

AN ORDINANCE AUTHORIZING (1) THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT BY AND BETWEEN CHARLESTON COUNTY, SOUTH CAROLINA (THE "COUNTY") AND DAIMLER VANS MANUFACTURING, LLC, PREVIOUSLY IDENTIFIED AS "PROJECT UNICORN," ACTING FOR ITSELF, ONE OR MORE AFFILIATES OR OTHER PROJECT SPONSORS (THE "COMPANY"), WHEREBY THE COUNTY SHALL COVENANT TO ACCEPT NEGOTIATED FEES IN LIEU OF *AD VALOREM* TAXES IN CONNECTION WITH THE ACQUISITION, IMPROVEMENT AND EQUIPPING OF CERTAIN FACILITIES IN THE COUNTY (COLLECTIVELY, THE "PROJECT"); (2) THE GRANT OF SPECIAL SOURCE REVENUE CREDITS AND/OR THE ISSUANCE OF SPECIAL SOURCE REVENUE BONDS, IN EITHER CASE TO FUND CERTAIN INFRASTRUCTURE IMPROVEMENTS ASSOCIATED WITH THE PROJECT; (3) THE BENEFITS OF A MULTI-COUNTY INDUSTRIAL OR BUSINESS PARK TO BE MADE AVAILABLE TO THE PROJECT; (4) THE PURCHASE OF CERTAIN PROPERTY AND THE SUBSEQUENT SALE OF SAID PROPERTY TO THE COMPANY, OR THE ASSIGNMENT BY THE COUNTY TO THE COMPANY OF THE RIGHT TO PURCHASE SAID PROPERTY, FOR USE IN CONNECTION WITH THE PROJECT; (5) THE AMENDMENT AND RE-DOCUMENTATION OF THAT CERTAIN LEASE PURCHASE AGREEMENT DATED AS OF JUNE 2, 1999, TO WHICH THE COMPANY AND COUNTY ARE PARTIES, PERTAINING TO THE COMPANY'S EXISTING FACILITIES LOCATED IN THE COUNTY; (6) UNDER CERTAIN CONDITIONS, EXTENSION OF THE PERIOD FOR PAYMENT OF FEES IN LIEU OF *AD VALOREM* TAXES WITH RESPECT TO ASSETS UNDER THE ABOVE-REFERENCED LEASE PURCHASE AGREEMENT; AND (7) OTHER MATTERS RELATING THERETO.

WHEREAS, Charleston County, South Carolina (the "County"), acting by and through its County Council (the "Council"), is authorized and empowered under and pursuant to the provisions of the Code of Laws of South Carolina 1976, as amended (the "Code"), and particularly Title 4, Chapter 12 of the Code (the "Streamlined FILOT Act"); Title 12, Chapter 44 of the Code (the "Negotiated FILOT Act"); and Title 4, Chapter 1 of the Code (the "Multi-County Park Act", or as to Section 4-1-175 thereof, and, by incorporation, Section 4-29-68 of the Code, the "Special Source Act") (collectively, the "Act") and by Article VIII, Section 13(D) of the South Carolina Constitution: (i) to enter into agreements with certain investors to construct, operate, maintain, and improve certain projects through which the economic development of the State of South Carolina (the "State") will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ the manpower, agricultural products, and natural resources of the State; (ii) to accept certain fee in lieu of ad valorem tax ("FILOT") payments with respect to a project, including, without limitation, negotiated FILOT payments; (iii) to permit investors to claim special source revenue credits against their FILOT payments ("Special Source Credits") to reimburse such investors for expenditures in connection with infrastructure serving the County and improved or unimproved real estate and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise

in order to enhance the economic development of the County (“Infrastructure Improvements”) or, in the alternative, to issue special source revenue bonds (“Special Source Revenue Bonds”), payable solely from special source revenues from FILOT payments derived from a project or projects, to pay for such Infrastructure Improvements; and (iv) to create, in conjunction with one or more other counties, a multi-county industrial or business park (“Multi-County Park”) in order to afford certain enhanced income tax credits to such investors and to facilitate the grant of Special Source Credits or the issuance of Special Source Revenue Bonds; and

WHEREAS, Daimler Vans Manufacturing, LLC, a limited liability company organized and existing under the laws of the State of Delaware and previously identified as “Project Unicorn”, acting for itself, one or more affiliates, or other project sponsors (the “Company”), proposes to invest in, or cause others to invest in, the acquisition, improvement and equipping of certain facilities located in the County (the “Project”) and anticipates that, should its plans proceed as expected, the Project will generate aggregate investment in the County of at least \$400,000,000, of which approximately \$15,000,000 is anticipated to consist of non-taxable pollution control equipment, and to create, or cause to be created, at least 1,300 new jobs, in the aggregate, at the Project; and

WHEREAS, the County has the option to purchase a certain tract of land in the County deemed by the Company to be suitable or useful for the Project (the “Option Property”); and

WHEREAS, based on information provided to the County by the Company, the County has determined that the Project will subserve the purposes of the Act and has made certain findings pertaining thereto in accordance with the Act; and

WHEREAS, in accordance with such findings and determinations and in order to induce the Company to locate the Project in the County, the Council adopted a Resolution on February 19, 2015 (the “Inducement Resolution”), whereby the County determined to provide, with respect to the Project, the benefits of a negotiated FILOT arrangement, Special Source Credits or, in the alternative, the proceeds from the issuance of Special Source Revenue Bonds, to pay for Infrastructure Improvements, a Multi-County Park arrangement, and the Option Property, which the County will, under certain conditions, acquire for re-sale to the Company or, alternatively, assign the purchase rights to which to the Company; and

WHEREAS, the County and the Company have agreed to specific terms and conditions of such arrangements as set forth herein and in a Fee in Lieu of Tax and Incentive Agreement by and between the County and the Company with respect to the Project (the “Incentive Agreement”), the form of which is presented to this meeting, and which is to be dated as of May 5, 2015 or such other date as the parties may agree; and

WHEREAS, in 1999 the Company established certain facilities for the manufacture of trucks and other vehicles or another commercial enterprise in the County (the “1999 Project”); and

WHEREAS, by an Ordinance duly enacted by the Council on February 16, 1999, and in accordance with the Streamlined FILOT Act, the Multi-County Park Act and the Special Source Act, the County agreed to provide certain FILOT, Multi-County Park and Special Source Credits incentives to the

Company in connection with the 1999 Project pursuant to that certain Lease Purchase Agreement between the County and the Company dated as of June 2, 1999 (the “Lease Purchase Agreement”); and

WHEREAS, pursuant to such arrangement, the County acquired title to the 1999 Project and leased such property to the Company pursuant to the Lease Purchase Agreement; and

WHEREAS, pursuant to Section 12-44-170(B) of the Negotiated FILOT Act, the County and the Company now seek to re-document the FILOT and other incentive arrangements specified in the Lease Purchase Agreement and, in connection therewith, the County will convey to the Company its right, title and interest in and to the Project; and the parties will replace the Lease Purchase Agreement and related documents in their entirety with an Amendatory Fee in Lieu of Tax and Incentive Agreement (the “Amendatory Agreement”); and

WHEREAS, pursuant to Section 12-44-30(21) of the Negotiated FILOT Act, the County and the Company have determined to, upon satisfaction of certain conditions set forth in the Amendatory Agreement, extend the payment period for the FILOT payments applicable to the 1999 Project by ten (10) years for each annual increment of investment in the 1999 Project, as set forth in greater detail in the Amendatory Agreement; and

WHEREAS, all such matters are to be undertaken in accordance with the provisions of the Incentive Agreement and the Amendatory Agreement now before this meeting; and

WHEREAS, it appears that the Incentive Agreement and the Amendatory Agreement now before this meeting are each in appropriate form and an appropriate instrument to be executed and delivered by the County for the purposes intended; and

WHEREAS, capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed thereto in the Incentive Agreement or the Amendatory Agreement, as the case may be.

NOW, THEREFORE, BE IT ORDAINED by the Council, as follows:

Section 1. As contemplated by Section 12-44-40(I) of the Negotiated FILOT Act, the findings and determinations set forth in the Inducement Resolution are hereby ratified and confirmed. In the event of any disparity or ambiguity between the terms and provisions of the Inducement Resolution and the terms and provisions of this Ordinance and the Incentive Agreement, the terms and provisions of this Ordinance and the Incentive Agreement shall control. Additionally, based on information provided to the County by the Company, the County makes the following findings and determinations:

(a) The Project will constitute a “project” within the meaning of the Negotiated FILOT Act; and

(b) The Infrastructure Improvements to be financed with the Special Source Credits or, in the alternative, by the Special Source Revenue Bonds, will constitute improved and unimproved real estate used in the operation of a manufacturing enterprise and will subserve the

purposes of the Special Source Act; and

(c) The Project, and the County's actions hereby and pursuant to the Incentive Agreement, will subserve the purposes of the Act; and

(d) The Project will be located entirely within the County; and

(e) The Project is anticipated to benefit the general public welfare of the State and the County by providing services, employment, recreation, or other public benefits not otherwise provided locally; and

(f) Neither the Project, the Special Source Credits or, if applicable, the Special Source Revenue Bonds, nor any documents or agreements to be entered into by the County in connection therewith will constitute or give rise to a pecuniary liability of the County or incorporated municipality or a charge against its general credit or taxing power; and

(g) The purposes to be accomplished by the Project are proper governmental and public purposes and the benefits of the Project are greater than the costs; and

(h) The Project will have a substantial public benefit.

Section 2. With respect to the Incentive Agreement and the Negotiated FILOT arrangements set forth therein, the County hereby agrees as follows:

(a) The County, under certain conditions, will enter into the Incentive Agreement with the Company, whereby the Company will agree to invest, or cause to be invested, not less than \$400,000,000, in the aggregate, with respect to the Project and to create, or caused to be created, at the Project at least 1,300 new jobs, in the aggregate, all within the Compliance Period applicable to an Enhanced Investment, and the County, under certain conditions to be set forth in, and subject to the provisions of, the Incentive Agreement, will agree to accept negotiated fee in lieu of *ad valorem* tax ("Negotiated FILOT") payments with respect to the Project. For each annual increment of investment in the Project during the Investment Period, the annual Negotiated FILOT payments shall initially be payable for a payment period of thirty (30) years, subject to extension as provided in the Incentive Agreement.

(b) The Negotiated FILOT shall be determined using: (1) an assessment ratio of 4%, (2) the lowest millage rate or millage rates allowed with respect to the Project pursuant to Section 12-44-50(A)(1)(d) of the Negotiated FILOT Act as set forth in the Incentive Agreement and, which millage rate shall be fixed pursuant to Section 12-44-50(A)(1)(b)(i) of the Negotiated FILOT Act for the full term of the Negotiated FILOT; (3) the fair market value of the Project, determined in accordance with the Negotiated FILOT Act; and (4) and such other terms and

conditions as are or will be specified in the Incentive Agreement, including, without limitation, that the Company, in its sole discretion, may dispose of property and replace property subject to Negotiated FILOT payments to the maximum extent permitted by the Negotiated FILOT Act.

Section 3. As an additional incentive to induce the Company to undertake the Project and in order to provide funds for the costs of Infrastructure Improvements related to the Project, the County hereby agrees to issue the Base Special Source Revenue Bonds in such amounts, payable at such times, and based upon such terms as may be appropriate under then existing market conditions and the County will utilize 50% of the FILOT payments made with respect to the Base Investment portion of the Project to pay debt service on the Base Special Source Revenue Bonds. Based upon the Company's projected investment and current bond market conditions, the County will use its best efforts to make available to the Company not less than \$13,100,000 from the proceeds of the Base Special Source Revenue Bonds to pay for the Infrastructure Improvements associated with the Project. As an alternative to the Base Special Source Revenue Bonds, and at the Company's election, the County hereby agrees that the Company and each other Sponsor or Sponsor Affiliate shall be entitled to receive, and the County shall provide, Special Source Credits against each FILOT payment made with respect to the Base Investment portion of the Project for a period of twenty (20) consecutive years, commencing with the year for which the initial Negotiated FILOT payment is due under the Incentive Agreement, in an amount equal to fifty percent (50%) of each such FILOT payment (the "Base Special Source Credits").

If investment in the Project exceeds the Base Investment, then, in addition to the Base Special Source Credits or the Base Special Source Revenue Bonds, as the case may be, the County hereby agrees that the Company shall be entitled to receive, and the County shall provide, Additional Special Source Credits against each FILOT Payment made with respect to such Excess Investment, in an amount equal to 50% of each such payment, and for the then remaining portion of the twenty-year period described above, as applicable to the Base Special Source Credits; provided, however, for each tranche of \$100,000,000 in Excess Investment a new twenty-year period for collection of such Additional Special Source Credits shall apply, commencing with the FILOT Payment due with respect to the first Property Tax Year in which such Excess Investment tranche reaches \$100,000,000; provided, further that, investment comprising each such \$100,000,000 tranche of Excess Investment shall receive the benefit of such Additional Special Source Credits for the then remaining portion of the Special Source Credits Period that most recently commenced, until such \$100,000,000 level is reached, at which time (i) for all investment comprising such \$100,000,000 tranche that has not previously been subject to a prior Special Source Credits Period, a new twenty-year Special Source Credits Period shall apply in full, and (ii) for any investment comprising such \$100,000,000 tranche that has previously been subject to a prior Special Source Credits Period, such investment shall be subject to the new twenty-year Special Source Credits Period less the number of years such investment has previously been subject to Special Source Credits. Notwithstanding the foregoing, and upon the request of the Company, and in lieu of such additional Special Source Credits which would otherwise apply, the County shall, in its sole discretion, consider issuing additional Special Source Revenue Bonds, all as set forth in greater detail in, and subject to the provisions of, the Incentive Agreement.

The provisions, terms and conditions of any Special Source Revenue Bonds shall be approved by separate ordinance of Council. In accordance with the Special Source Act, the aggregate amount of any Special Source Credits and principal amount of any Special Source Revenue Bonds authorized herein

shall not exceed cost of Infrastructure Improvements funded from time to time in connection with the Project. Any Special Source Revenue Bonds shall be limited obligations of the County, payable solely from the Pledged Revenues, and shall not be general obligations of the County or a charge against the general credit or taxing power of the County.

Section 3. The County will use its best efforts to insure that the Project will be included, if not already included, and will remain, within the boundaries of a Multi-County Park pursuant to the provisions of the Multi-County Park Act and Article VIII, Section 13(D) of the State Constitution on terms which provide the Company and the Project with any additional jobs creation tax credits afforded by the laws of the State for projects located within multi-county industrial or business parks and which facilitate the Special Source Credits and/or Special Source Revenue Bonds authorized herein and in the Incentive Agreement.

Section 4. The County hereby agrees to, at the request of the Company, proceed to purchase the Option Property and resell the Option Property to the Company or, in the alternative and upon the election of the Company, assign to the Company the County's option to purchase the Option Property, all as set forth in greater detail in, and subject to the provisions of, the Incentive Agreement.

Section 5. The County agrees to re-document the FILOT and other incentives set forth in the Lease Purchase Agreement and shall replace the Lease Purchase Agreement and related documents in their entirety with the Amendatory Agreement and, as to all matters pertaining to the incentives applicable to the 1999 Project, the Negotiated FILOT Act shall govern the negotiated FILOT arrangements pertaining thereto. In furtherance of such replacement, the parties agree that the Lease Purchase Agreement will be terminated; and the County will re-convey to the Company its right, title, and interest in and to the assets comprising the 1999 Project, all in accordance with the previously approved provisions of the Lease Purchase Agreement. In addition, upon satisfaction of the conditions set forth in the Amendatory Agreement, the period for payment of the negotiated FILOT with respect to the 1999 Project shall be extended by ten (10) years.

Section 6. The forms, provisions, terms, and conditions of the Incentive Agreement and the Amendatory Agreement presented to this meeting and filed with the Clerk to Council are hereby approved, and all of the provisions, terms, and conditions thereof are hereby incorporated herein by reference as if the Incentive Agreement and the Amendatory Agreement were set out in this Ordinance in their entirety. The Chairman of the Council is hereby authorized, empowered, and directed to execute the Incentive Agreement and the Amendatory Agreement in the name and on behalf of the County; the Clerk to Council is hereby authorized, empowered and directed to attest the same; and the County Administrator is further authorized, empowered, and directed to deliver the Incentive Agreement and the Amendatory Agreement to the Company. The Incentive Agreement and the Amendatory Agreement are to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall not materially adversely affect the rights of the County thereunder and as shall be

approved by the official or officials of the County executing the same, upon the advice of legal counsel, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the forms of the Incentive Agreement and the Amendatory Agreement now before this meeting.

Section 7. The Chairman of the Council, the County Administrator, and the Clerk to Council, for and on behalf of the County, are hereby each authorized, empowered, and directed to do any and all things necessary or proper to effect the performance of all obligations of the County under and pursuant to the Incentive Agreement and the Amendatory Agreement.

Section 8. The provisions of this Ordinance are hereby declared to be separable and if any section, phase, or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phases, and provisions hereunder.

Section 9. All orders, ordinances, resolutions, and parts thereof in conflict herewith are to the extent of such conflict hereby repealed. This Ordinance shall take effect and be in full force from and after its passage and approval.

[End of Ordinance]

Enacted and approved, in meeting duly assembled, this 19th day of May, 2015.

CHARLESTON COUNTY, SOUTH CAROLINA

By: _____
J. Elliott Summey, Chairman, County Council,
Charleston County, South Carolina

[SEAL]

Attest:

By: _____
Beverly T. Craven, Clerk to County Council,
Charleston County, South Carolina

First Reading: February 19, 2015
Second Reading: May 5, 2015
Public Hearing: May 5, 2015
Third Reading: May 19, 2015

FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

by and between

CHARLESTON COUNTY, SOUTH CAROLINA

and

DAIMLER VANS MANUFACTURING, LLC

Dated as of May 19, 2015

STATUTORILY REQUIRED RECAPITULATION

Pursuant to Title 12, Chapter 44 of the Code of Laws of South Carolina 1976, as amended (the “Negotiated FILOT Act”), and particularly Section 12-44-55(B) thereof, the County and the Company agree to waive the recapitulation requirements of Section 12-44-55 of the Negotiated FILOT Act, except as expressly provided below, to the extent that and so long as the Company and each other Sponsor or Sponsor Affiliate timely provides the County with copies of all filings required by the Negotiated FILOT Act to be made by such entity with regard to their respective portions of the Project. If the Company or any other Sponsor or Sponsor Affiliate should be required to retroactively comply with the recapitulation requirements of Section 12-44-55 of the Negotiated FILOT Act, then the County agrees, to the extent permitted by law, to waive all penalties for such entity’s noncompliance that are within the County’s control. Capitalized terms used in this recapitulation and not otherwise defined herein shall have the meanings ascribed thereto in this Agreement.

1. Legal name of each initial party to the Agreement:
Charleston County, South Carolina
Daimler Vans Manufacturing, LLC
2. County and street address of the project and property to be subject to the Agreement:
Charleston County
8501 Palmetto Commerce Pkwy
Ladson, SC 29456
3. Minimum investment:
\$400,000,000 in the aggregate to qualify for full SSRB/SSRC benefits; statutory minimums for FILOT benefits
4. Length and term of this Agreement:
30 years for each annual increment of investment in Negotiated FILOT Property during the Investment Period, subject to automatic extension in certain circumstances.
5. Assessment ratio applicable for each year of this Agreement:
4%
6. Millage rate applicable for each year of this Agreement:
Every year of the term: 276.1 mills.
7. Schedule showing the amount of the fee and its calculation for each year of this Agreement:
Waived.
8. Schedule showing the amount to be distributed annually to each of the affected taxing entities:
Waived.

9.
 - (a) Project is now or will be located in a multi-county industrial or business park formed pursuant to the Multi-County Park Act.
 - (b) Disposal of property subject to Negotiated FILOT Payments is allowed.
 - (c) The parties anticipate that the County will issue Base Special Source Revenue Bonds payable solely from Pledged Revenues consisting of 50% of the FILOT Payments derived from the Base Investment of \$400,000,000 (or such other investment amount as permitted hereunder) and which are made over a 20-year period. The County may, in its sole discretion, issue Additional Special Source Revenue Bonds payable from Pledged Revenues derived from Excess Investment over such Base Investment. The Company and any other Sponsor or Sponsor Affiliate may claim annual Special Source Credits in aggregate amounts equal to 50% of the FILOT Payments derived from the Excess Investment, but only to the extent that such amounts have not been pledged to secure payment of debt service on any Special Source Revenue Bonds, for 20 consecutive years; provided, however, additional 20-year Special Source Credits periods shall apply for each \$100,000,000 tranche of Excess Investment.
 - (d) Payment will not be modified using a net present value calculation.
 - (e) Replacement property provisions will apply.
10. Any other feature or aspect of this Agreement which may affect the calculation of items (7) and (8) of this Recapitulation.
Waived.
11. Description of the effect upon the schedules in items (7) and (8) of this Recapitulation of any feature covered by items (9) and (10) not reflected in the schedules for items (7) and (8):
Waived.
12. Which party or parties to this Agreement are responsible for updating any information contained in this Recapitulation:
The Company as to items 1 and 2 and the County as to all other items.

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FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

THIS FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT (this “Agreement”) dated as of May 19, 2015, by and between CHARLESTON COUNTY, SOUTH CAROLINA (the “County”), a body politic and corporate and a political subdivision of the State of South Carolina, and DAIMLER VANS MANUFACTURING, LLC, a limited liability company organized and existing under the laws of the State of Delaware, acting for itself, one or more affiliates or other project sponsors (the “Company”).

