### Lancaster County Council Administration Committee

Thursday, September 24, 2015

# County Council Chambers Council Administration Building 100 N. Main Street Lancaster, SC 29720

1. Call to Order - Committee Chair Brian Carnes

- 4:00 p.m.
- 2. Approval of the agenda [deletions and additions of non-substantive matters]
- 3. Minutes of the August 20, 2015 meeting pgs. 3-8
- 4. Citizens Comments
- 5. <u>Discussion / Action Items</u>
  - **a.** Resolution 0890-R2015 a Resolution approving the 2015 Assessment Roll for the Edenmoor Improvement District, Lancaster County, South Carolina. (copies of the assessment roll are available on the website <a href="https://www.mylancastersc.org">www.mylancastersc.org</a>) Steve Willis pgs. 9-10
  - **b.** Resolution 0893-R2015 a Resolution approving the 2015 Assessment Roll for the Edgewater II Improvement District, Lancaster County, South Carolina. (copies of the assessment roll are available on the website <a href="https://www.mylancastersc.org">www.mylancastersc.org</a>) Steve Willis pgs. 11-12
  - **c.** Gillette Company conversion of title transfer Fee in Lieu of Taxes. *John Weaver pgs. 13-106*
  - **d.** Sun City townhouse and condo build out question Ordinance 631. *John Weaver pgs.* 107-112
  - e. Nutramax Ordinance, Incentive, Fee and Infrastructure Agreements. *John Weaver pgs. 113-131*
  - **f.** Sale of older EMS units to purchase a new unit. Clay Catoe pgs. 132-135
  - g. Residency requirement for various department head positions. Steve Willis pgs. 136
  - h. SCAC deductible. Steve Willis

6. Adjournment Anyone requiring special services to attend this meeting should contact 285-1565 at least 24 hours in advance of this meeting. Lancaster County Council Administration Committee agendas are posted at the Lancaster County Administration Building and are available on the Website: www.mylancastersc.org



# Members of Lancaster County Council Administration Committee

Brian Carnes, District 7, Chairman Bob Bundy, District 3 Charlene McGriff, District 2



# Minutes of the Lancaster County Council Administration Committee Meeting 101 N. Main Street, Lancaster, SC 29720

Thursday August 20, 2015 4:30 p.m.

Council Members present were Brian Carnes, Bob Bundy, and Charlene McGriff. Also present was Steve Willis, John Weaver, Kimberly Hill, Debbie Hardin, Virginia Burgess, various Department Heads and spectators. A quorum of the Lancaster County Administration Committee was present for the meeting.

The following press was notified of the meeting by e-mail or by fax in accordance with the Freedom of Information Act: Lancaster News, Kershaw News Era, The Rock Hill Herald, Fort Mill Times, Cable News 2, Channel 9 and the local Government Channel. The agenda was also posted in the lobby of the County Administration Building the required length of time and on the county website.

#### Approval of the agenda

John Weaver, County Attorney, asked to add Ordinance 631 to the agenda as item k.

Charlene McGriff made a MOTION to approve the agenda as amended. SECONDED by Bob Bundy. Passed 3-0.

### Minutes of the July 16th and July 27th meeting

Charlene McGriff made MOTION to approve the minutes of the July 16<sup>th</sup> and July 27<sup>th</sup> meeting. SECONDED by Bob Bundy. Passed 3-0.

#### **Citizens Comments**

There were no Citizen Comments.

#### **Discussion / Action Items**



#### Edenmoor (now known as Walnut Creek)

Frannie Heizer and Michael Season, Attorneys from McNair Law Firm, explained that now a significant portion of the property has been developed as single family and owner occupied and Council is being asked to consider sub districting this developed area of Walnut Creek into District A. This will allow the debt associated with these lots to be refinanced at a lower interest rate. The advantage to the County and Home Owners is that the term shouldn't change and it would give the County an opportunity to get a more accurate reimbursement for administrative expenses since they have learned a lot over the past six to nine years. This refinancing at a lower interest rate should result in the individual homeowner paying less each year. The developer will bring some other things for Council to review regarding Walnut Creek at a later date.

- 1. **Resolution 0889-R2015**: Approving the form and authorizing the execution and delivery of a Forbearance Agreement related to the \$24,115,000 principal amount Edenmoor Improvement District Assessment Revenue Bonds, series 2006A and \$11,500,000 Edenmoor Improvement District Assessment Revenue Bonds, series 2006B and the assessments related thereto; and other matters related thereto.
- 2. **Resolution 0890-R2015** approving the 2015 assessment roll for the Edenmoor Improvement District, Lancaster County, South Carolina.
- 3. <u>Ist Reading of Ordinance 2015-1367 regarding modifications to the Edenmoor Improvement District (now known as Walnut Creek)</u>
  Ordinance Title: An Ordinance to authorize certain modifications to the Edenmoor Improvement District and the existing assessment roll related thereto, including changing reference therein to the Walnut Creek Improvement District, subdividing such improvement district to relate to certain parcels or areas therein and approving revised assessment rolls relating to such parcels or areas; and to provide for other matters relating thereto.
- 4. <u>1st Reading of Ordinance 2015-1368 to authorize and provide for issuance and sale of Walnut Creek Improvement District Revenue Bonds and other related matters.</u>

Ordinance Title: To authorize and provide for the issuance and sale of not to exceed \$12,000,000 principal amount Walnut Creek Improvement District Assessment Revenue Bonds, Series 2015a-1; to limit the payment of the bonds solely to the assessments imposed on certain designated parcels within the Walnut Creek Improvement District; to provide for the execution of a Master Trust Indenture, First Supplemental Indenture thereto, contract of purchase and other related documents for the Series 2015a-1 Bonds, and an amended and restated Master Trust Indenture and one or more supplements thereto related to the Series



2006 bonds; to make other covenants and agreements in connection with the foregoing; and to provide for other matters relating thereto.

Charlene McGriff made a MOTION to move forward with a favorable recommendation to Council Resolution 0889-R2015, Resolution 0890-R2015, Ordinance 2015-1367 and Ordinance 2015-1368. SECONDED by Bob Bundy. Passed 3-0.

#### LCI-Lineberger Construction, Inc.

John Weaver, County Attorney, explained that Lineberger Construction is moving to another location. This agreement would give the company a six percent (6%) fee-in-lieu for twenty (20) years and a special source revenue credit of fifteen percent (15%) of the fee-in-lieu payments for five (5) years. Lineberger Construction anticipates an investment of 3.7 million dollars.

- Resolution 0886-R2015: To state the commitment of Lancaster County to
  enter into a fee agreement with LCI-Lineberger Construction, Inc., and/or its
  designee or nominee; to provide the general terms of the fee agreement
  including the provision of a special source revenue credit; to identify the
  project for purposes of the fee-in-lieu of Tax Simplification Act; to state the
  commitment of Lancaster County to place project property in a multi-county
  park; and to provide for other matters related thereto.
- 2. 2015-1366 regarding the Fee Agreement between Lancaster County and LCI-Lineberger Construction, Inc.

Ordinance Title: An Ordinance to authorize the execution and delivery of a fee agreement by and between Lancaster County and LCI-Lineberger construction, Inc., providing for the payment of a Fee-In-Lieu of taxes and the provision of special source revenue credits; to express the intention of Council to provide monies to the Economic Development Fund; and to provide for other matters related thereto.

Charlene McGriff made a MOTION to move forward with a favorable recommendation to Council for Inducement Resolution 0886-R2015, Ordinance 2015-1366 and the Fee Agreement for LCI-Lineberger Construction, Inc. SECONDED by Bob Bundy. Passed 3-0.

Steve Willis, Administrator, stated for the record that Lineberger Construction has a business partner that will further their business opportunities.

#### **Nutramax**

John Weaver explained that the County had originally agreed to a fee-in-lieu agreement upon a pledge of an 8.5 million dollar investment. At present, Nutramax has invested 29 million and have created several hundred jobs. In this new Inducement Agreement, they are pledging 15



million more in investment and 125 new full time jobs with benefits. Terms of this will add ten years. They will receive fifty percent (50%) Special Source Revenue Source Credit for ten (10) years. This Inducement agreement is to approve these terms.

Resolution 0883-R2015: A Resolution to state the commitment of Lancaster County to enter into new incentive agreements or to amend existing incentive agreements with Nutramax Manufacturing Inc., Nutramax Properties, LLC, Nutramax Land Holdings, Inc., Nutramax Laboratories, Inc., or with one or more existing or to-be-formed subsidiaries and affiliated entities, providing incentives for new investments and the creation of new full-time jobs by the respective companies including the provision of special source revenue credits; and to provide for other matters related thereto.

Charlene McGriff made a MOTION to move forward with a favorable recommendation to Council for Resolution 0883-R2015. SECONDED by Bob Bundy. Passed 3-0.

**Resolution 0891-R2015**: Approving the updated 2015 Assessment Roll for the Sun City Carolina Lakes improvement District, Lancaster County, South Carolina.

Charlene McGriff made a MOTION to move forward with a favorable recommendation to Council for Resolution 0891-R2015. SECONDED by Bob Bundy. Passed 3-0.

<u>Resolution 0892-R2015</u> approving the updated 2015 Assessment Roll for the Edgewater Improvement District, Lancaster County, South Carolina.

Bob Bundy made a MOTION to move forward with a favorable recommendation to Council for Resolution 0892-R2015. SECONDED by Charlene McGriff. Passed 3-0.

**Resolution 0893-R2015** approving the updated 2015 Assessment Roll for the Edgewater II Improvement District, Lancaster County, South Carolina.

Charlene McGriff made a MOTION to move forward with a favorable recommendation to Council for Resolution 0893-R2015. SECONDED by Bob Bundy. Passed 3-0.

**Resolution 0894-R2015** directing the County Auditor and County Treasurer to impose and collect a \$225 per lot assessment in the Brookchase Special Tax District.

Bob Bundy made a MOTION to move forward with a favorable recommendation to Council for Resolution 0894-R2015. SECONDED by Charlene McGriff. Passed 3-0.

**Resolution 0887-R2015**: A Resolution authorizing the defeasance of the outstanding balance of the original principal amount \$38,410,000 SCAGO Public Facilities Corporation for Lancaster County, installment purchase revenue bonds (Lancaster County Project), series 2006.



Charlene McGriff made a MOTION to move forward with a favorable recommendation to Council for Resolution 0887-R2015. SECONDED by Bob Bundy. Passed 3-0.

<u>Resolution 0888-R2015</u>: A Resolution authorizing the cash defeasance of the outstanding balance of the original principal amount \$2,973,657.50 Lancaster County, South Carolina Special Source Revenue Bonds, series 2006 (Bailes Ridge Project) convertible Deferred Interest Bonds.

Frannie Heizer explained this document is to authorize the County Administrator to take actions necessary to defease the existing Installment Revenue Purchase Bonds because enough money has been collected to pay off the Courthouse.

Charlene McGriff made a MOTION to move forward with a favorable recommendation to Council for Resolution 0888-R2015. SECONDED by Bob Bundy. Passed 3-0.

#### Discussion of Economic Development program

1. **Process of establishing a new government department** – Steve Willis, County Administrator, handed out an outline of this process and also a job description for a Director of Economic Development, attached as schedule A.

Bob Bundy made a MOTION to craft a budget amendment that would accommodate the transition from an Economic Development organization as we have to fund an Economic Development Department. SECONDED by Charlene McGriff. Passed 3-0.

- 2. Interim management team
- 3. **Time Schedule** Steve Willis stated that it will take 60 90 days as they continue to walk through the processes.
- Resolution 0884-R2015 to acknowledge and confirm that the Lancaster County Economic Development Corporation has been relieved of its obligations and responsibilities to represent Lancaster County in its economic development efforts.

Charlene McGriff made a MOTION to move forward with a favorable recommendation to Council for Resolution 0884-R2015. SECONDED by Bob Bundy. Passed 3-1. Brian Carnes opposed.



#### **Discussion of Ordinance 631**

John Weaver distributed a handout, attached as schedule B. Mr. Weaver explained that Waylon Wilson, a citizen, sent an email expressing concern that the Sun City Developer, Pulte, had not built the minimum number of townhouses and condominiums that they had agreed to in their development agreement. In 2005, Pulte agreed to build a minimum of 400 townhomes and 200 condominiums. To date, they have only built 273 townhouses and 78 condominiums. Mr. Weaver stated that there is nothing that the County can legally do to make them build the additional units. He said that there are three options that the County has:

- 1. Take no action
- 2. Have a three (3) Reading Ordinance to adjust the Development Agreement down to the present number of units that are currently built.
- 3. File a lawsuit to claim County damages of lost taxes and fire fees.

Mr. Weaver said that this is a decision that Council will need to make and that he has no recommendation. After much discussion between the Council Members, Mr. Weaver suggested that he get more accurate figures on the single family homes as well as townhomes and condominiums that have already been built.

Charlene McGriff made a MOTION to defer this topic to another meeting at the Attorney's advice. SECONDED by Bob Bundy. Passed 3-0.

#### **Adjournment**

Bob Bundy made a MOTION to adjourn. SECONDED by Charlene McGriff. Passed 3-0.

Respectfully Submitted:	Approved by the Administration Committee Chair
Virginia C. Burgess Deputy Clerk to Council	
	Brian Carnes, Chairman

STATE OF SOUTH CAROLINA	)	
	)	RESOLUTION NO. 0890-R2015
COUNTY OF LANCASTER	)	

APPROVING THE 2015 ASSESSMENT ROLL FOR THE EDENMOOR IMPROVEMENT DISTRICT, LANCASTER COUNTY, SOUTH CAROLINA.

WHEREAS, the County Council (the "County Council") of Lancaster County, South Carolina (the "County") by Ordinance No. 713 enacted on January 30, 2006, authorized the creation of the Edenmoor Improvement District (the "District"); and

WHEREAS, the County Council by Ordinance No. 733 enacted on April 24, 2006, authorized and provided for the issuance and sale of \$24,115,000 principal amount Edenmoor Improvement District Assessment Revenue Bonds, Series 2006A and \$11,500,000 Edenmoor Improvement District Assessment Revenue Bonds, Series 2006B and approved the Assessment Reports and the Rates and Methods of Apportionment of Assessments (the "Rates and Methods of Apportionment") including the Assessment Rolls for the District; and

WHEREAS, the Rates and Method of Apportionments each provide in Section F, respectively:

The County shall update Appendix B-1 and B-2 of the Assessment Roll A each Assessment Year to reflect (i) the current Parcels in the Improvement District, (ii) the Assessment A as allocated for each Parcel, including any adjustments to the Assessment A as provided for in Section C, (iii) the Principal Portion of the Assessment for each Parcel, (iv) the Annual Assessment A for each Parcel, (v) the Annual Credit A and Annual Payment A to be collected from each parcel for the current Assessment Year, (vi) prepayments of the Assessment A as provided for in Section I, and (vii) termination of the Assessment A as provided for in Section H.

#### And

The County shall update Appendix B-1 and B-2 of the Assessment Roll B each Assessment Year to reflect (i) the current Parcels in the Improvement District, (ii) the Assessment B as allocated for each Parcel, including any adjustments to the Assessment B as provided for in Section C, (iii) the Principal Portion of the Assessment for each Parcel, (iv) the Annual Assessment B for each Parcel, (v) the Annual Credit B and Annual Payment B to be collected from each parcel for the current Assessment Year, (vi) prepayments of the Assessment A as provided for in Section J, and (vii) termination of the Assessment B as provided for in Section I; and

WHEREAS, the Rates and Method of Apportionment Assessment B provides that:

"Improvement Area" means an area identified with the issuance of any Series B Bonds to be improved with Edenmoor Improvements B from the proceeds of the Series B Bonds to be issued."

WHEREAS, MuniCap, Inc. has the Assessment Roll for Imposition of Assess 2015 (the "2015 Assessment Roll").	as prepared an A sments in 2015 a	nnual Assessment Report a nd Collection in 2016 date	nd Update of d August 28,
WHEREAS, pursuant to Res County Council approved a Forbearance Ag collected on certain of the parcels purchased b Acquisition II, LLC, and more particularly liste	reement relating y Edenmoor Lan	to the assessments to be d Acquisition, LLC and Ed	imposed and
NOW, THEREFORE, BE I	T RESOLVED	BY THE COUNTY CO	DUNCIL AS
1. The County Council 1 Assessment Roll as attached hereto.	nereby approves,	confirms and adopts the	updated 2015
THIS RESOLUTION SHALL BE EFF	ECTIVE IMMEI	DIATELY UPON ADOPTION	ON.
SIGNED, SEALED, AND DELIVERI	ED AS OF THIS	DAY OF	, 2015.
	LANCASTER	COUNTY, SOUTH CAR	OLINA
	Bob Bundy, Cl	nair, County Council	<del></del>
	Steve Harper, S	Secretary, County Council	
Attest:			
Debbie C. Hardin, Clerk to Council			
Approved as to form:			
County Attorney			

STATE OF SOUTH CAROLINA	)	
	)	<b>RESOLUTION #0893-R2015</b>
COUNTY OF LANCASTER	)	

APPROVING THE UPDATED 2015 ASSESSMENT ROLL FOR THE EDGEWATER II IMPROVEMENT DISTRICT, LANCASTER COUNTY, SOUTH CAROLINA.

WHEREAS, the County Council (the "County Council") of Lancaster County, South Carolina (the "County") by Ordinance No. 834 enacted on July 30, 2007, authorized the creation of the Edgewater II Improvement District (the "District"); and

WHEREAS, the County Council by Ordinance No. 835 enacted on July 30, 2007, authorized and provided for the issuance and sale of \$9,229,000 principal amount Edgewater II Improvement District Assessment Revenue Bonds, Series 2007A, and \$19,651,000 Principal Amount Edgewater Improvement District Assessment Revenue Bonds, Series 2007B and approved the Assessment Roll which included the Rate and Method of Apportionment of Assessments (the "Rate and Method of Apportionment"); and

WHEREAS, the Rate and Method of Apportionment provides in Section G:

The County Council shall update the Assessment Roll is to be updated each year to reflect "(i) the current parcels in the district, (ii) the Assessments A and B as allocated for each parcel (including any adjustments to the Assessments), (iii) the principal portion of the Assessments for each parcel, (iv) the Annual Assessments A and B for each parcel, (v) the Annual Credits A and B and Annual Payments A and B to be collected from each parcel for the current Assessment year, (vi) prepayments of the Assessments A and B, and (vii) termination of the Assessments A and B." This report has been prepared to show the calculation of the Annual Payment and the update of the Annual Assessment Roll for the Assessment Part A and the Assessment Part B.

WHEREAS, MuniCap, Inc. has prepared an Annual Assessment Report and Update of the Assessment Roll for Imposition of Assessments in 2015 and Collection in 2016 dated September 9, 2015 (the "2015 Assessment Roll").

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL AS FOLLOWS:

1. The County Council hereby approves, confirms and adopts the updated 2015 Assessment Roll as attached hereto.

	THIS RESOLUTION SHALL BE	EFFECTIVE IMMEDIATELY UPON ADOPTION.
2015	SIGNED, SEALED, AND DELIV	VERED AS OF THIS DAY OF
2015.		
		LANCASTER COUNTY, SOUTH CAROLINA
		Bob Bundy, Chair, County Council
		Steve Harper, Secretary, County Council
Attest:		
Debbie	C. Hardin, Clerk to Council	
Approv	red as to form:	
County	Attorney	



# The Gillette Company Conversion of Title Transfer Fee-in-Lieu of Tax

#### **Executive Summary**

#### **Background**

#### a. FILOT Arrangements

#### 1. Negotiated FILOT – Title Transfer

In the late 1990s, Lancaster County approved a negotiated fee-in-lieu of tax (FILOT) incentive for Duracell. The specific negotiated FILOT incentive used is referred to as a "title transfer" FILOT. As the name implies, a title transfer FILOT involves the transfer of title to real and personal property from the company to the County. The County then leases the property back to the company pursuant to a lease agreement. Because the property is owned by a governmental body, the property is exempt from property taxes, however, provisions in the lease agreement require the company to pay a fee-in-lieu of tax. The transfer of title and lease agreement remain in place for the period of time specified in the incentive documents. The result of the title transfer FILOT arrangement is that, technically, Lancaster County owns a significant portion of the Duracell facility although it is leased back to Duracell.

Today, title transfer FILOT arrangements are rarely, if ever, used, in large part because they are complicated and costly. In addition, companies have always been, and continue to be, reluctant to transfer title to their property to a county government. Moreover, county governments are hesitate to use the title transfer FILOT because of liability concerns, particularly when a simpler mechanism is available. The preferred method today for approving and implementing a negotiated FILOT arrangement is to use the Fee in Lieu of Tax Simplification Act (the "Simplified FILOT").

### 2. Negotiated FILOT – Incentive Terms

The basic terms of the negotiated title transfer FILOT approved for Duracell in 1998 were:

- Investment Period five years
- Term -- twenty years for each year of investment during the Investment Period. In effect, the arrangement is in place for twenty-five years and it ends December 31, 2022.
- Assessment Ratio 6%
- Millage Rate 375.9 mills
- Alternative Payment Method Equal annual payments using net present value

#### 3. Negotiated FILOT – Simplified FILOT

Since the approval of the title transfer FILOT arrangement in the late '90s, the County has approved two Simplified FILOT arrangements for Duracell, one in 2008 and the other in 2014.

#### b. Industrial Revenue Bonds

As part of the incentive package approved in the late '90s, the County agreed to issue not to exceed \$80,000,000 of Industrial Revenue Bonds ("IRBs"). The IRBs were purchased by Duracell. The proceeds from the IRB issue were used for the purpose of financing the Duracell manufacturing facility. Pursuant to the terms of the lease agreement between the County and Duracell, and, in addition to any other payments due under the lease agreement, Duracell is required to make annual lease payments to the County in an amount sufficient to pay the principal and interest on the IRBs.

#### Request from The Gillette Company

The Gillette Company, the successor to Duracell ("Gillette"), is asking the County for two actions:

- 1. Convert the title transfer FILOT arrangement to a Simplified FILOT. This request includes the termination of the IRBs.
- 2. Approve the assignment of all Duracell FILOT arrangements to Duracell Manufacturing, Inc., in connection with the divestiture of Duracell to Berkshire Hathaway, Inc.

#### **Actions Needed**

State law allows title transfer FILOT arrangements to be converted to Simplified FILOTs. As proposed by Gillette and required by state law, the duration and level of the FILOT incentive remains the same under the simplified arrangement.

If Council is willing to grant Gillette's request, then Council will need to approve one or more ordinances and to hold public hearings. At a minimum, Council would consider an ordinance to approve the conversion of the title transfer FILOT arrangements to a Simplified FILOT and the assignment of the FILOT arrangements to Duracell Manufacturing, Inc.

Although the request from Gillette is relatively straight forward, the conversion requires a number of documents to implement it. For that reason, several documents will be included as exhibits or attachments to the ordinance(s).

#### **Proposed Timetable**

September 24 – Administration Committee October 12 – First Reading October 26 – Second Reading November 9 – Public Hearings and Third Reading

STATE OF SOUTH CAROLINA	)	
	)	ORDINANCE
COUNTY OF LANCASTER	)	

AN ORDINANCE AUTHORIZING (I) THE TRANSFER OF A FEE IN LIEU OF TAX ("FILOT") ARRANGEMENT BETWEEN LANCASTER COUNTY, SOUTH CAROLINA ("COUNTY"), AND THE GILLETTE COMPANY, AS SUCCESSOR TO DURACELL INC. ("GILLETTE"), UNDER TITLE 4, CHAPTER 29 OF THE CODE OF LAWS OF SOUTH CAROLINA (1976), AS AMENDED, TO AN ARRANGEMENT UNDER TITLE 12, CHAPTER 44 OF THE CODE OF LAWS OF SOUTH CAROLINA (1976), AS AMENDED; AND OTHER MATTERS RELATED THERETO; AND (II) THE ASSIGNMENT OF THREE (3) FILOT ARRANGEMENTS BETWEEN GILLETTE AND THE COUNTY TO DURACELL MANUFACTURING, INC.

