



equipment, used in the operation of a manufacturing facility or commercial enterprise in order to enhance the economic development of the County ("Special Source Improvements");

(d) Remac Corporation d/b/a McClancy Seasoning Company, a Corporation organized and existing under the laws of the State of North Carolina, and NBI Investments II, LLC and NBI Investments III, LLC, who are both limited liability companies organized and existing under the laws of the State (all three jointly referred to as the "Sponsors") are considering investing, through themselves and/or one or more existing or to be formed affiliated entities, in personal property and certain real estate improvements located in the County, which would constitute a project, known by the Sponsors as "Project Strawberry", 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 Eight Million Dollars (\$8,000,000.00) (the "Project") and create a minimum number of new jobs as detailed in the Fee Agreement; and

(e) pursuant to Resolution No. 1090-R2020, adopted April 27, 2020, the Council approved an Inducement Resolution providing for, among other things, the commitment of the County to enter into a fee-in-lieu of tax incentive with the Sponsors and the provision of special source revenue credits.

## **Section 2.      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 3.      Approval of Fee Agreement and Special Source Revenue Credit Agreement.**

The form, terms, and provisions of the Fee Agreement, attached hereto as **EXHIBIT A**, and the form, terms and provisions of the Special Source Revenue Credit Agreement ("SSRC Agreement"), attached hereto as **EXHIBIT B**, are each approved, and all of the terms, provisions, and conditions thereof are incorporated herein by reference as if the Fee Agreement and SSRC Agreement were 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 and the SSRC Agreement in the name of and on behalf of the County, and

thereupon to cause the Fee Agreement and the SSRC Agreement to be delivered to the Sponsors. The Fee Agreement and SSRC Agreement are each 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 and SSRC Agreement attached to this ordinance.

**Section 4.      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 5.      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 SSRC Agreement and the performance of all obligations of the County under and pursuant to the Fee Agreement and SSRC Agreement.

**Section 6.      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 7.      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 8.      Effective Date.**

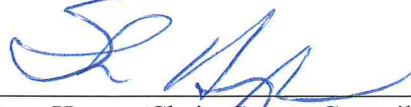
This ordinance is effective upon Third Reading.

SIGNATURES FOLLOW ON NEXT PAGE.

AND IT IS SO ORDAINED

Dated this 8<sup>th</sup> day of JUNE, 2020.

LANCASTER COUNTY, SOUTH CAROLINA



Steve Harper, Chair, County Council



Larry Honeycutt, Secretary, County Council

ATTEST:

  
Sherrie Simpson, Clerk to Council

First Reading: April 27, 2020  
Second Reading: May 26, 2020  
Public Hearing: June 8, 2020  
Third Reading: June 8, 2020

Approved as to form:

  
John K. DuBose III, County Attorney

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**Exhibit A to Ordinance No. 2020-1661**

**Fee Agreement**

See attached.

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**Exhibit B to Ordinance No. 2020-1661**

**Special Source Revenue Credit Agreement**

See attached.

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FEE AGREEMENT

by and between

LANCASTER COUNTY, SOUTH CAROLINA,

REMAC CORPORATION d/b/a McCLANCY SEASONING COMPANY,

NBI INVESTMENTS II, LLC

and

NBI INVESTMENTS III, LLC.

Dated as of June 8, 2020

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## FEE AGREEMENT

This FEE AGREEMENT (this "Agreement") is dated as of June 8, 2020, by and between LANCASTER COUNTY, SOUTH CAROLINA, a body politic and corporate and a political subdivision of the State of South Carolina (the "County"), REMAC CORPORATION d/b/a McCLANCY SEASONING COMPANY, a corporation organized and existing under the laws of the State of North Carolina, and NBI INVESTMENTS II, LLC and NBI INVESTMENTS III, LLC, each a limited liability company organized and existing under the laws of the State of South Carolina (each a "Sponsor", jointly referred to as the "Sponsors" or "Company" and, together with any subsequently joined Sponsor Affiliate(s), the "Companies").

### WITNESSETH:

WHEREAS, the County, acting by and through its 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 (a "FILOT"); and (iii) to maintain, create or expand, in conjunction with one or more other counties, a multi-county industrial park in order to afford certain enhanced income tax credits to such investors; and

WHEREAS, the Company proposes to renovate and expand the Company's existing manufacturing facility in the County (the "Project"); and

WHEREAS, the Company anticipates that the Project will result in the creation of at least one hundred and eight (108) new, full-time jobs from December 31, 2018 and an investment of at least \$8,000,000 in the County; and

WHEREAS, the County Council approved on April 27, 2020, Resolution No. 1090-R2020 (the "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 Company locating the Project in the County, the Company requested that the County complete the FILOT arrangement referred to in the Inducement Resolution by entering into this Agreement with the Company pursuant to the Act, and the Company elects to enter into such FILOT arrangement with the County in an effort to implement the terms of the Project and allow the Company to make FILOT payments pursuant to the Act; and

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



WHEREAS, for the Project, the parties have also determined that Sponsors are Project Sponsors, 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 Company, subject to the terms and conditions herein set forth.

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

## ARTICLE I

### DEFINITIONS AND RECAPITULATION

#### Section 1.01. Statutorily Required Recapitulation.

(a) Pursuant to Section 12-44-55(B) of the Act, the County and the Company 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:  
Remac Corporation, NBI Investments II, LLC, NBI Investments III, LLC  
and 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:  
  
Lancaster County, South Carolina  
182 Spice Road, Indian Land, SC 29707  
Tax Map No. 0010-00-001.00  
  
Lancaster County, South Carolina  
8746 Charlotte Hwy, Indian Land, SC 29707  
Tax Map No. 0010-00-029.03
3. Minimum investment agreed upon: \$8,000,000.
4. Length and term of this Agreement: 30 years for each annual increment of investment in the Project during the Investment Period.

5. Assessment ratio applicable for each year of this Agreement: 6%, except as otherwise provided in the Agreement.
6. Millage rate applicable for each year of this Agreement: 325.4 mills, 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 given to the Economic Development Property in amounts equal to 58% of Negotiated FILOT Payments for ten (10) consecutive years beginning with the Negotiated FILOT Payment due without penalty by January 15, 2023 and ending with the Negotiated FILOT Payment due without penalty by January 15, 2032;
  - (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 hereto shall have the following meanings, unless the context or use indicates another or different meaning or intent.

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

“*Administration Expense*” shall mean the reasonable and necessary out-of-pocket expenses, including attorneys’ fees, incurred by the County with respect to: (i) the preparation, review, approval and execution of this 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.

“*Affiliate*” shall mean any person or entity directly or indirectly controlling, controlled by, or under common control with such other person or entity. 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 or entity, whether through the ownership of voting securities, by contract, or otherwise.