WITNESSETH:

WHEREAS, the County, acting by and through its County Council (the “Council”), is authorized and empowered under and pursuant to the provisions of the Code of Laws of South Carolina 1976, as amended (the “Code”), and particularly Title 12, Chapter 44 of the Code (the “Negotiated FILOT Act”); and Title 4, Chapter 1 of the Code (the “Multi-County Park Act”, or as to Section 4-1-175 thereof, and, by incorporation, Section 4-29-68 of the Code, the “Special Source Act”) (collectively, the “Act”) and by Article VIII, Section 13(D) of the South Carolina Constitution: (i) to enter into agreements with certain investors to construct, operate, maintain, and improve certain projects through which the economic development of the State of South Carolina (the “State”) will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ the manpower, agricultural products, and natural resources of the State; (ii) to accept certain fee in lieu of *ad valorem* property tax (“FILOT”) payments, including, without limitation, negotiated FILOT payments made pursuant to the Negotiated FILOT Act, with respect to a project ; (iii) to issue special source revenue bonds (“Special Source Revenue Bonds”), payable solely from special source revenues from FILOT payments derived from a project or projects, to pay for expenditures in connection with infrastructure serving the County and improved or unimproved real estate and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County (“Infrastructure Improvements”) or, in the alternative, to permit investors to claim special source revenue credits against their FILOT payments (“Special Source Credits”) to reimburse such investors for Infrastructure Improvements; and (iv) to create, in conjunction with one or more other counties, a multi-county industrial or business park (“Multi-County Park”) in order to afford certain enhanced income tax credits to such investors and to facilitate the issuance of Special Source Revenue Bonds or the grant of Special Source Credits; and

WHEREAS, the Company proposes to invest in, or cause others to invest in, the acquisition, improvement and equipping of certain facilities located in the County (collectively, the “Project”) and anticipates that, should its plans proceed as presently expected, the Project will generate aggregate investment in the County of at least \$400,000,000, of which approximately \$15,000,000 is anticipated to consist of non-taxable pollution control equipment, and will create at least 1,300 new jobs at the Project; and

WHEREAS, the County has the option to purchase a certain tract of land in the County deemed by the Company to be suitable or useful for the Project (the “Option Property”); and

WHEREAS, based on information provided to the County by the Company, the County has determined that the Project will subserve the purposes of the Act and has made certain findings pertaining thereto in accordance with the Act; and

WHEREAS, in accordance with such findings and determinations and in order to induce the Company to locate the Project in the County, the Council adopted a Resolution on February 19, 2015 referencing “Project Unicorn”, as the Company was then identified, whereby the County agreed to provide certain negotiated FILOT benefits with respect to the Project, Special Source Credits benefits, or in the alternative proceeds from the issuance of Special Source Revenue Bonds, to pay for Infrastructure Improvements associated with the Project and Multi-County Park benefits with respect to the Project, and to make available to the Company the Option Property, all as set forth in greater detail herein; and

WHEREAS, the Company has, as of the date of original execution and delivery of this Agreement, elected to request the County to issue its Special Source Revenue Bonds to pay for Infrastructure Improvements associated with the Project, utilizing a portion of the FILOT payments from certain investment in taxable property constituting the Project, and to allow the Company to claim Special Source Credits on investment in excess of such investment, all as provided in greater detail herein; and

WHEREAS, the County has determined that it is in the best interest of the County to enter into this Agreement with the Company, subject to the terms and conditions set forth herein and, by an Ordinance enacted by the Council on May 19, 2015, the County approved the form, terms and conditions of this Agreement and ratified all prior actions taken with respect to the Project.

NOW, THEREFORE, in consideration of the premises; the potential investment to be made, or caused to be made, by the Company and the jobs to be generated at the Project, all of which contribute to the tax base and the economic welfare of the County; the respective representations and agreements hereinafter contained; and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the Company agree as follows:

ARTICLE II

DEFINITIONS

Section 10. 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” shall mean, collectively, the Negotiated FILOT Act, the Special Source Act, and the Multi-County Park Act, in each case as amended through the date hereof; provided, however,

that the parties may agree from time to time to rely upon amendments to the Act subsequent to the date hereof.

“Additional Special Source Credits” shall mean the special source revenue credits described in **Section 3.02(e)** hereof.

“Additional Special Source Revenue Bonds” shall mean the special source revenue bonds described in **Section 3.02(f)** hereof.

“Administration Expenses” shall mean the reasonable and necessary expenses incurred by the County in the fulfillment of its obligations under this Agreement and in the implementation of its terms and provisions, including attorneys’ fees but excluding any expenses incurred by the County in defending suits brought by any Company or any other Sponsor or Sponsor Affiliate under **Section 8.04** hereof; provided, however, that no such expense shall be considered an Administration Expense unless the County shall have first furnished to the Company, or other Sponsor or Sponsor Affiliate, required to pay such expense hereunder, an estimate of the amount thereof or as to the basis for which such expenses will be calculated and that the County shall have furnished to such Company, Sponsor or Sponsor Affiliate, an itemized statement of all expenses incurred; and provided, further, that nothing herein shall be construed as prohibiting the County from engaging the counsel of its choice for matters deemed necessary and prudent by the County.

“Affiliate” shall mean, with respect to the Company or any other Co-Investor, as the case may be, any corporation, limited liability company, partnership or other Person or entity which now or hereafter owns directly or indirectly all or part of the Company or such other Co-Investor, or which now or hereafter is owned directly or indirectly in whole or in part by the Company or such other Co-Investor, or by any partner, shareholder or owner of the Company or such other Co-Investor, as well as any subsidiary, affiliate or other Person, individual, or entity who now or hereafter bears a relationship to the Company or such other Co-Investor, as described in Section 267(b) of the Internal Revenue Code.

“Agreement” shall mean this Fee In Lieu of Tax and Incentive Agreement as originally executed and from time to time supplemented or amended as permitted herein.

“Amendatory FILOT Agreement” shall mean that certain Amendatory Fee in Lieu of Tax and Incentive Agreement by and between the County and the Company dated as of May 19, 2015.

“Anticipated Project Parameters” shall mean (i) investment in the Project, by the Company and all Co-Investors, in the aggregate, of at least \$400,000,000 (without regard to depreciation or other diminution in value) and (ii) the creation of at least 1,300 new Qualified Jobs by the Company and all Co-Investors, in the aggregate, at the Project, all measured at the highest point achieved, in each case separately, during the Compliance Period applicable to an Enhanced Investment.

“Base Investment” shall mean \$385,000,000 of taxable investment in the Project (without regard to depreciation, or other diminution in value resulting from casualty or condemnation) of investment in the Project; provided, however, and notwithstanding the foregoing, in the event that the Base Special Source Revenue Bonds are issued as set forth in **Section 3.02** hereof, Base Investment shall mean that amount of investment in the Project utilized in structuring such Base Special Source Revenue Bonds, as reflected in the written certification delivered by the Company to the County pursuant to **Section 3.02(b)** hereof .

“Base Special Source Credits” shall mean the special source revenue credits described in **Section 3.02(d)** hereof.

“Base Special Source Revenue Bonds” shall mean the special source revenue bonds to be issued by the County at the request of the Company in accordance with the provisions of **Section 3.02(a)-(c)** hereof.

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

“Co-Investor” shall mean any Sponsor or Sponsor Affiliate within the meaning of Sections 12-44-30(19) and (20) of the Negotiated FILOT Act, any Affiliate of the Company or of any such Sponsor or Sponsor Affiliate, any developer in a build-to-suit arrangement with respect to the Project, any lessor of equipment or other property comprising a part of the Project, any entity providing logistics, janitorial or other services to the Company or to any other Co-Investor at the Project, any financing entity or other third party investing in or providing funds for the Project and any entity which contracts with the Company or any other Co-Investor to provide contract or leased employees for the Project. The Company shall provide the County with written certification as to the identity of any Sponsor, Sponsor Affiliate or other Co-Investor and shall, to the extent the Company and any such Co-Investor intend to extend the benefits of the Negotiated FILOT to property owned by such Co-Investor pursuant to **Section 6.02** hereof, comply with any additional notice requirements, or other applicable provisions, of the Negotiated FILOT Act. As of the date of original execution and delivery of this Agreement, the Company, Mercedes-Benz USA, LLC and/or another provider of logistics services are the only Co-Investors anticipated.

“Company” shall mean Daimler Vans Manufacturing, LLC, a Delaware limited liability company, and any surviving, resulting, or transferee entity in any merger, consolidation or transfer of assets permitted under **Sections 4.07** or **6.01** hereof or any other assignee hereunder which is designated by the Company and approved by the County.

“Compliance Period” shall mean the period commencing with the first day that Negotiated FILOT Property is purchased or acquired, whether before or after the date of this Agreement, and ending as follows and in accordance with Section 12-44-30(13) of the Negotiated FILOT Act:

- (a) If the Project qualifies as an Enhanced Investment, the Compliance Period

shall end on the eighth anniversary of the end of the Property Tax Year in which the initial Negotiated FILOT Property is placed in service;

(b) If the Project fails to qualify as an Enhanced Investment, then for purposes of determining compliance with the Minimum Statutory Investment Requirement, the Compliance Period shall end on the fifth anniversary of the end of the Property Tax Year in which the initial Negotiated FILOT Property comprising the Project is placed in service; and

(c) The parties anticipate that the initial Negotiated FILOT Property comprising the Project will be placed in service in the Property Tax Year ending on December 31, 2016, that the Project will qualify as an Enhanced Investment, and that, therefore, the Compliance Period will end on December 31, 2024.

“*Council*” shall mean the governing body of the County and its successors.

“*County*” shall mean Charleston County, South Carolina, a body politic and corporate and a political subdivision of the State, and its successors and assigns.

“*Deficiency Payment*” shall have the meaning specified in **Section 5.01(e)** hereof.

“*Department of Revenue*” shall mean the South Carolina Department of Revenue and any successor thereof.

“*Enhanced Investment*” shall have the meaning ascribed to that term in Section 12-44-30(7) of the Negotiated FILOT Act.

“*Event of Default*” shall have the meaning set forth in **Section 8.01** hereof.

“*Excess Investment*” shall mean that portion of investment in the Project that is taxable (without regard to depreciation, or other diminution in value resulting from casualty or condemnation) in excess of the Base Investment.

“*Existing Property*” shall mean property which will not qualify for the Negotiated FILOT pursuant to Section 12-44-110 of the Negotiated FILOT Act, including without limitation property which has been subject to *ad valorem* property taxes in the State prior to commencement of the Investment Period 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 or on behalf of the Company or any other Sponsor or Sponsor Affiliate during the Investment Period which has not been placed in service in this State prior to the commencement of the Investment Period notwithstanding that *ad valorem* property taxes have heretofore been paid with respect to such property, or property which has been placed in service in the State pursuant to an inducement agreement or other preliminary approval by the County, including any inducement

resolution, prior to execution of this Agreement pursuant to Section 12-44-40(E) of the Negotiated FILOT Act, which property shall qualify as Negotiated FILOT Property; (c) property purchased by or on behalf of the Company or any other Sponsor or Sponsor Affiliate during the Investment Period in a transaction other than between any of the entities specified in Section 267(b) of the Internal Revenue Code, as defined under Chapter 6 of Title 12 of the Code as of the time of the transfer, to the extent that the Company or such other Sponsor or Sponsor Affiliate invests, or causes to be invested, at least an additional \$45,000,000 in the Project, exclusive of the property identified in this subsection (c); or (d) modifications which constitute an expansion of the real property portion of Existing Property.

“*FILOT*” shall mean fee in lieu of *ad valorem* property taxes.

“*FILOT Payment*” or “*FILOT Payments*” shall mean the FILOT payments to be made by the Company or any other Sponsor or Sponsor Affiliate with respect to the Project, whether made as Negotiated FILOT Payments pursuant to **Section 5.01** hereof or as FILOT payments made pursuant to the Multi-County Park Act.

“*Infrastructure Improvements*” shall mean to the extent paid for by the Company or any other Co-Investor, any infrastructure serving the economic development of the County and any improved or unimproved real property, buildings, structural components of buildings, fixtures, or other real property improvements and, upon the written election of the Company to the County, personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County, all as set forth in the Special Source Act. For purposes of this Agreement, Infrastructure Improvements shall initially be deemed to include, without limitation, all roadwork, water, sewer, drainage, rail, power and utility facilities serving the Project, as well as the Land, the buildings, fixtures and other real property improvements on the Land, and any additions or improvements to any of the foregoing, whether paid for by the Company or any Co-Investors directly or through lease payments.

“*Investment Period*” shall mean the period for completion of the Project, which shall be determined as follows and in accordance with Section 12-44-30(13) of the Negotiated FILOT Act:

(a) Initially, the Investment Period shall be equal to the Compliance Period applicable to an Enhanced Investment;

(b) If the Project fails to qualify as an Enhanced Investment, the Investment Period shall be equal to the Compliance Period applicable to determining qualification for the Minimum Statutory Investment Requirement;

(c) If the Project, after qualifying as an Enhanced Investment, has more than \$500,000,000 in capital invested in the State and employs more than 1,000 people in the State, then, upon written notice from the Company to the County of the reaching of such

investment and employment levels in the State, the Investment Period shall end on the tenth anniversary of the end of the Property Tax Year in which the initial Negotiated FILOT Property is placed in service;

(d) If the Company satisfies the requirements for the Investment Period Extension Thresholds, the Investment Period shall be automatically extended by five (5) years beyond the Compliance Period or, if applicable, the ten-year period specified in (c) above, in accordance with the provisions of **Section 3.01** hereof; and

(e) In the event that the initial Negotiated FILOT Property comprising any portion of the Project is placed in service in the Property Tax Year ending on December 31, 2016, and the Company qualifies for the extensions described in (c) and (d) above, the Investment Period shall end on December 31, 2031.

“Investment Period Extension Thresholds” shall mean (i) the written commitment by the Company prior to the end of the Investment Period applicable to an Enhanced Investment to invest or cause to be invested, in the Project at least \$100,000,000 and to create, or cause to be created, at least 200 Qualified Jobs at the Project, in each case in addition to the Anticipated Project Parameters and within the Investment Period as extended pursuant to **Section 3.01** hereof and (ii) compliance with the Anticipated Project Parameters.

“Land” shall mean the land upon which the Project has been or will be located, acquired, constructed and equipped, as described in **Exhibit A** attached hereto, as **Exhibit A** may be supplemented from time to time in accordance with the provisions of **Section 4.01(e)(iv)** hereof.

“Minimum Statutory Investment Requirement” shall mean investment in the Project of not less than \$2,500,000 (without regard to depreciation or other diminution in value) within the approximately five-year Compliance Period, all as determined pursuant to Section 12-44-30(14) of the Negotiated FILOT Act and **Sections 4.01(b)** and **6.02** hereof.

“Multi-County Park” shall mean the multi-county industrial or business park established pursuant to the Multi-County Park Agreement, and any multi-county industrial or business park which now or hereafter includes the Project and which is designated by the County as such pursuant to any agreement, which supersedes or replaces the initial Multi-County Park Agreement.

“Multi-County Park Act” shall mean Title 4, Chapter 1 of the Code, as amended through the date hereof.

“Multi-County Park Agreement” shall mean that certain Agreement for Development for Joint County Business and Industrial Park by and between the County and Colleton County, South Carolina dated as of September 1, 1995, as amended to add the Project, and as such agreement may be further amended, supplemented, or replaced from time to time.

“*Negotiated FILOT*” or “*Negotiated FILOT Payments*” shall mean the negotiated FILOT payments due pursuant to **Section 5.01** hereof with respect to that portion of the Project consisting of Negotiated FILOT Property qualifying under the Negotiated FILOT Act for the negotiated assessment ratio and millage rates described in **Section 5.01(b)(ii)** hereof.

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

“*Negotiated FILOT Property*” shall mean, subject to the provisions of **Section 4.01** hereof, all property comprising a portion of the Project which qualifies for the Negotiated FILOT as economic development property within the meaning of Section 12-44-30(6) of the Negotiated FILOT Act, including, without limitation, each item of real and tangible personal property which is placed in service prior to the end of the Investment Period and which meets the requirements of Sections 12-44-30(6) and 12-44-40(C) of the Negotiated FILOT Act, together with all Replacement Property, but excluding any Non-Qualifying Property and any Released Property.

“*Non-Qualifying Property*” shall mean that portion of the property located on the Land which does not qualify as Negotiated FILOT Property, such Non-Qualifying Property to include: (i) Existing Property; (ii) except as to Replacement Property, property which the Company or any other Sponsor or Sponsor Affiliate places in service after the end of the Investment Period; and (iii) any other property which fails or ceases to qualify for Negotiated FILOT Payments under the Negotiated FILOT Act, including, without limitation, property as to which the Company or any other Sponsor or Sponsor Affiliate has terminated the Negotiated FILOT pursuant to **Section 4.01(e)(iii)** hereof.

“*Option Property*” shall mean the portion of the Land described as Parcel Three on **Exhibit A** hereto.

“*Payment Period Extension Thresholds*” shall mean (i) investment in the Project by the Company and all Co-Investors, in the aggregate, of at least \$150,000,000 (without regard to depreciation or diminution in value) and (ii) the creation of at least 200 Qualified Jobs at the Project by the Company and all Co-Investors, in the aggregate, in each case within the period commencing on January 1, 2020 and ending on the last day of the Investment Period as extended pursuant to **Section 3.01** 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.

“*Pledged Revenues*” shall mean either (i) as to the Base Special Source Revenue Bonds, 50% of the FILOT Payments with respect to the Base Investment portion of the Project or (ii) as to the Additional Special Source Revenue Bonds, 50% of the FILOT Payments with respect to the Excess Investment portion of the Project.

“Project” shall mean, subject to the provisions of **Section 4.01(c)** hereof: (i) the Land; (ii) all buildings, structures, fixtures and other real property improvements now or hereafter constructed on the Land; (iii) all machinery, equipment, furnishings and other personal property now or hereafter acquired by or on behalf of the Company or any other Co-Investor for use on or about the Land; and (iv) any Replacement Property; provided, however, except as to Replacement Property, the term Project shall be deemed to include such real property improvements and personal property, whether now existing or hereafter constructed or acquired, only to the extent placed in service during the Investment Period.

“Property Tax Year” shall mean the annual period which is equal to the fiscal year of the Company or any other Co-Investor, as the case may be, *i.e.*, with respect to the Company, the annual period ending on December 31 of each year.

“Qualified Jobs” shall mean all full-time or full-time equivalent jobs at the Project with an hourly wage of at least \$14.00, whether permanent or temporary, net of 159 jobs at the Project site which currently exist or which are being created pursuant to a previously approved project, but including any such jobs created by the Company or any other Co-Investors whether directly or indirectly through third party contracts. A job shall be considered full-time if the job description anticipates that the employee will be paid for at least 2000 hours per year, including personal leave and holidays.

“Released Property” shall include property which was initially Negotiated FILOT Property but which is scrapped, sold, disposed of, or released from this Agreement by the Company or any other Sponsor or Sponsor Affiliate pursuant to **Section 4.01(e)** hereof and Section 12-44-50(B) of the Negotiated FILOT Act, property which the Company or any other Sponsor or Sponsor Affiliate dedicates to the public use within the meaning of Section 12-6-3420(C) of the Code, or property which is damaged, destroyed, or taken by process of eminent domain and not restored or replaced.

“Replacement Property” shall mean all property placed in service in or on the Land in substitution of, or as replacement for, any Negotiated FILOT Property which becomes Released Property, regardless of whether such property serves the same function as the property it replaces and regardless of whether more than one piece replaces a single piece of the Negotiated FILOT Property, to the maximum extent that such property may be included in the calculation of the Negotiated FILOT pursuant to **Section 5.01(d)** hereof and Section 12-44-60 of the Negotiated FILOT Act.

“Special Source Act” shall mean Section 4-1-175 of the Code, and by incorporation, Section 4-29-68 of the Code, as amended through the date hereof.

“Special Source Credits” shall mean the Base Special Source Credits and the Additional Special Source Credits, collectively.

“Special Source Credits Period” shall have the meaning ascribed thereto in **Section 3.02(e)** hereof.

“*Special Source Revenue Bonds*” shall mean the Base Special Source Revenue Bonds and the Additional Special Source Revenue Bonds, collectively.

“*Sponsor*” and “*Sponsor Affiliate*” shall mean an entity whose investment with respect to the Project will qualify for the Negotiated FILOT pursuant to **Section 6.02** hereof and Sections 12-44-30(19) or (20) and Section 12-44-130 of the Negotiated FILOT Act if the statutory investment requirements are met. As of the date of the original execution and delivery of this Agreement, the only Sponsor is the Company and the only Sponsor Affiliates anticipated are Mercedes-Benz USA, LLC and/or another provider of logistics services.

“*State*” shall mean the State of South Carolina.

“*Term*” shall mean the term of this Agreement, as set forth in **Section 7.01** hereof.

“*Transfer Provisions*” shall mean the provisions of Section 12-44-120 of the Negotiated FILOT Act.