WHEREAS, Lancaster County (the "County") and The Gillette Company (successor in interest to Duracell Inc.) (the "Company") entered into an Inducement Agreement and Millage Rate Agreement dated January 26, 1998 (the "Inducement Agreement"), a Lease Agreement dated as of June 1, 1998 (the "Lease Agreement"), a Memorandum of Lease and Option to Purchase dated as of June 26, 1998 (the "Memorandum of Lease"), an Indenture dated as of June 1, 1998 (the "Indenture"), and an Escrow Agreement among the Company, the County and Haynsworth, Marion, McKay & Guerard, L.L.P. dated as of June 1, 1998 (the "Escrow Agreement") and other documents, pursuant to which the certain property and improvements, including machinery and equipment, fixtures, and other personal property (collectively the "Project") were conveyed to the County and leased back to the Company under a fee-in-lieu of taxes ("FILOT") arrangement under Title 4, Chapter 29, Code of Laws of South Carolina (1976), as amended (the "Title Act"); and

WHEREAS, the County is authorized by Fitle 12, Chapter 44, Code of Laws of South Carolina (1976), as amended (the "Non-Fitle Act"), to enter into a Fee Agreement with companies to induce such companies to locate in the State of South Carolina; and

WHEREAS, Section 12-44-170(B) of the Non-Title Act provides for an election by an entity with property subject to an existing FILOT under the Title Act to transfer its FILOT arrangement under the Title Act to a substantially similar arrangement under the Non-Title Act; and

WHEREAS, the Company has requested that the County consent to its election to transfer the Company's FILOT arrangement under the Title Act to a substantially similar arrangement under the Non-Title Act; and

WHEREAS, the Company has caused to be prepared and presented to the Lancaster County Council the form of a Fee Agreement between the Company and the County for the purpose of meeting the requirements under the Non-Title Act (the "1998 Fee Agreement"); and

WHEREAS, the 1998 Fee Agreement provides that the Company continues to be liable for payments of fees in lieu of taxes as calculated under the Lease Agreement; and

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WHEREAS, the 1998 Fee Agreement referred to above, which is now before this meeting, is in appropriate form and is an appropriate instrument to be executed, delivered, and approved by the County for the purposes intended; and

WHEREAS, such other documents as presented to the County, including, but not limited to, a Title to Real Estate, a Bill of Sale, an Agreement to Terminate Lease Agreement, Indenture Industrial Revenue Bonds and Escrow Agreement, a recordable Termination of Memorandum of Lease and Option to Purchase and Indenture, are all in appropriate form and are appropriate instruments to be executed, delivered, and approved by the County for the purposes intended; and

WHEREAS, the County previously considered the request for the existing FILOT and has now considered the request for a transfer of the existing FILOT from the Title Act to the Non-Title Act by the Company and hereby finds and determines that: the Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; the Project gives rise to no pecuniary liability of the County or incorporated municipality or a charge against its general credit or taxing power; the purposes to be accomplished by the Project are proper governmental and public purposes; and the benefits of the Project are greater than the costs; and

WHEREAS, the Company has also requested the County's consent to the transfer of all of its existing FILOT arrangements including the 1998 Fee Agreement, the Fee Agreement dated as of October 27, 2008 (the "2008 Fee Agreement"), and the Fee Agreement dated as of June 23, 2014 (the "2014 Fee Agreement") and all assets subject to a FILOT in the County (collectively, the "Duracell Assets") to Duracell Manufacturing, Inc. ("DMI") in connection with the divestiture of the Duracell Assets to Berkshire Hathaway, Inc. (the "Proposed Transaction"); and

WHEREAS, the County is willing to consent to such transfer.

NOW, THEREFORE, be it ordained by the Lancaster County Council being duly assembled as follows:

Section 1. To the extent necessary and required, the County, pursuant to the Non-Title Act, hereby expressly recognizes, consents to, approves, and ratifies for any and all purposes the transfer of the FILOT arrangement with the Company under the Title Act to the Non-Title Act.

Section 2. In accordance with the Title Act and the Lease Agreement, the County consents to the transfer of title to all property both real and personal back to the Company and to the cancellation of the Lease Agreement and the Memorandum of Lease and Option to Purchase (to the extent said agreements are not cancelled by operation of law) without payment or penalty to the County under any such agreements, subject to the terms of the Lease Termination Agreement and the Fee Agreement.

Section 3. The form of the documents required to transfer the assets and to terminate any applicable agreements are in appropriate form and are appropriate instruments to be approved, executed, and delivered by the County for the purposes intended.

Section 4. The form, terms, and provisions of (i) the Fee Agreement; (ii) the Title to Real Estate; (iii) the Bill of Sale; (iv) the Agreement to Terminate Lease Agreement, Indenture. Industrial Revenue Bonds, and Escrow Agreement; and (v) the Termination of Memorandum of Lease and Option to Purchase and Indenture; which are before this meeting and filed with County Council, are hereby approved, and all of the terms, provisions, and conditions thereof are hereby incorporated herein by reference as fully as if the documents were set out in this Ordinance in their entirety. The Chairman of the County Council, the Vice Chairman of County Council, the Clerk to County Council, and the County Administrator, and each of them individually, are hereby authorized, empowered, and directed to acknowledge, execute, and deliver: (i) the Fee Agreement (the "1998 Fee Agreement"), (ii) the Title to Real Estate; (iii) the Bill of Sale; (iv) the Agreement to Terminate the Lease Agreement, Indenture, Industrial Revenue Bonds, and Escrow Agreement; and (v) the Termination of Memorandum of Lease and Option to Purchase and Indenture, to the Company. The documents are to be in substantially the same form now before this meeting and hereby approved, or with such changes therein that are not materially adverse to the County and as shall be approved by the officials of the County executing the same, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of the documents now before this meeting. The County agrees to take such other actions as may be reasonably necessary to achieve the purposes stated herein and reasonably requested by the Company to evidence the consent, approval, and ratification of these matters described in this Ordinance.

Section 5. The County hereby consents to the transfer of all of the Duracell Assets, including the 1998 Fee Agreement, the 2008 Fee Agreement, and the 2014 Fee Agreement by the Company to DMI and/or its subsidiaries upon closing of the Proposed Transaction.

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 severable, 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.

Done in meetir	ng duly assembled this _	day of		_, 2015.	
			LANCASTE SOUTH CAI	R COUNTY,	
				CODITY	
			Ву:		
			Name:	· · · · · · · · · · · · · · · · · · ·	
			Title:		
ATTEST:					
By:					
Name:				Ww.	
Its: Clerk to County C	Council		***		
First Reading:					
Second Reading:				~	
Third Reading: Public Hearing:					

# NOTICE OF A PUBLIC HEARING PRIOR TO FINAL ACTION BY THE COUNTY COUNCIL OF LANCASTER COUNTY TO ENTER INTO AN ORDINANCE.

Notice is hereby given by the County Council of Lancaster County (the "County Council") that a public hearing for the below-referenced Ordinance will be held at the Council Chambers of the County Council, 101 North Main Street, 2<sup>nd</sup> Floor of County Administration Building, Lancaster, South Carolina, at 6:00 p.m. on \_\_\_\_\_\_\_, 2015 in conjunction with a regularly scheduled meeting of the County Council. Such Ordinance is titled as follows: "AN ORDINANCE AUTHORIZING (I) THE TRANSFER OF A FEE IN LIEU OF TAX ("FILOT") ARRANGEMENT BETWEEN LANCASTER COUNTY SOUTH CAROLINA ("COUNTY"), AND THE GILLETTE COMPANY, AS SUCCESSOR TO DURACELL INC. ("GILLETTE"), UNDER TITLE 4, CHAPTER 29 OF THE CODE OF LAWS OF SOUTH CAROLINA (1976), AS AMENDED, TO AN ARRANGEMENT UNDER TITLE 12, CHAPTER 44 OF THE CODE OF LAWS OF SOUTH CAROLINA (1976), AS AMENDED; AND OTHER MATTERS RELATED THERETO; AND (II) THE ASSIGNMENT OF THREE (3) FILOT ARRANGEMENTS BETWEEN GILLETTE AND THE COUNTY TO DURACELL MANUFACTURING, INC."

Subject to the normal rules of County Council regarding appearances, members of the public are invited to attend and make comment concerning the proposed Ordinance.

If special accommodations are needed to participate in the public hearing, contact the Lancaster County Council office at (803) 285-3361 or dhardin@lancastercountysc.net at least 48 hours prior to the scheduled meeting date.

By order of the County Council of Lancaster County, South Carolina.

# AGREEMENT TO TERMINATE LEASE AGREEMENT, INDENTURE, INDUSTRIAL REVENUE BONDS AND ESCROW AGREEMENT

This AGREEMENT TO TERMINATI	E LEASE AGREEMENT, INDENTURE, INDUSTRIAL
	AGREEMENT (the "Agreement") is entered into to be
effective as of this day of	, 2015 ("Termination Date") by and between
LANCASTER COUNTY, SOUTH	CAROLINA (the "County") and THE GILLETTE
COMPANY, as successor to Duracell I	

#### WITNESSETH

WHEREAS, the County has entered into a fee in lieu of taxes arrangement (the "FILOT Transaction") under Title 4, Chapter 29, Code of Laws of South Carolina, 1976, as amended (the "Title Act") with the Company, in connection with which the Company transferred title to certain property (collectively, the "Project") to the County, and the County and the Company entered into a Lease Agreement dated as of June 1, 1998 ("Lease Agreement"), and an Indenture dated as of June 1, 1998 ("Indenture"), as well as an Escrow Agreement among the Company, the County, and Haynsworth, Marion, McKay & Guerard, L.L.P. ("Escrow Agreement"), as escrow agent (the "Escrow Agent"), pursuant to which the County leased the Project back to the Company; and

WHEREAS, in connection with the FILOT Transaction, the County issued not exceeding \$80,000,000 Lancaster County, South Carolina Industrial Revenue Bonds, Series 1998 (Duracell Inc. Project) (the "Bonds"), which Bonds were purchased by the Company; and

WHEREAS, the Company desires to transfer (the "Transfer") the Project from the arrangement under the Title Act to an arrangement under Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (the "Non-Title Act") in accordance with Section 12-44-70(B) of the Non-Title Act; and

WHEREAS, the County and Company, in furtherance of the desire to transfer property from an arrangement under the Title Act to one under the Non-Title Act and pursuant to and in consideration of the terms and conditions contained herein, desire to terminate the Lease Agreement, the Indenture, the Bonds, and the Escrow Agreement, prior to the scheduled expiration of the terms thereof and enter into a fee in lieu of tax agreement pursuant to the Non-Title Act.

NOW THEREFORE, based on the foregoing and for the sum of ten dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. The Lease Agreement, the Indenture, the Bonds, and the Escrow Agreement shall terminate on the Termination Date, without liability or penalty. The Inducement Agreement and Millage Rate Agreement between the Company and the County dated January 26, 1998 shall remain in effect but only to the extent required in order to continue the benefits of the FILOT under the Non-Title Act.

- 2. Effective as of the Termination Date, the Company does hereby waive, release, relieve, and forever discharge the Escrow Agent from any and all causes of action, liabilities, claims, or other demands of any kind or character which it may have against the Escrow Agent with respect to, or in connection with, the Escrow Agreement, or arising therefrom on and after the Termination Date. Effective as of the Termination Date, the County does hereby waive, release, relieve, and forever discharge the Escrow Agent from any and all causes of action, liabilities, claims, or other demands of any kind or character which it may have against the Escrow Agent with respect to, or in connection with, the Escrow Agreement, or arising therefrom on and after the Termination Date.
- 3. The County and the Company agree that the sole intent of the Transfer is to convert the FILOT arrangement from the Title Act to the Non-Title Act and not to terminate, alter or modify the incentives provided to the Company under the FILOT.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement or have caused their duly authorized representatives to execute the same, to be effective as of the day and year first above written.

Witnesses:  ATTEST	COUNTY:  LANCASTER COUNTY, SOUTH CAROLINA  By: Name: Title:
By:	COMPANY:
Witnesses:	THE GILLETTE COMPANY
	By: Name: Its:

STATE OF SOUTH CAROLINA	)	
	)	BILL OF SALE
COUNTY OF LANCASTER	)	

THIS BILL OF SALE (this "Bill of Sale") is given this \_\_\_\_ day of \_\_\_\_, 2015, by LANCASTER COUNTY, SOUTH CAROLINA, a body politic and corporate and a political subdivision of the State of South Carolina (the "County") to THE GILLETTE COMPANY, a Delaware corporation, or any successor thereof pursuant to the Lease (as defined below) (the "Company").

### RECITALS:

Pursuant to an ordinance dated March 30 1998 (the "Ordinance") the County Council of Lancaster County, South Carolina (the "County Council"), authorized the issuance by the County of Lancaster County, South Carolina, Industrial Revenue Bond in an aggregate amount not exceeding \$80,000,000 (the "Bond") for the purpose of financing the cost of the acquisition, by construction and purchase, of land, buildings, improvements machinery, equipment and fixtures which shall constitute a manufacturing facility for the manufacturing of batteries and components in the County (the "Project").

As contemplated by the Ordinance, the Tenant is to convex title to the Project to the County, including the Completed Segments, on or before each advance under the Bond by bills of sale and by a title to real estate. Pursuant to a Lease Agreement dated as of June 1, 1998 (the "Lease"), between the County and the Tenant, the County has agreed to lease the Project (including each Completed Segment thereof) back to the Tenant in return for rental payments that are exactly equal and fully sufficient to make the payments due under the Bond by the County. Pursuant to Article 10 of the Lease, the Tenant may, at its option, reacquire the title to the Project or any portion thereof by bill of sale or title to real estate from the County. Pursuant to an Escrow Agreement dated as of June 1, 1998 (the "Escrow Agreement"), among the County, the Company, and Haynsworth, Marion, McKay & Guerard, L.I.P. as Escrow Agent (the "Escrow Agent"), the Escrow Agent, among other duties, is to hold the specific description of all machinery and equipment which is a part of the Project.

The Company has requested the County's consent and the County has agreed to consent to the Company's election to transfer the Project back to the Company pursuant to Section 12-44-170(B) S.C. Code Ann. 1976 (as amended).

NOW, THEREFORE, FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the County does hereby grant, bargain, sell, transfer, and convey to the Company all the capital assets, including but not limited to, all real estate improvements (if any), machinery, equipment, and fixtures acquired in whole or in part from the proceeds of the Bond together with any and all additions, accessions, replacements and substitutions thereto or therefore that were transferred to the County directly or were reported for DM: 4174834 v. 1

fee in lieu of tax purposes as subject to the Lease Agreement, including but not limited to the property being more particularly described on <a href="Exhibit A">Exhibit A</a> attached hereto.

The County represents and warrants that it is the true and lawful owner of all of the property described herein; and that it has full power, right and lawful authority to sell the said property. The County further agrees that it will forever warrant and defend the title to said property; and that it will indemnify and save harmless the Tenant, its successors or assign, from any loss by reason of any such claims.

any such claims.	t, its successors or assign, from any loss by reason of
	LANCASTER COUNTY,
	SOUTH CAROLINA
	By:
	Name:
	Title:
ATTEST:	
By:	
Name:	
Its: Clerk to County Council	

### Exhibit A

All property and assets owned by the County and leased to the Company under the Lease.

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STATE OF SOUTH CAROLINA	) TITLE TO REAL ESTATE
COUNTY OF LANCASTER	)
corporate and politic and a subdivision consideration of One Dollar (\$1.00)	PRESENTS, that Lancaster County, South Carolina, a body sion of the State of South Carolina (the "Grantor") for and in has granted, bargained, sole and released, and by these presents se unto The Gillette Company, a corporation organized and f Delaware (the "Grantee").
(See Exhibit A) Grantee's Address:	A attached hereto for a legal description)
premises belonging or in any wise in the premises before mentioned under And, the Grantor does hereby bind to warrant and forever defend all and so successors and/or assigns against the	ghts, members, hereditaments and appurtenances to said neident or appertaining to have and to hold all and singular of the Grantee, and Grantee's successors and assigns, forever, the Grantor and the Grantee's successors and assigns, to singular said premises unto the Grantee and the Grantee's e Grantor and the Grantor's successors and assigns (except as
WITNESS the Grantor's hand and s	as to any other person whom seever may claim.  eal thisday of, 2015.
SIGNED, sealed and delivered in the	E presence of:  LANCASTER COUNTY, SOUTH CAROLINA  By:  Its:
ATTEST:	Zavaraži.
, Clerk, County C Lancaster County, South Carolina	Louncii
WITNESSES:	

STATE OF SOUTH CAROLINA	) PROBATE
COUNTY OF LANCASTER	) PROBATE
PERSONALLY appeared before me that (s)he saw the corporate seal of Lancaste	, who being duly sworn says cr County, South Carolina, affixed to the foregoing
Deed and that (s)he also saw	as Chairman of County Council
, Secretary of County C	Council, and as Clerk of the
County Council of Lancaster County, South	Council, and as Clerk of the Carolina, sign and attest the same and that (s)he
with witnessed the ex	secution and deliver thereof as the act and deed of
Lancaster County, South Carolina	
	Witness
SWORN to before me this, 2015	
Notary Public for South Carolina My Commission expires:	

#### **EXHIBIT A**

#### Exhibit A

All those certain pieces, parcels or tracts of land, lying, being and situate in Can Creek Township, Lancaster County, South Carolina, on the North side of South Carolina Road S-29-518, known as Hawthorne Road, containing a total of four and five tenths (4.5) acres, more or less, and being shown, described and designated as Tracts "A" 4.160 Acres and "B" 0.340 AC. IN R/W" on plat of survey made by Enfinger & Associates, dated June 28, 1995, entitled "PLAT OF BOUNDARY SURVEY FOR DURACELL INTERNATIONAL INC. (DURACELL U.S.A.)" and recorded in the Office of the Clerk of Court for Lancaster County, South Carolina, referenced to said plat is craved for a more minute description.

Being a portion of the property conveyed to Duracell, Inc. by deed of Pat O. Love, dated November 9, 1995 and recorded on November 9, 1995, in the Office of the Clerk of Court for Lancaster County, South Carolina in Deed Book M-13 at page 338.

STATE OF SOUTH CAROLINA	,	AINATION OF MEMORAN EASE AND OPTION TO PU	
COUNTY OF LANCASTER	•	INDENTURE	
THIS TERMINATION OF	MEMORANDU	JM OF LEASE AND OPTION	N TO PURCHASE
AND INDENTURE (the "Agreeme and between LANCASTER COUN"	TY, SOUTH CA	AROLINA, a body politic and	corporate and a
political subdivision of the State of			
COMPANY, as successor to Durace			
of the State of Delaware and author "Company").	ized to do busin	ess in the State of South Carol	ina (the
	RECIT	AES:	
		y") and the Company entered i	
Memorandum of Lease and Option	to Purchase date	ed as of June 26, 1998 (the "M	(OL"), and (ii) an
Indenture dated as of June 1, 1998 (	the "Indenture"	) in connection with a fee in li	eu of taxes
("FILOT") transaction between the			Chapter 29, Codes
of Laws of South Carolina (1976), a	is <b>amended</b> (the	"Code"), and	
WHEDEAS the MOI was		160	I amazata G
"Clerk's Office") in Book 0015. Pa	ecordeum me v	Office of the Clerk of Court fo	r Lancaster County
between the County and the Compa	ige 0000 in orde	The record the terms of a Leas	se Agreement
the Clerk's Office; and	ny and me mde	Mure was recorded in Book of	301 at Page 00/1 01
the cicik's Office, and			
WHEREAS nursuant to an	Ordinance ense	ted by the County on	2015 the
County consented to the transfer of	the FILOT and	er the Title Act to a FILOT tra	msaction under
Title 12. Chapter 44 of the Code (th	e "Non-Title A	et") and to the execution of a l	Fee Agreement and
all other documents necessary to ev	idence such trar	nsfer; and	. oo i 18100ment ana
		•	
WHEREAS, the parties now	desire to termi	nate the MOL and the Indentu	re.
NOW, THEREEORE, for go	od and valuabl	e consideration, the receipt an	d sufficiency of
which are hereby acknowledged, the	e undersigned a	gree the MOL and the Indentu	ire are herehy
terminated. The Company shall rec			
Register of Deeds.	<i>5</i>		

[Signature Page Follows.]

IN WITNESS WHEREOF, the undersigned have executed this Agreement under seal as of the date first written above.

WITNESSES:	LANCASTER COUNTY, SOUTH CAROLINA
10-	By:
	Name: Title:
	Title:
WITNESSES:	THE CHAPTER COMPANY
WIINESSES:	THE CALLETTE COMPANY
	By:
	Name:
	Title:
***************************************	
A TYPE CITE	
ATTEST:	
Jan	
By:	
Its:	
	% <i>(</i> /

STATE OF SOUTH CAROLINA )
COUNTY OF)
I,, Notary Public for the State of South Carolina, do hereby certify that THE GILLETTE COMPANY, by, its, personally appeared before me this day and acknowledged the due execution of the foregoing
instrument.
Subscribed to and sworn before me this day of, 2015. (L.S.)
Notary Public, State of  My Commission Expires:
NOTARIAL SEAL

STATE OF SOUTH CAROLINA	)		
COUNTY OF LANCASTER	)		
I,, No that LANCASTER COUNTY, SOU , personally app of the foregoing instrument.	tary Public for TH CAROLIN peared before i	the State of Sout NA, by me this day and ac	h Carolina, do hereby certify, its cknowledged the due execution
Subscribed to and sworn before	ore me this	day of	, 2015.
		state of South of South of South of State of South of State of South of State of Seal	(L.S.) Earolina

#### **LEGAL DESCRIPTION**

#### Exhibit A

All those certain pieces, parcels or tracts of land, lying, being and situate in Can Creek Township. Lancaster County, South Carolina, on the North side of South Carolina Road S-29-518, known as Hawthorne Road, containing a total of four and five tenths (4.5) acres, more or less, and being shown, described and designated as Tracts "A" 4.160 Acres and "B" 0.340 AC. IN R/W" on plat of survey made by Enfinger & Associates, dated June 28, 1995, entitled "PLAT OF BOUNDARY SURVEY FOR DURACELL INTERNATIONAL INC. (DURACELL U.S.A.)" and recorded in the Office of the Clerk of Court for Lancaster County, South Carolina, referenced to said plat is craved for a more minute description.

Being a portion of the property conveyed to Duracell, Inc. by deed of Pat O. Love, dated November 9, 1995 and recorded on November 9, 1995, in the Office of the Clerk of Court for Lancaster County, South Carolina in Deed Book M-13 at page 338.

#### FEE IN LIEU OF TAX AGREEMENT

between

## LANCASTER COUNTY, SOUTH CAROLINA

and

# THE GILLETTE COMPANY, AS SUCCESSOR TO DURACELL INC.

Transferring property under the existing fee in lieu of taxes lease agreement to a fee agreement under Title 12, Chapter 44, S.C. Code of Laws, to be effective as of December 1, 1997

### RECAPITULATION OF CONTENTS OF FEE AGREEMENT PURSUANT TO S.C. CODE ANN. § 12-44-55(A)

The parties have agreed to waive this requirement pursuant to S.C. Code Ann. § 12-44-55(B).



#### FEE IN LIEU OF TAX AGREEMENT

THIS FEE IN LIEU OF TAX AGREEMENT made and entered into to be effective as of
ne 1st day of December, 1997 ("Effective Date"), by and between LANCASTER COUNTY.
OUTH CAROLINA (hereinafter referred to as the "County"), a body politic and corporate and
political subdivision of the State of South Carolina, and THE GILLETTE COMPANY, AS
UCCESSOR TO DURACELL INC., a corporation duly organized and existing under the laws
f the State of Delaware and authorized to do business in the State of South Carolina (hereinafter
eferred to as the "Company"), as amended this day of , 2015.

#### WITNESSETH:

WHEREAS, Lancaster County (the "County") and The Gillette Company (successor in interest to Duracell Inc.) entered into an Inducement Agreement and Millage Rate Agreement dated January 26, 1998 (the "Inducement Agreement"), a Lease Agreement dated as of June 1, 1998 (the "Lease Agreement"), a Memorandum of Lease and Option to Purchase dated as of June 26, 1998 (the "Memorandum of Lease"), an Indenture dated as of June 1, 1998 (the "Indenture"), and an Escrow Agreement among the Company, the County and Haynsworth, Marion, McKay & Guerard, L.L.P. dated as of June 1, 1998 (the "Escrow Agreement") and other documents, pursuant to which the certain property and improvements, including machinery and equipment, fixtures, and other personal property (collectively the "Project") were conveyed to the County and leased back to the Company under a fee-in-lieu of taxes ("FILOT") arrangement under Title 4, Chapter 29, Code of Laws of South Carolina (1976), as amended (the "Title Act"); and

WHEREAS, the County is authorized by Fitle 12, Chapter 44, Code of Laws of South Carolina (1976), as amended (the "Non-Title Act"), to enter into a Fee Agreement with companies to induce such companies to locate in the State of South Carolina; and

WHEREAS, Section 12-44-170(B) of the Non-Title Act provides for an election by an entity with property subject to an existing FILOT under the Title Act to transfer its FILOT arrangement under the Title Act to a substantially similar arrangement under the Non-Title Act; and

WHEREAS, the Company has requested that the County consent to its election to transfer the Company's FILOT arrangement under the Title Act to a substantially similar arrangement under the Non-Title Act; and

WHEREAS, pursuant to an Ordinance enacted by the County on \_\_\_\_\_\_\_, 2015 (the "Ordinance"), the County has consented to the transfer of the FILOT arrangement under the Title Act to a FILOT arrangement under the Non-Title Act and to the execution of a Fee Agreement and all other documents necessary to evidence the transfer; and

WHEREAS, the County has found that: (a) the Project (as defined herein) is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; (b) the Project gives rise to no pecuniary liability of the County or any incorporated municipality and to no

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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 are greater than the costs.

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained, the County and the Company agree as follows provided that in the performance of the agreements of the County herein contained, any obligation it may thereby incur for the payment of money shall not create a pecuniary liability or a charge upon its general credit or taxing powers but shall be a limited obligation of the County payable solely out of the proceeds derived by it from this Agreement.

