

## NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the County Council of Lexington County, will conduct a Public Hearing (the "**Hearing**") on the proposed enactment of Ordinance 22-09 entitled, "AN ORDINANCE AUTHORIZING PURSUANT TO CHAPTER 44 OF TITLE 12, SOUTH CAROLINA CODE OF LAWS, 1976, AS AMENDED, THE EXECUTION AND DELIVERY OF A FEE AGREEMENT BETWEEN LEXINGTON COUNTY, SOUTH CAROLINA AND FEDEX GROUND PACKAGE SYSTEM, INC., A COMPANY PREVIOUSLY IDENTIFIED AS PROJECT LOGISTICS (THE "COMPANY"), TO PROVIDE FOR A FEE-IN-LIEU OF AD VALOREM TAXES INCENTIVE; THE INCLUSION OF COMPANY PROPERTY IN A MULTI-COUNTY BUSINESS OR INDUSTRIAL PARK; AND MATTERS RELATING THERETO" (the "**Ordinance**") on Tuesday, June 7, 2022 at 6:00 p.m. (or soon thereafter as can be heard). Public hearings are normally held in the Dorothy K. Black Chambers, which is located on the second floor of the Lexington County Administration Building, 212 South Lake Drive, Lexington, South Carolina 29072.

The Hearing will be held in person to receive public comment. However, those wishing to participate virtually may provide written public comments by visiting the Lexington County Council section of the Lexington County website address of [www.lex-co.com](http://www.lex-co.com). Anyone who wishes to submit comments will need to save the form to your device and email the form to [countycouncil@lex-co.com](mailto:countycouncil@lex-co.com). Additionally, comments may be emailed to [countycouncil@lex-co.com](mailto:countycouncil@lex-co.com) or mailed to the Clerk of County Council at 212 South Lake Drive, Lexington, SC 29072. All comments should be submitted by 2:00 p.m. on Monday, June 6, 2022. All public comments will be included in the minutes of the County Council meeting. The Hearing will be livestreamed on the County's website by visiting the Meeting Portal. The Hearing is also available on Spectrum Cable Channel 1302.

A copy of the Ordinance is available for review at the County from the Clerk of Lexington County Council at 803-785-8103 or by email at [BShumpert@lex-co.com](mailto:BShumpert@lex-co.com). Also, a copy of the Ordinance can be found on the Lexington County Website ([www.lex-co.com](http://www.lex-co.com)) under County Council and will be available for viewing on Friday, June 3, 2022.

If special accommodations are needed to participate in the Hearing, contact the Lexington County Council office at 803-785-8103 or [BShumpert@lex-co.com](mailto:BShumpert@lex-co.com).

Scott Whetstone  
Chairman  
Lexington County Council

**ORDINANCE 22-09**

**AN ORDINANCE AUTHORIZING PURSUANT TO CHAPTER 44 OF TITLE 12, SOUTH CAROLINA CODE OF LAWS, 1976, AS AMENDED, THE EXECUTION AND DELIVERY OF A FEE AGREEMENT BETWEEN LEXINGTON COUNTY, SOUTH CAROLINA AND FEDEX GROUND PACKAGE SYSTEM, INC., A COMPANY PREVIOUSLY IDENTIFIED AS PROJECT LOGISTICS (THE “COMPANY”) TO PROVIDE FOR A FEE-IN-LIEU OF AD VALOREM TAXES INCENTIVE; THE INCLUSION OF COMPANY PROPERTY IN A MULTI-COUNTY BUSINESS OR INDUSTRIAL PARK; AND MATTERS RELATING THERETO.**

**WHEREAS**, Lexington County, South Carolina (the “County”) is authorized by the Code of Laws of South Carolina 1976, as amended (the “Code”) and particularly Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (the “Fee Act”), to enter into a fee agreement with companies meeting the requirements of the Fee Act which identifies certain property of such companies as “economic development property” (as defined in the Fee Act) to induce such companies to locate in the State of South Carolina (the “State”) and to encourage companies now located in the State to expand their investments and thus make use of and employ manpower and other resources of the State and the County is further authorized by Title 4, Chapter 1 of the Code (the “Multi-County Park Act”) (the Multi-County Park Act and the Fee Act, hereinafter collectively referred to as the “Act”) and Article VIII, Section 13 of the Constitution of the State to designate properties as part of a multi-county industrial or business park (a “Multi-County Industrial and Business Park”), all of which enhances the economic development of the County;

**WHEREAS**, the County, a public body corporate and politic under the laws of the State, has, by an Inducement Resolution adopted on April 12, 2022 (the “Inducement Resolution”), taken official action to identify the Project (as defined below) for purposes of applicable fee-in-lieu of taxes statutes and otherwise;

**WHEREAS**, the County desires to enter into a fee agreement (the “Fee Agreement”) with FedEx Ground Package System, Inc., a corporation organized and existing under the laws of the State of Delaware, acting for itself, one or more affiliates, and/or other project sponsors and previously identified as Project Logistics (collectively, the “Company”), which shall, amongst other things, provide for payments of fees-in-lieu of taxes for a project qualifying under the Fee Act for such a payment arrangement;

**WHEREAS**, the County and the Company desire to enter into the Fee Agreement concerning the establishment and/or expansion of certain facilities to be located in the County which will consist of certain real property, including land, building and other real property improvements, and certain personal property including all machinery, equipment, furnishings and other personal property required by the Company and any and all activities relating thereto, all of which such property constitutes a “project” under the Fee Act (collectively referred to herein as the “Project”). The Project is expected to provide significant economic benefits to the

County and surrounding areas. In order to induce the Company to locate the Project in the County, the County has agreed to charge a fee-in-lieu of taxes with respect to the Project and otherwise make available to the Company the benefits intended by the Fee Act, all as is to be set forth in greater detail in the Fee Agreement;

**WHEREAS**, Lexington County Council (the “County Council”) has caused to be prepared and presented to the County Council the Fee Agreement between the County and the Company, which the County shall execute and deliver;

**WHEREAS**, as further inducement to the Company, the County will utilize an existing Multi-County Industrial and Business Park established by that certain Agreement for Development of Joint County Industrial Park dated December 11, 1995 between the County and Calhoun County, as amended (the “Multi-County Industrial and Business Park Agreement”), to include the Site (as defined in the Fee Agreement), and, accordingly, the Project, therein under the provisions of Article VIII, Section 13 of the Constitution of the State of South Carolina, and the Multi-County Park Act; and

**WHEREAS**, it appears that the documents above referred to are appropriate instruments to be executed and delivered or approved by the County for the purposes intended.