“*Agreement*” shall mean this Fee Agreement by and among the County and the Company, as originally executed and from time to time supplemented or amended as permitted herein, and dated as of June 8, 2020.

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

“*Company*” shall mean the Sponsors.

“*Companies*” shall mean the Sponsors together with any subsequently joined Sponsor Affiliate(s).

“*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 and in this Agreement.

“*Equipment*” shall mean all machinery, equipment, furnishings, and other personal property acquired by Sponsors 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) the Land; (b) property acquired or constructed by Sponsors 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 (c) modifications which constitute an expansion of Existing Property.

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

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

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

“*Investment Commitment*” shall mean the agreement of the Company to make investments with respect to the Project as set forth in Section 4.01(a) of this Agreement.

*“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 ten (10) years from the end of the property tax year in which this Agreement is executed by the Company and the County, unless extended by agreement of the County and the Company pursuant to Section 12-44-30(13) of the Code.

*“Jobs Commitment”* shall mean the commitment of Sponsors to create jobs with respect to the Project as set forth in Section 4.01(b) of this Agreement.

*“Land”* shall mean the real estate upon which the Project is to be located, as described in Exhibit A attached hereto. Additional real estate may be included in Exhibit A by amendment as provided in the Section 12.12 of this Agreement.

*“Multi-County Park”* means the multi-county park established pursuant to the Amended and Restated Master Multi-County Park Agreement, Amended and Restated as of November 9, 2015, between the County and Chesterfield County, South Carolina, as from time to time amended and updated, and as authorized by the MCP Laws.

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

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

*“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 those jobs created for the Project, after December 31, 2018. Jobs relocated from other states to the Project shall be counted as New Full-Time Jobs. All persons filling the New Full-Time Job positions must be authorized pursuant to state and federal law to be employed in the United States and not less than ninety percent (90%) of the persons filling the New Full-Time Job positions must be U.S. citizens.

*“Non-Qualifying Property”* shall mean that portion of the Project consisting of: (i) property as to which Sponsors 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 Company has terminated the Negotiated FILOT pursuant to Section 4.03(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 buildings and other improvements on the Land to the extent placed thereon by or on behalf of the Company, 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 Commitment”* shall mean the (i) Investment Commitment, and (ii) 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 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 Affiliate”* shall mean any entity who agrees to be bound by the terms and provisions of this Agreement and is approved by the County in writing pursuant to the provisions of Section 8.04 of 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 Requirement”* means Fourteen Dollars and Zero Cents (\$14.00) per hour, and, for purposes of satisfying the Wage Requirement (the “Initial Hourly Wage”). The Initial Hourly Wage rate applies to calendar years prior to 2021. The Initial Hourly Wage rate shall be adjusted for calendar years 2021 through 2024 to the lower of either Sixteen Dollars and Zero Cents (\$16.00) or the then current per capita hourly wage rate for the County as published by the South Carolina Department of Revenue. The County shall provide notice to the Sponsors 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 Sponsors. The Sponsors make the following representations and warranties as the basis for the undertakings on their part herein contained:

(a) Sponsors are each a limited liability company, validly existing and in good standing under the laws of South Carolina and authorized to do business in the State; have all requisite power to enter into this Agreement; and by proper action have been duly authorized to execute and deliver this Agreement.

(b) The agreements with the County with respect to the FILOT have been instrumental in inducing Sponsors to locate their 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 the Sponsors are pending or threatened against or affecting Sponsors 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 Sponsors for federal and state income tax purposes end December 31.

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

(f) Sponsors intend to operate the Project for the purpose of manufacturing food products. The Project constitutes a "project" and "economic development property" as provided under the Act.

## 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 Company in accordance with Section 5.01 hereof in lieu of *ad valorem* taxes with respect to the Project until this Agreement expires or is sooner terminated.

Section 3.02. No Warranties by County. The 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 Company the benefits of the Negotiated FILOT Payments in consideration of the Company's decision to locate the Project within Lancaster County and that this Agreement has been entered into in reliance upon the enactment of the Simplified FILOT Act. In the event that, 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, the Company and the County express their intentions that such payments be reformed so as to afford the Company 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 Company 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, the 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 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 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 the Company would have paid as *ad valorem* taxes, including all exemptions, credits, and depreciation for which the Company would have otherwise been eligible if it were obligated to pay *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. The 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 Company.

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 Company has otherwise complied with or provided 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 take action to place the Land in the Multi-County Park until the date this Agreement is terminated. If it becomes necessary to move the Land from one multi-county park to another prior to the termination of this Agreement, the County agrees to use its best efforts to place the Land in a 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 BY COMPANIES IN PROJECT; MAINTENANCE AND MODIFICATION OF PROJECT

Section 4.01. Investment by Companies in Project.

(a) For the Project, the Company agrees and commits to invest at least Eight Million Dollars (\$8,000,000) in Economic Development Property by the end of the Investment Period. 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 Sponsors and Sponsor Affiliates in Economic Development Property shall be included in any determination of whether the Company has fulfilled its commitment made in this Section to invest in the Project.

(b) For the Project, together with any Sponsor Affiliates, the Sponsors agree and commit to the following aggregate Jobs Commitment: the creation and maintenance of the number of New Full-Time Jobs, paying an hourly wage rate not less than the Wage Requirement, at the following employment levels and in the designated timeframes:

(1) to have employed in New Full-Time Jobs meeting the Wage Requirement, not less than forty-eight (48) at the end of calendar year 2021 (applicable to the Negotiated FILOT Payment due without penalty by January 15, 2023) for a total of 145 full-time employees,

(2) to have employed in New Full-Time Jobs meeting the Wage Requirement, not less than an average of sixty-three (63) in calendar year 2022 (applicable to the Negotiated FILOT Payment due without penalty by January 15, 2024) for a total of 160 full-time employees,

(3) to have employed in New Full-Time Jobs meeting the Wage Requirement, not less than an average of seventy-eight (78) in calendar year 2023 (applicable to the Negotiated FILOT Payment due without penalty by January 15, 2025) for a total of 175 full-time employees,



(4) to have employed in New Full-Time Jobs meeting the Wage Requirement, not less than an average of ninety-three (93) in calendar year 2024 (applicable to the Negotiated FILOT Payment due without penalty by January 15, 2026) for a total of 190 full-time employees,

(5) to have employed in New Full-Time Jobs meeting the Wage Requirement, not less than an average of one hundred and eight (108) in calendar year 2025 (applicable to the Negotiated FILOT Payment due without penalty by January 15, 2027) for a total of 205 full-time employees and each calendar year thereafter in which the Company receives an SSRC pursuant to Section 2.e below.

