referred to and defined in the Act, and the County’s actions herein will subserve the purposes and in all respects conform to the provisions and requirements of the Act.
- (b) The Project and the payments in lieu of taxes set forth herein are beneficial to the County, and the County has evaluated the Project based upon all criteria prescribed by law, including the anticipated dollar amount and nature of the investment to be made and the anticipated costs and benefits to the County.
- (c) The Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally.
- (d) 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.
- (e) The purposes to be accomplished by the Project, i.e., economic development, creation of jobs, and addition to the tax base of the County, are proper governmental and public purposes.
- (f) The inducement of the location or expansion of the Project within the County and State is of paramount importance.
- (g) The benefits of the Project to the public will be greater than the costs.

Section 3. The form, terms, and provisions of the Fee Agreement presented to this meeting are hereby approved, and all of the terms, provisions, and conditions thereof are incorporated herein by reference as if the Fee Agreement were set out in this Ordinance in its entirety. The Chairman of the County Council and/or the County Administrator are authorized, empowered, and directed to execute, acknowledge, and deliver the Fee Agreement in the name of and on behalf of the County, and thereupon to cause the Fee Agreement to be delivered to the Company. The Fee Agreement is to be in substantially the form now before this meeting and hereby approved, with such changes therein as shall not be materially adverse to the County and as shall be approved by the officials of the County executing the same, upon the advice of Counsel to the County, such official’s execution thereof to constitute conclusive evidence of

such official's approval of any and all changes or revisions therein from the form of the Fee Agreement now before this meeting.

Section 4. The Chairman of the County Council and/or the County Administrator, for and on behalf of the County, are hereby authorized and directed to do any and all things necessary to effect the execution and delivery of the Fee Agreement and the performance of all obligations of the County under and pursuant to the Fee Agreement.

Section 5. 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 6. All orders, resolutions, ordinances, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed, and this Ordinance shall take effect and be in full force from and after its passage and approval.

(SIGNATURE PAGE TO FOLLOW)



BEAUFORT COUNTY COUNCIL AGENDA ITEM SUMMARY

ITEM TITLE:
Beaufort County Business License Tax Standardization (<i>Ordinance</i>)
MEETING NAME AND DATE:
Finance Committee October 19, 2020
PRESENTER INFORMATION:
<i>(Edra Stephens)</i> <i>(10 minutes)</i>
ITEM BACKGROUND:
<i>Prior Business License Ordinance 99-36</i>
PROJECT / ITEM NARRATIVE:
SC Business License Tax Standardization Act, signed into law by Gov. Henry McMaster, this requires all licensing bodies to accept the act.
FISCAL IMPACT:
<i>(Rate class 8 is divide into sub-categories, rates will need to be establish)</i>
STAFF RECOMMENDATIONS TO COUNCIL:
To pass ordinance in its entirety.
OPTIONS FOR COUNCIL MOTION:
<i>Motion to approve new rates for Ordinance</i>

2019 MODEL BUSINESS LICENSE ORDINANCE

Section 1. License Required.

Every person engaged or intending to engage in any calling, business, occupation or profession, in whole or in part, within the limits of the County of Beaufort, South Carolina, is required to pay an annual license tax for the privilege of doing business and obtain a business license as herein provided.

Section 2. Definitions.

The following words, terms and phrases, when used in this ordinance, shall have the meaning ascribed herein:

“*Business*” means a calling, occupation, profession, or activity engaged in with the object of gain, benefit or advantage, either directly or indirectly.

“*Charitable Organization*” means an organization that is determined by the Internal Revenue Service to be exempt from Federal income taxes under 26 U.S.C. section 501 (c) (3), (4), (6), (7), (8), (10) or (19).

“*Charitable Purpose*” means a benevolent, philanthropic, patriotic, or eleemosynary purpose which does not result in personal gain to a sponsor, organizer, officer, director, trustee or person with ultimate control of the organization.

“*Classification*” means that division of businesses by major groups subject to the same license rate as determined by a calculated index of ability to pay based on national averages, benefits, equalization of tax burden, relationships of services, or other basis deemed appropriate by the Council.

“*Gross Income*” means the gross receipts or gross revenue of a business, received or accrued, for one calendar or fiscal year collected or to be collected from business done within the County, excepting therefrom income earned outside of the County on which a license tax is paid by the business to some other municipality or a county and fully reported to the County. Gross income for agents means gross commissions received or retained, unless otherwise specified. Gross income for insurance companies means gross premiums written. Gross income for business license tax purposes shall not include taxes collected for a governmental entity, escrow funds, or funds which are the property of a third party. The value of bartered goods or trade-in merchandise shall be included in gross income. The gross receipts or gross revenues for business license purposes may be verified by inspection of returns and reports filed with the Internal Revenue Service, the South Carolina Department of Revenue, the South Carolina Department of Insurance, or other government agencies.

“*License Official*” means a person designated by the County to administer this ordinance and the License Official’s designees and agents.

“*Licensee*” means the business, the person applying for the license on behalf of the business, an agent or legal representative of the business, a person who receives any part of the net profit of the business, or a person who owns or exercises control of the business.

“Council” means Beaufort County Council.

“County” means the County of Beaufort, South Carolina.

“*Person*” means any individual, firm, partnership, LLP, LLC, cooperative non-profit membership, corporation, joint venture, association, estate, trust, business trust, receiver, syndicate, holding company, or other group or combination acting as a unit, in the singular or plural, and the agent or employee having charge or control of a business in the absence of the principal.

Section 3. Purpose and Duration.

The business license levied by this ordinance is for the purpose of providing such regulation as may be required for the business subject thereto and for the purpose of raising revenue for the general fund through a privilege tax. Each yearly license shall be issued for the twelve-month period of May 1 to April 30. The provisions of this ordinance and the rates herein shall remain in effect from year to year as amended by the Council.

Section 4. License Tax.

A. The required license tax shall be paid for each business subject hereto according to the applicable rate classification on or before the due date of the 30th day of April in each year, except for those businesses in Rate Class 8 for which a different due date is specified.

B. A separate license shall be required for each place of business and for each classification or business conducted at one place. If gross income cannot be separated for classifications at one location, the license tax shall be computed on the combined gross income for the classification requiring the highest rate. A license tax based on gross income shall be computed on the gross income for the preceding calendar or fiscal year, and on a twelve-month projected income based on the monthly average for a business in operation for less than one year. The tax for a new business shall be computed on the estimated probable gross income stated in the license application for the balance of the license year. The initial tax for an annexed business shall be prorated for the number of months remaining in the license year. No refund shall be made for a business that is discontinued.

Section 5. Registration Required.

A. The owner, agent or legal representative of every business subject to this ordinance, whether listed in the classification index or not, shall register the business and make application for a business license on or before the due date of each year; *provided*, a new business shall be required to have a business license prior to operation within the County, and an annexed business shall be required to have a business license within thirty (30) days of the annexation. A license for a bar (NAICS 722410) must be issued in the name of the individual who has been issued a State alcohol, beer or wine permit or license and will have actual control and management of the business.

B. Application shall be on a form provided by the License Official which shall contain the Social Security Number and/or the Federal Employer's Identification Number, the business name as reported on the South Carolina income tax return, and all information about the applicant and the Licensee and the business deemed appropriate to carry out the purpose of this ordinance by the License Official. Applicants may be required to submit copies of portions of state and federal income tax returns reflecting gross receipts and gross revenue figures.

C. The applicant shall certify under oath that the information given in the application is true, that the gross income is accurately reported, or estimated for a new business, without any unauthorized deductions, and that all assessments, personal property taxes on business property and other monies due and payable to the County have been paid.

Section 6. Deductions, Exemptions, and Charitable Organizations.

A. No deductions from gross income shall be made except income earned outside of the County on which a license tax is paid by the business to some other municipality or a county and fully reported to the County, taxes collected for a governmental entity, or income which cannot be included for computation of the tax pursuant to State or Federal law. The applicant shall have the burden to establish the right to exempt income by satisfactory records and proof.

B. No person shall be exempt from the requirements of the ordinance by reason of the lack of an established place of business within the County, unless exempted by State or Federal law. The License Official shall determine the appropriate classification for each business in accordance with the latest issue of the North American Industry Classification System (NAICS) for the United States published by the Office of Management and Budget. No person shall be exempt from this ordinance by reason of the payment of any other tax, unless exempted by State law, and no person shall be relieved of liability for payment of any other tax or fee by reason of application of this ordinance.

C. A Charitable Organization shall be exempt from the business license tax on its gross income unless it is deemed a business subject to a business license tax on all or part of its gross income as provided in this section. A Charitable Organization, or any for-profit affiliate of a Charitable Organization, that reports income from for-profit activities, or unrelated business income, for Federal income tax purposes to the Internal Revenue Service shall be deemed a business subject to a business license tax on the part of its gross income from such for-profit activities or unrelated business income.

A Charitable Organization shall be deemed a business subject to a business license tax on its total gross income if (1) any net proceeds of operation, after necessary expenses of operation, inure to the benefit of any individual or any entity that is not itself a Charitable Organization as defined in this ordinance, or (2) any net proceeds of operation, after necessary expenses of operation, are used for a purpose other than a Charitable Purpose as defined in this ordinance. Excess benefits or compensation in any form beyond fair market value to a sponsor, organizer, officer, director, trustee or person with ultimate control of the organization shall not be deemed a necessary expense of operation.

Section 7. False Application Unlawful.

