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LANCASTER, SC

STATE OF SOUTH CAROLINA

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ORDINANCE NO. 2019-1593

)

COUNTY OF LANCASTER

)

AN ORDINANCE

TO AUTHORIZE THE EXECUTION AND DELIVERY OF A SPECIAL SOURCE REVENUE CREDIT AGREEMENT BY AND BETWEEN LANCASTER COUNTY AND 3i PRODUCTS, INC., PROVIDING FOR, AMONG OTHER THINGS, SPECIAL SOURCE REVENUE CREDITS; AND 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 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 Sections 4-1-175, 4-29-68 and 12-44-70, Code of Laws of South Carolina 1976, as amended (the "SSRC Law"), to enter into agreements 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;

(b) 3i Products, Inc., a South Carolina corporation, on its own or together with one or more of its subsidiaries, affiliates, successors, assigns, sponsors, lessors, and others (collectively, the "Company"), previously located a manufacturing facility in the County (the "Project");

(c) The Company previously entered into an Infrastructure Credit and Incentive Agreement, dated as of November 9, 2015, with the County ("Original Agreement"), however, the Original Agreement was terminated pursuant to its terms on December 31, 2018;

(d) The Project has resulted in an investment of approximately \$7,400,000 in personal and real property and approximately 40 new, full-time employees;

(e) The Company and the County desire to renew and redocument certain terms of the Original Agreement by entering into a Special Source Revenue Credit Agreement between the County and the Company (the "Credit Agreement"), which provides for special source revenue credits;

(f) the Company has caused to be prepared and presented to the Council the form of the Credit Agreement; and

(g) it appears that the Credit 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 Credit 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 Company to locate and maintain an industrial facility in the State, the Credit Agreement is hereby authorized, ratified, and approved.

Section 3. Statutory Findings.

Council makes the following additional findings:

(a) The County's actions herein will subserve the purposes and in all respects conform to the provisions and requirements of the SSRC Law.

(b) The Project and the payments in lieu of taxes referenced 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 Credit Agreement.

The form, terms, and provisions of the Credit 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 Credit 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 Credit Agreement in the name of and on behalf of the County, and thereupon to cause the Credit Agreement to be delivered to the Company. The Credit 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 Credit 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 Credit 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 Credit 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 Credit Agreement and the performance of all obligations of the County under and pursuant to the Credit 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.

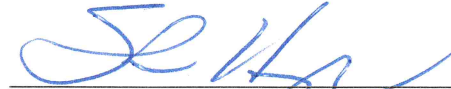
This ordinance is effective upon Third Reading.

SIGNATURES FOLLOW ON NEXT PAGE.

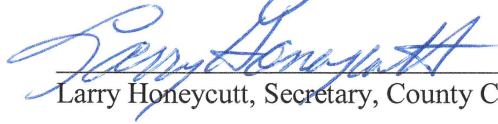
AND IT IS SO ORDAINED

Dated this 28th day of MAY, 2019.

LANCASTER COUNTY, SOUTH CAROLINA




Steve Harper, Chair, County Council



Larry Honeycutt, Secretary, County Council

ATTEST:



Sherrie Simpson, Clerk to Council

First Reading:	April 29, 2019
Second Reading:	May 13, 2019
Public Hearing:	May 28, 2019
Third Reading:	May 28, 2019

Exhibit A to Ordinance No. 2019-1593

**Special Source Revenue Credit Agreement
Lancaster County, South Carolina and 3i Products, Inc.**

See attached.

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SPECIAL SOURCE REVENUE CREDIT AGREEMENT

AMONG

LANCASTER COUNTY, SOUTH CAROLINA

AND

3i PRODUCTS, INC.