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) The 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, the 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 its 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) Sponsors agree, as soon as reasonably practicable following the end of each tax year of the Sponsors, to submit to the County Economic Development Director a certification on respective Sponsor letterhead listing the amount of capital investment and aggregate New Full-Time Jobs maintained by the Company at the end of such tax year.

(2) For purposes of determining compliance with the Jobs Commitment, Sponsors agree to provide to the County Economic Development Director, by January 30 of each year, a copy of all of Sponsors' filings with the State (if required to file by the State) for the preceding calendar year including: (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). The 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, the Company and the County Economic Development Director may agree on an alternative method for the Company to demonstrate compliance with the Jobs Commitment.

(c) (1) The 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) and (b) of this section (collectively, "Filings").

(2) 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 of Company's books and records pertaining to the Project and the Filings. The right of examination and inspection shall be exercised only upon reasonable and necessary terms and conditions prescribed by the 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 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 4.03 Modification of Project.

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

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

(ii) In any instance where the Company, 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, the Company may remove such items or portions from the Project and sell, trade in, exchange, or otherwise dispose of them (as a whole or in part) without the consent of the County; as such may be permitted under the Simplified FILOT Act.

(iii) The Company 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) 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 Company shall pay annually, with respect to the Project, a FILOT in the amount calculated as set forth in this Section, to be collected and enforced in accordance with Section 12-44-90 of the Act.

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

(i) With respect to any portion of the Project consisting of undeveloped land, land under development, other property not yet placed in service or 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 undeveloped land, land under development, other property not yet placed in service or Non-Qualifying Property if it were taxable giving effect to all credits, exemptions, depreciation, rebates and abatement that would be available if such undeveloped land, land under development, other property not yet placed in service or Non-Qualifying Property were taxable; and

(ii) 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 equal to 325.4 mills, for the Term, 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 granted to the Economic Development Property in amounts equal to fifty-eight (58%) of Negotiated FILOT Payments for ten (10) consecutive years beginning with the Negotiated FILOT Payment due without penalty by January 15, 2023 and ending with the Negotiated FILOT Payment due without penalty by January 15, 2032.

(e) The FILOT Payments are to be recalculated:

(i) to reduce such payments in the event the Company 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 the Company adds property (other than Replacement Property) to the Project; or

(iii) to adjust such payments if the Company elects to convert any portion of the Project from the Negotiated FILOT to the FILOT required by Section 5.01(b)(i) above, as permitted by Section 4.03(iii).

(f) To the extent permitted by law, because the FILOT Payments agreed to herein are intended to be paid by the Company 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 Company to the County in property taxes if the Company 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 set forth in Section 3(g) of Article X of the Constitution of the State of South Carolina would otherwise apply).

(g) Upon the Company's installation of any Replacement Property for any portion of the Project removed under Section 4.03 hereof and sold, scrapped, or disposed of by the Company, 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 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 Company and the County express their intentions that such payments be reformed so as to afford the Company 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 Company may, at the Company's expense, exercise the rights granted by Section 12-44-160 of the Code. If the Project is deemed not to be eligible for a Negotiated FILOT pursuant to the Act in whole or in part, the Company and the County agree that the Company shall pay an alternate fee-in-lieu of tax calculated in the manner set forth in Section 5.01(b)(i) hereof. In such event, the Company 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 exemptions or credits allowed by law; and (2) to enjoy all allowable depreciation. The Company agrees that if the FILOT Payments or this Agreement are reformed pursuant to this subsection (h), that under no circumstance shall the County be required to refund or pay any monies to the Company.

(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 Sponsors does not exceed, in the aggregate, Two Million Five Hundred Thousand Dollars (\$2,500,000.00) by the end of the Investment Period ("Act Minimum Investment Requirement"). 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 Company 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 Company had the project been taxable, taking into account exemptions from property taxes and depreciation that would have been available to the Company, and the total amount of fee payments actually made by the Company. This additional amount is subject to interest as provided in Section 12-54-25. The Company agrees, if the Negotiated FILOT Payments revert to payments equivalent to what the *ad valorem* taxes would be pursuant to this subsection (i), that under no circumstance shall the County be required to refund or pay any monies to the Company.

(j) The Company agrees that a portion of the Special Source Revenue Credits for a year shall be reduced to the extent that the Company fails to meet the Jobs Commitment. Specifically, in any year in which the Company fails to meet the Jobs Commitment, the SSRC shall be reduced in the same proportion that the Company failed to meet the Jobs Commitment. For example, if for the calendar year 2024, the Jobs Commitment is to have not less than an average of ninety-three (93), but the Company employed an average of seventy-eight (78) meeting the Jobs Commitment, then the SSRC would be set at 83.9% (78 divided by 93 equals 83.9%) of 58% which results in an SSRC applicable to the Negotiated FILOT Payment due without penalty by January 15, 2025 of 48.7% (83.9% times 58% equals 48.7%). In any year in which the Company must pay an additional fee as required in Section 5.01(k) below, the Company is ineligible for the SSRC provided for in Section 5.01(d).

(k) In any year after December 31, 2019 in which the Company fails to have employed in New Full-Time Jobs an average of not less than ten (10) the Company shall pay to the County an additional fee equal to the difference between the Negotiated FILOT Payments made by the Company and the FILOT Payment that would be due for the Economic Development Property if

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 (the "Hypothetical FILOT Payment").

As an example of the calculation set forth in this subsection (k), and by way of example only, assume Economic Development Property is first placed in service with respect to the Project in 2019, and that in the tax year ending December 31, 2022, that the maintained number of New Full-Time Jobs was 8, that the millage rate applicable for tax bills to be sent in the following year is 375, and all of the Economic Development Property classified as personal property would have a 10.5% assessment ratio applied if such property were subject to *ad valorem* taxation, then, the Hypothetical FILOT Payment for the tax year ending December 31, 2023, would be computed using the millage rate of 375 (instead of 325.4) and the 10.5% assessment ratio for the Economic Development Property classified as personal property (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 subsections (h) through (k) shall be paid within 90 days, following written notice thereof from the County to the Company.

(m) Notwithstanding any other provision of this Agreement, the Company acknowledges and agrees that County's obligation to provide the FILOT incentive and the Special Source Revenue Credits ends, and this Agreement is terminated, if the Company ceases operations. For purposes of this Section 5.01(m), "**cease operations**" means permanent closure of the facility. The Company agrees 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 Company.

## ARTICLE VI

### PAYMENTS BY COMPANIES

Section 6.01. Defaulted Payments. In the event the Company should fail to make any of the payments required under this Agreement, the item or installment so in default shall continue as an obligation of the Company until the amount in default shall have been fully paid. The Company agrees 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, the Company, in its sole discretion, may determine whether or not to repair or replace the same. The parties hereto agree that if the Company decides not to repair or replace all or any portion of the Project pursuant to this Section, the FILOT required pursuant to Section 5.01 hereof shall be abated in the same manner and in the same proportion as if *ad valorem* taxes were payable with respect to the Project.