It shall be unlawful for any person subject to the provisions of this ordinance to make a false application for a business license, or to give or file, or direct the giving or filing of, any false information with respect to the license or tax required by this ordinance.

Section 8. Display and Transfer.

A. All persons shall display the license issued to them on the original form provided by the License Official in a conspicuous place in the business establishment at the address shown on the license. A transient or non-resident shall carry the license upon his person or in a vehicle used in the business readily available for inspection by any authorized agent of the Municipality.

B. A change of address must be reported to the License Official within ten (10) days after removal of the business to a new location and the license will be valid at the new address upon written notification by the License Official and compliance with zoning and building codes. Failure to obtain the approval of the License Official for a change of address shall invalidate the license and subject the licensee to prosecution for doing business without a license. A business license shall not be transferable and a transfer of controlling interest shall be considered a termination of the old business and the establishment of a new business requiring a new business license, based on old business income.

Section 9. Administration of Article.

The License Official shall administer the provisions of this article, collect license taxes, issue licenses, make or initiate investigations and audits to insure compliance, initiate denial or suspension and revocation procedures, report violations to the county attorney, assist in prosecution of violators, produce forms, make reasonable regulations relating to the administration of this ordinance, and perform such other duties as may be duly assigned.

Section 10. Inspection and Audits.

A. For the purpose of enforcing the provisions of this ordinance, the License Official or other authorized agent of the County is empowered to enter upon the premises of any person subject to this ordinance to make inspections, examine and audit books and records. It shall be unlawful for any such person to fail or refuse to make available the necessary books and records. In the event an audit or inspection reveals that the licensee has filed false information, the costs of the audit shall be added to the correct license tax and late penalties in addition to other penalties provided herein. Each day of failure to pay the proper amount of license tax shall constitute a separate offense.

B. The License Official shall have the authority to make inspections and conduct audits of businesses within the County to insure compliance with the ordinance. Financial information obtained by inspections and audits shall not be deemed public records, and the License Official shall not release the amount of license taxes paid or the reported gross income of any person by name without written permission of the licensee, except as authorized by this ordinance, State or Federal law, or proper judicial order. Statistics compiled by classifications are public records.

Section 11. Assessments, Payment under Protest, Appeal.

A. If a person fails to obtain a business license or to furnish the information required by this ordinance or the License Official, the License Official shall examine such records of the business or any other available records as may be appropriate, and conduct such investigations and statistical surveys as the License Official may deem appropriate to assess a license tax and penalties as provided herein.

B. A notice of assessment shall be served by certified mail or personal service. An application for adjustment of the assessment may be made to the License Official within five (5) days after the notice is mailed or personally served or the assessment will become final. The License Official shall establish a uniform procedure for hearing an application for adjustment of assessment and issuing a notice of final assessment.

C. A final assessment may be appealed to the Council only by payment in full of the assessment under protest within five (5) days and the filing of written notice of appeal within ten (10) days after payment pursuant to the provisions of this ordinance relating to appeals to Council.

Section 12. Delinquent License Taxes, Partial Payment.

A. For non-payment of all or any part of the correct license tax, the License Official shall levy and collect a late penalty of five (5%) percent of the unpaid tax for each month or portion thereof after the due date until paid. Penalties shall not be waived. If any license tax remains unpaid for sixty (60) days after its due date, the License Official shall report it to the municipal attorney for appropriate legal action.

B. Partial payment may be accepted by the License Official to toll imposition of penalties on the portion paid; *provided*, however, no business license shall be issued or renewed until the full amount of the tax due, with penalties, has been paid.

Section 13. Notices.

The License Official may, but shall not be required to, mail written notices that license taxes are due. If notices are not mailed, there shall be published a notice of the due date in a newspaper of general circulation within the municipality three (3) times prior to the due date in each year. Failure to receive notice shall not constitute a defense to prosecution for failure to pay the tax due or grounds for waiver of penalties.

Section 14. Denial of License.

The License Official shall deny a license to an applicant when the License Official determines:

A. The application is incomplete, contains a misrepresentation, false or misleading statement, evasion or suppression of a material fact; or

B. The activity for which a license is sought is unlawful or constitutes a public nuisance per se or per accidens; or

C. The applicant, Licensee or prior Licensee or the person in control of the business has been convicted, within the previous ten years, of an offense under a law or ordinance regulating

business, a crime involving dishonest conduct or moral turpitude related to a business or a subject of a business, or an unlawful sale of merchandise or prohibited goods; or

D. The applicant, Licensee or prior Licensee or the person in control of the business has engaged in an unlawful activity or nuisance related to the business or to a similar business in the County or in another jurisdiction; or

E. The applicant, Licensee or prior Licensee or the person in control of the business is delinquent in the payment to the County of any tax or fee; or

F. The license for the business or for a similar business of the Licensee in the County or another jurisdiction has been denied, suspended or revoked in the previous license year.

A decision of the License Official shall be subject to appeal to Council as herein provided. Denial shall be written with reasons stated.

Section 15. Suspension or Revocation of License.

When the License Official determines:

A. A license has been mistakenly or improperly issued or issued contrary to law; or

B. A Licensee has breached any condition upon which the license was issued or has failed to comply with the provisions of this ordinance; or

C. A Licensee has obtained a license through a fraud, misrepresentation, a false or misleading statement, evasion or suppression of a material fact in the license application; or

D. A Licensee has been convicted, within the previous ten years, of an offense under a law or ordinance regulating business, a crime involving dishonest conduct or moral turpitude related to a business or a subject of a business, or an unlawful sale of merchandise or prohibited goods; or

E. A Licensee has engaged in an unlawful activity or nuisance related to the business; or

F. A Licensee is delinquent in the payment to the County of any tax or fee,

the License Official shall give written notice to the Licensee or the person in control of the business within the County by personal service or certified mail that the license is suspended pending a hearing before Council for the purpose of determining whether the license should be revoked.

The notice shall state the time and place at which the hearing is to be held, which shall be at a regular or special Council meeting within thirty (30) days from the date of service of the notice, unless continued by agreement. The notice shall contain a brief statement of the reasons for suspension and proposed revocation and a copy of the applicable provisions of this ordinance.

Section 16. Appeals to Council.

A. Any person aggrieved by a decision, final assessment, proposed revocation, suspension, or a denial of a business license by the License Official may appeal the decision to the Council by written request stating the reasons therefore, filed with the License Official within ten (10) days after service by mail or personal service of the notice of decision, final assessment, proposed revocation, suspension or denial.

B. An appeal or a hearing on proposed revocation shall be held by the Council within thirty (30) days after receipt of a request for appeal or service of notice of suspension at a regular or special meeting of which the applicant or licensee has been given written notice, unless continued by agreement. At the hearing, all parties shall have the right to be represented by counsel, to present testimony and evidence and to cross-examine witnesses. The proceedings shall be recorded and transcribed at the expense of the party so requesting. The rules of evidence and procedure prescribed by Council shall govern the hearing. Council shall by majority vote of members present render a written decision based on findings of fact and application of the standards herein which shall be served upon all parties or their representatives and shall be the final decision of the Municipality.

Section 17. Consent, franchise or license required for use of streets.

A. It shall be unlawful for any person to construct, install, maintain or operate in, on, above or under any street or public place under control of the municipality any line, pipe, cable, pole, structure or facility for utilities, communications, cablevision or other purposes without a consent agreement or franchise agreement issued by the Council by ordinance that prescribes the term, fees and conditions for use.

B. The annual fee for use of streets or public places authorized by a consent agreement or franchise agreement shall be set by the ordinance approving the agreement and shall be consistent with limits set by State law. Existing franchise agreements shall continue in effect until expiration dates in the agreements. Franchise and consent fees shall not be in lieu of or be credited against business license taxes unless specifically provided by the franchise or consent agreement.

Section 18. Confidentiality.

Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for any official or employee to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this ordinance. Nothing in this section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns. Any license data may be shared with other public officials or employees in the performance of their duties, whether or not those duties relate to enforcement of the license ordinance.

Section 19. Violations.

Any person violating any provision of this ordinance shall be deemed guilty of an offense and shall be subject to a fine of up to \$500.00 or imprisonment for not more than thirty (30) days or both, upon conviction. Each day of violation shall be considered a separate offense. Punishment for violation shall not relieve the offender of liability for delinquent taxes, penalties and costs provided for herein.

Section 20. Severability.

A determination that any portion of this ordinance is invalid or unenforceable shall not affect the remaining portions.

Section 21. Classification and Rates.

A. The classifications of businesses included in each rate class are listed with United States North American Industry Classification System (NAICS) codes, by sector, sub-sector, group or industry. The Business License Class Schedule (Appendix B) is a tool for classification and not a limitation on businesses subject to a license tax. The business classification, pursuant to the most recent version of the Business License Class Schedule adopted by the council, most specifically identifying the subject business, shall be applied to the business. The License Official shall have the authority to make the determination of the business classification most specifically applicable to a subject business...

B. The license tax for each class of businesses subject to this ordinance shall be computed in accordance with the current Business License Rate Schedule, designated as Appendix A to this ordinance, which may be amended from time to time by the Council. A copy of the Class Schedule and Rate Schedule shall be filed in the office of the County clerk.

