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LANCASTER, SC

STATE OF SOUTH CAROLINA

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ORDINANCE NO. 2017-1434

COUNTY OF LANCASTER

)

AN ORDINANCE

TO AUTHORIZE THE EXECUTION AND DELIVERY OF A FEE AGREEMENT BY AND AMONG LANCASTER COUNTY COMPUCOM SYSTEMS, INC. AND TKC BAILES RIDGE PARKWAY, LLC, 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.

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

Section 1. Findings.

The Lancaster County Council finds that:

(a) Lancaster County, South Carolina (the "County") acting by and through its County 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 (the "Code"), as amended (the "Act") to enter into fee-in-lieu of tax 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, as amended, and Section 12-44-70 of the Act to provide special source revenue credits for the purpose of defraying the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the County and for improved and unimproved real estate and personal property, including machinery and equipment, used in the operation of a manufacturing facility or commercial enterprise in order to enhance the economic development of the County;

(c) CompuCom Systems, Inc., a Delaware corporation (the "Sponsor"), is considering investing, through itself and/or one or more existing or to be formed affiliated entities and/or one or more unrelated parties, including TKC Bailes Ridge Parkway, LLC, a North Carolina limited liability company (the "Sponsor Affiliate"), in personal property and certain real estate improvements located in 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 at least Thirty Six Million Dollars (\$36,000,000.00) over seven (7) years (the "Project");

(d) pursuant to Resolution No. 0934-R2016, adopted September 26, 2016, 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, generally, for fee-in-lieu of tax payments utilizing a six percent (6%) assessment ratio and fixed millage rate as of June 30, 2016 (which is understood to be 301.1 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 through Five and twenty-five percent (25%) for Years Six through Ten; 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 4 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. 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 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 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 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 Fee Agreement and the performance of all obligations of the County under and pursuant to the Fee Agreement.

Section 7. 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 8. 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 9. Effective Date.

This ordinance is effective upon Third Reading.

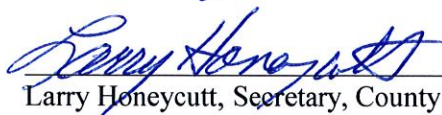
AND IT IS SO ORDAINED,

Dated this 8th day of May, 2017

LANCASTER COUNTY, SOUTH CAROLINA



Steve Harper, Chair, County Council



Larry Honeycutt, Secretary, County Council

ATTEST:



Sherrie Simpson, Clerk to Council

First Reading:	April 10, 2017
Second Reading:	April 24, 2017
Public Hearing:	May 8, 2017
Third Reading:	May 8, 2017

Exhibit A to Ordinance No. 2017-1434

Fee Agreement

Lancaster County, CompuCom Systems, Inc. and TKC Bailes Ridge Parkway, LLC

See attached.

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April 3, 2017

FEE AGREEMENT

by and among

LANCASTER COUNTY, SOUTH CAROLINA,

COMPUCOM SYSTEMS, INC.

and

TKC BAILES RIDGE PARKWAY, LLC

Dated as of May 8, 2017

FEE AGREEMENT

This FEE AGREEMENT is dated as of May 22, 2017, by and among Lancaster County, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina, CompuCom Systems, Inc., a Delaware corporation ("Sponsor"), and TKC Bailes Ridge Parkway, LLC, a North Carolina limited liability company ("Sponsor Affiliate") (collectively, Sponsor and Sponsor Affiliate are the "Companies").

WITNESSETH:

WHEREAS, the County, acting by and through its County Council (the "County Council"), is authorized and empowered under and pursuant to the provisions of Title 12, Chapter 44 (the "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 workforce, 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; 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 Companies propose to locate certain of their business operations in the County (the "Project"); and

WHEREAS, the Companies anticipate that the Project will result in an investment of Thirty-Six Million Dollars (\$36,000,000.00) in the County and the creation of at least seven hundred (700) new, full-time jobs; and

WHEREAS, the County Council approved on September 26, 2016 Resolution No. 0934-R2016 (the "Inducement Resolution"), an inducement resolution to identify, reflect and induce the Project under the Act and to state the commitment of the County to, among other things, enter into this Agreement; and

WHEREAS, as a result of the Companies locating certain operations in the County, the Companies requested that the County complete the FILOT arrangement referred to in the Inducement Resolution by entering into this Agreement with the Companies pursuant to the Act, and the Companies elect to enter into such FILOT arrangement with the County in an effort to encompass the terms surrounding the Project and allowing the Companies to make FILOT payments pursuant to the Act; and

WHEREAS, it is presently anticipated, but not required, that Sponsor Affiliate will initially own that portion of the Project comprised of the Land (as defined herein) and certain real property improvements now or hereafter constructed thereon; and

WHEREAS, it is presently anticipated, but not required, that Sponsor will hereafter own, that portion of the Project composed of personal property now or hereafter located on the Land; and

WHEREAS, for the Project, the parties have determined that Sponsor is a Project Sponsor, and that 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 Agreement with the Companies, 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 One Dollar (\$1.00) in hand, duly paid by the Companies to the County, the receipt and sufficiency of which are hereby acknowledged, the County and the Companies 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 Companies 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:

