

FEE IN LIEU OF TAX AND SPECIAL SOURCE CREDIT AGREEMENT

BY AND AMONG

GREENVILLE COUNTY, SOUTH CAROLINA

AND

PROJECT RAMPART

AND

ABC REAL ESTATE, LLC

DATED

AS OF

_____, 2015

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FEE IN LIEU OF TAX AND SPECIAL SOURCE CREDIT AGREEMENT

THIS FEE IN LIEU OF TAX AND SPECIAL SOURCE CREDIT AGREEMENT (this "Fee Agreement") is made and entered into as of _____, 2015 by and among GREENVILLE COUNTY, SOUTH CAROLINA (the "County"), a body politic and corporate and a political subdivision of the State of South Carolina, acting by and through its County Council (the "County Council") as governing body of the County; PROJECT RAMPART, a limited liability company organized and existing under the laws of the State of _____ (the "Company"), and ABC REAL ESTATE, LLC, a limited liability company organized and existing under the laws of the State of _____ (the "Sponsor Affiliate").

WITNESSETH:

WHEREAS, the County is authorized by Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (the "Act"), to enter into a fee agreement with companies meeting the requirements of the Act which identifies certain property of such companies as economic development property to induce such companies to locate in the State of South Carolina (the "State") and encourages companies to locate in the State or those now located in the State to expand their investments and thus make use of and employ manpower and other resources of the State, by allowing such companies to make payments in lieu of ad valorem property taxes;

WHEREAS, the Company wishes to manufacture engineered structural metal components and assemblies by placement of a facility for manufacturing and office use at _____, South Carolina (the "Project," as further defined in section 1.3 below);

WHEREAS, it is anticipated that the Company will operate the Project and own the personal property portion of the Project, and that the Sponsor Affiliate will own the real property portion of the Project and lease such portion to the Company;

WHEREAS, the Company anticipates that the Project will represent an investment of approximately \$44 million (without regard to whether some or all of the investment is included as economic development property under the Act) and the creation of approximately 130 new, full-time jobs, all within the period ending December 31 of the fifth year after the first year in which any portion of the Project is first placed in service;

WHEREAS, the real property premises constituting the Project consists of land and a building consisting of approximately 205,738 square feet of space and related improvements to such real property;

WHEREAS, pursuant to the Act, the County has determined, based on information supplied by the Company, that (i) it is anticipated that the Project (as defined in Section 1.3) will benefit the general public welfare of the County by providing services, employment and other public benefits not otherwise adequately provided locally; (ii) neither the Project nor any documents or agreements entered into by the County in connection therewith will give rise to

From time to time herein, reference is made to the term taxes or *ad valorem* taxes. All or portions of the Project are located in a Multi-County Industrial Park and are exempt from *ad valorem* taxation under and by virtue of the provisions of Paragraph D of Section 13 of Article VIII of the Constitution of the State of South Carolina, 1895, as amended. With respect to facilities located in a Multi-County Industrial Park, references to taxes or *ad valorem* taxes means the payments in-lieu-of taxes provided for in the MCIP Law.

SECTION 1.3. Definitions.

“Act” means Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended.

“Administration Expenses” means the reasonable and necessary out of pocket fees and expenses incurred by the County with respect to this Agreement and the inclusion of the Project in a Multi-County Industrial Park, including without limitation reasonable attorney fees; provided, however, that no such expense shall be considered an Administration Expense until the County has furnished to the Company a statement in writing indicating the amount of such expense and the reason it has been or will be incurred.

“Annual Credit” means the credit described in Section 5.2 hereof, which credit is granted by the County to the Company and the Sponsor Affiliate for the purpose of reimbursing a portion of the cost of the Infrastructure Improvements pursuant to one or more of the Act, the Infrastructure Law and the MCIP Law.

“Applicable Governmental Body” means each governmental entity within the State having jurisdiction over or the right to approve or disapprove any or all of the Documents.

“Chair” means the Chair of County Council (or the person or persons authorized to perform the duties thereof in the absence of the Chair).

“Clerk” means the Clerk of County Council (or the person or persons authorized to perform the duties thereof in the absence of the Clerk).

“Code” means the Code of Laws of South Carolina 1976, as amended.

“Commencement Date” means the last day of the property tax year when Project property is first placed in service by the Company, except that this 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 have entered into this Fee Agreement.

“Company” means Project Rampart and its successors and assigns.

“Company Affiliates” means one or more entities, now existing or to be formed in the future, which control, are controlled by, or are under common control with, the Company.

“County” means Greenville County, South Carolina, and its successors and assigns.

“County Administrator” means the Administrator of the County (or person or persons authorized to perform the duties thereof in the absence of the County Administrator).

“County Council” means the County Council of Greenville County.

“Deficiency Amount” shall have the meaning set forth in Section 5.4(a) hereof.

“Documents” means the Ordinance and this Fee Agreement.

“DOR” means the South Carolina Department of Revenue and any successor agency thereto.

“Equipment” means all machinery, apparatus, equipment, fixtures, office facilities, furnishings and other personal property to the extent such property becomes a part of the Project under this Fee Agreement.

“Event of Default” means any Event of Default specified in Section 9.1 of this Fee Agreement.

“Fee Agreement” means this Fee Agreement by and among the County, the Company and the Sponsor Affiliate.

“Fee Term” means the duration of this Fee Agreement with respect to each Stage of the Project as specified in Section 5.5 hereof.

“Improvements” means improvements to the Real Property at the facility, together with any and all additions, accessions, replacements and substitutions thereto, and all fixtures now or hereafter attached thereto, to the extent such additions, accessions, replacements, substitutions and fixtures become part of the Project under this Fee Agreement.

“Infrastructure Improvements” means, in accordance with the Infrastructure Law, the Company’s and Sponsor Affiliate’s costs of designing, acquiring, constructing, improving or expanding (i) the infrastructure serving the County or the Project, and (ii) improved or unimproved real estate used in connection with the Project. Personal property shall not be included in the definition of Infrastructure Improvements for any purposes under this Fee Agreement, unless the Company provides written notice to the County that personal property is to be so considered. In the event that personal property shall be so considered, the provisions of Section 4-29-68(A)(2)(ii) of the Act shall apply.

