

## 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 No. 21-01 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 SC INDUSTRIAL HOLDINGS, LLC, METROPOLITAN CAMPUS, LLC, AND METROPOLITAN CAMPUS II, LLC, COMPANIES PREVIOUSLY IDENTIFIED AS PROJECT BRONCO (COLLECTIVELY, THE “COMPANY”), TO PROVIDE FOR A FEE-IN-LIEU OF AD VALOREM TAXES INCENTIVE AND CERTAIN SPECIAL SOURCE REVENUE CREDITS; THE INCLUSION OF COMPANY PROPERTY IN A MULTI-COUNTY BUSINESS OR INDUSTRIAL PARK; AND OTHER MATTERS RELATING THERETO” (the “**Ordinance**”) on Tuesday, April 13, 2021 at 6:00 p.m. (or soon thereafter as can be heard). Public hearings are normally held in the Chambers of County Council, which is located on the second floor of the Lexington County Administration Facility, 212 South Lake Drive, Lexington, South Carolina 29072.

The Hearing will be held electronically in a virtual environment. Those wishing to provide written public comments may do so 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 Tuesday, April 13, 2021. All public comments will be read aloud during the Hearing and 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, April 9, 2021.

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).

M. Todd Cullum  
Chairman  
Lexington County Council

**ORDINANCE 21-01**

**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 SC INDUSTRIAL HOLDINGS, LLC, METROPOLITAN CAMPUS, LLC, AND METROPOLITAN CAMPUS II, LLC, COMPANIES PREVIOUSLY IDENTIFIED AS PROJECT BRONCO (COLLECTIVELY, THE “COMPANY”) TO PROVIDE FOR A FEE-IN-LIEU OF AD VALOREM TAXES INCENTIVE AND CERTAIN SPECIAL SOURCE REVENUE CREDITS; 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” or, as to Section 4-1-175 of the Multi-County Park Act and, by incorporation, Section 4-29-68 of the Code, the “Special Source Act”) (the Multi-County Park Act and the Special Source Act, together with 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”) and to use all or a portion of the payments-in-lieu-of-taxes resulting from such designation to pay, or reimburse such companies for paying, through the provision to such companies of special source revenue credits (“Special Source Credits”), the cost of infrastructure serving a project and of improved or unimproved real estate and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise, 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 March 9, 2021 (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 SC Industrial Holdings, LLC, a limited liability company organized and existing under the laws of the State of South Carolina, Metropolitan Campus, LLC, a limited liability company organized and existing under the laws of the State of South Carolina, and Metropolitan Campus II, LLC, a limited liability company organized and existing under the laws of the State of South Carolina, each acting for itself, one or more affiliates, and/or other project sponsors and previously identified

as Project Bronco (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 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 and has agreed to provide certain Special Source Credits with respect to the Project, 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 Project Site 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 \$61,700,000 (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, 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 \_\_\_\_\_, 2021.

**LEXINGTON COUNTY, SOUTH CAROLINA**

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M. Todd Cullum, Chairman  
Lexington County Council

ATTEST:

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

First Reading: March 9, 2021  
Second Reading: April 13, 2021  
Public Hearing: April 13, 2021  
Third Reading: \_\_\_\_\_, 2021  
Filed with Clerk of Court: \_\_\_\_\_, 2021

**FEE AGREEMENT**

**BY AND AMONG**

**LEXINGTON COUNTY, SOUTH CAROLINA,**

**SC INDUSTRIAL HOLDINGS, LLC,**

**METROPOLITAN CAMPUS, LLC,**

**AND**

**METROPOLITAN CAMPUS II, LLC**

**DATED AS OF**

**\_\_\_\_\_, 2021**

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## **FEE AGREEMENT**

**THIS FEE AGREEMENT** ("Fee Agreement") is made and entered into as of \_\_\_\_\_, 2021, 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 **SC INDUSTRIAL HOLDINGS, LLC**, a limited liability company organized and existing under the laws of the State of South Carolina (the "Operating Company"), and **METROPOLITAN CAMPUS, LLC**, a limited liability company organized and existing under the laws of the State of South Carolina (the "Site 1 Real Property Owner"), and **METROPOLITAN CAMPUS II, LLC**, a limited liability company organized and existing under the laws of the State of South Carolina (the "Site 2 Real Property Owner"), companies previously identified, collectively, as Project Bronco, each acting for itself, one or more affiliates, and/or other project sponsors (each of the Operating Company, the Site 1 Real Property Owner, and the Site 2 Real Property Owner, a "Company, and collectively, the "Companies").

