

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING AND APPROVING THE PARTIAL ASSIGNMENT AND ASSUMPTION OF A FEE IN LIEU OF TAX AGREEMENT BY AND BETWEEN PRECORP OF SOUTH CAROLINA, INC AND WALTER USA, LLC; AND OTHER MATTERS RELATED THERETO.

WHEREAS, Greenville County, South Carolina (the “*County*”), acting by and through its County Council (the “*County Council*”), is authorized and empowered, under and pursuant to the provisions of Title 12, Chapter 44 (the “*FILOT Act*”) and Title 4, Chapter 1, Code of Laws of South Carolina 1976, as amended (the “*Code*”) to enter into agreements with industry, to offer certain privileges, benefits and incentives as inducements for economic development within the County; to acquire, or cause to be acquired, properties as may be defined as "projects" in the FILOT Act and to enter agreements with the business or industry to facilitate the construction, operation, maintenance and improvement of such projects; to enter into or allow financing agreements with respect to such projects; and to accept any grants for such projects through which powers the industrial and business development of the State of South Carolina (the “*State*”) will be promoted, whereby the business or industry would pay fees-in-lieu-of taxes with respect to qualified investment in projects; through all such powers, the industrial development of the State will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate or remain in the State and thus utilize and employ the manpower, products and resources of the State and benefit the general public welfare the County by providing services, employment, recreation or other public benefits not otherwise provided locally; and

WHEREAS, Precorp of South Carolina, Inc., a corporation incorporated and existing under the laws of the State of South Carolina (“*Assignor*”), is a party to that certain Fee in Lieu of Tax Agreement dated December 1, 2013 (the “*FILOT Agreement*”), originally by and among Assignor as the operating company, BBW Properties, LLC as the landlord, and the County, whereby the County agreed to provide certain incentives with respect to certain real property more particularly described in the FILOT Agreement and improvements and other property now or hereafter located thereon; and

WHEREAS, BBW Properties, LLC assigned all of its right, title, and interest in the FILOT Agreement to South Batesville LLC, pursuant to that certain Assignment and Assumption of Fee in Lieu of Tax Agreement dated December 31, 2013, and approved pursuant to Resolution Number 1522 adopted by the County Council on December 2, 2014; and

WHEREAS, Assignor has conveyed to Walter USA, LLC, a limited liability company organized and existing under the laws of the State of Wisconsin (“*Assignee*”), property subject to the FILOT Agreement (the “*Transferred Property*”), pursuant to one or more transactions as well as certain documentation relating to the purchase, sale, and conveyance of the Transferred Property (the “*Transfer Documents*”), as of the date of the Transfer Documents (the actual date, the “*Conveyance Date*”); and

WHEREAS, Assignor and Assignee desire to enter into that certain Partial Assignment and Assumption of Fee in Lieu of Tax Agreement attached hereto as Exhibit A (the “*Assignment*”), wherein and whereby Assignor shall assign to Assignee, and Assignee shall assume, all of Assignor's right, title and interest to and under the FILOT Agreement, including but not limited to, the terms, covenants, conditions and agreements of the FILOT Agreement as they relate to the Transferred Property, all as of the Conveyance Date; and

WHEREAS, Assignor and Assignee have requested that the County authorize, ratify, approve and consent to such conveyance and assignment to Assignee, to be effective as of the Conveyance Date, in accordance with the provisions of the FILOT Agreement and Section 12-44-120 of the Code, including the transfer of the Transferred Property to Assignee; and

WHEREAS, the County Council has caused to be prepared and presented to this meeting the form of the Assignment which the County proposes to execute and deliver; and

WHEREAS, it appears that the document above referred to, which is now before this meeting, is in appropriate form and is an appropriate instrument to be executed and delivered or approved by the County for the purposes intended.

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

Section 1. The County hereby authorizes, ratifies, approves and consents to the sale and conveyance of the Transferred Property and the assignment of the FILOT Agreement by Assignor to Assignee, all effective as of the Conveyance Date. Pursuant to the terms of the Assignment, Assignor shall assign to Assignee, and Assignee shall assume, all of Assignor's right, title and interest to and under the FILOT Agreement, including, but not limited to, the terms, covenants, conditions and agreements of the FILOT Agreement as they relate to the Transferred Property. Such authorization, ratification, approval and consent of the County shall be further evidenced by the Assignment.

Section 2. The form, terms and provisions of the Assignment presented to this meeting are hereby approved and all of the terms and provisions thereof are hereby incorporated herein by reference as if the Assignment was set out in this Resolution in its entirety. The Chairman of County Council and the County Administrator are hereby authorized, empowered and directed to execute, acknowledge and deliver the Assignment in the name of and on behalf of the County, and the Clerk to County Council is hereby authorized and directed to attest the same, and thereupon to cause the Assignment to be delivered to Assignor and Assignee. The Assignment is to be in substantially the form now before this meeting and hereby approved, or with such minor changes therein as shall be approved by the County Administrator, upon advice of counsel, his execution thereof to constitute conclusive evidence of his approval of any and all changes or revisions therein from the form of Assignment now before this meeting.