“Infrastructure Law” means the provisions of Section 4-1-175 of the Code of Laws of South Carolina, 1976, as amended, and/or Section 12-44-70 of the Act.

“Investment Period” means the period beginning with the first date that economic development property for the Project is leased or placed in service by the Company, whichever

date is earlier, and ending on the last day of the fifth (5th) property tax year following the Commencement Date.

“Lease” means the Lease Agreement between the Company and the Sponsor Affiliate concerning Project property as the same may be amended or modified from time to time.

“MCIP Law” means the provisions of Article VIII, Section 13, Paragraph D of the Constitution of the State of South Carolina, 1895, as amended, and Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended.

“Multi-County Industrial Park” means an industrial or business park established by two or more counties acting under the provisions of the MCIP Law.

“Ordinance” means the Ordinance adopted by the County Council on _____, 2015, authorizing this Fee Agreement.

“Parties” means, collectively, the County, the Company and the Sponsor Affiliate, and **“Party”** means any one of the Parties.

“Payments-in-Lieu-of-Taxes” means the payments to be made by the Company pursuant to Section 5.1 of this Fee Agreement.

“Project” means all of the Equipment, Real Property and Improvements, together with the acquisition, construction, installation, design and engineering thereof, which are eligible for inclusion as economic development property under the Act and become subject to this Fee Agreement, including without limitation all of the foregoing located at the site identified on Exhibit A hereto. For purposes of this Fee Agreement, the Parties agree that Project property shall consist of such property so identified by the Company (directly or on behalf of the Sponsor Affiliate) or Sponsor Affiliate in connection with their annual filings with DOR or the County of such forms and schedules as DOR or the County may provide in connection with projects subject to the Act (as such filings may be amended or supplemented from time to time).

“Real Property” means the real property identified on Exhibit A hereto as part of the facility, together with all and singular rights, members, hereditaments and appurtenances belonging or in any way incident or appertaining thereto to the extent such become a part of the Project under this Fee Agreement; all Improvements now or hereafter situated thereon; and all fixtures now or hereafter attached thereto, to the extent such Improvements and fixtures become part of the Project under this Fee Agreement.

“Replacement Property” means any property acquired or constructed after the Investment Period as a replacement for any property theretofore forming a part of the Project and disposed of, or deemed disposed of, as provided in Section 5.3 hereof.

“Sponsor Affiliate” means ABC Real Estate, LLC and its successors and assigns. The Sponsor Affiliate is the fee owner of the Real Property and Improvements and will lease the Real Property and Improvements to the Company pursuant to the Lease.

“Sponsor Affiliate Affiliates” means one or more entities, now existing or to be formed in the future, which control, are controlled by, or are under common control with, the Sponsor Affiliate.

“Stage” means the year in which Equipment, Improvements and Real Property, if any, are placed in service during each year of the Investment Period.

“State” means the State of South Carolina.

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

ARTICLE II LIMITATION OF LIABILITY

SECTION 2.1. *Limitation of Liability.* Any obligation which the County may incur for the payment of money as a result of the transactions described in the Documents shall never constitute an indebtedness of the County within the meaning of any State constitutional provision or statutory limitation and shall never create a pecuniary liability of the County or a charge upon its general credit or against its taxing powers but shall be payable solely out of the funds received by it under the Documents.

ARTICLE III REPRESENTATIONS, WARRANTIES AND COVENANTS

SECTION 3.1. *Representations and Warranties of the County.* The County makes the following representations and warranties to the Company and covenants with the Company as follows:

(a) The County is a body politic and corporate and a political subdivision of the State and is authorized and empowered by the Act to execute the Documents to which it is a party and to fulfill its obligations described in the Documents. By proper action, the County Council has duly authorized the execution and delivery of the Documents to which the County is a party and has taken all such action as is necessary to permit the County to enter into and fully perform the transactions required of it under the Documents.

(b) To the best of the County’s knowledge, neither the execution and delivery of the Documents, nor the consummation and performance of the transactions described in the Documents, violate, conflict with or will result in a breach of any of the material terms,

conditions or provisions of any agreement, restriction, law, rule, order or regulation to which the County is now a party or by which it is bound.

(c) Neither the existence of the County nor the rights of any members of County Council to their offices is being contested and none of the proceedings taken to authorize the execution, delivery and performance of such of the Documents as require execution, delivery and performance by the County has been repealed, revoked, amended or rescinded.

(d) All consents, authorizations and approvals required on the part of the County, the State and all other Applicable Governmental Bodies in connection with the execution, delivery and performance by the County of the Documents have been obtained and remain in full force and effect as of the date hereof or will be obtained.

(e) To the best of the County's knowledge, the Documents to which the County is a party are (or, when executed, will be) legal, valid and binding obligations of the County enforceable under present law against the County in accordance with their respective terms, except as such terms may be limited by laws affecting creditors' rights generally.

(f) The County agrees that, subject to compliance with applicable laws, to the extent such property constitutes or qualifies as economic development property under the Act and based on the representations of the Company, each item of property comprising the Project shall be considered economic development property under the Act.

SECTION 3.2. *Covenants by the County.* The County covenants with the Company as follows:

(a) The County agrees to take such reasonable actions as may be requested by the Company in connection with the County's obligations under this Fee Agreement and in accordance with and pursuant to the Act, all for the purposes of promoting industrial development, developing trade, and utilizing and employing the manpower and natural resources of the County and the State.

(b) The County shall use its best efforts to ensure that the Project is at all times located in a Multi-County Industrial Park, for so long as may be necessary or appropriate for the Company and Sponsor Affiliate, or their respective, applicable successors in interest, to obtain and receive the benefits to be provided under this Fee Agreement. If at any time the County anticipates that the agreement establishing the Multi-County Industrial Park in which the Project is located may be terminated or may be modified so as to exclude all or part of the Project from the Park, the County shall promptly notify the Company of such potential termination or modification. The County shall use its best efforts to prevent such termination or modification. In the event that, notwithstanding the County's best efforts, either (i) the Agreement establishing the Multi-County Industrial Park in which the Project is located is in fact terminated or modified so as to exclude all or part of the Project from the Park, or (ii) all or part of the Project is otherwise excluded from the Park for any reason, then the County shall use its best efforts to ensure that, as soon as possible thereafter, the Project is placed in the same or another Multi-County Industrial Park so

that the benefits to be provided under this Fee Agreement to the Company and the Sponsor Affiliate can be provided in full.

