

the County which would constitute a project within the meaning of the Act and which are eligible for inclusion as economic development property, the cost of which is estimated to be approximately Twenty-One Million, Two Hundred Thousand Dollars (\$21,200,000.00) over five (5) years (the "Project");

(d) pursuant to Resolution No. 0857-R2014, adopted December 8, 2014, the Council approved an Inducement Resolution providing for, among other things, the agreement of the County to enter into a fee-in-lieu of tax incentive with the Sponsor and the provision of special source revenue credits;

(e) the Sponsor and Sponsor Affiliate have caused to be prepared and presented to the Council the form of the Fee Agreement by and among the County, the Sponsor and the Sponsor Affiliate (the "Fee Agreement"), which provides for fee-in-lieu of tax payments utilizing a six percent (6%) assessment ratio and fixed millage rate as of June 30, 2014 (which is understood to be 282.4 mills) for a period of thirty (30) years for the Project or each component thereof placed in service during the initial investment period and any investment period extension to which the County, the Sponsor and the Sponsor Affiliate agree, and for special source revenue credits equal to fifty percent (50%) of the fee-in-lieu of tax payments for years one (1) through five (5) and twenty-five percent (25%) of the fee-in-lieu of tax payments for years six (6) through ten (10); and

(f) it appears that the Fee Agreement, which is attached to this ordinance, is in appropriate form and is an appropriate instrument to be executed and delivered by the County for the purposes intended.

Section 2. Approval of Fee Agreement.

Subject to the provisions of Section 5 of this ordinance, and, in order to promote industry, develop trade, and utilize and employ the manpower, products, and natural resources of the State by assisting the Sponsor and Sponsor Affiliate to expand or locate an industrial facility in the State, the Fee Agreement is hereby authorized, ratified, and approved.

Section 3. Statutory Findings.

Council makes the following additional findings:

(a) The 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 Project and the payments in lieu of taxes set forth herein are beneficial to the County, and the County has evaluated the Project based upon all criteria prescribed by law, including the anticipated dollar amount and nature of the investment to be made.

(c) 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.

(d) The 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 Project, *i.e.*, economic development and addition to the tax base of the County, are proper governmental and public purposes.

(f) The inducement of the location or expansion of the Project within the County and State is of paramount importance.

(g) The benefits of the Project to the public will be greater than the costs to the public.

Section 4. Cost-Benefit Findings.

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

(a) The benefits of providing the incentives arrangement set forth in the Fee Agreement include: (i) investment in personal property and certain real estate improvements of at least \$21,200,000; (ii) construction benefit of \$2,857,200; (iii) facility operation benefit of \$24,265,284; (iv) employee benefit of \$68,945; and (v) visitor benefit of \$0. The total benefit is estimated at \$27,191,429;

(b) The cost of providing the incentives arrangement is estimated at: (i) development costs of \$0; (ii) operational costs of \$1,398,606; and (iii) employee costs of \$323,685. The total cost is estimated at \$1,722,291.

(c) The benefit to cost ratio in year one is estimated at \$15.79:1 and after year one at \$14.13:1.

(d) The value of the FILOT incentive to the Sponsor and the Sponsor Affiliate is estimated at \$2,050,716 and the special source revenue credits at \$1,398,606.

(e) Over a five-year period, a total of 672 new, full-time jobs will be created with an average annual wage of \$56,472..

Section 5. Approval and Execution of Fee Agreement.

The form, terms, and provisions of the Fee Agreement, attached hereto as Exhibit A, are approved, and all of the terms, provisions, and conditions thereof are incorporated herein by reference as if the Fee Agreement was set out in this ordinance in its entirety. The Council Chair and Council Secretary are authorized, empowered, and directed to execute and acknowledge the Fee Agreement in the name of and on behalf of the County, and thereupon to cause the Fee Agreement to be delivered to the Sponsor and the Sponsor Affiliate. The Fee Agreement is to be in substantially the form as attached to this ordinance 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 Fee Agreement attached to this ordinance.

Section 6. 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 Fee Agreement. 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 by the County after distribution to other taxing entities in the most recently completed tax year.

Section 7. 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 Fee Agreement and the performance of all obligations of the County under and pursuant to the Fee Agreement.

Section 8. Severability.

If any section, subsection or clause of this ordinance is held to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected.

Section 9. Controlling Provisions.

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

Section 10. Effective Date.


This ordinance is effective upon third reading.

AND IT IS SO ORDAINED, this 23rd day of November, 2015.

LANCASTER COUNTY, SOUTH CAROLINA



Bob Bundy, Chair, County Council



Steve Harper, Secretary, County Council

ATTEST:



Debbie C. Hardin, Clerk to Council

First Reading: October 26, 2015
Second Reading: November 9, 2015
Public Hearing: November 23, 2015
Third Reading: November 23, 2015

Exhibit A to Ordinance No. 2015-1379

**Fee Agreement
Lancaster County, Movement Mortgage, LLC and TKC CCII, LLC**

See attached.

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FEE AGREEMENT

by and among

LANCASTER COUNTY, SOUTH CAROLINA,

MOVEMENT MORTGAGE, LLC, as Sponsor

and

TKC CCII, LLC, as Sponsor Affiliate

Dated as of November 30, 2015

FEE AGREEMENT

This FEE AGREEMENT is dated as of _____, 2015, by and among LANCASTER COUNTY, SOUTH CAROLINA, a body politic and corporate and a political subdivision of the State of South Carolina (the "County"), MOVEMENT MORTGAGE, LLC, a Delaware limited liability company, or affiliated or related entities (the "Sponsor") and TKC CCII, LLC, a North Carolina limited liability company, or affiliated or related entities (the "Sponsor Affiliate" and together with the Sponsor referred to herein as the "Company").

WITNESSETH:

WHEREAS, the County, acting by and through its County Council (the "Council"), is authorized and empowered under and pursuant to the provisions of Title 12, Chapter 44 (the "Act") of the Code of Laws of South Carolina 1976, as amended (the "Code") and Sections 4-1-170, 4-1-172, and 4-1-175 of the Code and Article VIII, Section 13(D) of the South Carolina Constitution (the "Multi-County Park Act"): (i) to enter into agreements with certain investors to construct, operate, maintain, and improve certain industrial and commercial properties through which the economic development of the State of South Carolina will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State of South Carolina and thus utilize and employ the workers, agricultural products, and natural resources of the State; (ii) to covenant with such investors to accept certain payments in lieu of *ad valorem* taxes with respect to the project (a "FILOT"); and (iii) to maintain, create or expand, in conjunction with one or more other counties, a multi-county industrial park in order to afford certain enhanced income tax credits to such investors; and

WHEREAS, the Sponsor proposes to make new taxable investments in the County (the "Project"); and

WHEREAS, the Sponsor Affiliate owns the property where the Project will be located and improvements made thereon and thereto; and

WHEREAS, the Sponsor anticipates that the Project will result in the creation of approximately 672 new, full time jobs and, and the Company anticipates that the Project will result in an investment of approximately \$21,200,000 in the County; and

WHEREAS, as a result of the Sponsor making new and taxable investments in the County, the Sponsor and Sponsor Affiliate requested that the County enter into this Fee Agreement with the Sponsor and Sponsor Affiliate pursuant to the Act, and the Sponsor and Sponsor Affiliate elect to enter into such FILOT arrangement with the County in an effort to encompass the terms surrounding the Project and allowing the Sponsor to make FILOT payments pursuant to the Act; and

WHEREAS, the Project constitutes Economic Development Property within the meaning of the Act; and

WHEREAS, for the purposes set forth above, the County has determined that it is in the best interests of the County to enter into this Fee Agreement with the Sponsor and Sponsor Affiliate, subject to the terms and conditions herein set forth.