## ARTICLE VIII

### PARTICULAR COVENANTS AND AGREEMENTS

Section 8.01. Use of Project for Lawful Activities. During the Term of this Agreement, the Company shall use the Project for the purposes identified in Section 2.02(f) of this Agreement and 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), the 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 the Company, to one or more Related Entities (as defined in Section 9.01 below) without adversely affecting the benefits of the Company or its assignees pursuant to any such agreement or the Act. The 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 the 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.

Section 8.03. Indemnification. Sponsors release the County, including the members of the governing body of the County, and the employees, officers, attorneys and agents of the County (herein collectively referred to as the “Indemnified Parties”) 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. Sponsors further agree to indemnify and save harmless Indemnified Parties against and from any and all costs, liabilities, expenses, and claims arising from any breach or default on the part of the Company in the performance of any covenant or agreement on the part of the Company to be performed pursuant to the terms of this Agreement or arising from any act or negligence of, or negligent failure to act where there is a duty to do so by the Company, or any of its agents, attorneys, contractors, servants, employees, or licensees, and from and against all cost, liability, and expenses incurred in or in connection with any such claim or action or proceeding brought thereon.

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



Notwithstanding the fact that it is the intention of the Indemnified Parties hereto that none of them shall incur any pecuniary liability by reason of the terms of this Agreement, any related agreements or the undertakings required of the County hereunder by reason of the performance of any act requested of the County by the 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 Sponsors 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 Company, and the Company 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 Company shall obtain the prior written consent of the County to settle any such claim unless such claim is for monetary damages for which the Company has the ability to, and does, 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 Company reasonably determines that a conflict of interest exists between the County and the Company, the County may, in its sole discretion, hire independent counsel to pursue its own defense, and the Company 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 Company 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. Sponsors 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 Company 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 \$5,000,000, 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 Act Minimum Investment Requirement by the end of the Investment Period. Sponsors 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 property to be used in connection with the Project and subject to the Negotiated FILOT Payment, all in accordance with Section 12-44-130(B) of the Simplified FILOT Act.

## ARTICLE IX

### FINANCING ARRANGEMENTS; CONVEYANCES; ASSIGNMENTS

Section 9.01. Conveyance of Liens and Interests; Assignment. The Company 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 Sponsors or Sponsor Affiliate (collectively, the “Related Entities”), or transfers pursuant to clause (b) above (as to which such transfers the County hereby consents), the Company shall first obtain the prior written consent or subsequent ratification of the County; (ii) except where a financing entity, which is the income tax owner of all or part of the Project, is the transferee pursuant to clause (b) above and such transferee or financing entity assumes in writing the obligations of the Company hereunder, or where the County consents in writing, no such transfer shall affect or reduce any of the obligations of the Company hereunder, but all obligations of the Company hereunder shall continue in full force and effect as the obligations of a principal and not of a guarantor or surety; (iii) the Company, transferee, or financing entity shall, within 60 days thereof, furnish or cause to be furnished to the County and the Department of Revenue a true and complete copy of any such transfer agreement; and (iv) the Company and the transferee shall comply with all other requirements of the Transfer Provisions.

The 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 Payment or result in penalties under the Act absent compliance by the Company 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 Company 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 Company’s expense, to execute such agreements, documents, and instruments as may be reasonably required by such secured party or parties to effectuate or document such subordination.



## ARTICLE X

### TERM; TERMINATION

Section 10.01. Term. Unless sooner terminated pursuant to the terms and provisions herein contained, this Agreement shall be and remain in full force and effect for a term commencing on the date on which the Company executes 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 Company may agree to terminate this Agreement at any time, or the Sponsors may, at their option, terminate this Agreement at any time upon providing the County 30 days' notice of such termination, in which event the Project shall be subject to *ad valorem* taxes from the date of termination. In the event that this Agreement is terminated by the operation of this Section 10.02 at any time during the initial Investment Period prior to the Company meeting the Project Commitment, amounts due to the County as a result thereof, if any, shall be calculated as provided in Section 5.01(i) 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.

(a) 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 Company:

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

(2) if default shall be made by the Company in the due performance of or compliance with any of the terms hereof, including payment, other than those referred to in the foregoing paragraph (1), and such default shall continue for 90 days after the County shall have given the Company written notice of such default, provided, the Company shall have such longer period of time as necessary to cure such default if the Company proceeds promptly to cure such default and thereafter to prosecute the curing of such default with due diligence; and provided further, that no Event of Default shall exist under this paragraph (2) during any period when there is pending, before any judicial or administrative tribunal having jurisdiction, any proceeding in which the Company has contested the occurrence of such default.

(b) The failure of the Company to meet any Project Commitment 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, the County may exercise any of the following remedies, any of which may be exercised at any time during the periods permitted under the following clauses:

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

(b) have access to and inspect, examine, and make copies of the books, records, and accounts of the Company pursuant to Section 4.02(c); 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 Company under this Agreement.

Section 11.03. 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. 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 Company provided for in this Agreement shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Agreement or now or hereafter existing at law or in equity, in any jurisdiction where such rights, powers and remedies are sought to be enforced; and the exercise by the County or by the Company of any one or more of the rights, powers or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the County or by the Company of any or all such other rights, powers 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. Intentionally Omitted.

Section 12.04. Administration Expenses.

(a) The Company agrees to reimburse the County from time to time for its Administration Expenses promptly upon written request therefore, but in no event later than thirty (30) days after receiving the written request from the County, *provided, however*, the total reimbursement pursuant to this subsection is capped at Five Thousand and No/100 dollars (\$5000.00). The written request shall include a description of the nature of the Administration Expenses.

(b) 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 FILOT Payments and any special source revenue credits, *provided, however*, the maximum annual reimbursement pursuant to this subsection is capped at Five Hundred and No/100 dollars (\$500.00).

Section 12.05. Rules of Construction. The County and the Company 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 12.06. Notices; Demands; Requests. All notices, demands and requests to be given or made hereunder to or by the County or the Company shall be in writing and shall be deemed to be properly given or made if sent by United States first class mail, 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:

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@lanastercountysc.net](mailto:swillis@lanastercountysc.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  
Phone: (803) 286-3633  
Fax: (803) 416-9497  
Email: [jgilbert@lanastercountysc.net](mailto:jgilbert@lanastercountysc.net)

(b) As to the Sponsors:

Remac Corporation  
ATTN: Reid Wilkerson  
182 Spice Road  
Indian Land, SC 29707  
Telephone: (803) 548-2366  
Email: reidw@mcclancy.com

NBI Investments II, LLC  
ATTN: Reid Wilkerson  
182 Spice Road  
Indian Land, South Carolina 29707  
Telephone: (803)548-2366  
Email: reidw@mcclancy.com

NBI Investments III, LLC  
ATTN: Reid Wilkerson  
182 Spice Road  
Indian Land, South Carolina 29707  
Telephone: (803)548-2366  
Email: reidw@mcclancy.com

With a copy, in each case, to (which shall not constitute notice):

Burnet R. Maybank, III, Esq.  
Nexsen Pruet, LLC  
1230 Main Street, Suite 700  
Columbia, South Carolina 29201  
Phone: (803) 540-2048  
Email: bmaybank@nexsenpruet.com

Section 12.07. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

Section 12.08. 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 12.09. 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 12.10. 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 12.11. 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 12.12. 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 both parties.