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

**Section 1.** Pursuant to the Fee Act and particularly Section 12-44-40(I) thereof, the County Council has made and hereby makes the following findings:

(a) The Project constitutes a “project” as said term is referred to and defined in Section 12-44-30 of the Act;

(b) It is anticipated that the Project will benefit the general public welfare of the County by providing services, employment, recreation or other public benefits not otherwise adequately provided locally;

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

(d) It is anticipated that investment in the Project, in the aggregate, will be not less than \$13,923,000 (without regard to depreciation or other diminution in value);

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

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

(g) Having evaluated the purposes to be accomplished by the Project as proper governmental and public purposes, the anticipated dollar amount and nature of the investment to

be made, and the anticipated costs and benefits to the County, the County has determined that the Project is properly classified as economic development property (as defined in the Fee Act).

**Section 2.** In order to promote industry, develop trade and utilize the manpower, agricultural products and natural resources of the State, the form, terms and provisions of the Fee Agreement which is attached hereto and shall be executed and filed with the Clerk to County Council and which comply with the terms of the aforementioned Inducement Resolution are hereby approved and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if the Fee Agreement was set out in this Ordinance in its entirety. The Chair of County Council and the Clerk to County Council be and they are hereby authorized, empowered and directed to execute, acknowledge and deliver the Fee Agreement to the Company.

**Section 3.** The Chair of County Council and the Clerk to County Council, for and on behalf of the County, are hereby each authorized and directed to do any and all things necessary to effect the execution and delivery of the Fee Agreement in a form substantially identical to the terms contemplated herein and the performance of all obligations of the County under and pursuant to the Fee Agreement.

**Section 4.** With the appropriate consent of Calhoun County and the Town of Lexington, as required by the Multi-County Park Act, the Site, and, accordingly, the Project, shall be added to the Multi-County Industrial and Business Park established by the Multi-County Industrial and Business Park Agreement.

**Section 5.** The consummation of all transactions contemplated by the Fee Agreement and the Multi-County Industrial and Business Park Agreement are hereby approved.

**Section 6.** This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina.

**Section 7.** The provisions of this Ordinance are hereby declared to be separable and if any section, phrase or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions hereunder.

**Section 8.** All orders, resolutions, ordinances and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed and this Ordinance shall take effect and be in full force from and after its passage and approval.

[End of Ordinance]

**DONE, RATIFIED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2022.

**LEXINGTON COUNTY, SOUTH CAROLINA**

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Scott Whetstone, Chairman  
Lexington County Council

ATTEST:

By: \_\_\_\_\_  
Brittany M. Shumpert, Clerk to Council  
Lexington County Council

First Reading: April 12, 2022  
Second Reading: \_\_\_\_\_, 2022  
Public Hearing: June 7, 2022  
Third Reading: \_\_\_\_\_, 2022  
Filed with Clerk of Court: \_\_\_\_\_, 2022

**FEE AGREEMENT**  
**BY AND AMONG**  
**LEXINGTON COUNTY, SOUTH CAROLINA**  
**AND**  
**FEDEX GROUND PACKAGE SYSTEM, INC.**

**DATED AS OF**

**[\_\_\_\_\_], 2022**

**TABLE OF CONTENTS**

	<b>PAGE</b>
FEE AGREEMENT.....	1
ARTICLE I RECAPITULATION AND DEFINITIONS .....	2
SECTION 1.1. Statutorily Required Recapitulation.....	2
SECTION 1.2. Rules of Construction; Use of Defined Terms.....	2
SECTION 1.3. Definitions .....	2
SECTION 1.4. Internal References .....	6
ARTICLE II LIMITATION OF LIABILITY; INDUCEMENT .....	7
SECTION 2.1. Limitation of Liability .....	7
SECTION 2.2. Inducement.....	7
ARTICLE III REPRESENTATIONS, WARRANTIES AND COVENANTS.....	7
SECTION 3.1. Representations and Warranties of the County.....	7
SECTION 3.2. Covenants by the County .....	8
SECTION 3.3. Representations and Warranties of the Company .....	8
SECTION 3.4. Filings and Reports .....	8
ARTICLE IV COMMENCEMENT AND COMPLETION OF THE PROJECT .....	9
SECTION 4.1. The Project.....	9
SECTION 4.2. Diligent Completion .....	10
SECTION 4.3. Modifications to Project.....	10
ARTICLE V PAYMENTS-IN-LIEU-OF-TAXES; DISPOSITION OF PAYMENTS-IN-LIEU-OF-TAXES.....	10
SECTION 5.1. Payments-in-Lieu-of-Taxes .....	10
SECTION 5.2. Disposal of Property; Replacement Property.....	12
SECTION 5.3. Fee Term .....	12
SECTION 5.4. Contractual Minimum Requirements.....	12
SECTION 5.5. Multi-County Industrial and Business Park.....	13
ARTICLE VI PROPERTY TAX EXEMPTION AND ABATEMENT .....	13
SECTION 6.1. Protection of Tax Exempt Status of the Project.....	13
ARTICLE VII EFFECTIVE DATE .....	13
SECTION 7.1. Effective Date .....	13
ARTICLE VIII SPECIAL COVENANTS .....	14
SECTION 8.1. Indemnification Covenants .....	14
SECTION 8.2. Assignment and Leasing.....	14
ARTICLE IX EVENT OF DEFAULT AND REMEDIES; TERMINATION .....	15
SECTION 9.1. Events of Default Defined .....	15
SECTION 9.2. Remedies on Default.....	15
SECTION 9.3. No Additional Waiver Implied by One Waiver.....	20
SECTION 9.4. Option to Terminate.....	20
ARTICLE X MISCELLANEOUS .....	21
SECTION 10.1. Notices .....	21
SECTION 10.2. Binding Effect.....	22
SECTION 10.3. Invalidity and Severability.....	22