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained, and the sum of \$1.00 in hand, duly paid by the Sponsor and Sponsor Affiliate to the County, the receipt and sufficiency of which are hereby acknowledged, the County and the Sponsor and Sponsor Affiliate agree as follows:

ARTICLE I

DEFINITIONS AND RECAPITULATION

Section 1.01. Statutorily Required Recapitulation; Summary Agreement.

(a) Pursuant to Section 12-44-55(B) of the Act, the County and the Sponsor and Sponsor Affiliate agree to waive the recapitulation requirements of Section 12-44-55 of the Act. Subsection (b) of this section is inserted for convenience only and does not constitute a part of this Agreement or a summary compliant with Section 12-44-55 of the Act.

(b) Summary of Agreement.

1. Legal name of each initial party to this Agreement:
Movement Mortgage, LLC, a Delaware corporation, or its affiliated or related entities (Sponsor) and TKC CCII, LLC, a North Carolina limited liability company, its affiliated or related entities (Sponsor Affiliate) and Lancaster County, South Carolina
2. County and street address of the Project and property to be subject to this Agreement:

8024 Calvin Hall Road, Indian Land, South Carolina, 29707, Lancaster County
3. Minimum investment agreed upon:
\$21,200,000.00
4. Length and term of this Agreement:
30 years for each annual increment of investment in the Project during the Investment Period.
5. Assessment ratio applicable for each year of this Agreement:
6%
6. Millage rate applicable for each year of this Agreement:
Every year of the term: 282.4 mills, the millage rate applicable as of June 30, 2014

7. Schedule showing the amount of the fee and its calculation for each year of this Agreement:
Waived by the County and the Sponsor and Sponsor Affiliate
8. Schedule showing the amount to be distributed annually to each of the affected taxing entities:
Waived by the County and the Sponsor and Sponsor Affiliate
9. Statements
 - (a) The Project is to be located in a multi-county park;
 - (b) Disposal of property, subject to Payments-in-Lieu-of-Taxes is allowed;
 - (c) Special Source Revenue Credits shall be given to the qualifying property in amounts equal to 50% for years 1 – 5, and 25% for years 6 – 10.
 - (d) Payment will not be modified using a net present value calculation; and
 - (e) Replacement property provisions will apply.
10. Any other feature or aspect of this Agreement which may affect the calculation of items (7) and (8) of this summary.
Waived by the County and the Sponsor and Sponsor Affiliate
11. Description of the effect upon the schedules required by items (7) and (8) of this summary of any feature covered by items (9) and (10) not reflected in the schedules for items (7) and (8)
Waived by the County and the Sponsor and Sponsor Affiliate
12. Which party or parties to this Agreement are responsible for updating any information contained in this summary:
Waived by the County and the Sponsor and Sponsor Affiliate

Section 1.02. 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.

“Act” or “Simplified FILOT Act” shall mean Title 12, Chapter 44 of the Code, as amended through the date hereof.

“Administration Expense” shall mean the reasonable and necessary out-of-pocket expenses, including attorneys’ fees, incurred by the County with respect to: (i) the preparation, review, approval and execution of this Fee Agreement, (ii) the preparation, review, approval and execution of other documents related to the Fee Agreement and any multi-county park documents; and (iii) the fulfillment of its obligations under this Fee Agreement and any multi-county park documents, and in the implementation and administration of the terms and provisions of the documents after the date of execution thereof.

“Agreement” shall mean this Fee Agreement by and among the County and the Sponsor and Sponsor Affiliate, as originally executed and from time to time supplemented or amended as permitted herein or by the Act, and dated as of _____, 2015.

“Code” shall mean the Code of Laws of South Carolina 1976, as amended through the date hereof, unless the context clearly requires otherwise.

“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.

“Department of Revenue” shall mean the South Carolina Department of Revenue.

“Economic Development Property” shall mean each item of real and tangible personal property comprising the Project, except (if applicable) Non-Qualifying Property, within the meaning of that term as defined and used in Sections 12-44-30(6) and 12-44-40(C) of the Code.

“Equipment” shall mean all machinery, equipment, furnishings, and other personal property acquired by the Sponsor or Sponsor Affiliate and installed as part of the Project during the Investment Period in accordance with this Agreement.

“Event of Default” shall mean an Event of Default of the Sponsor as defined in Section 11.01 hereof.

“Existing Property” shall mean property proscribed from becoming Economic Development Property pursuant to Section 12-44-110 of the Code, including, without limitation, property which has been subject to *ad valorem* taxes in the State prior to the execution and delivery of this Agreement and property included in the Project as part of the repair, alteration, or modification of such previously taxed property; provided, however, that Existing Property shall not include: (a) property acquired or constructed by the Sponsor or Sponsor Affiliate during the Investment Period which has not been placed in service in this State prior to the Investment Period notwithstanding that *ad valorem* taxes have heretofore been paid with respect to such property; or (b) modifications which constitute an expansion of Existing Property.

“FILOT” shall mean the fee-in-lieu of taxes, which the Sponsor is obligated to pay to the County pursuant to Section 5.01 hereof.

“FILOT Payments” shall mean the payments to be made by the Sponsor pursuant to Section 5.01 hereof.

“FILOT Revenues” shall mean the revenues received by the County from the Sponsor’s payment of the FILOT.

“Investment Period” shall mean the period beginning with the first day that the Sponsor or Sponsor Affiliate purchased or purchases Economic Development Property and ending on the date that is five years from the end of the property tax year in which this Agreement is executed

by the Sponsor and Sponsor Affiliate and the County, unless extended by agreement of the County and the Sponsor and Sponsor Affiliate pursuant to Section 12-44-30(13) of the Code.

“Indemnified Party” shall mean the County, including the members of the governing body of the County, and the employees, officers, attorneys and agents of the County.

“Land” shall mean the real estate upon which the Project is to be located, as described in Exhibit A attached hereto, as Exhibit A may be supplemented from time to time in accordance with the provisions hereof.