#### ARTICLE 1

### DEFINITIONS

SECTION 1.1 <u>Definitions</u>. In addition to the words and terms elsewhere defined in this Agreement, the following words and terms as used herein and in the preambles hereto shall have the following meanings unless the context or use indicates another or different meaning or intent.

"Act" or "Non-Title Act" shall mean Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended, and all future actions amendatory thereto.

"Administration Expenses" shall mean the reasonable and necessary expenses incurred by the County with respect to the Project, this Agreement and the compensation and expenses paid to or incurred by the County under this Agreement; provided, however, that no such expense shall be considered an Administration Expense until the County has furnished to the Company a statement in writing indicating the amount of such expense and the reason it has been or will be incurred.

"Authorized County Representative" shall mean the person or persons at the time designated to act on behalf of the County by written certificate furnished to the Company containing the specimen signature of each such person and signed on behalf of the County by the Clerk to County Council.

"Authorized Company Representative" shall mean any person or persons at the time designated to act on behalf of the Company by a written certificate furnished to the County containing the specimen signature of each such person and signed on behalf of the Company by its President, any Vice President, Treasurer or Assistant Treasurer.

"Code" shall mean the Code of Laws of South Carolina, 1976, as amended.

"Completed Segment" shall mean a segment of the Project completed after the date of the Inducement Agreement and up to the Minimum Investment Date.

"Cost" or "Cost of the Project" shall mean the cost of acquiring, by construction and purchase, the Project and shall be deemed to include, whether incurred prior to or after the date of this Agreement: (a) obligations of the Company incurred for labor, materials and other expenses to contractors, builders and materialmen in connection with the acquisition.

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construction and installation of the Project; (b) the cost of contract bond and of insurance of all kinds that may be required or necessary during the course of construction of the Project, which are not paid by the contractor or contractors or otherwise provided for; (c) the expenses of the Company for test borings, surveys, test and pilot operations, estimates, plans and specifications and preliminary investigations therefor, and for supervising construction, as well as for the performance of all other duties required by or reasonably necessary in connection with the acquisition, construction and installation of the Project; (d) all other costs which the Company shall be required to pay under the terms of any contract or contracts for the acquisition, construction and installation of the Project; (e) costs incurred by the Company for the acquisition of an interest in the land upon which the Project is located; and (f) any sums required to reimburse the Company for advances made by it for any of the above items, or for any other work done and costs incurred by the Company which are for the acquisition of land or property of a character subject to the allowance for depreciation provided for under Section 167 of the Internal Revenue Code of 1986, as amended, and included in the Project.

"Company" shall mean The Gillette Company, a Delaware corporation and successor in interest to Duracell Inc. and any surviving, resulting or transferee corporation in any merger, consolidation or transfer of assets permitted under Section 8.9 hereof.

"County" shall mean Lancaster County, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina, and its successors and assigns.

"County Council" shall mean the governing body of the County and its successors.

"Default" shall mean an event or condition, the occurrence of which would, with the lapse of time or the giving of notice or both, become an Event of Default as defined in Section 11.1 hereof.

"Equipment" shall have the meaning ascribed to it in Section 6.2 of this Agreement.

"Land" shall mean the real estate described in <u>Exhibit A</u> attached hereto as may be supplemented from time to time.

"Minimum Investment Date" shall mean the date five (5) years from the end of the property tax year from which this Agreement is effective, as such date may have been extended from time to time.

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

"Plans and Specifications" shall mean the plans and specifications prepared for the Project, on file at the Company's office, as the same may be implemented and detailed from time to time and as the same may be revised from time to time prior to the completion of the acquisition, construction and installation of the Project in accordance with Section 4.3 hereof.

"Project" shall mean (i) all buildings and appurtenances which are presently under construction or are or have been constructed on the Land as of the Effective Date hereof, as they

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may at any time exist, including any air conditioning and heating systems (which shall be deemed fixtures); (ii) the items described in <u>Exhibit B</u> attached hereto; (iii) all other machinery, equipment, other fixtures or personal property which is installed in or on the equipment described in <u>Exhibit B</u> or in the foregoing buildings or on the Land in substitution or replacement of parts of such equipment; and (iv) any personal property acquired hereafter which becomes so attached, integrated or affixed to any item described in the foregoing clauses (i), (ii) or (iii) that it cannot be removed without impairing the operating utility of such item as originally designed or damaging such item.

"Reserved Rights" shall mean the rights of the County hereunder to receive notices to inspect the Project and any books and records relating to the Project, to receive payment of Administration Expenses for costs incurred by the County, to receive payments in lieu of taxes pursuant to Section 6.3 hereof, to receive payments under Section 6.4 hereof, and to receive indemnification under Sections 8.10 and 8.15 hereof.

"School District" shall mean the School District of Lancaster County, South Carolina, and its successors.

"Term" shall mean the duration of this Agreement as set forth in Section 5.1.

SECTION 1.2 References to Agreement. The words "hereof", "herein", "hereunder" and other words of similar import refer to this Agreement as a whole.

### ARTICLE 2

## REPRESENTATIONS AND COVENANTS

SECTION 2.1 Representations by County. The County makes the following representations and covenants as the basis for the undertakings on its part herein contained:

- (a) The County is a body politic and corporate and a political subdivision of the State of South Carolina and is authorized and empowered by the provisions of the Act to enter into the transaction contemplated by this Agreement and to carry out its obligations hereunder. The Project constitutes and will constitute a "Project" within the meaning of the Act. By proper action by the County Council, the County has been duly authorized to execute and deliver this Agreement and any and all agreements collateral thereto;
- (b) The County is not in default under any of the provisions of the laws of the State whereby any such default would affect the validity or enforceability of, or the transactions contemplated by, this Agreement;
- (c) The authorization, execution and delivery of this Agreement and the compliance by the County with the provisions hereof and thereof, will not conflict with or constitute a breach of, or a default under, any existing law, court or administrative regulation, decree, order or any provision of the Constitution of laws of the State relating to the establishment of the County or its affairs, or any agreement, mortgage, lease or other instrument to which the County is subject or by which it is bound; and

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- (d) No actions, suits, proceedings, inquiries or investigations are pending or threatened against or affecting the County in any court or before any governmental authority or arbitration board or tribunal, any of which involve the possibility of any material and adverse effect upon the transactions contemplated by this Agreement or which, in any way would adversely affect the validity or enforceability of this Agreement or any agreement or instrument to which the County is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby or thereby.
- SECTION 2.2 Representations and Warranties by Company. The Company makes the following representations and warranties as the basis for the undertakings on its part herein contained:
- (a) The Company is a corporation duly incorporated, validly existing, and in good standing, under the laws of the State of Delaware, qualified to do business in the State of South Carolina, has power to enter into this Agreement and by proper corporate action has been duly authorized to execute and deliver this Agreement.
- (b) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement will result in a material breach of any of the terms, conditions or provisions of any corporate restriction or any agreement or instrument to which the Company is now a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation of imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property of assets of the Company which materially restricts the Company's ability to make any payments hereunder, other than as may be created or permitted by this Agreement.
- (c) No event has occurred and no condition exists with respect to the Company which would constitute an "Event of Default" as defined herein or which with the lapse of time or with the giving of notice or both would become an "Event of Default" under this Agreement.
- (d) The Company intends to operate the Project for the purpose of the manufacturing of batteries and all other legal forms of manufacturing and distribution and for such other purposes permitted under the Act as the Company may deem appropriate.
- (e) The incentives provided in this Agreement have been instrumental in inducing the Company to locate and enlarge its facilities in the County and in the State of South Carolina.
- (f) No actions, suits, proceedings, inquiries or investigations are pending or threatened against or affecting the Company in any court or before any governmental authority or arbitration board or tribunal, any of which involve the possibility of any material and adverse effect upon the transactions contemplated by this Agreement, or which in any way would adversely affect the validity or enforceability of this Agreement or any agreement or instrument to which the Company is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby or thereby.

#### **ARTICLE 3**

#### [RESERVED]

#### **ARTICLE 4**

## ACQUISITION BY CONSTRUCTION AND PURCHASE OF PROJECT; REVISION OF PLANS AND SPECIFICATIONS; AMENDMENTS TO EXHIBITS

SECTION 4.1 Acquisition by Construction and Purchase of Project. The Company hereby agrees to acquire by construction and purchase the Project in accordance with the Plans and Specifications and to acquire by construction and purchase all other things deemed necessary by the Company in connection with the Project. The Company agrees to maintain such records in connection with the acquisition by construction and purchase of the Project as to permit ready identification thereof. The Company further agrees to use its best efforts to cause such acquisition as promptly as practicable and to expend upon the acquisition and expansion of the Project not less than \$45,000,000 within five (5) years from the Effective Date.

**SECTION 4.2 [RESERVED]** 

SECTION 4.3 Revision of Plans and Specifications. The Company may revise the Plans and Specifications at any time and from time to time.

SECTION 4.4 [RESERVED]

SECTION 4.5 RESERVED

SECTION 4.6 Amendments to Exhibits. The Company may supplement Exhibits A and B from time to time with the written consent of the County, which consent will not be unreasonably withheld. [Note: Should Exhibit A also include the 20 acre tract?]

## A. TERM **ARTICLE 5**

SECTION 521 Term. Subject to the terms and provisions herein contained, this Agreement shall be and remain in full force and effect for a term commencing June 1, 1998, and ending December 31, 2022 unless sooner terminated as herein permitted.

SECTION 5.2 Administration Expenses. The Company has agreed to pay Administration Expenses and indemnification payments (pursuant to Section 8.10 and 8.15 of this Agreement) when and as they shall become due, but in no event later than 45 days after receiving written notice from the County.

In the event Company should fail to make any of the payments required in this Section 5.2, the item so in Default shall continue as an obligation of the Company until the amount in Default shall have been fully paid, and the Company agrees to pay the same with interest thereon (to the extent permitted by law) at the rate per annum which is equal to the prime rate until paid.

6

SECTION 5.3 [RESERVED]

SECTION 5.4 [RESERVED]

SECTION 5.5 [RESERVED]

#### ARTICLE 6

## REMOVAL OF EQUIPMENT; PAYMENTS IN LIEU OF TAXES; AD VALOREM TAXES

**SECTION 6.1** [RESERVED]

SECTION 6.2 Removal of Equipment. The parties hereto understand that certain machinery, equipment and related property (herein "Equipment") shall be installed on the Land. If no Default under this Agreement shall have happened and be continuing, in any instance where the Company in its discretion determines that any items of Equipment have become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary for operations on the Land, the Company may remove such items of Equipment from the Land and sell trade-in, exchange or otherwise dispose of them (as a whole or in part) without consent of the County. The Company shall have the right, pursuant to the provisions of the Act, including Section 12-44-60 thereof, to replace any Equipment. Any additional payments due pursuant to Section 12-44-50(B)(2) of the Act as a result of the early termination of all or part of this Agreement with respect to all or part of the Project shall be due with the Company's tax bill for such year.

SECTION 6.3 Payments in Lieu of Taxes. It is recognized that under the Act, for a project involving an initial investment within the first five years of at least \$45,000,000, the County may provide for a payment in lieu of taxes as provided in the Act. In accordance with the provisions of the Act, and as subsequently amended, during the Term of the Agreement the Company shall make with respect to the Project (1) a payment equal to the taxes that would otherwise be due on any portion of the Project consisting of undeveloped land if it were taxable, and (2) twenty annual payments in lieu of taxes calculated as set forth in the next succeeding paragraph of this Agreement for each Completed Segment of the Project, including that portion of the Project consisting of substitution or replacement property; and (3) after the payments due pursuant to clause (2) hereinabove, then Completed Segment payments equal to normal ad valorem taxes.

Such annual payments under item (2) above shall be due and payable and subject to such penalties on the date and in the manner as prescribed for County and other <u>ad valorem</u> taxes. The amount of such annual payments shall be determined by:

(a) Using an assessment ratio of 6%, a millage rate of 375.9 mills, and a fair market value estimate as determined by the State Department of Revenue using original cost less allowable depreciation for the personal property as provided in Section 12-37-930 of the Code; and

(b) And then determining an equal annual payment based on a net present value of the sum of the fees for the period of twenty annual payments in lieu of taxes not less than the net present value of the fee schedule as calculated pursuant to subitem (a) above and using a discount rate of 6.04%.

For each Completed Segment of the Project, the amount of each of the twenty annual payments in lieu of taxes shall be calculated using the methodology applied in the example contained in Schedule A.

The total payment due shall equal the sum of the payments due for each Completed Segment.

In the event that the Act, or any portion thereof, and/or the above-described payments in lieu of taxes are declared invalid or unenforceable, in whole or in part, for any reason, the Company and the County express their intentions that such payments be reformed so as to afford the Company the maximum benefit their permitted by law. If the Project is deemed to be subject to ad valorem taxation, the Company shall be entitled (1) to enjoy the five-year exemption from ad valorem taxes provided by the South Carolina Constitution Article X, Section 3, and any other exemption allowed by law from time to time: (2) to enjoy all allowable depreciation; and (3) to receive credit, if any there be, by reason of the fact that the School District received larger allocation of funds under the Education Finance Act of 1977 (Sections 59-20-10 to 59-20-80 of the Code) than it would have received if the Project had been taxed at the assessment ratio (presently 10.5% of fair market value), provided such credit shall be adjusted to take into account any amounts which the School District is required to pay under the Education Finance Act as a result of the Project becoming subject to ad valorem taxation.

In the event that the Cost of the Project has not exceeded \$45,000,000 by the fifth anniversary of the Effective Date, the portions of the Project subject to this Agreement shall revert retroactively to the tax treatment required pursuant to the Act and the unpaid taxes due thereby shall be subject to interest as provided in Section 12-54-20 of the Code.

<u>SECTION 6.4</u> Ad Valorem Taxes. The County and the Company acknowledge that pursuant to the Act, no part of the Project subject to this Agreement will be subject to <u>ad valorem</u> taxation in South Carolina.

SECTION 6.5 [RESERVED]

#### **ARTICLE 7**

#### **CASUALTY AND CONDEMNATION**

SECTION 7.1 Damage and Destruction. [RESERVED]

**SECTION 7.2** [RESERVED]

**SECTION 7.3** [RESERVED]

#### ARTICLE 8

## PARTICULAR COVENANTS AND AGREEMENTS

**SECTION 8.1** [RESERVED]

**SECTION 8.2** [RESERVED]

**SECTION 8.3** [RESERVED]

**SECTION 8.4** [RESERVED]

SECTION 8.5 Right to Inspect. The Company agrees that the County and its authorized agents shall have the right at all reasonable times to enter upon and examine and inspect the Project. The County and its authorized agents shall also be permitted, at all reasonable times, to examine the Plans and Specifications and the other books and records of the Company with respect to the Project. The aforesaid rights of examination and inspection shall be exercised only upon such reasonable and necessary terms and conditions as the Company shall prescribe, which conditions shall be deemed to include, but not be limited to those necessary to protect the Company's trade secrets and proprietary rights. Prior to the exercise of any right to inspect the Project or the Plans and Specifications and books and records of the Project, the County, and its authorized agents, shall sign a nondisclosure statement substantially in the form shown in Exhibit C attached hereto. In no way shall this requirement of a nondisclosure statement be deemed to apply to or restrictive the rights of the United States Government and the State of South Carolina or its political subdivisions in the exercise of their respective sovereign duties and powers.

## SECTION 8.6 RESERVED

SECTION 8.7 Limitation of County's Liability. Anything herein to the contrary notwithstanding any obligation the County may incur hereunder, including for the payment of money shall not be deemed to constitute a debt or general obligation of the County but shall be payable solely and exclusively from the revenues and receipts derived by the County from this Agreement.

SECTION 8.8 [RESERVED]

SECTION 8.9 RESERVED

SECTION 8.10 Indemnification.

(a) The Company shall and agrees to indemnify and save the County harmless against and from all claims by or on behalf of any person, firm or corporation arising from the conduct or management of, or from any work or thing done on, the Project during the Term of this Agreement, and, Company further shall indemnify and save the County harmless against and from all claims arising during the Term of this Agreement from (i) any condition of the Project; (ii) any breach or default on the part of Company in the performance of any of its obligations under this Agreement; (iii) any act of negligence of Company or any of its agents, contractors, servants, employees or licensees, (iv) any act of negligence of any assignee or sublessee of

Company, or of any agents, contractors, servants, employees or licensees of any assignee or sublessee of Company, or (v) any environmental violation, condition, or effect. Company shall indemnify and save the County harmless from and against all costs and expenses incurred in or in connection with any such claim arising as aforesaid or in connection with any action or proceeding brought thereon, and upon notice from the County, Company shall defend in any such action, prosecution or proceeding it.

(b) Notwithstanding the fact that it is the intention of the parties that the County, its agents, officers, or employees, shall not incur pecuniary liability by reason of the terms of this Agreement, or the undertakings required of the County hereunder, by reason of the performance of any act requested of it by the Company, or the operation of the Project by the Company, including all claims, liabilities or losses arising in connection with the violation of any statutes or regulations pertaining to the foregoing, nevertheless, if the County, its agents, officers or employees should incur any such pecuniary liability, then in such event the Company shall indemnify and hold them harmless against all claims by or on behalf of any person, firm or corporation, arising out of the same, and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon, and upon notice, the Company shall defend them in any such action or proceeding.

<u>Provided</u>, however, the County shall not be indemnified by Section 8.10(a) and (b) above as to intentional or wanton acts of the County or its agents.

## SECTION 8.11 [RESERVED]

SECTION 8.12 Qualification in State. The Company warrants that it is duly qualified to do business in the State of South Carolina and covenants that it will continue to be so qualified so long as it operates the Project.

SECTION 8.13 No Liability of County's Personnel. All covenants, stipulations, promises, agreements and obligations of the County contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of the County and not of any member of the County Council or any officer, agent, servant or employee of the County in his individual capacity, and no recourse shall be had for the payment of any moneys hereunder or the performance of any of the covenants and agreements of the County herein contained or for any claims based thereon against any member of the governing body of the County or any officer, agent, servants or employee of the County.

## SECTION 8.14 RESERVED]

SECTION 8.15 Environmental Representations; Environmental Indemnity. The Company warrants and represents to the County, after thorough investigation on or prior to the Effective Date that (a) the Project and the Land as of the Effective Date and at all times thereafter while it was leased by the Company under the Lease Agreement was in reasonable compliance with all federal, state, and local environmental laws and regulations, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), Public Law No. 96-510, 94 Stat. 2767, 42 USC 9601 et seq., and the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Public Law No. 99-499,

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100 Stat. 1613, and (b)(i) as of the Effective Date, to the best of the Company's knowledge, there were no hazardous materials, substances, waste or other environmentally regulated substances (including without limitation, any materials containing asbestos) located on, in or under the Project and the Land or used in connection therewith, which the Company was not permitted by law, regulation or the conditions of a permit to maintain on, in or under the Project and the Land or use in connection herewith, and the Company has obtained and has maintained all licenses. permits and approvals required with respect thereto, and was in full compliance with all of the terms, conditions and requirements of such licenses, permits and approvals. The Company hereby indemnifies and agrees to hold the County harmless from and against any damages, fines, charges, expenses, fees, attorney fees and costs incurred by the County in the event the County as lessor under the Lease Agreement is hereafter determined to be in violation of any environmental laws, rules or regulations applicable thereto and this indemnity shall survive any foreclosure or deed in lieu of foreclosure. This indemnity includes, but is not limited to, any damages, claims and fees arising out of any claim for loss or damage to property or persons, contamination of or adverse effect on the environment, or any violation of statutes, ordinances, orders, rules or regulations of any governmental agency or entity, caused by or resulting from any hazardous material, substance or waste previously, now or hereafter on or under the Project.

#### ARTICLE 9

## ASSIGNMENT OF PROJECT

SECTION 9.1 Assignment. If Section 12-44-120 of the Act or any successor provision requires consent to an assignment, the Company may only assign this Fee Agreement in whole or in part with the prior written consent of the County or a subsequent written ratification by the County, which consent or ratification the County will not unreasonably withhold. The Company agrees to notify the County and the Department of the identity of any transferee within 60 days of the transfer. In case of a transfer, the transferee assumes the transferor's basis in the Project for purposes of calculating the Fee. No approval is required for transfers to sponsor affiliates or other financing related transfers, as defined in the Act.

The County understands that the Company (or its controlling shareholder P&G) is a party to a proposed transaction with Berkshire Hathaway, Inc. to divest the Duracell business (the "Proposed Transaction"). The County expressly agrees and provides its consent for P&G to assign this Agreement in full to Duracell Manufacturing, Inc. and/or its subsidiaries upon closing of the Proposed Transaction.

SECTION 9.2 [RESERVED]

**ARTICLE 10** 

**PURCHASE PRICE** 

[RESERVED]

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#### ARTICLE 11

#### **EVENTS OF DEFAULT AND REMEDIES**

SECTION 11.1 Events of Default. Any one or more of the following events (herein called "Event of Default", or collectively "Events of Default") shall constitute an Event of Default:

- (a) if Default shall be made in the due and punctual payment of any fee in lieu of tax payments due hereunder.
- (b) if the Company shall assign this Agreement, otherwise than as expressly permitted pursuant to Section 9.1 hereof;
- (c) if Default shall be made by the Company in the due performance of or compliance with any of the terms hereof, including payment, other than those referred to in the foregoing subdivisions (a) or (b) and such default shall (i) continue for 30 days after the Company shall have given the Company written notice of such Default or a responsible officer of the Company shall otherwise have actual notice thereof, or (ii) in the case of any such Default which can be cured but which cannot with due diligence be cured within such 30 day period, if the Company shall fail to proceed promptly to cure the same and thereafter prosecute the curing of such Default with due diligence, it being intended in connection with the Default not susceptible of being cured with due diligence within 30 days that the time of the Company within which to cure the same shall be extended for such period as may be necessary to complete the curing of the same with all due diligence;
- (d) If the Company shall file a voluntary petition seeking an order for relief in bankruptcy, or shall be adjudicated insolvent, or shall file any petition or answer or commence a case seeking any reorganization, composition, readjustment, liquidation or similar order for relief or relief for itself under any present or future statute, law or regulation, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of the Company or of the Project, or shall make any general assignment for the benefit of credits, or shall admit in writing its inability to pay its debts generally as they become due;
- if a petition shall be filed or a case shall be commenced against Company seeking an order for relief in bankruptcy or any reorganization, composition, readjustment, liquidation or similar relief under any present or future statute, law or regulation, and shall remain undismissed or unstayed for an aggregate of 30 days (whether or not consecutive), or if any trustee, receiver or liquidator of the Company or of all or any substantial part of its properties or of the Project shall be appointed without the consent or acquiescence of the Company and such appointment shall remain unvacated or unstayed for an aggregate of 30 days (whether or not consecutive).
- (f) If any material representation or warranty made by the Company herein or any statement, certificate or indemnification furnished or delivered by the Company in connection with the execution and delivery of this Agreement, proves untrue in any material

respect as of the date of the issuance or making thereof or is knowingly violated or breached, as the case may be:

- (g) If the Company shall abandon the Project; or
- (h) If the Company shall dissolve or fail to maintain its separate corporate existence without prior assignment of this Agreement pursuant to Section 9.1 hereof.
- SECTION 11.2 Remedies on Event of Default. Upon the occurrence of any Event of Default, the County at its option: (i) may terminate this Agreement as to one or more Completed Segments by 30 days' notice in writing specifying the termination date and the Completed Segments to be terminated; (ii) may have access to and inspect, examine and make copies of, the books, records and accounts of the Company pertaining to the Project; or (iii) may take whatever action at law or in equity as may appear necessary or desirable to collect any amounts then due and thereafter to become due or to enforce observance or performance of any covenant, condition or agreement of the Company under this Agreement.
- SECTION 11.3 Company's Obligations to Survive Repossession and Termination. Except as hereinafter provided, no termination of the Term of the Agreement hereof shall relieve the Company of its liability and obligations to make the payments required by Sections 8.10 and 8.15 hereof, all of which shall survive any such termination

## ARTICLE 12

## MISCELLANEOUS

SECTION 12.1 Rights and Remedies Cumulative. Each right, power and remedy of the County or of the Company provided for in this Agreement shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Agreement or now or hereafter existing at law or in equity, in any jurisdiction where such rights, powers and remedies are sought to be enforced, and the exercise by the County or by the Company of any one or more of the rights, powers or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the County or by the Company of any or all such other rights, powers and remedies.

SECTION 12.2 Successors and Assigns. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

SECTION 12.3 Notices; Demands; Requests. All notices, demands and requests to be given or made hereunder to or by the County or the Company, shall be in writing, and shall be deemed to be properly given or made if sent by United States first class mail, post prepaid addressed as follows or at such other places as may be designated in writing by such party.

(a) As to the County: Lancaster County PO Box 1809 Lancaster, South Carolina 29721 Attention: Lancaster County Administrator

(b) As to the Company:
 Duracell Inc.
 1551 Highway 9, Bypass West
 Lancaster, South Carolina 29620
 Attention: President

SECTION 12.4 Applicable Law; Entire Understanding. This Agreement shall be governed exclusively by the provisions hereof and by the applicable laws of the State of South Carolina. This Agreement expresses the entire understanding and all agreements of the parties hereto with each other, and neither party hereto has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth in this Agreement or in certificates delivered in connection with the execution and delivery hereof.