CompuCom Systems, Inc., a Delaware corporation
TKC Bailes Ridge Parkway, LLC, a North Carolina limited liability
company
Lancaster County, South Carolina

2. County, street address, parcel number or other location identifier of the Project and property to be subject to this Agreement:

Portion of Parcel Id. 0007-00-025.00
Old Lancaster Highway
Indian Land, SC 29707

3. Minimum investment agreed upon: \$36,000,000.00

4. Length and term of this Agreement: Thirty (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%, except as otherwise provided in the Agreement
6. Millage rate applicable for each year of this Agreement: 301.1, the millage rate in effect on June 30, 2016, except as otherwise provided in the Agreement.
7. 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 provided for the qualifying Economic Development Property in amounts equal to fifty percent (50%) of the Negotiated FILOT for years one through five (beginning in the year in which such portion of the Project is placed in service, but not later than the fifth year of the Investment Period) and twenty-five (25%) of the Negotiated FILOT for years six through ten. Notwithstanding the foregoing, in the event that the Companies create, collectively with any Co-Investors, at least 900 (instead of the 700 contained in the Jobs Commitment) new, full-time jobs (*i.e.*, at least thirty (30) hours per week), with health care benefits and in compliance with the Wage Requirements prior to the end of the fifth year of the Investment Period, then the twenty-five percent (25%) Special Source Revenue Credits is increased to fifty percent (50%).
 - (d) Payment will not be modified using a net present value calculation; and
 - (e) Replacement property provisions will apply.

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 hereof 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 Agreement, (ii) the preparation, review, approval and execution of other documents related to this Agreement and any multi-county park documents; and (iii) the fulfillment of its obligations under this 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.

“Affiliate” shall mean any Person directly or indirectly controlling, controlled by, or under common control with such other Person. For purposes of this definition, “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the Person, whether through the ownership of voting securities, by contract, or otherwise.

“Agreement” shall mean this Fee Agreement by and among the County and the Companies, as originally executed and from time to time supplemented or amended as permitted herein or by the Act, and dated as of May 22, 2017.

“Co-Investors” shall mean the Companies, any other Sponsor or Sponsor Affiliate within the meaning of Sections 12-44-30(19) and (20) of the Act, any Affiliate of the Companies or of any such other Sponsor or Sponsor Affiliate, any developer in a build-to-suit arrangement or other leasing arrangement with respect to the Project, any lessor of Equipment or other property comprising a part of the Project, and any financing entity or other third party investing in, or providing funds for, the Project. The Companies shall notify the County in writing of the identity of any other Sponsor, Sponsor Affiliate or other Co-Investor and shall, to the extent the Companies and any such other Sponsor, Sponsor Affiliate, or other Co-Investor intend to extend the benefits of the Negotiated FILOT to property owned by any such Sponsor, Sponsor Affiliate, or other Co-Investor, comply with any additional notice requirements, or other applicable provisions, of the Act. As of the original execution and delivery of this Agreement, the Companies are the only Co-Investors.

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

“Companies” shall mean Sponsor and Sponsor Affiliate, collectively.

“Company” shall mean each of Sponsor and Sponsor Affiliate.

“Confidential Information” shall have the meaning set forth in Section 4.02(d) 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.

“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 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 a Company or any Co-Investor 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 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 a Company or any Co-Investor 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.

“Filings” shall have the meaning set forth in Section 4.02(c) hereof.

“FILOT” shall mean the fee-in-lieu of taxes, which a Company or any Co-Investor is obligated to pay to the County pursuant to Section 5.01 hereof.

“FILOT Payments” shall mean the payments to be made by any Company or Co-Investor to Section 5.01 hereof.

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

“Indemnified Party” shall have the meaning ascribed to it in Section 8.03 hereof.

“Investment Commitment” shall mean the agreement and commitment of the Companies, together with any Co-Investors, to make investments with respect to the Project as set forth in Section 4.01(a) hereof.

“Investment Period” shall mean the period beginning with the first day that Economic Development Property is purchased or acquired and ending on the date that is seven years from the end of the property tax year in which this Agreement is executed by the Companies and the County, unless extended by agreement of the County and the Companies pursuant to Section 12-44-30(13) of the Code.

“Jobs Commitment” shall mean the agreement and commitment of the Companies, together with any Co-Investors, to create and maintain New Full-Time Jobs with respect to the Project as set forth in Section 4.01(b) hereof.

“Land” shall mean the real estate upon which the Project is to be located, as described in Exhibit A attached hereto and incorporated herein by reference, 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, 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" shall have the meaning set forth in Section 5.01(b)(i)(2) hereof.

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

"New Full-Time Job" means a new, full-time job (*i.e.*, at least thirty (30) hours per week), with health care benefits. As used in this definition and as applicable to the Project, "New Full-Time Job" includes only those jobs created for the Project in or after the first year in which Economic Development Property is purchased or acquired for the Project.

"Non-Qualifying Property" shall mean that portion of the Project consisting of: (i) property as to which the Companies or any Co-Investors 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 Companies have terminated the Negotiated FILOT pursuant to Section 4.03(a)(iii) hereof.