SECTION 10.4.	Payments Due on Saturday, Sunday and Holidays .....	22
SECTION 10.5.	Fiscal Year; Property Tax Year .....	22
SECTION 10.6.	Amendments, Changes and Modifications .....	22
SECTION 10.7.	Execution of Counterparts; Electronic Signatures.....	23
SECTION 10.8.	Law Governing Construction of Agreement .....	23
SECTION 10.9.	Filings .....	23
SECTION 10.10.	Headings .....	23
SECTION 10.11.	Further Assurance .....	23
SECTION 10.12.	Entire Understanding .....	23
EXHIBIT A	– Site Description	

## **FEE AGREEMENT**

**THIS FEE AGREEMENT** (“Fee Agreement”) is made and entered into as of [\_\_\_\_\_], 2022, by and between **LEXINGTON 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, and **FEDEX GROUND PACKAGE SYSTEM, INC.**, a corporation organized and existing under the laws of the State of Delaware and previously identified as Project Logistics, acting for itself, one or more affiliates, and/or other project sponsors (the “Company”).

### **WITNESSETH:**

**WHEREAS**, the County is authorized by the Code of Laws of South Carolina 1976, as amended (the “Code”) and particularly Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (the “Fee Act”), to enter into a fee agreement with companies meeting the requirements of the Fee Act which identifies certain property of such companies as economic development property to induce such companies to locate in the State and to encourage companies now located in the State to expand their investments and thus make use of and employ manpower and other resources of the State and the County is further authorized by Title 4, Chapter 1 of the Code (the “Multi-County Park Act”) (the Multi-County Park Act and Fee Act, hereinafter collectively referred to as the “Act”) and Article VIII, Section 13 of the Constitution of the State, to designate properties as part of a multi-county industrial or business park (a “Multi-County Industrial and Business Park”), all of which enhances the economic development of the County; and

**WHEREAS**, pursuant to the Fee Act, the County finds that: (a) it is anticipated that the Project (as defined herein) will benefit the general public welfare of the County by providing services, employment, recreation or other public benefits not otherwise adequately provided locally; (b) neither the Project nor any documents or agreements entered into by the County in connection therewith will give rise to any pecuniary liability of the County or incorporated municipality or to any charge against its general credit or taxing power; (c) the purposes to be accomplished by the Project are proper governmental and public purposes; and (d) the benefits of the Project to the public are greater than the costs to the public; and

**WHEREAS**, pursuant to an Inducement Resolution for Project Logistics dated April 12, 2022 (the “Inducement Resolution”), and in order to induce the Company to make, or cause to be made, new or additional investment through the establishment and/or expansion of facilities to be located in the County, the County agreed to, under certain conditions, negotiate a fee agreement under the Fee Act with the Company whereby the County would accept certain negotiated payments-in-lieu-of-taxes with respect to the Project, and the County has also now determined, under certain conditions, to provide the Company and the Project with the benefits of the inclusion and maintenance of the Project in a Multi-County Industrial and Business Park (as defined herein); and

**WHEREAS**, pursuant to an Ordinance adopted on [\_\_\_\_\_], 2022 (the “Ordinance”), as an inducement to the Company to develop the Project, the County Council authorized the County to enter into this Fee Agreement with the Company, which, establishes, amongst other things, a negotiated payment-in-lieu-of-taxes arrangement and identifies the property comprising the Project as economic development property under the Fee Act, subject to the terms and conditions hereof and the provisions of the Fee Act, and which provides for the inclusion of the property comprising the Project in a Multi-County Industrial and Business Park, all as set forth in greater detail herein, subject to the terms and conditions hereof.

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

## **ARTICLE I**

### **RECAPITULATION AND DEFINITIONS**

**SECTION 1.1. Statutorily Required Recapitulation.** Pursuant to Section 12-44-55(B) of the Fee Act, the County and the Company agree to waive the recapitulation requirements of Section 12-44-55 of the Fee Act. If the Company should be required to retroactively comply with the recapitulation requirements of Section 12-44-55 of the Fee Act, then the County agrees to waive all penalties and fees of the County for the Company’s noncompliance.

**SECTION 1.2. Rules of Construction; Use of Defined Terms.** Unless the context clearly indicates otherwise, in this Fee Agreement words and terms defined in **Section 1.3** hereof are used with the meanings ascribed thereto. The definition of any document or agreement shall include any amendments to that document, unless the context clearly indicates otherwise.

#### **SECTION 1.3. Definitions.**

“**Act**” means, collectively, the Fee Act and the Multi-County Park Act.

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

“**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 Code of Laws of South Carolina 1976, as in effect on the date hereof, as the same may be amended from time to time.

“**Commencement Date**” means the last day of the property tax year during which Project property consisting of economic development property (as defined under the Fee Act) is first placed in service, except that this date must not be later than the last day of the property tax year which is three (3) years from the year in which the County and the Company have entered into this Fee Agreement. The parties presently anticipate that the Commencement Date may be, but shall not be required to be, [**December 31, 202\_**].

“**Company**” means FedEx Ground Package System, Inc., a corporation organized and existing under the laws of the State of Delaware, and its successors and assigns.

“**Contractual Minimum Requirements**” shall mean (i) investment in the Project of, in the aggregate, at least \$13,923,000 (without regard to depreciation, reassessment, or other diminution in value) within the Investment Period, and (ii) the creation of, in the aggregate, at least one hundred fifty-one (151) new, Full-Time Jobs in the County, all within the Investment Period.

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

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

“**Documents**” means the Inducement Resolution, the Ordinance, the Multi-County Industrial and Business Park Agreement, the Ordinances enacted by the County Council to create the Multi-County Industrial and Business Park and to add the Project to the Multi-County Industrial and Business Park, and this Fee Agreement.