SECTION 3.3. *Representations and Warranties of the Company and Sponsor Affiliate.*

(a) The Company makes the following representations and warranties to the County:

(i) The Company is a limited liability company duly organized and validly existing under the laws of the State of Delaware and is duly authorized to conduct business in South Carolina. The Company has full corporate power to execute the Documents to which it is a party and to fulfill its obligations described in the Documents and, by proper action, has authorized the execution and delivery of the Documents to which it is a party.

(ii) Neither the execution and delivery of the Documents to which the Company is a party, nor the consummation and performance of the transactions described in the Documents violate, conflict with, or will, to its knowledge, result in a material breach of any of the material terms, conditions or provisions of any agreement, restriction, statute, rule, order or regulation to which the Company is now a party or by which it is bound.

(iii) All consents, authorizations and approvals required on the part of the Company in connection with the Documents and the transactions contemplated thereby and the acquisition, construction and installation of the Project have been obtained and remain in full force and effect or will be obtained.

(iv) The Documents to which the Company is a party are (or, when executed, will be) legal, valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms, except as such terms may be limited by laws affecting creditors' rights generally.

(v) The Company anticipates, but does not warrant or represent, that the Project will represent an investment of approximately \$44 million (without regard to whether some or all of the investment is included as economic development property under the Act) and the creation of approximately 130 new, full-time, jobs in the County, all within the Investment Period.

(b) The Sponsor Affiliate makes the following representations and warranties to the County:

(i) The Sponsor Affiliate is a corporation duly organized and validly existing under the laws of the State of Georgia and is duly authorized to conduct business in South Carolina. The Sponsor Affiliate has full power to execute the Documents to which it is a

party and to fulfill its obligations described in the Documents and, by proper action, has authorized the execution and delivery of the Documents to which it is a party.

(ii) To Sponsor Affiliate's knowledge, neither the execution and delivery of the Documents to which the Sponsor Affiliate is a party, nor the consummation and performance of the transactions described in the Documents violate, conflict with, or will result in a material breach of any of the material terms, conditions or provisions of any agreement, restriction, statute, rule, order or regulation to which the Sponsor Affiliate is now a party or by which it is bound.

(iii) All consents, authorizations and approvals required on the part of the Sponsor Affiliate in connection with the Documents and the transactions contemplated thereby and the Project generally have been obtained and remain in full force and effect or will be obtained.

(iv) The Documents to which the Sponsor Affiliate is a party are (or, when executed, will be) legal, valid and binding obligations of the Sponsor Affiliate enforceable against the Sponsor Affiliate in accordance with their respective terms, except as such terms may be limited by laws affecting creditors' rights generally.

ARTICLE IV COMMENCEMENT AND COMPLETION OF THE PROJECT; MODIFICATIONS

SECTION 4.1. *The Project.*

(a) The Company or Sponsor Affiliate has acquired, constructed and/or installed or made plans for the acquisition, construction and/or installation of certain land, buildings, improvements, fixtures, machinery and equipment which comprise the Project.

(b) Pursuant to the Act, the Parties hereby agree that, to the extent it qualifies as such under the Act, the property comprising the Project shall be economic development property as defined under the Act.

SECTION 4.2. *Diligent Completion.* The Company agrees to use its reasonable efforts to cause the acquisition, construction and installation of the Project to be completed. Anything contained in this Fee Agreement to the contrary notwithstanding, however, neither the Company nor the Sponsor Affiliate shall be obligated to complete the Project.

SECTION 4.3. *Modifications to Project.* The County agrees that the Company, the Sponsor Affiliate, or both, may make or cause to be made from time to time additions, modifications or improvements to the Project that they may deem desirable for their business purposes without the necessity for special approval by the County under this Agreement. Nothing herein shall, however, exempt the Project from appropriate building codes and like regulations promulgated by the County and generally applicable to all businesses located in the County.

ARTICLE V
PAYMENTS-IN-LIEU-OF-TAXES; ANNUAL CREDIT;
DISPOSITION OF PROPERTY; REPLACEMENT
PROPERTY; MINIMUM INVESTMENT; FEE TERM

SECTION 5.1. *Payments-in-Lieu-of-Taxes.* The Parties acknowledge that under Article I, Section 3 of the Constitution of the State of South Carolina, 1895, as amended, the Project is to be exempt from *ad valorem* property taxes for so long as such property is subject to this Fee Agreement. However, the Company (on its own behalf and, pursuant to Section 5.6 hereof, on behalf of the Sponsor Affiliate) shall be required to make the Payments-in-Lieu-of-Taxes with respect to the Project as provided in this Section. In accordance with the Act, and unless this Fee Agreement is sooner terminated, the Company shall make annual Payments-in-Lieu-of-Taxes with respect to the Project, said payments being due and payable and subject to penalty assessments in the manner prescribed by the Act. Such amounts shall be calculated and payable as follows:

(a) The Company (on its own behalf and, pursuant to Section 5.6 hereof, on behalf of the Sponsor Affiliate) shall make annual Payments-in-Lieu-of-Taxes with respect to the Project in an amount not less than the property taxes that would be due with respect to such property, if it were taxable, but using an assessment ratio of six percent (6.0%) and a millage rate equal to 287.1 mills, which rate shall be fixed for the life of this Fee Agreement pursuant to Section 12-44-50(A)(1)(b)(i) of the Act. Subject in all events to the provisions of the Act, the fair market value estimate determined by the DOR will be as follows:

- (i) for real property, (A) if the real property is constructed for the fee or otherwise, or is purchased in an arm's length transaction, using the original income tax basis for South Carolina income tax purposes without regard to depreciation; (B) otherwise, the real property must be reported at its fair market value for ad valorem property taxes as determined by appraisal; and
- (ii) for personal property within the Project, using the original income tax basis for South Carolina income tax purposes less depreciation allowable for property tax purposes, except that the Company is not entitled to extraordinary obsolescence.

