

AN ORDINANCE

AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE-IN-LIEU OF TAX AGREEMENT BY AND BETWEEN CHARLESTON COUNTY, PROTEGO (USA), INC., A SOUTH CAROLINA CORPORATION, AND LANDMARK ENTERPRISES, INC. A SOUTH CAROLINA CORPORATION, COLLECTIVELY PREVIOUSLY IDENTIFIED BY THE COUNTY AS “PROJECT PLATYPUS,” INCLUDING ANY RELATED OR AFFILIATED ENTITIES AND ANY SPONSOR AFFILIATES, WHEREBY CHARLESTON COUNTY WILL ENTER INTO A FEE-IN-LIEU OF TAXES ARRANGEMENT WITH THE COMPANY; PROVIDING FOR PAYMENT BY THE COMPANY OF CERTAIN FEES IN LIEU OF *AD VALOREM* TAXES; PROVIDING FOR THE ALLOCATION OF FEE-IN-LIEU OF TAXES PAID BY THE COMPANY, UNDER THE AGREEMENT FOR ESTABLISHMENT OF MULTI-COUNTY INDUSTRIAL/BUSINESS PARK; AND OTHER MATTERS RELATING THERETO.

WHEREAS, Charleston County, South Carolina (the “County”), acting by and through its County Council (the “County Council”) is authorized and empowered under and pursuant to the provisions of Title 12, Chapter 44 of the Code of Laws of South Carolina 1976, as amended (the “FILOT Act”), to designate real and tangible personal property as “economic development property” and to enter into an arrangement which provides for payment in lieu of taxes (“Negotiated FILOT Payments”) for a project qualifying under the FILOT Act; and

WHEREAS, the County, acting by and through the County Council, is authorized and empowered under and pursuant to the provisions of Title 4, Chapter 1 of the Code (the “MCIP Act”), to provide for payments in lieu of taxes (“PILOT Payments”) with respect to property situated or having a situs in a multi-county business or industrial park created under the MCIP Act, and to provide certain enhanced tax credits to such investors; and

WHEREAS, Sections 4-1-170 and 12-44-70 of the Code authorize the County to provide special source revenue credit (“Special Source Revenue Credit”) financing secured by and payable solely from revenues of the County derived from Negotiated FILOT Payments or PILOT Payments for the purposes set forth in Section 4-29-68 of the Code, namely: the defraying of the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the County and for improved and unimproved real estate, and personal property, including but not limited to machinery and equipment, used in the operation of a manufacturing facility or commercial enterprise in order to enhance the economic development of the County (collectively, “Infrastructure”); and

WHEREAS, Protego (USA), Inc., a South Carolina corporation, together with LBP Building 400, LLC, a South Carolina limited liability company affiliated with Landmark Enterprises, Inc., a South Carolina corporation (collectively, the “Company”), intends to acquire, construct, renovate, furnish, and equip the expansion of the Company’s existing facilities in the County (the “Project”); the Project is to be located at 9561 Palmetto Commerce Parkway in the County (the “Project Site”); and

WHEREAS, the Project when completed will represent an anticipated investment (the “Investment”) by the Company in the aggregate of not less than \$9,448,191, of which \$6,298,191 will be in real property (land and building) and \$3,150,000 will be in tangible business personal property (new machinery and equipment), all to be located at the Project Site within the County; and

WHEREAS, the County has been advised that upon the completion of the Project, the Project is anticipated to employ an additional approximately 39 full-time employees by the end of the Investment Period, in addition to the current 33 full-time employees at the existing facilities; and

WHEREAS, the County is authorized to include the site of the Project Site within a multi-county industrial and business park pursuant to the MCIP Act; and

WHEREAS, the Project is located entirely within Charleston County and will be included in and subject to the multi-county park and fee-in-lieu of tax arrangements as described herein; and

WHEREAS, the County has made specific proposals, including offers of certain economic development incentives as more fully set forth herein and in that certain Fee-in-lieu of Tax Agreement between/among the County and the Company (the "FILOT Agreement"), in substantially the form attached hereto as **Exhibit A.**, for the purpose of inducing the Company to invest its funds to acquire, construct, renovate, furnish, equip, and expand the Project (the "Incentives"); and

WHEREAS, it is in the public interest, for the public benefit, and in furtherance of the public purposes of the FILOT Act and the MCIP Act, for the County Council to provide final approval for qualifying the Project under the FILOT Act and the MCIP Act for the Incentives;

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

Section 1. Evaluation of the Project. County Council have evaluated the Project on the following criteria based upon any advice and assistance of the South Carolina Department of Revenue and the Revenue and Fiscal Affairs Office, as necessary:

- (a) the purposes to be accomplished by the Project are proper governmental and public purposes;
- (b) the anticipated dollar amount and nature of the investment to be made; and
- (c) the anticipated costs and benefits to the County.