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

“**Equipment**” means all machinery, apparatus, equipment, fixtures, office facilities, furnishings and other personal property, including, but not limited to, pollution control equipment, to the extent such property becomes a part of the Project under this Fee Agreement.

“**Event of Default**” shall mean any Event of Default specified in **Section 9.1** of this Fee Agreement.

“**Fee Act**” shall have the meaning ascribed thereto in the recitals hereto.

“**Fee Agreement**” means this Fee Agreement dated as of [\_\_\_\_\_], 2022, between the County and the Company.

“**Fee Term**” shall mean the duration of this Fee Agreement with respect to each Stage of the Project as specified in **Section 5.3** hereof.

“**Full-Time Jobs**” shall mean a job requiring a minimum of 35 hours of an employee’s time per week for the entire normal year of the Company’s operation or a job requiring a minimum

of 35 hours of an employee's time per week for a year in which the employee was hired initially for or transferred to the Project. For the purposes of this Agreement, two half-time jobs are considered one Full-Time Job. A "half-time job" is a job requiring a minimum of twenty hours of an employee's time a week for the entire normal year of the Company's operations or a job requiring a minimum of twenty hours of an employee's time a week for a year in which the employee was hired initially for or transferred to the Project.

**"Inducement Resolution"** shall mean the Resolution of the County Council adopted on April 12, 2022, as further described in the recitals hereto.

**"Investment Period"** shall mean the period beginning with the first day that economic development property (as defined in the Fee Act) is purchased or acquired with respect to the Project, and ending on the last day of the fifth property tax year following the Commencement Date, subject to an extension of such period as provided in **Section 3.2(b)** hereof.

**"Multi-County Industrial and Business Park"** means an industrial and business park established for inclusion of the Project pursuant to the Multi-County Industrial and Business Park Agreement pursuant to Section 4-1-170 of the Code, as amended, and Article VIII, Section 13, paragraph D of the Constitution of South Carolina, and any multi-county industrial or business park which includes the Project and which is designated by the County as such pursuant to any agreement that supersedes or replaces the initial Multi-County Industrial and Business Park Agreement.

**"Multi-County Industrial and Business Park Agreement"** shall mean the Agreement for Development of Joint County Industrial Park dated December 11, 1995 between the County and Calhoun County, South Carolina, as amended to include the Project and as further amended, supplemented, or replaced from time to time.

**"Multi-County Park Act"** shall have the meaning ascribed thereto in the recitals hereof.

**"Ordinance"** means the Ordinance adopted by the County on [\_\_\_\_\_], 2022 authorizing this Fee Agreement.

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

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

**"Project"** shall mean the Equipment, Real Property, and any Replacement Property, together with the acquisition, construction, installation, design and engineering thereof which is eligible for inclusion as economic development property under the Fee Act and becomes subject to this Fee Agreement; provided, however, except as to Replacement Property, the term Project shall be deemed to include any such real property improvements and personal property, whether

now existing or hereafter constructed, improved, acquired, or equipped, only to the extent placed in service during the Investment Period. The parties hereto agree that Project property shall consist of such property so properly identified by the Company or any other Person hereunder in connection with its annual filing with the DOR of a SCDOR PT-300, or such comparable form, and with such schedules as the DOR may provide in connection with projects subject to the Act (as such filing may be amended or supplemented from time to time) for each year within the Investment Period.

“**Real Property**” means the Site, all buildings structures, fixtures, and other improvements now or hereafter located on the Site.

“**Replacement Property**” means any property placed in service 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 5.2** hereof.

“**Site**” means, collectively, the land at which Project property will be located in the County which land is further described in *Exhibit A* hereto.

“**Sponsor Affiliate**” shall mean an entity that joins with the Company and that participates in the investment in, or financing of, the Project and which meets the requirements under the Fee Act to be entitled to the benefits of this Fee Agreement with respect to its participation in the Project, all as set forth in **Section 4.1** hereof.

“**Stage**” with respect to the Project shall mean each individual annual increment of Project property, if any, placed in service during the Investment Period.

“**State**” means the State of South Carolina.

**SECTION 1.4. *Internal References.*** 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. References herein to Title, Chapters or Sections, except the references to Sections of this Fee Agreement or where the intent clearly requires otherwise, refer to Sections of the Code. The words “hereof”, “herein”, “hereunder”, and other words of similar impact refer to this Fee Agreement as a whole.

## **ARTICLE II**

### **LIMITATION OF LIABILITY; INDUCEMENT**

**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.

**SECTION 2.2. *Inducement.*** The County and the Company acknowledge that pursuant to the Fee Act, upon execution of this Fee Agreement, no part of the Project will be subject to *ad valorem* property taxation in the State, and that this factor, among others, has induced the Company to enter into this Fee Agreement.

### **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) 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) There is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any judicial or administrative court or agency, public board or body, pending or threatened, against or affecting the County, wherein an unfavorable decision, ruling or finding may or would materially affect the validity and enforceability of the Documents, the County's obligations hereunder, or the consummation of the transactions described in the Documents.

(d) 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 have been repealed, revoked, amended or rescinded.

(e) All consents, authorizations and approvals required on the part of the County, State and all other applicable governmental bodies in connection with the execution, delivery and performance by the County of such of the Documents as require execution, delivery and performance by the County have been obtained and remain in full force and effect as of the date hereof or will be obtained.

(f) The Project constitutes a "project" within the meaning of the Act.

(g) By due corporate action, the County has agreed that, subject to compliance with the Fee Act, each item of property comprising the Project shall be considered “economic development property” under the Fee Act.

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

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

(a) The County agrees to do all things deemed reasonably necessary as requested by the Company in writing in connection with the Project including but not limited to the execution, delivery and performance of its obligations in the Documents and in accordance with 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. Except as reasonably believed to be required by the County in the performance of its duties under statute or law, the County will take no action with respect to the Project unless authorized or requested to do so by the Company.