APPENDIX A

RATE SCHEDULE

<u>RATE CLASS</u>	<u>INCOME: \$0 - \$2,000 BASE RATE</u>	<u>INCOME OVER \$2,000 Rate per Thousand or fraction thereof</u>
1	\$.00	\$
2	\$.00	\$
3	\$.00	\$
4	\$.00	\$
5	\$.00	\$
6	\$.00	\$
7	\$.00	\$
8.1	\$.00	\$
8.2	\$ set by State statute	
8.3	MASC Telecommunications	
8.41	\$.00	\$
8.42	\$.00	\$
8.5	\$.00	\$
8.61	\$.00	\$
8.62	\$.00	\$
8.7	MASC Insurance	
8.81	\$12.50 + \$12.50 per machine	
8.82	\$.00	\$
8.83	\$12.50 + \$12.50 per machine	
8.91	\$.00	\$
8.92	\$.00	\$
8.93	\$.00	\$
8.10	\$.00 + \$5.00 per table	\$

NON-RESIDENT RATES

Unless otherwise specifically provided, all taxes and rates shall be doubled for nonresidents and itinerants having no fixed principal place of business within the municipality.

DECLINING RATES

Declining Rates apply in all Classes for gross income in excess of \$1,000,000, unless otherwise specifically provided for in this ordinance.

<u>Gross Income in \$ Millions</u>	<u>Percent of Class Rate for each additional \$1,000</u>
0 - 1	100%
1 - 2	90%
2 - 3	80%
3 - 4	70%
OVER 4	60%

CLASS 8 RATES

Each NAICS Number designates a separate sub-classification. The businesses in this section are treated as separate and individual subclasses due to provisions of State law, regulatory requirements, service burdens, tax equalization considerations, etc., which are deemed to be sufficient to require individually determined rates. Non-resident rates do not apply except where indicated.

- 8.1 NAICS 230000 - Contractors, Construction, All Types** [Non-resident rates apply]
 Having permanent place of business within the municipality
 Minimum on first \$2,000.....\$ _____ PLUS
 Each additional 1,000.....\$ _____

A trailer at the construction site or structure in which the contractor temporarily resides is not a permanent place of business under this ordinance.

The total tax for the full amount of the contract shall be paid prior to commencement of work and shall entitle contractor to complete the job without regard to the normal license expiration date. An amended report shall be filed for each new job and the appropriate additional license fee per \$1,000 of the contract amount shall be paid prior to commencement of new work. Only one base tax shall be paid in a license year.

No contractor shall be issued a business license until all state and county qualification examination and trade license requirements have been met. Each contractor shall post a sign in plain view on each job identifying the contractor with the job.

Sub-contractors shall be licensed on the same basis as general or prime contractors for the same job. No deductions shall be made by a general or prime contractor for value of work performed by a sub-contractor.

No contractor shall be issued a business license until all performance and indemnity bonds required by the Building Code have been filed and approved. Zoning permits must be obtained when required by the Zoning Ordinance.

Each prime contractor shall file with the License Official a list of sub-contractors furnishing labor or materials for each project.

- 8.2 NAICS 482 - Railroad Companies** – (See S.C. Code § 12-23-210)

8.3 NAICS 517311, 517312 - Telephone Companies:

A. Notwithstanding any other provisions of the Business License Ordinance, the business license tax for "retail telecommunications services", as defined in S. C. Code Section 58-9-2200, shall be at the maximum rate authorized by S. C. Code Section 58-9-2220, as it now provides or as provided by amendment. The business license tax year shall begin on January 1 of each year. Declining rates shall not apply.

B. In conformity with S.C. Code Section 58-9-2220, the business license tax for "retail telecommunications services" shall apply to the gross income derived from the sale of retail telecommunications services for the preceding calendar or fiscal year which either originate or terminate in the municipality and which are charged to a service address within the municipality regardless of where these amounts are billed or paid and on which a business license tax has not been paid to another municipality. The measurement of the amounts derived from the retail sale of mobile telecommunications services shall include only revenues from the fixed monthly recurring charge of customers whose service address is within the boundaries of the municipality. For a business in operation for less than one year, the amount of business license tax shall be computed on a twelve-month projected income.

C. The business license tax for "retail telecommunications services" shall be due on January 1 of each year and payable by January 31 of that year, without penalty.

D. The delinquent penalty shall be five percent (5 %) of the tax due for each month, or portion thereof, after the due date until paid.

E. Exemptions in the business license ordinance for income from business in interstate commerce are hereby repealed. Properly apportioned gross income from interstate commerce shall be included in the gross income for every business subject to a business license tax.

F. Nothing in this Ordinance shall be interpreted to interfere with continuing obligations of any franchise agreement or contractual agreement in the event that the franchise or contractual agreement should expire after December 31, 2003.

G. All fees collected under such a franchise or contractual agreement expiring after December 31, 2003, shall be in lieu of fees or taxes which might otherwise be authorized by this Ordinance.

H. As authorized by S. C. Code Section 5-7-300, the Agreement with the Municipal Association of South Carolina for collection of current and delinquent license taxes from telecommunications companies pursuant to S. C. Code Section 58-9-2200 shall continue in effect.

8.41 NAICS 423930 - Junk or Scrap Dealers [Non-resident rates apply]
Minimum on first \$2,000\$ _____ PLUS
Per \$1,000, or fraction, over \$2,000 \$ _____

8.42 NAICS 522298 - Pawn Brokers - All Types
Minimum on first \$2,000 \$ _____ PLUS
Per \$1,000, or fraction, over \$2,000 \$ _____

8.5 NAICS 4411, 4412 - Automotive, Motor Vehicles, Boats, Farm Machinery or Retail
(except auto supply stores - see 4413)
Minimum on first \$2,000\$ _____ PLUS
Per \$1,000, or fraction, over \$2,000\$ _____

One sales lot not more than 400 feet from the main showroom may be operated under this license provided that proceeds from sales at the lot are included in gross receipts at the main office when both are operated under the same name and ownership.

Gross receipts for this classification shall include value of trade-ins. Dealer transfers or internal repairs on resale items shall not be included in gross income.

NAICS 454390 - Peddlers, Solicitors, Canvassers, Door-To-Door Sales

direct retail sales of merchandise. [Non-resident rates apply]

8.61 Regular activities [more than two sale periods of more than three days each per year]
Minimum on first \$2,000\$ _____ PLUS
Per \$1,000, or fraction, over \$2,000\$ _____

8.62 Seasonal activities [not more than two sale periods of not more than three days each year, separate license required for each sale period]
Minimum on first \$2,000\$ _____ PLUS
Per \$1,000, or fraction, over \$2,000\$ _____

Applicant for a license to sell on private property must provide written authorization from the property owner to use the intended location.

8.7 NAICS 5241 - Insurance Companies:

Except as to fire insurance, “gross premiums” means gross premiums written for policies for property or a risk located within the municipality. In addition, “gross premiums” shall include premiums written for policies that are sold, solicited, negotiated, taken, transmitted, received, delivered, applied for, produced or serviced by (1) the insurance company’s office located in the municipality, (2) the insurance company’s employee conducting business within the municipality, or (3) the office of the insurance company’s licensed or appointed producer (agent) conducting business within the county, regardless of where the property or risk is located, provided no tax has been paid to another county in which the property or risk is located based on the same premium.

Solicitation for insurance, receiving or transmitting an application or policy, examination of a risk, collection or transmitting of a premium, adjusting a claim, delivering a benefit, or doing any act in connection with a policy or claim shall constitute conducting business within the county, regardless of whether or not an office is maintained in the county.

As to fire insurance, “gross premiums” means gross premiums (1) collected in the county, and/or (2) realized from risks located within the limits of the county.

Gross premiums shall include all business conducted in the prior calendar year.

Gross premiums shall include new and renewal business without deductions for any dividend, credit, return premiums or deposit.

Declining rates shall not apply.

NAICS 52411 - Life, Health and Accident 0.75% of Gross Premiums

NAICS 524126 - Fire and Casualty..... 2% of Gross Premiums

NAICS 524127 - Title Insurance 2% of Gross Premiums

Notwithstanding any other provisions of this ordinance, license taxes for insurance companies shall be payable on or before May 31 in each year without penalty. The penalty for delinquent payments shall be 5% of the tax due per month, or portion thereof, after the due date until paid.

Any exemptions in the business license ordinance for income from business in interstate commerce are hereby repealed. Gross income from interstate commerce shall be included in the gross income for every business subject to a business license tax.

Pursuant to S.C. Code Ann. §§ 38-45-10 and 38-45-60, the Municipal Association of South Carolina, by agreement with the municipality, is designated the municipal agent for purposes of administration of the municipal broker’s premium tax. The agreement with the Association for administration and collection of current and delinquent license taxes from insurance companies as authorized by S.C. Code § 5-7-300.

[The South Carolina General Assembly, in order to ensure consistency with the federal Non-admitted and Reinsurance Reform Act of 2010 (“NRRA”), ratified an act (Rat# 283) on June 28, 2012, amending S.C. Code §§ 38-7-16 and 38-45-10 through 38-45-195. The act establishes a blended broker’s premium tax rate of 6 percent comprised of a 4 percent state broker’s premium tax and a 2 percent municipal broker’s premium tax. The act states a municipality may not impose on brokers of non-admitted insurance in South Carolina an additional license fee or tax based upon a percentage of premiums.]