"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 Land, buildings and other improvements on the Land to the extent placed thereon by or on behalf of the Companies or any Co-Investors, 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, collectively, the Investment Commitment and the Jobs Commitment.

"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 any Company or Co-Investor dedicates 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.

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

“Sponsor” shall mean CompuCom Systems, Inc., a Delaware corporation, 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 Bailes Ridge Parkway, LLC, a North Carolina 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 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.

“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.

“Wage Requirements” means Seventeen Dollars and Forty-Seven Cents (\$17.47) per hour and, for purposes of satisfying the Wage Requirement, it is applicable in Years 1 through 5 with Year 1 being the first year following the year in which Economic Development Property is first placed in service (the “Initial Hourly Wage”). The County shall change the Initial Hourly Wage at the end of the first five-year period (and at the end of every five-year period thereafter, if applicable) to the Department of Revenue’s then most recently published average hourly wage and the changed Wage Requirement shall apply to the subsequent five-year period. The County shall provide notice to the Sponsor and Sponsor Affiliate of any adjustment to the Wage Requirement.

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 Agreement.

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

(a) Sponsor is a corporation, validly existing and in good standing under the laws 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 and Special Source Revenue Credits have been instrumental in inducing Sponsor to locate its portion of 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 Sponsor are pending or threatened against or affecting 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) The income tax year of Sponsor, and accordingly the property tax year, for federal income tax purposes is a 52/53 week fiscal year ending on the Saturday closest to December 31.

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

(f) Sponsor intends to operate its portion of the Project as a part of its technology based sales and marketing businesses and the Project constitutes a "project" and "economic development property" as provided under the Act.

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

(a) Sponsor Affiliate is a limited liability company, validly existing and in good standing under the laws 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) The agreements with the County with respect to the FILOT and the Special Source Revenue Credits have been instrumental in inducing Sponsor Affiliate to locate its portion of the Project within Lancaster County and the State.

(c) The income tax year of Sponsor Affiliate, and accordingly the property tax year, for federal income tax purposes is a 52/53 week fiscal year ending on the Saturday closest to December 31.

(d) Except as otherwise disclosed to the County, no actions, suits, proceedings, inquiries, or investigations known to the undersigned representatives of Sponsor Affiliate are pending or threatened against or affecting 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 Companies and any Co-Investor 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. Each Company acknowledges 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 such Company'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. Invalidity. The parties acknowledge that the intent of this Agreement is to afford the Companies and any Co-Investors the benefits of the Negotiated FILOT Payments in consideration of the Companies' 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, for any reason, the Act and/or the Negotiated FILOT or any portion thereof is, by a court of competent jurisdiction following allowable appeals, declared invalid or unenforceable in whole or in part, or the portion of the Project consisting of Economic Development Property is deemed not to be eligible for a Negotiated FILOT pursuant to the Act in whole or in part, each Company and the County express their intentions that such payments be reformed so as to afford the Companies benefits commensurate with those intended under this Agreement as then permitted by law, including without limitation

any benefits afforded under the Code, to the extent allowed by law. Absent the legal authorization to effect such reformation, the Companies and the County agree that there shall be due hereunder, with respect to the portion of the Economic Development Property affected by such circumstances, *ad valorem* taxes and that, to the extent permitted by law, each Company shall be entitled: (1) to enjoy the five-year exemption from *ad valorem* taxes (or fees in lieu of taxes) provided by Article X, Section 3 of the Constitution of the State, and any other exemption allowed by law; (2) to enjoy all allowable depreciation; and (3) to receive other tax credits which would be due if such Company or Co-Investor were obligated to pay *ad valorem* taxes hereunder. To the extent that under such circumstances the Negotiated FILOT Payments hereunder are required by law to be subject to retroactive adjustment, then there shall be due and payable by such Company or Co-Investor to the County with respect to the portion of the Economic Development Property in question an amount equal to the difference between the Negotiated FILOT Payments theretofore actually paid and the amount which would have been paid as *ad valorem* taxes, together with, but only if required by law, interest on such deficiency as provided in Section 12-54-25(D) of the Code. Each Company agrees that if this Agreement is reformed as provided in this Section or if retroactive adjustments are made, then under no circumstances shall the County be required to refund or pay any monies to the Companies or any Co-Investors.

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 3.03 unless the Companies have otherwise complied with or provides satisfactory evidence to the County that it intends to comply with its obligations and responsibilities under this Agreement.

Section 3.04. Multi-County Park Status. The County agrees to maintain the Land in the Multi-County Park until the date this Agreement is terminated. If it becomes necessary to remove the Land from the Multi-County Park prior to the termination of this Agreement, the County agrees to use its best efforts to place the Land in another multi-county park established pursuant to the Multi-County Park Act and to maintain the multi-county park designation until the date this Agreement is terminated. The parties acknowledge and agree that the County's agreement to place and maintain the Land in a multi-county park may be subject to the exercise of discretion by a governmental entity other than the County and the exercise of that discretion is not controlled by the County.

