

FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

between

GREENVILLE COUNTY, SOUTH CAROLINA

and

[PROJECT GINA]

Dated as of December 4, 2012

TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS.....	2
Section 1.01. Definitions.....	2
Section 1.02. References to Agreement.....	8
ARTICLE II REPRESENTATIONS AND WARRANTIES.....	8
Section 2.01. Representations and Warranties by County	8
Section 2.02. Representations and Warranties by the Company	9
ARTICLE III COVENANTS OF COUNTY.....	9
Section 3.01. Agreement to Accept Negotiated FILOT Payments	9
Section 3.02. Special Source Credits	9
Section 3.03. Multi-County Park Designation.....	11
Section 3.04. Commensurate Benefits.....	11
Section 3.05. Additional Commitments of the County.....	12
ARTICLE IV COVENANTS OF COMPANY	12
Section 4.01. Investment and Job Creation.....	12
Section 4.02. Funding for Special Source Improvements.....	14
Section 4.03. Payment of County Expenses	14
Section 4.04. Indemnification Covenants	15
Section 4.05. Use of Expansion Project for Lawful Activities	16
Section 4.06. Maintenance of Existence	16
Section 4.07. Records and Reports	17
ARTICLE V FEES IN LIEU OF TAXES.....	18
Section 5.01. Payment of Fees in Lieu of Ad Valorem Taxes.....	18
Section 5.02. Statutory Lien.....	24
ARTICLE VI THIRD PARTY ARRANGEMENTS.....	24
Section 6.01. Conveyance of Liens and Interests; Assignment	24
Section 6.02. Sponsors and Sponsor Affiliates.....	25
ARTICLE VII TERM; TERMINATION.....	26
Section 7.01. Term.....	26
Section 7.02. Termination.....	26
ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES	26
Section 8.01. Events of Default	26
Section 8.02. Remedies on Event of Default	27

TABLE OF CONTENTS
(continued)

	Page
Section 8.03. Defaulted Payments	27
Section 8.04. Default by County.....	27
ARTICLE IX MISCELLANEOUS	28
Section 9.01. Rights and Remedies Cumulative.....	28
Section 9.02. Successors and Assigns.....	28
Section 9.03. Notices; Demands; Requests.....	28
Section 9.04. Applicable Law	29
Section 9.05. Entire Understanding	29
Section 9.06. Severability	30
Section 9.07. Headings and Table of Contents; References	30
Section 9.08. Multiple Counterparts	30
Section 9.09. Amendments	30
Section 9.10. Waiver.....	30
Section 9.11. Further Proceedings	30
Section 9.12. Ambiguity or Disparity between this Agreement and Inducement Agreement.....	30
EXHIBIT A LEGAL DESCRIPTION.....	A-1

FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

THIS FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT (this “Agreement”) dated as of December 4, 2012, between GREENVILLE COUNTY, SOUTH CAROLINA (the “County”), a body politic and corporate and a political subdivision of the State of South Carolina, and **[PROJECT GINA,]** a [_____] organized and existing under the laws of the State of [____], acting for itself, one or more affiliates or other project sponsors (the “Company”);

WITNESSETH:

WHEREAS, the County, acting by and through its County Council (the “Council”), is authorized and empowered under and pursuant to the provisions of the Code of Laws of South Carolina 1976, as amended (the “Code”), particularly Title 12, Chapter 44 of the Code (the “Negotiated FILOT Act”) and Title 4, Chapter 1 of the Code (the “Multi-County Park Act” or, as to Section 4-1-175 thereof, and Section 4-29-68 of the Code by incorporation, the “Special Source Act”) (collectively, the “Act”) and by Article VIII, Section 13(D) of the South Carolina Constitution: (i) to enter into agreements with certain investors to construct, operate, maintain, and improve certain projects through which the economic development of the State of South Carolina (the “State”) will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ the manpower, agricultural products, and natural resources of the State; (ii) to covenant with such investors to accept certain fee in lieu of *ad valorem* tax (“FILOT”) payments, including, without limitation, negotiated FILOT payments, with respect to a project; (iii) to permit investors to claim special source revenue credits against their FILOT payments (“Special Source Credits”) to reimburse such investors for expenditures in connection with infrastructure serving the County and improved or unimproved real estate and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County (“Special Source Improvements”); and (iv) to create, in conjunction with one or more other counties, a multi-county industrial or business park in order to afford certain enhanced income tax credits to such investors and facilitate the grant of Special Source Credits; and

WHEREAS, the Company, which was formerly known to the County and identified as **[Project Gina]**, proposes to invest in, or cause others to invest in, the potential expansion of certain manufacturing and related facilities at one or more locations in the County (collectively, the “Expansion Project”) and anticipates that, should its plans proceed as presently contemplated, the Expansion Project will generate substantial investment and/or job creation in the County; and

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

WHEREAS, in accordance with such findings and determinations and in order to induce the Company to locate the Expansion Project in the County, the Council adopted a Resolution on November 6, 2012 (the “Inducement Resolution”) authorizing the execution and delivery by the County of an Inducement and Millage Rate Agreement dated as of November 6, 2012 (the “Inducement Agreement”), whereby the County agreed to provide, among other things, negotiated FILOT, multi-county industrial or business park, and Special Source Credits benefits, which, including any modifications thereto, are set forth in greater detail herein; and

WHEREAS, the County has determined it is in the best interest of the County to enter into this Agreement with the Company, subject to the terms and conditions set forth herein and, by an Ordinance enacted by the Council on December 4, 2012 (the “Ordinance”), approved the form, terms and conditions of this Agreement and ratified all prior actions taken with respect to the Expansion Project.

NOW, THEREFORE, in consideration of the premises; the potential investment and jobs to be created, or caused to be created, by the Company which contribute to the tax base and the economic welfare of the County; the respective representations and agreements hereinafter contained; and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the Company agree as follows:

ARTICLE I

DEFINITIONS

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

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

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

“*Agreement*” shall mean this Fee In Lieu of Tax and Incentive Agreement as originally executed and from time to time supplemented or amended as permitted herein.