“Multi-County Park” shall mean the multi-county park established pursuant to the Agreement for the Development of a Joint Industrial and Business Park (Lancaster and Chester Counties), dated December 5, 2005, and authorized and approved by Lancaster County Ordinance No. 701 and Chester County Ordinance No. 12-05-05-I, as amended by the party counties (the “Multi-County Park Agreement”), and any successor multi-county park arrangement in which the Land is included.

“Multi-County Park Act” shall mean Sections 4-1-170, 4-1-172, and 4-1-175 of the Code and Article VIII, Section 13(D) of the South Carolina Constitution, as amended through the date hereof.

“Negotiated FILOT Payment” shall mean the FILOT due pursuant to Section 5.01(b) hereof with respect to that portion of the Project consisting of Economic Development Property.

“Non-Qualifying Property” shall mean (if applicable) that portion of the Project consisting of: (i) property as to which the Sponsor or Sponsor Affiliate incurred expenditures prior to the Investment Period or, except as to Replacement Property, after the end of the Investment Period; (ii) Existing Property; and (iii) any Released Property or other property which fails or ceases to qualify for Negotiated FILOT Payments, including without limitation property as to which the Sponsor and Sponsor Affiliate have terminated the Negotiated FILOT pursuant to Section 4.03(a)(iii) hereof. The Sponsor and Sponsor Affiliate agree that the real estate improvements on the Land as of the date of this Agreement shall constitute Non-Qualifying Property for purposes of this Agreement.

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

“Project” shall mean, collectively herein, the Project, and shall include the buildings and other improvements on the Land to the extent placed thereon by the Sponsor or Sponsor Affiliate including water, sewer treatment and disposal facilities, and other machinery, apparatus, equipment, office facilities, and furnishings which are necessary, suitable, or useful, including the Equipment; and any Replacement Property.

“Project Commitments” shall mean the investment and job commitments of the Sponsor with respect to the Project as set forth in Section 2.02(d) of this Agreement.

“Released Property” shall mean any portion of the Project removed, scrapped, traded in, sold, or otherwise disposed of pursuant to Section 4.03 hereof, any portion of the Project stolen, damaged, destroyed, or taken by condemnation or eminent domain proceedings as described in Article VII hereof, and any infrastructure which the Sponsor and Sponsor Affiliate dedicate to the public use (within the meaning of that phrase as used in Section 12-6-3420(C) of the Code).

“Replacement Property” shall mean all property installed in or on the Land in substitution of, or as replacement for, any portion of the Project, but only to the extent that such property may be included in the calculation of the Negotiated FILOT pursuant to Section 5.01(g) hereof and Section 12-44-60 of the Code.

“Simplified FILOT Act” shall mean Title 12, Chapter 44 of the Code, as amended through the date hereof.

“Special Source Revenue Credits” shall mean the Special Source Revenue Credits described in Section 5.01 hereof.

“Sponsor” shall mean Movement Mortgage, LLC, a Delaware limited liability company and any surviving, resulting, or transferee entity in any merger, consolidation, or transfer of assets permitted under section 8.02 or Article IX hereof; or any assignee hereunder which is designated by the Sponsor and approved or ratified by the County. Except as required by law, the County’s subsequent approval or ratification of an assignee hereunder shall not be required if the subsequent Assignee is Sponsor or Sponsor Affiliate.

“Sponsor Affiliate” shall mean TKC CCII, LLC, a North Carolina limited liability company, or affiliated or related entities as qualified under Section 12-44-30(20) of the Code; provided, however, that such affiliate or related entity must be approved by the County as a sponsor affiliate and must agree in writing to be bound by this Agreement.

“State” shall mean the State of South Carolina.

“Streamlined FILOT Act” shall mean Title 4, Chapter 12 of the Code, as amended through the date hereof.

“Term” shall mean the term of this Agreement, as set forth in Section 10.01 hereof.

“Transfer Provisions” shall mean the provisions of Section 12-44-120 of the Code, as amended through the date hereof.

Section 1.03. References to Agreement. The words “hereof,” “herein,” “hereunder” and other words of similar import refer to this Agreement as a whole.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.01. Representations and Warranties by County. The County represents and warrants that: (i) it is a body politic and corporate and a political subdivision of the State; (ii) it is authorized by the Act to enter into this Agreement; (iii) it has approved this Agreement in accordance with the procedural requirements of the Act and any other applicable state law; and (iv) it has authorized its officials to execute and deliver this Fee Agreement.

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

(a) Movement Mortgage, LLC is a limited liability company, validly existing and in good standing under the laws of the State of Delaware and authorized to do business in the State; has all requisite power to enter into this Agreement; and by proper action has been duly authorized to execute and deliver this Agreement.

(b) The agreements with the County with respect to the FILOT have been instrumental in inducing the Sponsor to locate the Project within Lancaster County and the State.

(c) Except as otherwise disclosed to the County, no actions, suits, proceedings, inquiries, or investigations known to the undersigned representatives of the Sponsor are pending or threatened against or affecting the Sponsor in any court or before any governmental authority or arbitration board or tribunal, which could materially adversely affect the transactions contemplated by this Agreement or which could, in any way, adversely affect the validity or enforceability of this Agreement.

(d) For the Project, and together with the Sponsor Affiliate, the Sponsor anticipates a total investment of approximately Twenty-One Million, Two Hundred Thousand Dollars (\$21,200,000.00) in land, buildings, and personal property, including machinery and equipment, at the Project by the end of the Investment Period, and the Sponsor anticipates the creation of 672 new, full time jobs by the end of the Investment Period. The investment amount shall not include any amount paid by the Sponsor or Sponsor Affiliate for real estate improvements on the land existing as of the date of this Agreement.

(e) The income tax year of the Sponsor, and accordingly the property tax year, for federal income tax purposes is _____.

(f) No event has occurred and no condition currently exists with respect to the Sponsor, which would constitute a default or an "Event of Default" as defined herein.

(g) The Sponsor intends, with the Project, to make new, taxable investments in the County, and the Project constitutes a "project" and "economic development property" as provided under the Act.

Section 2.03. Representations and Warranties by Sponsor Affiliate. The Sponsor Affiliate makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) TKC CCII, LLC is a limited liability company validly existing and in good standing under the laws of the State of North Carolina and authorized to do business in the State; has all requisite power to enter into this Agreement; and by proper action has been duly authorized to execute and deliver this Agreement.

(b) No actions, suits, proceedings, inquiries, or investigations known to the undersigned representatives of the Sponsor Affiliate are pending or threatened against or affecting the Sponsor Affiliate in any court or before any governmental authority or arbitration board or tribunal, which could materially adversely affect the transactions contemplated by this Agreement or which could, in any way, adversely affect the validity or enforceability of this Agreement.

ARTICLE III

UNDERTAKINGS OF THE COUNTY

Section 3.01. Agreement to Accept FILOT Payments. The County hereby agrees to accept FILOT Payments made by the Sponsor in accordance with Section 5.01 hereof in lieu of *ad valorem* taxes with respect to the Project until this Agreement expires or is sooner terminated.