DATED
AS OF
MAY 28, 2019

TABLE OF CONTENTS

	PAGE
ARTICLE I RULES OF CONSTRUCTION; DEFINITIONS	2
SECTION 1.1 <i>Rules of Construction; Use of Defined Terms</i>	2
SECTION 1.2 <i>Definitions</i>	2
SECTION 1.3 <i>Amended Agreements and Documents</i>	4
ARTICLE II LIMITATION OF LIABILITY	4
SECTION 2.1 <i>Limitation of Liability</i>	4
ARTICLE III REPRESENTATIONS AND COVENANTS	4
SECTION 3.1 <i>Representations of the County</i>	4
SECTION 3.2 <i>Covenants by the County</i>	4
SECTION 3.3 <i>Representations of the Company</i>	4
ARTICLE IV PAYMENTS-IN-LIEU-OF-TAXES; SPECIAL SOURCE REVENUE	
CREDIT; TERM.....	4
SECTION 4.1 <i>Payments-in-Lieu-of-Taxes</i>	4
SECTION 4.2 <i>Special Source Revenue Credit</i>	5
SECTION 4.3 <i>Performance Requirements</i>	6
SECTION 4.4 <i>Term</i>	8
ARTICLE V EFFECTIVE DATE	8
SECTION 5.1 <i>Effective Date</i>	8
ARTICLE VI SPECIAL COVENANTS	8
SECTION 6.1 <i>Confidential Information</i>	8
SECTION 6.2 <i>Indemnification Covenants</i>	8
SECTION 6.3 <i>Assignment</i>	9
ARTICLE VII EVENTS OF DEFAULT AND REMEDIES.....	9
SECTION 7.1 <i>Events of Default Defined</i>	9
SECTION 7.2 <i>Default by the Company</i>	10
SECTION 7.3 <i>Default by County</i>	10
SECTION 7.4 <i>No Remedy Exclusive</i>	10
SECTION 7.5 <i>No Additional Waiver Implied by One Waiver</i>	10
ARTICLE VIII COMPANY OPTION TO TERMINATE.....	11
SECTION 8.1 <i>Company Option to Terminate</i>	11
ARTICLE IX MISCELLANEOUS	11
SECTION 9.1 <i>Notices</i>	11
SECTION 9.2 <i>Binding Effect</i>	12
SECTION 9.3 <i>Rescission and Severability</i>	12
SECTION 9.4 <i>Fiscal Year</i>	12
SECTION 9.5 <i>Amendments, Changes and Modifications</i>	12

SECTION 9.6 <i>Execution of Counterparts</i>	13
SECTION 9.7 <i>Law Governing Construction of Agreement</i>	13
SECTION 9.8 <i>Filings</i>	13
SECTION 9.9 <i>Filing of Reports and Certifications</i>	13
SECTION 9.10 <i>Headings</i>	13
SECTION 9.11 <i>Further Assurance</i>	13
SECTION 9.12 <i>Administrative Expenses</i>	13

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SPECIAL SOURCE REVENUE CREDIT AGREEMENT

This SPECIAL SOURCE REVENUE CREDIT AGREEMENT (this "Agreement") is made and entered into as of May 28, 2019 ("Effective Date"), by and among LANCASTER COUNTY, SOUTH CAROLINA (the "County"), a body politic and corporate and a political subdivision of the State of South Carolina, acting by and through its County Council (the "County Council") as governing body of the County and 3i PRODUCTS, INC., a South Carolina corporation (the "Company").

RECITALS

WHEREAS, the County is authorized by Section 4-1-170 of the Code of Laws of South Carolina 1976, as amended and Article VIII, Section 13(D) of the South Carolina Constitution (the "MCP Laws") and by Sections 4-1-175, 4-29-68 and 12-44-70, Code of Laws of South Carolina 1976, as amended (the "SSRC Law") (collectively, the MCP Laws and SSRC Law are referred to as the "Acts") to (i) create multi-county industrial parks in partnership with contiguous counties; (ii) include the property of eligible companies within such parks as an inducement to locate within the County, which inclusion under the terms of the MCP Laws makes such property exempt from *ad valorem* property taxes, therefore changing the character of the annual receipts from such properties from *ad valorem* property taxes to fees-in-lieu of *ad valorem* property taxes; and (iii) grant an annual tax credit against such fee-in-lieu of tax receipts in order to assist a company in paying the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the property of any company located within such multi-county industrial parks or for improved or unimproved real estate and personal property including machinery and equipment used in the operation of a manufacturing or commercial enterprise located within such multi-county parks in order to enhance the economic development of the County;

WHEREAS, as authorized by the MCP Laws, the County and Chesterfield County have entered into an Amended and Restated Master Multi-County Park Agreement, Amended and Restated as of November 9, 2015 (the "Master Park Agreement");

WHEREAS, the County and Chesterfield County previously acted to include in the Master Park Agreement the approximately 15.58 acre parcel of land located at 3888 Chester Highway (S.C. 9) (Tax Map No 0066-00-033.00) (the "Land");

WHEREAS, the Company previously entered into an Infrastructure Credit and Incentive Agreement with the County dated November 9, 2015 ("Original Agreement"), however, the Original Agreement was terminated pursuant to its terms on December 31, 2018;

WHEREAS, pursuant to the Original Agreement, the Company acquired by construction, lease and purchase, the Land, Equipment, Improvements, and Real Property owned or leased by the Company including certain buildings, furnishings and fixtures, for the purpose of locating a manufacturing facility in the County (collectively, "Project");

WHEREAS, the Project has resulted in an investment of approximately \$7,400,000 in personal and real property and approximately 40 new, full-time employees of the Company;

WHEREAS, the Company and the County desire to renew and redocument certain terms of the Original Agreement by entering into this Agreement, which provides for special source revenue credits;

WHEREAS, the Company has committed to maintain during the term of this Agreement taxable investment at the Project of not less than \$2,500,000 ("Minimum Investment Commitment") and will maintain at the Project no less than 10 Qualified Full-Time Jobs (as defined below) ("Minimum Jobs Commitment") in connection with the Project.