Section 11. References to Agreement. The words “hereof”, “herein”, “hereunder”, and other words of similar import refer to this Agreement as a whole.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

Section 12. Representations and Warranties by County. The County makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) The County is a body politic and corporate and a political subdivision of the State and is authorized and empowered by the provisions of the Act to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. By proper action by the Council, the County has duly authorized the execution and delivery of this Agreement and has duly approved the Negotiated FILOT, Special Source Revenue Bonds, Special Source Credits, and Multi-County Park benefits, as well as the purchase of the Option Property and the resale thereof to the Company or, in the alternative and upon the election of the Company, the assignment to the Company of the County’s option to purchase the Option Property, and all actions reasonably necessary and appropriate to consummate the transactions contemplated hereby, all as further described in this Agreement. The County will use its best efforts to take all appropriate action as may be required to add the Option Property to the Multi-County Park and to obtain such consents as may be required by law therefor.

(b) Based on information provided by the Company, the County has determined that the Project will subserve the purposes of the Act and has made all other findings of fact required by the Act in connection with the undertaking of the arrangements set forth herein.

(c) This Agreement has been duly authorized, executed and delivered on behalf of the County. The authorization, execution, and delivery of this Agreement and the performance by the County of its obligations hereunder will not, to the best knowledge of the County, conflict with or constitute a breach of, or a default under, any State law, court or administrative regulation, decree, order, provision of the Constitution or laws of the State relating to the establishment of the County or its affairs, or any material agreement, mortgage, lease, or other instrument to which the County is subject or by which it is bound, nor, to the best knowledge of the County, any existing law or the provisions of the Constitution of the State.

(d) To the best knowledge of the County, the approval of this Agreement and the transactions contemplated herein have been made in accordance with all applicable laws.

(e) To the best knowledge of the County, no actions, suits, proceedings, inquiries, or investigations are pending or threatened against or affecting the County in any court or before any governmental authority or arbitration board or tribunal, any of which to the best knowledge of the County could materially adversely affect this Agreement or which could, in any way, adversely affect the validity or enforceability of this Agreement or the transactions contemplated hereby.

Section 13. Representations and Warranties by the Company. The Company makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) The Company is a limited liability company validly existing and in good standing under the laws of the State of Delaware and is authorized to do business in the State; has all requisite power to enter into this Agreement and to carry out its obligations hereunder; and by proper action has been duly authorized to execute and deliver this Agreement. The Company's fiscal year end is December 31 and the Company will notify the County of any changes in the fiscal year of the Company.

(b) The Company presently intends to operate, or cause operation of, the Project primarily for manufacturing vans and related activities and for such other activities as the Company may determine from time to time in its sole discretion. The

Company has approved the Project, and investment and job creation at the Project, on terms which will enable it, absent unforeseen circumstances, to reach the Anticipated Project Parameters.

(c) The agreements with the County with respect to the Negotiated FILOT, the Special Source Revenue Bonds, the Special Source Credits and the Multi-County Park benefits and the County's agreement to make available to the Company the Option Property, all as further described in this Agreement, were factors in inducing the Company to locate and maintain the Project within the County and the State.

(d) To the best knowledge of the Company, no actions, suits, proceedings, inquiries, or investigations are pending or threatened against or affecting the Company in any court or before any governmental authority or arbitration board or tribunal, which would materially adversely affect this Agreement or which would, in any way, adversely affect the validity or enforceability of this Agreement, or the transactions contemplated hereby.

ARTICLE IV

COVENANTS OF COUNTY

Section 14. Agreement to Accept Negotiated FILOT Payments. The County hereby agrees to accept Negotiated FILOT Payments in accordance with **Section 5.01** hereof in lieu of *ad valorem* property taxes with respect to that portion of the Project consisting of Negotiated FILOT Property until this Agreement expires or is sooner terminated. To encourage increased investment in the Project, the County hereby agrees that (i) if the Company and all Co-Investors collectively comply with the Investment Period Extension Thresholds, the Investment Period shall be extended by five (5) years and (ii) if the Company and all Co-Investors, collectively, comply with the Payment Period Extension Thresholds, the period for payment of the Negotiated FILOT shall be extended by ten (10) years, in each case, automatically without further action by the County and in accordance with the Negotiated FILOT Act.

Section 15. Special Source Revenue Bonds; Special Source Credits. To provide funding for Infrastructure Improvements constituting a portion of the Project and subject to the requirements of the Special Source Act, the County hereby agrees to issue Special Source Revenue Bonds and to provide the Company and each other Sponsor or Sponsor Affiliate with Special Source Credits in accordance with the following provisions.

(a) Unless the Company has theretofore elected for it, and any other Sponsors or Sponsor Affiliates, to claim Base Special Source Credits as set forth in **Section 3.02(d)**

hereof, the County shall use its best efforts to issue Base Special Source Revenue Bonds at such times (but subject to the County's standard practices regarding issuance of its bonds) and upon such terms as the Company shall request. Such Base Special Source Revenue Bonds shall be payable solely from Pledged Revenues with respect to the Base Investment portion of the Project during a period of twenty (20) consecutive years, commencing at a mutually acceptable time. As of the original execution and delivery of this Agreement, the Company anticipates that the Base Investment will be \$400,000,000, including at least \$385,000,000 in taxable property, and, based upon such projections, the County will use its best efforts to, subject to the timing of such investment and the then current bond market conditions, make available to the Company, as reimbursement for Infrastructure Improvements, not less than \$13,100,000 from the proceeds of such series of such Base Special Source Revenue Bonds.

(b) The provisions, terms and conditions of any Special Source Revenue Bonds shall be approved by subsequent ordinance of the Council and shall be subject to such approval by the State Budget and Control Board, or any successor agency to the State Budget and Control Board, as may be required under the Special Source Act. In addition, the final terms of any Special Source Revenue Bonds, including without limitation, the annual debt service pertaining thereto, shall be subject to the written approval of the Company. Prior to the issuance of any Special Source Revenue Bonds, the Company shall deliver to the County a written certification, in form and substance reasonably acceptable to the County and the Company, reflecting the projected amount, nature and timing of the anticipated investment in the Project upon which the County may rely in structuring such Special Source Revenue Bonds and upon which the payments required by **Section 5.01(f)(iv)** hereof shall be calculated.

(c) The County shall deposit the proceeds of any Special Source Revenue Bonds which remain after payment of cost of issuance, capitalized interest and any reserve fund requirement in a project fund or other restricted account with a trustee of its choice and shall require such trustee to disburse the proceeds so deposited in accordance with the terms of this Agreement as funding for Infrastructure Improvements. The County shall, at the request of the Company, promptly review and approve, or disapprove the Company's written request for reimbursement from such funds, which request shall be substantially in the form attached hereto as **Exhibit B**. In its agreement with the trustee, the County shall require payment to the Company in accordance with the Company's directions, within ten (10) days of receipt by the trustee of such request.

(d) As an alternative to the Base Special Source Revenue Bonds described in (a) above, and at the election of the Company, which election must be provided by the

Company to the County in writing on or before the date that the initial Negotiated FILOT Payment are due hereunder with respect to the Project (*i.e.*, January of 2018, in the event that the initial assets comprising the Project is placed in service in the Property Tax Year ending on December 31, 2016), the Company and any other Sponsors or Sponsor Affiliates shall each be entitled to receive, and the County shall provide, Base Special Source Revenue Credits against each annual FILOT Payment with respect to the Base Investment portion of the Project, in an amount equal to fifty percent (50%) of each such payment, for a period of twenty (20) consecutive years, commencing with the Negotiated FILOT Payment due with respect to the Property Tax Year in which the initial assets comprising the Project are placed in service, anticipated to be the FILOT Payment due in January of 2018.

(e) If investment in the Project exceeds the Base Investment, then, the Company, and any other Sponsors or Sponsor Affiliates, shall each be entitled to receive, and the County shall provide, Additional Special Source Credits against each FILOT Payment with respect to such Excess Investment, in an amount equal to 50% of each such payment, for the then remaining portion of the twenty-year period described in (d) above; provided, however, for each tranche of \$100,000,000 in Excess Investment, a new twenty-year period for collection of such Additional Special Source Credits (each of the twenty-year special source revenue credits period described in (d) above and any subsequent twenty-year special source revenue credits period, referred to herein as a “Special Source Credits Period”) shall apply, commencing with the FILOT Payment due with respect to the first Property Tax Year in which such Excess Investment tranche reaches \$100,000,000; provided, further that, investment comprising each such \$100,000,000 tranche of Excess Investment shall receive the benefit of such Additional Special Source Credits for the then remaining portion of the Special Source Credits Period that most recently commenced until such \$100,000,000 level is reached, at which time (i) for all investment comprising such \$100,000,000 tranche that has not previously been subject to a prior Special Source Credits Period, a new Special Source Credits Period shall apply in full, and (ii) for any investment comprising such \$100,000,000 tranche that has previously been subject to a prior Special Source Credits Period, such investment shall be subject to the new Special Source Credits Period less the number of years such investment has previously been subject to Special Source Credits. An illustration of how such additional Special Source Credits Periods would be calculated is attached hereto as **Exhibit C**.

(f) Upon the request of the Company, and in lieu of the Additional Special Source Credits which would otherwise apply, the County shall, in its sole discretion, consider issuing one or more series of Additional Special Source Revenue Bonds during

any such new Special Source Credit Period payable from all or a portion of the Pledged Revenues derived from the Excess Investment which triggered such Special Source Credit Period, in which event the provisions of (b), (c), and (e) above shall apply to such Additional Special Source Revenue Bonds; provided, however, the County shall only be required to consider the issuance of such Additional Special Source Revenue Bonds in the event that, based upon projected investment levels and then current bond market conditions, such bonds are expected to generate at least \$10,000,000 of bond proceeds, such bonds provide a cost-effective method of raising funds to pay for Infrastructure Improvements, and issuance of such bonds conforms to the County's standard practices regarding issuance of bonds.

(g) In accordance with the provisions of **Section 4.04** hereof, the Company and each Sponsor or Sponsor Affiliate shall, upon request, provide the County with such information as the County may reasonably request to verify the calculations of, and eligibility for, the Special Source Credits provided for in this Agreement. Additionally, the Company shall file separate schedules, as part of its annual property tax returns filed with the Department of Revenue with respect to the Project, in such manner as to facilitate the calculation by the County of those portions of the Pledged Revenues allocable, respectively, to any series of Special Source Revenue Bonds, and shall file a separate such schedule for each Special Source Credits Period to facilitate the calculation by the County of the Special Source Credits. The County shall pay an amount equal to the annual Special Source Credits to the order of the Company and any other Sponsor or Sponsor Affiliate, within ninety (90) days following receipt of all FILOT Payments and *ad valorem* property taxes with respect to the Project then due and owing.

(h) **THE SPECIAL SOURCE REVENUE BONDS AND SPECIAL SOURCE CREDITS AUTHORIZED HEREIN SHALL NOT CONSTITUTE GENERAL OBLIGATIONS OF THE COUNTY, BUT SHALL BE LIMITED OBLIGATIONS OF THE COUNTY PAYABLE SOLELY FROM THE FILOT PAYMENTS RECEIVED BY THE COUNTY HEREUNDER WITH RESPECT TO THE PROJECT.**

(i) The sum of the principal amount of any Special Source Revenue Bonds issued hereunder and the aggregate amount of Special Source Credits shall not exceed the cost of Infrastructure Improvements funded from time to time in connection with the Project.

(j) To the extent required by Section 4-29-68(A)(2)(ii) of the Code, if the Company claims Special Source Credits as reimbursement for investment in personal property, including machinery and equipment, if such property is removed from the

Project during the term of this Agreement, the amount of the FILOT Payments due from the Company on such personal property for the year in which the personal property was removed from the Project also shall be due for the two (2) years following such removal.

Section 16. Adjustment of Special Source Credits and Negotiated FILOT Payments Supporting Special Source Revenue Bonds upon Failure to Meet Anticipated Project Parameters or Bond Related Projections.

(a) If the Company and all Co-Investors collectively fail to meet the investment projections contained in the written certification provided to the County by the Company in connection with the issuance of any Special Source Revenue Bonds, the Company shall nevertheless make, or cause to be made, minimum annual Negotiated FILOT Payments in accordance with the provisions of **Section 5.01(f)(iv)** hereof.

(b) If, by the end of the Compliance Period for an Enhanced Investment, the Company and all Co-Investors have, collectively, invested at least \$300,000,000 in the Project and created at least 975 new Qualified Jobs at the Project, the Special Source Credits shall remain, retroactively and prospectively, at 50% of each annual FILOT Payment.

(c) Subject to the provisions of **Sections 3.03(d)** and **3.03(e)** hereof, if, by the end of the Compliance Period for an Enhanced Investment, the Company and all Co-Investors have not, collectively, invested at least \$300,000,000 in the Project and created at least 975 new Qualified Jobs at the Project, the County may elect to reduce any Special Source Credits prospectively to 37.5% of each annual FILOT Payment, commencing with the FILOT Payment due for the final Property Tax Year of the Compliance Period for an Enhanced Investment (*i.e.*, the Property Tax Year ending on December 31, 2024, in the event the initial Negotiated FILOT Property comprising the Project is placed in service in the Property Tax Year ending on December 31, 2016).

(d) Subject to the provisions of **Section 3.03(e)** hereof, if, by the end of the Compliance Period for an Enhanced Investment, the Company and all Co-Investors have not, collectively, invested at least \$200,000,000 in the Project and created at least 650 new Qualified Jobs at the Project the County may elect to reduce any Special Source Credits prospectively to 25% of each annual FILOT Payment, commencing with the FILOT Payment due for the final Property Tax Year of the Compliance Period for an Enhanced Investment (*i.e.*, the Property Tax Year ending on December 31, 2024, in the event the initial Negotiated FILOT Property comprising the Project is placed in service in the Property Tax Year ending on December 31, 2016).

(e) If by the end of the Compliance Period for an Enhanced Investment, the Company and all Co-Investors have not, collectively, invested at least \$150,000,000 in the Project and created at least 125 new Qualified Jobs at the Project the following provisions will apply:

- Subject to the provisions of **Sections 3.03(e)(ii)** and **3.03(e)(iii)** hereof, if, by the end of the Compliance Period for the Minimum Statutory Investment Requirement, the Company and all Co-Investors have not, collectively, invested at least \$150,000,000 in the Project and created at least 125 new Qualified Jobs at the Project, the County may elect to reduce any Special Source Credits, retroactively and prospectively, to 25% of each annual FILOT Payment and any payment due to the County as a result of such retroactive reduction shall be effected by the County's withholding, in whole or in part, of the 25% Special Source Credits that would otherwise be prospectively applicable until such payment has been achieved in full, at which point the 25% Special Source Credits shall again be provided by the County in full.

- Subject to the provisions of **Section 3.03(e)(iii)** hereof, if, by the end of the Compliance Period for the Minimum Statutory Investment Requirement, the Company and all Co-Investors have not, collectively, invested at least \$100,000,000 in the Project and created at least 100 new Qualified Jobs at the Project, the County may elect to reduce any Special Source Credits, retroactively and prospectively, to 15% of each annual FILOT Payment and any payment due to the County as a result of such retroactive reduction shall be effected by the County's withholding, in whole or in part, of the 15% Special Source Credits that would otherwise be prospectively applicable until such payment has been achieved in full, at which point the 15% Special Source Credits shall again be provided by the County in full.

- If, by the end of the Compliance Period for the Minimum Statutory Investment Requirement, the Company and all Co-Investors have not, collectively, invested at least \$50,000,000 in the Project and created at least 75 new Qualified Jobs at the Project, the County may elect to cancel any Special Source Credits, retroactively and prospectively, and the Company shall pay, or cause to be paid, to the County an amount equal to the Special Source Credits already by the County in accordance with **Section 4.03** hereof.

(f) An illustration reflecting application of the provisions of **Sections 3.03(b) – (e)** hereof is attached hereto as **Exhibit D**.

Section 17. Additional Provisions Regarding Special Source Credits

(a) If any of the following events shall occur, the County, by written notice to the Company, may suspend payment of any remaining Special Source Credits until compliance with the requirements of paragraph (b) of this Section has occurred:

- Subject to the rights of the Company set forth in **Sections 4.01, 4.07, 6.01 and 6.02** hereof, the Company has sold or leased, or entered into a contract to sell or lease, the entire Project or substantially all of the Project; or
- The County obtains information, which it reasonably believes to be reliable, that representations of the Company regarding compliance with the investment, job creation, or wage thresholds set forth in this Agreement are intentionally and materially inaccurate or misleading.

(b) Upon receipt of written notice from the County that one or more events described in paragraph (a) of this Section has occurred, the Company may provide to the County information and/or documentation establishing that such event has not occurred or, that if it has occurred, is no longer continuing. If the Company demonstrates that such event has not occurred, or no longer is, occurring, the County agrees to reinstate payment of the Special Source Credits, retroactively and prospectively.

(c) In the event that the Company fails to demonstrate that such event has not occurred, or no longer is occurring, then by written notice to the Company the County may prospectively terminate its obligation to pay Special Source Credits under this FILOT Agreement.

Section 18. Multi-County Park Designation. The County has designated, or will promptly designate, the Project as part of the Multi-County Park and has obtained or will obtain the requisite consents of the City of North Charleston, South Carolina, wherein the Project, as of the date of original execution and delivery of this Agreement, is located, and of the other participating county or counties to such designation. The County further agrees to use its best efforts to maintain the Project within the boundaries of the Multi-County Park pursuant to the provisions of the Multi-County Park Act and Article VIII, Section 13(D) of the State Constitution on terms which provide for all jobs created at the Project from January 1, 2015 through the end of the Investment Period, any additional jobs tax credits afforded by the laws of the State for projects located within multi-county industrial or business parks, and on terms which facilitate the Special Source Revenue Bonds and Special Source Credits described in **Section 3.02** hereof.

Section 19. Commensurate Benefits. The parties acknowledge the intent of this Agreement, in part, is to afford the Company and each other Sponsor or Sponsor Affiliate the benefits specified in this Article III in consideration of the Company's decision to locate the Project within the County, and this Agreement has been entered into in reliance upon the enactment of the Act and the County's compliance with the requirements thereof. In the event that a court of competent jurisdiction holds that the Act is unconstitutional or this Agreement or the Multi-County Park Agreement or agreements similar in nature to this Agreement or the Multi-County Park Agreement are invalid or unenforceable in any material respect, or should the Company determine that there is a reasonable doubt as to the validity or enforceability of this Agreement or the Multi-County Park Agreement in any material respect, then at the request of the Company, the County agrees to use its best efforts to extend to the Company and each other Sponsor or Sponsor Affiliate the intended benefits of this Agreement and agrees, if requested, and at the expense of the Company, to enter into a lease purchase agreement, subject to the provisions set forth below, with the Company and each other Sponsor or Sponsor Affiliate pursuant to Section 12-44-160 of the Negotiated FILOT Act, Title 4, Chapter 29 or Title 4, Chapter 12 of the Code, as applicable, or to take such other steps as may be appropriate to extend to the Company and each other Sponsor or Sponsor Affiliate the intended benefits of this Agreement. The Company acknowledges that, if a court of competent jurisdiction holds that all or part of the Negotiated FILOT Act is unconstitutional or otherwise illegal, the Negotiated FILOT Act currently provides the Company and each other Sponsor or Sponsor Affiliate may transfer its respective portion of the Negotiated FILOT Property to the County pursuant to lease-purchase arrangements within 180 days following such determination in order for the Negotiated FILOT benefits to continue to apply to such property. In such lease purchase agreement, the County, upon the conveyance of title to the Project to the County at the expense of the Company or any such other Sponsor or Sponsor Affiliate, as the case may be, shall agree to lease the Project to the Company or any such other Sponsor or Sponsor Affiliate, as the case may be, upon terms and conditions mutually agreeable to the County and the Company. At the end of the term of any such lease purchase agreement, and upon payment of all outstanding obligations incurred under such lease purchase agreement, the Company or any such other Sponsor or Sponsor Affiliate shall have the option to purchase its respective portion of the Project for Ten Dollars (\$10.00).

Section 20. Option Property. The County agrees, at the request of the Company, to purchase the Option Property and resell the Option Property to the Company on the terms and conditions, and at the price set forth in, that certain Option Agreement for the Purchase of Real Property dated as of December 11, 2014 (the "Option Agreement") between the County and Palmetto Industrial Park II, LLC and Palmetto Industrial Park, LLC (collectively, the "Seller"); provided, however, the County's obligation to so purchase the Option Property shall be

contingent upon bond proceeds from the issuance of the Base Special Source Revenue Bonds being available to make such purchase. The Company shall be responsible for all due diligence associated with acquisition of the Option Property; provided that the County agrees to share with the Company any due diligence reports with respect to the Option Property which the County has in its possession and to cooperate with the Company and its agents in gaining access to the Option Property in order to perform such due diligence. Upon the request of the Company, the County shall, in the alternative and with the consent of Seller, assign to the Company its rights under the Option Agreement whereupon the Company will pay to the County at closing on the Company's acquisition of the Option Property from Seller an amount sufficient to reimburse the County for (i) any option price and/or earnest money deposits theretofore paid to Seller by the County and (ii) engineering fees incurred by the County in connection with the Option Property and submitted to the Company prior to the date of this Agreement.

Section 21. No Pecuniary Liability of the County. The parties acknowledge and agree that any obligation which the County may incur for the payment of money as a result of the transactions described in this Agreement shall never constitute an indebtedness of the County within the meaning of any State Constitutional provision or statutory limitation and shall never create a pecuniary liability of the County or a charge upon its general credit or against its taxing powers but shall be payable solely out of the funds received by it under this Agreement.