(b) The Payments-in-Lieu-of-Taxes shall be made on the basis that the Project property, if it were otherwise subject to *ad valorem* property taxes, would be allowed all applicable exemptions from those taxes, except for the exemptions allowed under Section 3(g) of Article X of the Constitution of the State of South Carolina, 1895, as amended, and Section 12-37-220(B)(32) and (34) of the Code of Laws of South Carolina, 1976, as amended.

(c) The Company (on its own behalf and, pursuant to Section 5.6 hereof, on behalf of the Sponsor Affiliate) shall make Payments-in-Lieu-of-Taxes for each year during the term hereof beginning with respect to the property tax year in which Project property is first placed in

service. The Payments-in-Lieu-of-Taxes shall be made to the County Treasurer on the due dates which would otherwise be applicable for *ad valorem* property taxes for the Project, with the first payment being due on the first date following the delivery of this Fee Agreement when, but for this Fee Agreement, such taxes would have been paid with respect to the Project. Notwithstanding any other provision of this Section, the County hereby agrees that in each applicable year, the Company automatically shall be entitled to receive and take a credit against such Payments-in-Lieu-of-Taxes in an amount equal to the Annual Credit as set forth in Section 5.2 hereof.

(d) Any property placed in service as part of the Project during the Investment Period shall be included in the calculation of payments pursuant to subsections (a) and (b) above for a period of 30 years following the year in which such property was placed in service. Pursuant to and subject to the Act, the following rules shall apply to Replacement Property which becomes part of the Project: (i) Replacement Property shall be included (using its income tax basis) in the calculation of payments pursuant to subsections (a) and (b) above; (ii) more than one piece of Replacement Property can replace a single piece of economic development property; (iii) Replacement Property does not have to serve the same function as the property it is replacing; (iv) Replacement Property is entitled to the Payments-in-Lieu-of-Taxes pursuant to subsections (a) and (b) above for the period of time remaining on the 30-year period for the property which it is replacing; and (v) Replacement Property is deemed to replace the oldest property subject to this Fee Agreement, whether real or personal, which is disposed of in the same property tax year as the Replacement Property is placed in service.

SECTION 5.2. *Annual Credit.*

(a) In accordance with and pursuant to Section 12-44-70 of the Act and Section 4-1-175 of the MCIP Law, in order to reimburse the Company and the Sponsor Affiliate for qualifying capital expenditures incurred for costs of the Infrastructure Improvements, the Company and the Sponsor Affiliate shall be entitled to receive, and the County agrees to provide, total Annual Credits against the Payments-in-Lieu-of-Taxes due hereunder in the amounts provided for in Section 5.4(d) of this Agreement (“Annual Credits”).

(b) Unless otherwise specifically requested in writing by the Company and approved by the Sponsor Affiliate, the dollar amount of the Annual Credit shall be applied in its entirety against Payments-in-Lieu-of-Taxes to be made for the year in question on the real property portion of the Project, and not to any personal property, including any machinery or equipment. Pursuant to Section 4-29-68(A)(2)(ii)(a) of the Code, to the extent any Annual Credits shall be applied against both real property and personal property, including machinery and equipment investments by the Company, then for Annual Credit purposes, such credits will be presumed to be first used for real property, unless otherwise directed in writing by the Company. Pursuant to Section 4-29-68(A)(2)(ii) of the Code, to the extent any Annual Credits are applied against personal property, including machinery and equipment, and the personal property is removed from the Project at any time prior to the termination date of this Fee Agreement, then the amount of Payments-in-Lieu-of-Taxes due on such personal property for the year of such removal shall also be due for the two (2) years following the removal; provided, that if such removed personal

property is replaced with Replacement Property, then such personal property shall not be considered removed from the Project for these purposes.

(c) In no event shall the aggregate amount of Annual Credits received or otherwise entitled to be received by the Company and the Sponsor Affiliate exceed, at any point in time, the aggregate amount of expenditures incurred by the Company and the Sponsor Affiliate in respect of the Infrastructure Improvements. Upon request of the County, the Company shall provide documentation reflecting the cost of the Infrastructure Improvements.

(d) Each Annual Credit shall be reflected by the County Auditor or other authorized County official or representative on each bill for Payments-in-Lieu-of-Taxes sent to the Company by the County for each applicable property tax year, by reducing such Payments-in-Lieu-of-Taxes otherwise due by the amount of the Annual Credit to be provided to the Company and/or the Sponsor Affiliate for such property tax year.

(e) The Annual Credits are payable solely from the Payments-in-Lieu-of-Taxes, are not secured by, or in any way entitled to, a pledge of the full faith, credit or taxing power of the County, are not an indebtedness of the County within the meaning of any State constitutional provision or statutory limitation, are payable solely from a payment that does not include revenues from any tax or license, and are not a pecuniary liability of the County or a charge against the general credit or taxing power of the County.

SECTION 5.3. *Disposal of Property; Replacement Property.*

(a) In any instance where the Company or Sponsor Affiliate determines that any item or items of property included in the Project have become, in whole or in part, inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company or Sponsor Affiliate (as may be applicable) may remove such item (or such portion thereof as the Company shall determine) or items and sell, trade in, exchange or otherwise dispose of it or them (as a whole or in part) without any responsibility or accountability to the County therefor. The loss or removal from the Project of any property, or any portion thereof, as a result of fire or other casualty or by virtue of the exercise or threat of the power of condemnation or eminent domain shall be deemed to be a disposal of such property, or portion thereof, pursuant to this Section. Subject to the provisions of Section 5.1(d) of this agreement and this Section with respect to Replacement Property, the Payments-in-Lieu-of-Taxes required by Section 5.1 shall be reduced by the amount thereof applicable to any property included in the Project, or part thereof, disposed of, or deemed disposed of, pursuant to this Section.