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

ARTICLE I

RULES OF CONSTRUCTION; DEFINITIONS

SECTION 1.1 *Rules of Construction; Use of Defined Terms.* Unless the context clearly indicates otherwise, in this Agreement words and terms defined in Section 1.2 hereof are used with the meanings ascribed thereto.

SECTION 1.2 *Definitions.*

"Acts" has the meaning set forth in the Recitals.

"Administrative Expenses" has the meaning set forth in Section 9.12 of this Agreement.

"Agreement" means this Special Source Revenue Credit Agreement dated as of May 28, 2019, among the County and the Company.

"Company" means 3i Products, Inc., a South Carolina corporation, and its successors and assigns.

"County Council" means the governing body of the County.

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

"Documents" means the Ordinance and this Agreement.

"Equipment" means all machinery, apparatus, equipment, fixtures, office facilities, furnishings and other tangible personal property located on or at the Real Property to the extent such is used in the operation of the Project.

"Event of Default" means any Event of Default specified in Section 7.1 of this Agreement.

“Improvements” means improvements to the Real Property together with any and all additions, accessions, replacements and substitutions thereto or therefor, and all fixtures now or hereafter attached thereto.

“Infrastructure Improvements” means, in accordance with the Acts, the designing, acquiring, constructing, improving or expanding the infrastructure serving the County and for improved or unimproved real estate, buildings and structural components of buildings, including upfits. Upon the written election by the Company and written notice to the County, personal property, including the Equipment, and such other items as may be described in or permitted under Section 4-29-68 of the Acts, shall also be included.

“Land” has the meaning set forth in the Recitals.

“Master Park Agreement” has the meaning set forth in the Recitals.

“Minimum Jobs Commitment” has the meaning set forth in the Recitals.

“Minimum Investment Commitment” has the meaning set forth in the Recitals.

“MCP Laws” has the meaning set forth in the Recitals.

“Ordinance” means Ordinance No. 2019-[], enacted by the County Council on May 28, 2019, authorizing and approving this Agreement.

“Original Agreement” has the meaning set forth in the Recitals.

“Park” means the multi-county park jointly developed by the County and Chesterfield County, South Carolina pursuant to the Master Park Agreement, or a successor multi-county park established pursuant to the MCP Laws.

“Payments-in-Lieu-of-Taxes” means the payments to be made by the Company pursuant to Section 4.1 of this Agreement.

“Project” means has the meaning set forth in the Recitals.

“Qualified Full-Time Job” means a full-time job (*i.e.*, at least thirty (30) hours per week) at the facility, with health care benefits, paying an hourly wage not less than the Wage Requirement. As used in this definition and as applicable to the Project, “Qualified Full-Time Job” includes only those jobs employed by the Company for the Project. “Qualified Full-Time Jobs” does not include those jobs staffed using a temporary employment agency or staffing agency.

“Real Property” means the Land together with all and singular rights, members, hereditaments and appurtenances belonging or in any way incident or appertaining thereto; all Improvements now or hereafter situated thereon; and all fixtures now or hereafter attached thereto.

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

“**Special Source Revenue Credit**” or “**SSRC**” has the meaning set forth in Section 4.2 of this Agreement.

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

“**Wage Requirement**” means Fifteen Dollars (\$15.00) per hour. The hourly wage rate of fifteen dollars (\$15.00) shall be adjusted on December 31, 2024, to the lower of either sixteen dollars and eighty-eight cents (\$16.88) or the then current per capita hourly wage rate for the County as published by the SCDOR.

SECTION 1.3 *Amended Agreements and Documents.* Unless the context clearly indicates otherwise, any reference to any agreement or document in this Article or otherwise in this Agreement shall be deemed to include any and all amendments, supplements, addenda and modifications to such agreement or document.