Section 12.13. 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 12.14. Force Majeure. The Company 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 Company's reasonable control.

***[SIGNATURE PAGE TO FOLLOW]***



IN WITNESS THEREOF, 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 officers, all as of the day and year first above written.

LANCASTER COUNTY, SOUTH CAROLINA

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Steve Harper, Chair, County Council

---

Larry Honeycutt, Secretary, County Council

ATTEST:

---

Sherrie Simpson, Clerk to Council

REMAC CORPORATION d/b/a  
McCLANCY SEASONING COMPANY

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Reid Wilkerson, President

NBI INVESTMENTS II, LLC

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Reid Wilkerson, President

NBI INVESTMENTS III, LLC

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Reid Wilkerson, President

**EXHIBIT A**

Land

Tax Map Nos. 0010-00-001.00 and 0010-00-029.03

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SPECIAL SOURCE REVENUE CREDIT AGREEMENT

by and between

LANCASTER COUNTY, SOUTH CAROLINA,

REMAC CORPORATION d/b/a McCLANCY SEASONING COMPANY,

NBI INVESTMENTS II, LLC,

and

NBI INVESTMENTS III, LLC

Dated as of June 8, 2020

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SPECIAL SOURCE REVENUE CREDIT AGREEMENT

This SPECIAL SOURCE REVENUE CREDIT AGREEMENT, dated as of June 8, 2020 (as the same may be amended, modified or supplemented from time to time in accordance with the terms hereof, the "Agreement"), is by and between LANCASTER COUNTY, SOUTH CAROLINA, a body politic and corporate, and a political subdivision of the State of South Carolina (the "County"), REMAC CORPORATION d/b/a McCLANCY SEASONING COMPANY, a corporation organized and existing under the laws of the State of North Carolina, and NBI INVESTMENTS II, LLC and NBI INVESTMENTS III, LLC, each a limited liability company organized and existing under the laws of the State of South Carolina (all three referred to jointly as the "Companies").

W I T N E S S E T H :

WHEREAS, the County, acting by and through its County Council (the "County Council") is authorized by the Code of Laws of South Carolina 1976, as amended (the "Code") and, particularly, Sections 4-1-170, 4-1-175, and 4-29-68 of the Code, and Article VIII, Section 13(D) of the South Carolina Constitution (collectively, the "Park Act") (i) to provide special source revenue credits to investors for the purpose of defraying certain costs, including, without limitation, the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the County or a project and for improved and unimproved real estate and personal property, including, but not limited to, machinery and equipment, used in the operation of a manufacturing facility or commercial enterprise, all to enhance the economic development of the County; and (ii) to create, in conjunction with one or more other counties, a joint county industrial or business park ("Park") in order to facilitate the provision of such special source revenue credits to such investors; and

WHEREAS, the Companies invested in real and personal property on or before December 31, 2018 (the "Project") and the Project is operated primarily for the manufacture of food products; and

WHEREAS, pursuant to the Park Act, the County and Chesterfield County, South Carolina ("Chesterfield County") have jointly developed a Park ("Lancaster-Chesterfield Park") by entering into that certain Amended and Restated Master Multi-County Park Agreement dated as of November 9, 2015 (as amended, modified, or supplemented through the date hereof, and as may be amended, modified, or supplemented from time to time, the "Lancaster-Chesterfield Park Agreement"); and

WHEREAS, in accordance with the Park Act, real and personal property having a *situs* in a Park in the County, including, but not limited to, the Lancaster-Chesterfield Park, is exempt from all *ad valorem* taxation, but, the owners or lessees of such real and personal property are obligated to make, or cause to be made, payments in lieu of taxes to the County in the total amount equivalent to the *ad valorem* taxes or other fee in lieu of tax payments that would have been due and payable with respect to such real and personal property but for the location of such real and personal property within such Park and such exemption; and

WHEREAS, the County has determined to provide for inclusion of the Project Site within the boundaries of the Lancaster-Chesterfield Park, if such property is not already so included, and to maintain the Project Site within the boundaries of the Lancaster-Chesterfield Park, or a replacement or successor Park, in order to facilitate the provision of, and receipt by, the Companies of the special source revenue credits set forth in greater detail herein; and

WHEREAS, the County, as inducement for the continued operation of the Project in the County, and in accordance with the Park Act, has determined that the County shall provide, and the Companies shall be entitled to receive, special source revenue credits against each fee-in-lieu of tax payment due from the Companies with respect to the Project, all as set forth in greater detail herein; and

WHEREAS, the County Council has authorized the execution and delivery of this Agreement by Ordinance No. 2020-1661 enacted by the County Council on June 8, 2020 (the "County Ordinance").

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained, the above recitals which are incorporated herein by reference, and other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS

The defined terms in this Agreement shall for all purposes of this Agreement have the meanings specified in the recitals above and in this **Article I**, unless the context clearly otherwise requires. Except where the context otherwise requires, words importing the singular number shall include the plural number and *vice versa*.

"*Affiliate*" shall mean any corporation, limited liability company, partnership or other Person or entity which now or hereafter owns all or part of the Companies, or which now or hereafter is owned in whole or in part by the Companies, or by any partner, shareholder or owner of either of the Companies, as well as any corporation, limited liability company, partnership or other Person, which now or hereafter bears a relationship to either of the Companies, as described in Section 267(b) of the Internal Revenue Code.

"*Code*" shall have the meaning ascribed thereto in the recitals of this Agreement.

"*Company*" shall mean Remac Corporation, a corporation organized and existing under the laws of the State of North Carolina, NBI Investments II, LLC and NBI Investments III, LLC, each a limited liability company organized and existing under the laws of the State of South Carolina and their successors and assigns.