ARTICLE V

COVENANTS OF COMPANY

Section 22. Investment and Job Creation at Project; Prior Projects.

(a) The Company hereby agrees to acquire, construct, equip and improve, or cause to be acquired, constructed, equipped and improved, the Project, as the same shall be determined from time to time by the Company, in its sole discretion. As required by Section 12-44-30(2) of the Negotiated FILOT Act, at least a portion of the Negotiated FILOT Property comprising the Project shall be placed in service no later than the end of the Property Tax Year which is three years from the year in which this Agreement is entered, *i.e.*, the Property Tax Year ending on December 31, 2018.

(b) Notwithstanding anything herein to the contrary, and to the maximum extent permitted by law, investment and job creation by any and all other Co-Investors shall together with investment and job creation by the Company, count toward all investment and job creation requirements, thresholds, and levels set forth in this

Agreement, including, but not limited to, the Anticipated Project Parameters, the Investment Period Extension Thresholds, the Payment Period Extension Thresholds, and, to the full extent permitted by the Negotiated FILOT Act, the Minimum Statutory Investment Requirement and the requirements to qualify as an Enhanced Investment or for any extension of the Investment Period or the period for payment of the Negotiated FILOT, or the triggering of additional Special Source Credit Periods. Aggregate investment in the Project shall generally be determined by reference to the capital investment records of the Company and any Co-Investors, without regard to depreciation or other diminution in value. All investment in the Project during the applicable Compliance Period shall count toward any investment requirement regardless of whether such investment is subject to Negotiated FILOT Payments, FILOT Payments under the Multi-County Park Act or *ad valorem* property taxes, and regardless of whether such investment relates to acquisition, construction, installation, improvement of new assets or renovation of existing assets; provided, however, Project property that is exempt from FILOT Payments and *ad valorem* property taxes shall not count toward any \$100,000,000 tranche of Excess Investment for purposes of triggering additional Special Source Credits Periods for Additional Special Source Credits pursuant to **Section 3.02(e)** hereof.

(c) The parties acknowledge that certain facilities located on the Land are subject to prior FILOT agreements with the County, including an Amendatory Fee In Lieu of Tax Agreement of even date herewith, pursuant to which the parties amended and re-documented a Lease Purchase Agreement dated as of June 2, 1999 between the County and the Company, as successor through a series of assignments to Victoria 1998 Trust, pertaining to the manufacturing facilities originally established at the Project site (the “1999 FILOT Agreement”), and a Fee In Lieu Of Tax Agreement dated as of December 22, 2006 between the County and the Company, F/K/A DaimlerChrysler Manufacturing International LLC, pertaining to an expansion of the manufacturing facilities then located at the Project site (the “2006 FILOT Agreement”). The County acknowledges and agrees that the Company has met all of its investment and job creation requirements under each of the 1999 FILOT Agreement and the 2006 FILOT Agreement and that the Company is not currently in default thereunder. In the interest of clarity, the parties agree, to the maximum extent permitted by law, to the following allocation of property among the 1999 FILOT Agreement, the 2006 FILOT Agreement, and this Agreement:

- All assets placed in service on or before December 31, 2005 shall be allocated to the 1999 FILOT Agreement;
- All assets placed in service after December 31, 2005 and on or

before December 31, 2014 shall be allocated to the 2006 FILOT Agreement; provided that all assets related exclusively to the project identified by the Company as “VS20” shall be included in the 2006 FILOT Agreement to the extent permitted thereunder notwithstanding that such assets may be placed in service after December 31, 2014;

- Except as expressly provided to the contrary in (ii) above, all assets placed in service after December 31, 2014 shall be allocated to this Agreement;

- To the extent permitted by law, the Company may modify the allocations specified in (i) through (iii) above by written notification to the County.

(d) Subject to the provisions of **Section 3.04** hereof, the Company and each other Co-Investor shall retain title, or other property rights, to its respective portion of the Project throughout the Term of this Agreement, and the Company and each other Co-Investor shall have full right to mortgage, lease, or encumber all or any portion of the Project, including, without limitation, in connection with any financing transactions, without the consent of the County.

(e) The Company and each other Co-Investor shall have the right at any time and from time to time during the Term hereof to undertake any of the following:

- Subject to the provisions of subparagraph (iv) of this paragraph (e), the Company and each other Co-Investor may, at its own expense, add to the Project all such real and personal property as the Company, in its discretion deems useful or desirable, including, without limitation, Negotiated FILOT Property, without any limit as to the amount thereof. If any property added to this Project as Negotiated FILOT Property is located in a tax district which is different than the tax district in which the initial assets comprising the Project are located then the millage rate for such additional property shall be adjusted to the millage rate in effect for such other tax district as of June 30, 2014 or June 30, 2015, whichever is lower; provided, however, that such millage rate shall not be lower than 276.1 mills.

- Subject to the provisions of **Section 5.01(f)** hereof, in any instance when the Company or any other Co-Investor in its discretion, determines any of its property or portions of the Land included in the Project, including, without limitation, any Negotiated FILOT Property, have become inadequate, obsolete,

worn out, unsuitable, undesirable, or unnecessary for operations at the Project, the Company, or such Co-Investor, may remove such property 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.

- The Company and each other Co-Investor may, at any time and in its discretion by written notice to the County, remove any Negotiated FILOT Property, real or personal, from the Project or the provisions of this Agreement including, but not limited to, the Negotiated FILOT arrangement set forth in this Agreement and retain such property for use as part of its operations in the County, whether or not such property remains a part of the Project, and thereafter such property will be subject to FILOT payments pursuant to the Multi-County Park Act, to the extent such property continues to be located in the Multi-County Park, or, *ad valorem* property taxes, to the extent such property is not so located; provided, that, any such notice requirement may be, but shall not be required to be, satisfied by property tax returns filed with respect to the Project, including without limitation, such entity's SCDOR PT-300 or such comparable forms, as the Department of Revenue may provide in connection with projects under the Act.

- If the Company or any other Co-Investor sells, leases, or otherwise disposes of any portion of, or adds to, the Land, or removes any portion of the Land from the Project, but retains such property for use as part of its operations in the County, all as permitted herein, the Company, or such Co-Investor, shall deliver to the County a revised Exhibit A to this Agreement or supplements to Exhibit A and such revised or supplemented Exhibit A shall be automatically made a part of this Agreement without the necessity of additional action or proceedings by the County or the Council; provided, that any requirement to provide such supplements to the County may be, but shall not be required to be, satisfied by property tax returns filed with respect to the Project, including without limitation, such entity's SCDOR PT-300 or such comparable forms, as the Department of Revenue may provide in connection with projects under the Act.

- All Negotiated FILOT Property sold or otherwise disposed of under this Section shall be deemed Released Property for purposes of this Agreement.

Section 23. Infrastructure Improvements. The Company agrees to provide, or cause to

be provided, all funding for the costs of acquisition, construction, and installation of Infrastructure Improvements for which reimbursement is being provided by the Special Source Credits.

Section 24. Agreement to Make FILOT and FILOT-Related Payments. The Company agrees to make or cause to be made: (i) Negotiated FILOT Payments in accordance with the provisions of **Section 5.01** hereof and the Negotiated FILOT Act; (ii) with respect to any portion of the Project not subject to Negotiated FILOT Payments, FILOT Payments pursuant to the Multi-County Park Act or *ad valorem* property tax payments, as applicable, in accordance with the laws of the State; (iii) any amounts due under **Section 3.03(e)** hereof to reimburse the County for Special Source Credits theretofore received following failure to achieve the required investment and job creation; (iv) any amounts due under **Section 5.01(e)** as a Deficiency Payment or other retroactive payment; and (v) any amounts due under **Section 5.01(f)(iv)** hereof as a minimum FILOT Payment required to support any Special Source Revenue Bonds then outstanding. Except as otherwise expressly set forth in this Agreement or as otherwise required by the Act, any amounts due to the County under this **Section 4.02** as reimbursement to the County for Special Source Credits under **Section 3.03(e)** hereof, shall be paid as may be so required by the Negotiated FILOT Act but no later than one hundred eighty (180) days following receipt by the Company of notice from the County that such a payment is due from the Company or any other Sponsor or Sponsor Affiliate; provided that, if such payments exceed \$1,000,000, the Company may elect to pay such amounts to the County in three equal annual installments to the full extent permitted by law.

Section 25. Filings; Confidentiality. The Company shall cause a copy of this Agreement, as well as a copy of the completed Form PT-443 required by the Department of Revenue, to be filed within thirty (30) days after the date of execution and delivery hereof with the Administrator, Assessor, Auditor, and Economic Development Director of the County (collectively, the "County Officials") and with the Department of Revenue and both the auditors and assessors of each County which is party to the Multi-County Park Agreement. In addition, the Company shall provide the County Officials and the Treasurer with a copy of all annual filings made by the Company to the Department of Revenue pursuant to the Negotiated FILOT Act. To the extent requested, the Auditor of the County shall make such annual filings available to the auditor of any county which is party to the Multi-County Park Agreement. Upon direction of the Council, any County Official may obtain from the Company and any other Sponsor or Sponsor Affiliate such financial books and records as may be reasonably necessary to verify the calculations of the Negotiated FILOT Payments or the Special Source Credits.

Notwithstanding any other provision of this Section, to the full extent permitted by law, the County and each County Official shall maintain the confidentiality of any filings or other

documents or information, which have been identified by the Company as confidential or proprietary, that are delivered to the County or such County Official by the Company or any other Co-Investor. Except to the extent required by law, the County and such County Officials shall not knowingly and voluntarily release information which has been identified as confidential or proprietary by the Company or any other Co-Investor. The County Administrator and the County Economic Development Director shall use their respective best efforts to notify the Company promptly by electronic or other means as to all written requests from third Persons sent to, or received by, the County Administrator and the County Economic Development Office, or of which such offices become aware, for information or documentation pertaining to this Agreement, any related agreements or arrangements, the Company or any Affiliates or Co-Investors, the Project or the incentives offered by the County to induce the Company to locate the Project in the County, whether or not such request seeks disclosure of filings or other documents or information marked by the Company or any other Co-Investor as confidential or proprietary. The Company acknowledges that all ordinances and resolutions of the Council, including the ordinances and resolutions pertaining to this Agreement, are matters of public record and that, following execution and delivery of this Agreement by the parties, this Agreement shall be subject to disclosure under the laws of the State.

The Company must 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 and the amount of the investment with respect thereto. The Company agrees to provide to the County Officials, upon written request, copies of such financial books and records of the Company and any Co-Investor as the County may reasonably require to verify the calculations of Negotiated FILOT Payments and Special Source Credits.

Section 26. Payment of Administrative Expenses. The Company will reimburse the County, or cause the County to be reimbursed, from time to time for the County's Administration Expenses incurred in the fulfillment of its obligations hereunder, or in the implementation of this Agreement's terms and provisions, with respect to the Company or other Sponsor or Sponsor Affiliate, promptly upon written request therefor, but in no event later than forty-five (45) days after receiving written notice from the County specifying the nature of such expense and requesting the payment of the same. The County acknowledges that it currently imposes no charges in the nature of impact fees or recurring fees in connection with the Project or the incentives authorized by this Agreement and, aside from attorneys' fees, the one-time fee of the Clerk to Council of \$750, the cost associated with the approval of this Agreement as described below in this **Section 4.05** and the cost of issuance of any Special Source Revenue Bonds, the County currently foresees no out of pocket expenses in connection with this Agreement and the transactions authorized hereby. The parties understand that the County will incur legal fees and other expenses for review of this Agreement, the Multi-County Park Agreement, and the Amendatory FILOT Agreement, and all resolutions, ordinances and other documentation related thereto in an amount not to exceed \$42,000. Any costs associated with the issuance of the Special Source Revenue Bonds shall be paid from the proceeds thereof;

provided that, if the Company requests the County to issue Special Source Revenue Bonds, but such bonds cannot be issued through no fault of the County, the Company shall be responsible for all reasonable costs of the County associated with such attempted issuance.

Section 27. Use of Project for Lawful Activities. During the Term of this Agreement, the Company and each other Co-Investor may use the Project as it deems fit for any lawful purpose.

Section 28. Maintenance of Existence. Except in the event the resulting, surviving, or transferee entity is the Company or an Affiliate of the Company, as to which such consolidation, merger, or transfer the County hereby preapproves and consents, unless the County shall provide prior consent or subsequent ratification otherwise, which consent or ratification shall not be unreasonably withheld, conditioned, or delayed, the Company covenants that it will maintain its separate existence and will not dissolve or consolidate with, merge into or transfer, or otherwise dispose of substantially all of its property to any other entity or permit one or more other entities to consolidate with or merge into it or purchase substantially all of its property unless:

(a) the Company shall be the continuing business entity, or the business entity formed by such consolidation or into which the Company is merged or the entity which acquires by conveyance or transfer all or substantially all of the Company's assets shall (i) be an entity organized and existing under the laws of the United States of America or any state thereof or the District of Columbia and qualified to do business in the State; (ii) have a net worth equal to or greater than the net worth of the Company immediately preceding the date of such merger, consolidation or transfer; and (iii) expressly and unconditionally assume, by written agreement supplemental hereto and acceptable to the County as to form and content, in its reasonable discretion, every payment obligation of the Company herein and the performance of every covenant of this Agreement on the part of the Company to be performed or observed;

(b) immediately after giving effect to such transaction, no Event of Default, and no event, which, after notice or lapse of time or both, would become an Event of Default, shall have happened and be continuing; and

(c) the Company shall have delivered to the County (i) a certificate of a duly authorized officer of the Company, accompanied by financial statements of the surviving company (if other than the Company) showing compliance with the net worth requirements specified in paragraph (a) above and (ii) an opinion of counsel for the Company and/or counsel to the transferee company, each stating that such consolidation, merger, conveyance or transfer and such supplement to this Agreement comply with this

Section and that all conditions precedent herein provided for relating to such transaction have been complied with.

Upon any consolidation or merger or any conveyance or transfer of all or substantially all of the Company's assets in accordance with this Section, the successor entity formed by such consolidation or into which the Company is merged or to which such conveyance or transfer is made shall succeed to, and be substituted for, and may exercise every right and power of the Company under this Agreement with the same effect as if such successor entity had been named as the Company herein, and thereafter the Company shall be relieved of all obligations and covenants under this Agreement.

If a consolidation, merger or conveyance or transfer is made as permitted by this Section, the provisions of this Section shall continue in full force and effect and no further consolidation, merger or conveyance or transfer shall be made except in compliance with the provisions of this Section.

The Company acknowledges that transfers of this Agreement or the Negotiated FILOT Property may cause all or part of the Negotiated FILOT Property to become ineligible for a Negotiated FILOT or result in penalties under the Act absent compliance with the Transfer Provisions.

Section 29. Indemnification.

(a) The Company hereby releases the County, including the members of the governing body of the County, and the employees, officers, and agents of the County (herein collectively referred to as the "Indemnified Parties") from, agrees that Indemnified Parties shall not be liable for, and agrees to hold 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 the Project or the use thereof, except for that occasioned by grossly negligent or intentional acts of an Indemnified Party. The Company further agrees to indemnify and save harmless the 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 and any other Sponsor and Sponsor Affiliate in the performance of any covenant or agreement on the part of the Company and such other Sponsors and Sponsor Affiliates 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, contractors, servants, employees, or licensees, and from and against all cost, liability, and expenses incurred in any such claim or action or proceeding brought thereon.

(b) 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 Council or any officer, agent, servant, or employee of the County in his or her individual capacity, and, absent bad faith, no recourse shall be had for the payment of any moneys hereunder or the performance of any of the covenants and agreements of the County herein contained or for any claims based thereon against any member of the governing body of the County or any officer, agent, servant, or employee of the County.

(c) 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 with respect to 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 Company 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 with respect to any such claim or any action or proceeding brought thereon; provided, however, that nothing herein shall absolve the Indemnified Parties from, or entitle the Indemnification Parties to indemnification from, any claim, liabilities or losses arising from any grossly negligent or intentional acts of such Indemnified Party or any obligation such Indemnified Party has specifically agreed to undertake (including, without limitation, the obligation to maintain the land upon which the Project is located 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.

(d) The indemnity specified in this Section shall be in addition to any heretofore extended by the Company or any other Sponsors or Sponsor Affiliates to any Indemnified Party and shall survive the termination of this Agreement with respect to

liability arising out of any event or act occurring prior to such termination.

ARTICLE VI

FEES IN LIEU OF TAXES

Section 30. Payment of Negotiated Fees in Lieu of Ad Valorem Property Taxes.

(a) In accordance with the Negotiated FILOT Act, the parties hereby agree, during the Term hereof, that there shall be due annually with respect to that portion of the Project constituting Negotiated FILOT Property, whether owned by the Company or by any other Sponsor or Sponsor Affiliate, a Negotiated FILOT calculated as set forth in this **Section 5.01**, at the places, in the manner and subject to the penalty assessments prescribed by the County or the Department of Revenue for *ad valorem* property taxes. It is anticipated that the initial Negotiated FILOT Payment, which shall be due under current Code requirements on the January 15 following the year in which the County adds the initial Negotiated FILOT Property to its tax rolls, will be due on January 15, 2018. If the Company designates any Sponsor or Sponsor Affiliate pursuant to the terms of **Section 6.02** hereof, the Company must notify the County in writing as to whether such Sponsor or Sponsor Affiliate shall be primarily liable for the Negotiated FILOT Payments hereunder with respect to such other entity's portion of the Negotiated FILOT Property. Unless and until such additional notification is received, the Company shall be primarily liable for all Negotiated FILOT Payments with respect to such Negotiated FILOT Property.

(b) Subject to adjustment pursuant to the provisions of this **Section 5.01**, the Negotiated FILOT shall be calculated each year in accordance with the following provisions:

- For each annual increment of investment in Negotiated FILOT Property during the Investment Period, the annual Negotiated FILOT Payments shall be payable for a payment period of thirty (30) years or, if extended pursuant to **Section 3.01** hereof, for forty (40) years.

- The Negotiated FILOT shall be determined using: (1) an assessment ratio of 4%; (2) the lowest millage rate or millage rates allowed with respect to the Negotiated FILOT Property pursuant to Section 12-44-50(A)(1)(d) of the Negotiated FILOT Act, which shall not be less than 276.1 mills and which millage rate or rates shall be fixed pursuant to Section 12-44-50(A)(1)(b)(i) of the Negotiated FILOT Act for the full term of the Negotiated FILOT; and (3) the fair

market value of such Negotiated FILOT Property as determined in accordance with Section 12-44-50(A)(1)(c) of the Negotiated FILOT Act, which, for typical arm's length construction or acquisition, uses the original income tax basis for any real property without regard to depreciation or reassessment and the original income tax basis for any personal property less allowable depreciation (except depreciation due to extraordinary obsolescence); provided; however, that, upon the request of the Company or any other Sponsor or Sponsor Affiliate, the County may consent to amend this Agreement as to any real property comprising Negotiated FILOT Property owned by the Company or such other Sponsor or Sponsor Affiliate so as to determine the fair market value of any such real property in accordance any other method permitted by the Negotiated FILOT Act.

- 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* property taxes, except the five-year exemption from County taxes allowed for certain manufacturing, distribution, corporate headquarters and research and development facilities pursuant to Section 3(g) of Article X of the Constitution of the State and Sections 12-37-220(B)(32) and (34) of the Code.

- For purposes of calculating the Negotiated FILOT, the Negotiated FILOT Property shall not include any Released Property or Non-Qualifying Property.

(c) The Negotiated FILOT Payments are to be recalculated:

- to reduce such payments in the event the Company or any other Sponsor or Sponsor Affiliate disposes of any part of the Negotiated FILOT Property within the meaning of Section 12-44-50(B) of the Negotiated FILOT Act and as provided in **Section 4.01(e)(ii)** hereof, by the amount applicable to the Released Property;

- to reduce such payments in the event that the Negotiated FILOT Property or any portion thereof is damaged or destroyed, lost or stolen, or the subject of condemnation proceedings or otherwise removed from the Project as a result of circumstances beyond the control of the Company or any other Sponsor or Sponsor Affiliate;

- to increase such payments in the event the Company or any Sponsor or Sponsor Affiliate adds any Negotiated FILOT Property (other than Replacement Property) to the Project; or

- to adjust such payments if the Company or any Sponsor or Sponsor Affiliate elects to convert any portion of the Negotiated FILOT Property from the Negotiated FILOT to *ad valorem* property taxes or to FILOT payments pursuant to the Multi-County Park Act, as the case may be, as permitted by **Section 4.01(e)(iii)**.

(d) Upon installation or placing in service of any Replacement Property for any Released Property, such Replacement Property shall become subject to Negotiated FILOT Payments to the fullest extent allowed by the Negotiated FILOT Act, subject to the following rules and the provisions of the Negotiated FILOT Act:

- Such Replacement Property does not have to serve the same function as the Released Property it is replacing. Replacement Property is deemed to replace the oldest property subject to the Negotiated 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 Released Property which it is replacing in the same Property Tax Year. 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 Released Property which it is replacing, the excess amount is subject to payments equal to the *ad valorem* property taxes which would have been paid on such property but for this Agreement. Replacement property is entitled to the Negotiated FILOT Payments for the remaining portion of the thirty-year period or, if extended pursuant to **Section 3.01** hereof, the forty-year period, applicable to the Released Property.