Section 3.02. No Warranties by County. The Sponsor and Sponsor Affiliate acknowledge that the County has made no warranties or representations, either express or implied, as to the condition or state of the Project or as to the design or capabilities of the Project or that it will be suitable for the Sponsor's purposes or needs. No representation of the County is hereby made with regard to compliance by the Project or any Person with laws regulating: (i) the construction or acquisition of the Project; (ii) environmental matters pertaining to the Project; (iii) the offer or sale of any securities; or (iv) the marketability of title to any property.

Section 3.03. Multi-County Park Status. The County agrees to keep the Land in the Multi-County Park for the term of this Agreement, *provided, however*, the County may place the Land in another multi-county park established pursuant to the Multi-County Park Act so long as the Land is continuously included within the boundaries of a multi-county park established pursuant to the Multi-County Park Act.

Section 3.04. Execution of Lease. The parties acknowledge that the intent of this Agreement is to afford the Sponsor and Sponsor Affiliate the benefits of the Negotiated FILOT Payments in consideration of the Sponsor's decision to locate the Project within Lancaster County and that this Agreement has been entered into in reliance upon the enactment of the Simplified FILOT Act. In the event that a court of competent jurisdiction holds that the Simplified FILOT Act is unconstitutional or that this Agreement or agreements similar in nature to this Agreement are invalid or unenforceable in any material respect or should the parties

determine that there is a reasonable doubt as to the validity or enforceability of this Agreement in any material respect, then the County, upon the provision by the Sponsor and Sponsor Affiliate of evidence acceptable to the County that the Project is free from environmental contamination and the conveyance of title to the Project to the County at the expense of the Sponsor and Sponsor Affiliate, agrees to lease the Project to the Sponsor and Sponsor Affiliate pursuant to the Streamlined FILOT Act and, to the extent permitted under the law in effect at such time, use its best efforts to ensure that the Sponsor and Sponsor Affiliate receive the benefits of the Negotiated FILOT as contemplated by this Agreement.

In addition to and notwithstanding the foregoing paragraph, the County shall not be obligated to perform any of its obligations or promises under this Section 3.04 unless the Sponsor and Sponsor Affiliate have otherwise complied with or provides satisfactory evidence to the County that they intend to comply with their obligations and responsibilities under this Agreement.

ARTICLE IV

INVESTMENT BY SPONSOR IN PROJECT; MAINTENANCE AND MODIFICATION OF PROJECT

Section 4.01. Investment by Sponsor in Project. For the Project, the Sponsor agrees, together with the Sponsor Affiliate, to cumulatively invest at least Twenty-One Million, Two Hundred Thousand Dollars (\$21,200,000.00) in land, buildings, and personal property, including machinery and equipment, at the Project by the end of the initial Investment Period (the “**Minimum Contractual Investment Requirement**”). Further, the Sponsor agrees to create 672 new, full time jobs by the last day of the Investment Period (“**Minimum Contractual Jobs Requirement**”). The investment amount shall not include any amount paid by the Sponsor or Sponsor Affiliate for real estate improvements on the Land existing as of the date of this Agreement.

Section 4.02. Reporting and Filing.

(a) The Sponsor and Sponsor Affiliate agree to provide a copy of Form PT-443 filed with the Department of Revenue to the County Auditor and the County Assessor of the County and any multi-county park partner county not later than 30 days after execution and delivery of this Agreement. Each year during the term of this Agreement, the Sponsor and Sponsor Affiliate shall deliver to the County, the County Auditor, the County Assessor, and the County Treasurer a copy of their most recent annual filings made with the Department of Revenue with respect to the Project, not later than thirty (30) days following delivery thereof to the Department of Revenue.

(b) (1) The Sponsor and Sponsor Affiliate agree to maintain such books and records with respect to the Project as will permit the identification of those portions of the Project placed in service in each property tax year during the Investment Period, the amount of investment with respect thereto and their computations of all FILOT Payments made hereunder

and will comply with all reporting requirements of the State and the County applicable to property subject to FILOT Payments under the Act, including the reports described in paragraph (a) (collectively, "Filings").

(2) The Sponsor and Sponsor Affiliate agrees that the County and its authorized agents have the right at all reasonable times and upon prior reasonable notice to enter upon and examine and inspect the Project and to have access to and examine and inspect all the of Sponsor's and Sponsor Affiliate's books and records pertaining to the Project and the Filings. The right of examination and inspection shall be exercised only upon reasonable and necessary terms and conditions prescribed by the Sponsor or Sponsor Affiliate to protect the Sponsor or Sponsor Affiliate's confidentiality and proprietary rights. Any such entrance upon and examination and inspection of the Project and Filings shall be at the County's expense.

(c) County acknowledges and understands that the Sponsor and Sponsor Affiliate may have and maintain at the Project certain confidential and proprietary information, including, but not limited to, trade secrets, financial, sales or other information concerning the Sponsor or Sponsor Affiliate's operations and processes ("Confidential Information") and that any disclosure of the Confidential Information could result in substantial harm to the Sponsor and Sponsor Affiliate and could have a significant detrimental impact on the Sponsor's and Sponsor Affiliate's employees and also upon the County. Except as required by law, including, without limitation, court orders, the County agrees to use its best reasonable efforts to keep confidential, and to cause employees, agents and representatives of the County to keep confidential, the Confidential Information which may be obtained from the Sponsor and Sponsor Affiliate, its agents or representatives, when the Confidential Information is clearly marked and identified as Confidential Information and known to the County to be Confidential Information. The County shall not knowingly and willfully disclose and shall cause all employees, agents and representatives of the County not to knowingly and willfully disclose the marked and identified Confidential Information to any person or entity other than in accordance with the terms of this Agreement. If a demand is made for the release, under color of law, to a third party of any Confidential Information, the County shall notify the Sponsor and Sponsor Affiliate and give the Sponsor and Sponsor Affiliate the opportunity to contest the release.

Section 4.03 Modification of Project.

(a) As long as no event of default exists hereunder, the Sponsor and Sponsor Affiliate shall have the right at any time and from time to time during the Term hereof to undertake any of the following:

(i) The Sponsor and Sponsor Affiliate may, at their own expense, add to the Project any real and personal property as the Sponsor and/or Sponsor Affiliate in their discretion deem useful or desirable.

(ii) In any instance where the Sponsor and Sponsor Affiliate in their discretion determine that any items included in the Project have become inadequate, obsolete, worn out, unsuitable, undesirable, or unnecessary for operations at the Project, the Sponsor and Sponsor Affiliate may remove such items or portions from the Project and sell, trade in,

exchange, or otherwise dispose of them (as a whole or in part) without the consent of the County; as such may be permitted under the Simplified FILOT Act.

(iii) The Sponsor and Sponsor Affiliate may, at any time in their discretion by written notice to the County, remove any real or personal property from the Negotiated FILOT (as defined in Section 5.01) set forth in this Agreement, and thereafter such property will be considered Non-Qualifying Property and will be subject to FILOT Payments as set forth in Section 5.01(b)(i)(1) hereof.