ARTICLE IV

INVESTMENT AND JOBS COMMITMENT BY COMPANIES IN PROJECT; MAINTENANCE AND MODIFICATION OF PROJECT

Section 4.01. Investment and Job Creation by Companies in Project.

(a) For the Project, the Companies agree and commit to invest, collectively with any Co-Investors, at least Thirty-Six Million Dollars (\$36,000,000.00) in Economic Development Property by the end of the Investment Period (the "Investment Commitment"). The investment amount shall not include any amount paid by any Company for real estate improvements on the Land existing as of the date of this Agreement. Investments made by Sponsor, Sponsor Affiliate

or any Co-Investor in Economic Development Property shall be included in any determination whether the Companies have fulfilled their commitment made in this subsection (a) to invest in the Project.

(b) For the Project, together with any Sponsor Affiliates and any Co-Investors, the Sponsor agrees and commits to the creation and maintenance of the number of New Full-Time Jobs, paying an average hourly wage rate not less than the Wage Requirement, by year as follows: (i) Year 1 – not less than 140; (ii) Year 2 – not less than 280; (iii) Year 3 – not less than 420; (iv) Year 4 – not less than 560; (v) Years 5 through 10 – not less than 700 (the “Jobs Commitment”). As used in this subsection (b), the “Year” number refers to the year following the year in which Economic Development Property is first placed in service with Year 1 being the first year. The number of New Full-Time Jobs shall be based on the average number of New Full-Time Jobs for each month during the year.

Section 4.02. Reporting and Filing.

(a) Each Company agrees to provide a copy of Form PT-443 filed with the Department of Revenue no later than thirty (30) days after execution and delivery of this Agreement to the Auditor, Treasurer and Assessor of the County and any multi-county park partner county and the Economic Development Director of the County. Each year during the term of this Agreement, each Company shall deliver to the Auditor, Treasurer and Assessor of the County and any multi-county park partner county and the Economic Development Director of the County a copy of their most recent annual filings made with the Department of Revenue with respect to the Project, no later than thirty (30) days following delivery thereof to the Department of Revenue.

(b) (1) Sponsor agrees, as soon as reasonably practicable following the end of each tax year of the Sponsor, to submit to the County Economic Development Director a certification on Sponsor letterhead listing the amount of capital investment and aggregate New Full-Time Jobs maintained by the Companies and all Co-Investors at the end of such tax year.

(2) For purposes of determining compliance with the Jobs Commitment and determining whether the Enhanced Credit is applicable, Sponsor agrees to provide the County Economic Development Director a copy of Sponsor’s (i) most recently filed Quarterly Report Form submitted to the South Carolina Coordinating Council for Economic Development with respect to Job Development Credits awarded in connection with the Project, within thirty days of the filing of the form with the state, and (ii) most recently filed Department of Revenue Form SC SCH. TC 4 (New Jobs Credit). Sponsor agrees to redact any personally identifying information and proprietary and confidential information prior to submitting either form to the County Economic Development Director. In lieu of providing either the Job Development Credit form or New Jobs Credit form, or both, Sponsor and the County Economic Development Director may agree on an alternative method for the Sponsor to demonstrate compliance with the Jobs Commitment and to determine whether the Enhanced Credit is applicable.

(c) (1) Each Company agrees 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 its 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 subsection (a) of this section (collectively, "Filings").

(2) Each Company 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 Companies' 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 any Company to protect such Company'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.

(d) The County acknowledges and understands that the Companies and Co-Investors 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 Companies' and Co-Investors' operations and processes ("Confidential Information") and that any disclosure of the Confidential Information could result in substantial harm to the Companies and Co-Investors and could have a significant detrimental impact on the Companies' employees and also upon the County. Except as required by law, including, without limitation, court orders, the County agrees to use 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 Companies, Co-Investors and their respective 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 Companies and give the Companies the opportunity to contest the release.

Section 4.03 Modification of Project.

As long as no Event of Default exists hereunder, the Companies and any Co-Investor shall have the right at any time and from time to time during the Term hereof to undertake any of the following:

(i) Each Company and Co-Investor may, at its own expense, add to the Project any real and personal property as such Company or Co-Investor in its discretion deems useful or desirable.

(ii) In any instance where any Company or Co-Investor, in its discretion, determines that any items included in the Project have become inadequate, obsolete, worn out, unsuitable, undesirable, or unnecessary for operations at the Project, such Company or Co-Investor 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) Each Company and Co-Investor may, at any time in its 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 Companies and any Co-Investors shall pay annually, with respect to the applicable portions of 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 if it were 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) of this Section 5.01 (a "Negotiated FILOT").

(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 301.1 mills, the millage rate in effect on June 30, 2016, 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 (i) fifty percent (50%) of the Negotiated FILOT Payments for each of years one through five following the year in which such portion of the Project is placed in service, but beginning not later than the fifth year of the Investment Period; and (ii) twenty-five (25%) of the Negotiated FILOT Payments for each of years six through ten following the year in which such portion of the Project is placed in service; *provided, however*, that in the event the Companies create, collectively with any Co-Investors, at least nine hundred (900) (instead of the seven hundred (700) contained in the Jobs Commitment) by the end of the fifth year of the Investment Period, then the Special Source Revenue Credits provided pursuant to this clause (ii) shall be increased to fifty percent (50%) of the Negotiated FILOT Payments for each of years six through ten in which the nine hundred (900) New Full-Time Jobs are maintained (the "Enhanced Credit"). The provisions of Section 4.02(b)(2) apply for purposes of determining whether the Enhanced Credit is applicable.