"*Costs of Special Source Improvements*" means all of the costs of designing, acquiring, constructing, improving, equipping or expanding the Special Source Improvements, whether incurred prior to or after the date of this Agreement, and shall be deemed to include, but not be limited to: (a) existing buildings and building improvements together with all existing machinery and equipment; (b) obligations incurred for labor, materials, and other expenses to builders and materialmen in connection with the acquisition, construction, and installation of the Special Source Improvements; (c) the cost of construction bonds and of insurance of all kinds that may be required or necessary during the course of construction and installation of the Special Source Improvements, which is not paid by the contractor or contractors or otherwise provided for; (d) the expenses for test borings, surveys, test and pilot operations, estimates, plans and specifications and preliminary investigations therefore, and for supervising



construction, as well as for the performance of all other duties required by or reasonably necessary in connection with the acquisition, construction, and installation of the Special Source Improvements; and (e) all other costs which shall be required under the terms of any contract for, or incurred in connection with, the designing, acquisition, construction, equipping and installation of the Special Source Improvements.

“*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 Ordinance*” shall have the meaning ascribed thereto in the recitals of this Agreement.

“*Lancaster Park*” shall mean initially with respect to the Project Site, the Lancaster-Chesterfield Park established pursuant to the terms of the Lancaster-Chesterfield Park Agreement, and thereafter any Park which hereafter includes the Project Site and which is designated by the County as such pursuant to any Park agreement which replaces or succeeds the Lancaster-Chesterfield Agreement.

“*Lancaster-Chesterfield Park*” shall have the meaning ascribed thereto in the recitals of this Agreement.

“*Lancaster-Chesterfield Park Agreement*” shall have the meaning ascribed thereto in the recitals of this Agreement.

“*Park*” shall have the meaning ascribed thereto in the recitals of this Agreement.

“*Park Act*” shall have the meaning ascribed thereto in the recitals of this Agreement.

“*Park Agreement*” shall mean the Lancaster-Chesterfield Park Agreement.

“*Person*” means an individual, a corporation, a partnership, a limited liability company, an association, a joint stock company, a joint venture, a trust, any unincorporated organization, or a government or an agency or a political subdivision thereof.

“*Project*” shall have the meaning ascribed thereto in the recitals of this Agreement.

“*Project Site*” shall mean the land identified by Tax Map No. 0010-00-001.00 and located at 182 Spice Road, Indian Land, SC 29707 and Tax Map No. 0010-00-029.03 and located at 8746 Charlotte Hwy, Indian Land, SC 29707.

“*Property Tax Year*” shall mean the annual period which is equal to the fiscal year of the Companies, *i.e.*, as of the original execution and delivery of this Agreement, with respect to the Companies, the annual period ending on December 31 of each year.

“*Special Source Improvements*” means any existing infrastructure serving the economic development of the County, including any improved and unimproved real property, buildings, structural components of buildings, fixtures or other real property improvements, any personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise which have

been subject to *ad valorem* taxes, all in order to enhance the economic development of the County, all as set forth in the Park Act.

*“Special Source Revenue Credits”* shall mean the special source revenue credits hereby provided by the County and described in **Section 3.01** hereof.

*“State”* shall have the meaning ascribed thereto in the recitals of this Agreement.

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

## ARTICLE II

### REPRESENTATIONS AND COVENANTS

**SECTION 2.01. Representations by 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 Park Act to enter into this Agreement, (iii) it has approved this Agreement in accordance with the procedural requirements of the Park Act and any other applicable state law, and (iv) it has authorized its officials to execute and deliver this Agreement.

**SECTION 2.02. Representations by the Companies.** The Companies makes the following representations:

(a) The Companies are limited liability companies duly organized, validly existing, and in good standing, under the laws of the State and are authorized to transact business in the State, have power to enter into this Agreement, and by proper corporate action has authorized the respective Company official or officials signing this Agreement to execute and deliver this Agreement. Each Company’s fiscal year end is December 31 and each of the Companies will notify the County of any changes in the fiscal year of the respective Company.

(b) The Special Source Revenue Credits provided by the County in the manner set forth in this Agreement have been instrumental in inducing the continued operation of the Project in the County.

**SECTION 2.03 Covenants by the County.** The County will use its best efforts to include, and thereafter maintain, the Project Site within the boundaries of the Lancaster Park for the term of this Agreement.

## ARTICLE III

### SPECIAL SOURCE REVENUE CREDITS

**SECTION 3.01. Special Source Revenue Credits.**

(a) To defray or reimburse the Costs of Special Source Improvements with respect to the Project, the County agrees to provide, and the Companies shall, subject to the provisions of Section 3.02 hereof, receive, special source revenue credits in the amount of 42% of the fee-in-lieu of tax payment

otherwise due against each fee-in-lieu of tax payment due with respect to the respective Company's investments in real and personal property made on or before December 31, 2018, for a period of twenty (20) consecutive tax years, beginning with the FILOT Payment due from such Company for tax year 2020 (*i.e.*, the FILOT Payment due to be paid without penalty on or before January 15, 2021) and ending with the FILOT Payment due from such Company in tax year 2039 (*i.e.*, the FILOT Payment due to be paid without penalty on or before January 15, 2040), and not applying any exemption that would otherwise be allowed pursuant to Section 3(g), Article X of the Constitution of South Carolina and the exemptions allowed pursuant to Section 12-37-220(B)(32) and (34) of the Code.

(b) The Special Source Revenue Credits to which the Companies shall receive with respect to each tax year set forth above in **Section 3.01(a)** hereof shall be reflected by the County Auditor or other authorized County official or representative on each bill for fee-in-lieu of tax payment sent to the Companies by the County for each such tax year, by reducing the fee-in-lieu of tax payment otherwise due from each Company for such tax year by the amount of Special Source Revenue Credits to be provided to such Company for such tax year.

(c) If **Section 3.01(a)** hereof, or the provision of the Special Source Revenue Credits is found to be invalid, illegal or unenforceable by a court of competent jurisdiction, the County agrees to provide the Companies with an incentive that is valid pursuant to such court ruling and commensurate to the nature and value of the benefits intended to be provided under this Agreement, to the maximum extent legally permitted.

(d) THIS AGREEMENT AND THE SPECIAL SOURCE REVENUE CREDITS GRANTED HEREUNDER ARE LIMITED OBLIGATIONS OF THE COUNTY AND ARE PROVIDED BY THE COUNTY SOLELY FROM THE FEE-IN-LIEU OF TAX PAYMENT MADE BY THE COMPANIES WITH RESPECT TO THE PROJECT AND DO NOT AND SHALL NOT CONSTITUTE A GENERAL OBLIGATION OF THE COUNTY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY LIMITATION AND DO NOT AND SHALL NOT CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE COUNTY OR A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWER OF THE COUNTY. THE FULL FAITH, CREDIT, AND TAXING POWER OF THE COUNTY ARE NOT PLEDGED IN CONNECTION WITH THE GRANTING OF THE SPECIAL SOURCE REVENUE CREDITS HEREUNDER.