SECTION 12.5 Severability. In the event that any clause or provisions of this Agreement shall be held to be invalid by any court of competent jurisdiction, the invalidity of each clause or provision shall not affect any of the remaining provisions hereof.

SECTION 12.6 Headings and Table of Contents; References. The headings of the Agreement and any Table of Contents or Index annexed hereto are for convenience of reference only and shall not define or limit the provisions hereof or affect the meaning or interpretation hereof. All references in this Agreement to particular Articles or Sections or subdivisions of this Agreement are references to the designated Articles or Sections or subdivision of this Agreement.

SECTION 12.7 Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument.

SECTION 12.8 | RESERVED]

SECTION 12.9 Amendments. This Agreement may be amended only by a writing signed by both parties.

SECTION 12.10 Warver. Either party may waive compliance by the other party with any term or condition of this Agreement only in a writing signed by the waiving party.

SECTION 12.11 Intent of the Parties. Notwithstanding anything contained herein to the contrary, and in accordance with Section 12-44-170(B) of the Act, (i) the fee payments due hereunder shall in no event be less or more than, or be for a duration shorter or longer than, the fee payments that would be due if the Lease Agreement were continued; and (ii) any minimum investment or employment requirements under the Lease Agreement are hereby carried over to this Agreement. It is the intent of the parties that this Agreement will not affect the economic benefit and rights and obligations intended to be created by the Lease Agreement to the Company and the County, but is merely entered into in order to continue the fee in lieu of taxes

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arrangement previously entered into through the Lease Agreement but without the County having title to the assets subject to the fee in lieu of taxes, all in accordance with Section 12-44-170 of the Act.

Pursuant to Section 12-44-55(B) of the Simplified FILOT act, the County and the Company waive any and all compliance with any and all of the provisions, items, or requirements of Section 12-44-55 of the Act.

IN WITNESS WHEREOF, Lancaster County, South Carolina, has executed this Agreement by causing its name to be hereunto subscribed by the Chairman of County Council for the County, the Secretary of County Council for the County and attested to by the Clerk to the County Council, and The Gillette Company has executed this Agreement by causing its corporate name to be hereunto subscribed by its President or a Vice President and its corporate seal to be impressed hereon and attested to by its Secretary or Assistant Secretary, all being done as of the day and year first above written.

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## THE GILLETTE COMPANY

By:	
Name:	
Title:	



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#### **EXHIBIT A**

All those certain pieces, parcels or tracts of land, lying, being and situate in Can Creek Township, Lancaster County, South Carolina, on the North side of South Carolina Road S-29-518, known as Hawthorne Road, containing a total of four and five tenths (4.5) acres, more or less, and being shown, described and designated as Tracts "A" 4.160 Acres and "B" 0.340 AC. IN R/W" on plat of survey made by Enfinger & Associates, dated June 28, 1995, entitled "PLAT OF BOUNDARY SURVEY FOR DURACELL INTERNATIONAL INC. (DURACELL U.S.A.") and recorded in the Office of the Clerk of Court for Lancaster County, South Carolina, referenced to said plat is craved for a more minute description.



## **EXHIBIT B**

## Section 1 – Buildings

All buildings, structures, and appurtenances located on the Land.

## Section 2 - Equipment

All machinery, equipment, furniture and fixtures located on the Land and transferred from the County to the Company by Bill of Sale.



#### EXHIBIT C

### [FORM OF NON-DISCLOSURE STATEMENT]

## SCHEDULE A



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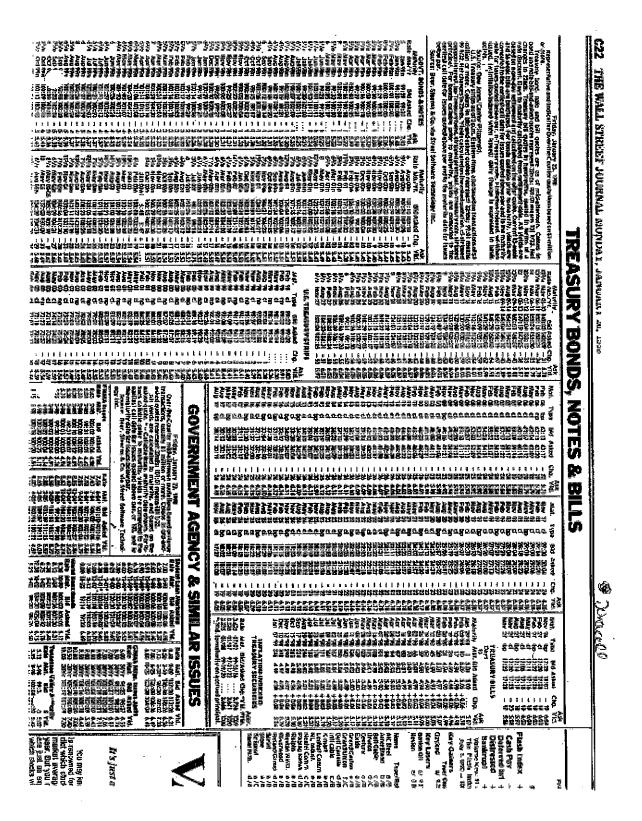
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			\$385,524 \$385,524		\$49,236	\$42,453	\$42,453	\$42,453	\$42,453	<b>经产门,在市场</b>	44.0° 4.00	\$42,453	<b>\$42,45</b> 3	\$42,453	542,459	\$42,453	562,453	542,453	641,453	942,453	342,453	94N,450	\$42,463	953,483						Fig.	The Year
			S4,604,569		549,236	\$112,519	OP8' ¥615	\$280,035	\$436,751	5436,751						\$436,751	\$436,751				\$436,751	5430,751	S436,751	5436.751	565 7655 567 7655	5324,232	5241,916	\$1.56,716		74	Total
		38	\$2,874,191		(\$27.251)	2014 NOOP	10 P. G. G. G. G.	(\$135,045)	(\$179,173)	(5179.173)	(517#173)	(5170.178)	(5179 173)	(5,179,173)	(\$179,173)	(\$179.179)	65174 77B	100 Table 2000	-	ws	\$183,67#	5363.886	S576.728				566,9694	087.50F\$			Savings from
			\$1,680,900 \$1,057,258					- T						<del></del>		<u> </u>						-		2174 700	\$157.719	\$129,695		\$62,686		Signal	A050



DM: 4186659 v. 1

STATE OF SOUTH CAROLINA COUNTY OF LANCASTER	,	NT AND ASSUMPTION EE AGREEMENT
THIS ASSIGNMENT AND is made as of, 2015 to Duracell Inc. (the "Assignor") and the "Parties").	by and between The Gillette	REEMENT (the "Assignment" Company, successor in interest. (the "Assignee") (collectively)
of Laws of South Carolina, 1976, a (the "County") and Assignor entered for the payment of a fee in lieu of agreement under Title 12, Chapter 4	s amended (the "Code"), Land into a Lease Agreement date taxes, which the parties code of the Code on	ed as of June 1, 1998 providing hyerted to a fee in lieu of tax
approved the assignment of all right other related documents by Assignor	ats, interests and obligations to Assignee; and	under the Fee Agreement and

WHEREAS, Assignor now desires to assign to Assignee, and Assignee desires to assume from Assignor, all of Assignor's right, title, and interest in, to, and under the Fee Agreement and all related documents pertaining to the fee in lieu of tax arrangement (collectively, the "Transaction Documents"); and

NOW THEREFORE, in consideration of the sum of five dollars and other good and valuable consideration, the receipt and sufficiency of which Assignor acknowledges, Assignor has assigned, contributed, granted, conveyed, transferred, and by these presents does assign, grant, contribute, convey, and transfer to Assignee, its representatives, successors, and assigns, all of Assignor's right, title, and interest in, to, and under the Transaction Documents.

TO HAVE AND TO HOLD the same to Assignee, its successors, and assigns forever, from and after the date of this Assignment, subject to the terms, covenants, and provisions of the Transaction Documents.

Assignee agrees to assume, pay, and perform all the obligations of Assignor under the Transaction Documents that arise or relate to the period beginning as of the date of this Assignment and agrees to be bound by the Transaction Documents.

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

The Parties are entitled to amend this Assignment only by a writing signed by the Parties with prior approval by the County, which the County is entitled to provide by resolution.

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

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

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

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

ii.	ASSIGNOR:
	THE GILLETTE COMPANY
****	
	Signature:
<i>//////</i>	Name:
	Title
	Min.
**************************************	
Millian,	ASSIGNEE:
	ASSECTION OF THE PROPERTY OF T
	DURACEEL MANUFACTURING, INC.
**************************************	DORACLES MANOTACTORING, INC.
The state of the s	Signature:
	Name:
	Title:
	<u> </u>
***************************************	

HISB initial markeys of lease 8/26/15

## FEE IN LIEU OF TAX AGREEMENT

between

## LANCASTER COUNTY, SOUTH CAROLINA

and

THE GILLETTE COMPANY, AS SUCCESSOR TO DURACELL INC.

Transferring property under the existing fee in lieu of taxes lease agreement to a fee agreement under Title 12, Chapter 44, S.C. Code of Laws, to be effective as of December 1, 1997

Columbia: 1073033 v.4

# RECAPITULATION OF CONTENTS OF FEE AGREEMENT PURSUANT TO S.C. CODE ANN. § 12-44-55(A)

The parties have agreed to waive this requirement pursuant to S.C. Code Ann. § 12-44-55(B).

FEE IN LIEU OF TAX AGREEMENT

to be effective

THIS FEE	IN LIEU OF TAX	AGREEMENT m	ade and entered into	as of the 1st day of
December, 1997,	by and between LA	NCASTER COU	NTY, SOUTH CARO	LINA (hereinafter
referred to as the "	"County"), a body p	olitic and corporat	e and a political subd	ivision of the State
of South Carolina,	and THE GILLET	TE COMPANY. A	S SUCCESSOR TO	DURACELLING
a corporation duly	organized and exist	ting under the laws	of the State of Delay	vare and authorized
to do business in	the State of South	Carolina (hereina	fter referred to as the	ne "Company") as
amended this	_ day of	. 2015.		. Company /, as
				_

WITNESSETH:

where As, Title 4, Chapter 29 of the Code of Laws of South Caroling, 1976, as amended (hereinafter referred to as the "Title Act"), empowers the several counties of the State of South Carolina to acquire, enlarge, improve, and expand one or more projects (as defined in the Title Act), to enter into financing agreements with any industry to construct and thereafter operate, maintain and improve a project, and to issue revenue bonds to defray the cost of acquiring, enlarging, improving, or expanding such project by construction and purchase; and

WHEREAS, as an inducement for the Company to expand its operations in the County, the County agreed to enter into a lease agreement with the Company to provide for payments in lieu of taxes with respect to certain real estate, real estate improvements including a building or buildings, machinery, apparatus, equipment, office facilities and furniture and furnishings deemed necessary, suitable or useful by the Company for the purpose of expanding the Company's capacity to manufacture in its Lancaster County facility and the construction of a manufacturing facility (as more fully described below, the "Project"); and

WHEREAS; the Company invested not less than \$ \_\_\_\_\_ in the Project prior to the Minimum Investment Data (as defined below); and

WHEREAS, the County is authorized by Title 12, Chapter 44, Code of Laws of South Carolina (1976), as amended (the "Non-Title Act"), to enter into a Fee Agreement with companies to induce such companies to locate in the State of South Carolina; and

where we will be with the Non-Title Act provides for an election by an entity to transfer its FILOT arrangement under the Title Act to a substantially similar arrangement under the Non-Title Act; and

WHEREAS, pursuant to an Ordinance enacted by the County on (the "Ordinance"), the County has consented to the transfer of the FILOT arrangement under the Title Act to a FILOT arrangement under the Non-Title Act and to the execution of a Fee Agreement and all other documents necessary to evidence the transfer; and

WHEREAS, the County has found that: (a) the Project (as defined herein) is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; (b) the Project gives rise to no pecuniary liability of the County or any incorporated municipality and to no

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 are greater than the costs.

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained, the County and the Company agree as follows provided that in the performance of the agreements of the County herein contained, any obligation it may thereby incur for the payment of money shall not create a pecuniary liability or a charge upon its general credit or taxing powers but shall be a limited obligation of the County payable solely out of the proceeds derived by it from this Agreement.

#### ARTICLE I

#### **DEFINITIONS**

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

"Administration Expenses" shall mean the reasonable and necessary expenses incurred by the County with respect to this Agreement; provided, however, that no expense shall be considered an Administration Expense until the County has furnished to the Company a statement in writing indicating the amount of such expense and the reason it has been or will be incurred.

"Agreement" shall mean this agreement as originally executed and from time to time supplemented as permitted herein.

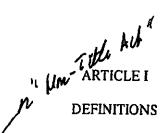
"Code" shall mean the Code of Laws of South Carolina 1976, as amended.

"Company" shall mean The Gillette Company, a Delaware corporation, and any surviving, resulting or transferee corporation in any merger, consolidation or transfer of assets permitted hereunder.

"Completed Segment" shall mean a segment of the Project completed after the date of the Inducement Agreement and up to the Minimum Investment Date.

"Completion Date" shall mean the date on which the acquisition, construction, and installation of the Project is completed in its entirety as certified in accordance with this Agreement.

"Cost" or "Cost of Project" shall mean the cost of acquiring, by construction and purchase, the Project and shall be deemed to include, whether incurred prior to or after the date of this Agreement: (a) obligations of the Company incurred for labor, materials, and other expenses to builders and materialmen in connection with the acquisition, construction, and installation of the Project; (b) the cost of construction bonds and of insurance of all kinds that



SECTION 1.01. Definitions. In addition to the words and terms elsewhere defined in this Lease; the following words and terms as used herein and in the preambles hereto shall have the following meanings unless the context or use indicates another or different meaning or intent. Furthermore, terms not defined herein which are defined in the Indenture hereinbelow defined) shall have the meaning ascribed to them in the Indenture.

"Act" shall mean Title 4, Chapter 24, Code of Laws of South Carolina, 1976, as

amended, and all future acts amendatory thereof.

"Administration Expenses" shall mean the reasonable and necessary expenses incurred by the County with respect to the Project, this Lease and the Indentire and the compensation and expenses paid to or incurred by the Punchaser under this Lease or the Indenture; provided, however, that no such expense shall be considered an Administration Expense until the Issuer or the Purchaser, as the case may be; has furnished to the Tenant a statement in writing indicating the amount of such expense and the reason it has been or will be incurred.

"Authorized County Representative" shall mean the person or persons at the time designated to act on behalf of the County by written certificate furnished to the Tenant and the Purchaser containing the specimen signature of each such person and signed on behalf of the County by the Clerk of the County Council.

"Authorized Tenant Representative" shall mean any person or persons at the time designated to act on behalf of the Tenant by a written certificate furnished to the County and the Purchaser containing the specimen signature of each such person and signed on behalf of the Tenant by its President, any Vice President, Treasurer or Assistant Treasurer.

"Basic Rem" shall have the meaning ascribed to it in Section 5.02 of this Lease.

Bond, Series 1998 (Duracell Inc. Project) in the aggregate principal amount of not exceeding \$80,000,000, authorized, executed and delivered by the County under the Indenture, and a bond executed and delivered under the Indenture in lieu of or in substitution thereof (including pursuant to Section 2.01 thereof), the proceeds of which will be applied by advances to the Temant to finance the Project.

"Code" shall mean the Code of Laws of South Carolina, 1976, as amended. Industrial

"Completed Segment" shall have the meaning set forth in the Indenture:

"Completion Date" shall mean the date on which the acquisition, construction and installation of the Project is completed in its entirety as certified in accordance with Section 4.04 of this Trase Agreement

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"Cost" or "Cost of the Project" shall mean the cost of acquiring, by construction and purchase, the Project and shall be deemed to include, whether incurred prior to or after the date of this Lease: (a) obligations of the Tenant-or-the County incurred for labor, materials and other expenses to contractors, builders and materialmen in connection with the acquisition, construction and installation of the Project; (b) the cost of contract bond and of insurance of all kinds that may be required or necessary during the course of construction of the Project, which are not paid by the contractor or contractors or otherwise provided for; (c) the expenses of the Tenant or the County for test borings, surveys, test and pilot operations, estimates, plans and specifications and preliminary investigations therefor, and for supervising construction, as well as for the performance of all other duties required by or reasonably necessary in connection with the acquisition, construction and installation of the Project; (d) compensation and expenses of the Purchaser, legal, accounting, financial and printing expenses, fees and all other expenses incurred in connection with the execution and delivery of the Bond; (e) all other costs which the Tenant or the County shall be required to pay under the terms of any contract or contracts for the acquisition, construction and installation of the Project; (f) costs incurred by the Tenant for the acquisition of a leached interest in the land upon which the Project is located; (g) any sums required to reimburse the Tenant or the County for advances made by either of them for any of the above items, or for any other work done and costs incurred by the Tenant or the County which are for the acquisition of land or property of a character subject to the allowance for depreciation provided for under Section 167 of the Internal Revenue Code of 1986, as amended, and included in the Project; and (h) any amount for the payment of interest on the Bond accordingprior to the Completion Date and for which a requisition may be made under Section 3.02 of the Indenture.

"County" shall mean Lancaster County, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina, and its successors and assigns.

"County Council" shall mean the governing body of the County and its successors.

"Default" shall mean an event or condition, the occurrence of which would, with the lapse of time or the giving of notice or both, become an Event of Default as defined in Section 11.01 hereof.

"Escrow Agreement" shall mean the Escrow Agreement dated as of June 1, 1998, by and between the County, the Tenant, the Purchaser, Duracell Inc., and, to the extent set forth therein, as such may be amended or supplemented from time to time.

"Financed Increments" shall mean those increments of the Project which are (i) completed and fit for their intended use as prescribed by Section 12-37-670 of the Code, and (ii) which are evidenced by a requisition pursuant to Section 3.02 of the Indenture, and financed by one of more Bond or Series of Bonds as set forth in the Indenture.

"Future Completed Segment" shall have the meaning set forth in the Indenture.

"Future Series" shares have the meaning set forth in the Indenture.

"Future Sublease" shall have the meaning set forth in the Indenture.

"Future Sublessee" shall have the meaning set forth in the Indendure.

"Indemnified Party" shall have the meaning ascribed to it in Section 8.10 of this

Lease.

"Indenture" shall mean the Indenture, dated as of June 1, 1998, between the County and Purchaser, as the same may be amended, modified, or supplemented in accordance with the provisions thereof.

"Independent Counsel" shall mean an attorney duly admitted to practice law before the highest court of any state.

"Interest Payment Date" shall mean each date specified in the Bond for the payment of interest thereon.

"Lease" shall mean this agreement as originally executed and from time to time supplemented or amended as permitted herein.

"Lease Equipment" shall have that meaning ascribed to it in Section 6.02 of this Lease.

"Least Land" shall mean the real estate described in Exhibit A attached hereto as may be supplemented from time to time.

"Permitted Encumbrances" shall mean as of any particular time, (i) liens for ad valorem taxes and special assessments not then delinquent, (ii) this Lease, any Future Sublease and the Indenture, (iii) utility, access and other easements and rights of way, flood rights, leases, subleases, restrictions and exceptions that an Authorized Tenant Representative certifies will not interfere with or impair the operations being conducted at the Project (or, if no operations are

being conducted therein, the operations for which the Project was designed or last modified), (iv) such minor defects, irregularities, encumbrances, easements, rights of way, and clouds on title as normally exist with respect to properties similar in character to the Project and as do not, according to the written certification of an Authorized Tenant Representative delivered to the Purchaser, materially impair the property affected thereby for the purpose for which it was acquired or is held by the County, (v) mechanic's and materialman's liens in effect on the date hereof or otherwise, (vi) any mortgage, lease or security interest with respect to machinery and equipment not constituting part of the Project to be used or installed at the Project, and (vii) any other lien, mortgage, easement or encumbrance to which the Purchaser consents.

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

"Plans and Specifications" shall mean the plans and specifications prepared for the Project, on file at the Tenant's office, as the same may be implemented and detailed from time to time and as the same may be revised from time to time prior to the completion of the acquisition, construction and installation of the Project in accordance with Section 4.03 hereof.

"Principal Payment Date" shall mean any date on which any of the principal of the Bond shall become due, whether at maturity or by prepayment or acceleration.

"Project" shall mean (i) all buildings and appurtenances which are presently under construction or are to be constructed on the Leased Land from the proceeds of the Bend, as they may at any time exist, including any air conditioning and heating systems (which shall be deemed fixtures); (ii) the items described in Exhibit B attached hereto; (iii) all other machinery, equipment, other fixtures or personal property, (a) the acquisition of which was financed in whole or in part from the proceeds of the Bend, or (b) which is installed in or on the equipment described in Exhibit B or in the foregoing buildings or on the leasend Land in substitution or replacement of parts of such equipment; and (iv) any personal property acquired hereafter which becomes so attached, integrated or affixed to any item described in the foregoing clauses (i), (ii) or (iii) that it cannot be removed without impairing the operating utility of such item as originally designed or damaging such item.

"Purchaser" shall mean Duracell Inc., a Delaware corporation, as the Holder of the Bond

"Reasonable Escalation Factors" shall have the meaning ascribed to it in Section

"Reconveyance Documents" shall have the meaning ascribed to it in the Escrow-Agreement.

"Reserved Rights" shall mean the rights of the County hereunder to receive

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notices, to inspect the Project and any books and records relating to the Project, to receive payment of Administration Expenses for costs incurred by the County, to receive payments in lieu of taxes pursuant to Section 6.03 hereof, to receive payments under Section 6.04 hereof, and to receive indemnification under Sections 8.10 and 8.15 hereof.

"School District" shall mean the School District of Lancaster County, South Carolina, and its successors.

"Series of the Bonds" shall have the meaning set forth in Section 2.91 of the Indepeare.

"Terrant" shall mean Duracell Inc. and any surviving, resulting or transferee corporation in any merger, consolidation or transfer of assets permitted under Section 8.09 hereof.

hereof.

"Term" shall mean the duration of the leasehold estate as set forth in Section 5.01

All lerms used herein which are not otherwise defined shall have the meaning ascribed to them in the Indenture.

SECTION 1.02. References to Lective. The words "hereof", "herein", "hereunder" and other words of similar import refer to this Lease as a whole.

[End of Article I]

#### ARTICLE II

## REPRESENTATIONS AND COVENANTS

<u>SECTION 2.01.</u> Representations by County. The County makes the following representations and covenants as the basis for the undertakings on its part herein contained:

- (a) The County is a body politic and corporate and a political subdivision of the State of South Carolina and is authorized and empowered by the provisions of the Act to enter into the transactions contemplated by this Lease and to carry out its obligations hereunder. The Project constitutes and will constitute a "Project" within the meaning of the Act. By proper action by the County Council, the County has been duly authorized to execute and deliver this Lease, the Indenture and any and all agreements collateral thereto, and by proper action of the County Council and the State Budget and Control Board, the County has been duly authorized to issue the Bond.
- (b) The County is acquiring the Project and proposes to construct or acquire the Project on the Leased Land and proposes to lease the Project to the Tenant and to sell the Project to the Tenant at the expiration or sconer termination of the Term of the Lease, if the Tenant shall elect to purchase the same, all for the purpose of promoting the industrial development, developing the trade, and utilizing and employing the manpower, agricultural products and natural resources of South Carolina.
- (c) Heretofore, the County and the Tenant did agree that the County words finance all or a portion of the cost to be incurred by the County or the Tenant in acquiring by construction and purchase the Project. The Tenant has determined that the Cost of the Project, including expenses incident thereto, will not exceed \$80,000,000 and on that basis the County, in order to defray the Cost of the Project, now proposes to issue the Bond in the aggregate principal amount of not exceeding \$80,000,000 which will be dated, mature and bear interest as set forth in the Indenture and which will be subject to redemption on the occasions and at the redemption prices set forth in the Indenture.
- (d) Concurrently with the delivery hereof, the County will execute and deliver the Indenture.
- (e) The County is not in default under any of the provisions of the laws of the State whereby any such default would affect the issuance, validity or enforceability of the Bends or the transactions contemplated by this Lease or the Indenture; and
- (f) The authorization, execution and delivery of this Lease and the Indenture and the compliance by the County with the provisions hereof and thereof, will not conflict with

or constitute a breach of, or a default under, any existing law, court or administrative regulation, decree, order or any provision of the Constitution or laws of the State relating to the establishment of the County or its affairs, or any agreement, mortgage, lease or other instrument to which the County is subject or by which it is bound, that

(g) No actions, suits, proceedings, inquiries or investigations are pending or threatened against or affecting the County in any court or before any governmental authority or arbitration board or tribunal, any of which involve the possibility of any material and adverse effect upon the transactions contemplated by this Lease or which, in any way would adversely affect the validity or enforceability of the Bond, the Indenture, this Lease or any agreement or instrument to which the County is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby or thereby.