ARTICLE II LIMITATION OF LIABILITY

SECTION 2.1 *Limitation of Liability.* This Agreement imposes no obligation on the County for the payment of money. Any obligation which may be imposed on the County by this Agreement does not and shall never constitute an indebtedness of the County within the meaning of any state constitutional provision or statutory limitation and shall never create a pecuniary liability of the County or a charge upon its general credit or against its taxing powers.

ARTICLE III REPRESENTATIONS AND COVENANTS

SECTION 3.1 *Representations of the County.* The County represents that (i) it is a body politic and corporate and a political subdivision of the State, (ii) it is authorized by the Acts to enter into this Agreement, (iii) it has approved this Agreement in accordance with the procedural requirements of the Acts and any other applicable state law and the applicable County Council rules, and (iv) it has authorized its officials to execute and deliver this Agreement.

SECTION 3.2 *Covenants by the County.* The County covenants with the Company to maintain the Land in the Park for so long as the Company receives Special Source Revenue Credits pursuant to this Agreement.

SECTION 3.3 *Representations of the Company.* The Company represents that (i) it is a corporation organized, validly existing, and in good standing under the laws of the State, (ii) it has the power to enter into this Agreement, (iii) it has by proper action approved this Agreement, and (iv) it has authorized its officials to execute and deliver this Agreement.

ARTICLE IV PAYMENTS-IN-LIEU-OF-TAXES; SPECIAL SOURCE REVENUE CREDIT; TERM

SECTION 4.1 *Payments-in-Lieu-of-Taxes.*

(a) The parties acknowledge that under the MCP Laws, the Project is exempt from *ad valorem* property taxes. However, the Company shall be required to make annual Payments-in-Lieu-of-Taxes with respect to the Project in an amount equal to what such *ad valorem* property taxes would be if the Project were not located in the Park, less the Special Source Revenue Credits that are provided in Section 4.2. The Payments-in-Lieu-of-Taxes to be made by the Company under this Agreement shall be calculated in the same manner as *ad valorem* taxes. The collection and enforcement of the Payments-in-Lieu of Taxes shall be as provided in Section 12-2-90, Code of Laws of South Carolina 1976, as amended.

(b) Further, pursuant to the Acts as existing on the date of this Agreement, if the Company has made a written election to include, as part of the Infrastructure Improvements, the Equipment, and has provided notice to the County of such election, and the Company subsequently removes or disposes of Equipment from the Project during the term of this Agreement and has claimed a Special Source Revenue Credit against its Payments-in-Lieu-of-Taxes based upon such Equipment, then the Company is required to continue to make Payments-in-Lieu-of-Taxes on the removed Equipment for the two years immediately following the year in which the Company removes the Equipment from the Project. The amount of the Payments-in-Lieu-of-Taxes due on the removed Equipment under the Acts is equal to the Payment-in-Lieu-of-Taxes due on the Equipment for the year in which the Company removes or disposes of the Equipment. If the Company replaces the Equipment with qualifying replacement property, as defined in the Acts, then the removed Equipment is deemed not to have been removed from the Project. Notwithstanding anything in this subsection to the contrary, the Company shall be required to make the Payments-in-Lieu-of-Taxes required in this subsection only if and to the extent that the Acts so require at the time that the Equipment in question is removed or disposed of.

SECTION 4.2 *Special Source Revenue Credit.*

(a) *Special Source Revenue Credit #1.* Subject to the provisions of this subsection (a), the County grants an annual Special Source Revenue Credit (“Special Source Revenue Credit #1”) for a period of twenty (20) years (“Credit Period #1”) to the Company against each annual Payment-in-Lieu-of-Taxes in an amount that would allow the Company’s remaining Payment-in-Lieu-of-Taxes, after deduction of Special Source Revenue Credit #1 but before deduction of Special Source Revenue Credit #2, to be equivalent to an amount calculated using a 6% assessment ratio and a millage rate of 317.6. Special Source Revenue Credit #1 shall apply to the annual Payment-in-Lieu-of-Taxes due with respect to the Project in connection with investments made between November 9, 2015, and December 31, 2015, and for each year thereafter through December 31, 2020 (“Investment Period”). Credit Period #1 shall commence with the property tax year ending December 31, 2018 and the last year of Credit Period #1 will be the property tax year ending December 31, 2037.

(b) *Special Source Revenue Credit #2.* In addition to Special Source Revenue Credit #1, the County grants an annual Special Source Revenue Credit (“Special Source Revenue Credit #2”) to the Company against each annual Payment-in-Lieu-of-Taxes in an amount equal to 50% of the remaining Payment-in-Lieu-of-Taxes liability, after deduction of Special Source

Revenue Credit #1, each year for a period of seven (7) years ("Credit Period #2") so long as the Company meets the Special Source Revenue Credit #2 Performance Requirement (as defined below). Credit Period #2 shall commence with the property tax year ending December 31, 2018 and ends with the property tax year ending December 31, 2024.