(b) Upon receipt of written request from the Company, the County agrees to consider any request the Company may make for an extension of the Investment Period in accordance with and up to the limits permitted under Section 12-44-30(13) of the Fee Act. Such extension may be provided by a resolution of County Council. Upon the granting of any such extension, the County agrees to cooperate with the Company by filing with the DOR a copy of documentation evidencing such extension within thirty (30) days of the date of execution thereof by the County.

**SECTION 3.3. *Representations and Warranties of the Company.*** The Company makes the following representations and warranties to the County:

(a) The Company is a corporation authorized to transact business in the State. 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 corporate action, has authorized the execution and delivery of the Documents to which it is a party.

(b) 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, law, rule, order or regulation to which the Company is now a party or by which it is bound.

(c) There is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any judicial or administrative court or agency, public board or body, pending or threatened, against or affecting the Company wherein an unfavorable decision, ruling or finding

would adversely and materially affect the consummation of the transactions described in the Documents to which the Company is a party.

(d) All consents, authorizations and approvals required on the part of the Company in connection with the Documents to which the Company is a party 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.

(e) 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.

(f) The Company will satisfy, or cause satisfaction of, the Contractual Minimum Requirements by the end of the Investment Period.

(g) The Company will pay all reasonable costs of the County, including reasonable attorney's fees, incurred in connection with the authorization, execution, and delivery of this Fee Agreement, which attorney's fees, absent unforeseen circumstances, will not exceed [ \$\_\_\_\_\_ ].

#### **SECTION 3.4. *Filings and Reports.***

(a) Each year during the Fee Term, the Company shall deliver to the County, the County Auditor, the County Assessor, the County Treasurer and the County Department of Economic Development, a copy of its most recent annual filings with the DOR with respect to the Project, not later than thirty (30) days following delivery thereof to the DOR. Not later than the April 30 following each property tax year corresponding to each tax year comprising the Investment Period, the Company will furnish to the County Department of Economic Development a copy of the most recent quarterly UCE 120 report filed with the South Carolina Department of Employment and Workforce with respect to employment at the Project. The Company shall redact the following information from such UCE 120 report: any reference to individual employee's names, street addresses, Social Security Numbers, or payroll. The employees' resident zip codes shall not be redacted if provided in such UCE 120 report. Given that the UCE 120 report includes all employees who were paid during the reporting quarter, including former employees that are no longer working at the Project, the records on these former employees shall be clearly highlighted.

(b) The Company shall cause the filing of a copy of this Fee Agreement, as well as a copy of the completed Form PT-443 of the DOR, to be filed with the County Auditor and the County Assessor of the County and any partner county, when the Project is placed in a joint county

industrial and business park, and the DOR within thirty (30) days after the date of execution and delivery hereof by all parties hereto.

## ARTICLE IV

### COMMENCEMENT AND COMPLETION OF THE PROJECT

**SECTION 4.1. *The Project.*** The Company has acquired, constructed and/or installed or has made or will make plans for the acquisition, construction and/or installation of certain real property and improvements, and/or machinery, equipment, and other personal property, including but not limited to Equipment, Real Property, and/or any Replacement Property, which comprise the Project, all in support of the utilization of the Project as facilities for sorting and distribution and related activities. The parties hereto agree that Project property shall consist of such property and any additional real and personal property as may be identified by the Company, its Affiliates, or other third parties that have entered into any financing, lease, license or other access arrangement with the Company or any of its Affiliates with respect to Project property, in connection with annual filings with the DOR of a SCDOR PT-300, or comparable property tax or fee in lieu of tax forms, including any schedules thereto (as such filings may be amended or supplemented from time to time), for each property tax year within the Investment Period and, with respect to Replacement Property, for each property tax year thereafter during the Fee Term.

Pursuant to the Fee Act, the Company and the County hereby agree that the property comprising the Project shall be economic development property as defined under the Fee Act, so long as such property meets the requirements of the Fee Act.

Notwithstanding any other provision of this Fee Agreement, the Company may place real or personal property into service at any time under this Fee Agreement.

All investment in, and job creation at, the Project by the Company, by any of its Affiliates, and by any third party to the extent that the Company or any of its Affiliates utilizes the property funded by such third party pursuant to any financing, lease, license, or other access arrangement, shall, to the extent permitted by law, count toward any investment and job requirement or threshold specified in this Fee Agreement. Notwithstanding anything in this Fee Agreement or the other Documents to the contrary, each such Affiliate or third party, upon written notice by the Company to the County of the identity of such Affiliate or third party, shall hereby be deemed Sponsor Affiliates under the Fee Agreement, and shall be entitled, to the extent permitted by the Act, to all rights, interests, and benefits to which the Company is entitled under this Fee Agreement including, without limitation, the Payments-in-Lieu-of-Taxes arrangement, and shall also be bound by all of the duties, restrictions, and obligations to which the Company has agreed upon under this Fee Agreement, all only with respect to each such entity's respective portion of the Project. The Company shall notify DOR in writing of all such entities to benefit from the Payments-in-Lieu-of-Taxes arrangement in accordance with Section 12-44-130(B) of the Fee Act.

The Company may designate from time to time any additional Sponsor Affiliates pursuant to the provisions of Sections 12-44-30(20) and 12-44-130 of the Fee Act, which Sponsor Affiliates shall join with the Company and make investments with respect to the Project, or participate in the

financing of such investments, and shall agree to be bound by the terms and provisions of this Fee Agreement pursuant to the terms of a written joinder agreement with the County and the Company, in form and substance reasonably acceptable to the County. The Company shall provide the County and the DOR with written notice of any Sponsor Affiliate designated pursuant to this Section within ninety (90) days after the end of the calendar year during which any such Sponsor Affiliate has placed in service any portion of the Project, in accordance with Section 12-44-130(B) of the Fee Act. Any other such entity to which the Company intends to extend the benefits of this Fee Agreement may, at the request of the Company, be approved by a resolution passed by the County Council, in its sole discretion.

**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; however, notwithstanding anything contained in this Fee Agreement to the contrary, the Company shall not be obligated to complete, or cause to be completed, the acquisition, construction and installation of the Project and may terminate this Fee Agreement with respect to all or a portion of the Project as set forth in Article IX herein.