NAICS 713120 - Amusement Machines, coin operated (except gambling) -

Music machines, juke boxes, kiddie rides, video games, pin tables with levers, and other amusement machines with or without free play feature licensed by SC Department of Revenue pursuant to S.C. Code §12-21-2720(A)(1) and (A)(2) – [Type I and Type II]

8.81 Operator of machine\$12.50/machine PLUS
.....\$12.50 business license
for operation of all machines (not on gross income).[§12-21-2746]

8.82 Distributor selling or leasing machines
(not licensed by the State as an operator pursuant to §12-21-2728) - [Nonresident rates apply.]
Minimum on first \$2,000 \$ _____ PLUS
Per \$1,000 or fraction over \$2,000\$ _____

NAICS 713290 - Amusement Machines, coin operated, non-payout

Amusement machines of the non-payout type or in-line pin game licensed by SC Department of Revenue pursuant to S.C. Code §12-21-2720(A)(3) [Type III]

8.83 Operator of machine\$12.50/machine PLUS
.....\$12.50 business license
for operation of all machines (not on gross income). [§12-21-2720(B)]

8.82 -. Distributor selling or leasing machines (not licensed by the State as an operator pursuant to §12-21-2728) - [Nonresident rates apply.] -Minimum on first \$2,000..... \$ ____ PLUS
Per \$1,000, or fraction, over \$2,000\$ ____

8.91 NAICS 713290 - Bingo halls, parlors –
Minimum on first \$2,000\$ ____ PLUS
Per \$1,000, or fraction, over \$2,000\$ ____

8.92 NAICS 711190 - Carnivals and Circuses -
Minimum on first \$2,000\$ ____ PLUS
Per \$1,000, or fraction, over \$2,000\$ ____

8.93 NAICS 722410 - Drinking Places, bars, lounges, cabarets (Alcoholic beverages consumed on premises)
Minimum on first \$2,000\$ ____ PLUS
Per \$1,000, or fraction, over \$2,000\$ ____

License must be issued in the name of the individual who has been issued a State alcohol, beer or wine permit or license and will have actual control and management of the business.

8.10 NAICS 713990 - Billiard or Pool Rooms, all types \$5.00 or \$12 per table PLUS
Minimum on first \$2,000\$ ____ PLUS
Per \$1,000, or fraction, over 2000.....\$ ____

NAICS 22112 - Electric Power Distribution..... See Consent or Franchise

NAICS 22121 – Natural Gas DistributionSee Consent or Franchise

NAICS 517110 – Television: Cable or Pay
Services using public streets.....See Franchise

Business License Class Schedule by NAICS Code

Appendix B

This appendix will be updated annually based on the latest available IRS statistics. The updated Business License Class Schedule may be accessed at <http://www.masc.sc/SiteCollectionDocuments/Finance/BL-AppxB.pdf>

Session 123 - (2019-2020)

H 3187 General Bill, By G.R. Smith and Oremus

Summary: Lodging marketplace

A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 10 TO CHAPTER 1, TITLE 6 SO AS TO PROVIDE DEFINITIONS, TO PROVIDE THAT THE GOVERNING BODY OF A MUNICIPALITY OR COUNTY MAY NOT PROHIBIT VACATION RENTALS OR SHORT-TERM RENTALS, TO PROVIDE THAT THE GOVERNING BODY OF A MUNICIPALITY OR COUNTY MAY NOT ENACT CERTAIN REGULATIONS, TO PROVIDE THAT A LODGING MARKETPLACE MAY REGISTER WITH THE DEPARTMENT OF REVENUE FOR A LICENSE FOR THE COLLECTION AND REMITTANCE OF ALL TAXES, TO PROVIDE THAT IN CERTAIN CIRCUMSTANCES THE GOVERNING BODY OF A MUNICIPALITY OR COUNTY MAY NOT LEVY CERTAIN FEES OR TAXES, AND TO PROVIDE FOR CERTAIN DISCLOSURE REQUIREMENTS.

12/18/18 House Prefiled

12/18/18 House Referred to Committee on Ways and Means

01/08/19 House Introduced and read first time (House Journal-page 121)

01/08/19 House Referred to Committee on Labor, Commerce and Industry (House Journal-page 121)

03/03/20 House Member(s) request name added as sponsor: Oremus

South Carolina General Assembly
123rd Session, 2019-2020

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~~Indicates Matter Stricken~~

Indicates New Matter

H. 4431

STATUS INFORMATION

General Bill

Sponsors: Reps. Jordan, Fry, Rose, Forrest, Anderson, Hyde, B. Cox, Elliott, Morgan, B. Newton, Rutherford, Long, Magnuson, Clemmons, Davis, Taylor, Hewitt, Pope, Ligon, Tallon and D.C. Moss

Document Path: I:\council\bills\rt\17613sa19.docx

Introduced in the House on April 9, 2019

Currently residing in the House Committee on **Labor, Commerce and Industry**

Summary: SC Business License Tax Reform

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
4/9/2019	House	Introduced and read first time (House Journal-page 27)
4/9/2019	House	Referred to Committee on Labor, Commerce and Industry (House Journal-page 27)
4/11/2019	House	Member(s) request name added as sponsor: Anderson, Hyde
4/23/2019	House	Member(s) request name removed as sponsor: Daning
4/24/2019	House	Member(s) request name added as sponsor: B.Cox, Elliott, Morgan
4/25/2019	House	Member(s) request name added as sponsor: B.Newton
5/7/2019	House	Member(s) request name added as sponsor: Rutherford
5/20/2019	House	Member(s) request name added as sponsor: Long, Magnuson, Clemmons, Davis, Taylor
5/21/2019	House	Member(s) request name added as sponsor: Hewitt, Pope
1/15/2020	House	Member(s) request name removed as sponsor: Atkinson
1/15/2020	House	Member(s) request name added as sponsor: Ligon, Tallon, D.C.Moss

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VERSIONS OF THIS BILL

[4/9/2019](#)

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 4 TO CHAPTER 1, TITLE 6 SO AS TO PROVIDE BUSINESS LICENSE TAX REFORM, TO PROVIDE DEFINITIONS, TO PROVIDE FOR THE WAY IN WHICH A BUSINESS LICENSE TAX IS COMPUTED, TO PROVIDE FOR THE WAY IN WHICH TO PURCHASE A BUSINESS LICENSE, TO PROVIDE THAT A TAXING JURISDICTION SHALL ADOPT THE LATEST STANDARDIZED BUSINESS LICENSE CLASS SCHEDULE, TO PROVIDE THE WAY IN WHICH A BUSINESS LICENSE OFFICIAL SHALL SERVE NOTICE OF ASSESSMENT OF BUSINESS LICENSE TAX DUE; TO AMEND SECTIONS [4-9-30](#) AND [5-7-30](#), RELATING TO THE DESIGNATION OF POWERS IN COUNTY GOVERNMENT AND THE POWERS CONFERRED UPON MUNICIPALITIES, RESPECTIVELY, SO AS TO PROVIDE THAT A BUSINESS LICENSE TAX MUST BE GRADUATED ACCORDING TO THE BUSINESS TAXABLE INCOME AND THAT A WHOLESALER DELIVERING GOODS IN CERTAIN INSTANCES IS NOT SUBJECT TO THE BUSINESS LICENSE TAX; TO AMEND SECTION [6-1-120](#), RELATING TO THE CONFIDENTIALITY OF COUNTY OR MUNICIPAL TAXPAYER INFORMATION, SO AS TO ALLOW THE SHARING OF CERTAIN DATA AND CERTAIN BUSINESS LICENSE TAXES; TO AMEND SECTION [12-4-310](#), RELATING TO THE DEPARTMENT OF REVENUE'S POWERS AND DUTIES, SO AS TO PROVIDE THAT THE DEPARTMENT SHALL MAKE CERTAIN RECORDS AVAILABLE TO CERTAIN AUTHORITIES LEVYING A TAX BASED ON BUSINESS TAXABLE INCOME.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be cited as the "South Carolina Business License Tax Reform Act".

SECTION 2. Chapter 1, Title 6 of the 1976 Code is amended by adding:

"Article 4
South Carolina Business License Tax Reform

Section [6-1-400](#). (A)(1) Unless specifically provided by state law, a county or municipality which levies a business license tax must comply with the provisions of this article.

(2) As used in this article:

(a) 'Business license' means a license issued to a taxpayer by a county or municipality for the privilege of doing business in that county or municipality.

(b) 'Taxing jurisdiction' means any county or municipality that levies a business license tax.

(c) 'Taxpayer' means any individual, firm, partnership, limited liability partnership, limited liability corporation, or corporation.

(B)(1) For purposes of this article, unless otherwise provided, 'business taxable income' means gross receipts, if reported on a cash basis, or gross revenues, if reported on an accrual basis, from the performance of services and from the sale, lease, or rental of goods or other property in the ordinary course of business.

(2) 'Business taxable income' does not include:

(a) costs of goods sold or other business expenses;

(b) wages and cash compensation paid to employees;

(c) dividends or other distributions received by a corporation, or proceeds from borrowings, the sale of a capital asset, the repayment of the principal portion of a loan, the issuance of stock or other equity investments or capital contributions, or the undistributed earnings of subsidiary entities;

(d) royalties and revenue derived from intellectual property;

(e) taxes, funds, or fees collected for and remitted to a governmental entity;

(f) escrow or trust funds or other funds that are the property of a third party;

(g) sales tax paid by a contractor on building materials or supplies;

(h) sales tax paid on the purchase of materials or supplies which become a component of a product manufactured, produced, or constructed for sale;

- (i) revenue received from reimbursements from clients or customers in which the business charges no fee or interest for providing funds upfront to a client or customer;
- (j) revenue earned from engaging in business in another taxing jurisdiction where an additional business license tax is paid; or
- (k) the trade in value of a vehicle, equipment, or merchandise.