ARTICLE V

PAYMENTS IN LIEU OF TAXES

Section 5.01. Payments in Lieu of *Ad Valorem* Taxes.

(a) In accordance with the Act, the parties hereby agree that, during the Term of the Agreement, the Sponsor shall pay annually, with respect to the Project, a FILOT in the amount calculated as set forth in this Section, to be collected and enforced in accordance with Section 12-44-90 of the Act.

(b) The FILOT Payment due with respect to each property tax year shall equal:

(i) For the Project:

- (1) With respect to any portion of the Project consisting of Non-Qualifying Property, as long as such property is located in the Multi-County Park, a payment equal to the *ad valorem* taxes that would otherwise be due on such Non-Qualifying Property were it taxable giving effect to all credits, exemptions, rebates and abatement that would be available if such undeveloped land or Non-Qualifying Property were taxable; and
- (2) With respect to those portions of the Project consisting of Economic Development Property, for each of the thirty consecutive years following the year in which such portion of the Project is placed in service, a payment calculated each year as set forth in paragraphs (c) and (d) below (a "Negotiated FILOT"); less Special Source Revenue Credits given to the Economic Development Property as set forth in paragraph (d) below.

(c) The Negotiated FILOT Payments shall be calculated with respect to each property tax year based on: (1) the fair market value (determined in accordance with Section 12-44-50(A)(1)(c) of the Code) of the improvements to real property and Equipment included within the Project theretofore placed in service (less, for Equipment, depreciation allowable for property tax purposes as provided in Section 12-44-50(A)(1)(c) of the Code), (2) a fixed millage rate of 282.4 for the entire term of this Agreement, and (3) an assessment ratio of six percent (6%). All such calculations shall take into account all deductions for depreciation or diminution in value allowed by the Code or by the tax laws generally, as well as tax exemptions which would have

been applicable if such property were subject to *ad valorem* taxes, except the exemption allowed pursuant to Section 3(g) of Article X of the Constitution of the State of South Carolina and the exemptions allowed pursuant to Sections 12-37-220(B)(32) and (34) of the Code.

(d) Special Source Revenue Credits shall be given to the Economic Development Property in amounts equal to 50% for years 1 – 5, and 25% for years 6-10.

(e) The FILOT payments are to be recalculated:

(i) to reduce such payments in the event the Sponsor and Sponsor Affiliate dispose of any part of the Project within the meaning of Section 12-44-50(B) of the Code and as provided in Section 4.03 hereof, by the amount applicable to the Released Property;

(ii) to increase such payments in the event the Sponsor and Sponsor Affiliate add property (other than Replacement Property) to the Project; or

(iii) to adjust such payments if the Sponsor and Sponsor Affiliate elect to convert any portion of the Project from the Negotiated FILOT to the FILOT required by Section 5.01(b)(i)(1) above, as permitted by Section 4.03(a)(iii).

(f) To the extent permitted by law, because the FILOT Payments agreed to herein are intended to be paid by the Sponsor to the County in lieu of taxes, it is agreed that said FILOT Payments shall not, as to any year, be in any amount greater than what would otherwise be payable by the Sponsor and Sponsor Affiliate to the County in property taxes if the Sponsor and Sponsor Affiliate had not entered into a fee-in-lieu of taxes arrangement with the County (except it is not intended that said FILOT Payments would necessarily be less than such property taxes to the extent that the constitutional abatement of property taxes would otherwise apply).

(g) Upon the Sponsor and Sponsor Affiliate's installation of any Replacement Property for any portion of the Project removed under Section 4.03 hereof and sold, scrapped, or disposed of by the Sponsor and Sponsor Affiliate, such Replacement Property shall become subject to Negotiated FILOT Payments to the fullest extent allowed by law, subject to the following rules:

(i) Replacement Property does not have to serve the same function as Economic Development Property it is replacing. Replacement Property is deemed to replace the oldest property subject to the FILOT, whether real or personal, which is disposed of in the same property tax year as the Replacement Property is placed in service. Replacement Property qualifies for Negotiated FILOT Payments up to the original income tax basis of Economic Development Property which it is replacing. More than one piece of property can replace a single piece of property. To the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the Economic Development Property which it is replacing, the excess amount is subject to payments equal to the *ad valorem* taxes which would have been paid on such property but for this Agreement. Replacement property is entitled to the FILOT payment for the period of time remaining on the thirty-year FILOT period for the property which it is replacing.

(ii) The new Replacement Property which qualifies for the Negotiated FILOT payment shall be recorded using its income tax basis, and the Negotiated FILOT Payment shall be calculated using the millage rate and assessment ratio provided on the original property subject to FILOT payment.

(h) In the event that the Act or the FILOT or any portion thereof, are declared, by a court of competent jurisdiction following allowable appeals, invalid or unenforceable, in whole or in part, for any reason, the Sponsor, Sponsor Affiliate and the County express their intentions that such payments be reformed so as to afford the Sponsor and Sponsor Affiliate the maximum benefit then permitted by law, including, without limitation, the benefits afforded under Section 12-44-50 of the Code and, specifically, that the Sponsor and Sponsor Affiliate may, at the Sponsor and Sponsor Affiliate's expense, exercise the rights granted by Section 12-44-160 of the Code. If the Project is deemed not to be eligible for a Negotiated FILOT pursuant to the Act in whole or in part, the Sponsor, Sponsor Affiliate and the County agree that the Sponsor and Sponsor Affiliate shall pay an alternate fee-in-lieu of tax calculated in the manner set forth in Section 5.01(b)(i)(1) hereof. In such event, the Sponsor and Sponsor Affiliate shall be entitled, to the extent permitted by law: (1) to enjoy the five-year exemption from *ad valorem* taxes (or fees in lieu of taxes) provided by Section 3(g) of Article X of the Constitution of the State of South Carolina, and any other exemption allowed by law; and (2) to enjoy all allowable depreciation. The Sponsor and Sponsor Affiliate agree that if the FILOT Payments or this Agreement is reformed pursuant to this subsection (h), that under no circumstance shall the County be required to refund or pay any monies to the Sponsor or Sponsor Affiliate.

(i) For the Project, in the event that the investment in the Project in land, buildings, and personal property, including machinery and equipment, by the Sponsor and Sponsor Affiliate does not exceed Two Million Five Hundred Thousand Dollars (\$2,500,000.00) by the end of the applicable Investment Period ("**Act Minimum Investment Requirement**"), the Negotiated FILOT Payments will revert retroactively to payments equivalent to what the *ad valorem* taxes would have been with respect to the property absent this Agreement, taking into account exemptions and/or abatements from property taxes that would have been available to the Sponsor and Sponsor Affiliate, including but not limited to any exemption and/or abatement provided pursuant to Section 12-37-220(A)(7) of the Code, less the total amount of Negotiated FILOT Payments actually made by the Sponsor and Sponsor Affiliate. No other penalty shall be asserted against the Sponsor and Sponsor Affiliate, except to the extent required by South Carolina law. The Sponsor and Sponsor Affiliate agree, if the Negotiated FILOT Payments revert to payments equivalent to what the *ad valorem* taxes would be pursuant to this subsection (i), that under no circumstance shall the County be required to refund or pay any monies to the Sponsor or Sponsor Affiliate.