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

“*Co-Investor*” shall mean any Sponsor or Sponsor Affiliate within the meaning of Sections 12-44-30(19) and (20) of the Negotiated FILOT Act, any Affiliate of the Company or of any such Sponsor or Sponsor Affiliate, any developer in a build-to-suit arrangement with respect to the Expansion Project, any lessor of equipment or other property comprising a part of the Expansion Project, and any financing entity or other third party investing in or providing funds for the Expansion Project. The Company shall notify the County in writing of the identity of any Sponsor, Sponsor Affiliate or other Co-Investor and shall, to the extent the Company and any such Co-Investor intend to extend the benefits of the Negotiated FILOT to property owned by such Co-Investor pursuant to **Section 6.02** hereof, comply with any additional notice requirements, or other applicable provisions, of the Negotiated FILOT Act. As of the date of original execution and delivery of this Agreement, the Company is the only Co-Investor.

“*Company*” shall mean [**Project Gina**], a [_____] and any surviving, resulting, or transferee entity in any merger, consolidation or transfer of assets permitted under **Sections 4.06** or **6.01** hereof or any other assignee hereunder which is designated by the Company and approved by the County.

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

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

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

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

“*Enhanced Investment FILOT Compliance Period*” shall mean the period commencing with the first day that Negotiated FILOT Property is purchased or acquired, whether before or after the date of this Agreement, and ending on the eighth anniversary of the end of the Property Tax Year in which the initial Negotiated FILOT Property comprising all or a portion of the Expansion Project is placed in service, all as specified in Section 12-44-30(13) of the Negotiated FILOT Act. The parties anticipate that the initial Negotiated FILOT Property comprising all or a portion of the Expansion Project will be placed in service in the Property Tax Year ending on December 31, 2012 and, in such event, the Enhanced Investment FILOT Compliance Period will end on December 31, 2020.

“*Enhanced Investment FILOT Minimum Requirement*” shall mean either (a) aggregate investment in the Expansion Project of at least \$200,000,000 (without regard to depreciation or other diminution in value) and creation of at least 125 new full-time jobs at the Project within the Enhanced Investment FILOT Compliance Period, or alternatively (b) investment in the Expansion Project of at least \$400,000,000 (without regard to depreciation or other diminution in value) within the Enhanced Investment FILOT Compliance Period, all as permitted by Section 12-44-30(7) of the Negotiated FILOT Act.

“*Event of Default*” shall have the meaning set forth in **Section 8.01** hereof.

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

“*Expansion Project*” shall mean: (i) the Land [**but excluding the portion of the Land presently titled in the name of the County pursuant to an existing FILOT arrangement between the County and the Company, which portion is comprised of Site [] as set forth in Exhibit A attached hereto**]; (ii) all buildings, structures, fixtures and other real property improvements now or hereafter constructed on the Land; (iii) all machinery, equipment, furnishings and other personal property now or hereafter acquired by or on behalf of the Company or any other Co-Investor for use on or about the Land; and (iv) any Replacement Property; provided, however, except as to Replacement Property, the term Expansion Project shall be deemed to include such real property improvements and personal property, whether now existing or hereafter constructed or acquired, only to the extent placed in service during the Investment Period.

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

“*Investment Period*” shall mean the period for completion of the Expansion Project, which shall be equal to the longer of (a) the Enhanced Investment FILOT Compliance Period and (b) in the event that (i) the Enhanced Investment FILOT Minimum Requirement is satisfied by the end of the Enhanced Investment FILOT Compliance Period and (ii) the Company has more than \$500,000,000 in capital invested in the State and employs more than one thousand (1,000) people in the State either upon satisfaction of the Enhanced Investment FILOT Minimum Requirement or subsequently thereto by the end of the Enhanced Investment FILOT Compliance

Period, the period commencing with the first day that Negotiated FILOT Property is purchased or acquired, whether before or after the date of this Agreement, and ending on the tenth anniversary of the end of the Property Tax Year in which the initial Negotiated FILOT Property comprising all or a portion of the Expansion Project is placed in service; provided, however, that in the event that the Enhanced Investment FILOT Minimum Requirement is not satisfied by the end of the Enhanced Investment FILOT Compliance Period, but the Standard FILOT Threshold Requirement is nevertheless satisfied by the end of the Standard FILOT Compliance Period, the Investment Period shall revert to the Standard FILOT Compliance Period and, in such event, the Investment Period shall hereby be automatically extended by three (3) years beyond the Standard FILOT Compliance Period; provided, further, that there shall be no extension of the period for meeting the Enhanced Investment FILOT Minimum Requirement beyond the Enhanced Investment FILOT Compliance Period, or, in the event that the Enhanced Investment FILOT Requirement is not met by the end of the Enhanced Investment FILOT Compliance Period, for meeting the Standard FILOT Minimum Requirement beyond the Standard FILOT Compliance Period, as the case may be, all determined as specified in Section 12-44-30(13) of the Negotiated FILOT Act.

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

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

“*Multi-County Park Act*” shall mean Title 4, Chapter 1 of the Code, as amended through the date hereof.

“*Multi-County Park Agreement*” shall mean that certain Agreement for Development for Joint County Industrial Park between the County and [**Anderson County**], South Carolina dated as of October 6, 1998, as amended, supplemented, or modified through the date hereof and as such agreement may be further amended, supplemented, or replaced from time to time.

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

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

“*Negotiated FILOT Property*” shall mean all property qualifying for the Negotiated FILOT as economic development property within the meaning of Section 12-44-30(6) of the

Negotiated FILOT Act, including, without limitation, each item of real and tangible personal property comprising the Expansion Project which is placed in service prior to the end of the Investment Period and which meets the requirements of Sections 12-44-30(6) and 12-44-40(C) of the Negotiated FILOT Act, together with all Replacement Property, but excluding any Non-Qualifying Property and any Released Property.

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

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

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

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

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

“*Special Source Act*” shall mean Section 4-1-175 of the Code, as amended.

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

“*Special Source Credits Investment Level*” shall mean aggregate investment in the Expansion Project of at least \$200,000,000 (without regard to depreciation or other diminution in value) within the Enhanced Investment FILOT Compliance Period.