(3) Business taxable income for real estate brokers-in-charge is gross commissions retained.

(4) Business taxable income for manufacturers of goods or materials with a location in a taxing jurisdiction is the lesser of gross receipts or gross revenues collected from business done at the location as determined in accordance with Section [12-6-2280](#)(A) and (B) but applicable only to sales in a taxing jurisdiction or the amount of taxable income allocated and apportioned to that location for purposes of the business's state income tax return as determined in accordance with Section [12-6-2280](#)(A) and (B) but applicable only to sales in a taxing jurisdiction. Manufacturers include those taxpayers reporting a 'manufacturing' principal business activity code on their respective federal income tax return.

(C)(1) A business license must be issued to a taxpayer for a twelve-month period beginning May first and ending April thirtieth. A business license tax must be paid by the taxpayer to the taxing jurisdiction. A taxing jurisdiction may impose penalties if the tax is not paid before June first. If a business license is issued on a construction contract, the taxpayer may elect to have the business license expire at the completion of either the entire construction project or a phase of the construction project.

(2) The business license tax must be computed based on the business taxable income for the calendar year preceding May first or the business's twelve-month fiscal year preceding May first. For a new business license, the business license tax must be computed based on the estimated business taxable income for the calendar year preceding May first or the business's twelve-month fiscal year preceding May first. The use of a calendar year or twelve-month fiscal year must be determined by the basis used by the taxpayer in its most recently filed federal income tax return. A business license related to construction contract projects may be issued on an individual project basis at the option of the taxpayer.

(D) A taxing jurisdiction that requires a business license shall accept a standard business license application as established and provided by the Secretary of State.

(E)(1) A taxing jurisdiction shall establish a 2020 Business License Tax Rate Schedule using business license tax revenue collected for a twelve-month period in the 2018 business license year so that the aggregate county or municipal business license tax calculated for 2020 does not exceed the aggregate county or municipal business license tax collected in 2018, adjusted for inflation, from the same businesses.

(2) If the rate for a North American Industry Classification System (NAICS) sector, subsector, or industry is unchanged from 2018 to 2019, then the business license tax collections may be excluded from the calculation provided for in item (1).

(3) Beginning January 1, 2022, the 2020 Business License Tax Rate Schedule may be adjusted by majority vote of the county or municipal council.

(F) A taxing jurisdiction may not refuse to issue a certificate of occupancy for a building due to nonpayment of the business license tax by subcontractors. An ongoing highway construction operation may not be impeded by a taxing jurisdiction for nonpayment of the business license tax by a contractor or subcontractor.

(G) A taxpayer is entitled to a refund if it submits a business license tax payment that is greater than the amount owed. The refund must be requested by the taxpayer before June first. The taxing jurisdiction shall issue the refund to the taxpayer within thirty days of the taxpayer's request for the refund.

(H)(1) Any special ordinance or formal or informal agreement entered into between a taxing jurisdiction and a taxpayer regarding rate classes or the calculation of business license taxes which was adopted by ordinance or agreed to before January 1, 2020, is considered valid upon the approval of the taxpayer. A taxpayer may prove the existence and terms of an agreement through direct or circumstantial evidence, including evidence of prior payment accepted.

(2) This section does not impair or affect any special business license ordinance passed for economic stimulus or any formal or informal agreement between a county or a municipality and a taxpayer regarding the calculation of taxes entered into before January 1, 2020.

(I) For the purposes of levying a business license tax, a taxpayer performing a single act of a limited or isolated nature does not, in itself, constitute doing business in that taxing jurisdiction.

(J) Eleemosynary organizations are exempt from the business license tax. If an eleemosynary organization reports income from for-profit activities or unrelated

business income for federal income tax purposes to the Internal Revenue Service, then it is considered a taxpayer subject to the business license tax on the part of its business taxable income from the for-profit activities or unrelated business income.

Section [6-1-420](#). (A) A taxing jurisdiction shall allow the purchase of a business license as provided by Section [6-1-400](#) or a delivery license by any taxpayer that has no other physical presence within the taxing jurisdiction for the privilege of delivering its merchandise therein. The amount of the delivery license may not exceed one hundred dollars. A taxing jurisdiction may require by ordinance the purchase of a decal by the taxpayer for each delivery vehicle making deliveries within the taxing jurisdiction. The charge for the decal may not exceed the taxing jurisdiction's actual cost of the decal.

(B) As used in this section, 'delivery license' means a fixed rate business license issued by a taxing jurisdiction for the limited privilege of delivering and requisite set-up and installation, by the taxpayer's employees or agents, of the taxpayer's own merchandise in that taxing jurisdiction, by means of delivery vehicles owned, leased, or contracted by the taxpayer; provided that the gross receipts derived from the sale and any requisite set-up or installation of all merchandise so delivered into the taxing jurisdiction may not exceed seventy-five thousand dollars during the delivery license year, and any set-up or installation must relate only to that required by the contract between the taxpayer and the customer or as may be required by state or local law, and the merchandise so delivered. A common carrier, contract carrier, or similar delivery service making deliveries on behalf of others may not be entitled to purchase a delivery license.

(C) If at any time during the delivery license year the taxpayer fails to meet the criteria specified in this section, then within forty-five days after any of the criteria have been violated or exceeded, the taxpayer shall purchase a delivery license or other appropriate license from the taxing jurisdiction and may be subject to a penalty not to exceed ten dollars.

Section [6-1-430](#). (A)(1) By December thirty-first of every even year, a taxing jurisdiction shall adopt, by ordinance, the latest Standardized Business License Class Schedule as provided by the Secretary of State.

(2) The Secretary shall determine and revise the Standardized Business License Class Schedule every odd year using the latest available nationwide Internal Revenue Service statistics for the calculation of profitability of businesses and using the business classification codes of the latest North American Industry Classification System. The class schedule must be determined further by use of an index of profitability derived by ratios based on division of net profit as the numerator and

gross profit as the denominator. This index must be determined for each active and pertinent classification and subclassification, ranked from lowest ratio to highest ratio, and divided into seven classes. Pursuant to Section [6-1-400\(E\)](#), a taxing jurisdiction is authorized to establish the rate applicable to each license class in the Standardized Business License Class Schedule.

(3) A taxing jurisdiction, upon a finding of a rational basis as explained in its ordinance and by a positive majority vote of the county or municipal council, may provide for additional reasonable subclassifications based upon particularized considerations as needed for economic stimulus or the enhanced or disproportionate demands by specific business subclassifications on county or municipal services or infrastructure. The county or municipal council may review proposed additional subclassifications while in executive session but must adopt any new subclassifications on the record in a meeting open to the public. The details of proposed subclassifications discussed during executive session are exempt from Chapter 4, Title 30, the Freedom of Information Act, providing an exemption for efforts to attract business or industry to invest within South Carolina. Any subclassifications adopted by a county or municipal council expires upon the establishment by the Secretary of State of a revised Standard Business License Class Schedule every odd year unless the county or municipal council agree upon a different length of time, in which case the length of time agreed upon by the county or municipal council and the taxpayer is controlling.

(4) A taxing jurisdiction shall provide thirty days' notice to the public before holding a public meeting to adopt a business license subclassification or rate class.

(B) A taxing jurisdiction shall provide access to taxpayers for the reporting, calculation, and payment of business license taxes through the business license tax portal managed by the Office of the Secretary of State, subject to the availability and capability of the portal. Any limitations in portal availability or capability do not relieve taxpayers from existing business license or business license tax obligations. Any audit of income or assessment of tax reported through the business license tax portal must be undertaken by the taxing jurisdiction. Data obtained through the business license tax portal may not be used by the Secretary, the Municipal Association of South Carolina (MASC), or any other party for statewide analytics or any other purpose not specified in this section. The Secretary of State and the MASC are prohibited from auditing a taxpayer using the business license tax portal. In addition to allowing a payment through the business license tax portal, a taxing jurisdiction shall allow a taxpayer to file and pay its business license tax in person at a location within the taxing jurisdiction, by telephone, or by mail.

(C) The Secretary of State is authorized to contract with software providers and payment processors for the purposes of implementing the provisions of this section. The Secretary may promulgate regulations to carry out the provisions of this section.

(D) The Secretary of State may retain an amount not more than one quarter of one percent of the revenue collected, as approved by the Business License Class Schedule Board, to defray the administrative costs of administering the business license tax program, but the Secretary of State may not retain more than its actual administrative costs.

(E) The Secretary of State is authorized to expend any funds carried forward from previous fiscal years for the purpose of implementing the provisions of this section. Expenditures may not exceed the actual cost of implementing the provisions of this section.

Section [6-1-440](#). (A) The county or municipal business license official shall serve notice of assessment of business license tax due on the taxpayer by mail or personal service. Within thirty days after the date of postmark or personal service, a taxpayer may request, in writing with reasons stated, an adjustment of the assessment. An informal conference between the county or municipal business license official and the taxpayer must be held within fifteen days of the receipt of the request, at which the taxpayer may present any information or documents in support of the requested adjustment. Within five days after the conference, the county or municipal business license official shall issue a notice of final assessment and serve the taxpayer by mail or personal service with the notice and provide a form for any further appeal of the assessment by the taxpayer.