Section 5.02. Clawbacks.

(a) (1) If the Company satisfies the Act Minimum Investment Requirement but does not satisfy either the Minimum Contractual Investment Requirement or the Minimum Contractual Jobs Requirement (note that the Sponsor is responsible for the Minimum Contractual Jobs Requirement and not the Sponsor Affiliate, and therefore if the Minimum Contractual Jobs Requirement is not met but the investment requirements are met, the Sponsor shall be responsible for any resulting clawbacks for failure to meet the Minimum Contractual Jobs

Requirement, if any), or both, the Company shall be required to repay to the County a portion of the Special Source Revenue Credits received and the repayment amount shall be calculated as follows:

Repayment Amount = Total Amount of Special Source Revenue Credits Received minus [dollar amount of Special Source Revenue Credits received times Clawback Achievement Percentage]

Clawback Achievement Percentage = [(Maximum Investment Achieved During Investment Period / \$21,200,000) + (Maximum Number of Jobs Meeting Minimum Contractual Jobs Requirement / 672)] ÷ 2. *Provided, however,* that neither of the two computations may be more than one hundred percent (100%).

For example, and by way of example only, if the Company satisfied the Act Minimum Investment Requirement during the Investment Period, created 700 jobs meeting the Minimum Contractual Jobs Requirement but only achieved a maximum investment of \$20,000,000, and if the Company had received \$500,000 in Special Source Revenue Credits, the Repayment Amount would be \$14,151, calculated as follows:

Clawback Achievement Percentage = (\$20,000,000 / \$21,200,000) + (700/ 675) ÷ 2 = (94.33962% + 100%) ÷ 2 = 194.33962 ÷ 2 = 97.16981%

Repayment Amount = \$500,000 - (\$500,000 x 97.16981%) = \$500,000 - \$485,849 = \$14,151.

(2) If the Sponsor and Sponsor Affiliate are required to make a repayment to the County pursuant to subsection (a)(1) of this section, then the Sponsor and Sponsor Affiliate are not eligible for any Special Source Revenue Credits after the end of the Investment Period.

(3) In the event that both the Minimum Contractual Investment Requirement and the Minimum Contractual Jobs Requirement are satisfied by the end of the Investment Period, but following the Investment Period, investment in the Project, without regard to depreciation or other diminution in value, falls below the investment level set forth in the Minimum Contractual Investment Requirement or the number of new, full-time jobs falls below that set forth in the Minimum Contractual Jobs Requirement, then the Sponsor and Sponsor Affiliate agree that the Sponsor and Sponsor Affiliate forfeit the Special Source Revenue Credit for the year in which either the Minimum Contractual Investment Requirement or the Minimum Contractual Jobs Requirement, or both, is not maintained. On or before May 31 of the year following the end of the Investment Period, and for each year thereafter that the Sponsor and Sponsor Affiliate would be eligible for a Special Source Revenue Credit, the Sponsor and Sponsor Affiliate shall certify to the County Auditor that the Company has complied with the Minimum Contractual Investment Requirement and Minimum Contractual Jobs Requirement, and, to the extent that the credit would apply to a year after the end of the Investment Period, that the Sponsor and Sponsor Affiliate have maintained the Minimum Contractual Investment Requirement and Minimum Contractual Jobs Requirement. If the certification is not made or is received after May 31 of the applicable year, then the Sponsor and Sponsor Affiliate agree that the Special Source Revenue Credit is forfeited for the then applicable year.

(b) Notwithstanding any other provision of this Fee Agreement, the Sponsor and Sponsor Affiliate acknowledges and agrees that County's obligation to provide the FILOT incentive and the Special Source Revenue Credits ends, and this Fee Agreement is terminated, if the Sponsor ceases operations. For purposes of this Section 5.02(b), "**ceases operations**" means closure of the facility. The provisions of Section 5.02(a) relating to clawback apply if this Fee Agreement is terminated in accordance with this subsection prior to the end of the Investment Period and before the Company has achieved the Minimum Contractual Investment Requirement and Minimum Contractual Jobs Requirement. The Sponsor and Sponsor Affiliate agree that if this Agreement is terminated pursuant to this section, that under no circumstance shall the County be required to refund or pay any monies to the Sponsor and Sponsor Affiliate.

ARTICLE VI

PAYMENT OF EXPENSES BY SPONSOR

Section 6.01. Defaulted Payments. In the event the Sponsor should fail to make any of the payments required under this Agreement, the item or installment so in default shall continue as an obligation of the Sponsor until the amount in default shall have been fully paid. If any such default relates to its obligations to make FILOT Payments hereunder, the Sponsor agrees to pay the same with interest as provided in Section 12-44-90 of the Code.

ARTICLE VII

CASUALTY AND CONDEMNATION

Section 7.01. Adjustments in the Event of Damage and Destruction or Condemnation. In the event that the Project or any portion thereof is damaged or destroyed, lost or stolen, or the subject of condemnation proceedings, the Sponsor and Sponsor Affiliate, in their sole discretion, may determine whether or not to repair or replace the same. The parties hereto agree that if the Sponsor and Sponsor Affiliate decide not to repair or replace all or any portion of the Project pursuant to this Section, the FILOT required pursuant to Section 5.01 hereof shall be abated in the same manner and in the same proportion as if *ad valorem* taxes were payable with respect to the Project.

ARTICLE VIII

PARTICULAR COVENANTS AND AGREEMENTS

Section 8.01. Use of Project for Lawful Activities. During the Term of this Agreement, the Sponsor and Sponsor Affiliate shall use the Project for any lawful purpose authorized pursuant to the Act.

Section 8.02. Assignment. The County agrees that, to the maximum extent allowable under the Act (or any amendments thereto), the Sponsor and/or Sponsor Affiliate may assign (including, without limitation, absolute, collateral, and other assignments) all or a part of its rights or obligations under this Agreement, and any lease agreement, lease purchase agreement, or fee agreement, as the case may be, or any other agreement related hereto or thereto, or transfer any and all assets of the Sponsor and/or Sponsor Affiliate, to one or more

Related Entities (as defined in Section 9.01 below) without adversely affecting the benefits of the Sponsor and/or Sponsor Affiliate or their assignees pursuant to any such agreement or the Act. The County agrees that, to the extent permitted by law, the investments in the Project by any Affiliate related to the Sponsor and/or Sponsor Affiliate (except that the investment set for in Section 4.01 hereof must be met in accordance with the terms therein) shall be considered as an investment by the Sponsor and/or Sponsor Affiliate in the Project. The Sponsor and/or Sponsor Affiliate shall provide the County and the Department of Revenue with notice of any such assignment, transfer, or investment in accordance with the Act, and the County agrees, upon the request of the Sponsor and/or Sponsor Affiliate, to take all further action necessary to implement such assignment, transfer, or investment in accordance with the provisions of the Act. To the extent that the Act may require the consent, approval or ratification of or by the County for the assignment of this Agreement, in whole or in part, the County agrees to not unreasonably withhold its consent, approval or ratification.