“*Special Source Improvements*” shall mean, to the extent paid for by the Company or any other Sponsor or Sponsor Affiliate, any infrastructure serving the economic development of the County and any improved and unimproved real property, buildings, structural components of buildings, fixtures or other real property improvements used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County, all as set forth in the Special Source Act. For purposes of this Agreement, Special Source Improvements shall initially be deemed to include, without limitation, all roadwork, water, sewer, drainage, power and utility facilities serving the Expansion Project, as well as the portion of the Land comprising a portion of the Project, the buildings, fixtures and other real property improvements on the Land and any additions or improvements to any of the foregoing, whether paid for by the Company or any other Sponsor or Sponsor Affiliate directly or through lease payments. **[At the request of the Company, the County hereby agrees to hereafter consider inclusion of personal property, including machinery and equipment, as Special Source Improvements hereunder in accordance with Section 4-29-68(A)(2)(i) of the Code, which inclusion may be approved by a resolution of the Council.]**

“*Sponsor*” and “*Sponsor Affiliate*” shall mean an entity whose investment with respect to the Expansion Project will qualify for the Negotiated FILOT pursuant to **Section 6.02** hereof and Sections 12-44-30(19) or (20) and Section 12-44-130 of the Negotiated FILOT Act if the statutory investment requirements are met. As of the date of the original execution and delivery of this Agreement, the Company is the only Sponsor or Sponsor Affiliate.

“*Standard FILOT Compliance Period*” shall mean the period commencing with the first day that Negotiated FILOT Property is purchased or acquired, whether before or after the date of this Agreement, and ending on the fifth anniversary of the end of the Property Tax Year in which the initial Negotiated FILOT Property comprising all or a portion of the Expansion Project is placed in service, all as specified in Section 12-44-30(13) of the Negotiated FILOT Act. The parties anticipate that the initial Negotiated FILOT Property comprising all or a portion of the Expansion Project will be placed in service in the Property Tax Year ending on December 31, 2012 and that in such event, the Standard FILOT Compliance Period will end on December 31, 2017.

“*Standard FILOT Minimum Requirement*” shall mean investment in the Expansion Project of at least \$2,500,000 (without regard to depreciation or other diminution in value) within the Standard FILOT Compliance Period, in accordance with Section 12-44-30(14) of the Negotiated FILOT, which investment amount shall be calculated in accordance with Section 12-44-130 of the Negotiated FILOT Act and **Section 6.02** hereof.

“*Standard FILOT Threshold Requirement*” shall mean aggregate investment in the Expansion Project of at least \$7,000,000 (without regard to depreciation or other diminution in value) within the Standard FILOT Compliance Period.

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

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

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

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

ARTICLE II

REPRESENTATIONS AND WARRANTIES

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

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

(b) The County has determined the Expansion Project will subserve the purposes of the Act and has made all other findings of fact required by the Act in connection with the undertaking of the arrangements set forth herein.

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

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

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

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

(b) The Company presently intends to operate, or cause operation of, the Expansion Project as facilities primarily for manufacturing and related activities.

(c) The agreements with the County with respect to the Negotiated FILOT, the Special Source Credits and the Multi-County Park were factors in inducing the Company to locate the Expansion Project within the County and the State.

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

ARTICLE III

COVENANTS OF COUNTY

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

Section 3.02. Special Source Credits.

(a) As an additional incentive to induce the Company to locate the Expansion Project in the County, and as reimbursement for investment in Special Source

Improvements and subject to the requirements of the Special Source Act, the County does hereby agree that the Company and each other Sponsor or Sponsor Affiliate (each a "Credit Eligible Entity") shall be entitled to receive, and the County shall provide, Special Source Credits against each Negotiated FILOT Payment due with respect to the Expansion Project for a period of twenty (20) consecutive Property Tax Years, commencing with the Property Tax Year for which the initial Negotiated FILOT payment is due hereunder, in an amount equal to forty (40%) of each such Negotiated FILOT Payment.

(b) In the event the Expansion Project fails to satisfy the Enhanced Investment FILOT Minimum Requirement by the end of the Enhanced Investment FILOT Compliance Period, but has nevertheless satisfied the Standard FILOT Threshold Requirement by the end of the Standard FILOT Compliance Period, the following provisions shall apply:

(i) the Special Source Credits period of twenty (20) Property Tax Years set forth above in this **Section 3.02** shall be reduced by one (1) Property Tax Year for each full \$10,000,000 increment of investment shortfall, if any, when comparing the highest level of aggregate investment in the Expansion Project prior to the end of the Enhanced Investment FILOT Compliance Period to the Special Source Credits Investment Level.

As an example, assuming that the highest level of aggregate investment in the Expansion Project prior to the end of the Enhanced Investment FILOT Compliance Period is \$125,000,000 (i.e., an investment shortfall of seven (7) full \$10,000,000 increments of investment), the applicable Special Source Credits period would be reduced by seven (7) Property Tax Years; and

(ii) each Credit Eligible Entity shall make, or cause to be made, payment to the County as set forth in **Section 5.01(f)(i)** hereof.

(c) In accordance with the Special Source Act, the Special Source Credits authorized herein shall not, in the aggregate, exceed the aggregate cost of Special Source Improvements funded from time to time by the Company or any other Sponsor or Sponsor Affiliate, as the case may be, in connection with the Expansion Project.

(d) The Special Source Credits shall be reflected by the County on each bill to a Credit Eligible Entity for each such Negotiated FILOT Payment due, by reducing the total original Negotiated FILOT Payment otherwise due by the amount of such Special Source Credits.

(e) **THE SPECIAL SOURCE CREDITS AUTHORIZED HEREIN SHALL NOT CONSTITUTE A GENERAL OBLIGATION OF THE COUNTY, BUT SHALL BE A LIMITED OBLIGATION OF THE COUNTY PAYABLE SOLELY FROM THE**

NEGOTIATED FILOT PAYMENTS RECEIVED BY THE COUNTY WITH RESPECT TO THE EXPANSION PROJECT.

(f) On or before the April 30 immediately following the end of the Enhanced Investment FILOT Compliance Period, the Company will provide, or cause to be provided, a written certification to the County, in form and substance reasonably agreeable to the County and the Company, reflecting investment in the Expansion Project, job creation at the Expansion Project, and investment in Special Source Improvements, in the aggregate, within the Enhanced FILOT Compliance Period.

Section 3.03. Multi-County Park Designation. **[The County hereby represents that the Land is presently included within the Multi-County Park.]** The County will use its best efforts to insure that the Expansion Project and the Land will be included within the boundaries of the Multi-County Park, if not already so included, and that the Expansion Project and the Land will remain within the boundaries of the Multi-County Park pursuant to the provisions of the Multi-County Park Act and Article VIII, Section 13(D) of the State Constitution on terms which provide for all jobs created at the Expansion Project from January 1, 2012 through the end of the Investment Period, any additional jobs tax credits afforded by the laws of the State for projects located within multi-county industrial or business parks, and on terms which facilitate the Special Source Credits set forth herein.