(B) Within thirty days after the date of postmark or personal service, the taxpayer may appeal from the notice of final assessment by filing the completed appeal form with the county or municipal business license official by mail or personal service, and by paying to the county or municipality in protest at least eighty percent of the business license tax based on the final assessment. The appeal must be heard and determined by the county or municipal council or its designated appeals officer or appeals board. The county or municipal council or its designee shall provide the taxpayer with written notice of the hearing and with any rules of evidence or procedure prescribed by the county or municipal council or its designee. The hearing must be held within thirty days after receipt of the appeal form unless continued to another date by agreement of the parties. A hearing by the county or municipal council, or its designee, or appeals board must be held at a regular or special meeting of the county or municipal council or appeals board. At the appeals hearing, the taxpayer and the county or municipality have the right to be represented by counsel, to present testimony and evidence, and to cross-examine witnesses. The hearing must be

recorded and must be transcribed at the expense of the party so requesting. The county or municipal council, or its designee, or appeals board shall decide the assessment by majority vote. The county or municipal council, or its designee, appeals board, or designated appeals officer shall issue a written decision explaining the basis for the decision with findings of fact and conclusions and shall inform the taxpayer of the right to request a contested case hearing before the Administrative Law Court. The written decision must be filed with the county or municipal business license official and served on the taxpayer by mail or personal service. The decision is the final decision of the county or municipality on the assessment.

(C) Within thirty days after the date of postmark or personal service of the county's or municipality's written decision on the assessment, a taxpayer may appeal the decision to the Administrative Law Court in accordance with the rules of the Administrative Law Court. The court may affirm, reverse, or remand the decision on assessment."

SECTION 3. Section [4-9-30](#)(12) of the 1976 Code is amended to read:

"(12) to levy uniform license taxes upon persons and businesses engaged in or intending to engage in a business, occupation, or profession, in whole or in part, within the county but outside the corporate limits of a municipality except those persons who are engaged in the profession of teaching or who are ministers of the gospel and rabbis, except persons and businesses acting in the capacity of telephone, telegraph, gas and electric utilities, suppliers, or other utility regulated by the Public Service Commission and except an entity which is exempt from license tax under another law or a subsidiary or affiliate of ~~any such~~ an exempt entity. No county license fee or tax may be levied on insurance companies. The license tax must be graduated according to the gross business taxable income of the person or business taxed. A wholesaler delivering goods to retailers in a county is not subject to the business license tax unless he maintains within the corporate limits of the county a warehouse or mercantile establishment for the distribution of wholesale goods. A business engaged in making loans secured by real estate is subject to the license tax only if it has premises located in the county but outside the corporate limits of a municipality. For the purpose of assessing the business license tax, 'business taxable income' has the same meaning as provided in Section [6-1-400](#)(B). If the person or business taxed pays a license tax to another county or to a municipality, the gross business taxable income for the purpose of computing the tax must be reduced by the amount of gross business taxable income taxed in the other county or municipality."

SECTION 4. Section [5-7-30](#) of the 1976 Code is amended to read:

"Section 5-7-30. (A) Each municipality of the State, in addition to the powers conferred to its specific form of government, may enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of powers in relation to roads, streets, markets, law enforcement, health, and order in the municipality or respecting any subject which appears to it necessary and proper for the security, general welfare, and convenience of the municipality or for preserving health, peace, order, and good government in it, including the authority to levy and collect taxes on real and personal property and as otherwise authorized in this section, make assessments, and establish uniform service charges relating to them; the authority to abate nuisances; the authority to provide police protection in contiguous municipalities and in unincorporated areas located not more than three miles from the municipal limits upon the request and agreement of the governing body of ~~such~~ a contiguous municipality or the county, including agreement as to the boundaries of ~~such~~ the police jurisdictional areas, in which case the municipal law enforcement officers shall have the full jurisdiction, authority, rights, privileges, and immunities, including coverage under the workers' compensation law, which they have in the municipality, including the authority to make arrests, and to execute criminal process within the extended jurisdictional area; provided, however, that this ~~shall~~ may not extend the effect of the laws of the municipality beyond its corporate boundaries; grant franchises for the use of public streets and make charges for them; grant franchises and make charges for the use of public beaches; engage in the recreation function; levy a business license tax ~~on gross income, but a wholesaler delivering goods to retailers in a municipality is not subject to the business license tax unless he maintains within the corporate limits of the municipality a warehouse or mercantile establishment for the distribution of wholesale goods; and a business engaged in making loans secured by real estate is not subject to the business license tax unless it has premises located within the corporate limits of the municipality and no entity which is exempt from the license tax under another law nor a subsidiary or affiliate of an exempt entity is subject to the business license tax;~~ borrow in anticipation of taxes; and pledge revenues to be collected and the full faith and credit of the municipality against its note and conduct advisory referenda. The municipal governing body may fix fines and penalties for the violation of municipal ordinances and regulations not exceeding five hundred dollars or imprisonment not exceeding thirty days, or both. If the person or business taxed pays a business license tax to a county or to another municipality where the income is earned, the gross business taxable income for the purpose of computing the tax must be reduced by the amount of gross business taxable income taxed in the other county or municipality.

(B) A wholesaler delivering goods to retailers in a municipality is not subject to the business license tax unless he maintains within the corporate limits of the municipality a warehouse or mercantile establishment for the distribution of wholesale goods. A

business engaged in making loans secured by real estate is not subject to the business license tax unless it has premises located within the corporate limits of the municipality. An entity which is exempt from the license tax under another law or a subsidiary or affiliate of an exempt entity is not subject to the business license tax. For the purpose of assessing the business license tax, 'business taxable income' has the same meaning as provided in Section 6-1-400(B).

(C) For the purpose of providing and maintaining parking for the benefit of a downtown commercial area, a municipality may levy a surtax upon the business license of a person doing business in a designated area in an amount not to exceed fifty percent of the current yearly business license tax upon terms and conditions fixed by ordinance of the municipal council. The area must be designated by council only after a petition is submitted by not less than two-thirds of the persons paying a business license tax in the area and who paid not less than one-half of the total business license tax collected for the preceding calendar year requesting the designation of the area. The business within the designated area which is providing twenty-five or more parking spaces for customer use is required to pay not more than twenty-five percent of a surtax levied pursuant to the provisions of this paragraph subsection."

SECTION 5. Section [6-1-120](#) of the 1976 Code is amended to read:

"Section [6-1-120](#). (A) Except in accordance with a proper judicial order or as otherwise provided by the Freedom of Information Act, it is unlawful for an officer or employee of a county or municipality, ~~or the agent of such an officer or employee to~~ divulge or make known in any manner the financial information, or ~~other information indicative of units of goods or services sold, provided by a taxpayer included~~ any particulars set forth or disclosed in a report, tax return, or application required to be filed by the taxpayer with that county or municipality pursuant to a county or municipal ordinance imposing a:

- (1) tax authorized under Article 5 or Article 7;
 - (2) business license tax authorized under Section [4-9-30](#)(12) or Section [5-7-30](#);
 - (3) fee the measure of which is:
 - (a) gross proceeds of sales of goods or services; or
 - (b) paid admissions to a place of amusement.
- (B) Nothing in this section prohibits the:

- (1) publication of statistics classified to prevent the identification of particular reports, returns, or applications and the information on them;
- (2) inspection of reports, returns, or applications and the information included on them by an officer or employee of the county or municipality, ~~or an agent retained by an officer or employee~~, in connection with audits of the taxpayer, appeals by the taxpayer, and collection efforts in connection with the tax or fee which is the subject of the return, report, or application;
- (3) sharing of data between public officials or employees in the performance of their duties, including the specific sharing of data as provided in Article 8 of this chapter, the Fairness in Lodging Act.
- (C) Notwithstanding any other provision of law, a city or county may not share or disclose any information relating to business license tax returns with any third party, specifically including a private sector auditor or auditing firm who is paid on a contingency fee or success basis and it is against the public policy of this state for a city or county to pay business license tax auditors on a contingency fee basis.
- (D) A business license application and tax return is not subject to Chapter 4, Title 30, the Freedom of Information Act. A business license application and tax return, as well as the right of inspection, may not be shared, transferred, assigned, or contracted to any other entity, agency, department, or other organization.
- (E) A person who knowingly violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both. In addition, if the person convicted is an officer or employee of the county or municipality, the offender must be dismissed from the office or position held and is disqualified from holding a public office in this State for five years following the conviction."

SECTION 6. Section [12-4-310](#)(10) and (11) of the 1976 Code is amended to read:

"(10) make available to the authorities of a municipality or county in this State levying a tax based on ~~gross receipts~~ business taxable income or net taxable sales, any records indicating the amount of ~~gross receipts~~ business taxable income or net taxable sales reported to the department; provided, however, that income tax records may be made available only if the department first has satisfied itself that the gross receipts reported to the municipality or county were less than the gross receipts as indicated by the records of the department; and

(11) provide data and assistance to municipalities and counties, or their agents, in which Article 8, Chapter 1, Title 6, the Fairness in Lodging Act, and Section 4-1-190, Section 5-7-320, and Article 4, Chapter 1, Title 6, the South Carolina Business License Tax Reform Act, is are implemented."

SECTION 7. This act takes effect January 1, 2020.