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

- (a) The Tenant is a corporation duly incorporated, validly existing, and in good standing, under the laws of the State of South Carolina, qualified to do business in the State of South Carolina, has power to enter into this Lease and by proper corporate action has been duly authorized to execute and deliver this Lease.
- (b) Neither the execution and delivery of this Lease, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Lease will result in a material breach of any of the terms, conditions or provisions of any corporate restriction or any agreement or instrument to which the Tenant is now a party or by which it is bound, or will constitute a Default under any of the foregoing, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Tenant which materially restricts the Tenant's ability to make any payments hereunder, other than as may be created or permitted by this Lease and the Indenture.
- (c) No event has occurred and no condition exists with respect to the Tenant which would constitute an "Event of Default" as defined herein or in the Indenture which with the lapse of time or with the giving of notice or both would become an "Event of Default" under this Lease or the Indenture:

(d) The Tenant intends to operate the Project for the purpose of the manufacturing of batteries and all other legal forms of manufacturing and distribution and for such other purposes permitted under the Act as the Tenant-may deem appropriate.

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(e) The acquisition, by construction and purchase, of the Project by the County through the issuance of the Bond and the leasing of the Project to the Tenant has been instrumental in inducing the Tenant to locate and enlarge its facilities in the County and in the State of South Carolina.

required to pay the Cost of the Project, and the Tenant expects that all such proceeds will be used for such purposes no later than December 31, 2003.

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(g) No actions, suits, proceedings, inquiries or investigations are pending or threatened against or affecting the Tenant in any court or before any governmental authority or arbitration board or tribunal, any of which involve the possibility of any material and adverse effect upon the transactions contemplated by this Lease or which in any way would adversely affect the validity or enforceability of the Bond, the Indenture, this Lease or any agreement or instrument to which the Tenant is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby or thereby.

[End of Article II]

#### ARTICLE III

## DEMISING CLAUSE AND WARRANTY OF TITLE -

SECTION 3.01. Demise of the Project. The County demises and leases to the Tenant, and the Tenant leases from the County, the Project and the Leased Land for the Term and at the rental set forth in Sections 5.01, 5.02 and 5.03 hereof in accordance with the provisions of this Lease. Nevertheless, the parties acknowledge that for purposes of Title 36, Chapter 1, Section 201(37) of the Code of Laws of South Carolina, 1976, as amended (the Uniform Commercial Code), this Lease shall be considered a security agreement.

SECTION 3.02. Warranty of Fitle. The County, for itself, its successors and assigns, warrants to the Tenant, its successors and assigns that subject only to defects existent at the time title was transferred by the Tenant to the County, it has good and marketable title to the site of the Project, subject to no encumbrances that will prevent or interfere with the locating of the Project on such site or with the carrying out of the terms of this Lease in any other respect, and that it has good and marketable title to the Leased Land, free from all encumbrances except Permitted Encumbrances.

Unless the County intentionally causes a defect in title by its acts or omissions, the County shall not be liable to the Tenant for any damages resulting from failure of or any defect in the County's title which interferes with, prevents or renders burdensome the use or occupancy of the Project or the compliance by the Tenant with any of the terms of this Lease, or from any cause whatsoever, and no such failure or defect in the County's title or delay shall terminate this Lease or entitle the Tenant to any abatement, in whole or in part, of any of the rental or any other sums to be paid by the Tenant pursuant to any of the terms of this Lease.

[End of Article III]

#### **ARTICLE IV**

#### ACQUISITION BY CONSTRUCTION AND PURCHASE OF PROJECT; MODIFICATION, IMPROVEMENT AND ADDITIONS TO PROJECT: AMENDMENTS TO EXHIBITS

SECTION 4.01. Acquisition by Construction and Purchase of Project. The Tenant hereby agrees to acquire in the name of the County by construction and purchase the Project in accordance with the Plans and Specifications and to acquire by construction and purchase all other things deemed necessary by the Tenant in connection with the Project. The Tenant agrees to maintain such records in connection with the acquisition by construction and purchase of the Project as to permit ready identification thereof. The Tenant further agrees to use its best efforts to cause such acquisition as promptly as practicable and to expend upon the acquisition and expansion of the Project not less than \$45,000,000 within five (5) years from the effective date of execution of this Leane. Title to the Project shall be and remain in the name of the County throughout the Termfof this Lease:

-[RESERVED] SECTION 4.02. Issuance of the Bond. In order to provide funds for payment of the portion of the Cost of the Project represented by a Financed Increment, the County will issue the Bond. If requested by the Purchaser, the County will re-designate the Bond and issue further Series of the Bonds pursuant to Section 2.01 of the Indenture (a "Future Series").

SECTION 4.03. Revision of Plans and Specifications. The Tenant may revise the Plans and Specifications at any time and from time to time prior to the Completion Date:

CRESERVED SECTION 4.04. Completion Date. / The Completion Date shall be evidenced to the Purchaser by a certificate of an Authorized Tenant Representative certifying the Completion Date and stating that the acquisition of the Project has been completed in accordance with the Plans and Specifications and that payment of the Cost of the Project or provision therefor has been made except for any items of Cost of the Project not then due and payable or the liability for payment of which is being contested or disputed by the Tenant. Notwithstanding the foregoing, the certificate of completion may state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being.

- (RZSERUSD) SECTION 4.05. Completion of the Project if Bond Procesus are Insufficient If the principal of the Bond, or any Future Series available for payment of a portion of Cost of the Project, represented by a Financed Increment or any Funire-Completed Segment, is insufficient to pay such portion of the Cost of the Project in full, the Tenant will complete or cause to be completed the Project and pay or cause to be paid all of that portion of the Cost of the Project in excess of the moneys available therefor under the Bond. The County does not make any warranty, either express or implied, that the moneys which will be advanced under the Bond will,

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be sufficient to pay the Cost of the Project. If the Tenant shall pay any portion of the Cost of the Project pursuant to the provisions of this Section 4.05, it shall not be entitled to any reimbursement therefor, nor shall it be entitled to any diminution in or postponement of the payments required in Article V of this Lease to be paid by the Tenant.

SECTION 4.06. Amendments to Exhibits. The Tenant may supplement Exhibits A and B from time to time with the written consent of the County, which consent will not be unreasonably withheld.

[End of Article IV]

#### ARTICLE V

#### LEASE TERM AND RENT PROVISIONS

SECTION 5.01. Term. Subject to the terms and provisions herein contained, this Lease shall be and remain in full force and effect for a term commencing June 1, 1998, and ending December 31, 2022, unless sooner terminated as herein permitted; provided that, if at the expiration of the Term payment of the Bond has not been made or provided for in accordance with the Indenture, the Term shall expire on such later date as payment of the Bond shall have been made or so provided for.

SECTION 5.02. Basic Rent. The Tenant will pay to the County without notice or demand, in such coin or currency of the United States of America as at the time of payment shall be legal tender for public and private debts, sums equal to the amounts required to pay, at the times and places required under the Indenture, the principal and interest on the Bond and any Future Series, together with the Administration Expenses and any other amounts required to be paid under the terms hereof or by the County under the Indenture, the following net basic rental (herein called the "Basic Rent"):

- (a) On or before each Interest Payment Date with respect to the Bond, and any Future Series, the sum which will equal the interest to be paid on the Bond and any Future Series, respectively, on such Interest Payment Date; and
- (b) On or before each Principal Payment Date, the sum which will equal the sum of (i) the principal of the Bond, and any Future Series which will become due and payable on such Principal Payment Date, and (ii) any accrued interest which will become due and payable on such Principal Payment Date.

Notwithstanding the foregoing and any other provision of this Lease, so long as the Tenant is the Registered Owner of the Bond, or any Future Series, the Tenant shall offset the obligation to make payments of Basic Rent hereunder with respect to the Bond or any Future Series, including without limitation amounts due pursuant to Section 10.03 hereof, against the Tenant's right to receive payments on the Bond or any Future Series, respectively.

In addition, the Tenant has agreed to pay Administration Expenses and indemnification payments (pursuant to Section 8.10 and 8.15 of this Lease) when and as they shall become due, but in no event later than 45 days after receiving written notice from the County or the Indemnified Party (as defined in Section 8.10).

In the event the Tenant should fail to make any of the payments required in this Section 5.02, the item or installment so in Default shall continue as an obligation of the Tenant

until the amount in Default shall have been fully paid, and the Tenant agrees to pay the same with interest thereon (to the extent permitted by law) at the rate per annum which is equal to the Prime Rate (as defined in the Indenture) until paid.

SECTION 5.03. Additional Rent. The Tenant will pay on demand, as Additional Rent, all other amounts, liabilities and obligations which the Tenant herein assumes or agrees to pay. In the event of any failure on the part of the Tenant to pay any such amounts, liabilities or obligations, the County shall have all rights, powers and remedies provided for herein or by law of equity or otherwise in the case of nonpayment of the Basic Rent.

SECTION 5.04. Assignment and Pledge by County to Purchaser. It is understood and agreed that this Lease and all Revenues and receipts derived by the County pursuant to this Lease (except payment of Administration Expenses pursuant to Section 5.03 of this Lease, payments in lieu of taxes pursuant to Section 6.03 of this Lease and indemnification payments pursuant to Sections 8.10 and 8.15 of this Lease) and the moneys beid in the funds and accounts established under the Indenture, including the investment income thereon, are to be pledged and assigned by the County to the Purchaser pursuant to the Indenture. The Tenant assents to such pledge and assignment and agrees that its obligation to make payments required hereunder to the Purchaser (except as otherwise provided herein) shall be absolute and unconditional and shall not be subject to any defense (other than payment) or any right of set-off, counterclaim or recoupment arising out of any breach by the County of any obligation to the Tenant, whether hereunder or otherwise, or out of any indebtedness or liability at any time owing to the Tenant by the County.

The County directs the Tenant, and the Tenant agrees, to pay to the Purchaser all payments payable by the Tenant to the County pursuant to this Lease (except payment of Administration Expenses pursuant to Section 5.03 of this Lease, payments in lieu of taxes pursuant to Section 6.03 of this Lease and indemnification payments pursuant to Sections 8.10 and 8.15 of this Lease).

SECTION 5.05. Net Lease. This Lease is a net lease and so long as any part of the Bond is outstanding and unpaid, the obligation to pay Basic Rent. Additional Rent and all other sums payable hereunder to or for the account of the County, and to perform all other covenants, conditions and agreements hereunder (except as otherwise provided herein) shall be absolute and unconditional without notice or demand and without set-off, counterclaim, abatement, suspension, deduction, diminution or defense for any reason whatsoever.

[End of Article V]

#### ARTICLE VI

MAINTENANCE AND MODIFICATION OF PROJECT: REMOVAL OF LEASED EQUIPMENT; PAYMENTS IN LIEU OF TAXES; TAXES, UTILITIES AND OTHER CHARGES; INSURANCE [NESEAVED

SECTION 6.01. Maintenance and Modification of Project. The Tenant at just own expense during the Term of this Lease will keep and maintain the Project in good repair and in good operating condition. The Tenant will promptly make, or cause to be made, all repairs, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, necessary to keep the Project in good and lawful order and in good operating condition, wear and tear from reasonable use excepted, whether or not such repairs are due to any laws, rules, regulations or ordinances hereafter enacted which involve a change of policy on the part of the government body enacting the same.

The County shall not be required to rebuild or to make any repairs, replacements or renewals of any nature or description to the Project or to make any expenditure whatsoever in connection with this Lease or to maintain the Project in any way. The Tenant expressly waives the right contained in any law now or hereafter in effect to make any repairs at the expense of the Centity, as lessor hereunder.

SECTION 6.02. Removal of Leaste Equipment. The parties hereto understand that certain machinery, equipment and related property (herein "Leased Equipment") shall be acquired in whole or in part from the proceeds of the Bond and installed on the Leased Land. The County shall not be under any obligation to renew, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary Leased Equipment. If no Default under this Lease shall have happened and be continuing, in any instance where the Tenant in its discretion determines that any items of Leased Equipment have become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary for operations on the Leased-Land, the Tenantmay remove such items of Leased Equipment from the Leased Land and (on behalf of the -County) sell, trade-in, exchange or otherwise dispose of them (as a whole or in part) without consent of the County. The Tenant shall have the right, pursuant to the provisions of Section 4-29-67(F) of the Acta to replace any Leased Equipment by transferring the replacement equipment to the County by Bill of Sale subject to the Escrow Agreement:

SECTION 6.03. Payments in Lieu of Taxes. It is recognized that under the Act, for a project involving an initial investment within the first five years of at least \$45,000,000, the face Gunts greament may provide for a payment in lieu of taxes as provided in the Act. In accordance with the provisions of the Act, and as subsequently amended, during the Term of the Lease the Tenant shall make with respect to the Project (1) a payment equal to the taxes that would

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otherwise be due on any portion of the Project consisting of undeveloped land if it were taxable, and (2) twenty annual payments in lieu of taxes calculated as set forth in the next succeeding paragraph of this Lease for each Financed Increment of the Project, including that portion of the Project consisting of substitution or replacement property; and (3) after the payments due pursuant to clause (2) hereinabove, then the statutory payments in lieu of ad valorem taxes required by Section 4-29-30 of the Act for Financed Increments of the Project.

Such annual payments under item (2) above shall be due and payable and subject to such penalties on the date and in the manner as prescribed for County and other ad valorem taxes. The amount of such annual payments shall be determined by:

- (a) using an assessment ratio of 6%, a millage rate of 375.9 mills, and a fair market value estimate as determined by the State Department of Revenue using original cost less allowable depreciation for the personal property as provided in Section 12-37-930 of the Code; and
- (b) and then determining an equal annual payment based on a net present value of the sum of the fees for the period of the twenty annual payments in lieu of taxes not less than the net present value of the fee schedule as calculated pursuant to subitem (a) above and using a discount rate of 6.04%.

For each Financed Increment of the Project, the amount of each of the twenty annual payments in lieu of taxes shall be calculated using the methodology applied in the example contained in Schedule A.

The total payment due shall equal the sum of the payments due for each Financed-Increment.

In the event that the Act, any portion thereof, and/or the above-described payments in lieu of taxes are declared invalid or unenforceable, in whole or in part, for any reason, the Tenant and the County express their intentions that such payments be reformed so as to afford the Tenant the maximum benefit then permitted by law. If the Project is deemed to be subject to ad valorem taxation, the Tenant shall be entitled (1) to enjoy the five-year exemption from ad valorem taxes provided by South Carolina Constitution Article X, Section 3, and any other exemption allowed by law from time to time; (2) to enjoy all allowable depreciation; and (3) to receive credit, if any there be, by reason of the fact that the School District received larger allocations of funds under the Education Finance Act of 1977 (Sections 59-20-10 to 59-20-80 of the Code) than it would have received if the Project had been taxed at the assessment ratio (presently 10.5% of fair market value), provided such credit shall be adjusted to take into account any amounts which the School District is required to pay under the Education Finance Act as a result of the Project becoming subject to ad valorem taxation.

effective date of this Agreement

suffer to this In the event that the Cost of the Project has not exceeded \$45,000,000 by the fifth anniversary of the execution and delivery of this Lease, the portions of the Project financed underthis Lease and the Indenture shall revert retroactively to the tax treatment required pursuant to Section 4-12-30 of the Gode and the unpaid taxes due thereby shall be subject to interest as provided in Section 12-54-20 of the Code. - Agree until terminated

In the event the Bond is redequed, in whole or in part, and the ampunt of advalorem taxes assessed with respect to the Project is less in any year during the Term of this Lease than the amount of the payments in lieu of taxes determined under this Lease, the Tenant shall pay to the Chunty and all other taxing authorities, including the School District, the

difference in such amounts in accordance with Section 10.02(d) and (e) of this Lesse.

SECTION 6.04. Taxes, Utilities and Other Governmental Charges. The County and the Tenant acknowledge that: In pursuant to the Act, no part of the Project owned by the subject to ad valorem taxation in South Carolina, and (b) under present law the their subject to either Federal of Agus Andrews in Agus South Carolina: However, in addition to the payments in lieu of taxes referred to in Section 6.03 hereof and any other taxes and governmental charges that may lawfully be assessed levied or imposed against it, the Tenant will pay as the same respectively become due. (1) all taxes and governmental charges of any kind whatsoever that may be lawfully assessed, levied or imposed against the County with respect to the Project or any machinery, equipment or other property installed or brought by the Tenant therein or thereon; (ii) all utility and other charges incurred in the operation, maintenance, use and occupancy of the Project; and (iii) all assessments and charges lawfully made by any governmental body for public improvement to the Project. If the Tenant shall contest any such tax, assessment, lien or charge, such action by the Tenant shall not be considered as a breach by it of any of its covenants under this Lease while the action to contest such tax, assessment, lien or charge remains pending

SECTION 6.05. Insurance. The Tenant shall maintain public liability insurance with specific reference to the Project and shall otherwise keep the Project continuously insured against such risks as are customarily insured against by businesses of like size and type, paying as the same become due and payable all premiums with respect thereto. In lieu of separate insurance policies, such insurance may be in the form of a blanket insurance policy or policies. Insurance policies may be written with deductible amounts and exceptions and exclusions comparable to those of businesses of like size and type. The insurance requirements hereunder may be satisfied by the Tenant's providing self-insurance.

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All proceeds of insurance against property damage to the Project shall be made payable as the Tenant and the Purchaser shall specify, and such proceeds shall be collected and applied as provided in Section 7.01 hereof and Section 4.05 of the Indenture, and all claims under any insurance policy referred to in this Lease may be settled by the Tenant only with the written consent of the Purchaser.

[End of Article VI]

#### **ARTICLE VII**

#### CASUALTY AND CONDEMNATION

or any part of the Project shall be destroyed or damaged, the Tenant shall either repair the Project or prepay that portion of the Bond or Series of Bonds which financed such Financed Increment of the Project equal to the portion of the their existing tax basis of Financed Increment destroyed or damaged, as the Tenant may elect in its sole discretion. If the cost of rebuilding, replacing, restoring or repairing thereof after any particular incident shall exceed \$500,000, the Tenant shall promptly notify the County and the Purchaser as to the nature and extent of such damage or loss. If the Tenant shall determine to repair the Project, the Tenant shall forthwith proceed with such rebuilding, repairing or restoring and shall notify the County and the Purchaser upon the completion thereof. In the event any insurance proceeds are not sufficient to pay in full the costs of such rebuilding, repair or restoration, the County shall not have any responsibility to complete the work thereof or pay that portion of the costs thereof in excess of the amount of said proceeds. The Tenant shall not, by reason of the payment of any excess costs, be entitled to any reimbursement from the County or the Purchaser or any abatement or diminution of the amounts payable under Section 5.02 hereof.

SECTION 7.02. Condemnation. In the event that title to or the temporary use of the Project, or any part thereof, shall be taken in condemnation or by the exercise of the power of eminent domain, there shall be no abatement or reduction in the payments required under Section 5.02 hereof to be made by the Tenant. Immediately after the occurrence of any such taking of the Project, the Tenant shall notify the County and the Purchaser as to the nature and extent of such taking and, as soon as practicable thereafter, notify the County and the Purchaser whether it desires to restore the Project. If the Tenant shall determine to restore the Project, the Tenant shall forthwith proceed with such restoration, and shall notify the County and the Purchaser upon the completion thereof. Any proceeds of any such taking shall be paid as Tenant shall specify.

SECTION 7/03. Payments in Lieu of Taxes in the Event of Damage and Destruction or Condemnation. In the event that the Project is damaged or destroyed or the subject of condemnation proceedings, which damage, destruction and/or condemnation would substantially impair the operating ability of the Project, the parties hereto agree that the payments in lieu of taxes required pursuant to Section 6.03 hereof shall be abated in the same manner and in the same proportion as would ad valorem taxes if the Project were owned by the Tenant.

[End of Article VII]

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#### **ARTICLE VIII**

#### PARTICULAR COVENANTS AND AGREEMENTS

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representation or covenant that the Tenant shall have quiet and peaceable possession of the Project; provided, however, the County agrees that it will not take or cause another party to take any action to interfere with the Tenant's peaceful and quiet enjoyment of the Project. In the event peaceful and quiet enjoyment of the Project shall be denied to the Tenant or contested by anyone, the County shall, upon request of the Tenant, join where necessary in any proceeding to protect and defend the quiet enjoyment of the Tenant, provided that the Tenant shall pay the entire cost of any such proceeding and shall reimburse and indemnify and hold harmless the County from any cost or liability whatsoever resulting therefrom. The provisions of this Section shall be subjectiond subordinate to the obligations of the Tenant set forth in Article V hereof.

SECTION 8.02. No Warranty of Condition or Suitability of Project. The Tenant-acknowledges that it has examined the premises described in Exhibit A attached hereto prior to the making of this Lease and knows the condition and state thereof as of the day of the execution hereof, and accepts the same in said condition and state; that no representations as to the condition or state thereof have been made by representatives of the County; and that the Tenant in entering into this Lease is relying solely upon its own examination thereof.

The county makes no warranty, either express or implied, as to the design, capabilities or condition of the Project or that it will be suitable for the Tenant's purposes or needs.

Section 8.03. No Conveyance or Impairment of Title by the County. The County covenants and agrees than during the Term of this Lease, it will not convey, or suffer or permit the conveyance of, or impair or permit the impairment of (other than Permitted Encumbrances), by any voluntary act or omission on its part, its title to the Project to any person, firm or corporation whatsoever irrespective of whether any such conveyance or attempted conveyance shall recite that it is expressly subject to the terms of this Lease, provided, however, that nothing herein shall restrict the conveyance or transfer of the Project in accordance with any terms or requirements of this Lease or of the Indenture.

SECTION 8.04) Primary Use. The Tenant is granted and shall have the right during the Term of this Lease to occupy and use the Project for any lawful purpose authorized pursuant to the Act. Insofar as it is practicable under existing conditions from time to time during the Term of this Lease, the Project shall be used primarily as a manufacturing facility for the manufacturing of batteries and such other manufacturing and distribution as may legally be conducted at the Project.

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Purchaser and their authorized agents shall have the right at all reasonable times to enter upon and examine and inspect the Project. The County, the Purchaser and their authorized agents shall also be permitted, at all reasonable times, to examine the Plans and Specifications and the other books and records of the Tenant with respect to the Project. The aforesaid rights of examination and inspection shall be exercised only upon such reasonable and necessary terms and conditions as the Tenant shall prescribe, which conditions shall be deemed to include, but not be limited to, those necessary to protect the Tenant's trade secrets and proprietary rights. Prior to the exercise of any right to inspect the Project or the Plans and Specifications and books and records of the Project, the County, the Purchaser and their authorized agents, shall sign a nondisclosure statement substantially in the form shown in Exhibit C attached hereto. In no way shall this requirement of a nondisclosure statement be deemed to apply to or restrict the rights of the United States Government and the State of South Carolina or its political subdivisions in the exercise of their respective sovereign duties and powers.

SECTION 8.06. Release of Leased Land; Easements. The County agrees that so long as the Tenant is not in Default hereof it will convey fee title, grant easements, rights of way, licenses, execute party wall agreements or terminate any of the foregoing or enter into such other similar agreements for the purposes of providing railroad services, utility services, roadway or roadway access whether for the Project or other land, expansion of the Tenant's facilities, reasonable business purposes of the Tenant or for such other similar purposes as may be deemed necessary or desirable by the Tenant upon receipt of the following:

- (a) a legal description of the real property proposed to be conveyed or affected by such grant, license or agreement (which legal description shall be accompanied by a current plat of survey delineating the Leased Land affected by the proposed conveyance, grant, license or agreements);
  - (b) the instrument in the form necessary for such purpose;
- (c) a certificate from an officer of the Tenant stating that the Tenant is not in Default under the Lease;
- (d) a certificate from an Authorized Tenant Representative stating that (i) the conveyance, grant, license or agreement will not impair the character or significance of the Project for the purpose for which it was last designed or modified and is not detrimental to the proper conduct of the business of the Tenant at the Project, (ii) no part of the Project is included in any conveyance, and (ii) such conveyance, grant, license or agreement will not destroy the means of ingress thereto or egress therefrom;

grant or agreement is not in violation of the terms hereof or of the Indenture.

Upon receipt of the foregoing, the County shall promptly execute and deliver such conveyance, grant or agreement.

No release effected under the provisions of this section of the Lease shall entitle the Tenant to any abatement or diminution of the rents payable under Section 5.02 and 5.03 hereof.

SECTION 8.07. Limitation of County's Liability. Anything herein to the contrary notwithstanding: (a) any obligation the County may incur hereunder, including for the payment of money, except for the County's obligations under Sections 8.03 and 9.01, shall not be deemed to constitute a debt or general obligation of the County but shall be payable solely and exclusively from the Revenues and receipts derived by the County from the lease or sale of the Project; (b) the County's obligations under any contracts which may be assigned to it infurtherance of any provision of this Lease shall be limited to the proceeds of the Bond or other moneys available to the County hereunder or under the Indenture; (c) the County may require as a condition to the participation by it with the Tenant in any contests or in obtaining any license or permits or other legal approvals a deposit by the Tenant of such amount as determined by the County to be reasonable to assure the reimbursement to the County of the costs incurred by it in such participation, with any amount of such deposit in excess of such costs to be returned to the Tenant; and (d) the liability of the County for any breach of any of the representations or warranties by it set forth herein shall be limited solely and exclusively to the Revenues and receipts derived by it from the lease or sale of the Project.

respect to easements, rights of way, licenses and party wall agreements, the Tenant will not create or permit to be created or to remain, and will discharge, any lien, encumbrance or charge (other than Permitted Encumbrances) upon the Project or any part thereof or upon the Tenant's leasehold interest therein.