Section 3.04. Commensurate Benefits. The parties acknowledge the intent of this Agreement, in part, is to afford the Company and each other Sponsor or Sponsor Affiliate the benefits specified in this Article III in consideration of the Company's decision to locate the Expansion Project within the County, and this Agreement has been entered into in reliance upon the enactment of the Act and the County's compliance with the requirements thereof. In the event that a court of competent jurisdiction holds that the Act is unconstitutional or this Agreement or the Multi-County Park Agreement or agreements similar in nature to this Agreement or the Multi-County Park Agreement are invalid or unenforceable in any material respect, or should the Company determine there is a reasonable doubt as to the validity or enforceability of this Agreement or the Multi-County Park Agreement in any material respect, then at the request of the Company, the County agrees to use its best efforts to extend to the Company and each other Sponsor or Sponsor Affiliate the intended benefits of this Agreement, including, without limitation, the Negotiated FILOT and the Special Source Credits, and agrees, if requested, to enter into a lease purchase agreement, subject to the provisions set forth below, with the Company and each other Sponsor or Sponsor Affiliate pursuant to Section 12-44-160, Title 4, Chapter 29 or Title 4, Chapter 12 of the Code, as applicable, or to take such other steps as may be appropriate to extend to the Company and each other Sponsor or Sponsor Affiliate the intended benefits of this Agreement. In furtherance of this covenant, the County also agrees that, in the event that, for any reason, the Multi-County Park is declared by a court of competent jurisdiction to be invalid or unenforceable in whole or in part, the Company and the County express their intentions that tax or FILOT payments be reformed so as to best afford the Company and each other Sponsor or Sponsor Affiliate benefits commensurate with, but not in excess of, those intended under this Agreement as then permitted by law, including without

limitation any benefits afforded under Title 12, Chapter 6, Title 4, Chapter 1 and Title 4, Chapter 29 of the Code, as applicable, to the extent allowed by law. The Company acknowledges, if a court of competent jurisdiction holds all or part of the Negotiated FILOT Act is unconstitutional or otherwise illegal, the Negotiated FILOT Act currently provides the Company and each other Sponsor or Sponsor Affiliate must transfer its respective portion of the Negotiated FILOT Property to the County pursuant to lease-purchase arrangements within 180 days following such determination in order for the Negotiated FILOT benefits to continue to apply to such property. In such lease purchase agreement, the County, upon the conveyance of title to the Expansion Project to the County at the expense of the Company or any such other Sponsor or Sponsor Affiliate, as the case may be, shall agree to lease the Expansion Project to the Company or any such other Sponsor or Sponsor Affiliate, as the case may be, upon terms and conditions mutually agreeable to the County and the Company, including without limitation any environmental representations and indemnification covenants of the Company reasonably requested by the County. At the end of the term of any such lease purchase agreement, and upon payment of all outstanding obligations incurred under such lease purchase agreement, the Company or any such other Sponsor or Sponsor Affiliate shall have the option to purchase its respective portion of the Expansion Project for Ten Dollars (\$10.00).

Section 3.05. Additional Commitments of the County. As an additional incentive to induce the Company to locate the Expansion Project in the County, the County will use commercially reasonable efforts to assist the Company and each other Co-Investor in securing and processing grants and other funding for infrastructure and other expenses in connection with the Expansion Project.

ARTICLE IV

COVENANTS OF COMPANY

Section 4.01. Investment and Job Creation.

(a) The Company hereby agrees to acquire, construct, equip, or improve or cause to be acquired, constructed, equipped, or improved, the Expansion Project, as the same shall be determined from time to time by the Company in its sole discretion. As required by Section 12-44-30(2) of the Negotiated FILOT Act, at least a portion of the Negotiated FILOT Property comprising the Expansion Project shall be placed in service no later than the end of the Property Tax Year which is three years from the year in which this Agreement is entered, *i.e.*, the Property Tax Year ending on December 31, 2015.

(b) Notwithstanding anything herein to the contrary, and to the maximum extent permitted by law, investment and job creation by any and all other Co-Investors shall, together with investment and job creation by the Company, count toward any investment and job creation requirements and thresholds set forth in this Agreement, including, without limitation, the Enhanced Investment FILOT Minimum Requirement, the Standard FILOT Threshold Requirement, and the Standard FILOT Minimum

Requirement, and the Special Source Credits Investment Level. Aggregate investment shall generally be determined by reference to the property tax returns of the Company and each other Co-Investor filed with respect to the Expansion Project, including without limitation, each such entity's SCDOR PT-300 or such comparable forms, as the Department of Revenue may provide in connection with projects under the Act and filed with respect to each Property Tax Year during the Investment Period, without regard to depreciation or other diminution in value.

(c) The Company and each other Co-Investor or other Sponsor or Sponsor Affiliate, as the case may be, shall retain title, or other property rights, to its respective portion of the Expansion Project throughout the Term of this Agreement, and the Company and each other Co-Investor shall have full right to mortgage, lease, or encumber all or any portion of the Expansion Project, including, without limitation, in connection with any financing transactions, without the consent of the County.

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

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

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

(iii) The Company and each other Sponsor or Sponsor Affiliate may, at any time and in its discretion by written notice to the County, remove any Negotiated FILOT Property, real or personal, from the Negotiated FILOT arrangement set forth in this Agreement and retain such property for use as part of its operations in the County, and thereafter such property will be subject to *ad valorem* taxes or to FILOT payments pursuant to the Multi-County Park Act, as the case may be; provided, that, any such notice requirement may be, but shall not be required to be, satisfied by property tax returns filed with respect to the Expansion Project, including without limitation, such entity's SCDOR PT-300 or

such comparable forms, as the Department of Revenue may provide in connection with projects under the Act.

(iv) If the Company or any other Co-Investor sells, leases, or otherwise disposes of any portion of, or adds to, the Land, the Company, or such Co-Investor, shall deliver to the County a revised **Exhibit A** to this Agreement or supplements to **Exhibit A** and such revised or supplemented Exhibit A shall be automatically made a part of this Agreement without the necessity of additional action or proceedings by the County; provided, that any requirement to provide such supplements to the County may be, but shall not be required to be, satisfied by property tax returns filed with respect to the Expansion Project, including without limitation, such entity's SCDOR PT-300 or such comparable forms, as the Department of Revenue may provide in connection with projects under the Act.