**SECTION 4.3. *Modifications to Project.*** The Company may make, or cause to be made, from time to time any additions, modifications or improvements to the Project that it may deem desirable for its business purposes.

## ARTICLE V

### PAYMENTS-IN-LIEU-OF-TAXES; DISPOSITION OF PAYMENTS-IN-LIEU-OF-TAXES

**SECTION 5.1. *Payments-in-Lieu-of-Taxes.*** The parties hereto acknowledge that under Article I, Section 3 of the South Carolina Constitution, the Project is exempt from *ad valorem* property taxes upon the execution of this Fee Agreement. However, the Company shall be required to make, or cause to be made, the Payments-in-Lieu-of-Taxes with respect to the Project as provided in this **Section 5.1**. In accordance with the Fee Act, and unless this Fee Agreement is sooner terminated, the Company shall make, or cause to be made, 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 Fee Act. Such amounts shall be calculated and payable as follows:

(a) The Company has agreed to make, or cause to be made, annual Payments-in-Lieu-of-Taxes with respect to the Project in an amount equal to the property taxes that would be due with respect to such property, if it were taxable, but using (i) an assessment ratio of 6%, and (ii) a millage rate of [\_\_\_\_\_] mills, which such millage rate shall be fixed in accordance with Section 12-44-50(A)(1)(b)(i) of the Fee Act.

Subject in all events to the provisions of the Fee Act, the fair market value estimate determined by the DOR will be as follows:

- (i) for real property, using the original income tax basis for South Carolina income tax purposes without regard to depreciation; provided, however, if real property is constructed for the fee or is purchased in an arm's length transaction, fair market value equals the original income tax basis; provided, however, that the Company and the County may agree to hereafter amend this Fee Agreement as to Project real property so as to determine the fair market value of any such real property in accordance with any other method permitted by the Fee Act, including by DOR's determination of fair market value by appraisal; and
- (ii) for personal property, 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) During the Fee Term, the Payments-in-Lieu-of-Taxes shall be made on the basis that the Project property shall not be allowed those exemptions from *ad valorem* property taxes which may be otherwise applicable to the Project property if such property were subject to *ad valorem* property taxes, including, but not limited to, the exemptions allowed under Section 3(g) of Article X of the South Carolina Constitution and Sections 12-37-220(B)(32), (34), and (52)(a) of the Code.

(c) The Company shall make, or cause to be made, Payments-in-Lieu-of-Taxes for each year during the Fee Term beginning with the tax year corresponding to the property tax year in which Project property consisting of economic development property under the Fee Act 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.

(d) Any economic development property under the Fee Act placed in service as part of the Project during the Investment Period shall be included in the calculation of payments pursuant to paragraphs (a), (b) and (c), above, for a period not exceeding thirty (30) years following the property tax year in which such property was placed in service. As set forth in the Fee Act, Replacement Property shall be included (using its income tax basis) in the calculation of payments pursuant to paragraphs (a), (b) and (c), above, but only up to the original income tax basis of property which is being disposed of in the same property tax year. Replacement Property shall be deemed to replace the oldest property subject to this Fee Agreement which is disposed of in the same property tax year that the Replacement Property is placed in service. More than one piece of property can replace a single piece of property. Replacement Property does not have to serve the same function as the property it is replacing. To the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the property which it is replacing, the portion of such property allocable to the excess amount shall be subject to annual payments calculated as if the exemption for economic development property under the Fee Act were not allowed. Replacement Property is entitled to the Payment-in-Lieu-of-Taxes pursuant to this **Section 5.1** for the period of time remaining on the thirty (30) year Fee Term for the property which it is replacing.

**SECTION 5.2. *Disposal of Property; Replacement Property.***

(a) In any instance where the Company in its sole discretion 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 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 5.2**. Subject to the provisions of **Section 5.1(d)** with respect to Replacement Property and this **Section 5.2(a)** with regard to the maintenance of certain investment levels, the Payments-in-Lieu-of-Taxes required by **Section 5.1** hereof 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 5.2**. In the event that following the Investment Period, such disposal (without replacement) reduces the investment in the Project, without regard to depreciation or other diminution in value, below the investment level set forth in the Contractual Minimum Requirements, then the County may, in its sole discretion, revert the Project prospectively to *ad valorem* taxation and, in such instance, this Fee Agreement shall terminate prospectively pursuant to Section 12-44-140 of the Fee Act.

(b) The Company may, in its sole discretion, 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 **Section 5.2(a)** hereof. 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.

**SECTION 5.3. *Fee Term.*** The applicable term of this Fee Agreement shall be measured for each Stage beginning from the last day of the property tax year in which such Stage of the Project is placed in service through the last day of the property tax year which is the twenty-ninth (29<sup>th</sup>) year following such year; provided, that the maximum term of this Fee Agreement shall not be more than thirty (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 payment of the final installment of Payments-in-Lieu-of-Taxes pursuant to **Section 5.1** hereof or exercise by the Company of its option to terminate as to all or a portion of the Project pursuant to **Section 9.4** hereof.

**SECTION 5.4. *Contractual Minimum Requirements.*** If the Company has not satisfied, or caused to be satisfied, the Contractual Minimum Requirements by the end of the Investment Period, then the County may, in its sole discretion, terminate this Fee Agreement, retroactively and/or prospectively, and, in such instances, the Project shall revert retroactively and/or prospectively, as the case may be, to *ad valorem* taxation and, in the event the County elects to so terminate retroactively, the Company shall, within one hundred and eighty (180) days of the end of the Investment Period, make, or cause to be made, payment to the County of the difference

between the Payments-in-Lieu-of-Taxes actually made by the Company and the amount of *ad valorem* property taxes which would otherwise have been due with respect to the Project; provided, however, in calculating any such differential payment, the Company shall be entitled: (1) to enjoy the five-year exemptions from *ad valorem* property taxes (or fees in lieu of property taxes) provided by Article X, Section 3 of the Constitution of the State, and any other property tax exemption that would have been available to the Company; (2) to enjoy all allowable depreciation; and (3) to receive all other tax credits which would have been due if the Company were obligated to pay *ad valorem* property taxes hereunder or under the Fee Act.