(b) The Company and the Sponsor Affiliate may replace, renew or acquire and/or install other property in substitution for, any or all property or portions thereof disposed of, or deemed disposed of, pursuant to subsection (a) above. Any such property may, but need not, serve the same function, or be of the same utility or value, as the property being replaced. Absent a written election to the contrary made at the time of filing the first property tax return that would apply to such property, such property shall be treated as Replacement Property to the greatest extent permitted by the Act.

SECTION 5.4. *Minimum Investment.*

(a) If the Company and the Sponsor Affiliate have not invested, in the aggregate, at least \$22 million (“Contract Minimum Investment”) in the Project by the end of the Investment Period, then following the end of the Investment Period, this Agreement shall be deemed terminated and the Company and the Sponsor Affiliate shall thereafter pay *ad valorem* taxes with respect to the Project at the rates provided by law. In such event, and subject to the provisions of paragraph (b) of this Section, the Company and the Sponsor Affiliate shall not be required to pay any Deficiency Amount as defined below.

(b) In accordance with Section 12-44-140(C) of the Act, if at any time during the term of this Fee Agreement following the period of time in which the Company and the Sponsor Affiliate must make the minimum aggregate investment referred to in paragraph (a) above, the Company’s and the Sponsor Affiliate’s aggregate investment based on income tax basis without regard to depreciation falls below such minimum, then thereafter the Company and the Sponsor Affiliate will no longer qualify for the Payments-in-Lieu-of-Taxes provided under Section 5.1 hereof. Company and Sponsor Affiliate shall not, however, be responsible for any FILOT Deficiency Amount (as defined below) or similarly calculated retroactive payments covering periods of time prior to the date on which the aggregate investment falls below such minimum.

(c) The Company and the Sponsor Affiliate acknowledge that Section 12-44-130 of the Act requires a minimum aggregate investment in the Project of not less than \$5,000,000 during the Investment Period. If the Company and the Sponsor Affiliate fail to meet such aggregate requirement by the end of the Investment Period, then this Fee Agreement shall terminate and the Company and the Sponsor Affiliate, as the case may be, shall pay the County an amount 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 were not Economic Development Property within the meaning of the Act, but with appropriate reductions equivalent to all tax exemptions and abatements to which the Company and the Sponsor Affiliate would be entitled in such a case, through and including the end of the Investment Period, over (ii) the total amount of Payments-in-Lieu-of-Taxes the Company and the Sponsor Affiliate have made with respect to the Project, taking into account any Annual Credits received, through and including the end of the Investment Period (such excess, a “FILOT Deficiency Amount”). Any amounts determined to be owing pursuant to the foregoing sentence shall be subject to interest at the statutory rate for the late payment of ad valorem taxes and shall be payable to the County within 120 days following the last day of the Investment Period.

(d) The Company and the Sponsor Affiliate acknowledge that the amount of the Annual Credits provided for in Section 5.2 shall be based upon the Company and Sponsor Affiliate making certain aggregate investments (based on income tax basis without regard to depreciation) before expiration of the Investment Period (as set forth below, each an “SSRC Minimum Investment” and collectively, “SSRC Minimum Investments”). These SSRC Minimum Investments, as well as certain terms and conditions associated with same, are set forth below:

- (i) After the Company and Sponsor Affiliate make an SSRC Minimum Investment of \$20 million, then Company and Sponsor Affiliate shall be entitled to an Annual Credit equivalent to 25% of the Payments in Lieu of Taxes otherwise due for a period of 10 years.
- (ii) If the Company and Sponsor Affiliate make an SSRC Minimum Investment of \$35 million, then Company and Sponsor Affiliate shall receive an Annual Credit equivalent to 35% of the Payments in Lieu of Taxes otherwise due for a period of 15 years.
- (iii) Upon reaching either of the SSRC Minimum Investment thresholds set forth in subsections (i) or (ii) above, the Company and Sponsor Affiliate shall certify this fact to the CountyCounty using the attached certificate as set forth on Exhibit B and may thereafter receive the Annual Credits in the appropriate amount. In no event, however, shall the Company and Sponsor Affiliate receive Annual Credits for a period greater than and outer limit of 15 years from the date of certification.
- (iv) If the Company and the Sponsor Affiliate fail to achieve at least the SSRC Minimum Investment threshold set forth in subsections (i) above by the end of the Investment Period, then the Annual Credit shall terminate and the Company and the Sponsor Affiliate, as the case may be, shall pay the County an amount which is equal to the total amount of any Annual Credits actually received by the Company and Sponsor Affiliate prior to the expiration of the Investment Period (such amount, a “SSRC Deficiency Amount”). Any amounts determined to be owing pursuant to the foregoing sentence shall be subject to interest at the statutory rate for the late payment of *ad valorem* taxes and shall be payable to the County within 120 days following the last day of the Investment Period.
- (v) If at any time following the Investment Period the Company and Sponsor Affiliate’s aggregate investment based on income tax basis without regard to depreciation falls below either SSRC Minimum Investment threshold set forth above, then thereafter the Company and the Sponsor Affiliate will no longer qualify for the Annual Credits associated with that SSRC Minimum Investment threshold. Company and Sponsor Affiliate shall not, however, be responsible for any SSRC Deficiency Amount or similarly calculated retroactive payments covering periods of time prior to the date on which the aggregate investment falls below such SSRC Minimum Investment.

(e) As between the Company and the Sponsor Affiliate, (i) nothing in this Fee Agreement shall be construed to require the Sponsor Affiliate to invest any greater amounts in

the Project than those amounts required in the Lease, and (ii) responsibility for any investment in excess of the amounts so required in the Lease shall reside solely with Company.

SECTION 5.5. *Fee Term.* With respect to each Stage of the Project, the applicable term of this Fee Agreement shall be from the first day of the property tax year in which such Stage is placed in service through the last day of the property tax year which is the thirtieth (30th) year following such year; provided, that the maximum term of this Fee Agreement shall not be more than 30 years from the end of the last year of the Investment Period. This Fee Agreement shall terminate with respect to the Project or any Stage or part thereof upon the earlier to occur of (a) payment of the thirtieth installment of Payments-in-Lieu-of-Taxes with respect to the last Stage of the Project in accordance with Section 5.1 hereof and of any other amounts payable to the County under this Fee Agreement, or (b) exercise by the Company of the option to terminate pursuant to Section 10.1 hereof.