(c) Notwithstanding anything in this Agreement to the contrary, the Company is entitled to an SSRC only to the extent that, as of the date that an SSRC is to be applied, the total cost of the Infrastructure Improvements is at least equal to the aggregate amount of any SSRC previously provided and the amount of the SSRC to be provided for the year in question. Upon request of the County, the Company shall provide documentation to the County reflecting the cost of the Infrastructure Improvements.

(d) For purposes of this Section 4.2 and Section 4.3, "year" means the twelve month period January 1 through December 31 and the "first year of the Project" means the year for which Payments-in-Lieu-of Taxes are due and payable on or before January 15, 2019.

SECTION 4.3 *Performance Requirements.*

(a) The Company shall receive the Special Source Revenue Credit #1 so long as the Company meets the Minimum Investment Commitment and the Minimum Jobs Commitment, to be tested for each year of Credit Period #1 by the County Economic Development Director (the "Special Source Revenue Credit #1 Performance Requirement").

(b) If the Company meets the Special Source Revenue Credit #1 Performance Requirement, then the Company shall receive Special Source Revenue Credit #2 so long as the Company satisfies the Special Source Revenue Credit #2 Performance Requirement. "Special Source Revenue Credit #2 Performance Requirement" means the maintenance of not less than twenty (20) Qualified Full-Time Jobs at the Project, to be tested for each year of the Credit Period #2 by the County Economic Development Director.

(c) Company agrees, as soon as reasonably practicable, following the end of each twelve month period described above to submit to the County Economic Development Director a certification on Company letterhead listing the aggregate number of Qualified Full-Time Jobs maintained by the Company at the end of such twelve month period.

(d) For purposes of determining compliance with the Minimum Jobs Commitment, the Special Source Revenue Credit #1 Performance Requirement and the Special Source Revenue Credit #2 Performance Requirement, Company agrees to provide to the County Economic Development Director, in January of each year, a copy of all of Company's filings with the State (if required to be filed with the State) for the preceding calendar year of: (i) reports submitted to the South Carolina Coordinating Council for Economic Development with respect to any Job Development Credits awarded in connection with the Project, (ii) Department of Revenue Form SC SCH. TC 4 (New Jobs Credit), and (iii) South Carolina Department of Employment and Workforce quarterly contribution and wage reports (such as Form UCE 120). Company agrees to redact any personally identifying information and proprietary and confidential information prior to submitting any form to the County Economic Development Director. In lieu of providing any

of the forms specifically identified in this subsection, Company and the County Economic Development Director may agree on an alternative method for the Company to demonstrate compliance with the Minimum Jobs Commitment, the Special Source Revenue Credit #1 Performance Requirement and the Special Source Revenue Credit #2 Performance Requirement.

(e) *Special Source Revenue Credit #1 Clawback.* Both the Minimum Investment Commitment and the Minimum Jobs Commitment shall be tested annually by the County Economic Development Director. If either or both of the Minimum Investment Commitment and the Minimum Jobs Commitments are not satisfied during any single tax year, the Company shall not be entitled to Special Source Revenue Credit #1 and Special Source Revenue Credit #2 and shall be required to pay a Payment-in-Lieu-of-Taxes computed in accordance with Section 4.1(a) of this Agreement but without any Special Source Revenue Credit, *provided, however*, the Payment-in-Lieu-of-Taxes shall be computed with regard to any applicable property tax exemptions.

(f) *Special Source Revenue Credit #2 Clawback.* The Special Source Revenue Credit #2 Performance Requirement shall be tested annually by the County Economic Development Director. If the Special Source Revenue Credit #2 Performance Requirement is not satisfied during any given tax year, the amount of Special Source Revenue Credit #2 to which the Company is entitled shall be subject to a pro-rata reduction, to be calculated in accordance with the following:

Special Source Revenue Credit #2 Amount = 50% x Special Source Revenue Credit #2 Achievement Percentage

Special Source Revenue Credit #2 Achievement Percentage = Actual New, Full-Time Jobs Created / Special Source Revenue Credit #2 Performance Requirement

For example, and by way of example only, if 16 Qualified Full-Time Jobs had been maintained during a certain tax year, the reduction in Special Source Revenue Credits would be calculated as follows:

Special Source Revenue Credit #2 Achievement Percentage = 16/20 = 80%

Special Source Revenue Credit #2 Amount = 50% x 80% = 40%

Unless otherwise provided in this Agreement, the Company's failure to satisfy the Minimum Investment Commitment or the Minimum Jobs Commitment in any single tax year shall not affect the Company's right to receive the Special Source Revenue Credit #1 or Special Source Revenue Credit #2 for any subsequent tax year.