(e) No breach by the County of this Agreement shall result in the imposition of any pecuniary liability upon the County other than against the fee-in-lieu of tax payment made by the Companies with respect to the Project or any charge upon its general credit or against its taxing power. The liability of the County under this Agreement or for any breach or default by the County of any of the foregoing shall be limited solely and exclusively to the fee-in-lieu of tax payment made by the Companies.

(f) Except as otherwise provided in this Agreement, the Companies shall receive, in addition to the Special Source Revenue Credits, all other credits, exemptions, or reductions against *ad valorem* taxes or against payments in lieu of taxes due pursuant to the Park Act allowed by law.

(g) In accordance with the Park Act, the Special Source Revenue Credits authorized herein shall not, in the aggregate, exceed the aggregate cost of Special Source Improvements funded from time to time in connection with the Project by the Companies.



(h) Notwithstanding any other provision of this Agreement, the Companies acknowledge and agree that County's obligation to provide the special source revenue credits ends, and this Agreement is terminated, if the Companies cease operations. For purposes of this Section 3.01(h), "**cease operations**" means permanent closure of the facility. The Companies agrees that if this Agreement is terminated pursuant to this Section 3.01(h), that under no circumstance shall the County be required to refund or pay any monies to the Companies.

SECTION 3.02. Maintenance of Books and Records; Annual Reports; Examinations and Inspections; Confidential Information. (a) The Companies shall maintain, or cause to be maintained, such books and records with respect to the Project as will permit the identification of those portions of the Project placed in service on or before December 31, 2018, the amount of investment with respect thereto, and any computations of the fee-in-lieu of tax payment and the special source revenue credits made by the Companies hereunder. The Companies agrees to comply with all reporting requirements of the State and the County applicable to fee-in-lieu of tax property under the Park Act, including without limitation the reports and returns required by Section 12-2-90 of the Code.

(b) Upon direction of the governing body of the County, a County Official may request and obtain such financial books and records from the Companies that support the returns of such Companies as may be reasonably necessary to verify the calculations of the fee-in-lieu of tax payments by the Companies. For purposes of this Agreement, the term "County Official" shall include the Administrator, Auditor, Assessor, Treasurer of the County, or the County Director of Economic Development.

(c) Each year during the term hereof, the Companies shall deliver to the County Auditor, the County Assessor, the County Treasurer, and County Director of Economic Development a copy of any form or return it files with the Department of Revenue with respect to the Project at the same time as delivery thereof to the South Carolina Department of Revenue.

(d) During the term hereof, the Companies shall deliver to the County Auditor and the County Director of Economic Development on or before each May 31 following the end of a Property Tax Year, beginning with May 31, 2021, the information required by the County Auditor for a fee-in-lieu of tax payment bill to be prepared in accordance with this Agreement and Section 3.01(a) hereof. The information delivered must include, at a minimum, the amount of investment by the Companies in Project property. If the County incurs expenses in the computation, preparation and verification of the annual fee-in-lieu of tax payment bill, the Companies agrees to reimburse the County for those expenses, including, but not limited to, expenses incurred by the County for accountants and similar experts (the "Administrative Expense Reimbursement"). The annual Administrative Expense Reimbursement is capped at one thousand dollars (\$1000.00). If the information and certification required by this subsection is not delivered to the County Auditor and County Director of Economic Development on or before May 31 of the applicable year, the Companies agrees that the special source revenue credits are forfeited for the fee-in-lieu of tax payment due for Project property for the then current Property Tax Year.

(e) The Companies agrees that the County and its authorized agents shall 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 its 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 Companies to protect the Companies' confidentiality and proprietary rights. Any such entrance upon and examination and inspection of the Project shall be at the County's expense.

(f) The County acknowledges and understands that the information provided by the Companies may contain, and the Companies 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 operations and processes of the Companies ("Confidential Information") and that any disclosure of the Confidential Information could result in substantial harm to the Companies and could have a significant detrimental impact on the 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 Companies, its agents or representatives, when the Confidential Information is clearly marked and identified as Confidential Information. The County shall not knowingly and willfully disclose and shall cause all employees, agents and representatives of the County to not 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.

#### ARTICLE IV

##### TRANSFERS OF PROJECT PROPERTY; ASSIGNMENT

SECTION 4.01. Transfers of Project Property; Assignment of Interest in this Agreement. The County hereby acknowledges that the Companies may from time to time and, to the extent permitted by applicable law, sell, transfer, lease, convey, or grant the right to occupy and use the Project, in whole or in part, or assign its interests in this Agreement, in whole or in part, to one or more Persons without the consent of the County; provided, however, that any transfer or assignment by the Companies of all or any of their interest in this Agreement to any Person other than an Affiliate shall require the prior written consent or subsequent ratification of the County, which consent or ratification shall not be unreasonably withheld, conditioned, or delayed; and provided, further, that the Companies shall provide written notice to the County of any such transfer or assignment. Subject to the foregoing provisions of this **Section 4.01**, no such sale, lease, conveyance, grant, transfer or assignment shall relieve the County from the County's obligation to provide the special source revenue credits to the Companies, or any transferee or assignee of the same, under this Agreement.

#### ARTICLE V

##### DEFAULTS AND REMEDIES

SECTION 5.01. Events of Default. If any party shall fail duly and punctually to perform any material covenant, condition, agreement or provision contained in this Agreement on the part of such party to be performed, which, except as otherwise provided in this Agreement, failure shall continue for a period of sixty (60) days after written notice by another party, specifying the failure and requesting that it be remedied, is given to the defaulting party by first-class mail, then such party shall be in default under this Agreement (an "Event of Default"); provided, however, that if any such failure is not, with due



diligence, susceptible of cure within such 60-day period, then such defaulting party shall have a period of time not to exceed ninety (90) days from the date of such written notice by the other party to remedy such failure, unless such parties agree in a writing signed by all parties to an extension of such time prior to its expiration.

SECTION 5.02. Legal Proceedings. Upon the happening of any Event of Default by a party, then and in every such case each other party in its respective discretion may:

- (1) by mandamus, or other suit, action, or proceeding at law or in equity, enforce all of its rights and require the defaulting party to carry out any agreements with or for its benefit and to perform its duties under the Park Act and this Agreement;
- (2) bring suit upon this Agreement;
- (3) exercise any or all rights and remedies provided by the applicable laws of the State; or
- (4) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of its rights.

SECTION 5.03. Remedies Not Exclusive. No remedy in this Agreement conferred upon or reserved to the Companies, or the County is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.

SECTION 5.04. Nonwaiver. No delay or omission of the Companies, or the County to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default, or an acquiescence therein; and every power and remedy given by this **Article V** to the Companies, or the County may be exercised from time to time and as often as may be deemed expedient.