(e) The FILOT payments are to be recalculated:

(i) to reduce such payments in the event any Company or Co-Investor disposes 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, based on the methodology set forth in Section 5.01(c) hereof, in the event any Company or Co-Investor adds property (other than Replacement Property) to the Project; or

(iii) to adjust such payments if a Company elects 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 Companies or any Co-Investor 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 Companies or any Co-Investor to the County in property taxes if the Companies 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 any Company's or any Co-Investor'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 any Company or Co-Investor, 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 the 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 the 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 Companies and the County express their intentions that such payments be reformed so as to afford the Companies and Co-Investors 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 Companies may, at the Companies' 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 Companies and the County agree that the Companies 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 Companies and any Co-Investors 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 Companies 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 Companies.

(i) For the Project, this Agreement is automatically terminated in the event that the investment in the Project in land, buildings, and personal property, including machinery and equipment, by Sponsor or Sponsor Affiliate, collectively with any Co-Investors, does not exceed Five Million Dollars (\$5,000,000.00) by the end of the applicable Investment Period. If terminated pursuant to this subsection (i), the Negotiated FILOT Payments shall revert retroactively to payments equivalent to what the *ad valorem* taxes would have been with respect

to the property absent this Agreement. At the time of termination, the Companies shall pay to the County an additional fee equal to the difference between the total amount of property taxes that would have been paid by the Companies had the project been taxable, taking into account exemptions from property taxes that would have been available to the Companies, and the total amount of fee payments actually made by the Companies. This additional amount is subject to interest as provided in Section 12-54-25. The Companies 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 any Company or Co-Investor.

(j) (1) The Companies agree that a portion of the Special Source Revenue Credits for a year shall be reduced, prospectively, for such year to the extent that the Companies, collectively with any Co-Investors, fail to meet the Jobs Commitment, in a percentage amount equal to (A) the amount by which the number of jobs satisfying the Jobs Commitment at the Project at the end of such year is less than the number of jobs contained in the Jobs Commitment for such year, *divided by* (B) the number of jobs contained in the Jobs Commitment for such year. For example, and by way of example only, if, at the end of Year 3, the Jobs Commitment provides for the maintenance of not less than 420 jobs satisfying the Jobs Commitments, the actual number of jobs satisfying the Jobs Commitment is 210, and the Special Source Revenue Credit to which the Companies would otherwise be entitled for Year 4 is Five Hundred Thousand Dollars (\$500,000.00), then the reduction of the Special Source Revenue Credit pursuant to this subsection (j)(1) would be calculated as follows:

Jobs Commitment at the end of Year 3: 420 New Full-Time Jobs

Jobs Maintained at the Project at the end of Year 3: 210 New Full-Time Jobs

Special Source Revenue Credit reduction for Year 4:

$$[420 - 210] / 420 = 210 / 420 = 50.0\%$$

$$50.0\% \times \$500,000.00 = \mathbf{\$250,000.00}$$

As an additional example, and by way of example only, if, at the end of Year 5, the Jobs Commitment provides for the maintenance of not less than 700 jobs satisfying the Jobs Commitment, the actual number jobs satisfying the Jobs Commitment is 630, and the Special Source Revenue Credit to which the Companies would otherwise be entitled for Year 6 is One Million Dollars (\$1,000,000.00), then the reduction of the Special Source Revenue Credit pursuant to this subsection (j)(1) would be calculated as follows:

Jobs Commitment at the end of Year 5: 700 New Full-Time Jobs

Jobs Maintained at the Project at the end of year 5: 630 New Full-Time Jobs

Special Source Revenue Credit reduction for Year 6:

$$[700 - 630] / 700 = 70 / 700 = 10\%$$

10% x \$1,000,000.00: **\$100,000.00**

(k) Beginning with the year following the end of the tenth (10th) tax year after Economic Development Property is first placed in service, and for each year thereafter, Sponsor and Sponsor Affiliate agree that the FILOT Payment due for the Economic Development Property shall be calculated, notwithstanding the provisions of Section 5.01(c), using the then current millage rate and the assessment ratios that would be applicable to the Economic Development Property if it were subject to *ad valorem* taxes, if Sponsor in the immediately prior year

(i) failed to maintain investment in the Project for Economic Development Property, without regard to depreciation or other diminution in value, of not less than Eighteen Million Dollars (\$18,000,000.00), or

(ii) failed to maintain for the Project at least 350 New Full-Time Jobs paying an average hourly wage rate not less than the Wage Requirement.