Section 8.03. Indemnification of the County. The Sponsor and Sponsor Affiliate release the County, including the members of the governing body of the County, and the employees, officers, attorneys and agents of the County (herein collectively referred to as the "Indemnified Parties" and each an "Indemnified Party") from, agrees that the Indemnified Parties shall not be liable for, and agrees to hold the Indemnified Parties harmless against, any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to this Agreement, the Project or the use thereof, except for that occasioned by grossly negligent or intentional acts of an Indemnified Party. The Sponsor and Sponsor Affiliate further agree to indemnify and save harmless Indemnified Parties against and from any and all costs, liabilities, expenses, and claims arising from any breach or default on the part of the Sponsor and Sponsor Affiliate in the performance of any covenant or agreement on the part of the Sponsor and Sponsor Affiliate to be performed pursuant to the terms of this Agreement or arising from any act or negligence of, or negligent failure to act where there is a duty to do so by, the Sponsor and Sponsor Affiliate, or any of their agents, attorneys, contractors, servants, employees, or licensees, and from and against all cost, liability, and expenses incurred in or in connection with any such claim or action or proceeding brought thereon.

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, attorney, servant, or employee of the County in his or her 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, attorney, agent, servant, or employee of the County.

Notwithstanding the fact that it is the intention of the Indemnified Parties hereto that none of them shall incur any pecuniary liability by reason of the terms of this Agreement, any related agreements or the undertakings required of the County hereunder by reason of the performance of any act requested of the County by the Sponsor and Sponsor Affiliate, including all claims, liabilities, or losses arising in connection with the violation of any statutes or regulations pertaining to the foregoing, nevertheless, if any Indemnified Party shall incur any such pecuniary liability, then in such event the Sponsor and Sponsor Affiliate shall indemnify and hold them

harmless against all claims by or on behalf of any Person, firm, or corporation or other legal entity 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 provided, however, that nothing herein shall absolve the Indemnified Parties from, or entitle the Indemnified Parties to indemnification from, any obligation such Indemnified Party has specifically agreed to undertake (including, without limitation, the obligation to place and maintain the Land within a multi-county park). If any action, suit, or proceeding is brought against any Indemnified Party to which such Indemnified Party is entitled to indemnification, such Indemnified Party shall promptly notify the Sponsor and Sponsor Affiliate, and the Sponsor and Sponsor Affiliate shall have the sole right and duty to assume, and shall assume, the defense thereof, at its expense, with full power to litigate, compromise, or settle the same in their sole discretion; provided the Sponsor and Sponsor Affiliate shall obtain the prior written consent of the County to settle any such claim unless such claim is for monetary damages for which the Sponsor and Sponsor Affiliate have the ability to, and do, pay. Notwithstanding the foregoing, in the event the County reasonably believes there are defenses available to it that are not being pursued or that the counsel engaged by the Sponsor and Sponsor Affiliate reasonably determines that a conflict of interest exists between the County and the Sponsor and Sponsor Affiliate, the County may, in its sole discretion, hire independent counsel to pursue its own defense, and the Sponsor and Sponsor Affiliate shall be liable for the reasonable cost of such counsel.

The indemnity specified in this Section shall be in addition to any heretofore extended by the Sponsor and Sponsor Affiliate to any Indemnified Party and shall survive the termination of this Agreement with respect to liability arising out of any event or act occurring prior to such termination.

ARTICLE IX

FINANCING ARRANGEMENTS; CONVEYANCES; ASSIGNMENTS

Section 9.01. Conveyance of Liens and Interests; Assignment. The Sponsor and Sponsor Affiliate may at any time: (a) transfer all or any of its rights and interests hereunder or with respect to the Project to any Person; or (b) enter into any lending, financing, security, or similar arrangement or succession of such arrangements with any financing entity with respect to the Agreement or the Project, including without limitation any sale, leaseback, or other financing lease arrangement; provided that, in connection with any of the foregoing transfers: (i) except in connection with any transfer to the Sponsor or Sponsor Affiliate, any of the Sponsor and Sponsor Affiliate's affiliates (collectively, the "Related Entities"), or transfers pursuant to clause (b) above (as to which such transfers the County hereby consents), the Sponsor and Sponsor Affiliate shall first obtain the prior written consent or subsequent ratification of the County; (ii) except where a financing entity, which is the income tax owner of all or part of the Project, is the transferee pursuant to clause (b) above and such transferee or financing entity assumes in writing the obligations of the Sponsor and Sponsor Affiliate hereunder, or where the County consents in writing, no such transfer shall affect or reduce any of the obligations of the Sponsor and Sponsor Affiliate hereunder, but all obligations of the Sponsor and Sponsor Affiliate hereunder shall continue in full force and effect as the obligations of a principal and not of a guarantor or surety; (iii) the Sponsor and Sponsor Affiliate, transferee, or financing entity shall, within 60 days thereof, furnish or cause to be furnished to the County and the

Department of Revenue a true and complete copy of any such transfer agreement; and (iv) the Sponsor and Sponsor Affiliate and the transferee shall comply with all other requirements of the Transfer Provisions.

The Sponsor and Sponsor Affiliate acknowledge that such a transfer of an interest under this Agreement or in the Project may cause the Project to become ineligible for a Negotiated FILOT or result in penalties under the Act absent compliance by the Sponsor and Sponsor Affiliate with the Transfer Provisions.

Section 9.02. Relative Rights of County and Financing Entities as Secured Parties. The parties acknowledge the application of the provisions of Section 12-44-90 of the Act, and that the County's right to receive FILOT Payments hereunder shall be the same as its rights conferred under Title 12, Chapter 49 and 54, among others, of the Code relating to the collection and enforcement of *ad valorem* property taxes. The County's rights under this Agreement, except for its rights to receive FILOT revenues, shall be subordinate to the rights of any secured party or parties under any financing arrangements undertaken by the Sponsor and Sponsor Affiliate with respect to the Project pursuant to Section 9.01 hereof, such subordination to be effective without any additional action on the part of the County; provided, however, that the County hereby agrees, at the Sponsor's expense, to execute such agreements, documents, and instruments as may be reasonably required by such secured party or parties to effectuate or document such subordination.