### **W I T N E S S E T H:**

**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" or, as to Sections 4-1-175 of the Multi-County Park Act and, by incorporation, Section 4-29-68 of the Code, the "Special Source Act") (the Multi-County Park Act and the Special Source Act, together with 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") and to use all or a portion of the payments-in-lieu-of-taxes resulting from such designation to pay, or reimburse such companies for paying, through the provision to such companies of special source revenue credits, the cost of infrastructure serving a project and of improved or unimproved real estate and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise ("Special Source Improvements"), 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 Bronco dated March 9, 2021 (the “Inducement Resolution”), and in order to induce the Companies to make, or cause to be made, new or additional investment through the establishment 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 Companies 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 Companies and the Project with the benefits of certain Special Source Credits (as defined herein) and to 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 \_\_\_\_\_, 2021 (the “Ordinance”), as an inducement to the Companies to develop the Project, the County Council authorized the County to enter into this Fee Agreement with the Companies, 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, and the grant of Special Source Credits to pay, or to reimburse for payment of, the costs of certain Special Source Improvements related to the Project, 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 Companies agree to waive the recapitulation requirements of Section 12-44-55 of the Fee Act. If the Companies 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 Companies’ 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, including, without limitation, the Special Source Act.

**“Affiliate”** shall mean any corporation, limited liability company, partnership or other Person or entity which now or hereafter owns all or part of any Company or which now or hereafter is owned in whole or in part by any Company or by any partner, shareholder or owner of any Company, and any subsidiary, affiliate or other Person, individual, or entity who now or hereafter bears a relationship to any 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 Companies 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 each of the Operating Company, Site 1 Real Property Owner, and Site 2 Real Property Owner, each with respect to its respective portion of the Project.

**“Companies”** means the Operating Company, Site 1 Real Property Owner, and Site 2 Real Property Owner, collectively.

**“Contractual Minimum Requirements”** shall mean (i) investment in the Project of, in the aggregate, at least \$61,700,000 (without regard to depreciation, reassessment, or other diminution in value) and (ii) the creation of, in the aggregate, at least one hundred and fifty (150) new jobs, 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.

**“Credit Period”** shall have the meaning ascribed thereto in **Section 5.6** hereof.

**“Defaulting Entity”** shall have the meaning ascribed thereto in **Section 9.2** hereof.

**“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 \_\_\_\_\_, 2021, between the County and the Companies.

**“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.

**“Inducement Resolution”** shall mean the Resolution of the County Council adopted on March 9, 2021, 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 the 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.

**“Operating Company”** means SC Industrial Holdings, LLC, a limited liability company organized and existing under the laws of the State of South Carolina, and its successors and assigns.

**“Ordinance”** means the Ordinance adopted by the County on \_\_\_\_\_, 2021 authorizing this Fee Agreement.

**“Payments-in-Lieu-of-Taxes”** means the payments to be made by any 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 (1) all existing personal property and real property improvements title to which has been, or will be, transferred to Site 1 Real Property Owner pursuant to that certain **[Purchase and Sale Agreement]** including, but not limited to, all such real property improvements now or prior hereto located on that portion of the Site identified on *Exhibit A* hereto as of the original execution and delivery of this Agreement as Site 1 (which shall be Project property hereunder to the extent permitted by Section 12-44-110(3) of the Fee Act), and (2) 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 any 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, and identified therein as of the original execution and delivery of this Agreement as Site 1 and Site 2.

**“Site 1 Real Property Owner”** means Metropolitan Campus, LLC, a limited liability company organized and existing under the laws of the State of South Carolina, and its successors and assigns.

**“Site 2 Real Property Owner”** means Metropolitan Campus II, LLC, a limited liability company organized and existing under the laws of the State of South Carolina, and its successors and assigns.

**“Special Source Act”** shall have the meaning ascribed thereto in the recitals hereof.

**“Special Source Credits”** mean the special source revenue credits described in **Section 5.6** hereof.

**“Special Source Improvements”** means, to the extent paid for, or caused to be paid for, by any Company, or used by any Company pursuant to any financing, lease, license or other access arrangement, any infrastructure serving the economic development of the County and any improved and unimproved real property, buildings, structural components of buildings, fixtures or other real property improvements, and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County, all in accordance with the Special Source Act. For purposes of this Fee Agreement, Special Source Improvements shall be deemed to include, without limitation, all roadwork, water, sewer, drainage, power and utility facilities serving the Project, as well as any land comprising the Site, the buildings, fixtures, and other real property improvements at the Site, and the personal property, including machinery and equipment, located at the Site, and any additions or improvements to any of the foregoing, whether paid for by any Company directly or pursuant to any lease, license or other access arrangement.