- The Company or any other Sponsor or Sponsor Affiliate shall maintain, or cause to be maintained, records sufficient to identify all Replacement Property it places in service, and the Negotiated FILOT Payments with respect thereto shall be calculated using the millage rate and assessment ratio provided on the property it is replacing.

(e) In the event that, for any reason, the Negotiated FILOT 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 Negotiated FILOT 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, at the Company's expense, so as to afford the Company and any other Sponsor or Sponsor Affiliate benefits commensurate with those intended under this Agreement as then permitted by law, including without limitation any benefits afforded under Title 4, Chapter 12 and Title 4, Chapter 29 of the Code, as applicable, 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 Negotiated FILOT Property affected by such circumstances *ad valorem* property taxes and that, to the extent permitted by law, the Company and any other Sponsor or Sponsor Affiliate shall be entitled: (1) to enjoy the five-year exemption from *ad valorem* property 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 all other tax credits which would be due if the Company and any other Sponsor or Sponsor Affiliate were obligated to pay *ad valorem* property taxes hereunder. To the extent that under such circumstances the Negotiated FILOT Payments hereunder are subject to retroactive adjustment, then there shall be due and payable from the Company and each other Sponsor or Sponsor Affiliate, as the case may be, with respect to its portion of the Negotiated FILOT Property in question an amount equal to the difference between the Negotiated FILOT Payments theretofore actually paid and the amount which would have been paid as *ad valorem* property taxes, together with interest on such deficiency as provided in Section 12-54-25(D) of the Code or any successor provision thereto (a "Deficiency Payment").

(f) The Negotiated FILOT Payments shall be subject to the following additional adjustments based upon the level of investment attained at the Project.

- If the Project does not meet the requirements necessary to qualify as an Enhanced Investment, but the level of investment qualifies for standard Negotiated FILOT Payments under the Negotiated FILOT Act, then the assessment ratio for calculation of the Negotiated FILOT Payments shall equal 6% *ab initio*. In such event, the Company shall pay the County an additional amount equal to the difference between the Negotiated FILOT Payments theretofore actually made with respect to the Project and the Negotiated FILOT Payments which would have been made had the Negotiated FILOT Payments been calculated based upon an assessment ratio of 6%, together with interest as required by the Negotiated FILOT Act.

- In the event that the Minimum Statutory Investment Requirement is not satisfied by the end of the Compliance Period, then all Negotiated FILOT Payments shall revert retroactively to *ad valorem* property taxes, calculated as set forth in paragraph (e) above, and a Deficiency Payment from the Company and, as applicable, each other Sponsor or Sponsor Affiliate shall be due and payable with respect to Negotiated FILOT Payments theretofore made and this Agreement shall terminate. In the event that the aggregate investment in the Project does not exceed \$5,000,000 by the end of the Compliance Period and any Sponsor or Sponsor Affiliate does not satisfy the Minimum Statutory Investment Requirement solely through its own direct investment in the Project, then the Negotiated FILOT Payments with respect to that portion of the Project owned by such Sponsor or Sponsor Affiliate shall revert retroactively to *ad valorem* property taxes calculated as set forth in **Section 5.01(e)** hereof, and such Sponsor or Sponsor Affiliate shall owe a Deficiency Payment with respect to Negotiated FILOT Payments theretofore made as to such portion of the Project, together with interest as required by the Negotiated FILOT Act. To the extent necessary to collect a Deficiency Payment under this subparagraph (ii) due to failure to satisfy the Minimum Statutory Investment Requirement by the end of the Compliance Period, Section 12-44-140(D) of the Negotiated FILOT Act provides that any statute of limitations that might apply pursuant to Section 12-54-85 of the Code is suspended.

- In the event that the Minimum Statutory Investment Requirement is satisfied by the end of the Compliance Period, but following the Compliance Period, investment in the Project, without regard to depreciation or other diminution in value, falls below the investment level set forth in the Minimum Statutory Investment Requirement, then the Project shall prospectively be subject to *ad valorem* property taxes, or to FILOT payments, as the case may be, calculated as set forth in paragraph (e) above, in accordance with Section 12-44-140(C) of the Negotiated FILOT Act commencing with any Negotiated FILOT Payments due with respect to the first Property Tax Year following the Property Tax Year in which such deficiency occurs.

- As long as any Special Source Revenue Bonds issued pursuant to **Section 3.02** hereof remain outstanding, then, notwithstanding anything to the contrary in this Agreement, including without limitation the Special Source Credits provisions of **Section 3.02** hereof and the other provisions of this **Section 5.01**, the Company shall make, or cause to be made, to the County annual Negotiated FILOT Payments in such minimum amounts as shall be sufficient,

together with annual FILOT Payments with respect to the Project by the Company and any other Co-Investors, to pay debt service on any such Special Source Revenue Bonds using fifty percent (50%) of such aggregate annual FILOT Payments, all in accordance with the debt service schedule to be approved by the Company pursuant to **Section 3.02(b)** hereof. The Company's obligation to make, or cause to be made, minimum FILOT Payments pursuant to this **Section 5.01(f)(iv)** shall survive any termination of this Agreement by the Company pursuant to **Section 5.01** hereof or **Section 7.02** hereof until the last minimum payment due with respect to such Special Source Revenue Bonds under this **Section 5.01(f)(iv)** shall have been paid.

- In accordance with the provisions of **Sections 4.01(b)** and **6.02** hereof, except for Existing Property, investment in all property utilized by the Company or any other Co-Investor as part of the Project, whether owned by the Company or any other Co-Investor outright or utilized by the Company or any other Co-Investor pursuant to any financing agreement or any lease or other arrangement with any Co-Investor and whether or not subject to this Agreement, shall be counted toward all investment obligations under this Agreement, including, to the extent permitted by law, investment obligations under the Act.

Section 31. Statutory Lien. The parties acknowledge the County's right to receive Negotiated FILOT Payments hereunder is entitled to and shall have a statutory lien with respect to the Project pursuant to Section 12-44-90(E) of the Negotiated FILOT Act and Title 12, Chapter 54 of the Code relating to the collection and enforcement of *ad valorem* property taxes.

ARTICLE VII

THIRD PARTY ARRANGEMENTS

Section 32. Conveyance of Liens and Interests; Assignment. The County agrees that the Company and each other Co-Investor may at any time, and subject to the remaining provisions of this paragraph, (a) transfer all or any of its rights and interests hereunder or with respect to all or any part of the Project to any Person; or (b) enter into any lending, financing, leasing, security, or similar arrangement or succession of such arrangements with any financing entity or other Person with respect to this Agreement or all or any part of the Project, including without limitation any lease arrangement, assignment, sublease or similar arrangement or succession of such arrangements, regardless of the identity of the income tax owner of such portion of the Project, whereby the transferee in any such arrangement leases the portion of the Project in question to the Company or any other Co-Investor or any of their respective Affiliates

or operates such assets for the Company or any other Co-Investor or any of their respective Affiliates or is leasing portion of the Project in question from the Company or any other Co-Investor or any of their respective Affiliates. In order to transfer all or any of its rights and interests under this Agreement and preserve the benefits of the Negotiated FILOT and the Special Source Credits, with respect to any property so transferred, leased, financed, or otherwise affected: (i) except in connection with any transfer to any other Co-Investor or an Affiliate of the Company or any Co-Investor, or transfers, leases, or financing arrangements pursuant to clause (b) above (as to which such transfers the County hereby consents), the Company shall obtain the prior consent or subsequent ratification of the County, which consent or ratification may be given by the County in its sole discretion; (ii) except when a financing entity which is the income tax owner of all or part of the Project property is the transferee pursuant to clause (b) above and such financing entity assumes in writing the obligations of the Company or any such other Co-Investor hereunder, or when the County consents in writing or when the transfer relates to Released Property pursuant to **Section 4.01(e)** hereof, no such transfer shall affect or reduce any of the obligations of the Company or any such other Co-Investor hereunder, provided, however, notwithstanding the foregoing, the obligations of the Company set forth in **Section 5.01(f)(iv)** may not be reduced or released without the consent of the County; (iii) to the extent the transferee or financing entity shall become obligated to make Negotiated FILOT payments hereunder, the transferee shall assume the then current basis of the Company or any such other Co-Investor (or prior transferee) in the Negotiated FILOT Property transferred; (iv) the Company or any such other Co-Investor, transferee or financing entity shall, within sixty (60) days thereof, furnish or cause to be furnished to the County and the Department of Revenue a true and complete copy of any such transfer agreement; and (v) the Company or any such other Co-Investor and the transferee shall comply with all other requirements of the Transfer Provisions in order to preserve the benefits of the Negotiated FILOT.

Subject to County consent when required under this **Section 6.01**, and at the expense of the Company or any such other Co-Investor, the County agrees to take such further action or execute such further agreements, documents, and instruments as may be reasonably required to effectuate the assumption by any such transferee of all or part of the rights of the Company or any other Co-Investor under this Agreement and/or any release of the Company or any other Co-Investor pursuant to this **Section 6.01**.

The Company acknowledges that any transfer of an interest under this Agreement or in the Negotiated FILOT Property may cause all or part of the Negotiated FILOT Property to become ineligible for a Negotiated FILOT or the Special Source Credits or result in penalties under the Act absent compliance by the Company or any such Co-Investor with the Transfer Provisions.

Section 33. Sponsors and Sponsor Affiliates. The Company 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 Negotiated 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 the Company or other Persons described in **Section 6.01(b)** 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 Negotiated FILOT Act must be approved by Resolution of the Council.

To the extent that a Sponsor or Sponsor Affiliate invests an amount equal to the Minimum Statutory Investment Requirement at the Project prior to the end of the Compliance Period the investment by such Sponsor or Sponsor Affiliate shall qualify for the Negotiated FILOT under **Section 5.01** hereof (subject to the other conditions set forth therein) in accordance with Section 12-44-30(19) of the Negotiated FILOT Act. To the extent that the aggregate investment in the Project prior to the end of the Compliance Period by the Company, all Sponsors and Sponsor Affiliates and, to the extent provided by law, other Co-Investors, exceeds \$5,000,000 as provided in Section 12-44-30(19) of the Negotiated FILOT Act, all investment by such Sponsors and Sponsor Affiliates during the Investment Period shall qualify for the Negotiated 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 Minimum Statutory Investment Requirement.

An Event of Default or failure to comply with any investment or job requirement hereunder or, to the extent permitted by law, under the Act, by one Sponsor or Sponsor Affiliate shall not result in an Event of Default or failure to comply by any other Sponsor or Sponsor Affiliate except to the extent that such Event of Default or failure to comply results in the failure to comply with an aggregate investment or job requirement, and any remedies provided hereunder or, to the full extent permitted by law, under the Act shall affect only the defaulting or non-complying Sponsor or Sponsor Affiliate.

The Company shall provide the County and the Department of Revenue with written notice of any Sponsor or Sponsor Affiliate designated pursuant to this **Section 6.02** within ninety (90) days after the end of the calendar year during which any such Sponsor or Sponsor Affiliate has placed in service Negotiated FILOT Property to be used in connection with the Project, all in accordance with Section 12-44-130(B) of the Negotiated FILOT Act.

ARTICLE VIII

TERM; TERMINATION

Section 34. 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 later of (i) the day the last Negotiated FILOT Payment is made hereunder; (ii) the day the last minimum FILOT Payment is made pursuant to **Section 5.01(f)(iv)** hereof; and (iii) the day that all Special Source Credits due from the County hereunder have been fully paid by the County.

Section 35. Termination. The County and the Company may jointly agree to terminate this Agreement at any time, or the Company, may, at its option, unilaterally terminate this Agreement at any time, with respect to all, or a portion of, the Project in which event the Project, or such portion of the Project, shall be subject to FILOT payments pursuant to the Multi-County Park Act, to the extent such Project property continues to be located in the Multi-County Park, or *ad valorem* property taxes, to the extent such property is not so located, from the date of termination. Notwithstanding termination of this Agreement, the County shall have the same rights to receive payment for any retroactive *ad valorem* property taxes, Deficiency Payments, interest or penalties, and the same enforcement rights with respect to such obligations as it would have with respect to *ad valorem* property taxes, and the County's rights arising under **Sections 3.03(e)** and **5.01** hereof, including, but not limited to, **Section 5.01(f)(iv)** hereof, prior to the time of such termination shall survive any such termination.

ARTICLE IX

EVENTS OF DEFAULT AND REMEDIES

Section 36. Events of Default. 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 or any other Sponsor or Sponsor Affiliate (the "Defaulting Entity") but only with respect to such Defaulting Entity's rights, duties, and obligations contained herein:

(a) if default shall be made in the due and punctual payment of any Negotiated FILOT Payments or any other payments due to the County under this Agreement, which default shall not have been cured within sixty (60) days following receipt of written notice of such default from the County; or

(b) if default shall be made in the due performance of or compliance with any of the terms hereof, other than those referred to in the foregoing paragraph (a), and such default shall continue for ninety (90) days after the County shall have given the Defaulting Entity written notice of such default; provided, the County may, in its discretion, grant the Defaulting Entity a longer period of time as necessary to cure such default if the Defaulting Entity proceeds with due diligence to cure such default; provided however, that no Event of Default shall exist under this Agreement during any period

when there is pending, before any judicial or administrative tribunal having jurisdiction, any proceeding in which the Defaulting Entity has contested in good faith the occurrence of such default.

Notwithstanding anything herein to the contrary, failure to meet any investment or job creation requirements, thresholds, or levels set forth in this Agreement shall not be deemed to be an Event of Default under this Agreement, but may terminate or adjust certain benefits hereunder or obligate the Company or other Co-Investors, as the case may be, to make certain additional payments to the County, all as set forth in **Sections 3.03, 3.04** and **5.01(f)** hereof.

Section 37. Remedies on Event of Default. Upon the occurrence of any Event of Default, the County may exercise any of the following remedies only as to the Defaulting Entity:

(a) terminate this Agreement by delivery of written notice to the Defaulting Entity not less than sixty (60) days prior to the termination date specified therein;

(b) have access to and inspect, examine, and make copies of the books and records of the Defaulting Entity pertaining to the construction, acquisition, or maintenance of the Project or calculation of the Negotiated FILOT pursuant hereto as provided in **Section 4.03** hereof;

(c) take whatever action at law or in equity as may appear necessary or desirable to collect the amount then due or enforce the County's rights hereunder, it being the express intent of the parties that the County, without limitation, shall have the same remedies available by law to collect Negotiated FILOT Payments as if they were delinquent *ad valorem* property tax payments, including execution upon the lien referred to in **Section 5.02** hereof.

(d) Although the parties hereto acknowledge that the Negotiated FILOT Property is exempt from *ad valorem* property taxes, the County and any other taxing entity affected thereby may, without limiting the generality of the foregoing, exercise any remedies provided by general law (Title 12, Chapters 49 and 51 of the Code or any other statutory provision for tax collection of property taxes (the "Tax Statute")) relating to the enforced collection of taxes, including an Event of Default under **Section 8.01(a)** hereof pertaining to the failure to make Negotiated FILOT Payments. The Company expressly acknowledges that in the event of its failure to make the required Negotiated FILOT Payments, that the County is only required to give notice thereof in accordance with the Tax Statute, and that no further notice is required hereunder in order to enforce the remedies set forth in this paragraph (d).

Section 38. Defaulted Payments. In the event the Company or any other Co-Investor

should fail to make any of the payments required to be made by such entity under this Agreement, the item or installment so in default shall continue as an obligation of such entity until the amount in default shall have been fully paid. If any such default relates to its obligations to make Negotiated FILOT Payments hereunder, such entity shall pay the same with interest thereon at the rate per annum provided by the Code for late payment of *ad valorem* property taxes together with any penalties provided by the Code for late payment of *ad valorem* property taxes, all as provided in Section 12-44-90 of the Negotiated FILOT Act.

Section 39. Default by County. Upon the default of the County in the performance of any of its obligations hereunder, the Company and any other Sponsor or Sponsor Affiliate may take whatever action at law or in equity as may appear necessary or desirable to enforce its rights under this Agreement, including without limitation a suit for *mandamus* or specific performance.

Section 40. No Additional Waiver Implied by One Waiver. In the event any warranty, covenant, or agreement contained in this Agreement should be breached by the Company or the County and thereafter waived by the other party to this Agreement, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach.

ARTICLE X

MISCELLANEOUS

Section 41. Rights and Remedies Cumulative. Each right, power, and remedy of the County or of the Company or any other Co-Investor or 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 or any other Co-Investor 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 or such other Co-Investor of any or all such other rights, powers, or remedies.

Section 42. Successors and Assigns. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, any Co-Investor, and their respective successors and assigns as permitted hereunder; provided, however, that notwithstanding anything herein to the contrary, the County may not assign any or all of its rights, duties, and obligations in, to, and under this Agreement without the written consent of the

Company, which consent may be provided the Company in its sole discretion.

Section 43. 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 transmission or reputable courier service, to the following persons and addresses or to such other persons and places as may be designated in writing by such party.

(a) if to the County:

Charleston County
Attn.: Charleston County Administrator
4045 Bridge View Drive
Charleston, South Carolina 29405
Phone: (843) 958-4000
Fax: (843) 958-4017

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

Charleston County Attorney
4045 Bridge View Drive
Charleston, South Carolina 29405
Phone: (843) 958-4010
Fax: (843) 958-4017

and

Samuel W. Howell, Esq.
Howell Linkous & Nettles, LLC
106 Broad Street
Charleston, South Carolina 29401
Phone: (843) 266-3801
Fax: (843) 266-3085

and

Charleston County Economic Development Manager
4000 Faber Place Drive, Suite 140
North Charleston, South Carolina 29405
Phone: (843) 958-4511
Fax: (843) 958-4505

(c) if to Company:

Daimler Vans Manufacturing, LLC
Attn.: President and CEO
8501 Palmetto Commerce Parky
Ladson, SC 29456
Phone: 843-695-5000
Fax: 843-695-5031

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

Nexsen Pruet, LLC
Tushar Chikhliker, Esq.
P.O. Box 2426 (29202)
1230 Main Street, Suite 700
Columbia, South Carolina 29201
Phone: 803-771-8900
Fax: 803-727-1469

Section 44. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State. To the extent of any conflict between the provisions of this Agreement and the Act, the Act controls.

Section 45. Entire Understanding. This Agreement, and the agreements referenced in **Section 4.01(c)** hereof, express the entire understanding and all agreements of the parties hereto with each other with respect to the subject matter hereof, 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, the agreements referenced in **Section 4.01(c)** hereof, including any amendments or supplements thereof, or in certificates delivered in connection with the execution and delivery and performance hereof or thereof.

Section 46. Severability. In the event that any clause or provisions of this Agreement shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.

Section 47. 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 48. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument.

Section 49. Amendments. Subject to the limitations set forth in Section 12-44-40(K)(2) of the Negotiated FILOT 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 50. 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 51. Further Proceedings. To the extent additional proceedings are required by law, however, the parties agree to undertake all such steps as may be reasonably required or appropriate to effectuate the intent of this Agreement.

[Execution Pages to Follow]

IN WITNESS WHEREOF, the parties hereto, each after due authorization, have executed this Agreement to be effective as of the date first written above.

CHARLESTON COUNTY, SOUTH CAROLINA

By: _____
J. Elliott Summey, Chairman, County Council,
Charleston County, South Carolina

[SEAL]

Attest:

By: _____
Beverly T. Craven, Clerk to County Council,
Charleston County, South Carolina

DAIMLER VANS MANUFACTURING, LLC

By: _____
Name: Marco J. Wirtz
Title: President and CEO

EXHIBIT A
LAND DESCRIPTION

PARCEL ONE (EXISTING PLANT):

All that piece, parcel or tract of land, with the improvements thereon, situate, lying and being in the City of North Charleston, County of Charleston, State of South Carolina, being shown and designated as "TRACT 3 90.44 ACRES" on a plat entitled "PLAT SHOWING: THE SUBDIVISION OF TMS 393-00-00-010 INTO TRACT 4 (8.97 ACRES), PARCEL B (52.49 ACRES) AND RESIDUAL (+/-384.0 ACRES); THE SUBDIVISION OF TMS 393-00-00-005 INTO PARCEL 1 (37.95 ACRES) AND RESIDUAL (+/- 266.2 ACRES); THE ABANDONMENT OF THE PROPERTY LINE BETWEEN PARCEL A AND PARCEL B TO FORM TRACT 3 (90.44 ACRES). PROPERTY OF SPRING GROVE ASSOCIATES" prepared by Hoffman Lester Associates, Inc., dated October 16, 1998, and recorded November 4, 1998, in Plat Book EC, Page 846 in the RMC Office for Charleston County, reference to which is craved for a more complete description.

TMS No. 393-00-00-031

PARCEL TWO (EXPANSION PARCEL):

All that piece, parcel or tract of land, with the improvements thereon, if any, situate, lying and being in the City of North Charleston, County of Charleston, State of South Carolina, being shown and designated as "LOT FG, DAIMLERCHRYSLER MANUFACTURING INTERNATIONAL LLC TMS NO. 393-00-00-095 NEW 64.00 ACRES" on a plat entitled "PLAT SHOWING THE ABANDONMENT OF PROPERTY LINES AND RIGHT-OF-WAY LINES NEAR THE END OF PALMETTO COMMERCE PARKWAY TO SHOW NEW 64.00 ACRES FOR LOT FG (TMS NO. 393-00-00-095) PROPERTY OF DAIMLERCHRYSLER MANUFACTURING INTERNATIONAL LLC. LOCATED IN THE CITY OF NORTH CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA" prepared by HLA INC dated April 4, 2007, and recorded June 29, 2007, in Plat Book EK, Page 830 in the RMC Office for Charleston County, reference to which is craved for a more complete description.