SECTION 8.99. Maintenance of Corporate Existence. The Tenant agrees that as long as the Bond is outstanding it will maintain its separate corporate existence, will not dissolve or otherwise dispose of all or substantially all of its assets of any material portion of the Project and will not consolidate with or merge into any other corporation or permit one or more other corporations to consolidate with or merge into it without the prior written consent of the Purchaser, which consent will not be unreasonably withheld.

SECTION 8.10. Indemnification. (a) Tenant shall and agrees to indemnify and save the County harmless against and from all claims by or on behalf of any person, firm or corporation arising from the conduct or management of, or from any work or thing done on, the

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Project during the Lease Term, and, Lessee further, shall indemnify and save the County

Project during the Lease Term, and, Lessee further, shall indemnify and save the County harmless against and from all claims arising during the Lease Term from (i) any condition of the Project, (ii) any breach or default on the part of Lessee in the performance of any of its obligations under this Agreement, (iii) any act of negligence of Lessee or any of its agents, contractors, servants, employees or licensees, (iv) any act of negligence of any assignee or sublessee of Tenant, or of any agents, contractors, servants, employees or licensees of any assignee or sublessee of Lessee, or (v) any environmental violation, condition, or effect. Tenant shall indemnify and save the County harmless from and against all costs and expenses incurred in or in connection with any such claim arising as aforesaid or in connection with any action or proceeding brought thereon, and upon notice from the County, Tenant shall defend in any such action, prosecution or proceeding it.

(b) Notwithstanding the fact that it is the intention of the parties that the County, its agents, officers, or employees, shall not incur pecuniary liability by reason of the terms of this Agreement, or the undertakings required of the County hereunder, by reason of the issuance of the Bonds, by reason of the execution of the Indenture, by reason of the performance of any act requested of it by the Tenant, or by reason of the County's ownership of the Project or the operation of the Project by the Tenant, including all claims, liabilities or losses arising in connection with the violation of any statutes or regulations pertaining to the foregoing, nevertheless, if the County, its agents, officers or employees should incur any such pecuniary liability, then in such event the Tenant shall indemnify and hold them harmless against all claims by or on behalf of any person, firm or corporation, arising out of the same, and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon, and upon notice, the Lessee shall defend them in any such action or proceeding.

<u>Provided</u>, however, the County shall not be indemnified by Section 8.10 (a) and (b) above as to intentional or wanton acts of the County or its agents.

SECTION 8.11. Applications and Licenses. In the event it may be necessary for the proper performance of this Lease, on the part of the County or the Tenant; that any application or applications for any permit or license to do or to perform certain things be made to any governmental or other agency by the Tenant or the County, the Tenant and the County each agree to execute upon the request of the other such application or applications, including among other things the authorization necessary for the County to perform its obligations under Article X of this Lease.

SECTION 8.12. Qualification in State. The Tenant warrants that it is duly qualified to do business in the State of South Carolina and covenants that it will continue to be so qualified so long as it operates the Project.

SECTION 8.13. No Liability of County's Personnel. All covenants, stipulations, promises, agreements and obligations of the County contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of the County and not of any member of the County Council or any officer, agent, servant or employee of the County in his individual capacity, and no recourse shall be had for the payment of any moneys hereunder or the performance of any of the covenants and agreements of the County herein contained or for any claims based thereon against any member of the governing body of the County or any officer, agent, servants or employee of the County.

Except as otherwise expressly provided herein or to long as any of the Bond is distanding, this Lease shall not terminate, nor shall the Tenant have any right to terminate this Lease or be entitled to the abatement of any rent or any reduction thereof, nor shall the obligations hereunder of the Tenant be otherwise affected, by reason of any damage to or the destruction of all or any part of the Project from whatever cause, the loss or theft of the Project or any part thereof, the taking of the Project or any portion thereof by condemnation or otherwise, the prohibition, limitation or restriction of the Tenant's use of the Project or the interference with such use by any private person or corporation, or by reason of any eviction by paramount title or otherwise, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the Basic Rent and Additional Rent reserved hereunder shall continue to be payable in all events and the obligations of the Tenant hereunder shall be terminated only pursuant to an express provision of this Lease.

If was SECTION 8.13. Environmental Representations: Environmental Indemnity. The Tenark warrants and represents to the Purchaser and the County (each of such Persons being referred to herein as an /Indemnified Party" collectively the "Indemnified Parties") after thorough investigation that (a) the Project and the Leased-Land is now and at all times hereafter while owhed by the Tenant will continue to be in reasonable compliance with all federal, state, and local environmental laws and regulations, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), Public Law No. 96-510, 94 Stat. 2767, 42 USC 9601 et seq., and the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Public Law No. 99-499, 100 Stat. 1613, and (b)(i) as of the)date hereof, to the best of the Tenant's knowledge, there are no hazardous materials, substances, wastes or other environmentally regulated substances (including without limitation, any materials containing asbestos) located on, in or under the Project and the Leased Land or used in connection therewith, which the Tenant is not permitted by law, regulation or the conditions of a permit to maintain on, in or under the Project and the Leased Land or use in connection herewith, and the Tenant has obtained and will maintain all licenses, permits and approvals required with respect thereto, and is in full compliance with all of the terms, conditions and requirements of such licenses, permits and approvals. The Tenant hereby indemnifies and agrees to hold the County harmless from and against any damages, fines, charges, expenses, fees, attorney fees and costs incurred by the County in the event the County as lessor under this

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Leafe is hereafter determined to be in violation of any environmental laws, rules or regulations applicable thereto, and this indemnity shall survive any foreclosure or deed in lieu of foreclosure. This indemnity includes, but is not limited to, any damages, claims and fees arising out of any claim for loss or damage to property or persons, contamination of or adverse effect on the environment, or any violation of statutes, ordinances, orders, rules or regulations of any governmental agency or entity, caused by or resulting from any hazardous material, substance or waste previously, now or hereafter on or under the Project.

[End of Article VIII]

#### ARTICLE IX

SUBLET OR ASSIGNMENT OF PROJECT; SURVIVAL OF TENANT'S OBLIGATION

SECTION 9.01. Sublet or Assignment. The Tenant may at any time sublet the?

Project or any part thereof (including pursuant to any Future Sublease) and may assign or otherwise transfer all of its rights and interest hereunder to any Future Sublessee selected by the Tenant on such terms as the Tenant may determine in its sole discretion and the Project or any portion thereof may be further subleased by such Future Sublessee, all without the consent of the County; provided (a) that no assignment, transfer or sublease shall affect or reduce any of the obligations of the Tenant hereunder, but all obligations of the Tenant hereunder shall continue in full force and effect as the obligations of a principal and not of a guarantor or surety, except that the Tenant shall be released from its obligations hereunder upon the written consent of the County, which will not be unreasonably withheld, to any sublease, assignment or transfer, and (b) that the Tenant or sublessee shall give the County and the Purchaser written notice of any such assignment, transfer or sublease and within 30 days thereof shall furnish or cause to be furnished to the Purchaser and the County a true and complete copy of any such sublease, assignment or other transfer. The County shall, if the Tenant requests, acknowledge the receipt and sufficiency of any such notice.

Any Future Sublease may grant to any Future Sublessee a purchase option for the Project or such portion thereof as may be subject to any Future Sublease, as the case may be, and, as collateral for the Tenant's obligations with respect to such option and other obligations, Tenant may grant to any Future Sublessee a security interest in Tenant's rights under this Lease, including Article X hereof. The Lounty hereby consents to all of the foregoing and acknowledges that if any Future Sublessee properly exercises such option pursuant to Article X at any time and notifies the County thereof, the Tenant will be deemed to have exercised its option under Section 10.02 hereof and, upon payment to the County of \$1.00, the County will (notwithstanding the failure of any other condition or requirement for purchase of the Project set forth in this Lease) convey all its right, title and interest in and to the Project or such portion thereof directly to any Future Sublessee, whether or not amounts due under Section 10.03 have been paid and whether or not an Event of Default exists. Upon such exercise, the Tenant shall be unconditionally obligated to pay the amounts due under Section 10.03 and shall continue to be liable for any other amounts due under this Lease (including Section 6.03), but no Future Sublessee shall have any obligation to make any such payments. The County acknowledges and consents to any further assignment for security purposes made by any Future Sublessee to another party, which other party may be granted the right to exercise directly any Future Sublessee's rights under any Future Sublease and under this Lease.

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Tenant pursuant to Section 9.01, Tenant may, without any approval by the County, grant such rights of access to the Project and the Leased Land and the buildings thereon and of removal of part or all of the Project, as the Tenant may decide in its sole discretion.

[End of Article IX]

# ARTICLE X [ RESERVED] PURCHASE AND OPTION TO PURCHASE PROJECT: PURCHASE PRICE

SECTION 10.01. Mandatory Purchase of Project by Tenant. If, during the Term (a) as a consequence of a defect in title to the Leased Land the Tenant and the County shall be denied the use and occupancy of the Project; (b) a final decree or judgment shall be entered by a court of competent jurisdiction that the 1989 Amendment to the Act is invalid, unenforceable or unconstitutional or that the negotiated payments in lieu of taxes described in Section 6.03 hereof are invalid, unenforceable or anconstitutional or a change occurs in the Constitution or other laws and regulations of the State of South Carolina or the United States of America which would render the payments in lieu of taxes described herein or any other provision hereof invalid. unenforceable or unconstitutional; or (c) as a result of any changes in the Constitution of the State of South Carolina or the Constitution of the United States of America or of legislative or administrative action (whether state or federal) or by final decree, judgment or order of any court or administrative body (whether state or federal) entered after the contest thereof by the Tenant in good faith, this Lease shall have become void or unenforceable or impossible to perform in accordance with the intent and purposes of the parties as expressed in this Lease, then in any such event, so long as the Bond is outstanding and unpaid, the Tenant shall purchase the Project. Any such purchase provided for herein shall be made not later than 45 days after such use or occupancy is decied or such change, decree, judgment or order as the case may be or at such later date as may be agreeable to the County. Upon such purchase, this Lease shall terminate.

SECTION 10.02. Options to Purchase the Project: Exercise of Option Hereunder. The Tenant or its Future Sublessee shall have, and is hereby granted, the option to purchase all or a portion of the Project prior to the expiration of the full Term hereof upon the occurrence of any of the following (such option to be exercisable whether or not an "Event of Default" has occurred and is continuing):

- (a) Unreasonable burdens or excessive liabilities shall have been imposed on the County or the Tenant with respect to the Project or the operation of the Project, including without limitation, federal, state or other ad valorem property, income or other taxes not being imposed or levied on the date of this Lease, which taxes are, in the Tenant's judgment, unreasonable or excessive in amount; or
- (b) The Tenant shall have exercised its option to purchase the Project due to passage of a local sales tax option in the County upon payment of the purchase price, as defined in Section 10.03 below; or
  - (c) The Tenant shall have exercised its option to purchase all or a

portion of the Project for any other reason at the Tenant's discretion upon payment of the purchase price, as defined in Section 10.03 below, plus an additional payment equal to the amount by which payments that would be due under Section 6.03 hereunder exceed the ad valorem taxes, persuming the fixed millage rate, that will be due on the Project for the remainder of the Term.

(d) Any Future Sublessee exercises its purchase option referenced in Section 9.01.

To exercise such option, the Tenant (or in the case of clause (d), any Future Sublessee) shall, within 90 days following the event giving rise to the exercise of such option, give written notice to the County and to the Purchaser and shall specify therein the anticipated date of closing such purchase and which portions of the Project are to be purchased, which date shall be not less than 30 days nor more than 90 days from the date such notice is mailed. Upon the purchase pursuant to such option, this Lease shall terminate with respect to the portion of the Project so purchased.

SECTION 10.03. Purchase Price. Except as set forth in Section 9.01, the purchase price for any purchase of a Financed Increment pursuant to Sections 10.01 or 10.02 hereof shall be an amount equal to the entire principal amount of the then outstanding Bond or Series of Bonds attributable to such Financed Increment and all interest accrued or to accrue thereon on and prior to the purchase date, less moneys available for such purposes then held by the Purchaser, plus (a) any additional rental due or to become due hereunder with respect to such Financed Increment, including, without limitation, any unpaid fees and expenses of the County or the Purchaser which are then due or will become due prior to the time that the Bond or any Future Series, as applicable, are paid in full and the trust established by the Indenture is terminated, and (b) \$1.00. The purchase price for any portion of the Leased Land, the improvements upon which were not paid for with Bond proceeds, shall be \$1.00.

pursuant to Section 7.01 thereof, the Tenant and the Purchaser shall transfer the Project and the purchase price shall be \$1.00 within 60 days of discharge.

any portion thereof pursuant to any provision of this Lease, the County shall convey good and marketable title by a deed thereto to the Tenant (or in the case of the exercise of the option in Section 10.02 (g), to any Future Sublessee) free and clear of the Indenture in accordance with the Escrow Agreement if a Financed Increment is being purchased, but the County shall not otherwise be obligated to give or assign any better title than existed on the first day of the Term. The Tenant, any Future Sublessee shall accept such title, subject, however, to (i) Permitted Encumbrances (ii) any liens, encumbrances, charges, exceptions and restrictions not created or caused by the County, and (iii) any applicable laws, regulations and ordinances. Although the

County shall be obligated to convey title to the Project as aforesaid on the date of purchase upon receipt of the purchase price therefor, the County shall nevertheless have such additional time as is reasonably required by the County to deliver or cause to be delivered to the Tenant, any Future Sublessee all instruments and documents required by the Tenant, any Future Sublessee and necessary to remove from record or otherwise discharge any liens, encumbrances, charges or restrictions in order that the County may convey title as aforesaid.

for the purchase of the Project or any portion thereof by the Tenant, any Future Sublessee, the Tenant shall tender the purchase price therefor and the additional payments required by Section 10.02 of this Lease to the County or its order, and the County shall deliver a deed for the Project or such portion thereof to the Tenant (or in the case of the exercise of the option in Section 10.02(g), to any Future Sublessee). The Tenant shall pay all expenses of the County and all other charges incident to any conveyance, including any escrow fees, recording fees and any applicable federal, state and local taxes and the like.

[End of Article X]

#### ARTICLE XI

#### **EVENTS OF DEFAULT AND REMEDIES**

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SECTION 11.01. Events of Default. Any one or more of the following events (herein called "Event of Default", or collectively "Events of Default") shall constitute an Event of Default:

if Default shall be made in the due and punctual payment of any (a)

Basic Rent:

if the Tenant shall assign this Least Sublet the whole or any part of the Project, otherwise than as expressly permitted pursuant to Section 9.01 hereof;

- if Default shall be made by the Tenant in the due performance of or (c) compliance with any of the terms hereof, including payment, other than those referred to in the foregoing subdivisions (a) or (b) and such default shall (i) continue for 30 days after the County or the Purchases shall have given the Tenant written notice of such Default or a responsible officer of the Tenant shall otherwise have actual notice thereof, or (ii) in the case of any such Default which can be cured but which cannot with due diligence be cured within such 30-day period, if the Tenant shall fail to proceed promptly to cure the same and thereafter prosecute the curing of such Default with due diligence, it being intended in connection with the Default not susceptible of being cured with due diligence within 30 days that the time of the Tenant within which to cure the same shall be extended for such period as may be necessary to complete the curing of the same with all due diligence;
- if the Tenant shall file a voluntary petition seeking an order for relief in bankruptcy, or shall be adjudicated insolvent, or shall file any petition or answer or commence a case seeking any reorganization, composition, readjustment, liquidation or similar order for relief or relief for itself under any present or future statute, law or regulation, or shall seek or consent to or acquiesce in the appointment of any trustee. receiver or liquidator of the Tenant or of the Project, or shall make any general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due;
- if a petition shall be filed or a case shall be commenced against the Tenant seeking an order for relief in bankruptcy or any reorganization, composition, readjustment, liquidation or similar relief under any present or future statute, law or regulation, and shall remain undismissed or unstayed for an aggregate of 30 days (whether or not consecutive), or if any trustee, receiver or liquidator of the Tenant or of

all or any substantial part of its properties or of the Project shall be appointed without the consent or acquiescence of the Tenant and such appointment shall remain unvacated or unstayed for an aggregate of 30 days (whether or not consecutive);

- (f) if any material representation or warranty made by the Tenant herein or any statement, certificate or indemnification furnished or delivered by the Tenant in connection with the execution and delivery of this Lease, proves untrue in any material respect as of the date of the issuance or making thereof or is knowingly violated or breached, as the case may be:
  - (g) if the Tenant shall abandon the Project; or

(h) if the Tenant shall dissolve or fail to maintain its separate corporate existence without prior assignment of this Lease pursuant to Section 9.01 hereof.

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SECTION 11.02. Remedies on Event of Default. Upon the occurrence of any Event of Default, the County at its option: (i) may declare immediately due and payable an amount of Basic Rent equal to the entire principal amount of any then outstanding Series of Bonds, or the Bond and all interest accrued or to accrue on and prior to the next earliest Interest Payment Date on which the Bond will be paid plus any additional rental due or to become due hereunder; (i) may terminate this Lease as to one or more Financed Increments by 30 days' notice in writing specifying the termination date and the Financed Infrements to be terminated: (iii) may reenter and take possession of one or more Financed Increments, make any necessary. repairs and perform any work that may be necessary by reason of the Tenant's Default; with or without terminating this Lease; and relet one or more Financed Increments; (iv) may have access to and inspect, examine and make copies of, the books, records and accounts of the Tenant pertaining to the Project; or (v) may take whatever action at law or in equity as may appear necessary or desirable to collect the-rent then due and thereafter to become due or to enforce observance or performance of any covenant, condition or agreement of the Tenant under this I-case. Notwithstanding the foregoing, the Tenant (or any Future Sublessee in the case of Section. 10.02(g)) shall retain the right to exercise any purchase option referred to in Section 10.02 hereof. -dry amounts

Except as hereinafter provided, no termination of the Term of the Lease or repossession of the Project pursuant to Section 11.02 hereof shall relieve the Tenant of its liability and obligations to make the payments required by Sections 6.25 8.10 and 8.15 hereof, all of which shall survive any such termination or repossession.

[End of Article XI]

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#### ARTICLE XII

#### MISCELLANEOUS

SECTION 12.01. Rights and Remedies Cumulative. Each right, power and remedy of the County or of the Tenant provided for in this Lease shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Lease or now or hereafter existing at law or in equity, in any jurisdiction where such rights, powers and remedies are sought to be enforced, and the exercise by the County or by the Tenant of any one or more of the rights, powers or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the County or by the Tenant of any or all such other rights, powers or remedies.

<u>SECTION 12.02.</u> Successors and Assigns. The terms and provisions of this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

SECTION 12.03. Notices; Demands; Requests. All notices, demands and requests to be given or made hereunder to or by the County) the Tenant or the Purchaser, shall be in writing, and shall be deemed to be properly given or made if sent by United States first class mail, postage prepaid addressed as follows or at such other places as may be designated in writing by such party.

(a) As to the County:

Lancaster County
Post Office Box 1809
Lancaster, South Carolina 29721
Attention: Lancaster County Administrator

(b) As to the Temme: Coupay

Duracell Inc. 1551 Highway 9, Bypass West Lancaster, South Carolina 29620 Attention: President Duracel hac Berkshire Corporate Par

Berkshire Corporate Park Bethel, Connecticut 06801

SECTION 12.04. Applicable Law: Entire Understanding. This Lease shall be governed exclusively by the provisions hereof and by the applicable laws of the State of South Carolina. This Lease 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 Lease or in certificates delivered in connection with the execution and delivery hereof.

SECTION 12.05. Severability. In the event that any clause or provisions of this Lease shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.

SECTION 12.06. Headings and Table of Contents; References. The headings of the Lease and any Table of Contents or Index annexed hereto are for convenience of reference only and shall not define or limit the provisions hereof or affect the meaning or interpretation hereof. All references in this Lease to particular Articles or Sections or subdivisions of this Lease are references to the designated Articles or Sections or subdivision of this Lease.

SECTION 12.07. Multiple Counterparts. This Lease may be executed in multiple counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument.

herein by the Tenant to or for the benefit of the Purchaser are intended by the Tenant to be specifically enforceable by the Purchaser, and the Tenant acknowledges that the acquisition of the Road by the Purchaser is consideration for any such agreements or obligations.

SECTION 12.09. Amendments. This Lease may be amended only by a writing signed by both parties.

<u>SECTION 12.10.</u> Waiver. Either party may waive compliance by the other party with any term or condition of this Lease only in a writing signed by the waiving party.

-CABBBERED

SECTION 12.11. Lien. In order to secure the County's obligations under Article.

X hereof, the County hereby grants to the Tenant a security interest in and to all of the County's right, title and interest in and to the Project. The County agrees to sign and record Uniform Commercial Code financing statements (at the expense of the Tenant) to perfect such security interest.

[End of Article XII]

IN WITNESS WHEREOF, Lancaster County, South Carolina, has executed this Lease by causing its name to be hereunto subscribed by the Chairman of County Council for the County, the Secretary of County Council for the County and attested to by the Clerk to the County Council, and Duracell Inc. has executed this Lease by causing its corporate name to be hereunto subscribed by its President or a Vice President and its corporate seal to be impressed hereon and attested to by its Secretary or Assistant Secretary, all being done as of the day and year first above written.

#### LANCASTER COUNTY, SOUTH CAROLINA

Ray E. Gardner, Chairman of Lancaster County

Council, Lancaster, South Carolina

Polly C. Vackson, Secretary of Lancaster County

Council, Lancaster, South Carolina

ATTEST:

Irene Plyler, Clerk Count

Council of Lancaster County, South Carolina

Signed, sealed and delivered

in the presence of:

T-5-C-

Its: President

(SEAL)

ATTEST:

Mame: Kevin Loftus

Its: Assistant Secretary

STATE OF SOUTH CAROLINA	)		
COUNTY OF LANCASTER)	)	PROBATE	
PERSONALLY apportunity says that (s)he saw the within Land Council, Polly C. Jackson, Secretary County Council of Lancaster County officers, did seal said Lease and as Robert G. Catoe	caster County ary of the County, sign the its act and de	by Ray E. Ga ounty Council, within Lease.	and Irene Plyler, Clerk to the and the said County, by said within Lease and that (s)he with

SWORN to before me, this

8th day of <u>June</u>, 1998.

Notary Public for South Carolina (L.S.)

My Commission expires: 10-19-98

STATE OF CONNECTICUT COUNTY OF FAIRFIELD	) ) )	PROBATE		_
PERSONALLY says that (s) he saw the within E Kevin Loftus, its Assistant Secas its act and deed,	retary, sign the wi deliver the	dward F. DeGraan	who on oar hits President, along with said Tenant, by said office and that (s)he with	r,
	7	D Sag	Vitness	
SWORN to before me this ZLLA day of, 19	98.			
Many Jone St. Notary Public for Connecticut	(L.S.)			
My Commission expires:	MARY JANE ST  NOTARY PUB.  My Commission Expires	LIC		

#### EXHIBIT A Land Description

All those certain pieces, parcels or tracts of land, lying, being and situate in Can Creek Township, Lancaster County, South Carolina, on the North side of South Carolina Road S-29-518, known as Hawthorne Road, containing a total of four and five tenths (4.5) acres, more or less, and being shown, described and designated as Tracts "A" 4.160 Acres and "B" 0.340 AC. IN R/W" on plat of survey made by Enfinger & Associates, dated June 28, 1995, entitled "PLAT OF BOUNDARY SURVEY FOR DURACELL INTERNATIONAL INC. (DURACELL U.S.A.)" and recorded in the Office of the Clerk of Court for Lancaster County, South Carolina, referenced to said plat is craved for a more minute description.



#### Section 1 - Buildings

All buildings, structures, and appurtenances located on the Leased Land.

#### Section 2 - Equipment

All machinery, equipment, furniture and fixtures located on the Leaced Land and transferred from the Tepans to the County by Bill of Sale.

Exhibit B, page 1

## [FORM OF NON-DISCLOSURE STATEMENT]

("Duraceil") utilizes confidential and proprietary "state-of-the-art" manufacturing processes and techniques and that any disclosure of any information relating to such processes and techniques would result in substantial harm to Duraceil and could thereby have a significant detrimental impact on Duraceil and its employees. Consequently, I agree to keep confidential the nature, description and type of the machinery, equipment, processes and techniques which I observe. I agree that I shall not disclose the nature, description or type of such machinery, equipment, processes or techniques to any person or entity other than in accordance with the terms of the Lease Agreement between Duracell and Lancaster County, South Carolina, dated as of June 1998.	g_c_
Ву:	
Date:	

Exhibit C, page 1



## Agenda Item Summary

Ordinance # / Resolution#: Discussion

Contact Person / Sponsor: John Weaver

**Department:** County Attorney

Date Requested to be on Agenda: August 20, 2015

Committee: Administration Committee

<u>Issue for Consideration</u>: Whether or not it is the desire of this Committee and Lancaster County Council as a whole to pursue the issue of Pulte's decision not to build in Sun City Carolina Lakes the minimum number of town houses and condominiums agreed to in PDD-18 and approved in Ordinance 631, passed August 2, 2004?