Section 3. The Chairman of County Council, the County Administrator and the Clerk to County Council, for and on behalf of the County, are hereby authorized and directed to do any and all things necessary to effect the execution and delivery of the Assignment and the performance of all obligations of the County thereunder.

Section 4. The provisions of this Resolution are hereby declared to be separable and if any section, phrase or provisions shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions hereunder.

Section 5. All orders, resolutions and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed. This Resolution shall take effect and be in full force from and after its passage by the County Council.

[End of Resolution]

DONE in meeting duly assembled this ____ day of _____, 2023.

GREENVILLE COUNTY, SOUTH CAROLINA

Chairman of County Council

County Administrator

ATTEST:

Clerk to County Council
Greenville County, South Carolina

EXHIBIT A

PARTIAL ASSIGNMENT AND ASSUMPTION OF FEE IN LIEU OF TAX AGREEMENT

This **PARTIAL ASSIGNMENT AND ASSUMPTION OF FEE IN LIEU OF TAX AGREEMENT** (the “*Assignment*”) is made as of _____, 2023 (the “*Effective Date*”) between **PRECORP OF SOUTH CAROLINA, INC.** a South Carolina corporation (the “*Assignor*”) and **WALTER USA, LLC**, a Wisconsin limited liability company (“*Assignee*”) (collectively, the “*Parties*”).

WHEREAS, pursuant to the authorization granted under Title 12, Chapter 44 (the “*FILOT Act*”) of the Code of Laws of South Carolina, 1976, as amended (the “*Code*”), Assignor is a party to that certain Fee in Lieu of Tax Agreement dated December 1, 2013 (the “*FILOT Agreement*”), originally by and among Assignor as the operating company, BBW Properties, LLC as the landlord, and Greenville County (the “*County*”), acting by and through its County Council (the “*County Council*”), which provided for certain benefits and incentives as inducements for economic development within the County;

WHEREAS, Section 12-44-120 of the FILOT Act authorizes a transfer, with the applicable county’s consent, of an interest in a fee in lieu of tax agreement and the economic development property to which the fee in lieu of tax agreement relates, at any time;

WHEREAS, BBW Properties, LLC assigned all of its right, title, and interest in the FILOT Agreement to South Batesville LLC, pursuant to that certain Assignment and Assumption of Fee in Lieu of Tax Agreement dated December 31, 2013, and approved pursuant to Resolution Number 1522 adopted by the County Council on December 2, 2014;

WHEREAS, Assignee has agreed to acquire certain property, under certain conditions, which is subject to the FILOT Agreement (the “*Project*”); and

WHEREAS, pursuant to this Assignment, Assignor now desires to assign to Assignee, and Assignee desires to assume from Assignor, all of Assignor’s rights, title, and interest in, to, and under the FILOT Agreement.

NOW THEREFORE, in consideration of the above and other good and valuable consideration, the receipt and sufficiency of which Assignor acknowledges, the parties hereby agree as follows:

Section 1. Assignor hereby assigns, contributes, grants, conveys, and transfers to Assignee, its representatives, successors, and assigns, Assignor’s rights, title, obligations and interest in, to, and under the FILOT Agreement, TO HAVE AND TO HOLD the same to Assignee, its successors, and assigns forever, from and after the effective date of this Assignment, subject to the terms, covenants, and provisions of the FILOT Agreement.

Section 2. Assignor represents and warrants that the FILOT Agreement was validly executed and active under the laws of the State of South Carolina, and that Assignor has complied with its obligations thereunder at all times.

Section 3. Assignee agrees to assume, pay, and perform all the obligations of Assignor, under the FILOT Agreement and agrees to be bound thereby.

Section 4. This Assignment is binding on and inures to the benefit of the Parties, their heirs, executors, administrators, successors in interest, and assigns.

Section 5. The Parties are entitled to amend this Assignment only by a signed writing.

Section 6. This Assignment is governed by and construed in accordance with the laws of the State of South Carolina.

Section 7. A determination that any provision, or part of a provision, of this Assignment is unenforceable or invalid does not affect the enforceability or validity of any other provision, and any determination that the application of any provision or part of a provision of this Assignment to any person or circumstance is illegal or unenforceable does not affect the enforceability or validity of that provision or part of a provision as it may apply to any other person or circumstance.

Section 8. The parties may execute this Assignment in two or more counterparts, and by original signature or electronic means, each of which is deemed to be an original, but all of which together constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have caused this Assignment to be duly executed on the date first above written.

ASSIGNOR:

PRECORP OF SOUTH CAROLINA, INC.

By: _____

Its: _____

ASSIGNEE:

WALTER USA, LLC

By: _____

Its: _____