(g) Notwithstanding any other provision of this Agreement, Company acknowledges and agrees that County's obligation to provide the Special Source Revenue Credits ends, and this Agreement is terminated, if the Company ceases operations. For purposes of this Section 4.3(g), "cease operations" means permanent closure of the facility. Company agrees that if this

Agreement is terminated pursuant to this Section 4.3(g), that under no circumstance shall the County be required to refund or pay any monies to Company.

SECTION 4.4 *Term.* Except for those provisions which are intended to survive termination of this Agreement, the term of this Agreement shall be from the Effective Date until the last day of the year in which the Company is eligible for the Special Source Revenue Credits provided in Section 4.2 of this Agreement unless earlier terminated pursuant to Section 4.3(g) hereof or pursuant to the exercise by the Company of its option to terminate pursuant to Section 8.1 hereof.

ARTICLE V EFFECTIVE DATE

SECTION 5.1 *Effective Date.* This Agreement is effective as of the Effective Date.

ARTICLE VI SPECIAL COVENANTS

SECTION 6.1 *Confidential Information.*

(a) The 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 Company's books and records pertaining to the Project. The right of examination and inspection shall be exercised only upon reasonable and necessary terms and conditions prescribed by the Company to protect the Company's confidentiality and proprietary rights.

(b) The County acknowledges and understands that the Company 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 Company's operations and processes ("Confidential Information") and that any disclosure of the Confidential Information could result in substantial harm to the Company and could have a significant detrimental impact on the Company'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 Company, 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 Company and give the Company the opportunity to contest the release.

SECTION 6.2 *Indemnification Covenants.*

(a) The Company shall and agrees to hold the County and its County Council members, officers, agents and employees harmless from all pecuniary liability based upon those reasons set forth in subsection (b) below. Such indemnification obligation shall survive any termination of this Agreement.

(b) Notwithstanding the fact that it is the intention of the parties that neither the County nor any of its County Council members, officers, agents and employees shall incur any pecuniary liability to any third party (i) by reason of the terms of this Agreement or the undertakings of the County required hereunder, (ii) by reason of the performance of any act in connection with the entering into and performance of the transactions described in the Documents, or (iii) by reason of the condition or operation of the Project, including claims, liabilities or losses arising in connection with the violation of any statutes or regulations, if the County or any of its County Council members, officers, agents or employees should incur any such pecuniary liability, then, in that event the Company shall indemnify and hold harmless the County and its County Council members, officers, agents and employees against all pecuniary claims by or on behalf of any person, firm or corporation, arising out of the same, and all costs and expenses incurred in connection with any such claim. The provisions of this Section 6.2 shall survive any termination of this Agreement.

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

SECTION 6.3 *Assignment.* With the County's consent, which shall not be unreasonably withheld, any or all of the Company's interest in the Project and/or this Agreement may be transferred or assigned by the Company or any assignee to any other entity, without the termination of the benefits provided in this Agreement. The County hereby expressly consents to any such transfer or assignment by the Company to any Company affiliate. The County agrees that the County Council can provide any required consent by a resolution of County Council.

ARTICLE VII EVENTS OF DEFAULT AND REMEDIES

SECTION 7.1 *Events of Default Defined.* The occurrence of any one or more of the following events shall be an "Event of Default" under this Agreement:

(a) If the Company shall fail to make any Payment-in-Lieu-of-Taxes or payment of any other amount required under this Agreement and such failure shall continue for 30 days after receiving written notice of default from the County; or

(b) If the Company shall fail to observe or perform any covenant, condition, or agreement required herein to be observed or performed by the Company (other than as referred to in subsection (a) above), and such failure shall continue for a period of 30 days after written notice of default has been given to the Company by the County; *provided, that*, if, by reason of "*force majeure*", as hereinafter defined, the Company is unable in whole or in part to carry out any such

covenant, condition, or agreement or if it takes longer than 30 days to cure such default and the Company is diligently attempting to cure such default during such period, there shall be no Event of Default during such inability. The term "*force majeure*" as used herein shall mean circumstances not reasonably within the control of the parties, such as, without limitation, acts of God, strikes, lockouts or other industrial disturbances; war; acts of public enemies; mobilization or military conscription on a large scale; order of any kind of the government of the United States or any State, or any civil or military authority other than the County Council; insurrections; riots; landslides; earthquakes; fires; lightning; storms; droughts; floods; requisitions, confiscation, or commandeering of property; fuel restrictions; general shortages of transport, goods, or energy; or

(c) If any material representation or warranty on the part of the Company made in the Documents, or in any report, certificate, financial or other statement furnished in connection with the Documents or the transactions described in the Documents shall have been false or misleading in any material respect.