SECTION 5.6. *Certain Sponsor Affiliate Payment Matters.* The County hereby agrees that the Company shall have the right to make all Payments-in-Lieu-of-Taxes on behalf of, and otherwise payable by, the Sponsor Affiliate under this Fee Agreement, and the County shall accept all Payments-in-Lieu-of-Taxes made hereunder by the Company (regardless of whether or not such payments are specifically designated as being on behalf of the Sponsor Affiliate).

ARTICLE VI PROPERTY TAX EXEMPTION AND ABATEMENT

SECTION 6.1. *Protection of Tax Exempt Status of the Project.* In order to insure that the Project is not and will not become subject to *ad valorem* property taxes under the laws of the State or any political subdivision thereof, the Parties covenant that:

(a) all right and privileges granted to any Party under this Fee Agreement or any other Documents shall be exercised so that if any conflict between this Section and any other provision in any other document shall arise, then in that case, this Section shall control; and

(b) the Parties have not knowingly committed or permitted and will not knowingly commit or permit (as to any act over which they have control) any act which would cause the Project to be subject to *ad valorem* property taxes by the County or political subdivision of the State in which any part of the Project is located, subject to any mandatory or optional termination rights expressly set forth herein.

SECTION 6.2. *Rescission in the Event of Termination.* In the event it shall be determined by a court of competent jurisdiction that the Project or any portion thereof is subject to State, County, or other local property taxes, then, at the option of the Company, the provisions of Section 11.3 hereof shall apply, either to the Project as a whole or to such portion thereof as the Company may elect.

**ARTICLE VII
EFFECTIVE DATE**

SECTION 7.1. *Effective Date.* This Fee Agreement shall become effective as of the date first written above.

**ARTICLE VIII
SPECIAL COVENANTS**

SECTION 8.1. *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 and that any disclosure of any information relating to such processes and materials, services, equipment, trade secrets or techniques, including but not limited to disclosures of financial, sales or other information concerning the Company's operations, would 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. Therefore, the County agrees that, except as required by Section 12-44-90(J) of the Act and any other law and except as operating for other purposes in its sovereign capacity (such as for such routine health and safety purposes as would be applied to any other industrial facility in the County), neither the County nor any employee, agent or contractor of the County: (i) shall request or be entitled to receive any such confidential or proprietary information; (ii) shall request or be entitled to inspect the Project or any property associated therewith; or (iii) shall disclose or otherwise divulge any such confidential or proprietary information to any other person, firm, governmental body or agency, or any other entity unless specifically required to do so by State law. Prior to disclosing any confidential or proprietary information or allowing inspections of the Project or any property associated therewith, subject to the requirements of law, in particular, Title 30, Chapter 4, of the Code of Laws of South Carolina, 1976, as amended, 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 or conduct or review the results of any inspections. In the event that the County is required by law to disclose any confidential or proprietary information obtained from the Company to any third party, the County agrees to use its best efforts to provide the Company with maximum possible advance notice of such requirement before making such disclosure, and to reasonably cooperate with any attempts by the Company to obtain judicial or other relief from such disclosure requirement.

SECTION 8.2. *Indemnification Covenants.*

(a) The Company shall and agrees to indemnify and hold the County and its County Council members, elected officials, officers, agents and employees, and the Sponsor Affiliate and its officers, directors, shareholders, agents and employees (collectively, the “Indemnified Parties”) harmless from and against the cost, fees and expenses of any litigation (including reasonable attorneys’ fees) initiated by a third party against any of the Indemnified Parties, and any other loss, damage or liability incurred by the Indemnified Parties, to the extent relating in any manner to, or arising because of, this Fee Agreement, except to the extent that such litigation, loss, damage or liability arises from the grossly negligent act or omission, or willful misconduct, of any of the Indemnified Parties; provided, however, that the Company’s liability pursuant to this indemnification provision shall be limited by the provisions of the South Carolina Tort Claims Act, Section 15-78-10 et seq. of the Code of Laws of South Carolina, 1976, as amended, to the extent those provisions provide full or limited immunity to governmental parties from third party claims and prohibit recovery of punitive or exemplary damages. With the consent of the County, which shall not be unreasonably withheld, the Company may, at its own expense, defend the County and its officers, agents and employees in any such action or proceeding. The Parties agree that, if and to the extent that the Company or any of its contractors, agents, officers or employees, or any of its insurers, make any payment to any of the Indemnified Parties pursuant to this Section for reasons other than an action or failure to act by the Company or any of its contractors, agents, officers or employees, the Council will, upon request by the Company, reasonably cooperate with and support any efforts by the Company or any of its contractors, agents, officers or employees, or any of its insurers, to recover from such third party some or all of such payment.

(b) The provisions of this Section shall survive termination or expiration of this Fee Agreement.

SECTION 8.3. *Assignment and Leasing.*

(a) Subject to the terms of the Lease, the interests of the Company or Sponsor Affiliate in this Fee Agreement may be transferred or assigned by the Company or the Sponsor Affiliate, or any assignee of the foregoing, to another entity so long as that entity agrees to be bound by the provisions hereof. Any equity or ownership interest in the Company or the Sponsor Affiliate may be sold, disposed, reorganized or otherwise transferred, without the consent of, or the requirement of any notice to, any of the Parties unless otherwise required by the terms of the Lease. In addition, any ownership or leasehold interest of the Company or Sponsor Affiliate in the Project may be sold, disposed, reorganized or otherwise transferred, without the consent of, or the requirement of any notice to the other Parties, unless otherwise required by the terms of the Lease.

(b) A transaction or an event of sale, assignment, leasing, transfer of an interest herein, or disposal or replacement of all or part of the Project shall not constitute a termination of this Fee Agreement in whole or in part or a basis for changing the Payments-in-Lieu-of-Taxes due under Section 12-44-50 of the Act, except as otherwise required by the Act.