**“Sponsor Affiliate”** shall mean an entity that joins with any 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 Companies 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 Companies 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 Companies and covenants with the Companies 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 Companies as follows:

(a) The County agrees to do all things deemed reasonably necessary as requested by any 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 any Company.

(b) Upon receipt of written request from any Company, the County agrees to consider any request any 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 Companies 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 Operating Company.*** The Operating Company makes the following representations and warranties to the County:

(a) The Operating Company is a limited liability company authorized to transact business in the State. The Operating 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 Operating 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 Operating 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 Operating 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 Operating Company is a party.

(d) All consents, authorizations and approvals required on the part of the Operating Company in connection with the Documents to which the Operating Company is a party and the transactions contemplated thereby and the acquisition, construction and installation of the Operating Company's respective portion of the Project have been obtained and remain in full force and effect or will be obtained.

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

(f) The Operating Company, together with the Site 1 Real Property Owner and the Site 2 Real Property Owner, will satisfy, or cause satisfaction of, the Contractual Minimum Requirements by the end of the Investment Period.

(g) The Companies 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. *Representations and Warranties of the Site 1 Real Property Owner.*** The Site 1 Real Property Owner makes the following representations and warranties to the County:

(a) The Site 1 Real Property Owner is a limited liability company authorized to transact business in the State. The Site 1 Real Property Owner 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 Site 1 Real Property Owner 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 Site 1 Real Property Owner 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 Site 1 Real Property Owner wherein an unfavorable decision, ruling or finding would adversely and materially affect the consummation of the transactions described in the Documents to which the Site 1 Real Property Owner is a party.

(d) All consents, authorizations and approvals required on the part of the Site 1 Real Property Owner in connection with the Documents to which the Site 1 Real Property Owner is a

party and the transactions contemplated thereby and the acquisition, construction and installation of the Site 1 Real Property Owner's respective portion of the Project have been obtained and remain in full force and effect or will be obtained.

(e) The Documents to which the Site 1 Real Property Owner is a party are (or, when executed, will be) legal, valid and binding obligations of the Site 1 Real Property Owner enforceable against the Site 1 Real Property Owner in accordance with their respective terms, except as such terms may be limited by laws affecting creditors' rights generally.

(f) The Site 1 Real Property Owner, together with the Operating Company and the Site 2 Real Property Owner, will satisfy, or cause satisfaction of, the Contractual Minimum Requirements by the end of the Investment Period.

(g) The Companies will pay all reasonable costs of the County as set forth in **Section 3.3(g)** hereof.

**SECTION 3.5. *Representations and Warranties of the Site 2 Real Property Owner.*** The Site 2 Real Property Owner makes the following representations and warranties to the County:

(a) The Site 2 Real Property Owner is a limited liability company authorized to transact business in the State. The Site 2 Real Property Owner 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 Site 2 Real Property Owner 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 Site 2 Real Property Owner 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 Site 2 Real Property Owner wherein an unfavorable decision, ruling or finding would adversely and materially affect the consummation of the transactions described in the Documents to which the Site 2 Real Property Owner is a party.

(d) All consents, authorizations and approvals required on the part of the Site 2 Real Property Owner in connection with the Documents to which the Site 2 Real Property Owner is a party and the transactions contemplated thereby and the acquisition, construction and installation of the Site 2 Real Property Owner's respective portion of the Project have been obtained and remain in full force and effect or will be obtained.

(e) The Documents to which the Site 2 Real Property Owner is a party are (or, when executed, will be) legal, valid and binding obligations of the Site 2 Real Property Owner

enforceable against the Site 2 Real Property Owner in accordance with their respective terms, except as such terms may be limited by laws affecting creditors' rights generally.

(f) The Site 2 Real Property Owner, together with the Operating Company and the Site 1 Real Property Owner, will satisfy, or cause satisfaction of, the Contractual Minimum Requirements by the end of the Investment Period.

(g) The Companies will pay all reasonable costs of the County as set forth in **Section 3.3(g)** hereof.