SECTION 7.2 *Default by the Company.* Whenever any Event of Default by the Company shall have happened and be subsisting, the County may terminate this Agreement and/or take whatever action at law or in equity may appear legally required or necessary or desirable to collect any payments then due. As set forth in Section 8.1 hereof, the Company may terminate this Agreement at any time upon providing 30 days' notice to the County, without regard to any Event of Default. Although the parties acknowledge that the Project is exempt from *ad valorem* taxes, the County and any other taxing entity affected thereby may, without limiting the generality of the foregoing, enforce the collection of the Payments-in-Lieu of Taxes as provided in Section 12-2-90, Code of Laws of South Carolina 1976, as amended, and exercise the remedies provided by general law (Title 12, Chapter 49) and the laws relating to the enforced collection of taxes, and shall have a first priority lien status as provided in the Acts and Chapters 4 and 54 of Title 12, Code of Laws of South Carolina 1976, as amended.

SECTION 7.3 *Default by County.* Upon the default of the County in the performance of any of its obligations hereunder, the Company may take whatever action at law or in equity as may appear necessary or desirable to enforce its rights under this Agreement, including without limitation a suit for mandamus or specific performance.

SECTION 7.5 *No Remedy Exclusive.* No remedy herein conferred upon or reserved to the County or Company is intended to be exclusive of any other available remedy or remedies, but in each and every instance such remedy shall be cumulative and shall be in addition to every other remedy given under the Documents or now or hereafter existing at law or in equity or by statute. Unless otherwise provided herein or in the other Documents, no delay or omission to exercise any right or power shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

SECTION 7.6 *No Additional Waiver Implied by One Waiver.* In the event any warranty, covenant or agreement contained in this Agreement should be breached by the Company or the County and thereafter waived by the other party to this Agreement, such waiver

shall be limited to the particular breach so waived and shall not be deemed to waive any other breach.

ARTICLE VIII COMPANY OPTION TO TERMINATE

SECTION 8.1 *Company Option to Terminate.* From time to time (including without limitation any time during which there may be subsisting an Event of Default) and at any time upon at least 30 days' notice, the Company may terminate this Agreement with respect to the entire Project or any portion thereof. Upon termination of all or part of this Agreement, the Company will become liable, prospectively but not retroactively, for Payments-in-Lieu-of-Taxes computed in accordance with Section 4.1(a) of this Agreement but without any Special Source Revenue Credits, *provided, however*, the Payments-in-Lieu-of-Taxes shall be computed with regard to any applicable property tax exemptions on the Project or such portion thereof as is so terminated from inclusion in the Project, as well as for any amounts already due and owing under this Agreement, which latter amounts, if any, shall be paid to the County with the next installment of Payments-in-Lieu-of-Taxes pursuant to Section 4.1, or, if the termination is of the entire Project, then within 120 days of termination. The Company agrees that if this Agreement is terminated pursuant to this Section 8.1, that under no circumstance shall the County be required to refund or pay any monies to the Company.

ARTICLE IX MISCELLANEOUS

SECTION 9.1 *Notices.* All notices, approvals, consents, requests and other communications hereunder shall be in writing and may be delivered personally, or may be sent by certified mail, return receipt requested, to the following addresses, unless the parties are subsequently notified of any change of address in accordance with this Section 9.1:

If to the Company:

3i Products, Inc.
Attn: Albert Chen, General Manager
3888 Chester Highway
Lancaster, SC 29720
Telephone: 866-267-7772
Facsimile: 909-627-4759
Email:

With a copy to:

Parker Poe Adams & Bernstein LLP
Attn: Ray Jones
1221 Main Street, Suite 1100
Columbia, South Carolina 29201

To the County:

County of Lancaster, South Carolina
ATTN: Steve Willis, County Administrator
101 N. Main St. (29720)
P.O. Box 1809 (29721-1809)
Lancaster, South Carolina
Phone: (803) 416-9300
Email: swillis@lancastercountysc.net

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

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

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

SECTION 9.2 *Binding Effect.* This Agreement shall inure to the benefit of and shall be binding upon the County and the Company and their respective successors and assigns.