TMS No. 393-00-00-095

PARCEL THREE (MARSHALLING YARD):

All those certain pieces, parcels or tracts of land, with the improvements thereon, if any, situate, lying and being in the City of North Charleston, Charleston County, South Carolina, known and designated as "NEW TRACT A ESTATE LANDS, LLC, 23.571 ACRES" and

“NEW TRACT B ESTATE LANDS, LLC, 39.921 ACRES” on a plat entitled “PLAT SHOWING THE ABANDONMENT OF THE PROPERTY LINES BETWEEN TMS NO. 390-00-00-053, 390-00-00-155, 390-00-00-156 & 390-00-00-239 TO FORM A 63.492 ACRE TRACT AND SHOWING THE SUBDIVISION OF THE 63.492 ACRE TRACT INTO NEW TRACT A (23.571 ACRES) AND NEW TRACT B (39.921 ACRES) PREPARED FOR ESTATE LANDS, LLC LOCATED IN THE CITY OF NORTH CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA” prepared by HLA INC, dated June 6, 2014, and recorded in Plat Book L14, Page 0273 in the RMC Office for Charleston County, reference to which is craved for a more complete description.

**EXHIBIT B
FORM OF REQUISITION**

REQUISITION NO. ____
PROJECT ACCOUNT

Amount Requested: \$ _____

_____, as Trustee

Attn: _____

RE: \$_____ Charleston County, South Carolina Special Source Revenue Bonds (Daimler Vans Manufacturing, LLC Project), Series 2015 (the "Bonds")

1. With the written approval of Charleston County, South Carolina (the "County") as reflected hereinbelow, Daimler Vans Manufacturing, LLC (the "Company") hereby requests you, as Trustee for the above referenced Bonds (the "Trustee") to reimburse the Company from funds in the Project Account established with the Trustee in connection with the Bonds as set forth herein. Each obligation for which a reimbursement is hereby requested is described in reasonable detail in Attachment A hereto.

2. Documentation reflecting proof of payment of each obligation referenced in Attachment A hereto is also attached hereto.

3. The Company hereby represents to the County and to you, as Trustee, that each item listed is a proper charge against the Project Account that was incurred in connection with the Project, and the amount of this request is justly due and owing and has not been the subject of another requisition which was paid.

This ____ day of _____, 20__.

DAIMLER VANS MANUFACTURING, LLC

By: _____
President and CEO

Approved this ____ day of _____, 20__.

By: _____
Chief Financial Officer of
Charleston County, South Carolina

ATTACHMENT A
Project Costs
Proof of Payments Attached

Payment Directions	Amount	Service
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EXHIBIT C

ILLUSTRATION OF 20-YEAR PERIODS FOR SPECIAL SOURCE CREDITS

Each capitalized term not otherwise defined herein shall have the meaning ascribed to such term in the Fee in Lieu of Tax and Incentive Agreement dated as of May 19, 2015 (the “Agreement”) by and between Daimler Vans Manufacturing, LLC (the “Company”) and Charleston County, South Carolina (the “County”) of which this Exhibit C is a part.

Base Investment - \$385,000,000 of taxable investment

First Special Source Credits Period

The Special Source Credits Period with respect to the Base Investment, and any Excess Investment, commences with the first property tax year for which the initial Negotiated FILOT Payment is due. Assuming the initial assets comprising a portion of the Project are placed in service in 2016, the parties anticipate that the first Special Source Credit Period will commence with the FILOT Payment due in January of 2018, and will expire with the FILOT Payment due in January of 2037.

Second and Subsequent Special Source Credits Periods

Initially, Excess Investment will be eligible for Special Source Credits within the first Special Source Credits Period. Once Excess Investment reaches \$100,000,000, a second Special Source Credits Period will commence, and the Excess Investment initially included in the first Special Source Credits Period, subject to the benefit period limitations set forth in Section 3.02(e) of the Agreement, shall roll into the second Special Source Credits Period together with any new investment. Each successive tranche of \$100,000,000 in Excess Investment shall be treated in like manner. The table below illustrates how the Special Source Credits Periods shall apply, assuming Base Investment of \$385,000,000. Notwithstanding anything in the Agreement, or in any Exhibit to the Agreement including, but not limited to, this Exhibit C, to the contrary, the County and the Company acknowledge and agree that the amount and timing of the investment set forth below in this Exhibit C are being utilized solely for such illustrative purposes and are in no way binding commitments of the Company, or statements of anticipation or projections with respect to Project investment.

[Continued on next page]

EXHIBIT C

**ILLUSTRATION OF 20-YEAR PERIODS
FOR SPECIAL SOURCE CREDITS
(continued)**

In-Service Year	Investment Included in First Special Source Credits Period	Investment Included in Second Special Source Credits Period	Investment Included in Third Special Source Credits Period
2016	\$10,000,000		
2017	20,000,000		
2018	350,000,000		
2019	50,000,000		
2020	10,000,000		
2021	15,000,000		
2022	15,000,000		
2023		\$175,000,000 (\$85,000,000 Excess Investment from 2019-2022 rolled into 2 nd Special Source Credits Period + \$90,000,000 2023 Excess Investment)	
2024		\$50,000,000	
2025			\$85,000,000 (\$25,000,000 Excess Investment from 2024-rolled into 3 rd Special Source Credits Period + \$60,000,000 2025 Excess Investment)
	Full Special Source Credits Period runs from FILOT Payment due for 2016 (in January of 2018) through FILOT Payment due for 2035 (in January of	Full Special Source Credits Period runs from FILOT Payment Due for 2023 (in January of 2025) through FILOT Payment due for 2042 (in January of 2044)	Full Special Source Credits Period runs from FILOT Payment Due for 2025 (in January of 2027) through FILOT Payment due for 2044 (in January of 2046)

	of 2037)		
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Note: As set forth in Section 3.03(e) of the Agreement no annual increment of Excess Investment shall receive the benefit of Special Source Credits for more than 20 years. For example, the \$45,000,000 of Excess Investment placed in service in 2019 that is rolled into the second Special Source Credits Period would, in addition to the 4 years of Special Source Credits under the first Special Source Credits Period, receive Special Source Credits for the first 16 years of the second Special Source Credits Period.

AMENDATORY FEE IN LIEU OF TAX AGREEMENT

, pertaining to the amendment and re-documentation of incentive arrangements set forth in that certain Lease Purchase Agreement dated as of June 2, 1999 between Charleston County, South Carolina and Daimler Vans Manufacturing, LLC, as successor through a series of assignments to Victoria 1998 Trust

by and between

CHARLESTON COUNTY, SOUTH CAROLINA

and

DAIMLER VANS MANUFACTURING, LLC

Dated as of May 19, 2015

STATUTORILY REQUIRED RECAPITULATION

Pursuant to Title 12, Chapter 44 of the Code of Laws of South Carolina 1976, as amended (the “Negotiated FILOT Act”), and particularly Section 12-44-55(B) thereof, the County and the Company agree to waive the recapitulation requirements of Section 12-44-55 of the Negotiated FILOT Act, except as expressly provided below, to the extent that and so long as the Company and each other Sponsor or Sponsor Affiliate timely provides the County with copies of all filings required by the Negotiated FILOT Act to be made by such entity with regard to their respective portions of the Project. If the Company or any other Sponsor or Sponsor Affiliate should be required to retroactively comply with the recapitulation requirements of Section 12-44-55 of the Negotiated FILOT Act, then the County agrees, to the extent permitted by law, to waive all penalties for such entity’s noncompliance that are within the County’s control. Capitalized terms used in this recapitulation and not otherwise defined herein shall have the meanings ascribed thereto in this Agreement.

1. Legal name of each initial party to the Agreement:

Charleston County, South Carolina
Daimler Vans Manufacturing, LLC

2. County and street address of the project and property to be subject to the Agreement:

Charleston County

8501 Palmetto Commerce Pkwy
Ladson, SC 29456

3. Minimum investment:

Statutory \$5,000,000

4. Length and term of this Agreement:

20 years for each annual increment of investment in Negotiated FILOT Property during the Investment Period, subject to automatic extension as set forth in Section 6.01(b)(i) of this Agreement.

5. Assessment ratio applicable for each year of this Agreement:

6%

6. Millage rate applicable for each year of this Agreement:

273.1 mills, fixed for entire term.

7. Schedule showing the amount of the fee and its calculation for each year of this Agreement:

Waived.

8. Schedule showing the amount to be distributed annually to each of the affected taxing entities:

Waived.

9. (a) Project is now and will be located in a multi-county industrial or business park formed pursuant to the Multi-County Park Act.

(b) Disposal of property subject to Negotiated FILOT Payments is allowed.

(c) Special Source Credits provided during the first six years to fund infrastructure improvements. No additional Special Source Credits anticipated.

(d) Payment will not be modified using a net present value calculation.

(e) Replacement property provisions will apply.

10. Any other feature or aspect of this Agreement which may affect the calculation of items (7) and (8) of this Recapitulation.

Waived.

11. Description of the effect upon the schedules in items (7) and (8) of this Recapitulation of any feature covered by items (9) and (10) not reflected in the schedules for items (7) and (8):

Waived.

12. Which party or parties to this Agreement are responsible for updating any information contained in this Recapitulation:

The Company as to items 1 and 2 and the County as to all other items.

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EXHIBIT A LAND DESCRIPTION

AMENDATORY FEE IN LIEU OF TAX AGREEMENT

THIS AMENDATORY FEE IN LIEU OF TAX AGREEMENT (this "Agreement") dated as of May 19, 2015, by and between CHARLESTON COUNTY, SOUTH CAROLINA (the "County"), a body politic and corporate and a political subdivision of the State of South Carolina, and DAIMLER VANS MANUFACTURING, LLC, a limited liability company organized and existing under the laws of the State of Delaware, acting for itself, one or more affiliates or other project sponsors and as successor through a series of assignments to Victoria 1998 Trust (the "Company").

WITNESSETH:

WHEREAS, the County, acting by and through its County Council (the "Council"), is authorized and empowered under and pursuant to the provisions of the Code of Laws of South Carolina 1976, as amended (the "Code"), and particularly Title 4, Chapter 12 of the Code (the "Streamlined FILOT Act"); Title 12, Chapter 44 of the Code (the "Negotiated FILOT Act"); and Title 4, Chapter 1 of the Code (the "Multi-County Park Act", or as to Section 4-1-175 thereof, and, by incorporation, Section 4-29-68 of the Code, the "Special Source Act") (collectively, the "Act") and by Article VIII, Section 13(D) of the South Carolina Constitution: (i) to enter into agreements with certain investors to construct, operate, maintain, and improve certain projects through which the economic development of the State of South Carolina (the "State") will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ the manpower, agricultural products, and natural resources of the State; (ii) to accept certain fee in lieu of ad valorem tax ("FILOT") payments, including, without limitation, negotiated FILOT payments made pursuant to the Negotiated FILOT Act, with respect to a project ; (iii) to permit investors to claim special source revenue credits against their FILOT payments ("Special Source Credits") to reimburse such investors for expenditures in connection with infrastructure serving the County and improved or unimproved real estate and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County; and (iv) to create, in conjunction with one or more other counties, a multi-county industrial or business park ("Multi-County Park") in order to afford certain enhanced income tax credits to such investors and to facilitate the grant of Special Source Credits; and

WHEREAS, Victoria 1998 Trust and Western Star Truck US Inc. previously established certain manufacturing facilities in the County, which the Company, through a series of assignments, now operates or will operate as a facility for manufacturing vans and other activities, including without limitation sub-leasing a portion of the real property comprising such facilities to IFA Rotorion North America, LLC, or one of its affiliates, to manufacture automotive parts (collectively, the "Project"); and

WHEREAS, by an Ordinance duly enacted by the Council on February 16, 1999, and in accordance with the Streamlined FILOT Act, the Multi-County Park Act and the Special Source Act, the County agreed to provide certain FILOT, Multi-County Park and Special Source Credits

benefits to the Company in connection with the Project pursuant to that certain Lease Purchase Agreement between the County and the Company dated as of June 2, 1999 (the “Lease”); and

WHEREAS, pursuant to such arrangements, the County acquired title to the Project and leased the Project to the Company pursuant to the Lease; and

WHEREAS, pursuant to Section 12-44-170(B) of the Negotiated FILOT Act, the County and the Company have determined to re-document the FILOT and other incentive arrangements specified in the Lease and, in connection therewith, the County will convey to the Company its right, title and interest in and to the Project; and the parties will replace the Lease and related documents in their entirety with this Agreement; and

WHEREAS, pursuant to Section 12-44-30(21) of the Negotiated FILOT Act, the County has agreed to, upon satisfaction of certain conditions, extend the payment period for the Negotiated FILOT Payments by ten (10) years for each annual increment of investment in the Project; and

WHEREAS, the County has determined that it is in the best interest of the County to enter into this Agreement with the Company subject to the terms and conditions set forth herein and, by Ordinance enacted by the Council on May 19, 2015, the County approved the form, terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the premises; the continuing investment to be made, or caused to be made, by the Company which contributes to the tax base and the economic welfare of the County; the respective representations and agreements hereinafter contained; and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the Company agree as follows:

ARTICLE XI

DEFINITIONS

Section 52. 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*” shall mean, collectively, the Streamlined FILOT Act, the Negotiated FILOT Act, the Special Source Act, and the Multi-County Park Act, in each case as amended through the date hereof; provided, however, that the parties may agree from time to time to rely upon amendments to the Act subsequent to the date hereof.

“*Administration Expenses*” shall mean the reasonable and necessary expenses incurred by the County in the fulfillment of its obligations under this Agreement and in the implementation of its terms and provisions, including attorneys’ fees but excluding any expenses

incurred by the County in defending suits brought by any Company or any other Sponsor or Sponsor Affiliate under **Section 9.04** hereof; provided, however, that no such expense shall be considered an Administration Expense unless the County shall have furnished to the Company, or other Sponsor or Sponsor Affiliate, required to pay such expense hereunder, an estimate of the amount thereof or as to the basis for which such expenses will be collected and that the County shall have furnished to such Company, Sponsor or Sponsor Affiliate, an itemized statement of all expenses incurred; and provided, further, that nothing herein shall be construed as prohibiting the County from engaging the counsel of its choice for matters deemed necessary and prudent by the County.

“Affiliate” shall mean, with respect to the Company or any other Co-Investor, as the case may be, any corporation, limited liability company, partnership or other Person or entity which now or hereafter owns directly or indirectly all or part of the Company or such other Co-Investor, or which now or hereafter is owned directly or indirectly in whole or in part by the Company or such other Co-Investor, or by any partner, shareholder or owner of the Company or such other Co-Investor, as well as any subsidiary, affiliate or other Person, individual, or entity who now or hereafter bears a relationship to the Company or such other Co-Investor, as described in Section 267(b) of the Internal Revenue Code.

“Agreement” shall mean this Fee In Lieu of Tax and Incentive Agreement as originally executed and from time to time supplemented or amended as permitted herein.

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

“Co-Investor” shall mean any Sponsor or Sponsor Affiliate within the meaning of Sections 12-44-30(19) and (20) of the Negotiated FILOT Act, any Affiliate of the Company or of any such Sponsor or Sponsor Affiliate, any developer in a build-to-suit arrangement with respect to the Project, any lessor of equipment or other property comprising a part of the Project, any entity providing logistics, janitorial or other services to the Company or to any other Co-Investor at the Project, other financing entity or other third party investing in or providing funds for the Project and any entity which contracts with the Company or any other Co-Investor to provide contract or leased employees, any tenant or lessee of the Company or other Co-Investor, and any financing entity or other third party, all to the extent that such Persons invest in, or create jobs at, the Project during the Investment Period and to the extent such investment and jobs are not allocable to a separate FILOT arrangement. As of the date of original execution and delivery of this Agreement, the only Co-Investors identified are the Company and the prior and current lessees of the portions of the Project occupied by IFA Rotorion North America, LLC.

“Company” shall mean Daimler Vans Manufacturing, LLC, a Delaware limited liability company, and any surviving, resulting, or transferee entity in any merger, consolidation or transfer of assets permitted under **Sections 5.05** or **7.01** hereof or any other assignee hereunder which is designated by the Company and approved by the County.

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

“*County*” shall mean Charleston County, South Carolina, a body politic and corporate and a political subdivision of the State, and its successors and assigns.

“*Deficiency Payment*” shall have the meaning specified in **Section 6.01(e)** hereof.

“*Department of Revenue*” shall mean the South Carolina Department of Revenue and any successor thereof.

“*Event of Default*” shall have the meaning set forth in **Section 9.01** hereof.

“*Existing Property*” shall mean property which will not qualify for the Negotiated FILOT pursuant to Section 12-44-110 of the Negotiated FILOT Act, including without limitation property which has been subject to *ad valorem* property taxes in the State prior to commencement of the Investment Period 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 or on behalf of the Company or any other Sponsor or Sponsor Affiliate during the Investment Period which has not been placed in service in this State prior to the commencement of the Investment Period notwithstanding that *ad valorem* property taxes have heretofore been paid with respect to such property, or property which has been placed in service in the State pursuant to an inducement agreement or other preliminary approval by the County, including any inducement resolution pertaining to the Project, prior to execution of this Agreement pursuant to Section 12-44-40(E) of the Negotiated FILOT Act, which property shall qualify as Negotiated FILOT Property; (c) property purchased by or on behalf of the Company or any other Sponsor or Sponsor Affiliate during the Investment Period in a transaction other than between any of the entities specified in Section 267(b) of the Internal Revenue Code, as defined under Chapter 6 of Title 12 of the Code as of the time of the transfer, to the extent that the Company or such other Sponsor or Sponsor Affiliate invests, or causes to be invested, at least an additional \$45,000,000 in the Project, exclusive of the property identified in this subsection (c); or (d) modifications which constitute an expansion of the real property portion of Existing Property.

“*Expansion Project*” shall have the meaning ascribed to “Project” in the Expansion Project Incentive Agreement.

“*Expansion Project Co-Investors*” shall have the meaning ascribed to “Co-Investors” in the Expansion Project Incentive Agreement.

“*Expansion Project Incentive Agreement*” shall mean that certain Fee in Lieu of Tax and Incentive Agreement by and between the County and the Company dated as of May 19, 2015, as originally executed and from time to time supplemented or amended as permitted therein.

“*FILOT*” shall mean fee in lieu of *ad valorem* property taxes.

“Investment Period” shall mean the extended period for completion of the Project, as specified in Section 4-12-30(C)(2) and (D)(1)(b) of the Streamline FILOT Act; *i.e.* the period commencing on October 17, 1998 and ending December 31, 2006.

“Land” shall mean the land upon which the Project has been or will be located, acquired, constructed and equipped, as described in **Exhibit A** attached hereto, as **Exhibit A** may be supplemented from time to time in accordance with the provisions hereof.

“Lease” shall mean that certain Lease Purchase Agreement dated as of June 2, 1999 between the County and the Company, as successor through a series of assignments to Victoria 1998 Trust.

“Multi-County Park” shall mean the multi-county industrial or business park established pursuant to the Multi-County Park Agreement, and any multi-county industrial or business park which now or hereafter includes the Project and which is designated by the County as such pursuant to any agreement, which supersedes or replaces the initial Multi-County Park Agreement.

“Multi-County Park Act” shall mean Title 4, Chapter 1 of the Code.

“Multi-County Park Agreement” shall mean that certain Agreement for Development for Joint County Business and Industrial Park between the County and Colleton County, South Carolina dated as of September 1, 1995, as amended, supplemented, or replaced from time to time.

“Negotiated FILOT” or *“Negotiated FILOT Payments”* shall mean the negotiated FILOT payments due pursuant to **Section 6.01** hereof with respect to that portion of the Project consisting of Negotiated FILOT Property qualifying under the Negotiated FILOT Act for the negotiated assessment ratio and millage rates described in **Section 6.01(b)** hereof.

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

“Negotiated FILOT Property” shall mean, subject to the provisions of **Section 5.01** hereof, all property comprising a portion of the Project, which qualifies for the Negotiated FILOT as economic development property within the meaning of Section 12-44-30(6) of the Negotiated FILOT Act, including, without limitation, each item of real and tangible personal property which was placed in service prior to the end of the Investment Period and which meets the requirements of Sections 12-44-30(6) and 12-44-40(C) of the Negotiated FILOT Act, together with all Replacement Property, but excluding any Non-Qualifying Property and any Released Property.

“Non-Qualifying Property” shall mean that portion of the property located on the Land, which does not qualify as Negotiated FILOT Property, such Non-Qualifying Property to include: (i) Existing Property; (ii) except as to Replacement Property, property which the Company or

any other Sponsor or Sponsor Affiliate places in service after the end of the Investment Period; and (iii) any other property which fails or ceases to qualify for Negotiated FILOT Payments under the Negotiated FILOT Act, including, without limitation, property as to which the Company or any other Sponsor or Sponsor Affiliate has terminated the Negotiated FILOT pursuant to **Section 5.01(d)(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: (i) the Land; (ii) all buildings, structures, fixtures and other real property improvements now or hereafter constructed on the Land, including without limitation the building and other real property improvements now occupied by IFA Rotorion North America, LLC; (iii) all machinery, equipment, furnishings and other personal property now or acquired by or on behalf of the Company or any other Co-Investor for use on or about the Land; and (iv) any Replacement Property; provided, however, except as to Replacement Property, the term Project shall be deemed to include such real property improvements and personal property, only to the extent placed in service during the Investment Period.