<u>Points to Consider</u>: This issue is before the Committee based upon the ongoing inquiries of a Sun City resident and other interested citizens in the Indian Land are of the county. Attached for the Committee's consideration are the following:

- 1. August 18, 2015 email from Waylon Wilson
- 2. Ordinance 631.
- 3. PDD-18 Development District, 2., THE MASTER PLAN

According to the numbers presented by Mr. Wilson, 273 townhomes have been built rather than the 400 minimum townhomes agreed to earlier, a deficit of 127 units. Additionally, 78 condominium units have been built rather than the 200 minimum condominiums agreed to earlier, a deficit of 122 units – together totaling a deficit of 249.

## Funding and Liability Factors: Undetermined.

### **Council Options:**

- 1. Take no action and allow the completion of Sun City development according to the developer's present plan.
- 2. Initiate litigation for a claim for damages (taxes, etc.) incurred prospectively by the county because of Pulte's failure to comply with the PDD-18 requirements.
- 3. Amend Ordinance 631 to decrease the number of townhouses and condominiums consistent with the actual number of units constructed.

**Recommendation: NONE** 

#### John Weaver

From:

Waylon Wilson <wilson4323@comporium.net>

Sent:

Tuesday, August 18, 2015 2:07 PM

To:

John Weaver

Cc:

Larry McCullough; Larry Honeycutt; Charlene McGriff; Bob Bundy; Steve Harper;

jackestridge@yahoo.com; Brian Carnes; Waylon Wilson

Subject:

Violations of Ordinance 631

Mr. Weaver - Lancaster County Attorney

I appreciate your speaking with me regarding my formal complaint of violations of Ordinance 631 submitted on February 12, 2015. We talked following the adjournment of the August 11, 2015 Infrastructure and Regulation Committee meeting. I have to assume that the County Manger concurs with your statements that a lawsuit would likely follow if Lancaster County pursued these violations and that Lancaster County would gain very little regardless of the results.

The developer requested relief from the stated obligations in the Ordinance to build 400 townhomes and 200 condominiums. The developer stated this relief was needed because the "units" would not sell, but would not substantiate their claims with documentation or proof to the Planning Commission.

Items within Ordinance 631 are: "1,215.53 development acres – A minimum for sale units consisting of 400 townhomes and 200 condominiums – Maximum development intensity of 3 dwelling units per acre". According to Lancaster County records, only a total of 273 townhome units and 78 condo units are to be built in Sun City Carolina Lakes.

The actions of the developer will have negative repercussions on Lancaster County as well as the homeowners of SCCL such as; reduced monies for the fire and emergency tax district, fewer household payments to retire development bonds, reduced monies for building permits, less population to consume community's goods and services, etc.

I want to restate that I would never expect or require anyone to construct something that will not sell. I can also appreciate what appears to be the County's position. However, County Council must amend the governing Ordinances to eliminate or adjust the numbers of townhome and condominium units. Several other items and areas should be evaluated or negotiated with the developer if the Ordinance requirements are not going to be implemented. A few estimated expectations from these reduced numbers are:

- 1) The county losing future property taxes on 249 residential units every year. For the sake of argument; say \$1,000 X 249 units = \$249,000 lost taxes in a year or \$1,245,000 in 5 years.
- 2) The County's Fire and Emergency Service is losing \$90.00 on 249 residential units every year. That's \$90.00 X 249 units = \$22,410 lost to Lancaster County Services or \$112,050 in 5 years.
- 3) The Sun City Carolina Lakes Improvement District residences are losing \$382.55 to pay for the bonds on 249 residential units every year. \$382.55 X 249 units = \$95,254.95 or \$476,274.75 in 5 years.

Some suggested approaches could be:

- A) Negotiate with the Developer to pay a lump sum dollar amount to offset some or all of the three items listed above.
- B) Negotiate with the Developer a specified number of years to pay the yearly amounts to offset some or all of the three items listed above.
- C) Negotiate with the Developer a specified number of years or lump sum to pay the yearly bond payments for the multifamily units that are not built. Council needs to be fair to their citizens.

Plebe contact me if you have questions or require additional information. Thank you for your time and efforts and I am looking forward to the resolution of this matter.

Regards, Waylon Wilson 15117 Legend Oaks Court

# STATE OF SOUTH CAROLINA COUNTY OF LANCASTER

**ORDINANCE #631** 

# AN ORDINANCE AMENDING THE LANCASTER COUNTY ZONING MAP BY REZONING PROPERTY LOCATED WEST OF U.S. HIGHWAY 521-18 FROM R-30 TO PDD-18

WHEREAS, Pulte Homes and Del Webb applied to rezone approximately 1,215.53 acres of primarily vacant land located west of U.S. Highway 521 and south of River Road from R-30 to PDD-18; and

WHEREAS, the applicant requests to rezone the property with the intent of developing a mixed use active adult retirement community with single family detached homes, townhomes and condominiums for sale. The community shall also include a public golf course and between 25 and 60 acres of commercial development including retail, restaurant and/or support services for the residents of the community.

WHEREAS, the Joint Planning Commission recommended approval of the rezoning request by a vote of 9-2.

NOW, THEREFORE, BE IT ORDAINED by the Lancaster County Council that approximately 1,215.53 acres of primarily vacant land located west of U.S. Highway 521 and south of River Road shall be rezoned from R-30, Low Density Residential District to Sun City Carolina Lakes Planned Development District, PDD-18.

AND BE IT FURTHER ORDAINED that the Sun City Carolina Lakes Planned Development District, PDD-18, shall hereby be created as per the attached Development Regulations.

AND IT IS SO ORDAINED this 2nd day of August, 2004.

LANCASTER COUNTY COUNCIL

Rudy L. Carter Chairman

Maxy L. Hammond, Secretary

Approved as to form and content:

William R. Sims, County Attorney

Attest:

Irene Plyler, Clerk to Council

<sup>1st</sup> reading: 6/28/2004

2<sup>nd</sup> reading: 7/12/2004 3<sup>rd</sup> reading: 8/02/2004

> 2219944.14 LIB: CH

STATE OF SOUTH CAROLINA	)	
	)	Sun City Carolina Lakes Planned
		Development District, PDD-18
NAME OF THE PROPERTY OF THE PROPERTY OF	)	Ordinance #631
COUNTY OF LANCASTER	1	

# 1. PURPOSE, AUTHORITY & JURISDICTION

# 1.1 Purpose

The purpose of the Sun City Carolina Lakes Development Ordinance ("Ordinance") is to establish certain specific land use controls over the development of the Property to ensure that it is developed in accordance with existing and future needs and to promote the health, safety, and general welfare of the future residents. At the same time, the intent of this Ordinance is to provide the flexibility needed to develop the Property in response to ever changing market conditions and to permit the use of evolving innovative development techniques for the protection of the natural environment and the quality of life of future residents.

# 1.2 Authority

Sections of the South Carolina Local Government Code ("Code") and Lancaster County's Ordinances provide the legal authority for the County and a property owner to enter into an agreement that (i) governs the creation, development, and existence of certain property, and (ii) establishes the rights and obligations of the property owner and the County with respect to the development of the property. Additionally, legal authority for such an agreement is derived from common law. The Code and the ordinances also provide the legal authority for the creation, adoption and enforcement of this Development Ordinance.

# 1.3 Jurisdiction

This Ordinance shall govern development of the Sun City Carolina Lakes property ("Property") identified on the Master Plan for Sun City Carolina Lakes attached hereto, which consists of approximately 1,215.53 acres more or less. Sun City Carolina Lakes may be expanded with additional properties.

# 2. THE MASTER PLAN

The Master Plan proposes a residential community with an overall gross density of up to three dwelling units per acre. The community will be a mixed use master planned age-restricted, active adult community. The community shall include single family detached homes, townhomes or condominiums for sale, a public golf course, and between 25 and 60 acres of commercial development including but not limited to retail, restaurant commercial and/or support services for the residents of the community. The residential components may utilize a variety of lot sizes and configurations and varying densities within the separate development tracts as long as the overall maximum gross density is maintained. A minimum of 400 townhomes for sale and 200 condominiums for sale shall be located throughout the community. The village shall also include a mixture of commercial, retail, office, civic and/or institutional uses within Tract A, the area of the Site located just to the west of Highway 521. The amount of commercial, retail, office, civic, and/or institutional development within Tract

### John Weaver

From:

Joshua Vann < Joshua. Vann@mortongettys.com>

Sent:

Tuesday, August 25, 2015 11:39 AM

To:

John Weaver

Cc:

Brett Manery; Cisco Garcia

Subject:

Sun City Condos

#### John,

There evidently were another 18 single family homes constructed as a result of the condominiums not being built. The 2005 master plan was conceptual, and the condominiums were never designed, so it's difficult to pinpoint exactly where these 18 houses are, but there were 18 more built than planned since the condos weren't built. Thanks,

Joshua B. Vann, Partner MORTON & GETTYS Fountain Park Place 331 E Main St Suite 300 PO Box 707 Rock Hill, SC 29731

Direct Tel: 803.366.3341 Fax: 803.324.3768 Web: www.mortongettys.com

A Limited Liability Company

# MORTON & GETTYS

ATTORNEYS AT LAW

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CIRCULAR 230 DISCLOSURE: TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE IRS, UNLESS SPECIFICALLY INDICATED OTHERWISE, ANY TAX ADVICE CONTAINED IN THIS COMMUNICATION (INCLUDING ANY ATTACHMENTS) IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, FOR THE PURPOSE OF AVOIDING TAX RELATED PENALTIES OR PROMOTING, MARKETING OR RECOMMENDING TO ANOTHER PARTY ANY TAX RELATED MATTER ADDRESSED HEREIN.

### John Weaver

From:

Ey, Mike <MEy@MCNAIR.NET>

Sent:

Thursday, September 10, 2015 2:32 PM

To:

John Weaver

Subject:

Nutramax -- Ordinance No. 2015-1348

**Attachments:** 

COLUMBIA-#1200661-v7-Ordinance\_No\_2015-1348\_approving\_2015

\_incentive\_amendments.DOCX

John, attached is the Nutramax ordinance, Ordinance No. 2015-1348. I think you may have it set for the next meeting of the Administration Committee which I understand is on September 24. Please note that the attached document is, in effect, four documents in one. It includes the body of the ordinance plus three exhibits. Each exhibit contains an amendment to a specific Nutramax document – Incentive Agreement, Fee Agreement, and Infrastructure Credit Agreement.

Also note that I have filled in as many blanks as possible in Section 4 of the ordinance, which contains the cost-benefit numbers. I understand that Steve Willis may be getting final numbers from Commerce in the next day or two, in which case Section 4 will need to be updated.

Contact me if you have any questions or need more information. Thanks, Mike.



#### J. Michael Ey

Shareholder mey@mcnair.net | 803 753 3268 Direct | 803 513 7852 Mobile

McNair Law Firm, P.A.

Columbia Office 1221 Main Street | Suite 1800 | Columbia, SC 29201
803 799 9800 Main | 803 933 1539 Fax

Mailing Post Office Box 11390 | Columbia, SC 29211

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STATE OF SOUTH CAROLINA	)	ORDINANCE NO. 2015-1348
COUNTY OF LANCASTER	)	ORDINANCE NO. 2013-13-16

#### AN ORDINANCE

TO AUTHORIZE THE EXECUTION AND DELIVERY OF AMENDMENTS TO A 2010 INCENTIVE AGREEMENT, FEE AGREEMENT, AND INFRASTRUCTURE CREDIT AGREEMENT BY AND AMONG LANCASTER COUNTY, SOUTH CAROLINA, NUTRAMAX MANUFACTURING, INC., NUTRAMAX LABORATORIES, INC., NUTRAMAX PROPERTIES, LLC, NUTRAMAX LAND HOLDINGS, INC., THE CITY OF LANCASTER, AND THE LANCASTER COUNTY ECONOMIC DEVELOPMENT CORPORATION; AND TO PROVIDE FOR OTHER MATTERS RELATED THERETO.

Be it ordained by the Council of Lancaster County, South Carolina:

#### Section 1. Findings and Determinations.

Council finds and determines that:

- a. Lancaster County, South Carolina (the "County") acting by and through its Council (the "Council") is authorized and empowered pursuant to the provisions of Title 12, Chapter 44 of the Code of Laws of South Carolina 1976, as amended (the "Act"), to enter into fee agreements with any industry, with said agreements identifying certain properties of such industries as economic development property, through which powers the industrial development of the State of South Carolina (the "State") and the County will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate, remain, and expand in the State and the County and thus utilize and employ the manpower, products, and natural resources and benefit the general public welfare of the State and County by providing services, employment, or other public benefits not otherwise adequately provided locally;
- b. the County is authorized by Sections 4-1-175 and 4-29-68 of the Code of Laws of South Carolina 1976, as amended, to provide special source revenue credits for the purpose of defraying the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving Lancaster County and for improved and unimproved real estate used in the operation of a manufacturing facility or commercial enterprise in order to enhance the economic development of Lancaster County;

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- c. the County previously recruited a project (the "Original Project") in the County by Nutramax Manufacturing, Inc., Nutramax Laboratories, Inc., Nutramax Properties, LLC, and Nutramax Land Holdings, Inc. (sometimes collectively referred to herein as the "Company");
- d. in connection with the Original Project, Nutramax Manufacturing, Inc., Nutramax Laboratories, Inc., the County, the Lancaster County Economic Development Corporation, and the City of Lancaster, South Carolina (the "City") entered into a June 7, 2010 Incentive Agreement (the "Incentive Agreement"); Nutramax Manufacturing, Inc. and the County entered into a June 28, 2010 Fee Agreement (the "Fee Agreement"); and Nutramax Laboratories, Inc., Nutramax Properties, LLC and the County entered into a June 28, 2010 Infrastructure Credit Agreement (the "Infrastructure Credit Agreement") (collectively, the Incentive Agreement, the Fee Agreement, and the Infrastructure Credit Agreement are referred to herein as the "2010 Agreements");
- e. pursuant to the 2010 Agreements, the Company agreed to invest \$8.5 million in the Original Project and to create 200 jobs in connection with the Original Project by June 28, 2015;
- f. the Company has already invested approximately \$29 million in the Original Project (\$20.5 million in excess of its \$8.5 million investment commitment) and has succeeded in creating 200 jobs in connection with the Original Project;
- g. Nutramax Manufacturing, Inc., Nutramax Laboratories, Inc., Nutramax Properties, LLC and Nutramax Land Holdings, Inc., and one or more related corporations and limited liability companies which are now existing or to be formed in the future are considering additional investments, through themselves and/or one or more existing or to-be-formed affiliated or related entities and/or one or more unrelated parties, including third party lessors, in the expansion of a manufacturing facility and related facilities through the acquisition of land, buildings, and improvements thereon (the "Land and Building"), the construction of improvements thereon and/or therein, and/or the acquisition of personal property, including, but not limited to, machinery, equipment, and furniture to be installed on and/or in the Land and Building, which are eligible for inclusion under the Act as economic development property, the cost of which is estimated to be \$15 million, along with the creation of 125 new, full-time jobs (the "New Project"), all as more fully set forth in the Amendments;
- h. the Original Project is presently located at three sites in the County, including one site in the City, and it is presently contemplated that the New Project will be located at one or more of such three sites and/or an additional site in the County, so that all investments and jobs located or to be located at any of those four sites shall be counted and included for purposes of all benefits and requirements set forth in the 2010 Agreements;
- i. Council, in order to induce the Company to locate the New Project in the County, adopted, on August 24, 2015, Resolution No. 0883-R2015 (the "Inducement Resolution") to the effect that, if the Company would commit to locate the New Project in the County, the Council would take certain actions and provide certain incentives for the New Project and the Original Project, including entering into amendments to the 2010 Agreements to, among other things, extend the period during which reduced fee-in-lieu of tax payments may be made and extend the period during which the special source revenue credit would apply to the Company's investments; and
- j. it is the purpose of this ordinance to provide for the approval of the above-referenced amendments and to effectuate the commitments of the County made in the Inducement Resolution.

### Section 2. Additional findings and determinations.

Council finds and determines that:

- a. the New Project will constitute a "project" as the term is referred to and defined in the Act, and the County's actions herein will subserve the purposes and in all respects conform to the provisions and requirements of the Act;
- b. the New Project and the payments in lieu of taxes set forth herein are beneficial to the County, and the County has evaluated the New Project based upon all criteria prescribed by law, including the anticipated dollar amount and nature of the investment to be made;
- c. the New Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally;
- d. the New Project gives rise to no pecuniary liability of the County or any incorporated municipality or a charge against the general credit or taxing power of either;
- e. the purposes to be accomplished by the New Project, i.e., economic development, creation of jobs, and addition to the tax base of the County, are proper governmental and public purposes;
- f. the inducement of the location of the New Project within the County and State is of paramount importance; and
  - g. the benefits of the New Project to the public will be greater than the costs to the public.

### Section 3. Approval of Amendments.

The form, terms, and provisions of the First Amendment to Incentive Agreement, attached hereto as Exhibit A, the First Amendment to Infrastructure Credit Agreement, attached hereto as Exhibit B, and the First Amendment to Fee Agreement, attached hereto as Exhibit C (collectively, the First Amendment to Incentive Agreement, the First Amendment to Infrastructure Credit Agreement, and the First Amendment to Fee Agreement are referred to as the "Amendments"), are approved, and all of the terms, provisions, and conditions thereof are incorporated herein by reference as if the Amendments were set out in this Ordinance in their entirety. The Council Chair and Council Secretary are authorized, empowered, and directed to execute and acknowledge the Amendments in the name of and on behalf of the County, and thereupon to cause the Amendments to be delivered to the Company. The Amendments are to be in substantially the form attached hereto and hereby approved, with such changes therein as shall not be materially adverse to the County and as shall be approved by the officials of the County executing the same, upon the advice of counsel to the County, such officer's execution thereof to constitute conclusive evidence of such officer's approval of any and all changes or revisions therein from the form of the Amendments attached to this ordinance.

# Section 4. Cost-Benefit Findings.

Council makes the following findings concerning the costs and benefits of the New Project:

- a. the benefits of providing the incentives arrangement set forth in the Amendments include: (i) investment in personal property and certain real estate improvements of at least \$15,000,000; (ii) an average annual increase in property taxes (FILOT payments) of approximately \$[TBD] after application of incentives; (iii) construction benefit of \$1,684,872; (iv) facility operation benefit of \$3,929,320; (v) employee benefit of \$46,477; and (vi) visitor benefit of \$0. The total benefit is estimated at \$5,660,669;
- b. the cost of providing the incentives arrangement is estimated at: (i) development costs of \$0; (ii) operational costs of \$203,243; and (iii) employee costs of \$95,878. The total cost is estimated at \$299,121;
- c. the benefit to cost ratio in year one is estimated at \$17.67:1 and after year one at \$12.04:1; and
- d. the value of the FILOT incentive to the Company is estimated at \$[TBD] and the special source revenue credits at \$[TBD].

# Section 5. Economic Development Fund.

- (A) Council finds that (i) by passage of Ordinance No. 2014-1260, Council created an Economic Development Fund with the intent to make monies available to the fund from new revenues to the County derived from new and expanded businesses and industry, and (ii) the ability to make monies available to the Economic Development Fund can be difficult because of complexities and legalities applicable to fee-in-lieu of tax arrangements and multi-county parks.
- (B) It is the intent of Council, in the annual County budget, to appropriate monies to the Economic Development Fund based on the new revenue that the County receives pursuant to the Amendments. Specifically, it is Council's intent to appropriate from the General Fund of the County an amount based on the following formula: Seven percent (7%) times the amount of money received pursuant to the Fee Agreement from the New Project by the County after distribution to other taxing entities in the most recently completed tax year.

### Section 6. Authority to act.

The Council Chair, Council Secretary, Clerk to Council, County Administrator, County Attorney and all other appropriate officials of the County are authorized and directed to do any and all things necessary to effect the execution and delivery of the Amendments and the performance of all obligations of the County under and pursuant to the Amendments.

### Section 7. Severability.

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

### Section 8. Controlling Provision.

To the extent that this Ordinance contains provisions that conflict with provisions contained elsewhere in the Lancaster County Code or other County ordinances and resolutions, the provisions contained in this Ordinance supersede all other provisions and this Ordinance is controlling.

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Section 9.	Effective date.			
This Ordinance	e is effective upon thin	rd reading.		
AND IT IS SO	ORDAINED, this	_ day of	, 2015.	
		LANCASTI	ER COUNTY, SOUTH CAROLINA	•
		Bob Bundy,	Chair, County Council	<del></del>
		Steve Harpe	r, Secretary, County Council	
Attest:				
Debbie C. Hard	din, Clerk to Council	<del></del>		
First Reading: Second Readin Public Hearing Third Reading:	:			

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### Exhibit A to Ordinance No. 2015-1348

### First Amendment to Incentive Agreement Nutramax

This FIRST AMENDMENT TO INCENTIVE AGREEMENT (this "Amendment") is dated as of \_\_\_\_\_\_\_, 2015 by and between NUTRAMAX MANUFACTURING, INC., NUTRAMAX LABORATORIES, INC., NUTRAMAX PROPERTIES, LLC, NUTRAMAX LAND HOLDINGS, INC., LANCASTER COUNTY, SOUTH CAROLINA (the "County"), a body politic and corporate and a political subdivision of the State of South Carolina, the LANCASTER COUNTY ECONOMIC DEVELOPMENT CORPORATION ("LCEDC"), and the CITY OF LANCASTER, SOUTH CAROLINA (the "City") (all of the foregoing entities collectively referred to in this Amendment as the "Parties").

### WITNESSETH:

WHEREAS, the County previously recruited a project (the "Original Project") in the County by Nutramax Manufacturing, Inc., Nutramax Laboratories, Inc., Nutramax Properties, LLC, and Nutramax Land Holdings, Inc. (sometimes collectively referred to herein as the "Company");

WHEREAS, in connection with the Original Project, Nutramax Manufacturing, Inc., Nutramax Laboratories, Inc., the County, the LCEDC, and the City entered into a June 7, 2010 Incentive Agreement (the "Incentive Agreement"); Nutramax Manufacturing, Inc. and the County entered into a June 28, 2010 Fee Agreement (the "Fee Agreement"); and Nutramax Laboratories, Inc., Nutramax Properties, LLC and the County entered into a June 28, 2010 Infrastructure Credit Agreement (the "Infrastructure Credit Agreement") (collectively, the Incentive Agreement, the Fee Agreement, and the Infrastructure Credit Agreement are referred to herein as the "2010 Agreements");

WHEREAS, pursuant to the 2010 Agreements, the Company agreed to invest \$8.5 million in the Original Project and to create 200 jobs in connection with the Original Project by June 28, 2015;

WHEREAS, the Company has already invested approximately \$29 million in the Original Project (\$20.5 million in excess of its \$8.5 million investment commitment) and has succeeded in creating 200 jobs in connection with the Original Project;

WHEREAS, the County recruited an additional investment in the County by the Company of approximately \$15 million and 125 new, full-time jobs (the "New Project");

WHEREAS, the Original Project is presently located at three sites in the County, including one site in the City, and it is presently contemplated that the New Project will be located at one or more of such three sites and/or an additional site in the County, so that all investments and jobs located or to be located at any of those four sites shall be counted and included for purposes of all benefits and requirements set forth in the 2010 Agreements;

WHEREAS, the County Council, in order to induce the Company to locate the New Project in the County, adopted on August 24, 2015, Resolution No. 0883-R2015 (the "Inducement Resolution") to the effect that, if the Company would commit to locate the New Project in the County, the Council would take certain actions and provide certain incentives for the New Project and the Original Project, including

entering into amendments to the 2010 Agreements to, among other things, extend the period during which reduced fee-in-lieu of taxes ("FILOT") payments may be made and extend the period during which the special source revenue credit ("SSRC") would apply to the Company's investments;

WHEREAS, the C	ty Council, in order to induce the Company to loca	ate a portion of the New
Project in the City, passed	a, 2015 Motion affirming the Coun	ity Council's August 24
2015 Inducement Resolution		
WHEREAS, pursu	uant to Ordinance No. 2015-1348 dated	, 2015 (the
"Ordinance"), the County	Council authorized this Amendment, and pursu	uant to Resolution No
	, 2015, the City Council authorized this Am	
now desire to enter into this	Amendment.	

NOW, THEREFORE, in consideration of the above and the respective agreements contained in this Amendment, the Parties hereby agree as follows:

- 1. The Incentive Agreement shall be amended by adding Nutramax Properties, LLC and Nutramax Land Holdings, Inc. as parties thereto, and such additional parties, together with Nutramax Manufacturing, Inc. and Nutramax Laboratories, Inc., shall be collectively defined therein as the "Company."
- 2. Article I of the Incentive Agreement shall be amended by adding the following paragraph at the end of that Article:

As of [insert the effective date of the First Amendment], the Company and the County agree to add to the land and buildings subject to this Agreement prior to [insert the effective date of the First Amendment] the parcel of land located at 1792 Silkies Boulevard, Lancaster, South Carolina (Tax Map No. 0080-00-001.00) together with one or more buildings and personal property located or to be located on such parcel (the "Additional Site"). The incentives and benefits provided to the Company through the MCBP FILOT and SSRC shall apply to the Additional Site. Investments made and jobs created at the Additional Site shall be included in the computations made to determine if the amount of investments and the number of jobs required with respect to any maintenance requirements set forth in this Agreement (including without limitation Article II(c)(ii) and Article IV (b) hereof) have been achieved.