As an example of the calculation set forth in this subsection (k), and by way of example only, assume that in Year 13 the investment level set in this subsection (k) has not been maintained, that the millage rate applicable for tax bills to be sent in Year 14 is 350, and all of the Economic Development Property would have a 10.5% assessment ratio applied if the property were subject to *ad valorem* taxation, then the FILOT Payment for Year 14 would be computed using the millage rate of 350 (instead of 301.1) and the 10.5% assessment ratio (instead of 6%). As an additional example, and by way of example only, assume that in Year 22 the investment level set in this subsection (k) has been maintained, but that the maintained number of New Full-Time Jobs paying an average hourly wage not less than the Wage Requirement was 300, that the millage rate applicable for tax bills to be sent in Year 23 is 375, and all of the Economic Development Property would have a 10.5% assessment ratio applied if the property were subject to *ad valorem* taxation, then, the FILOT Payment for Year 23 would be computed using the millage rate of 375 (instead of 301.1) and the 10.5% assessment ratio (instead of 6%).

(l) Unless otherwise provided by the Act, any amounts due to the County under this Section 5.01 by virtue of the application of Section 5.01(h)-(k) hereof shall be paid within ninety (90) days, following written notice thereof from the County to the Companies.

(m) Notwithstanding any other provision of this Fee Agreement, the Companies acknowledge and agree 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 this Section 5.01(m), "**ceases operations**" means closure of the facility. The Companies agree that if this Agreement is terminated pursuant to this Section 5.01(m), that under no circumstance shall the County be required to refund or pay any monies to the Companies.

ARTICLE VI

PAYMENTS BY COMPANIES

Section 6.01. Defaulted Payments. In the event any Company or Co-Investor 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 such Company or Co-Investor until the amount in default shall have been fully paid. The Companies agree that the collection and enforcement of the defaulted payment shall be 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, any Company or Co-Investor, in its sole discretion, may determine whether or not to repair or replace the same. The parties hereto agree that if the Companies 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, each Company shall use the Project for any lawful purpose that is 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), each Company 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 such Company, to one or more Affiliates without adversely affecting the benefits of such Company or its assignees pursuant to any such agreement or the Act. Such Company 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 such Company, 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 and further agrees to consider such assignment in the form of a Resolution of Council.

Section 8.03. Indemnification. Each Company releases 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. Each Company further agrees 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 Companies in the performance of any covenant or agreement on the part of the Companies 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 any Company, 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 any Company, 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 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 Companies, and the Companies 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 its sole discretion; provided the Companies shall obtain the prior written consent of the County to settle any such claim unless such claim is for monetary damages for which the Companies have the ability to, and do, pay. Notwithstanding the foregoing, if the Indemnified Party is the County, 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 Companies reasonably determines that a conflict of interest exists between the County and the Companies, the County may, in its sole discretion, hire independent counsel to pursue its own defense, and the Companies 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 Companies 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.

Section 8.04. Sponsors and Sponsor Affiliates. Sponsor or Sponsor Affiliate may designate from time to time other Sponsors or Sponsor Affiliates pursuant to the provisions of Sections 12-44-30(19) or (20), respectively, and Section 12-44-130 of the Simplified FILOT Act, which Sponsors or Sponsor Affiliates shall be Persons who join with the Companies and make investments with respect to the Project, or who participate in the financing of such investments, who agree to be bound by the terms and provisions of this Agreement and who shall be Affiliates of Sponsor, Sponsor Affiliate or other Sponsors or Sponsor Affiliates, or other Persons described in Section 8.02 hereof. All other Sponsors or Sponsor Affiliates who otherwise meet the requirements of Section 12-44-30 (19) or (20) and Section 12-44-130 of the Simplified FILOT Act must be approved by the County in writing. To the extent that the aggregate investment in the Project by the end of the Investment Period by all Sponsors and Sponsor Affiliates exceeds Five Million Dollars (\$5,000,000.00), to the extent permitted by Section 12-44-30(19) of the Simplified FILOT Act, all investment by such Sponsors and Sponsor Affiliates during the Investment Period shall qualify for the FILOT pursuant to Section 5.01 of this Agreement (subject to the other conditions set forth therein) regardless of whether each such entity invested amounts equal to the Investment Commitment by the end of the Investment Period. Sponsor or Sponsor Affiliate shall provide the County and the Department of Revenue with written notice of any other Sponsor or Sponsor Affiliate designated pursuant to this Section 8.04 within ninety (90) days after the end of the calendar year during which any such Sponsor or Sponsor Affiliate has placed in service Economic Development Property to be used in connection with the Project, all in accordance with Section 12-44-130(B) of the Simplified FILOT Act. The parties agree that, if any Sponsor or Sponsor Affiliate ceases to become party to this Agreement, the Agreement shall continue to remain in effect with respect to any remaining Sponsors or Sponsor Affiliates.

Section 8.05. Chamber of Commerce Membership. During any year in which Special Source Revenue Credits are awarded to Sponsor pursuant to the terms of this Agreement, Sponsor shall maintain membership in good standing with the Lancaster County Chamber of Commerce.