“*Property Tax Year*” shall mean the annual period which is equal to the fiscal year of the Company or any other Co-Investor, as the case may be, *i.e.*, with respect to the Company, the annual period ending on December 31 of each year.

“*Released Property*” shall include property which was initially Negotiated FILOT Property but which is scrapped, sold, disposed of, or released from this Agreement by the Company or any other Sponsor or Sponsor Affiliate pursuant to **Section 5.01(d)** hereof and Section 12-44-50(B) of the Negotiated FILOT Act, property which the Company or any other Sponsor or Sponsor Affiliate dedicates to the public use within the meaning of Section 12-6-3420(C) of the Code, or property which is damaged, destroyed, or taken by process of eminent domain and not restored or replaced.

“*Replacement Property*” shall mean all property placed in service in or on the Land in substitution of, or as replacement for, any Negotiated FILOT Property which becomes Released Property, regardless of whether such property serves the same function as the property it replaces and regardless of whether more than one piece replaces a single piece of the Negotiated FILOT Property, to the maximum extent that such property may be included in the calculation of the Negotiated FILOT pursuant to **Section 6.01(d)** hereof and Section 12-44-60 of the Negotiated FILOT Act.

“*Special Source Act*” shall mean Section 4-1-175 of the Code, and by incorporation, Section 4-29-68 of the Code, as amended through the date hereof.

“*Special Source Credits*” shall mean the special source revenue credits described in the Lease and in **Section 4.02** hereof.

“*Sponsor*” and “*Sponsor Affiliate*” shall mean an entity whose investment with respect to the Project will qualify for the Negotiated FILOT pursuant to **Section 7.02** hereof and Sections 12-44-30(19) or (20) and Section 12-44-130 of the Negotiated FILOT Act if the statutory investment requirements are met. As of the date of the original execution and delivery of this Agreement, the only Sponsor is the Company and the only Sponsor Affiliates identified are the prior and current lessees of the portions of the Project occupied by IFA Rotorion North America, LLC.

“*State*” shall mean the State of South Carolina.

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

“*Term*” shall mean the term of this Agreement, as set forth in **Section 8.01** hereof.

“*Transfer Provisions*” shall mean the provisions of Section 12-44-120 of the Negotiated FILOT Act.

Section 53. References to Agreement. The words “hereof”, “herein”, “hereunder”, and other words of similar import refer to this Agreement as a whole.

ARTICLE XII

REPRESENTATIONS AND WARRANTIES

Section 54. Representations and Warranties by County. The County makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) The County is a body politic and corporate and a political subdivision of the State and is authorized and empowered by the provisions of the Act to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. By proper action by the Council, the County has duly authorized the execution and delivery of this Agreement, has duly approved the Negotiated FILOT, Special Source Credits, and Multi-County Park benefits described herein, and all actions reasonably necessary and appropriate to consummate the transactions contemplated hereby.

(b) Based on information provided by the Company, the County has determined that the Project will subserve the purposes of the Act and has made all other findings of fact required by the Act in connection with the undertaking of the arrangements set forth herein.

(c) This Agreement has been duly authorized, executed and delivered on behalf of

the County. The authorization, execution, and delivery of this Agreement and the performance by the County of its obligations hereunder will not, to the best knowledge of the County, conflict with or constitute a breach of, or a default under, any State law, court or administrative regulation, decree, order, provision of the Constitution or laws of the State relating to the establishment of the County or its affairs, or any material agreement, mortgage, lease, or other instrument to which the County is subject or by which it is bound, nor, to the best knowledge of the County, any existing law or the provisions of the Constitution of the State.

(d) To the best knowledge of the County, the approval of this Agreement, and the transactions contemplated herein, have been made in accordance with all applicable laws.

(e) To the best knowledge of the County, no actions, suits, proceedings, inquiries, or investigations are pending or threatened against or affecting the County in any court or before any governmental authority or arbitration board or tribunal, any of which to the best knowledge of the County could materially adversely affect this Agreement or which could, in any way, adversely affect the validity or enforceability of this Agreement or the transactions contemplated hereby.

Section 55. Representations and Warranties by the Company. The Company makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) The Company is a limited liability company validly existing and in good standing under the laws of the State of Delaware and is authorized to do business in the State; has all requisite power to enter into this Agreement and to carry out its obligations hereunder; and by proper action has been duly authorized to execute and deliver this Agreement. The Company's fiscal year end is December 31 and the Company will notify the County of any changes in the fiscal year of the Company.

(b) The Company presently intends to operate, or cause operation of, the Project primarily for manufacturing vans and related activities and for such other activities as the Company may determine from time to time in its sole discretion.

(c) The agreements with the County with respect to the Negotiated FILOT, the Special Source Credits and the Multi-County Park benefits were factors in inducing the Company to locate and maintain the Project within the County and the State.

(d) To the best knowledge of the Company, no actions, suits, proceedings, inquiries, or investigations are pending or threatened against or affecting the Company in any

court or before any governmental authority or arbitration board or tribunal, which would materially adversely affect this Agreement or which would, in any way, adversely affect the validity or enforceability of this Agreement, or the transactions contemplated hereby.

ARTICLE XIII

RE-DOCUMENTATION

Section 56. Replacement of Lease and Related Documents. The Company and the County hereby agree and acknowledge that, from and after the execution and delivery of this Agreement: (i) this Agreement shall replace the Lease in its entirety and as to all matters pertaining to the incentives applicable to the Project; and (ii) the Negotiated FILOT Act shall govern the Negotiated FILOT arrangements pertaining to the Project. In furtherance of such replacement, the parties agree that the Lease is hereby terminated and that the parties obligations thereunder are deemed fully discharged.

Section 57. Conveyance of Project by the County to the Company of Leased Property. Simultaneously with the execution and delivery of this Agreement, the County has, by Quit Claim Deed and Bill of Sale, re-conveyed to the Company all assets comprising the Project and other leased property which are currently titled in the County pursuant to the terms of the Lease. The County covenants and agrees to take such further steps and to execute and deliver, at the expense of the Company, such further instruments, agreements or other documents as shall be reasonably required by the Company to evidence or confirm such conveyance.

ARTICLE XIV

COVENANTS OF COUNTY

Section 58. Agreement to Accept Negotiated FILOT Payments. The County hereby agrees to accept Negotiated FILOT Payments in accordance with **Section 6.01** hereof in lieu of *ad valorem* property taxes with respect to that portion of the Project consisting of Negotiated FILOT Property until this Agreement expires or is sooner terminated.

Section 59. Special Source Credits. To provide funding for infrastructure improvements constituting a portion of the Project and subject to the requirements of the Special Source Act and the Lease, the County agreed to permit the Company to claim Special Source Credits for a period of six years. The period for collection of such Special Source Credits has expired. The Company confirms to the County that all Special Source Credits claimed by the Company were used to reimburse the Company for Special Source Improvements, as defined in the Lease and as then permitted by Section 4-29-68 of the Code.

Section 60. Multi-County Park Designation. The County has designated the Project, as part of the Multi-County Park and has obtained the requisite consents of the City of North Charleston, South Carolina, wherein the Project is located, and of the other participating county or counties to such designation. The County further agrees to use its best efforts to maintain the Project within the boundaries of the Multi-County Park pursuant to the provisions of the Multi-County Park Act and Article VIII, Section 13(D) of the State Constitution on terms which provide for all jobs created at the Project during the Investment Period, any additional jobs tax credits afforded by the laws of the State for projects located within multi-county industrial or business parks.

Section 61. Commensurate Benefits. The parties acknowledge the intent of this Agreement, in part, is to afford the Company and each other Sponsor or Sponsor Affiliate the benefits specified in this Article III in consideration of the Company's decision to locate the Project within the County, and this Agreement has been entered into in reliance upon the enactment of the Act and the County's compliance with the requirements thereof. In the event that a court of competent jurisdiction holds that the Act is unconstitutional or this Agreement or the Multi-County Park Agreement or agreements similar in nature to this Agreement or the Multi-County Park Agreement are invalid or unenforceable in any material respect, or should the Company determine that there is a reasonable doubt as to the validity or enforceability of this Agreement or the Multi-County Park Agreement in any material respect, then at the request of the Company, the County agrees to use its best efforts to extend to the Company and each other Sponsor or Sponsor Affiliate the intended benefits of this Agreement and agrees, if requested, and at the expense of the Company, to enter into a lease purchase agreement, subject to the provisions set forth below, with the Company and each other Sponsor or Sponsor Affiliate pursuant to Section 12-44-160 of the Negotiated FILOT Act, Title 4, Chapter 29 or Title 4, Chapter 12 of the Code, as applicable, or to take such other steps as may be appropriate to extend to the Company and each other Sponsor or Sponsor Affiliate the intended benefits of this Agreement. The Company acknowledges that, if a court of competent jurisdiction holds that all or part of the Negotiated FILOT Act is unconstitutional or otherwise illegal, the Negotiated FILOT Act currently provides the Company and each other Sponsor or Sponsor Affiliate may transfer its respective portion of the Negotiated FILOT Property to the County pursuant to lease-purchase arrangements within 180 days following such determination in order for the Negotiated FILOT benefits to continue to apply to such property. In such lease purchase agreement, the County, upon the conveyance of title to the Project to the County at the expense of the Company or any such other Sponsor or Sponsor Affiliate, as the case may be, shall agree to lease the Project to the Company or any such other Sponsor or Sponsor Affiliate, as the case may be, upon terms and conditions mutually agreeable to the County and the Company. At the end of the term of any such lease purchase agreement, and upon payment of all outstanding obligations incurred

under such lease purchase agreement, the Company or any such other Sponsor or Sponsor Affiliate shall have the option to purchase its respective portion of the Project for Ten Dollars (\$10.00).

Section 62. No Pecuniary Liability of the County. The parties acknowledge and agree that any obligation which the County may incur for the payment of money as a result of the transactions described in this Agreement shall never constitute an indebtedness of the County within the meaning of any State Constitutional provision or statutory limitation and shall never create a pecuniary liability of the County or a charge upon its general credit or against its taxing powers but shall be payable solely out of the funds received by it under this Agreement.

ARTICLE XV

COVENANTS OF COMPANY

Section 63. Investment in Project.

(a) The County hereby agrees and acknowledges that the Company has met all investment and job creation requirements with respect to the Project required by the Lease and/or the Act, including without limitation the Streamlined FILOT Act, and that the Company is currently in compliance with all requirements set forth in the Lease.

(b) Notwithstanding anything herein to the contrary, and to the maximum extent permitted by law, investment and job creation by any and all other Co-Investors shall together with investment and job creation by the Company, count toward all investment and job creation requirements, thresholds, and levels set forth in this Agreement, including, but not limited to, the any contractual requirement and, to the full extent permitted by the Negotiated FILOT Act, any statutory requirement. Aggregate investment in the Project shall generally be determined by reference to the capital investment records of the Company and all Co-Investors, without regard to depreciation or other diminution in value. All investment in the Project during any applicable measurement period shall count toward any investment requirement regardless of whether such investment is subject to Negotiated FILOT Payments, FILOT payments under the Multi-County Park Act or *ad valorem* property taxes and regardless of whether such investment relates to acquisition, construction, installation, improvement of new assets or renovation of existing assets. The Company shall provide the County with written certification as to the identity of any Sponsor, Sponsor Affiliate or other Co-Investor and shall, to the extent the Company and any other Sponsor or Sponsor Affiliate intend to extend the benefits of the Negotiated FILOT to property owned by such other Sponsor or Sponsor Affiliate pursuant to **Section 7.02** hereof, comply with any additional

notice requirements, or other applicable provisions, of said **Section 7.02** and Section 12-44-130(B) of the Negotiated FILOT Act.

(c) The Company and each other Co-Investor shall retain title, or other property rights, to its respective portion of the Project throughout the Term of this Agreement, and the Company and each other Co-Investor shall have full right to mortgage, lease, or encumber all or any portion of the Project, including, without limitation, in connection with any financing transactions, without the consent of the County.

(d) The Company and each other Co-Investor shall have the right at any time and from time to time during the Term hereof to undertake any of the following:

- The Company and each other Co-Investor may, at its own expense, add to the Project all such real and personal property as the Company, or such other Co-Investor, in its discretion deems useful or desirable, including, without any limit as to the amount thereof.

- Subject to the provisions of **Section 6.01(f)** hereof, in any instance when the Company or any other Co-Investor in its discretion, determines any of its property or portions of the Land included in the Project, including, without limitation, any Negotiated FILOT Property, have become inadequate, obsolete, worn out, unsuitable, undesirable, or unnecessary for operations at the Project, the Company, or such Co-Investor, may remove such property 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.

- The Company and each other Co-Investor may, at any time and in its discretion by written notice to the County, remove any Negotiated FILOT Property, real or personal, from the Project or the provisions of this Agreement including, but not limited to, the Negotiated FILOT arrangement set forth in this Agreement and retain such property for use as part of its operations in the County, whether or not such property remains a part of the Project, and thereafter such property will be subject to *ad valorem* property taxes or to FILOT payments pursuant to the Multi-County Park Act, as the case may be; provided, that, any such notice requirement may be, but shall not be required to be, satisfied by property tax returns filed with respect to the Project, including without limitation, such entity's SCDOR PT-300 or such comparable forms, as the Department of Revenue may provide in connection with projects under the Act.

- If the Company or any other Co-Investor sells, leases, or otherwise disposes of any portion of, or adds to, the Land, or removes any portion of the Land from the Project, but retains such property for use as part of its operations in the County, all as permitted herein, the Company, or such Co-Investor, shall deliver to the County a revised **Exhibit A** to this Agreement or supplements to **Exhibit A** and such revised or supplemented **Exhibit A** shall be automatically made a part of this Agreement without the necessity of additional action or proceedings by the County or the Council; provided, that any requirement to provide such supplements to the County may be, but shall not be required to be, satisfied by property tax returns filed with respect to the Project, including without limitation, such entity's SCDOR PT-300 or such comparable forms, as the Department of Revenue may provide in connection with projects under the Act.
- All Negotiated FILOT Property sold or otherwise disposed of under this **Section 5.01(d)** shall be deemed Released Property for purposes of this Agreement.

Section 64. Filings; Confidentiality. The Company shall cause a copy of this Agreement, as well as a copy of the completed Form PT-443 required by the Department of Revenue, to be filed within thirty (30) days after the date of execution and delivery hereof with the Administrator, Assessor, Auditor, and Economic Development Director of the County (collectively, the "County Officials") and with the Department of Revenue and both the auditors and assessors of each County which is party to the Multi-County Park Agreement. In addition, the Company shall provide the County Officials and the Treasurer of the County with a copy of all annual filings made by the Company to the Department of Revenue pursuant to the Negotiated FILOT Act. To the extent requested, the Auditor of the County shall make such annual filings available to the auditor of any county which is party to the Multi-County Park Agreement. Upon direction of the Council, any County Official may obtain from the Company and any other Sponsor or Sponsor Affiliate such financial books and records as may be reasonably necessary to verify the calculations of the Negotiated FILOT Payments or the Special Source Credits.

Notwithstanding any other provision of this Section, to the full extent permitted by law, the County and each County Official shall maintain the confidentiality of any filings or other documents or information, which have been identified by the Company as confidential or proprietary, that are delivered to the County or such County Official by the Company or any other Co-Investor. Except to the extent required by law, the County and such County Officials shall not knowingly and voluntarily release information which has been identified as confidential or proprietary by the Company or any other Co-Investor. The County Administrator and the

County Economic Development Director shall use their respective best efforts to notify the Company promptly by electronic or other means as to all written requests from third Persons sent to, or received by, the County Administrator and the County Economic Development Office, or of which such offices become aware, for information or documentation pertaining to this Agreement, any related agreements or arrangements, the Company or any Affiliates or Co-Investors, the Project or the incentives offered by the County to induce the Company to locate the Project in the County, whether or not such request seeks disclosure of filings or other documents or information marked by the Company or any other Co-Investor as confidential or proprietary. The Company acknowledges that all ordinances and resolutions of the Council, including the ordinances and resolutions pertaining to this Agreement, are matters of public record and that, following execution and delivery of this Agreement by the parties, this Agreement shall be subject to disclosure under the laws of the State.

Section 65. Payment of Administrative Expenses. The Company will reimburse the County, or cause the County to be reimbursed, from time to time for the County's Administration Expenses incurred in the fulfillment of its obligations hereunder, or in the implementation of this Agreement's terms and provisions, with respect to the Company or other Sponsor or Sponsor Affiliate, promptly upon written request therefor, but in no event later than forty-five (45) days after receiving written notice from the County specifying the nature of such expense and requesting the payment of the same. The County acknowledges that it currently imposes no charges in the nature of impact fees or recurring fees in connection with the Project or the incentives authorized by this Agreement and, aside from attorneys' fees, as set forth in the Expansion Project Incentive Agreement, the County currently foresees no out of pocket expenses in connection with this Agreement and the transactions authorized hereby.

Section 66. Use of Project for Lawful Activities. During the Term of this Agreement, the Company and each other Co-Investor may use the Project as it deems fit for any lawful purpose.

Section 67. Maintenance of Existence. Except in the event the resulting, surviving, or transferee entity is the Company or an Affiliate of the Company, as to which such consolidation, merger, or transfer the County hereby preapproves and consents, unless the County shall provide prior consent or subsequent ratification otherwise, which consent or ratification shall not be unreasonably withheld, conditioned, or delayed, the Company covenants that it will maintain its separate existence and will not dissolve or consolidate with, merge into or transfer, or otherwise dispose of substantially all of its property to any other entity or permit one or more other entities to consolidate with or merge into it or purchase substantially all of its property unless:

- (a) the Company shall be the continuing business entity, or the business entity formed by such consolidation or into which the Company is merged or the entity which acquires by conveyance or transfer all or substantially all of the Company's assets shall (i) be

an entity organized and existing under the laws of the United States of America or any state thereof or the District of Columbia and qualified to do business in the State; (ii) have a net worth equal to or greater than the net worth of the Company immediately preceding the date of such merger, consolidation or transfer; and (iii) expressly and unconditionally assume, by written agreement supplemental hereto and acceptable to the County as to form and content, in its reasonable discretion, every payment obligation of the Company herein and the performance of every covenant of this Agreement on the part of the Company to be performed or observed;

(b) immediately after giving effect to such transaction, no Event of Default, and no event, which, after notice or lapse of time or both, would become an Event of Default, shall have happened and be continuing; and

(c) the Company shall have delivered to the County (i) a certificate of a duly authorized officer of the Company, accompanied by financial statements of the surviving company (if other than the Company) showing compliance with the net worth requirements specified in paragraph (a) above and (ii) an opinion of counsel for the Company and/or counsel to the transferee company, each stating that such consolidation, merger, conveyance or transfer and such supplement to this Agreement comply with this Section and that all conditions precedent herein provided for relating to such transaction have been complied with.

Upon any consolidation or merger or any conveyance or transfer of all or substantially all of the Company's assets in accordance with this Section, the successor entity formed by such consolidation or into which the Company is merged or to which such conveyance or transfer is made shall succeed to, and be substituted for, and may exercise every right and power of the Company under this Agreement with the same effect as if such successor entity had been named as the Company herein, and thereafter the Company shall be relieved of all obligations and covenants under this Agreement.

If a consolidation, merger or conveyance or transfer is made as permitted by this Section, the provisions of this Section shall continue in full force and effect and no further consolidation, merger or conveyance or transfer shall be made except in compliance with the provisions of this Section.

The Company acknowledges that transfers of this Agreement or the Negotiated FILOT Property may cause all or part of the Negotiated FILOT Property to become ineligible for a Negotiated FILOT or result in penalties under the Act absent compliance with the Transfer Provisions.

Section 68. Indemnification.

(a) The Company hereby releases the County, including the members of the governing body of the County, and the employees, officers, and agents of the County (herein collectively referred to as the "Indemnified Parties") from, agrees that Indemnified Parties shall not be liable for, and agrees to hold 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 the Project or the use thereof, except for that occasioned by grossly negligent or intentional acts of an Indemnified Party. The Company further agrees to indemnify and save harmless the 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 and any other Sponsor and Sponsor Affiliate in the performance of any covenant or agreement on the part of the Company and such other Sponsors and Sponsor Affiliates 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, contractors, servants, employees, or licensees, and from and against all cost, liability, and expenses incurred in any such claim or action or proceeding brought thereon.

(b) 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 Council or any officer, agent, servant, or employee of the County in his or her individual capacity, and, absent bad faith, no recourse shall be had for the payment of any moneys hereunder or the performance of any of the covenants and agreements of the County herein contained or for any claims based thereon against any member of the governing body of the County or any officer, agent, servant, or employee of the County.

(c) 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 with respect to 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 Company 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 with respect to any such claim or any action or proceeding brought thereon; provided, however, that nothing herein shall absolve the Indemnified Parties from, or entitle the Indemnification Parties to indemnification from, any claim, liabilities or losses arising from any grossly negligent or intentional acts of such Indemnified Party or any obligation such Indemnified Party has specifically agreed to undertake (including, without limitation, the obligation to maintain the land upon which the Project is located 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.

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

ARTICLE XVI

FEES IN LIEU OF TAXES

Section 69. Payment of Negotiated Fees in Lieu of *Ad Valorem* Property Taxes.