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This web page was last updated on January 15, 2020 at 4:10 PM



BEAUFORT COUNTY COUNCIL AGENDA ITEM SUMMARY

ITEM TITLE:
<i>Discussion – Update on the internal auditor</i>
MEETING NAME AND DATE:
Finance Committee 10/19/2020
PRESENTER INFORMATION:
<i>Hayes Williams Finance Director 5 Minutes</i>
ITEM BACKGROUND:
<i>The County had an RFP for the Internal Audit. The County meet with both proposing firms on 10/09/2020 to narrow the scope.</i>
PROJECT / ITEM NARRATIVE:
Representatives from Beaufort County meet virtually with Baker Tilly and Elliot Davis on 10/09/2020 to discuss the scope of work needed to complete the internal audit. Both companies are still interested, they will work to give Beaufort County updated pricing for their services.
FISCAL IMPACT:
N/A
STAFF RECOMMENDATIONS TO COUNCIL:
The bids should be ready by next Finance Committee meeting.
OPTIONS FOR COUNCIL MOTION:
<i>None – this topic was for informational purposes only.</i>

BEAUFORT COUNTY
STATE (2%) ATAX DISTRIBUTION

<u>FY</u>	<u># of Applications Received</u>	<u>Total Amount Requested</u>	<u>Allotment</u>	<u># of Applications Funded</u>
2017	41	\$ 1,328,670.00	\$ 550,000.00	37
2018	30	\$1,083,477.00	\$ 540,000.00	26
2019	33	\$ 976,842.00	\$ 490,000.00	28
2020	39	\$1,226,274.25	\$ 550,000.00	31



BEAUFORT COUNTY COUNCIL AGENDA ITEM SUMMARY

ITEM TITLE:
<i>Discussion – Update on State Accommodations Tax Awards</i>
MEETING NAME AND DATE:
Finance Committee 10/19/2020
PRESENTER INFORMATION:
<i>Hayes Williams – Finance Director</i> <i>5 minutes</i>
ITEM BACKGROUND:
Beaufort County is in the process of awarding the State Accommodations Tax funds.
PROJECT / ITEM NARRATIVE:
Beaufort County is awarding \$260,000 in State Accommodations Tax Funding. The awards will be substantially less than prior years due to unknown COVID 19 impacts. The State ATax Committee has twenty seven applications totaling \$1.5 million. The Committee is meeting on October 21 st in Council Chambers to review applications and make recommendations to County Council for funding. The ATax Chairman will appear before the Finance Committee on November 16, 2020 to make recommendations.
FISCAL IMPACT:
<i>None</i>
STAFF RECOMMENDATIONS TO COUNCIL:
None
OPTIONS FOR COUNCIL MOTION:
<i>Finance Committee needed to be aware of the State Accommodations Tax Committee meeting and the related timing to the awards.</i>



BEAUFORT COUNTY COUNCIL AGENDA ITEM SUMMARY

ITEM TITLE:
<i>Discussion on the RFP for State Accommodations Tax and Local Accommodations Tax to the DMO's and Chambers</i>
MEETING NAME AND DATE:
Finance Committee 10/19/2020
PRESENTER INFORMATION:
<i>Hayes Williams Finance Director 30 minutes</i>
ITEM BACKGROUND:
<i>The Finance Committee voted unanimously on September 21, 2020 to have an RFP for qualifying DMO's and Chambers.</i>
PROJECT / ITEM NARRATIVE:
The County is in the process of preparing an RFP for the marketing services related to State Accommodations Tax and Local Accommodations Tax.
FISCAL IMPACT:
<i>None</i>
STAFF RECOMMENDATIONS TO COUNCIL:
None – discussion on the process
OPTIONS FOR COUNCIL MOTION:
<i>N/A</i>

Beaufort County
 State Atax and Local Atax awards to DMO's and Chambers for 2020:

	State Atax	Local Atax	Total Received
Greater Beaufort CVB	119,785	150,000	269,785
HHI Bluffton Chamber	119,785	150,000	269,785
Beaufort County Black Chamber of Commerce		50,000	50,000
	239,571	350,000	589,571
	239,571	350,000	589,571

State Atax and Local Atax awards to DMO's and Chambers for 2019:

	State Atax	Local Atax	Total Received
Greater Beaufort CVB	119,995	150,000	269,995
HHI Bluffton Chamber	119,995	150,000	269,995
Beaufort County Black Chamber of Commerce		50,000	50,000
	239,990	350,000	589,990
	239,990	350,000	589,990



BEAUFORT COUNTY COUNCIL AGENDA ITEM SUMMARY

ITEM TITLE:
<i>CAFR Audit Discussion</i>
MEETING NAME AND DATE:
Finance Committee 10/19/2020
PRESENTER INFORMATION:
<i>Hayes Williams Interim CFO</i> <i>15 Minutes</i>
ITEM BACKGROUND:
<i>Update on the timeline of the CAFR.</i>
PROJECT / ITEM NARRATIVE:
There was a discussion with the audit partner for the engagement. Tentatively Mauldin and Jenkins should begin their fieldwork in mid- November. They project that best case scenario that they could have a draft audit report by December 31. There are factors that could cause delay such as staff changes, and unknown COVID 19 issues.
FISCAL IMPACT:
<i>10001111-51160 Professional Services \$65,500</i>
STAFF RECOMMENDATIONS TO COUNCIL:
None
OPTIONS FOR COUNCIL MOTION:
<i>None</i>

Beaufort County, South Carolina
 Carryover Budget FY 2021

Description	Carryover Amount	Amount Expended	Remaining Balance
GENERAL FUND			
Sheriff's Department			
Six Dodge Durangos	194,574.00	-	194,574.00
Geo Validation Upgrade	10,920.00	-	10,920.00
Install Two transfer switches for Shelter for emergencies	10,822.91	(10,822.91)	-
Four Computers	8,638.07	(8,638.07)	-
DNA Lab Expansion	461,175.93	-	461,175.93
DNA processing	5,000.00	(1,500.00)	3,500.00
Total Sheriff's Department	691,130.91	(20,960.98)	670,169.93
Public Works			
Repairing boat ramp Daufuskie Island	11,586.00	(11,586.00)	-
Repairing boat ramp Grays Hill	12,725.00	-	12,725.00
Bluffton Sound Wall	4,800.00	(4,800.00)	-
Broad River Blvd sidewalk repair	18,759.00	-	18,759.00
Total Public Works	47,870.00	(16,386.00)	31,484.00
Roads & Drainage			
Glass Crusher Shed	2,129.15	-	2,129.15
Repairing boat ramp Sands/ Sam's Point	7,475.00	(7,475.00)	-
Total Roads & Drainage	9,604.15	(7,475.00)	2,129.15
Mosquito Control			
Mosquito Control hanger heaters	21,214.00	-	21,214.00
Total Mosquito Control	21,214.00	-	21,214.00
Parks & Recreation			
2020 F250	28,579.00	(28,579.00)	-
Tennis or Pickle Ball Courts	65,000.00	-	65,000.00
Total Parks & Recreation	93,579.00	(28,579.00)	65,000.00
Animal Services			
Van for Animal Services	30,000.00	-	30,000.00
Total Animal Services	30,000.00	-	30,000.00
Treasurer's Office - General Fund Request			
Beaufort/ Bluffton/ Hilton Head Island Camera Update	12,609.88	(5,178.62)	7,431.26
Treasurer's Office	12,609.88	(5,178.62)	7,431.26

Beaufort County, South Carolina
Carryover Budget FY 2021

Description	Carryover Amount	Amount Expended	Remaining Balance
Facilities Maintenance			
278 Landscaping	13,112.00	(3,576.00)	9,536.00
BW lighting	1,586.89	-	1,586.89
Install doors Lind Brown Center	3,332.46	-	3,332.46
Administration Roof Repair	4,798.79	-	4,798.79
Wetland delineation Camp St. Mary's	400.00	(400.00)	-
Survey Camp St. Mary's	930.00	(930.00)	-
Hilton Head Island Library roof repair	1,927.73	-	1,927.73
LEC Generator	72,283.38	-	72,283.38
Detention Center Water Heater	127,195.75	-	127,195.75
Detention Center Roof Top Unit	11,687.30	-	11,687.30
Detention Center Kitchen Hood	1,890.11	-	1,890.11
Detention Center Cooler/Freezer	4,050.83	-	4,050.83
Detention Center Generator	157,511.37	-	157,511.37
Pools Architecture & Engineering	23,750.00	-	23,750.00
Architecture & Engineering new building	9,372.10	-	9,372.10
Total Facilities Maintenance	433,828.71	(4,906.00)	428,922.71
 Total Budget Amendment for General Fund	1,339,836.65	(83,485.60)	1,256,351.05
SPECIAL REVENUE FUND			
Treasurer's Office - Special Revenue Fund Request			
Beaufort/ Bluffton/ Hilton Head Island Camera Update	12,609.86	(5,178.62)	7,431.24
Treasurer's Office	12,609.86	(5,178.62)	7,431.24
STORMWATER PROPRIETARY FUND			
Stormwater			
Engineering service outfall erosion issues	3,320.00	(1,205.00)	2,115.00
Stormwater retention pond	20,550.00	-	20,550.00
Design & construct a regional stormwater best	22,763.74	-	22,763.74
Oak Marsh Plantation Drainage Improvements	6,725.00	-	6,725.00
Pine Tree & Water Oak Tree Removed & Dismantled	2,000.00	-	2,000.00
Remove & Install Drainage Pipe	2,800.00	(2,800.00)	-
Light bar install	2,053.18	-	2,053.18
International HX620 6x4 Dump Truck	164,778.68	(164,778.68)	-
International HX620 6x4 Dump Truck	164,778.68	(164,778.68)	-
Brewer Memorial Park BMP Demonstration	43,105.69	-	43,105.69
Sub watershed Regional Detention Center	265,806.37	-	265,806.37
Study & investigate to evaluate the current condition & capacity of the Stormwater Drainage Facilities	54,250.00	(15,300.00)	38,950.00
Total Stormwater	752,931.34	(348,862.36)	404,068.98
 Total	2,105,377.85	(437,526.58)	1,667,851.27