## ARTICLE VI

### MISCELLANEOUS

SECTION 6.01. Termination This Agreement shall automatically terminate on the date upon which all special source revenue credits provided for in **Section 3.01** hereof have been provided to, and received by, the Companies. Additionally the County and the Companies may jointly agree to terminate this Agreement at any time and the Companies may, at their option, unilaterally terminate this Agreement at any time with respect to all, or any portion of the Project.

SECTION 6.02. Binding Effect; Successors and Assigns. This Agreement shall be binding, in accordance with its terms, and to the extent permitted by law, upon and inure to the benefit of the Companies, the County and their respective successors and assigns. All covenants, stipulations, promises, and agreements contained in this Agreement, by or on behalf of, or for the benefit of, the County, shall bind or inure to the benefit of the successors of the County from time to time and any officer, board, commission, agency, or instrumentality to whom or to which any power or duty of the County shall be transferred.

SECTION 6.03. Provisions of Agreement for Sole Benefit of the Companies and the County. Except as otherwise specifically provided in this Agreement, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any Person other than the Companies and the County any right, remedy, or claim under or by reason of this Agreement, this Agreement being intended to be, except as otherwise specifically provided in this Agreement, for the sole and exclusive benefit of the Companies and the County.

SECTION 6.04. Severability. In case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal, invalid or unenforceable, the illegality, invalidity or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed and enforced as if the illegal, invalid or unenforceable provisions had not been contained herein so as to most closely effectuate the legal, valid and enforceable intent hereof and so as to afford the Companies with the maximum benefits to be derived herefrom.

SECTION 6.05. No Liability for Personnel of the County, the Companies or the Affiliated Company. No covenant or agreement contained in this Agreement is deemed to be a covenant or agreement of any elected official, member, agent, or employee of the County or its governing body or the Companies or any of their respective officers, elected officials, employees, or agents in an individual capacity, and neither the members of the governing body of the County nor any official of the County or the Companies executing this Agreement is liable personally on the special source revenue credits or this Agreement or subject to any personal liability or accountability by reason of the issuance thereof.

SECTION 6.06. Notices. All notices, certificates, requests, or other communications under this Agreement are sufficiently given and are deemed given, unless otherwise required by this Agreement, when (i) delivered or (ii) sent by facsimile and confirmed by United States first-class registered mail, postage prepaid, addressed as follows:

(a) As to the County:

Lancaster County  
Attn.: County Administrator  
P.O. Box 1809 (29721)  
101 N. Main Street, 2<sup>nd</sup> Floor (29720)  
Lancaster, South Carolina  
Phone: (803) 416-9300  
Fax: (803) 285-3361

with a copy to (which shall not constitute notice for purposes of this Agreement):

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

(b) As to the Companies:

Remac Corporation  
ATTN: Reid Wilkerson  
182 Spice Road  
Indian Land, South Carolina 29707  
Telephone: (803)548-2366  
Email: reidw@mcclancy.com

NBI Investments II, LLC  
ATTN: Reid Wilkerson  
182 Spice Road  
Indian Land, South Carolina 29707  
Telephone: (803)548-2366  
Email: reidw@mcclancy.com

NBI Investments III, LLC  
ATTN: Reid Wilkerson  
182 Spice Road  
Indian Land, South Carolina 29707  
Telephone: (803)548-2366  
Email: reidw@mcclancy.com

with a copy, in each case, to (which shall not constitute notice):

Burnet R. Maybank, III, Esq.  
Nexsen Pruet, LLC  
1230 Main Street, Suite 700  
Columbia, South Carolina 29201  
Phone: (803) 540-2048  
Email: bmaybank@nexsenpruet.com

The County and the Companies shall, by notice given under this **Section 6.06**, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

**SECTION 6.07. Administrative Fees.** The Companies shall reimburse, or cause reimbursement of, the County for reasonable expenses, including, reasonable attorneys' fees, related to review and approval of this Agreement, and any other documents related to this Agreement in an amount not to exceed One Thousand (\$1,000).

**SECTION 6.08. Merger.** This Agreement constitutes the entire agreement among the parties to it with respect to the matters contemplated in it, and it is understood and agreed that all undertakings, negotiations, representations, promises, inducements and agreements heretofore had among these parties are merged herein.

SECTION 6.09. Agreement to Sign Other Documents and to Take Further Action. The County agrees that it will from time to time execute and deliver such further instruments, in form and substance reasonably acceptable to it, and take such further action as may be reasonable and as may be requested by the Companies as may be required to carry out the purpose of this Agreement. The requesting party shall reimburse, or cause reimbursement of, the County for reasonable attorneys' fees, related to review and negotiation of such further instruments. Such instruments or actions shall never create or constitute an indebtedness of the County within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the County, other than against the fee-in-lieu of tax payments made by the Companies with respect to the Project, or a charge against its general credit or taxing power or pledge the credit or taxing power of the State, or any other political subdivision of the State.

SECTION 6.10. Construction of Agreement. The parties agree that each party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party does not apply in the interpretation of this Agreement or any amendments or exhibits to this Agreement.

SECTION 6.11. Applicable Law. The laws of the State govern the construction of this Agreement.

SECTION 6.12. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same instrument.

SECTION 6.13. Amendments. This Agreement may be amended only by written agreement of the parties hereto.

SECTION 6.14. Waiver. Either party may waive compliance by the other party with any term or condition of this Agreement but the waiver is valid only if it is in a writing signed by the waiving party.

SECTION 6.15. Further Proceedings. It is intended by the parties that any action to be taken hereinafter by the County pursuant to the express provisions of this Agreement may be undertaken by the County without necessity of further proceedings. To the extent that additional proceedings are required by law, however, the County agrees, to the extent permitted by law, to undertake all such steps as may be reasonably required or appropriate to effectuate the intent of this Agreement.

SIGNATURES FOLLOW ON NEXT PAGE.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF, Lancaster County, South Carolina has caused this Agreement to be executed by its respective appropriate officials and its respective corporate seal to be hereunto affixed and attested and Remac Corporation, NBI Investments II, LLC and NBI Investments III, LLC have caused this Agreement to be executed by its authorized officers, effective the day and year first above written.

LANCASTER COUNTY, SOUTH CAROLINA

\_\_\_\_\_  
Steve Harper, Chair, County Council

\_\_\_\_\_  
Larry Honeycutt, Secretary, County Council

[SEAL]

Attest:

\_\_\_\_\_  
Sherrie Simpson, Clerk to Council,  
Lancaster County, South Carolina

NBI INVESTMENTS II, LLC

By: \_\_\_\_\_  
Reid Wilkerson, President

NBI INVESTMENTS II, LLC

By: \_\_\_\_\_  
Reid Wilkerson, President

NBI INVESTMENTS III, LLC

By: \_\_\_\_\_  
Reid Wilkerson, President