Section 2. Findings by County Council. Based upon information provided by and representations of the Company, County Council's investigation of the Project, including the criteria described in Section 1 above, and any advice and assistance of the South Carolina Department of Revenue and the Revenue and Fiscal Affairs Office, as necessary, County Council hereby find that:

- (a) the Project constitutes a "project" as that term is defined in the FILOT Act;
- (b) the Project will serve the purposes of the FILOT Act and the MCIP Act;
- (c) the Investment by the Company in the Project will be approximately \$9,448,191, of which \$6,298,191 will be in real property (land and building) and \$3,150,000 will be in tangible business personal property (new machinery and equipment), all to be invested within the "investment period" (as defined in the FILOT Act); and the Company expects to employ 39 new full-time employees at the Project;
- (d) the Project will be located entirely within Charleston County and is anticipated to be located in the Park created pursuant to the MCIP Act;
- (e) the Project is anticipated to benefit the general welfare of Charleston County by providing services, employment, or other public benefits not otherwise adequately provided locally;
- (f) the Project gives rise to neither a pecuniary liability of the County nor a charge against its general credit or taxing power;
- (g) the purposes to be accomplished by the Project are proper governmental and public purposes;
- (h) the inducement of the location of the Project is of paramount importance; and
- (i) the benefits of the Project to the public are greater than the cost to the public.

Section 3. Fee-in-Lieu of Taxes Arrangement. Pursuant to the authority of the FILOT Act, the Project is designated as "economic development property" under the FILOT Act and there is hereby authorised a fee-in-lieu of taxes arrangement with the Company which will provide Negotiated FILOT Payments to be made with respect to the Project based upon a 6% assessment ratio with the

millage rate which is the lower of (a) the cumulative property tax millage rate levied on behalf of all taxing entities within which the Project is located on June 30 of the year preceding the calendar year in which the FILOT Agreement (as defined below) is executed, which the County believes is 302.3 mills, or (b) the cumulative property tax millage rate levied on behalf of all taxing entities within which the Project is located on June 30 of the calendar year in which the FILOT Agreement is executed, such rate to be fixed for the entire 20-year term of the fee-in-lieu of taxes, and also the provision of certain Special Source Revenue Credits equal to 69% of each annual Negotiated FILOT Payment to be made by the Company during years 1-7 of the FILOT Agreement, not to exceed a cumulative amount of \$600,000 over the full term of the FILOT Agreement, all as more fully set forth in the FILOT Agreement, in substantially the form attached hereto as **Exhibit A**. The FILOT Agreement shall be a "Fee Agreement" within the meaning of Section 12-44-30(10) of the FILOT Act.

Section 4. Multi-County Park Incentive.

- (a) By separate ordinance (the "MCIP Ordinance") of the County Council, the County will use its commercially reasonable efforts to designate the Project Site as being within that certain multi-county business park ("Park") pursuant to Article VIII, Section 13 of the South Carolina Constitution, the MCIP Act, and the terms of the Agreement for Development of Joint County Industrial Park between the County and Colleton County, South Carolina, effective as of September 1, 1995, as amended to add the Project Site, and as further amended, supplemented, or replaced from time to time (the "MCIP Agreement"). In addition, the County will use its commercially reasonable efforts to ensure both Colleton County (the "Partner County") and the City of North Charleston, whose consent is required under Section 4-1-170(C) of the MCIP Act, take action to confirm or consent to the placement of the Project Site within the Park.
- (b) Pursuant to the terms of the MCIP Act and the MCIP Agreement, the County hereby provides that for the term of the FILOT Agreement, commencing with the first tax year in which the Negotiated FILOT Payments are generated by the Project and payable to the County, Negotiated FILOT Payments will be distributed in accordance with the terms of the MCIP Agreement as follows:
- i. After deducting any amounts distributed to the Partner County in accordance with the MCIP Agreement, to the County an amount equal to the total Special Source Revenue Credits to be provided in such year pursuant to Section 3 hereof; and
 - ii. After making the allocations under paragraph (i) of this Section, the balance is to be distributed among the taxing districts in Charleston County in accordance with the applicable provisions of Section 9 of the MCIP Agreement.

Section 5. Execution of the FILOT Agreement. The form, terms, and provisions of the FILOT Agreement presented to the meeting at which this Ordinance received third reading and filed with the Clerk of the County Council be and hereby are approved, and all of the terms, provisions, and conditions thereof are hereby incorporated herein by reference as if such FILOT Agreement were set out in this Ordinance in its entirety. The Chairman of the County Council and the Clerk of the County Council be and they are hereby authorized and directed to execute and deliver the FILOT Agreement in the name and on behalf of the County, and thereupon to cause the FILOT Agreement to be delivered to the Company. The FILOT Agreement is to be in substantially the form before the meeting of County Council at which this Ordinance received third reading and hereby approved, or with any changes therein as shall not materially adversely affect the rights of the County thereunder, upon the advice of legal counsel, by the officials of the County executing the same, their execution thereof to constitute conclusive evidence of their approval of all changes therein from the form of FILOT Agreement presented to said meeting.

Section . Miscellaneous.

- (a) The Chairman and all other appropriate officials of the County are hereby authorized to execute, deliver, and receive any other agreements and documents as may be required by the County in order to carry out, give effect to, and consummate the transactions authorised by this Ordinance.

- (b) This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina.
- (c) This Ordinance shall become effective immediately upon approval following third reading by the County Council.
- (d) The provisions of this Ordinance are hereby declared to be severable and if any section, phrase, or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, that declaration shall not affect the validity of the remainder of the sections, phrases, and provisions hereunder.
- (e) All ordinances, resolutions, and parts thereof in conflict herewith are, to the extent of the conflict, hereby repealed.

CHARLESTON COUNTY, SOUTH CAROLINA

By: _____
Herb Sass
Chairman, County Council of
Charleston County, South Carolina

ATTEST:

Kristen L. Salisbury
Clerk to County Council
Charleston County, South Carolina

First Reading: May 23, 2023
Second Reading: June 6, 2023
Third Reading: June 20, 2023
Public Hearing: June 20, 2023