(a) In accordance with the Negotiated FILOT Act, the parties hereby agree, during the Term hereof, that there shall be due annually with respect to that portion of the Project constituting Negotiated FILOT Property, whether owned by the Company or by any other Sponsor or Sponsor Affiliate, a Negotiated FILOT calculated as set forth in this **Section 6.01**, at the places, in the manner and subject to the penalty assessments prescribed by the County or the Department of Revenue for *ad valorem* property taxes. If the Company designates any additional Sponsors or Sponsor Affiliates pursuant to the terms of **Section 7.02** hereof, the Company must notify the County in writing as to whether such Sponsor or Sponsor Affiliate shall be primarily liable for the Negotiated FILOT Payments hereunder with respect to such other entity's portion of the Negotiated FILOT Property. Unless and until such additional notification is received, the Company shall be primarily liable for all Negotiated FILOT Payments with respect to such Negotiated FILOT Property.

(b) Subject to adjustment pursuant to the provisions of this **Section 6.01**, the Negotiated FILOT shall be calculated each year in accordance with the following provisions:

- For each annual increment of investment in Negotiated FILOT Property during the Investment Period, the annual Negotiated FILOT Payments shall be payable for a period of twenty (20) years; provided, however, if aggregate investment in the Expansion Project by the Company and all other Expansion Project Co-Investors collectively amounts to at least \$475,000,000 (without regard to depreciation, or other diminution in value resulting from casualty or condemnation) by the expiration of the twenty-year Negotiated FILOT payment

period applicable hereunder to the initial annual increment of investment in Negotiated FILOT Property, such payment period shall be automatically extended by ten (10) years, to a period of thirty (30) years.

- The Negotiated FILOT shall be determined using: (1) an assessment ratio of 6% (2) a millage rate of 273.1 mills, which millage rate shall be fixed pursuant to Section 12-44-50(A)(1)(b)(i) of the Negotiated FILOT Act for the full term of the Negotiated FILOT; and (3) the fair market value of such Negotiated FILOT Property as determined in accordance with Section 12-44-50(A)(1)(c) of the Negotiated FILOT Act, which, for typical arm's length construction or acquisition, uses the original income tax basis for any real property without regard to depreciation or reassessment and the original income tax basis for any personal property less allowable depreciation (except depreciation due to extraordinary obsolescence); provided; however, that, upon the request of the Company or any other Sponsor or Sponsor Affiliate, the County may consent to amend this Agreement as to any real property comprising Negotiated FILOT Property owned by the Company or such other Sponsor or Sponsor Affiliate so as to determine the fair market value of any such real property in accordance any other method permitted by the Negotiated FILOT Act.

- 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* property taxes, except the five-year exemption from County taxes allowed for certain manufacturing, distribution, corporate headquarters and research and development facilities pursuant to Section 3(g) of Article X of the Constitution of the State and Sections 12-37-220(B)(32) and (34) of the Code.

- For purposes of calculating the Negotiated FILOT, the Negotiated FILOT Property shall not include any Released Property or Non-Qualifying Property.

(c) The Negotiated FILOT Payments are to be recalculated:

- to reduce such payments in the event the Company or any other Sponsor or Sponsor Affiliate disposes of any part of the Negotiated FILOT Property within the meaning of Section 12-44-50(B) of the Negotiated FILOT Act and as provided in **Section 5.01(d)** hereof, by the amount applicable to the

Released Property;

- to reduce such payments in the event that the Negotiated FILOT Property or any portion thereof is damaged or destroyed, lost or stolen, or the subject of condemnation proceedings or otherwise removed from the Project as a result of circumstances beyond the control of the Company or any other Sponsor or Sponsor Affiliate;

- to increase such payments in the event the Company or any Sponsor or Sponsor Affiliate adds any Negotiated FILOT Property (other than Replacement Property) to the Project; or

- to adjust such payments if the Company or any Sponsor or Sponsor Affiliate elects to convert any portion of the Negotiated FILOT Property from the Negotiated FILOT to *ad valorem* property taxes or to FILOT payments pursuant to the Multi-County Park Act, as the case may be, as permitted by **Section 5.01(d)(iii)**.

(d) Upon installation or placing in service of any Replacement Property for any Released Property, such Replacement Property shall become subject to Negotiated FILOT Payments to the fullest extent allowed by the Negotiated FILOT Act, subject to the following rules and the provisions of the Negotiated FILOT Act:

- Such Replacement Property does not have to serve the same function as the Released Property it is replacing. Replacement Property is deemed to replace the oldest property subject to the Negotiated 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 Released Property which it is replacing in the same Property Tax Year. 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 Released Property which it is replacing, the excess amount is subject to payments equal to the *ad valorem* property taxes which would have been paid on such property but for this Agreement. Replacement property is entitled to the Negotiated FILOT Payments for the remaining portion of the twenty-year period or, if extended pursuant to **Section 6.01(b)(i)** hereof, the thirty-year period, applicable to the Released Property.

- The Company or any other Sponsor or Sponsor Affiliate shall maintain, or cause to be maintained, records sufficient to identify all Replacement Property it places in service, and the Negotiated FILOT Payments with respect thereto shall be calculated using the millage rate and assessment ratio provided on the property it is replacing.

(e) In the event that, for any reason, the Negotiated FILOT 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 Negotiated FILOT 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, at the Company's expense, so as to afford the Company and any other Sponsor or Sponsor Affiliate benefits commensurate with those intended under this Agreement as set forth in **Section 4.04** hereof. 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 Negotiated FILOT Property affected by such circumstances *ad valorem* property taxes and that, to the extent permitted by law, the Company and any other Sponsor or Sponsor Affiliate shall be entitled: (1) to enjoy the five-year exemption from *ad valorem* property 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 all other tax credits which would be due if the Company and any other Sponsor or Sponsor Affiliate were obligated to pay *ad valorem* property taxes hereunder. To the extent that under such circumstances the Negotiated FILOT Payments hereunder are subject to retroactive adjustment, then there shall be due and payable from the Company and each other Sponsor or Sponsor Affiliate, as the case may be, with respect to its portion of the Negotiated FILOT Property in question an amount equal to the difference between the Negotiated FILOT Payments theretofore actually paid and the amount which would have been paid as *ad valorem* property taxes, together with interest on such deficiency as provided in Section 12-54-25(D) of the Code or any successor provisions thereto (a "Deficiency Payment").

(f) In the event that, after meeting the statutory requirements to qualify for Negotiated FILOT Payments, investment in the Project subsequently falls below the statutory investment requirement, without regard to depreciation or other diminution in value, the Project shall prospectively be subject to *ad valorem* property taxes or to FILOT payments pursuant to the Multi-County Park Act, as the case may be, calculated as set forth in paragraph (e) above, in accordance with Section 12-44-140(C) of the Negotiated FILOT Act commencing with any Negotiated FILOT Payments due with respect to the first Property Tax

Year following the Property Tax Year in which such deficiency occurs.

(g) Except as otherwise expressly set forth in this Agreement or as otherwise required by the Act, any amounts due to the County under this **Section 6.01** as a Deficiency Payment, reimbursement or other retroactive payment shall be paid within one hundred eighty (180) days following receipt by the Company or any other Sponsor or Sponsor Affiliate of notice from the County that such a Deficiency Payment or other retroactive payment is due from such entity.

Section 70. Statutory Lien. The parties acknowledge the County's right to receive Negotiated FILOT Payments hereunder is entitled to and shall have a statutory lien with respect to the Project pursuant to Section 12-44-90(E) of the Negotiated FILOT Act and Title 12, Chapter 54 of the Code relating to the collection and enforcement of *ad valorem* property taxes.

ARTICLE XVII

THIRD PARTY ARRANGEMENTS

Section 71. Conveyance of Liens and Interests; Assignment. The County agrees that the Company and each other Co-Investor may at any time, and subject to the remaining provisions of this paragraph, (a) transfer all or any of its rights and interests hereunder or with respect to all or any part of the Project to any Person; or (b) enter into any lending, financing, leasing, security, or similar arrangement or succession of such arrangements with any financing entity or other Person with respect to this Agreement or all or any part of the Project, including without limitation any lease arrangement, assignment, sublease or similar arrangement or succession of such arrangements, regardless of the identity of the income tax owner of such portion of the Project, whereby the transferee in any such arrangement leases the portion of the Project in question to the Company or any other Co-Investor or any of their respective Affiliates or operates such assets for the Company or any other Co-Investor or any of their respective Affiliates or is leasing portion of the Project in question from the Company or any other Co-Investor or any of their respective Affiliates. In order to transfer all or any of its rights and interests under this Agreement and preserve the benefits of the Negotiated FILOT and the Special Source Credits, with respect to any Project property so transferred, leased, financed, or otherwise affected: (i) except in connection with any transfer to any other Co-Investor or an Affiliate of the Company or any Co-Investor, or transfers, leases, or financing arrangements pursuant to clause (b) above (as to which such transfers the County hereby consents), the Company shall obtain the prior consent or subsequent ratification of the County, which consent or ratification may be given in the sole discretion of the County; (ii) except when a financing entity which is the income tax owner of all or part of the Project property is the transferee

pursuant to clause (b) above and such financing entity assumes in writing the obligations of the Company or any such other Co-Investor hereunder, or when the County consents in writing or when the transfer relates to Released Property pursuant to **Section 5.01(d)** hereof, no such transfer shall affect or reduce any of the obligations of the Company or any such other Co-Investor hereunder; (iii) to the extent the transferee or financing entity shall become obligated to make Negotiated FILOT Payments hereunder, the transferee shall assume the then current basis of the Company or any such other Co-Investor (or prior transferee) in the Negotiated FILOT Property transferred; (iv) the Company or any such other Co-Investor, transferee or financing entity shall, within sixty (60) days thereof, furnish or cause to be furnished to the County and the Department of Revenue a true and complete copy of any such transfer agreement; and (v) the Company or any such other Co-Investor and the transferee shall comply with all other requirements of the Transfer Provisions in order to preserve the benefits of the Negotiated FILOT.

Subject to County consent when required under this **Section 7.01**, and at the expense of the Company or any such other Co-Investor, the County agrees to take such further action or execute such further agreements, documents, and instruments as may be reasonably required to effectuate the assumption by any such transferee of all or part of the rights of the Company or any other Co-Investor under this Agreement and/or any release of the Company or any other Co-Investor pursuant to this **Section 7.01**.

The Company acknowledges that any transfer of an interest under this Agreement or in the Negotiated FILOT Property may cause all or part of the Negotiated FILOT Property to become ineligible for a Negotiated FILOT or the Special Source Credits or result in penalties under the Act absent compliance by the Company or any such Co-Investor with the Transfer Provisions.

Section 72. Sponsors and Sponsor Affiliates. The Company 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 Negotiated 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 the Company or other Persons described in **Section 7.01(b)** 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 Negotiated FILOT Act must be approved by Resolution of the Council.

To the extent that a Sponsor or Sponsor Affiliate met the minimum investment requirement under Section 12-44-30(19) of the Negotiated FILOT Act, such Sponsor or Sponsor Affiliate shall qualify for the Negotiated FILOT payable under **Section 6.01** hereof, subject to the other conditions set forth therein and in accordance with the Negotiated FILOT Act. In

addition, the County acknowledges that the aggregate investment in the Project by the Company, all Sponsors and Sponsor Affiliates and, to the extent provided by the Negotiated FILOT Act, other Co-Investors, exceeded \$5,000,000 within the period provided in Section 12-44-30(14) of the Negotiated FILOT Act, and that, therefore, all investment by such Sponsors and Sponsor Affiliates during the Investment Period qualifies for the Negotiated FILOT pursuant to **Section 6.01** of this Agreement (subject to the other conditions set forth therein) regardless of whether each such entity invested amounts equal to the minimum statutory investment requirement.

An Event of Default or failure to comply with any investment or job requirement hereunder or, to the extent permitted by law, under the Act, by one Sponsor or Sponsor Affiliate shall not result in an Event of Default or failure to comply by any other Sponsor or Sponsor Affiliate except to the extent that such Event of Default or failure to comply results in the failure to comply with an aggregate investment or job requirement, and any remedies provided hereunder or, to the full extent permitted by law, under the Act shall affect only the defaulting or non-complying Sponsor or Sponsor Affiliate.

The Company shall provide the County and the Department of Revenue with written notice of any Sponsor or Sponsor Affiliate designated pursuant to this **Section 7.02** within ninety (90) days after the end of the calendar year during which any such Sponsor or Sponsor Affiliate has placed in service Negotiated FILOT Property to be used in connection with the Project, all in accordance with Section 12-44-130(B) of the Negotiated FILOT Act.

ARTICLE XVIII

TERM; TERMINATION

Section 73. 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 day the last Negotiated FILOT Payment is made hereunder.

Section 74. Termination. The County and the Company may jointly agree to terminate this Agreement at any time, or the Company, may, at its option, unilaterally terminate this Agreement at any time, with respect to all, or a portion of, the Project in which event the Project, or such portion of the Project, shall be subject to *ad valorem* property taxes or to FILOT payments pursuant to the Multi-County Park Act, as the case may be, from the date of termination. Notwithstanding termination of this Agreement, the County shall have the same rights to receive payment for any retroactive *ad valorem* property taxes, Deficiency Payments, interest or penalties, and the same enforcement rights with respect to such obligations, as it would have with respect to *ad valorem* property taxes, and the County's rights arising under **Section 6.01** hereof prior to the time of such termination shall survive any such termination.

ARTICLE XIX

EVENTS OF DEFAULT AND REMEDIES

Section 75. Events of Default. 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 or any other Sponsor or Sponsor Affiliate (the “Defaulting Entity”) but only with respect to such Defaulting Entity’s rights, duties, and obligations contained herein:

(a) if default shall be made in the due and punctual payment of any Negotiated FILOT Payments or any other payments due to the County under this Agreement, which default shall not have been cured within sixty (60) days following receipt of written notice of such default from the County; or

(b) if default shall be made in the due performance of or compliance with any of the terms hereof, other than those referred to in the foregoing paragraph (a), and such default shall continue for ninety (90) days after the County shall have given the Defaulting Entity written notice of such default; provided, the County may, in its discretion, grant the Defaulting Entity a longer period of time as necessary to cure such default if the Defaulting Entity proceeds with due diligence to cure such default; provided however, that no Event of Default shall exist under this Agreement during any period when there is pending, before any judicial or administrative tribunal having jurisdiction, any proceeding in which the Defaulting Entity has contested in good faith the occurrence of such default.

Notwithstanding anything herein to the contrary, failure to meet any investment requirements, thresholds, or levels set forth in this Agreement shall not be deemed to be an Event of Default under this Agreement, but may terminate or adjust certain benefits hereunder or obligate the Company or other Co-Investors, as the case may be, to make certain additional payments to the County, all as set forth in **Section 6.01** hereof.

Section 76. Remedies on Event of Default. Upon the occurrence of any Event of Default, the County may exercise any of the following remedies only as to the Defaulting Entity:

(a) terminate this Agreement by delivery of written notice to the Defaulting Entity not less than sixty (60) days prior to the termination date specified therein;

(b) have access to and inspect, examine, and make copies of the books and , records of the Defaulting Entity pertaining to the construction, acquisition, or maintenance of the Project or calculation of the Negotiated FILOT pursuant hereto as provided in **Section 5.02** hereof;

(c) take whatever action at law or in equity as may appear necessary or desirable to collect the amount then due or enforce the County's rights hereunder, it being the express intent of the parties that the County, without limitation, shall have the same remedies available by law to collect Negotiated FILOT Payments as if they were delinquent *ad valorem* tax payments, including execution upon the lien referred to in **Section 6.02** hereof;

(d) Although the parties hereto acknowledge that the Negotiated FILOT Property is exempt from ad valorem property taxes, the County and any other taxing entity affected thereby may, without limiting the generality of the foregoing, exercise any remedies provided by general law (Title 12, Chapters 49 and 51 of the Code; or any other statutory provision for tax collection of property taxes (the "Tax Statute") and the Act) relating to the enforced collection of taxes, including an Event of Default under **Section 9.01(a)** hereof. The Company expressly acknowledges that in the event of its failure to make the required Negotiated FILOT Payments, that the County is only required to give notice thereof in accordance with the Tax Statute, and that no further notice is required hereunder in order to enforce the remedies set forth in this paragraph (d).

Section 77. Defaulted Payments. In the event the Company or any other Co-Investor should fail to make any of the payments required to be made by such entity under this Agreement, the item or installment so in default shall continue as an obligation of such entity until the amount in default shall have been fully paid. If any such default relates to its obligations to make Negotiated FILOT Payments hereunder, such entity shall pay the same with interest thereon at the rate per annum provided by the Code for late payment of *ad valorem* property taxes together with any penalties provided by the Code for late payment of *ad valorem* property taxes, all as provided in Section 12-44-90 of the Negotiated FILOT Act.

Section 78. Default by County. Upon the default of the County in the performance of any of its obligations hereunder, the Company and any other Sponsor or Sponsor Affiliate may take whatever action at law or in equity as may appear necessary or desirable to enforce its rights under this Agreement, including without limitation a suit for *mandamus* or specific performance.

Section 79. No Additional Waiver Implied by One Waiver. In the event any warranty, covenant, or agreement contained in this Agreement should be breached by the Company or the County and thereafter waived by the other party to this Agreement, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach.

ARTICLE XX

MISCELLANEOUS

Section 80. Rights and Remedies Cumulative. Each right, power, and remedy of the County or of the Company or any other Co-Investor or 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 or any other Co-Investor 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 or such other Co-Investor of any or all such other rights, powers, or remedies.

Section 81. Successors and Assigns. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, any Co-Investor, and their respective successors and assigns as permitted hereunder; provided, however, that notwithstanding anything herein to the contrary, the County may not assign any or all of its rights, duties, and obligations in, to, and under this Agreement without the written consent of the Company, which consent may be provided the Company in its sole discretion.

Section 82. 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 transmission or reputable courier service, to the following persons and addresses or to such other persons and places as may be designated in writing by such party.

(a) if to the County:

Charleston County
Attn.: Charleston County Administrator
4045 Bridge View Drive
Charleston, South Carolina 29405
Phone: (843) 958-4000
Fax: (843) 958-4017

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

Charleston County Attorney
4045 Bridge View Drive

Charleston, South Carolina 29405
Phone: (843) 958-4010
Fax: (843) 958-4017

and

Samuel W. Howell, Esq.
Howell Linkous & Nettles, LLC
106 Broad Street
Charleston, South Carolina 29401
Phone: (843) 266-3801
Fax: (843) 266-3085

and

Charleston County Economic Development Manager
4000 Faber Place Drive, Suite 140
North Charleston, South Carolina 29405
Phone: (843) 958-4511
Fax: (843) 958-4505

(c) if to Company:

Daimler Vans Manufacturing, LLC
Attn.: President and CEO
8501 Palmetto Commerce Parky
Ladson, SC 29456
Phone: 843-695-5000
Fax: 843-695-5031

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

Nexsen Pruet, LLC
Tushar Chikhliker, Esq.
P.O. Drawer 2426 (29202)
1230 Main Street, Suite 700
Columbia, South Carolina 29201
Phone: 803-771-8900
Fax: 803-727-1469

Section 83. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State. To the extent of any conflict between the provisions of this Agreement and the Act, the Act controls.

Section 84. Entire Understanding. This Agreement expresses the entire understanding and all agreements of the parties hereto with each other with respect to the subject matter hereof, 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, and performance, hereof.

Section 85. Severability. In the event that any clause or provisions of this Agreement shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.

Section 86. 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 87. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument.

Section 88. Amendments. Subject to the limitations set forth in Section 12-44-40(K)(2) of the Negotiated FILOT 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 89. 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 90. Further Proceedings. To the extent additional proceedings are required by law, however, the parties agree to undertake all such steps as may be reasonably required or appropriate to effectuate the intent of this Agreement.

[Execution Pages to Follow]

IN WITNESS WHEREOF, the parties hereto, each after due authorization, have executed this Agreement to be effective as of the date first written above.

CHARLESTON COUNTY, SOUTH CAROLINA

By: _____
J. Elliott Summey, Chairman, County Council,
Charleston County, South Carolina

[SEAL]

Attest:

By: _____
Beverly T. Craven, Clerk to County Council,
Charleston County, South Carolina

DAIMLER VANS MANUFACTURING, LLC

By: _____
Name: Marco J. Wirtz
Title: President and CEO

EXHIBIT A
LAND DESCRIPTION

All that piece, parcel or tract of land, with the improvements thereon, situate, lying and being in the City of North Charleston, County of Charleston, State of South Carolina, being shown and designated as "TRACT 3 90.44 ACRES" on a plat entitled "PLAT SHOWING: THE SUBDIVISION OF TMS 393-00-00-010 INTO TRACT 4 (8.97 ACRES), PARCEL B (52.49 ACRES) AND RESIDUAL (+/-384.0 ACRES); THE SUBDIVISION OF TMS 393-00-00-005 INTO PARCEL 1 (37.95 ACRES) AND RESIDUAL (+/- 266.2 ACRES); THE ABANDONMENT OF THE PROPERTY LINE BETWEEN PARCEL A AND PARCEL B TO FORM TRACT 3 (90.44 ACRES). PROPERTY OF SPRING GROVE ASSOCIATES" prepared by Hoffman Lester Associates, Inc., dated October 16, 1998, and recorded November 4, 1998, in Plat Book EC, Page 846 in the RMC Office for Charleston County, reference to which is craved for a more complete description.

TMS No. 393-00-00-031