- 3. Article II of the Incentive Agreement shall be amended by adding new Article II(g) and Article II(h), which shall read as follows:
  - (g) Notwithstanding anything in Article II(c) hereof to the contrary, the County and the Company agree that as of [insert effective date of Amendment], (i) the Company has satisfied all conditions and requirements imposed by Article II of this Agreement with respect to the 43 Acre Tract, and the County does hereby and, as necessary, shall, terminate, release and/or satisfy, as applicable, any mortgages or other liens that the County may have with respect to the 43 Acre Tract, (ii) the County has satisfied the conditions and requirements imposed by Article III(a)(vi) of this Agreement to provide a 95% special source revenue credit for the 43 Acre Tract, and (iii) the 50% SSRC referenced in Article III(a)(iii) of this Agreement shall also apply to the Company's FILOT payments on the 43 Acre Tract.

- (h) As of December 31, 2014, the parties to this Agreement recognize and agree that Scenario III, as set forth in Article II(b)(iii) hereof, is the applicable scenario for purposes of this Agreement.
- 4. In Article III(a)(i) of the Incentive Agreement, the reference in clause (v) to "a 30-year term" shall be changed to a reference to "a 40-year term."
- 5. Article III(a)(iii) of the Incentive Agreement shall be revised and restated to read as follows:

The County agrees to provide an additional SSRC equal to fifty percent (50%) of the Negotiated FILOT and the MCBP FILOT, net of the SSRC as provided in subarticle (ii) above, for all qualifying expenses of the Company under South Carolina law, for a period of ten (10) years as described in the following sentence. This SSRC shall apply to each annual component of the Negotiated FILOT and the MCBP FILOT for a period of ten (10) years for each annual component of investments placed in service by the Company between January 1, 2010 and December 31, 2024, so that for each year's investments placed in service during such period the fifty percent (50%) SSRC shall apply for ten (10) years thereafter. Thus, for example, for investments placed in service by the Company during 2010, the ten (10)-year, 50% SSRC shall apply for years 2011-2020, and for investments placed in service by the Company during 2024, the ten (10)-year, 50% SSRC shall apply for years 2025-2034.

- 6. Article IV of the Incentive Agreement shall be amended by adding new Article IV(e) and Article IV(f), which shall read as follows:
  - (e) If, between January 1, 2014 and December 31, 2019 the Company does not invest, in addition to the \$29,000,000 already invested or to be invested (including the \$8,500,000 referenced in Article II(c)(ii) hereof), at least \$15,000,000 (the "Expansion Investment Minimum") and does not create, in addition to the 200 jobs already created (as referenced in Article II(c)(ii) hereof), at least 125 new, full-time (i.e., at least thirty (30) hours per week) jobs, (i) with an average hourly wage not less than \$13.15, including overtime, bonuses and all other forms of actual pre-tax and post-tax monetary compensation and (ii) with health care benefits (the "Expansion Jobs Minimum"), then the additional 50% SSRC to be provided to the Company pursuant to Article III(a)(iii) hereof with respect to the annual components of investments placed in service during 2020 and subsequent years, shall be reduced by an amount that is proportional to any shortfall by the Company of greater than 10% in achieving the Expansion Investment Minimum and the Expansion Jobs Minimum; provided, however, that an overperformance in either the Expansion Investment Minimum or the Expansion Jobs Minimum shall serve to offset an underperformance in the other category.
  - (f) As of December 31, 2014, the parties to this Agreement recognize and agree that the Company has met the initial investment, wage and job requirements as set forth in Articles II(c)(ii) and IV(b) hereof within the five (5)-year period referenced therein. The Company recognizes and agrees that the maintenance requirement set forth in Articles II(c)(ii) and IV(b) hereof continues to apply as set forth therein.

	ver any contrary or inconsistent provision of the Incentive e Agreement not amended or modified by the terms of this II force and effect.		
IN WITNESS WHEREOF, the Partie written.	s have executed this Amendment, as of the date first above		
	LANCASTER COUNTY, SOUTH CAROLINA		
	Bob Bundy, Chair, County Council		
	Steve Harper, Secretary, County Council		
Attest:			
Debbie C. Hardin, Clerk to Council			
ADDITIONAL SIGNATURES FOLLOW ON NEXT PAGE.			

]	Ву:
]	Name:
•	Title:
]	NUTRAMAX LABORATORIES, INC.
	By:
٠	Name:
	Title:
	NUTRAMAX PROPERTIES, LLC
	By:
	Name:
	Title:
	By:
	LANCASTER COUNTY ECONOMIC DEVELOPY CORPORATION
	By:
	Name:
	Title:
	CITY OF LANCASTER, SOUTH CAROLINA
	By:
	Name:

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### Exhibit B to Ordinance No. 2015-1348

# First Amendment to Infrastructure Credit Agreement Nutramax

This FIRST AMENDMENT TO INFRASTRUCTURE CREDIT AGREEMENT (this "Amendment") is dated as of \_\_\_\_\_\_\_, 2015 by and between LANCASTER COUNTY, SOUTH CAROLINA (the "County"), a body politic and corporate and a political subdivision of the State of South Carolina, NUTRAMAX MANUFACTURING, INC., NUTRAMAX LABORATORIES, INC., NUTRAMAX PROPERTIES, LLC and NUTRAMAX LAND HOLDINGS, INC. (all of the foregoing entities collectively referred to in this Amendment as the "Parties").

### WITNESSETH:

WHEREAS, the County previously recruited a project (the "Original Project") in the County by Nutramax Manufacturing, Inc., Nutramax Laboratories, Inc., Nutramax Properties, LLC, and Nutramax Land Holdings, Inc. (sometimes collectively referred to herein as the "Company");

WHEREAS, in connection with the Original Project, Nutramax Manufacturing, Inc., Nutramax Laboratories, Inc., the County, the Lancaster County Economic Development Corporation, and the City of Lancaster, South Carolina (the "City") entered into a June 7, 2010 Incentive Agreement (the "Incentive Agreement"); Nutramax Manufacturing, Inc. and the County entered into a June 28, 2010 Fee Agreement (the "Fee Agreement"); and Nutramax Laboratories, Inc., Nutramax Properties, LLC and the County entered into a June 28, 2010 Infrastructure Credit Agreement (the "Infrastructure Credit Agreement") (collectively, the Incentive Agreement, the Fee Agreement, and the Infrastructure Credit Agreement are referred to herein as the "2010 Agreements");

WHEREAS, pursuant to the 2010 Agreements, the Company agreed to invest \$8.5 million in the Original Project and to create 200 jobs in connection with the Original Project by June 28, 2015;

WHEREAS, the Company has already invested approximately \$29 million in the Original Project (\$20.5 million in excess of its \$8.5 million investment commitment) and has succeeded in creating 200 jobs in connection with the Original Project;

WHEREAS, the County recruited an additional investment in the County by the Company of approximately \$15 million and 125 new, full-time jobs (the "New Project");

WHEREAS, the Original Project is presently located at three sites in the County, including one site in the City, and it is presently contemplated that the New Project will be located at one or more of such three sites and/or an additional site in the County, so that all investments and jobs located or to be located at any of those four sites shall be counted and included for purposes of all benefits and requirements set forth in the 2010 Agreements;

WHEREAS, the County Council, in order to induce the Company to locate the New Project in the County, adopted on August 24, 2015, Resolution No. 0883-R2015 (the "Inducement Resolution") to the effect that, if the Company would commit to locate the New Project in the County, the Council would take certain actions and provide certain incentives for the New Project and the Original Project, including entering into amendments to the 2010 Agreements to, among other things, extend the period during which

Ordinance No. 2015-1348 Page 11 of 18 reduced fee-in-lieu of taxes ("FILOT") payments may be made and extend the period during which the special source revenue credit ("SSRC") would apply to the Company's investments; WHEREAS, the City Council, in order to induce the Company to locate a portion of the New Project in the City, passed a , 2015 Motion affirming the County Council's August 24. 2015 Inducement Resolution; and , 2015 (the WHEREAS, pursuant to Ordinance No. 2015-1348 dated "Ordinance"), the County Council authorized this Amendment, and pursuant to Resolution No. , 2015, the City Council authorized the Incentive Agreement Amendment and consented to the FILOT and SSRC modifications referenced above with respect to the City site, and the Parties now desire to enter into this Amendment. NOW, THEREFORE, in consideration of the above and the respective agreements contained in this Amendment, the Parties hereby agree as follows: The Infrastructure Credit Agreement shall be amended by adding Nutramax 1. Manufacturing, Inc. and Nutramax Land Holdings, Inc. as parties thereto, and such additional parties. together with Nutramax Laboratories, Inc. and Nutramax Properties, Inc., shall be collectively defined therein as the "Company." 2. Exhibit A to the Infrastructure Credit Agreement shall be amended by adding at the end of the exhibit: "PARCEL D: 1792 Silkies Boulevard, Lancaster, South Carolina Tax Map No. 0080-00-001.00" The third paragraph of Section 3.02(a) of the Infrastructure Credit Agreement is revised 3. and restated to read as follows: The third component of the SSRC is an annual credit equal to fifty percent (50%) of the Lancaster Fee Payments each year for ten years (net of the first and second components of the Special Source Revenue Credits) for each annual component of qualifying expenses property that the Company places in service during the Investment Period, as the Fee Agreement defines that term between January 1, 2010 and December 31, 2024. Thus, for example, for each annual component of property placed in service by the Company during 2010, the ten-year, 50% SSRC shall apply for years 2011-2020, and for

4. Section 3.03 of the Infrastructure Credit Agreement shall be amended by adding new subsections (e) and (f), which shall read as follows:

ten-year, 50% SSRC shall apply for years 2025-2034.

(e) If, between January 1, 2014 and December 31, 2019 the Company does not invest, in addition to the \$29,000,000 already invested or to be invested (including the \$8,500,000 referenced in Section 3.03(a) hereof), at least \$15,000,000 (the "Expansion Investment Minimum") and does not create, in addition to the 200 jobs already created (as

each annual component of property placed in service by the Company during 2024, the

referenced in Section 3.03(a) hereof), at least 125 new, full-time (i.e., at least thirty (30) hours per week) jobs, (i) with an average hourly wage not less than \$13.15, including overtime, bonuses and all other forms of actual pre-tax and post-tax monetary compensation and (ii) with health care benefits (the "Expansion Jobs Minimum"), then the additional 50% SSRC to be provided to the Company pursuant to Section 3.02(a) hereof with respect to the annual components of investments placed in service during 2020 and subsequent years, shall be reduced by an amount that is proportional to any shortfall by the Company of greater than 10% in achieving the Expansion Investment Minimum and the Expansion Jobs Minimum; provided, however, that an overperformance in either the Expansion Investment Minimum or the Expansion Jobs Minimum shall serve to offset an underperformance in the other category.

- (f) As of December 31, 2014, the parties to this Agreement recognize and agree that the Company has met the initial investment, wage and job requirements as set forth in Section 3.03(a) hereof within the five (5)-year period referenced therein. The Company recognizes and agrees that the maintenance requirement set forth in Section 3.03(b) hereof continues to apply as set forth therein.
- 5. This Amendment controls over any contrary or inconsistent provision of the Infrastructure Credit Agreement. Every provision of the Infrastructure Credit Agreement not amended or modified by the terms of this Amendment shall remain unchanged and in full force and effect.

SIGNATURES FOLLOW ON NEXT PAGE.

	LANCASTER COUNTY, SOUTH CAROLINA
	Bob Bundy, Chair, County Council
Attest:	Steve Harper, Secretary, County Council
Debbie C. Hardin, Clerk to Council	
	NUTRAMAX MANUFACTURING, INC.
	By: Name: Title:
	NUTRAMAX LABORATORIES, INC.
	By:
	NUTRAMAX PROPERTIES, LLC
	By: Name: Title:
	NUTRAMAX LAND HOLDINGS, INC.
	By: Name: Title:
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### Exhibit C to Ordinance No. 2015-1348

### First Amendment to Fee Agreement Nutramax

This FIRST AMENDMENT TO FEE AGREEMENT (this "Amendment") is dated as of \_\_\_\_\_\_\_, 2015 by and between NUTRAMAX MANUFACTURING, INC., NUTRAMAX LABORATORIES, INC., NUTRAMAX PROPERTIES, LLC, NUTRAMAX LAND HOLDINGS, INC. and LANCASTER COUNTY, SOUTH CAROLINA (the "County"), a body politic and corporate and a political subdivision of the State of South Carolina (the foregoing entities collectively referred to in this Amendment as the "Parties").

### WITNESSETH:

WHEREAS, the County previously recruited a project (the "Original Project") in the County by Nutramax Manufacturing, Inc., Nutramax Laboratories, Inc., Nutramax Properties, LLC, and Nutramax Land Holdings, Inc. (sometimes collectively referred to herein as the "Company");

WHEREAS, in connection with the Original Project, Nutramax Manufacturing, Inc., Nutramax Laboratories, Inc., the County, the Lancaster County Economic Development Corporation, and the City of Lancaster, South Carolina (the "City") entered into a June 7, 2010 Incentive Agreement (the "Incentive Agreement"); Nutramax Manufacturing, Inc. and the County entered into a June 28, 2010 Fee Agreement (the "Fee Agreement"); and Nutramax Laboratories, Inc., Nutramax Properties, LLC and the County entered into a June 28, 2010 Infrastructure Credit Agreement (the "Infrastructure Credit Agreement") (collectively, the Incentive Agreement, the Fee Agreement, and the Infrastructure Credit Agreement are referred to herein as the "2010 Agreements");

WHEREAS, pursuant to the 2010 Agreements, the Company agreed to invest \$8.5 million in the Original Project and to create 200 jobs in connection with the Original Project by June 28, 2015;

WHEREAS, the Company has already invested approximately \$29 million in the Original Project (\$20.5 million in excess of its \$8.5 million investment commitment) and has succeeded in creating 200 jobs in connection with the Original Project;

WHEREAS, the County recruited an additional investment in the County by the Company of approximately \$15 million and 125 new, full-time jobs (the "New Project");

WHEREAS, the Original Project is presently located at three sites in the County, including one site in the City, and it is presently contemplated that the New Project will be located at one or more of such three sites and/or an additional site in the County, so that all investments and jobs located or to be located at any of those four sites shall be counted and included for purposes of all benefits and requirements set forth in the 2010 Agreements;

WHEREAS, the County Council, in order to induce the Company to locate the New Project in the County, adopted on August 24, 2015, Resolution No. 0883-R2015 (the "Inducement Resolution") to the effect that, if the Company would commit to locate the New Project in the County, the Council would take certain actions and provide certain incentives for the New Project and the Original Project, including entering into amendments to the 2010 Agreements to, among other things, extend the period during which

reduced fee-in-lieu of taxes ("FILOT") payments may be made and extend the period during which the special source revenue credit ("SSRC") would apply to the Company's investments;

WHERE	AS, the City Council, in order to induce the Company to lo	ocate a portion of the New
Project in the City	y, passed a, 2015 Motion affirming the County	Council's August 24, 2015
Inducement Reso		0 ,
WHERE	AS, pursuant to Ordinance No. 2015-1348 dated	, 2015 (the
"Ordinance"), the	e County Council authorized this Amendment, and pursuant to	Resolution No.
dated	, 2015, the City Council authorized the Incentive Ag	greement Amendment and
	FILOT and SSRC modifications referenced above with respe	
	e to enter into this Amendment.	• ,

NOW, THEREFORE, in consideration of the above and the respective agreements contained in this Amendment, the Parties hereby agree as follows:

- 1. The Fee Agreement shall be amended by adding Nutramax Laboratories, Inc., Nutramax Properties, LLC and Nutramax Land Holdings, Inc. as parties thereto, and such additional parties, together with Nutramax Manufacturing, Inc., shall be collectively defined therein as the "Company."
  - 2. Exhibit A to the Fee Agreement shall be amended by adding at the end of the exhibit:

# "PARCEL D:

1792 Silkies Boulevard, Lancaster, South Carolina Tax Map No. 0080-00-001.00"

- 3. In Section 1.1 of the Fee Agreement, the definition of "Termination Date" shall be amended by revising the references to "29th year" to read "39th year" and by revising the reference to "30 annual FILOT payments" to read "40 annual FILOT payments."
- 4. Section 4.1(a), Step 2, of the Fee Agreement shall be amended by revising the reference to "29 years" to read "39 years."
  - 5. Section 4.1(c)(1) of the Fee Agreement shall be amended and restated to read as follows:

The County agrees that all qualifying capital expenses of the Company during the Investment Period between January 1, 2010 and December 31, 2024 shall qualify for an Infrastructure Credit equal to 50% of the FILOT payments arising under this Agreement for ten years. This Infrastructure Credit shall apply to each annual component of the FILOT property placed in service during the Investment Period between January 1, 2010 and December 31, 2024 for a period of ten years for each such annual component, beginning the year after each such component is placed in service. Thus, for example, for property placed in service during 2010, the 10-year, 50% SSRC shall apply for years 2011-2020, and for property placed in service during 2024, the 10-year, 50% SSRC shall apply for years 2025-2034. The Infrastructure Credit shall be applied as a setoff against the FILOT owed for the then current year and shall apply against the entire FILOT payment due, including any portions that may be allocable to any municipality or school district.

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- 6. Section 4.2 of the Fee Agreement shall be amended by adding new subsections (f) and (g), which shall read as follows:
  - (f) If, between January 1, 2014 and December 31, 2019 the Company does not invest, in addition to the \$29,000,000 already invested or to be invested (including the \$8,500,000 referenced in Section 4.2(b) hereof), at least \$15,000,000 (the "Expansion Investment Minimum") and does not create, in addition to the 200 jobs already created (as referenced in Section 4.2(b) hereof), at least 125 new, full-time (i.e., at least thirty (30) hours per week) jobs, (i) with an average hourly wage not less than \$13.15, including overtime, bonuses and all other forms of actual pre-tax and post-tax monetary compensation and (ii) with health care benefits (the "Expansion Jobs Minimum"), then the additional 50% SSRC to be provided to the Company pursuant to Section 4.1(c)(1) hereof with respect to the annual components of investments placed in service during 2020 and subsequent years, shall be reduced by an amount that is proportional to any shortfall by the Company of greater than 10% in achieving the Expansion Investment Minimum and the Expansion Jobs Minimum; provided, however, that an overperformance in either the Expansion Investment Minimum or the Expansion Jobs Minimum shall serve to offset an underperformance in the other category.
  - (g) As of December 31, 2014, the parties to this Agreement recognize and agree that the Company has met the initial investment, wage and job requirements as set forth in Section 4.2(b) hereof within the five (5)-year period referenced therein. The Company recognizes and agrees that the maintenance requirement set forth in Section 4.2(c) hereof continues to apply as set forth therein.
- 7. This Amendment controls over any contrary or inconsistent provision of the Fee Agreement. Every provision of the Fee Agreement not amended or modified by the terms of this Amendment shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the date first above written.

LANCASTER COUNTY, SOUTH CAROLINA
Bob Bundy, Chair, County Council
Steve Harper, Secretary, County Council
ONAL SIGNATURES FOLLOW ON NEXT PAGE.

Ordinance No. 2015-1348 Page 17 of 18

NUTRAMAX MANUFACTURING, INC.
Ву:
Name:
Title:
NUTRAMAX LABORATORIES, INC.
Ву:
Name:
Title:
NUTRAMAX PROPERTIES, LLC  By:
Name:
Title:
NUTRAMAX LAND HOLDINGS, INC.
Ву:
Name:
Title:

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Ordinance No. 2015-1348 Page 18 of 18



# Agenda Item Summary

Ordinance # / Resolution#:

Contact Person / Sponsor: Clay Catoe, EMS

Department: Administration

Date Requested to be on Agenda: 9-24-15

# **Issue for Consideration:**

Selling of current older EMS Units that are high maintenance issues and allowing funds to be used for a replacement ambulance or ambulances.

# **Points to Consider:**

Current cost of continuous repair and high mileage of these units.

### **Funding and Liability Factors:**

Partial funding from sell of current older used ambulances that can be used in the budget process for 2016-2017 budgeting.

### **Council Options:**

# **Recommendation:**

Forward to full Council for consideration of selling used units and allow proceeds to be put toward the future purchase of an additional unit in the 2016-2017 Budget.

otal Repair Cost	52,929.09	3,603.14	3,733.98
ř	<b>\$</b>	Ŷ	❖
Outside Repair Cost Total Repair Cost	40,565.06 \$	ı	ı
5	₩.	<b>↔</b>	Ş
Local Repair Cost	11,911.44 \$	3,418.24 \$	3,631.62 \$
Loc	\$	\$	Ş
PM Repairs	452.59 \$	184.90 \$	102.36 \$
Mileage	133,456 \$	218,283 \$	168,539 \$
EMS Unit Number	334 International-2010	326 Chevy-2004	325 Chevy-2004

Unit 325 computer docking station will not charge computer, replacement cost \$1,200.

Unit 325 currently is not wired to support the new Cardiac Monitors, thus burning up inverters at a cost of \$1,332 each. Unit 325 currently has no A/C -Heating Unit in the rear - Replacement Cost between \$8,000-\$10,000

Unit 326 currently is not wired to support the new Cardiac Monitors, thus burning up inverters at a cost of \$1,332 each. Unit 326 compter docking station will not charge computer, replacement cost \$1,200

Unit 326 has no narcotics secure storage, cost unknown

Unit 334 has major motor issues that causes it to smoke and no one can seem to fix, major cost to repair.



# Lancaster County Emergency Medical Services

Post Office Box 1809 Lancaster, SC 29721 803-283-4134 (Phone) 803-283-2092 (Fax)

Lancaster County EMS along with Lancaster County Vehicle Fleet Maintenance are pursing the idea of selling several current EMS units due to high cost of repairs and continuous mechanical issues. These units are older units with high mileage and will need replacement within the next 2-3 years.

Notification was made on September 10, 2015 to Lancaster EMS by SC DHEC that SC DHEC EMS Ambulance Building Standards (SPEC's) will change on July 1, 2017. Current building standards are Triple K which will be replace by NFPA 1917 or the Triple K version 7/; which standard is yet to be determined. However, each version has a national recommended change in safety equipment that must be included on each new unit purchased after July 1, 2017 that will increase the cost of the units by \$30,000 - \$50,000 per unit.

In an attempt to "beat" the price increase and to help cut down on current repair cost. We are proposing the sale of current units with major repair issues. The funds profited we ask to be allowed to be put toward the purchase of an additional unit or units. If enough funds are not made to purchase additional units, then the budgeting process for the 2016-2017 budget will be used to offset the difference.

To make budgeting simple, I propose selling these units between now and the end of the current calendar year (2015). Therefore, we will know just how much money was made as we begin to look at the 2016/2017 unit purchases. The money profited would only be used toward a replacement unit and would hopefully allow us to purchase three units in the next budget, which will beat the new upcoming changes implementation date. Two units would be budgeted as currently and the additional unit would come for the profit of the sell plus ( if needed ) additional funding as council deems appropriate.

I have included in your package a breakdown of all our units and their current mileages. As you can see we have several that at pushing high mileage (200,000) and will need to be replaced in the upcoming years. Purchasing more new ones now at the current cost allows us to keep current high mileage units from running many calls, thus extending their life cycle and ultimately saving money.

If I can provide any further information or be of any further assistance, please let me know.

S/	Clay Catoe
	Clay Catoe, Director



# Agenda Item Summary

Ordinance # / Resolution#:

Discussion/Action Item

Contact Person / Sponsor:

Steve Willis

Department:

Administration

Date Requested to be on Agenda:

Administration Committee – September 17, 2015

County Council - September 28, 2015

### **Issue for Consideration:**

Potential residency requirement for some department heads.

### **Points to Consider:**

Council must determine if it desires to impose such a requirement as part of the Personnel Policy.

The change would be prospective in nature and current department heads that do not live in Lancaster County would be exempted.

### **Draft of Policy Statement:**

### **Residency Requirement**

Those department heads subject to the County Administrators control, pursuant to Title 9 of Chapter 4 of the South Carolina Code of Laws shall reside within the county limits of Lancaster County, unless such requirement is waived by the Administrator due to hardship. When necessary, the employee shall be granted a period not to exceed twelve (12) months to move. This section shall not apply to those department heads employed prior to January 1, 2016.

### **Funding and Liability Factors:**

N/A

# **Council Options:**

Direct preparation of necessary documents to modify the Personnel Policy or remove this from the 2016 Project List.

### **Staff Recommendation:**

If the desire is to insure a prompt emergency response then I need to point out a drive time requirement would be better. A person living in Fort Lawn or Catawba could respond more rapidly than a resident of Charlesboro or Three C's. If this is a policy desire to insure senior management has a vested interest then this is a valid concern. I do need to note this does not apply to all department heads per state law.

### **Committee Recommendation:**

To be determined.