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

Section 4.02. Funding for Special Source Improvements. The Company agrees that it will provide, or cause other Sponsors or Sponsor Affiliates to provide, funding for the Special Source Improvements related to the establishment of the Expansion Project.

Section 4.03. Payment of County Expenses. The Company will reimburse, or cause reimbursement to, the County for all reasonable and necessary expenses, including reasonable and necessary attorneys' fees, to which it might be put in (i) the review and completion of this Agreement, the Inducement Agreement, any amendments to existing FILOT arrangements contemplated hereby or by the Ordinance, and any related procedural documents and the initial implementation of the terms and provisions of this Agreement, the Inducement Agreement, any amendments to existing FILOT arrangements contemplated hereby or by the Ordinance, and any related procedural documents, all up to a maximum aggregate amount of \$12,500, and (ii) thereafter, the fulfillment of its obligations under this Agreement, the Inducement Agreement, any amendments to existing FILOT arrangements contemplated hereby or by the Ordinance, and any related procedural documents; provided, however, that notwithstanding anything herein to the contrary, the Company shall not be required to reimburse, or cause reimbursement to, the County for, and the County shall not seek reimbursement of, any expenses incurred by the County arising from the County's customary performance of its obligations under, or the routine administration of its duties in connection with, this Agreement, the Inducement Agreement, any such amendments to such existing FILOT arrangements, and any such related procedural documents, including, but not limited to, any expenses incurred by the County which arise from the determination of any FILOT payments due by the Company or any other Co-Investor, or Special Source Credits due to the Company or any other Co-Investor, thereunder, and the preparation of any FILOT bills or notices to the Company or any other Co-Investor related thereto.

Section 4.04. Indemnification Covenants.

(a) Notwithstanding any other provisions in this Agreement or in any other agreements between the Company and the County, (a) the Company shall agree to indemnify and save the County, its members, elected officials, officers, employees, servants and agents (collectively, the “Indemnified Parties”), harmless against and from all claims brought against the Indemnified Parties by or on behalf of any third party person, firm or corporation arising from the conduct or management of, or from any work or thing done on the Expansion Project during the Term, and, the Company further, shall indemnify and save the Indemnified Parties harmless against and from all claims brought against the Indemnified Parties arising during the Term from (i) any condition of the Expansion Project, (ii) any breach or default on the part of the Company in the performance of any of its obligations under this Agreement, (iii) any act of negligence of the Company, or of any agents, contractors, servants, employees or licensees, (iv) except in such cases where the County has released the Company pursuant to Section 6.01 hereof, any act of negligence of any assignee or lessee of the Company, or of any agents, contractors, servants, employees or licensees of any assignee or lessee of Company, (v) any environmental violation, condition, or effect. The Company shall indemnify and save the Indemnified Parties harmless from and against all reasonable costs and expenses incurred by the Indemnified Parties in connection with defending against any such claim arising as aforesaid or in connection with defending against any action or proceeding brought thereon, and upon notice from the Indemnified Parties, 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 during the Term of the Project by reason of the terms of this Agreement, or the undertakings required of the County hereunder, by reason of the granting of the Negotiated FILOT, by reason of the execution of this Agreement, by reason of the performance of any act requested of it by the Company, or by reason of the operation of the Expansion Project by the Company, nevertheless, if the County, its agents, officers or employees should incur any such pecuniary liability during the Term of this Agreement, then in such event the Company shall indemnify and hold them harmless against all claims by or on behalf of any third party person, firm or corporation, arising out of the same, and all reasonable costs and expenses incurred in connection with defending against any such claim or in connection with defending against any such action or proceeding brought thereon, and upon reasonable notice, the Company shall defend them in any such action or proceeding.

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

(d) No termination of this Agreement pursuant to any provision elsewhere in this Agreement shall relieve the Company of its duties and obligations to make the payments required by this Section 4.04, all of which duties and obligations shall survive any such termination.

Section 4.05. Use of Expansion Project for Lawful Activities. During the Term of this Agreement, the Company and each other Co-Investor may use the Expansion Project as it deems fit for any lawful purpose.

Section 4.06. Maintenance of Existence. Except in the event the resulting, surviving, or transferee entity is the Company or an Affiliate of the Company, as to which such consolidation, merger, or transfer the County hereby preapproves and consents, unless the County shall provide prior consent or subsequent ratification otherwise, which consent or ratification shall not be unreasonably withheld, conditioned, or delayed, the Company covenants that it will maintain its separate existence and will not dissolve or consolidate with, merge into or transfer, or otherwise dispose of substantially all of its property to any other entity or permit one or more other entities to consolidate with or merge into it or purchase substantially all of its property unless:

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

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

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

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

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

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

Section 4.07. Records and Reports. The Company and each other Sponsor or Sponsor Affiliate will maintain such books and records with respect to the Expansion Project as will permit the identification of those portions of the Expansion Project it places in service in each Property Tax Year during the Investment Period, the amount of investment with respect thereto, computations of all Negotiated FILOT Payments made by such entity hereunder and will comply with all reporting requirements of the State and the County applicable to Negotiated FILOT Property under the Negotiated FILOT Act, including without limitation the reports required by 12-44-90 of the Negotiated FILOT Act (collectively, "Filings"); provided, however, that the parties hereby waive in its entirety the requirement under Section 12-44-55 of the Negotiated FILOT Act for a recapitulation of the terms of this Agreement. In addition, the following records shall be provided to the County:

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

(b) Each year during the Term hereof, the Company and each other Sponsor or Sponsor Affiliate shall deliver to the County Auditor, the County Assessor, and the County Treasurer a copy of its most recent annual filings made with the Department of Revenue with respect to the Expansion Project at the same time as delivery thereof to the Department of Revenue.

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

Notwithstanding any other provision of this Section, the Company and each other Sponsor or Sponsor Affiliate may, by clear, written designation, conspicuously marked, designate with respect to any Filings or other documents or information delivered to the County segments thereof that the Company or such other Sponsor or Sponsor Affiliate believes contain proprietary, confidential, or trade secret matters. To the extent permitted by law, the County shall comply with all reasonable, written requests made by the Company and each other Sponsor or Sponsor Affiliate with respect to maintaining the confidentiality of such designated segments. Except to the extent required by law, the County shall not knowingly and voluntarily release information, which has been designated as confidential or proprietary by the Company or any other Sponsor or Sponsor Affiliate.