SECTION 9.3 *Rescission and Severability.* In the event that the Acts or the Special Source Revenue Credit arrangement described in Article IV hereof is determined to be invalid in its entirety, the parties hereby agree that except as the final judicial decision may otherwise require, the Company shall be entitled to retain any benefits received under or pursuant to this Agreement; otherwise, in the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, that decision shall not invalidate or render unenforceable any other provision of this Agreement, unless that decision destroys the basis for the transaction, in which event, at the expense and sole discretion of the Company, the parties shall in good faith attempt to preserve, to the maximum extent possible, the benefits provided and to be provided to the Company hereunder by either restructuring or reconstituting this Agreement under any then applicable law.

SECTION 9.4 *Fiscal Year.* If the Company's fiscal year changes in the future, the timing of the requirements set forth in this Agreement shall, as appropriate and as needed, be automatically revised accordingly, to the extent allowed by law.

SECTION 9.5 *Amendments, Changes and Modifications.* Except as otherwise provided in this Agreement, this Agreement may not be amended, changed, modified, altered or

terminated without the written consent of the County and the Company. To the maximum extent allowed by law, any County consent, including specifically and without limitation any County consent referred to in this Agreement, may be provided by a resolution of County Council.

SECTION 9.6 *Execution of Counterparts.* This Agreement may be executed in several counterparts, each of which shall constitute an original instrument.

SECTION 9.7 *Law Governing Construction of Agreement.* The laws of South Carolina shall govern the construction of this Agreement.

SECTION 9.8 *Filings.* The Company shall cause a copy of this Agreement to be filed with the County Auditor and the County Assessor within thirty (30) days after the date of execution and delivery hereof.

SECTION 9.9 *Filing of Reports and Certifications.* Each year during the term of this Agreement, the Company shall deliver to the County Auditor, the County Assessor, the County Treasurer, and the County Economic Development Director a copy of its most recent annual filings with the SCDOR with respect to the Project, not later than 30 days following delivery thereof to the SCDOR.

SECTION 9.10 *Headings.* The headings of the articles and sections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Agreement.

SECTION 9.11 *Further Assurance.* From time to time the County agrees to execute and deliver to the Company such additional instruments as the Company may reasonably request to effectuate the purposes of this Agreement.

SECTION 9.12 *Administrative Expenses* (a) Company agrees to reimburse the County from time to time for its Administrative Expenses actually incurred in connection with the Project 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 Administrative Expenses. The Company and the County agree that the Administrative Expenses shall not exceed \$6,000 in the aggregate. As used in this section, "Administrative Expenses" means 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 any related multi-county park documents, (iii) the preparation, review, approval and execution of other documents related to the Agreement and multi-county park documents, and (iv) 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.

(b) In addition to the reimbursement of Administrative Expenses as provided in subsection (a) of this section, the Company 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 Payments-in-Lieu-of-Taxes 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 9.13 *Temporary Right of First Refusal.* Section 2.10 of the Original Agreement provided the County with a right of first refusal in the deed in which the County conveyed title to the Land to the Company (the “Right of First Refusal”). The Right of First Refusal provided that in the event the Company offered to sell the Land to any unrelated third party within five (5) years from the date of conveyance of the Land to the Company, the County would have the right, but not the obligation to cause the Company to reconvey the Land to the County for the consideration of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00). However, the Right of First Refusal terminated immediately upon the Company’s completion of the Performance Requirement. As used in Section 2.10 of the Original Agreement, “Performance Requirement” meant the expenditure of not less than \$1,000,000 (including the amount of \$500,000 paid as the Purchase Price) for improvements to the Project site. The County acknowledges and agrees that (i) the Company has met the Performance Requirement required by Section 2.10 of the Original Agreement, and (ii) the Right of First Refusal has terminated. Upon approval of the form of the document by the County Attorney, the County Administrator is authorized to execute, deliver, and record a recordable document acknowledging the termination of the Right of First Refusal.

SIGNATURES FOLLOW ON NEXT PAGE.

IN WITNESS WHEREOF, LANCASTER COUNTY, SOUTH CAROLINA, and 3i PRODUCTS, INC., pursuant to due authority, have duly executed this Special Source Revenue Credit Agreement, all as of the Effective Date.

LANCASTER COUNTY, SOUTH CAROLINA

By: _____
Steve Harper, Chair, County Council

Larry Honeycutt, Secretary, County Council

ATTEST:

Sherrie Simpson, Clerk to Council

3i PRODUCTS, INC.

By: _____

Name: _____

Title: _____