**SECTION 5.5. *Multi-County Industrial and Business Park.*** The County agrees that, with the appropriate consent of the County Council and Calhoun County Council and Lexington Town Council, as required by the Multi-County Park Act, the County will amend the Multi-County Industrial and Business Park Agreement to include the Project in the Multi-County Industrial and Business Park pursuant to Section 13 of Article VIII of the South Carolina Constitution and Section 4-1-170 of the Code of Laws of South Carolina 1976, as amended, and to undertake and execute those procedures, instruments, ordinances, resolutions and documents as may be reasonably required to accomplish same.

## 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 County and the Company covenant that:

(a) all rights 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 document shall arise, then in that case, this Section shall control;

(b) the County and the Company have not knowingly committed or permitted and will not knowingly commit or permit (as to any act over which either has 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; and

(c) the Company will maintain the identity of the Project as a “project” in accordance with the Act.

## ARTICLE VII

### EFFECTIVE DATE

**SECTION 7.1. *Effective Date.*** This Fee Agreement shall become effective as of the date written above upon its execution and delivery by the parties hereto unless a later date is specified herein.

## ARTICLE VIII

### SPECIAL COVENANTS

#### **SECTION 8.1. *Indemnification Covenants***

(a) The Company shall, and agrees to, hold the County and its County Council members, officers, agents and employees harmless from all pecuniary liability in connection with those reasons set forth in (i) or (ii) of **Section 8.1(b)** and to reimburse them for all reasonable expenses to which any of them might be subject due to the approval and entering into of the Documents or the fulfillment of their obligations under this Fee Agreement in the implementation of its terms and provisions.

(b) Notwithstanding the fact that it is the intention of the parties hereto that neither the County nor any of its members, officers, agents and employees shall incur any pecuniary liability to any third party (i) by reason of the terms of this Fee Agreement or the undertakings of the County required hereunder, or (ii) by reason of the performance of any act in connection with the entering into and performance of the transactions described in the Documents, if the County or any of its members, officers, agents or employees should incur any such pecuniary liability, then, in that event the Company shall indemnify and hold harmless the County and its members, officers, agents and employees against all pecuniary claims by or on behalf of any Person arising out of the same, and all reasonable costs and expenses incurred in connection with any defending against such claim, and upon written notice from the County, the Company at its own expense shall defend the County and its officers, agents and employees in any such action or proceeding.

(c) Notwithstanding the foregoing, the Company shall not be obligated to indemnify the County or any of its individual members, officers, agents or employees for expenses, claims, losses or damages arising from the intentional or willful misconduct or negligence of the County or any of its individual members, officers, agents or employees.

**SECTION 8.2. *Assignment and Leasing.*** The County agrees to consent, as allowed by the Fee Act, for solely financing purposes, to: (a) any sale, transfer, disposition or assignment of this Fee Agreement, whether in whole or in part, by the Company or any transferee or assignee; (b) the transfer or assignment of security or other interests in any or all of the Company's interests in the Project; or (c) the sublease of the Project. Additionally, the County hereby expressly consents to any transfer or assignment by the Company of any or all of its interests in the Project and/or this Fee Agreement to any Affiliates of the Company and to any transfer or assignment of any or all of such interest among such entities. The County further agrees that, if future County consent is required by the Fee Act, such consent shall not be unreasonably conditioned, withheld or delayed, and that the County Council can provide any such consent by a resolution of County Council. The County Administrator and the Clerk to County Council are hereby expressly individually and jointly authorized and directed to evidence the County's consent to such transfer or assignment by timely executing such documents as the Company may reasonably request. Further, for the purposes of this Fee Agreement and as noted in **Article V** herein, a transaction or an event of sale, assignment, leasing, transfer of an interest herein, disposal, or replacement of all

or part of the Project shall not be a termination of the Fee Agreement in whole or in part or a basis for changing the calculation of any payments in connection with the Project, whether Payments-in-Lieu-of-Taxes hereunder or fee payments due under Section 12-44-50 of the Act. If, notwithstanding the foregoing sentence, the Company elects to obtain additional action by County Council indicating such consent, a resolution passed by County Council shall be sufficient to indicate such additional County Council consent.

## ARTICLE IX

### EVENT OF DEFAULT AND REMEDIES; TERMINATION

**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 shall fail to make, or cause to be made, any Payment-in-Lieu-of-Taxes due under **Section 5.1** hereof or any other amount required under this Fee Agreement and such failure shall continue for thirty (30) days after receiving written notice of default from the County; or

(b) If the Company or the County shall fail to observe or perform any covenant, condition or agreement required herein to be observed or performed by the Company or the County (other than as referred to in **Section 9.1(a)** hereof), and such failure shall continue for a period of thirty (30) days after written notice of default has been given to the Company by the County or to the County by the Company; provided if by reason of “force majeure” (as hereinafter defined) the Company or the County is unable in whole or in part to carry out any such covenant, condition or agreement or if it takes longer than thirty (30) days to cure such default and the Company or the County 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; 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 or other County authority; 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 or the County made in the Documents 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.

**SECTION 9.2. *Remedies on Default.*** Whenever any Event of Default by the Company shall have happened and be subsisting beyond all applicable notice and cure periods, the County may (i) terminate this Fee Agreement by providing at least thirty (30) days’ written notice to the Company specifying the termination date; or (ii) take whatever action at law or in equity may appear legally required or necessary or desirable to collect the payments and other amounts then due or to enforce performance and observance of any obligation, agreement or covenant of the

Company, under the Documents. Although the parties hereto acknowledge that the Project is exempt from *ad valorem* property taxes, the County and any other taxing entity affected thereby may, without limiting the generality of the foregoing, exercise the remedies provided by general State law (Title 12, Chapter 49 and Title 12, Chapter 51 of the Code) and any act relating to the enforced collection of taxes. The County's right to receive Payments-in-Lieu-of-Taxes shall have a first priority lien status pursuant to Section 12-44-90 of the Fee Act and Title 12, Chapters 4 and 54 of the Code. Upon the default of the County in the performance of any of its obligations hereunder, the Company may take whatever action at law or in equity as may appear necessary or desirable to enforce its rights under this Fee Agreement, including, without limitation, a suit for *mandamus* or specific performance.