ARTICLE IX

FINANCING ARRANGEMENTS; CONVEYANCES; ASSIGNMENTS

Section 9.01. Conveyance of Liens and Interests; Assignment. Each Company or Co-Investor 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 Sponsor or Sponsor Affiliate or their Affiliated entities, or transfers pursuant to clause (b) above (as to which such transfers the County hereby consents), such Company shall first obtain the prior written consent or subsequent ratification of the County, which consent or ratification shall not be unreasonably withheld, conditioned or delayed and may be given by resolution of County Council; (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 such Company hereunder, or where the County consents in writing, no such transfer shall affect or reduce any of the obligations of such Company hereunder, but all obligations of such Company hereunder shall continue in full force and effect as the obligations of a principal and not of a guarantor or surety; (iii) such Company, transferee, or financing entity shall, within sixty (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) such Company and the transferee shall comply with all other requirements of the Transfer Provisions.

Each Company acknowledges 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 Companies 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 Companies 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 Companies' 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 Companies 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 (30) 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 Companies may agree to terminate this Agreement at any time, or the Sponsor or Sponsor Affiliate may, at its option, terminate this Agreement at any time with respect to its portion of the Project, upon providing the County thirty (30) days' notice of such termination, in which event the applicable portion of the Project shall be subject to *ad valorem* taxes from the date of termination. In the event that this Agreement is fully terminated by the operation of this Section 10.02 at any time during the initial Investment Period prior to the Companies' meeting the Investment Commitment, amounts due to the County as a result thereof shall be calculated as provided in Section 5.01(j) hereof. The County's rights to receive payment for such *ad valorem* taxes and its rights to enforce the terms of this Agreement shall survive termination of this Agreement.

ARTICLE XI

EVENTS OF DEFAULT AND REMEDIES

Section 11.01. Events of Default by Companies. 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 Companies, but in each case, only with respect to the defaulting entity:

- (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 thirty (30) days following receipt of written notice thereof from the County; or
- (b) if default shall be made by any Company 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 ninety (90) days after the County shall have given the Companies written notice of such default, provided, such Company shall have such longer period of time as necessary to cure such default if such Company proceeds promptly to cure such default and thereafter to prosecute the curing of such default with due diligence.

The failure of the Companies, collectively with any Co-Investors, to meet the Project Commitments set forth herein shall not be deemed to be an Event of Default under this Agreement.

Section 11.02. Remedies on Event of Default by Company. Upon the occurrence of any Event of Default and the expiration of any applicable cure periods, 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, solely with respect to the defaulting entity, by delivery of written notice to the Companies not less than thirty (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 defaulting entity 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 defaulting entity under this Agreement.

Section 11.03. Default by County. Upon the default of the County in the performance of any of its obligations hereunder, any Company may take whatever action at law or in equity as may appear necessary or desirable to enforce its rights under this 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 Companies 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 Companies 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 Companies of any or all such other rights, powers or remedies.

Section 12.02. 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 12.03. Administration Expenses. (a) The Companies agree 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 Companies agree 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 FILOT Payments and any Special Source Revenue Credits, *provided, however*, the maximum annual reimbursement pursuant to this subsection is capped at Five Hundred Dollars (\$500.00).

Section 12.04. Rules of Construction. The County and the Companies acknowledge and agree that each has been represented by legal counsel of its choice throughout the negotiation and drafting of this Agreement, that each has participated in the drafting hereof and that this Agreement will not be construed in favor of or against either party solely on the basis of such party's drafting or participation in the drafting of any portion of this Agreement.

Section 12.05. Notices; Demands; Requests. All notices, demands and requests to be given or made hereunder to or by the County or the Companies 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.

(a) As to the County:

Lancaster County
Attn: Steve Willis, County Administrator
101 N. Main St. (29720)
P.O. Box 1809 (29721-1809)
Lancaster, South Carolina
Telephone: (803) 416-9300
Fax: (803) 285-3361
Email: swillis@lancastercountysc.net

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

Mr. Jamie Gilbert
Economic Development Director, Lancaster County
P.O. Box 1809
Lancaster, South Carolina 29721
Telephone: (803) 286-3633
Fax: (803) 416-9497
Email: jgilbert@lancastercountysc.net

(b) As to the Sponsor:

CompuCom Systems, Inc.
Attn: Finance Director
3800 Arco Corporate Dr.
Charlotte, NC 28273

Email: Kwang.Elder@CompuCom.com

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

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

As to the Sponsor Affiliate

The Keith Corporation
Attn: Brendan Pierce
5935 Carnegie Blvd.
Suite 200
Charlotte, NC 28209
Email: bpierce@thekeithcorp.com

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

The Keith Corporation
Attn: Keith R. Beuley
5935 Carnegie Blvd.
Suite 200
Charlotte, NC 28209
Email: ken@thekeithcorp.com

Section 12.06. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

Section 12.07. 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 12.08. Severability. In the event that any clause or provision 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 12.09. 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 12.10. 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 12.11. 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 12.12. 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 12.13. Force Majeure. The Companies 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 Companies' 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 Companies have 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

By: _____
Name: Steve Harper
Title: Chair, County Council

By: _____
Name: Larry Honeycutt
Title: Secretary, County Council

ATTEST:

By: 
Sherrie Simpson, Clerk to Council

[Companies signatures follow on next page.]