ARTICLE V

FEES IN LIEU OF TAXES

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

(a) In accordance with the Negotiated FILOT Act, the parties hereby agree, during the Term hereof, that there shall be due annually with respect to that portion of the Expansion Project constituting Negotiated FILOT Property, whether owned by the Company or by any other Sponsor or Sponsor Affiliate, a Negotiated FILOT calculated as set forth in this **Section 5.01**, at the places, in the manner and subject to the penalty assessments prescribed by the County or the Department of Revenue for *ad valorem* taxes. It is anticipated that the initial Negotiated FILOT Payment, which shall be due under current Code requirements on the January 15 following the year in which the County adds the initial Negotiated FILOT Property to its tax rolls, will be due on January 15, 2014. If the Company designates any Sponsor or Sponsor Affiliate, as the same shall have been consented to by the County, if such consent is required pursuant to **Section 6.02** hereof, the Company must notify the County in writing at the time of such designation as to whether such Sponsor or Sponsor Affiliate shall be primarily liable for the Negotiated FILOT Payments hereunder with respect to such other entity's portion of the Negotiated FILOT Property. Unless and until such additional notification is received, the Company shall be primarily liable for all Negotiated FILOT Payments with respect to such Negotiated FILOT Property.

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

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

(ii) The Negotiated FILOT shall be determined using: (1) an assessment ratio of 4%; provided, that, in the event that the Expansion Project fails to qualify as an Enhanced Investment FILOT Project but nevertheless qualifies as a Standard FILOT Project, an assessment ratio of 6% shall be used; (2) the lowest millage rate or millage rates allowed with respect to the Expansion Project pursuant to Section 12-44-50(A)(1)(d) of the Negotiated FILOT Act, which the parties believe to be [___] mills, and which millage rate or millage rates shall be fixed pursuant to Section 12-44-50(A)(1)(b)(i) of the Negotiated FILOT Act for the full term of the Expansion Project Negotiated FILOT; and (3) the fair market value of such Negotiated FILOT Property as determined in accordance with Section 12-44-50(A)(1)(c) of the Negotiated FILOT Act, which, for typical arm's length construction or acquisition, uses the original income tax basis for any real property without regard to depreciation or reassessment and the original income tax basis for any personal property less allowable depreciation (except depreciation due to extraordinary obsolescence); provided, however, that the Company or any other Sponsor or Sponsor Affiliate and the County may agree at a later date to amend this Agreement as to Expansion Project property owned by such entity so as to determine the fair market value of any such real property in accordance any other method permitted by the Negotiated FILOT Act.

(iii) All such calculations shall take into account all deductions for depreciation or diminution in value allowed by the Code or by the tax laws generally, as well as tax exemptions which would have been applicable if such property were subject to *ad valorem* taxes, except the five-year exemption from County taxes allowed for certain manufacturing, distribution, corporate headquarters and research and development facilities pursuant to Section 3(g) of Article X of the Constitution of the State and Sections 12-37-220(B)(32) and (34) of the Code.

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

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

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

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

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

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

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

(i) Such Replacement Property does not have to serve the same function as the Released Property it is replacing. Replacement Property is deemed to replace the oldest property subject to the Negotiated FILOT, whether real or personal, which is disposed of in the same Property Tax Year as the Replacement Property is placed in service. Replacement Property qualifies for Negotiated FILOT Payments up to the original income tax basis of the Released Property which it is replacing in the same Property Tax Year. More than one piece of property can replace a single piece of property. To the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the Released Property which it is replacing, the excess amount is subject to

payments equal to the *ad valorem* taxes which would have been paid on such property but for this Agreement. Replacement property is entitled to the Negotiated FILOT Payments for the remaining portion of the thirty-year period applicable to the Released Property.

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

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

(f)

(i) In the event that the Enhanced Investment FILOT Minimum Requirement is not satisfied by the end of the Enhanced Investment FILOT Compliance Period, but the Standard FILOT Threshold Requirement is nevertheless satisfied by the end of the Standard FILOT

Compliance Period, then (1) the Expansion Project shall continue to be eligible for Negotiated FILOT Payments as set forth in **Section 5.01** hereof, but such Negotiated FILOT Payments shall be determined with an applicable assessment ratio of 6%, retroactively and prospectively, and (2) each Credit Eligible Entity shall make, or cause to be made, payment to the County in an amount equal to the difference between the Negotiated FILOT Payments theretofore made by such Credit Eligible Entity with respect to the Expansion Project (as a project anticipated to satisfy the Enhanced Investment FILOT Minimum Requirement) after application of the Special Source Credits, and the Negotiated FILOT Payments which would have been theretofore due from such Credit Eligible Entity with respect to the Expansion Project (as a project that actually satisfied the Standard FILOT Threshold Requirement) after application of the Special Source Credits, which differential payment shall be due to the County from each such Credit Eligible Entity, with respect to its portion of the Expansion Project, within one hundred eighty (180) days from the Negotiated FILOT Payment due date with respect to Expansion Project property placed in service as of the final Property Tax Year of the Enhanced Investment FILOT Compliance Period.

(ii) In the event that the Enhanced Investment FILOT Minimum Requirement is not satisfied by the end of the Enhanced Investment FILOT Compliance Period and the Standard FILOT Threshold Requirement is not satisfied by the end of the Standard FILOT Compliance Period, then all Negotiated FILOT Payments shall revert retroactively to *ad valorem* taxes, calculated as set forth in paragraph (e) above, and a Deficiency Payment from each such owing entity shall be due and payable with respect to Negotiated FILOT Payments theretofore made. In the event that the aggregate investment in the Expansion Project does not exceed \$5,000,000 by the end of the Standard FILOT Compliance Period and any Sponsor or Sponsor Affiliate does not satisfy the Standard FILOT Minimum Requirement solely through its own direct investment in the Expansion Project, then the Negotiated FILOT Payments with respect to that portion of the Expansion Project owned by such Sponsor or Sponsor Affiliate shall revert retroactively to *ad valorem* taxes calculated as set forth in paragraph (e) above, and such Sponsor or Sponsor Affiliate shall owe a Deficiency Payment with respect to Negotiated FILOT Payments theretofore made as to such portion of the Expansion Project. To the extent necessary to collect a Deficiency Payment under this subparagraph (ii) due to failure to satisfy the Standard FILOT Minimum Requirement by the end of the Standard FILOT Compliance Period, Section 12-44-140(D) of the Negotiated FILOT Act provides that any statute of limitations that might apply pursuant to Section 12-54-85 of the Code is suspended.