SECTION 8.4. Administration Expenses. The Company agrees to pay any Administration Expenses to the County when and as they shall become due, but in no event later than the date which is the earlier of any payment date expressly provided for in this Fee Agreement or the date which is forty-five (45) days after receiving written notice from the County, accompanied by such supporting documentation as may be necessary to evidence the County's or Indemnified Party's right to receive such payment, specifying the nature of such expense and requesting payment of same.

ARTICLE IX EVENTS OF DEFAULT AND REMEDIES

SECTION 9.1. Events of Default Defined. The occurrence of any one or more of the following events shall be an "Event of Default" under this Fee Agreement:

(a) If the Company or Sponsor Affiliate, as may be applicable, shall fail to make any Payment-in-Lieu-of-Taxes, any payment of a FILOT Deficiency Amount or SSRC Deficiency Amount or any other amount required under this Fee Agreement and such failure shall continue for 30 days after receiving written notice of default from the County; or

(b) If the Company or Sponsor Affiliate, as may be applicable, shall fail to observe or perform any material covenant, condition or agreement required herein to be observed or performed by the Company or Sponsor Affiliate (other than as referred to in Section 9.1(a) hereof), and such failure shall continue for a period of 30 days after written notice of default has been given to the Company and Sponsor Affiliate by the County, or such additional time as may be reasonably necessary under the particular circumstances so long as the Company or Sponsor Affiliate, as may be applicable, commences to cure such default within such 30-day period and thereafter diligently pursues such cure to completion. If, by reason of "*force majeure*" as hereinafter defined, the Company or Sponsor Affiliate is unable in whole or in part to carry out any such material covenant, condition or agreement or if it takes longer than 30 days to cure such default and the Company or Sponsor Affiliate, as may be applicable, is diligently attempting to cure such default, there shall be no Event of Default during such inability. The term "*force majeure*" as used herein shall mean circumstances not reasonably within the control of the Parties, such as, without limitation, acts of God, strikes, lockouts or other industrial disturbances; war; acts of public enemies or of terrorists; mobilization or military conscription on a large scale; order of any kind of the government of the United States or any State, or any civil or military authority other than the County Council; insurrections; riots; landslides; earthquakes; fires; lightning; storms; droughts; floods; requisitions, confiscation, or commandeering of property; fuel restrictions; general shortages of transport, goods, or energy; or

(c) If any material representation or warranty on the part of the Company and Sponsor Affiliate made in the Documents, or in any report, certificate, financial or other statement furnished in connection with the Documents or the transactions described in the Documents shall

have been false or misleading in any material respect. The County agrees that any notice of default shall be sent by the County to both the Sponsor Affiliate and the Company.

SECTION 9.2. Remedies on Default by the Company or Sponsor Affiliate. Whenever any Event of Default shall have happened and be subsisting, the County may (i) terminate this Fee Agreement or (ii) take whatever action at law or in equity may appear legally required or necessary or desirable to collect any payments then due or to enforce performance and observance of any obligation, agreement or covenant of the Company and Sponsor Affiliate, under the Documents. In addition to all other remedies provided herein, and although the Parties acknowledge that the Project is exempt from *ad valorem* property taxes, the failure to timely make Payments-in-Lieu-of-Taxes hereunder shall give rise to a lien for tax purposes as provided in Section 12-44-90 of the Act. The County and any other taxing entity affected thereby may, without limiting the generality of the foregoing, exercise the remedies provided by general law (Title 12, Chapter 49) and the Act relating to the enforced collection of taxes. There shall be no joint and several liability of the Company and Sponsor Affiliate for any defaults under this Fee Agreement. The Company shall be solely responsible for any defaults by the Company of its obligations under this Fee Agreement, and the Sponsor Affiliate shall be responsible only for defaults of its express obligations under this Fee Agreement.

SECTION 9.3. Default by the County. In the event of a breach by the County of any provision contained in this Fee Agreement, the Company and the Sponsor Affiliate may take whatever action at law or in equity may appear legally required, necessary or desirable to enforce the performance and observance of any obligation, agreement or covenant of the County under the Documents.

SECTION 9.4. No Remedy Exclusive. No remedy herein conferred upon or reserved to the County, the Company, or the Sponsor Affiliate is intended to be exclusive of any other available remedy or remedies, but in each and every instance such remedy shall be cumulative and shall be in addition to every other remedy given under the Documents or now or hereafter existing at law or in equity or by statute. Unless otherwise provided herein or in the other Documents, no delay or omission to exercise any right or power shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

SECTION 9.5. No Additional Waiver Implied by One Waiver. In the event any warranty, covenant or agreement contained in this Fee Agreement should be breached by any Party and thereafter waived by another Party to this Fee Agreement, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach.

ARTICLE X OPTION OF THE COMPANY

SECTION 10.1. Option to Terminate. From time to time (including without limitation any time during which there may be subsisting an Event of Default) and at any time upon at least 30 days notice to the County, and subject to the provisions herein which are stated to expressly

survive any termination of this Fee Agreement, the Company may terminate this Fee Agreement with respect to the entire Project or any portion thereof. Upon termination of all or part of this Fee Agreement, the Company and the Sponsor Affiliate will no longer be entitled, with respect to the Project or such portion thereof as is so terminated from inclusion in the Project, to make the Payments-in-Lieu-of-Taxes on such property as provided in Section 5.1 of this Fee Agreement but shall instead become liable, prospectively but not retroactively, for ad valorem property taxes on such property, as well as for amounts already due and owing under this Fee Agreement, which latter amounts, if any, shall be paid to the County with the next installment of Payments-in-Lieu-of-Taxes pursuant to Section 5.1(c), or, if the termination is of the entire Project, then within 120 days of termination.

**ARTICLE XI
MISCELLANEOUS**

SECTION 11.1. *Notices; Timing of Certain Sponsor Affiliate Notices and Payments.*

(a) All notices, approvals, consents, requests and other communications hereunder shall be in writing and may be delivered personally, or may be sent by overnight mail to the following addresses, unless the parties are subsequently notified of any change of address in accordance with this subsection:

If to the Company:

Project Rampart

Attn:

With a Copy to:

Nelson Mullins Riley & Scarborough LLP
Poinsett Plaza, Suite 900
104 South Main Street
Greenville, SC 29601-2122

Attention: James L. Rogers, Jr.