ARTICLE X

TERM; TERMINATION

Section 10.01. Term. Unless sooner terminated pursuant to the terms and provisions herein contained, this Agreement shall be and remain in full force and effect for a term commencing on the date on which the Sponsor and Sponsor Affiliate execute this Agreement, and ending at midnight on the last day of the property tax year in which the last Negotiated FILOT Payment is due hereunder. The Project has a term of thirty years, as calculated pursuant to the respective dates when the relevant portions of the Project are placed in service, and as discussed in greater detail in this Agreement. The County's rights to receive indemnification and payment of Administration Expenses pursuant hereto shall survive the expiration or termination of this Agreement.

Section 10.02. Termination. The County and the Sponsor and/or Sponsor Affiliate may agree to terminate this Agreement at any time, or the Sponsor and Sponsor Affiliate, may, at their option, terminate this Agreement at any time upon providing the County 30 days' notice of such termination, in which event the Project shall be subject to *ad valorem* taxes from the date of termination.

ARTICLE XI

EVENTS OF DEFAULT AND REMEDIES

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

(a) if default shall be made in the due and punctual payment of any FILOT Payments, indemnification payments, or Administration Expenses, which default shall not have been cured within 30 days following receipt of written notice thereof from the County;

(b) if default shall be made by the Sponsor in the due performance of or compliance with any of the terms hereof, including payment, other than those referred to in the foregoing paragraph (a), and such default shall continue for 90 days after the County shall have given the Sponsor written notice of such default, provided, the Sponsor shall have such longer period of time as necessary to cure such default if the Sponsor proceeds promptly to cure such default and thereafter to prosecute the curing of such default with due diligence; or

(c) a cessation of operations at the Project.

Section 11.02. Remedies on Event of Default by Sponsor. Upon the occurrence of any Event of Default, the County may exercise any of the following remedies, any of which may be exercised at any time during the periods permitted under the following clauses:

(a) terminate this Agreement by delivery of written notice to the Sponsor and Sponsor Affiliate not less than 30 days prior to the termination date specified therein;

(b) have access to and inspect, examine, and make copies of the books, records, and accounts of the Sponsor pertaining to the construction, acquisition, or maintenance of the Project; or

(c) take whatever action at law or in equity as may appear necessary or desirable to collect the amounts then due and thereafter to become due or to enforce observance or performance of any covenant, condition, or agreement of the Sponsor under this Agreement.

Section 11.03. Default by the County. Upon the default of the County in the performance of any of its obligations hereunder, the Sponsor and Sponsor Affiliate may take whatever action at law or in equity as may appear necessary or desirable to enforce its rights under this Agreement, including without limitation, a suit for mandamus or specific performance. Provided, however, that anything herein to the contrary notwithstanding, any financial obligation the County may incur hereunder, including for the payment of money, shall not be deemed to constitute a pecuniary liability or a debt or general obligation of the County.

ARTICLE XII

MISCELLANEOUS

Section 12.01. Rights and Remedies Cumulative. Each right, power, and remedy of the County or of the Sponsor and Sponsor Affiliate 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 Sponsor and Sponsor Affiliate 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 Sponsor and Sponsor Affiliate of any or all such other rights, powers or remedies.

Section 12.02. Administration Expenses.

(a) The Sponsor agrees to reimburse the County from time to time for its Administration Expenses promptly upon written request therefore, but in no event later than thirty (30) days after receiving the written request from the County. The written request shall include a description of the nature of the Administration Expenses.

(b) The Sponsor agrees to reimburse the County for expenses incurred by the County for accountants and similar experts used by the County in the computation, preparation and verification of the annual Fee Payments and any special source revenue credits, *provided, however*, the maximum annual reimbursement pursuant to this subsection is capped at one thousand dollars (\$1000.00).

Section 12.03. 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 as permitted hereunder.

Section 12.04. Notices; Demands; Requests. All notices, demands and requests to be given or made hereunder to or by the County or the Sponsor and Sponsor Affiliate shall be in writing and shall be deemed to be properly given or made if sent by United States first class mail, postage prepaid or via facsimile or other commonly-used electronic transmission or reputable courier service, addressed as follows or to such other persons and places as may be designated in writing by such party.

AS TO THE COUNTY: County of Lancaster, South Carolina
ATTN: Steve Willis, County Administrator
101 N. Main St. (29720)
PO Box 1809 (29721-1809)
Lancaster, South Carolina
Telephone: (803) 416 - 9300
Fax: (803) 285 - 3361
Email: swillis@lanastercountysc.net

WITH A COPY TO: John Weaver
(which shall not County Attorney, Lancaster County
constitute notice) 101 N. Main St. (29720)
PO Box 1809 (29721-1809)

Lancaster, South Carolina
Telephone: (803) 416 - 9426
Fax: (803) 285 - 3361
Email: jweaver@lancastercountysc.net

AS TO THE SPONSOR AND SPONSOR AFFILIATE:

Sponsor:

Movement Mortgage, LLC
8024 Calvin Hall Road
Indian Land, South Carolina 29702

With a copy to (which shall not constitute notice):

Ms. Stephanie L. Yarbrough (attorney for Sponsor)
Womble Carlyle Sandridge & Rice, LLP
5 Exchange Street
Charleston, South Carolina 29401
Phone: (843) 720-4621
styarbrough@wcsr.com

Sponsor Affiliate:

TKC CCII, LLC
ATTN: Greg Keith and Ken Beuley
5935 Carnegie Boulevard
Suite 200
Charlotte, North Carolina 28209
Phone: (704) 365-6000
ken@thekeithcorp.com

Section 12.05. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

Section 12.06. Entire Understanding. 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 12.07. 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 such clause or provision shall not affect any of the remaining provisions hereof.

Section 12.08. Headings and Table of Contents; References. The headings of the Agreement and any Table of Contents 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 paragraphs of this Agreement are references to the designated articles or Sections or paragraphs of this Agreement.

Section 12.09. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

Section 12.10. Amendments. Subject to the limitations set forth in the Act, this Agreement may be amended, or the rights and interest of the parties hereunder surrendered, only by a writing signed by all parties.


Section 12.11. Waiver. 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 12.12. Force Majeure. The Sponsor and Sponsor Affiliate shall not be responsible for any delays or non-performance caused in whole or in part, directly or indirectly, by strikes, accidents, freight embargoes, labor shortages, fire, floods, inability to obtain materials, conditions arising from government orders or regulations, war or national emergency, acts of God, and any other cause, similar or dissimilar, beyond the Sponsor and Sponsor Affiliate's reasonable control.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the County, acting by and through the County Council, has caused this Fee Agreement to be executed in its name and behalf by the Council Chair and Council Secretary and to be attested by the Clerk to Council; and the Company has caused this Fee Agreement to be executed by its duly authorized officer, all as of the day and year first above written.

LANCASTER COUNTY, SOUTH CAROLINA




Bob Bundy, Chair, County Council



Steve Harper, Secretary, County Council

ATTEST:



Debbie C. Hardin, Clerk to Council

MOVEMENT MORTGAGE, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

TKC CCII, LLC,
a North Carolina limited liability company

By: _____
Name: _____
Title: _____

EXHIBIT A

**PROPERTY DESCRIPTION
LANCASTER COUNTY**