(iii) In the event that the Enhanced Investment FILOT Minimum Requirement is satisfied by the end of the Enhanced Investment FILOT Compliance Period, but following the Enhanced Investment FILOT Compliance Period, investment in the Expansion Project, without regard to depreciation or other diminution in value, falls below the lowest investment level that the Expansion Project must maintain in order to continue to qualify as an “enhanced investment” pursuant to Section 12-44-30(7) of the Negotiated FILOT Act (as in effect on the date hereof), so long as investment in the Expansion Project, without regard to depreciation, reassessment, or other diminution in value, maintains the investment level set forth in the Standard FILOT Threshold Requirement, then the Expansion Project shall continue to be eligible for Negotiated FILOT Payments set forth in **Section 5.01** hereof, but such Negotiated FILOT Payments shall be determined with an applicable assessment ratio of 6%, prospectively, commencing with any Negotiated FILOT Payments due with respect to the first Property Tax Year following the Property Tax Year in which such deficiency occurs. In the event that the Enhanced Investment FILOT Minimum Requirement is not satisfied by the end of the Enhanced Investment FILOT Compliance Period, but the Expansion Project nevertheless continues to be eligible for Negotiated FILOT Payments pursuant to **Section 5.01(f)(i)** hereof, if following the Standard FILOT Compliance Period, investment in the Expansion Project, without regard to depreciation or other diminution in value, falls below the investment level set forth in the Standard FILOT Threshold Requirement, then the Expansion Project shall prospectively be subject to *ad valorem* taxes, or to FILOT payments pursuant to the Multi-County Park Act, as the case may be, calculated as set forth in paragraph (e) above, in accordance with Section 12-44-140(C) of the Negotiated FILOT Act commencing with any Negotiated FILOT Payments due with respect to the first Property Tax Year following the Property Tax Year in which such deficiency occurs.

(iv) In accordance with the provisions of **Sections 4.01(b)** and **6.02** hereof, except for Existing Property, all property utilized by the Company or any other Co-Investor at the Expansion Project site, whether owned by the Company or any other Co-Investor outright or utilized by the Company or any other Co-Investor pursuant to any financing agreement or any lease or other arrangement with any Co-Investor and whether or not subject to this Agreement, shall be counted toward all investment obligations under this Agreement, including, to the extent permitted by law, investment obligations under the Act.

(g) Except as otherwise set forth in this Agreement or as otherwise required by the Act, any amounts due to the County under this **Section 5.01** as a Deficiency

Payment or other retroactive payment shall be paid within one hundred eighty (180) days following receipt by the Company or any other Sponsor or Sponsor Affiliate of notice from the County that such a Deficiency Payment or other retroactive payment is due from such entity.

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

ARTICLE VI

THIRD PARTY ARRANGEMENTS

Section 6.01. Conveyance of Liens and Interests; Assignment. The County agrees that the Company and each other Sponsor or Sponsor Affiliate may at any time (a) transfer all or any of its rights and interests hereunder or with respect to all or any part of the Expansion Project to any Person; or (b) enter into any lending, financing, leasing, security, or similar arrangement or succession of such arrangements with any financing entity or other Person with respect to this Agreement or all or any part of the Expansion Project, including without limitation any sale-leaseback, equipment lease, build-to-suit lease, synthetic lease, nordic lease, defeased tax benefit or transfer lease, assignment, sublease or similar arrangement or succession of such arrangements, regardless of the identity of the income tax owner of such portion of the Expansion Project, whereby the transferee in any such arrangement leases the portion of the Expansion Project in question to the Company or any other Sponsor or Sponsor Affiliate or any of their respective Affiliates or operates such assets for the Company or any other Sponsor or Sponsor Affiliate or any of their respective Affiliates or is leasing portion of the Expansion Project in question from the Company or any other Sponsor or Sponsor Affiliate or any of their respective Affiliates. In order to preserve the benefits of the Negotiated FILOT hereunder with respect to any Negotiated FILOT Property so transferred, leased, financed, or otherwise affected: (i) except in connection with any transfer to any other Sponsor or Sponsor Affiliate or an Affiliate of the Company or any Sponsor or Sponsor Affiliate, or transfers, leases, or financing arrangements pursuant to clause (b) above (as to which such transfers the County hereby consents), the Company shall obtain the prior consent or subsequent ratification of the County which consent or subsequent ratification may be granted by the County, in its sole discretion; (ii) except when a financing entity which is the income tax owner of all or part of the Negotiated FILOT Property is the transferee pursuant to clause (b) above and such financing entity assumes in writing the obligations of the Company or any such other Sponsor or Sponsor Affiliate hereunder, or when the County consents in writing or when the transfer relates to Released Property pursuant to **Section 4.01(d)** hereof, no such transfer shall affect or reduce any of the obligations of the Company or any such other Sponsor or Sponsor Affiliate hereunder; (iii) to the extent the transferee or financing entity shall become obligated to make Negotiated FILOT payments hereunder, the transferee shall assume the then current basis of the Company or any

such other Sponsor or Sponsor Affiliate (or prior transferee) in the Negotiated FILOT Property transferred; (iv) the Company or any such other Sponsor or Sponsor Affiliate, transferee or financing entity shall, within sixty (60) days thereof, furnish or cause to be furnished to the County and the Department of Revenue a true and complete copy of any such transfer agreement; and (v) the Company or any such other Sponsor or Sponsor Affiliate and the transferee shall comply with all other requirements of the Transfer Provisions.