COMPUCOM SYSTEMS, INC.

By: _____
Name: _____
Title: _____

TKC BAILES RIDGE PARKWAY, LLC

By: _____
Name: _____
Title: _____

[The remainder of this page is intentionally left blank.]

EXHIBIT A

Land

Being 19.400 acres known as Future Tract 19-A of the Bailes Ridge Business Park as recorded in Lancaster County Register of Deeds in Plat Book _ Page _ and located in Indian Land Township, Lancaster County, South Carolina

Commencing from a found mag nail in the northern right of way of Bailes Parkway as recorded in Lancaster County Register of Deeds in Plat Book 2015 Page 108 with SCGS (NAD 83/2011) grid coordinates N=1,151,168.37, E=2,038,267.32 and a combine factor = 1.00003893, thence S47°01'19"W 107.26' to a set mag nail a common corner to Tract 19-B, being the Point of Beginning, thence with Bailes Parkway southern right of way the following 12 courses and distances, 1) a curve to the left with a radius of 640.00', a length of 76.42' and chord bearing and distance of S84°51'26"E 76.37' to a found mag nail, 2) S 88°16'41"E 303.29' to a found mag nail, 3) a curve to the right with a radius of 30.00', a length of 31.42' and a chord bearing and distance of S58°16'41"E 30.00' to a found rebar with a cap, 4) a curve to the left with a radius of 110.00', a length of 57.60' and a chord bearing and distance of S43°16'41"E 56.94' to a found rebar with a cap, 5) a curve to the right having a radius of 30.00', a length of 31.42' and a chord bearing and distance of S28°16'41"E 30.00' to a found mag nail, 6) S01°43'18"W 34.72' to a found rebar with cap, 7) S88°16'41"E 80.00' to a found rebar with cap, 8) N01°43'19"E 34.72' to a found pk nail, 9) a curve to the right with a radius of 30.00', a length of 31.42' and a chord bearing and distance of N31°43'19"E 30.00' to a found pk nail, 10) a curve to the left with a radius of 110.00', a length of 57.60' and a chord bearing and distance of N46°43'19"E 56.94' to a found pk nail, 11) a curve to the right with a radius of 30.00', a length of 31.42' and a chord bearing and distance of N61°43'19"E 30.00' to a found rebar with cap, 12) S88°16'41"E 34.72' to a found rebar with cap, a common corner to Bailes Investments Associates, LLC as recorded in Deed Book 164 Page 328, thence creating a common line S88°16'41"E 88.94' to a found 1/2" pipe a common corner to Lancaster County as recorded in Deed Book 411 Page 163, thence with the common line of Lancaster County the following 29 courses and distances, 1) S26°34'39"W 53.98' to a set #4 rebar, 2) S44°19'29"W 55.12' to a set #4 rebar, 3) S12°58'26"W 72.85' to a set #4 rebar, 4) S08°18'20"W 84.76' to a set #4 rebar, 5) S39°24'09"E 49.14' to a set #4 rebar, 6) S24°17'52"E 75.95' to a found rebar with cap, 7) S33°56'38"W 57.49' to a found rebar with cap, 8) S05°52'35"E 36.31' to a found rebar with cap, 9) S25°47'42"W 55.30' to a found rebar with cap, 10) S07°56'35"W 67.07' to a found rebar with cap, 11) S43°35'45"W 80.58' to a found rebar with cap, 12) S10°40'36"W 48'67' to a found rebar with cap, 13) S06°43'09"W 53.85' to a found rebar with cap, 14) S30°33'08"E 54.71' to a found rebar with cap, 15) S67°31'46"W 92.25' to a found rebar with cap, 16) S19°53'30"W 37.80' to a found rebar with cap, 17) S30°53'36"W 49.73' to a found rebar with cap, 18) S23°43'22"W 87.12' to a found rebar with cap, 19) S27°50'09"E 75.57' to a found rebar with cap, 20) S33°13'04"W 83.48' to a found rebar with cap, 21) S00°09'25"E 77.56' to a found rebar with cap, 22) S59°48'09"W 108.62' to a found rebar with cap, 23) S03°54'48"W 124.21' to a found rebar with cap, 24) S13°11'38"W 4.54' to a found

rebar with cap, 25) S60°42'02"W 55.48' to a found rebar with cap, 26) N79°06'43"W 67.86' to a found rebar with cap, 27) S66°18'06"W 65.56' to a found rebar with cap, 28) S88°52'36"W 63.32' to a found rebar with cap, 29) S83°42'47"W 72.62' to a found rebar with cap a common corner to Tract 20, thence with the following 5 division line, 1) N11°54'00"E 474.69' to a set #4 rebar, 2) N77°18'17"W 384.19' to a set #4 rebar a common corner to Tract 19-B, 3) N12°29'47"E 462.94' to a set #4 rebar, 4) S77°37'38"E 53.00' to a set #4 rebar, 5) N12°29'47"E 444.84' to the Point of Beginning. Containing 19.400 Acres.

Portion of Parcel Id. 0007-00-025.00

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