If to the Sponsor Affiliate:

ABC Real Estate, LLC

Attn:

With a Copy to:

Sutherland Asbill & Brennan LLP

999 Peachtree Street NE
Suite 2300
Atlanta, Georgia 30309-3996
Attn: Michael G. Kerman

If to the County:

Greenville County, South Carolina
301 University Ridge, Suite 2400
Greenville, South Carolina 29601
Attn: County Administrator

With a copy to:

Greenville County, South Carolina
301 University Ridge, Suite 2400
Greenville, South Carolina 29601
Attn: County Attorney

Whenever the County provides any notice under this subsection to either the Company or the Sponsor Affiliate, the County shall provide a copy of such notice to the other Party, and whenever the Company or the Sponsor Affiliate provides any notice under this subsection to the County, the Party providing such notice shall provide a copy of such notice to the other Party.

Any notice shall be deemed to have been received as follows: (1) by personal delivery, upon receipt; (2) by overnight mail upon delivery; and (3) by certified mail, return receipt requested, postage prepaid, on the third (3rd) day after deposited with the United States Postal Service.

(b) All Project-related notices or other written communications received by the Sponsor Affiliate from the County, the County Council, the County Assessor, the County Auditor, the County Treasurer, or DOR, or from any member, officer, employee or agent of any of the foregoing, concerning Payments-in-Lieu-of-Taxes, *ad valorem* property taxes, or any other taxes, shall within five (5) Business Days of the Sponsor Affiliate's receipt thereof be delivered personally or sent by overnight mail by the Sponsor Affiliate to the Company at the addresses set forth in subsection (a) of this Section; provided, however, that the Sponsor Affiliate shall in no event have any liability whatsoever to Company for failure to comply with this Subsection (b).

SECTION 11.2. *Binding Effect.* This Fee Agreement shall inure to the benefit of and shall be binding upon the County, the Sponsor Affiliate (only to the extent specifically provided herein) and the Company and their respective successors and assigns.

SECTION 11.3. *Rescission and Severability.* In the event that the Act or the Payments-in-Lieu-of-Taxes arrangement described in Section 5.1 hereof is determined to be invalid in its entirety by any court of competent jurisdiction, the Parties hereby agree that, except as the final judicial decision may otherwise require, the Company and the Sponsor Affiliate shall be entitled to retain any benefits received under or pursuant to this Fee Agreement; otherwise, in the event any provision of this Fee Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, that decision shall not invalidate or render unenforceable any other provision of this Fee Agreement, unless that decision destroys the basis for the transaction, in which event the Parties shall in good faith attempt to preserve, to the maximum extent possible, the benefits provided to the Company and Sponsor Affiliate hereunder by either restructuring or reconstituting this Fee Agreement under any then applicable law, including but not limited to Chapters 12 and 29 of Title 4, Code of Laws of South Carolina, 1976, as amended.

SECTION 11.4. *Payments Due on Saturday, Sunday and Holidays.* Whenever any payment to be made hereunder shall be stated to be due on a Saturday, a Sunday or a holiday, such payment shall be made on the next business day.

SECTION 11.5. *Amendments, Changes and Modifications.* Unless otherwise specified in this Fee Agreement, this Fee Agreement may not be amended, changed, modified, altered or terminated without the written consent of the County, the Company, and the Sponsor Affiliate.

SECTION 11.6. *Execution of Counterparts.* This Fee Agreement may be executed in several counterparts, each of which shall constitute an original instrument and all of which together shall constitute but one and the same document.

SECTION 11.7. *Law Governing Construction of Fee Agreement.* The laws of the State of South Carolina shall govern the construction of this Fee Agreement.

SECTION 11.8. *Filings.*

(a) The Company shall cause a copy of this Fee Agreement to be filed with the County Auditor, the County Assessor, the County Treasurer, as well as the corresponding parties of the partner county pursuant to the Multi-County Industrial Park agreement, and DOR within 30 days after the date of execution and delivery hereof.

(b) To the extent a form or return is filed by the Company or the Sponsor Affiliate with DOR, the Company or the Sponsor Affiliate, as the case may be, shall cause a copy of such form or return to be promptly filed with the County Auditor, the County Assessor and the County Treasurer as appropriate.

SECTION 11.9. *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 11.10. *Further Assurances/Instruments.* From time to time the County agrees to execute and deliver to the Company or the Sponsor Affiliate such additional assurances and/or instruments as the Company or the Sponsor Affiliate may reasonably request to effectuate the purposes of this Fee Agreement.

SIGNATURES NEXT PAGE

IN WITNESS WHEREOF, GREENVILLE COUNTY, SOUTH CAROLINA, PROJECT RAMPART, and ABC REAL ESTATE, LLC each pursuant to due authority, have duly executed this Fee Agreement, all as of the date first above written.

GREENVILLE COUNTY, SOUTH CAROLINA

Chairman of County Council

County Administrator

(SEAL)

Attest:

Clerk to County Council

PROJECT RAMPART

Name:
Title:

ABC REAL ESTATE, LLC

Name:
Title:

EXHIBIT A

DESCRIPTION OF FACILITY SITE

EXHIBIT B

INFRASTRUCTURE INVESTMENT CERTIFICATION

I _____, the _____ of _____ (the "Company"), do hereby certify in connection with Section 5.4(d)(iii) of the Fee in Lieu of Tax and Special Source Credit Agreement dated as of _____, 2015 (the "Agreement") between Greenville County, South Carolina and the Company, as follows:

(1) The total investment made by the Company and any Sponsor Affiliates in the Project during the calendar year ending December 31, 20__ was \$_____.

(2) The cumulative total investment made by the Company and any Sponsor Affiliates in the Project from the period beginning _____, 20__ (that is, the beginning date of the Investment Period) and ending December 31, 20__, is \$_____.

(3) Based on the cumulative number in (2) above, the Company is entitled to receive an Annual Credit of ___% for calendar year _____.

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

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

Name: _____

Its: _____