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

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

Section 6.02. Sponsors and Sponsor Affiliates. The Company may designate from time to time other Sponsors or Sponsor Affiliates pursuant to the provisions of Sections 12-44-30(19) or (20), respectively, and Section 12-44-130 of the Negotiated FILOT Act, which Sponsors or Sponsor Affiliates shall be Persons who join with the Company and make investments with respect to the Expansion Project, or who participate in the financing of such investments, who agree to be bound by the terms and provisions of this Agreement and who shall be Affiliates of the Company or other Persons described in **Section 6.01(b)** hereof. All other Sponsors or Sponsor Affiliates who otherwise meet the requirements of Section 12-44-30 (19) or (20) and Section 12-44-130 of the Negotiated FILOT Act must be approved by Resolution of the County Council. To the extent that a Sponsor or Sponsor Affiliate invests an amount equal to the Standard FILOT Minimum Requirement at the Expansion Project prior to the end of the Standard FILOT Compliance Period the investment by such Sponsor or Sponsor Affiliate shall at least qualify for the Negotiated FILOT utilizing an assessment ratio of 6% payable under **Section 5.01** hereof (subject to the other conditions set forth therein) in accordance with Section 12-44-30(19) of the Negotiated FILOT Act. To the extent that the aggregate investment in the Expansion Project prior to the end of the Standard FILOT Compliance Period by the Company, all Sponsors and Sponsor Affiliates and, to the extent provided by law, other Co-Investors, exceeds \$5,000,000 as provided in Section 12-44-30(19) of the Negotiated FILOT Act, all investment by such Sponsors and Sponsor Affiliates during the Investment Period shall at least qualify for the Negotiated FILOT utilizing an assessment ratio of 6% pursuant to **Section 5.01** of this Agreement (subject to the other conditions set forth therein) regardless of whether each such entity invested amounts equal to the Standard FILOT Minimum Requirement. The Company shall provide the County and the Department of Revenue with written notice of any Sponsor or Sponsor Affiliate designated pursuant to this **Section 6.02** within ninety (90) days after the end of the calendar year during which any such Sponsor or Sponsor Affiliate has placed in service

Negotiated FILOT Property to be used in connection with the Expansion Project, all in accordance with Section 12-44-130(B) of the Negotiated FILOT Act.

ARTICLE VII

TERM; TERMINATION

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

Section 7.02. Termination. In addition to the rights of the County under **Sections 5.01(f)** and **8.01**, the County and the Company may jointly agree to terminate this Agreement at any time, or the Company, may, at its option, unilaterally terminate this Agreement at any time, with respect to all, or a portion of, the Expansion Project in which event the Expansion Project, or such portion of the Expansion Project, shall be subject to *ad valorem* taxes or to FILOT payments, as the case may be, from the date of termination. Notwithstanding termination of this Agreement, the County shall have the same rights to receive payment for any retroactive *ad valorem* taxes, Deficiency Payments, interest or penalties, and the same enforcement rights with respect to such obligations as it would have with respect to *ad valorem* taxes, and the County's rights arising under **Section 5.01** and **Section 4.04** hereof prior to the time of such termination shall survive any such termination.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

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

(a) if default shall be made in the due and punctual payment of any Negotiated FILOT Payments, which default shall not have been cured within thirty (30) days following receipt of written notice of such default from the County; or

(b) if default shall be made in the due performance of or compliance with any of the terms hereof, other than those referred to in the foregoing **paragraph (a)**, and such default shall continue for ninety (90) days after the County shall have given the Defaulting Entity written notice of such default; provided, the County may, in its discretion, grant the Defaulting Entity a longer period of time as necessary to cure such default if the Defaulting Entity proceeds with due diligence to cure such default; provided

however, that no Event of Default shall exist under this Agreement during any period when there is pending, before any judicial or administrative tribunal having jurisdiction, any proceeding in which the Defaulting Entity has contested in good faith the occurrence of such default.

Notwithstanding anything herein to the contrary, failure to meet any investment or job creation requirements set forth herein shall not be deemed to be an Event of Default under this Agreement, but may terminate certain benefits hereunder or obligate the Company or other Sponsor or Sponsor Affiliate, as the case may be, to make certain additional payments to the County, all as set forth in **Section 5.01(f)** hereof.

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

(a) terminate this Agreement by delivery of written notice to the Defaulting Entity not less than sixty (60) days prior to the termination date specified therein;

(b) have access to and inspect, examine, and make copies of the books and , records of the Defaulting Entity pertaining to the construction, acquisition, or maintenance of the Expansion Project or calculation of the Negotiated FILOT pursuant hereto as provided in **Section 4.07** hereof;

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

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

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

ARTICLE IX

MISCELLANEOUS

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

Section 9.02. Successors and Assigns. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, any Sponsor or Sponsor Affiliates designated pursuant to **Section 6.02** hereof, and their respective successors and assigns as permitted hereunder.

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

(a) if to the County:

Greenville County Administrator
Greenville County
Attn.: Greenville County Administrator

Phone: _____

Fax: _____

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

Greenville Area Development Corporation

Phone: _____

Fax: _____

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

Greenville County Attorney
Greenville County

Phone: _____

Fax: _____

(d) if to Company:

Project Gina

Phone: _____

Fax: _____

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

Nexsen Pruet, LLC
Burnet R. Maybank, III, Esq.
Tushar V. Chikhliker, Esq.
P.O. Box 2426
1230 Main Street, Suite 700
Columbia, South Carolina 29201
Phone: 803-771-8900
Fax: 803-253-8277

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

Section 9.05. Entire Understanding. This Agreement expresses the entire understanding and all agreements of the parties hereto with each other, and neither party hereto has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth in this Agreement or in certificates delivered in connection with the execution and delivery hereof.

Section 9.06. Severability. In the event that any clause or provisions of this Agreement shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.

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

Section 9.08. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument.

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

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

Section 9.11. Further Proceedings. To the extent additional proceedings are required by law, however, the County agrees to undertake all such steps as may be reasonably required or appropriate to effectuate the intent of this Agreement.

Section 9.12. Ambiguity or Disparity between this Agreement and Inducement Agreement. In the event of any ambiguity or disparity between the terms and provisions of the Inducement Agreement and the terms and provisions of this Agreement, the terms and provisions of this Agreement shall control.

[Execution Pages to Follow]

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

GREENVILLE COUNTY, SOUTH CAROLINA

By: _____
Herman G. Kirven, Jr., Chairman, County Council
Greenville County, South Carolina

By: _____
Joseph Kernell, County Administrator
Greenville County, South Carolina

[SEAL]

Attest:

By: _____
Theresa B. Kizer, Clerk to County Council,
Greenville County, South Carolina

PROJECT GINA

By: _____
Name: _____
Title: _____

EXHIBIT A
LAND
LEGAL DESCRIPTION

[TO BE INSERTED]