BEAUFORT COUNTY COUNCIL AGENDA ITEM SUMMARY

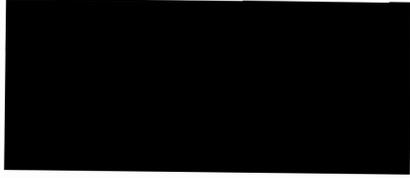
ITEM TITLE:
<i>Update on Carryover Budget 2021 Expenditures</i>
MEETING NAME AND DATE:
Finance Committee 10/19/2020
PRESENTER INFORMATION:
<i>Hayes Williams Finance Director 5 minutes</i>
ITEM BACKGROUND:
Approved at County Council meeting on 09/14/2020 on the Consent Agenda
PROJECT / ITEM NARRATIVE:
This is an update to County Council about the expenditures to date for the Carryover Budget FY2021.
FISCAL IMPACT:
<i>No fiscal impact these items were budgeted in 2020 and rolled into 2021.</i>
STAFF RECOMMENDATIONS TO COUNCIL:
N/A
OPTIONS FOR COUNCIL MOTION:
<i>N/A discussion update.</i>



BEAUFORT COUNTY COUNCIL AGENDA ITEM SUMMARY

ITEM TITLE:
CONSIDERATION OF THE APPOINTMENT AND REAPPOINTMENT TO THE AIRPORTS BOARD.
MEETING NAME AND DATE:
FINANCE COMMITTEE MEETING OCTOBER 19, 2020
PRESENTER INFORMATION:
COMMITTEE CHAIR HERVOCHON
ITEM BACKGROUND:
APPOINTMENT OF THOMAS SHEAHAN FOR ACTIVE/RECENTLY RETIRED COMMERCIAL PILOT WITHDRAW RESIGNATION/REAPPOINTMENT TO DAN AHERN FOR PROXIMITY 3 MILE RADIUS TO LI AIRPORT
PROJECT / ITEM NARRATIVE:
CONSIDERATION TO THE APPOINTMENT OF THOMAS SHEAHAN CONSIDERATION OF THE REAPPOINTMENT OF DAN AHERN TO THE AIRPORTS BOARD UNTIL REPLACEMENT IS FOUND.
FISCAL IMPACT:
N/A
STAFF RECOMMENDATIONS TO COUNCIL:
APPROVE, MODIFY OR REJECT
OPTIONS FOR COUNCIL MOTION:
MOTION TO (APPROVE, MODIFY, OR REJECT) REAPPOINTMENT OF DAN AHERN TO THE AIRPORTS BOARD MOTION TO (APPROVE, MODIFY, OR REJECT) APPOINTMENT OF THOMAS SHEAHAN TO THE AIRPORTS

Dan Ahern



Clerk to Council Office
100 Ribaut Road
Beaufort, SC 29902

To Whom it may concern:

This is a statement to verify the intention that I, Dan Ahern am seeking reappointment and withdraw my resignation from the Airports Board until a replacement is found. This is a temporary reappointment since I will only be serving, as I stated in my original resignation letter, to the end of this calendar year.

Sincerely,

Dan Ahern

A handwritten signature of Dan Ahern in cursive, followed by the date 9-22-2020 written in a simple, blocky font.



COUNTY COUNCIL OF BEAUFORT COUNTY
County Boards, Agencies, Commissions, Authorities and Committees

Item 20.

County Council of Beaufort County selects citizens for service on Council appointed Boards, Agencies, Commissions, Authorities and Committees from a roster of individuals who have either volunteered or have been recommended for appointment. The Clerk to Council uses this form to keep an up-to-date roster of volunteers and to provide Council basic information about each volunteer.

Top Three Priorities: Please indicate by placing a "1", "2", or "3" alongside your choices.

BOARDS AND COMMISSIONS

- ___ Accommodations Tax (2% State)
- 1 Airports
- ___ Alcohol and Drug Abuse
- ___ Assessment Appeals
- ___ Beaufort County Transportation
- ___ Beaufort-Jasper Economic Opportunity
- ___ Beaufort-Jasper Water & Sewer
- ___ Beaufort Memorial Hospital
- ___ Bluffton Township Fire
- ___ Burton Fire
- ___ Coastal Zone Management Appellate (inactive)
- ___ Construction Adjustments and Appeals
- ___ Daufuskie Island Fire
- ___ Design Review
- ___ Disabilities and Special Needs
- ___ Economic Development Corporation
- ___ Forestry (inactive)
- ___ Historic Preservation Review
- ___ Keep Beaufort County Beautiful
- ___ Lady's Island / St. Helena Island Fire
- ___ Library
- ___ Lowcountry Council of Governments
- ___ Lowcountry Regional Transportation Authority
- ___ Parks and Recreation
- ___ Planning *
- ___ Rural and Critical Lands Preservation
- ___ Sheldon Fire
- ___ Social Services (inactive)
- ___ Solid Waste and Recycling
- ___ Southern Beaufort County Corridor Beautification
- ___ Stormwater Management Utility
- ___ Zoning

DATE: 9-21-20 NAME: THOMAS W. SHEAHAN

BEAUFORT COUNTY VOTER REGISTRATION NUMBER: *

OCCUPATION: RETIRED

TELEPHONE: (Home) [REDACTED] EMAIL: [REDACTED]

HOME ADDRESS: [REDACTED] STATE: [REDACTED] ZIP CODE: [REDACTED]

MAILING ADDRESS: [REDACTED] STATE: [REDACTED] ZIP CODE: [REDACTED]

COUNTY COUNCIL DISTRICT: 1 2 3 4 5 6 7 8 9 10 11

ETHNICITY: Caucasian African American Other

Are you presently serving on a Board, Agency, Commission, Authority or Committee? Yes No

If "yes", what is the name of the board and when does term expire? _____

- Please return completed form and a brief resume' either Email or U.S. Mail:
 - o Email: boardsandcommissions@bcgov.net
 - o U.S. Mail: Clerk to Council, County Council of Beaufort County, P.O. Drawer 1228, Beaufort, SC 29901
- Applications without a brief resume' cannot be considered.
- Applications will be held **three (3) years** for consideration.
- All information contained on this application is subject to public disclosure.

YOU MUST BE A BEAUFORT COUNTY REGISTERED VOTER TO APPLY
YOU MUST ATTACH YOUR RESUME' WITH THIS APPLICATION TO BE CONSIDERED
An incomplete application will be returned

* Anyone submitting an application to serve on the Planning Commission must fill out the questionnaire on page 2.

Applicant's Signature: Thomas W. Sheahan

Submit by Email

* RETIRED SEP 1, 2020 FROM DELTA AIR LINES. IN PROCESS OF CHANGING RESIDENCY FROM GEORGIA TO SOUTH CAROLINA

THOMAS SHEAHAN



EXPERIENCE

DELTA AIRLINES

PILOT | 1986-2020

- Flight Engineer B727, L1011
- First Officer B727, L1011
- Captain MD88, B767/B757

UNITED STATES AIR FORCE

FIGHTER PILOT F4E/G | 1980-1986

- Osan Air Base – South Korea
- Moody Air Force Base – Valdosta, Georgia
- Spangdahlem Air Base – Germany

MCDONNELL DOUGLAS F4 TRAINING – HOMESTEAD AIR FORCE BASE | 1979-1980

UNDERGRADUATE PILOT TRAINING – REESE AIR FORCE BASE | 1978-1979

EDUCATION

United States Air Force Academy | BS Aeronautical Engineering | 1974-1978

PROFESSIONAL HIGHLIGHTS

23 years as a Captain at a Major Airline

Pilot ratings:

- Flight Engineer
- Commercial Pilot
- Air Transport pilot

Vaughn, Tithanie

From: Thomas Sheahan <sheahan78@gmail.com>
Sent: Wednesday, October 14, 2020 11:58 AM
To: Vaughn, Tithanie
Subject: Re: Airports board application

Follow Up Flag: Follow up
Flag Status: Flagged

[EXTERNAL EMAIL] Please report any suspicious attachments, links, or requests for sensitive information to the Beaufort County IT Division at helpdesk@bcgov.net or to 843-255-7000.

Tithanie,

I have received a voter registration number. Reg no. [REDACTED] Thank you for your patience.

Best regards,
Tom Sheahan

On Tue, Sep 22, 2020 at 11:04 AM Vaughn, Tithanie <tithanie.vaughn@bcgov.net> wrote:

Citizens are encouraged to call or e-mail before driving to a Beaufort County Office. Visit us online at www.beaufortcountysc.gov.
Effective July 17, all Beaufort County buildings are closed to the public until further notice to minimize opportunities to spread COVID-19 in our community.

Good Morning Mr. Sheahan,

We have received your application to serve as a member on the Airports Board for Active/retired commercial pilot.

As soon as you get your voter's registration number please email me so that we can submit your application to serve in the place of Barry Wilbur. We want to thank you for your willingness to be a part of our team.

Please, feel free to contact me if you have any questions.

Thank You,