Each right, power, and remedy of the County or the Company provided for in this Fee Agreement shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy provided for in this Fee 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 the Company of any one or more of the rights, powers, or remedies provided for in this Fee 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 the Company of any or all such other rights, powers, or remedies.

**SECTION 9.3. *No Additional Waiver Implied by One Waiver.*** In the event any warranty, covenant or agreement contained in this Fee Agreement should be breached by the Company or the County and thereafter waived by the other 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.

**SECTION 9.4. *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 thirty (30) days' notice, the Company may terminate this Fee Agreement with respect to all or part of the Project. Upon termination of the Fee Agreement with respect to all or any portion of the Project, the Company will become liable for *ad valorem* property taxes, or payments-in-lieu-of-taxes pursuant to the Multi-County Park Act, as the case may be, on all or such portion of the Project as is so terminated from inclusion in the Project, as well as for any amounts already due and owing under this Fee Agreement by the Company, 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**, or, if the termination is the entire Project, then within one hundred eighty (180) days of such termination.

## ARTICLE X

### MISCELLANEOUS

**SECTION 10.1. *Notices.*** All notices, approvals, consents, requests and other communications hereunder shall be in writing and may be delivered personally, or may be sent by facsimile or certified mail, return receipt requested, to the following addresses, unless the parties hereto are subsequently notified of any change of address in accordance with this **Section 10.1**:

If to the Company: FedEx Ground Package System, Inc.  
Attention: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With A Copy To: Nexsen Pruet, LLC  
Attention: Tushar V. Chikhliker  
1230 Main Street, Suite 700  
Columbia, SC 29201

If to the County: Lexington County Council  
Attention: Clerk to Council  
212 South Lake Drive  
Lexington, SC 29072

With A Copy To: Davis Frawley, LLC  
Attention: Jeffrey M. Anderson  
140 E. Main Street  
Lexington, SC 29072

Any notice shall be deemed to have been received as follows: (1) by personal delivery, upon receipt; (2) by facsimile, twenty four (24) hours after confirmed transmission or dispatch; and (3) by certified mail, three (3) business days after delivery to the U.S. Postal authorities by the party serving notice.

**SECTION 10.2. *Binding Effect.*** This Fee Agreement shall inure to the benefit of and shall be binding upon the County and the Company and their respective successors and assigns.

**SECTION 10.3. *Invalidity and Severability.*** In the event that the Act or the Payments-in-Lieu-of-Taxes arrangement described in **Section 5.1** hereof are determined to be invalid or unenforceable in whole or in part, the parties hereto hereby agree that, except as the final judicial decision may otherwise require, the Company shall be entitled to retain any benefits received and to be 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 contemplated herein, in which event the parties hereto shall in good faith attempt to preserve, to the maximum extent possible, the benefits provided and to be provided to the Company hereunder by either restructuring or reconstituting this Fee Agreement under any then applicable law, including but not limited to, Section 12-44-160, Chapter 29 of Title 4, and/or Chapter 12 of Title 4 of the Code.

**SECTION 10.4. *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 10.5. *Fiscal Year; Property Tax Year.*** If the Company’s fiscal year changes in the future so as to cause a change in the Company’s property tax year, the timing of the requirements set forth in this Fee Agreement shall be revised accordingly.

**SECTION 10.6. *Amendments, Changes and Modifications.*** Except as otherwise provided in this Fee Agreement, this Fee Agreement may not be amended, changed, modified, altered or terminated without the written consent of the County and the Company. To the maximum extent allowed by law, any such County consent may be provided by a resolution of County Council.

**SECTION 10.7. *Execution of Counterparts; Electronic Signatures.*** This Fee Agreement may be executed in several counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument; provided, however, that any action may be brought upon any counterpart of this Fee Agreement or any counterpart of any document that is attached to this Fee Agreement as an exhibit. Signature pages to this Fee Agreement may be delivered with original signatures or by photostatic reproduction, telephonic facsimile transmission, email or other electronic transmission or other similar means whereby each original signature has been reproduced (including, without limitation, .pdf or any electronic signature complying with the U.S. federal E-SIGN Act of 2000, e.g., [www.docusign.com](http://www.docusign.com)), and all reproduced signatures shall be deemed “electronic signatures” and equivalent to an original signature for all purposes.

**SECTION 10.8. *Law Governing Construction of Agreement.*** The laws of the State of South Carolina shall govern the construction of this Fee Agreement.

**SECTION 10.9. *Filings.*** Whenever the County shall be required to file or produce any reports, notices or other documents related to the Project during the Fee Term, the Company shall in due time furnish, or cause to be furnished, to the County the completed form of such report, notice or other required documents together with a certification by the Company that such document is accurate.

**SECTION 10.10. *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 10.11. *Further Assurance.*** From time to time the County agrees to execute and deliver to the Company such additional instruments, and to undertake further proceedings, as the Company may reasonably request to effectuate the purposes of this Fee Agreement.

**SECTION 10.12. *Entire Understanding.*** This Fee Agreement expresses the entire understanding and all agreements of the parties hereto with each other, and neither party hereto has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth in this Fee Agreement delivered in connection with the execution and delivery thereof.

[Signature Pages Follow]



**IN WITNESS WHEREOF, LEXINGTON COUNTY, SOUTH CAROLINA and the COMPANY**, each pursuant to due authority, have duly executed this Fee Agreement, all as of the date first above written.

**LEXINGTON COUNTY, SOUTH CAROLINA**

---

Scott Whetstone  
Chair of Lexington County Council

**ATTEST:**

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Brittany M. Shumpert  
Clerk, Lexington County Council

**FEDEX GROUND PACKAGE SYSTEM, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT A**

**SITE DESCRIPTION**

[To be inserted.]