### **SECTION 3.6. *Filings and Reports.***

(a) Each year during the term of the Fee Agreement, each 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 its respective portion of the Project, not later than thirty (30) days following delivery thereof to the DOR. Within thirty (30) days of each annual anniversary date of this Fee Agreement during the Credit Period set forth in **Section 5.6** hereof, the Operating Company will furnish to the County Department of Economic Development a copy of the most recent quarterly UCE 120 report filed with the DOR with respect to employment at the Project. The Operating 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. The County will subtract the number of former employees from the total number of employees for the reporting quarter in determining the current head count for purposes of the maintenance requirement set forth in **Section 5.6** hereof.

(b) The Companies 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 Companies have acquired, constructed and/or installed or have made or will make plans for the acquisition, construction and/or installation of certain real property and improvements, and machinery, equipment, and other personal property, including but not limited to Equipment, Real Property, and any Replacement Property, which comprise the Project, all in support of the utilization of the Project for the manufacturing of small arms and related products and for 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 any

Company, its Affiliates, or other third parties that have entered into any financing, lease, license or other access arrangement with any Company or any of its Affiliates with respect to such entity's respective portion of the 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, each 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, any 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 any Company, by any of its Affiliates, and by any third party to the extent that any 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 any 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 each Company is entitled under this Fee Agreement including, without limitation, the Payments-in-Lieu-of-Taxes and Special Source Credits arrangements, and shall also be bound by all of the duties, restrictions, and obligations to which each Company has agreed upon under this Fee Agreement, all only with respect to each such entity's respective portion of the Project. The Companies 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.

Any 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 Companies 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 Companies, in form and substance reasonably acceptable to the County. One or more of the Companies 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 any Company intends to extend the benefits of this Fee Agreement may, at the request of any Company, be approved by a resolution passed by the County Council, in its sole discretion.

**SECTION 4.2. *Diligent Completion.*** Each 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 Companies 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.*** Any 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.

**SECTION 4.4. *Special Source Improvements.*** The Companies agree to provide, or cause to be provided, the funding for the designing, acquiring, constructing, improving, or expanding of Special Source Improvements related to the establishment of the Project.

## **ARTICLE V**

### **PAYMENTS-IN-LIEU-OF-TAXES; DISPOSITION OF PAYMENTS-IN-LIEU-OF-TAXES; SPECIAL SOURCE CREDITS**

**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, each Company shall be required to make, or cause to be made, the Payments-in-Lieu-of-Taxes with respect to its respective portion of the Project as provided in this **Section 5.1**. In accordance with the Fee Act, and unless this Fee Agreement is sooner terminated, each Company shall make, or cause to be made, annual Payments-in-Lieu-of-Taxes with respect to its respective portion of 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) Each Company has agreed to make, or cause to be made, annual Payments-in-Lieu-of-Taxes with respect to its respective portion of 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 515.6 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 Companies 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 Companies are not entitled to extraordinary obsolescence.

(b) The Payments-in-Lieu-of-Taxes must 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 South Carolina Constitution and Section 12-37-220(B)(32) and (34) of the Code.

(c) Each 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 its respective portion of the 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 each Company's respective portion of 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 such Company's respective portion of 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 twenty (20) 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 the fee 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 fee payment pursuant to this **Section 5.1** for the period of time remaining on the twenty (20) year fee period for the property which it is replacing.

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

(a) In any instance where any Company in its sole discretion determines that any item or items of property included in its respective portion of the Project have become, in whole or in part, inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, such Company may remove such item (or such portion thereof as such 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) Any 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 nineteenth (19<sup>th</sup>) year following such year; provided, that the maximum term of this Fee Agreement shall not be more than twenty (20) 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 and provision to each Company by the County of all Special Source Credits due to such Company from the County pursuant to **Section 5.6** hereof, or exercise by any Company of its option to terminate as to its respective portion of the Project pursuant to **Section 9.4** hereof.

**SECTION 5.4. Contractual Minimum Requirements.** If the Companies have 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, each 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 such Company and the amount of *ad valorem* property taxes which would otherwise have been due with respect to such Company's respective portion of the Project; provided, however, in calculating any such differential payment, such 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 such Company; (2) to enjoy all allowable depreciation; and (3) to receive all other tax credits which would have been due if such 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, 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 on terms, and for a duration, sufficient to facilitate the Special Source Credits set forth herein and to undertake and execute those procedures, instruments, ordinances, resolutions and documents as may be reasonably required to accomplish same.

**SECTION 5.6. *Special Source Credits.*** As reimbursement for investment in Special Source Improvements related to the Project, and subject to the requirements of the Special Source Act, the County grants to each Company, for a period of ten (10) consecutive property tax years (the Credit Period”), beginning with the tax year corresponding to the property tax year for which the initial Payment-in-Lieu-of-Taxes under **Section 5.1** hereof becomes due, special source revenue credits against each Payment-in-Lieu-of-Taxes due from such Company with respect to its respective portion of the Project as follows: (1) for the first five (5) such tax years, in an amount equal to twenty percent (20%) of each such Payment-in-Lieu-of-Taxes; and (2) for the remaining five (5) such tax years, in an amount equal to ten percent (10%) of each such Payment-in-Lieu-of-Taxes.

With respect to each Special Source Credit, the County shall automatically reflect the Special Source Credit against the Payment-in-Lieu-of-Taxes on those invoices provided by the County to the Companies. The Companies shall be permitted to utilize the Special Source Credit to offset any of its expenditures on Special Source Improvements.

If, following the Investment Period, the Companies fail to maintain the minimum jobs threshold set forth in the Contractual Minimum Requirements in any property tax year during the Credit Period, then the County, in its sole discretion, may withhold the Special Source Credits from each Company for such property tax year. Provided, however, any Company may request that the County waive such minimum job threshold and provide the Special Source Credit to each Company for such property tax year, and the County, in its sole discretion, may approve or deny such request. Notwithstanding the foregoing, in the event that such Special Source Credit is so withheld for any such property tax year, such withholding shall have no bearing on the award of Special Source Credits to each Company for any other property tax year of the Credit Period.

## 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 Companies 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 Companies 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 Companies 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 Companies shall, and agree 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 Companies 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 Companies at their own expense shall defend the County and its officers, agents and employees in any such action or proceeding.

(c) Notwithstanding the foregoing, the Companies 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 any Company or any transferee or assignee; (b) the transfer or assignment of security or other interests in any or all of any Company's interests in its respective portion of the Project; or (c) the sublease of the Project. Additionally, the County hereby expressly consents to any transfer or assignment by any Company of any or all of its interests in the Project and/or this Fee Agreement to any Affiliates of such 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, that 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 any 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, any 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 any 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 any Company or the County shall fail to observe or perform any covenant, condition or agreement required herein to be observed or performed by such 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 such Company by the County or to the County by any Company; provided if by reason of “force majeure” (as hereinafter defined) such 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 such 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 any 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 any Company (the “Defaulting Entity”) shall have happened and be subsisting beyond all applicable notice and cure periods, the County may, as to the Defaulting Entity only, (i) terminate this Fee Agreement by providing at least thirty (30) days’ written notice to the Defaulting Entity 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 Defaulting Entity, 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, any 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 Companies 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 any 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 any 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 any Company or the County and thereafter waived by the other parties 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, any Company may terminate this Fee Agreement with respect to all or part of its respective portion of the Project. Upon termination of the Fee Agreement with respect to all or part of its respective portion of the Project, such 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 part of its respective 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 such 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 of such Company's entire portion of the 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 Operating Company:

SC Industrial Holdings, LLC

Attention: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

With A Copy To:

Nexsen Pruet, LLC

Attention: Tushar V. Chikhliker

1230 Main Street, Suite 700

Columbia, SC 2920

If to the Site 1 Real Property Owner:

Metropolitan Campus, LLC

Attention: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

With A Copy To:

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

If to the Site 2 Real Property Owner:

Metropolitan Campus II, LLC  
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 Companies 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, and/or the Special Source Credits arrangement described in **Section 5.6** hereof are determined to be invalid or unenforceable, the parties hereto hereby agree that, except as the final judicial decision may otherwise require, each 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, 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 each 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 any Company's fiscal year changes in the future so as to cause a change in such 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 Companies. 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 Companies 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 Companies 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 any Company such additional instruments, and to undertake further proceedings, as any 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 none of the parties hereto have made or shall be bound by any agreement or any representation to any 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 COMPANIES**, each pursuant to due authority, have duly executed this Fee Agreement, all as of the date first above written.

**LEXINGTON COUNTY, SOUTH CAROLINA**

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M. Todd Cullum  
Chair of Lexington County Council

**ATTEST:**

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Brittany M. Shumpert  
Clerk, Lexington County Council

**SC INDUSTRIAL HOLDINGS, LLC**

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

**METROPOLITAN CAMPUS, LLC**

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

**METROPOLITAN CAMPUS II, LLC**

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

**EXHIBIT A**  
**SITE DESCRIPTION**

**Site 1**

[To be inserted]

TMS No.:

**Site 2**

[To be inserted]

TMS No.: