

## **FIRST AMENDMENT TO FEE AGREEMENT**

**THIS FIRST AMENDMENT TO FEE AGREEMENT** (the “Amendment”) is made and entered into as of \_\_\_\_\_, 2013, by and between **LEXINGTON COUNTY, SOUTH CAROLINA** (the “County”), a body politic and corporate and political subdivision of the State of South Carolina, acting by and through its County Council (the “County Council”) as governing body of the County, and **RNDC SOUTH CAROLINA, LLC** (“RNDCSC”), a Delaware limited liability company, and **RNDC SOUTH CAROLINA RE HOLDINGS, LLC** (“RE Holdings”), a South Carolina limited liability company (RNDCSC and RE Holdings are collectively, the “Sponsors”).

**WHEREAS**, the County entered into a Fee in Lieu of Tax arrangement pursuant to Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (the “Act”) with the Sponsors in connection with which the County and the Sponsors entered into a Fee in Lieu of Tax and Incentive Agreement dated as of February 23, 2010 (the “2010 Fee Agreement”) concerning the project;

**WHEREAS**, the Sponsors contemplate increasing the initial promised minimum investment of \$11,850,000, which must consist of a real estate investment of not less than \$7,150,000, by making an additional investment of a minimum of \$17,195,000, of which, \$5,600,000 will be in real estate and improvements, and by creating fifty-four (54) new, full-time jobs;

**WHEREAS**, in order to make the additional investment, the Sponsors desire to add additional property to the Joint Park with Calhoun County;

**WHEREAS**, the County has agreed to extend the investment period for the project under the 2010 Fee Agreement by five (5) years; and

**WHEREAS**, the County and the Sponsors desire to enter into this Amendment to amend the 2010 Fee Agreement as described above.

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

1. **Recitals.** The recitals set forth above are true and correct and are incorporated herein by this reference; provided, however, that such recitals shall not be deemed to modify the express provisions hereinafter set forth.

2. **Section 1.3.** The defined term “Investment Period” contained in Section 1.3 of the 2010 Fee Agreement is hereby deleted in its entirety and replaced with the following:

**“Investment Period”** shall mean the period beginning with the first day that economic development property is purchased or acquired and ending on the last day of the tenth (10<sup>th</sup>) property tax year following the Commencement Date, subject to an extension for such period as provided in Section 3.2(b) hereof.

3. Section 3.3(f). Section 3.3(f) of the 2010 Fee Agreement is hereby deleted in its entirety and replaced with the following:

In accordance with an as required by Section 12-44-40(F) of the Act, the Sponsors commit to the Project with a cumulative minimum investment of \$29,009,000.00, which shall be made up of at least \$12,750,000.00 in Real Estate and improvements and is subject to Section 5.4 of this Agreement.

4. Section 5.4. Section 5.4 of the 2010 Fee Agreement is hereby deleted in its entirety and replaced with the following:

**SECTION 5.4. *Minimum Investment; Failure to Maintain Minimum Investment.***

(a) The Sponsors shall invest a cumulative minimum investment of \$11,850,000.00 (without regard to depreciation) in the Project by the end of the first five (5) years of the Investment Period and any extensions granted pursuant to Section 3.2(b) of this Agreement which must consist of a Real Estate investment of not less than \$7,150,000.00 (collectively, the "Initial Investment").

(b) In the event the Real Estate portion of the Initial Investment does not reach a level of \$7,150,000.00 (without regard to depreciation) during the first five (5) years of the Investment Period and any extensions, then this Fee Agreement shall terminate with respect to the Initial Investment and each Sponsor shall pay the County an additional amount equal (if any) to that Sponsor's total savings from the time the first Payment-in-Lieu-of-Taxes was made to that point (that is, the difference between the fee amount paid by each Sponsor and the amount which would have been otherwise due in case of normal property taxes with all applicable exemptions). Subject to Section 5.2(a), this Fee Agreement shall not terminate with respect to the Real Estate invested in the Project as part of the Initial Investment, so long as there is a Real Estate investment of at least \$7,150,000.00 (without regard to depreciation) during the first five (5) years of the Investment Period and any extensions.

(c) In the event the Sponsors fail to reach the cumulative minimum Initial Investment of \$11,850,000.00 (without regard to depreciation) during the first five (5) years of the Investment Period and any extensions, or fail to maintain the cumulative minimum Initial Investment of \$11,850,000.00 for the remainder of the term of this Fee Agreement, and provided that at such time the Equipment invested in the Project as part of the Initial Investment has not reached a level of \$4,700,000.00, then this Fee Agreement shall terminate with respect to the Equipment invested (but not the Real Estate invested) in the Project as part of the Initial Investment and the Sponsor(s) investing the Equipment shall pay the County an additional amount equal (if any) to such Sponsor(s)' total savings with regard to its/their investment in the Equipment for the Project from the time the first Payment-in-Lieu-of-Taxes was made to that point (that is, the difference between the fee amount paid by such Sponsor(s) and the amount which would have been otherwise due in case of normal property taxes with all applicable exemptions).

(d) In addition to the Initial Investment to be made as provided in subsections (a), (b) and (c) of this Section, the Sponsors shall invest a cumulative minimum investment of \$17,195,000.00 (without regard to depreciation) in the Project by the end of the Investment Period and any extensions granted pursuant to Section 3.2(b) of this Agreement, which must consist of a Real Estate investment of not less than \$5,600,000.00 (collectively, the “Expansion Investment”).

(e) In addition to the Initial Investment and the Expansion Investment, the Sponsors must also create a minimum of fifty-four (54) new, full-time jobs during the Investment Period such that the total number of full-time employees working for the Sponsors at the site located on the Real Property is three hundred forty-nine (349) (the “Labor Investment”).

(f) In the event that: (i) the Expansion Investment does not reach a cumulative minimum investment of \$17,195,000.00 (without regard to depreciation) during the Investment Period and any extensions; or (ii) the Sponsors fail to make the required Labor Investment during the Investment Period, then this Fee Agreement shall terminate with respect to the Real Estate and Equipment invested in the Project as part of the Expansion Investment and the Sponsor(s) investing such Real Estate and Equipment shall pay the County an additional amount equal (if any) to such Sponsor(s)’ total savings with regard to its/their investment in the Real Estate and Equipment for the Project as part of the Expansion Investment from the time the first Payment-in-Lieu-of-Taxes was made to that point (that is, the difference between the fee amount paid by such Sponsor(s) and the amount which would have been otherwise due in case of normal property taxes with all applicable exemptions).

(g) In the event that: (i) the Sponsors fail to maintain the Expansion Investment at a cumulative minimum investment of \$17,195,000.00 (without regard to depreciation) for the remainder of the term of this Fee Agreement after the end of the Investment Period and any extensions; or (ii) the Sponsors fail to maintain the required Labor Investment for the remainder of the term of this Fee Agreement after the end of the Investment Period and any extensions ((i) and (ii) are each a “Maintenance Failure”), then this Fee Agreement shall terminate as of the date of the Maintenance Failure with respect to the Real Estate and Equipment invested in the Project as part of the Expansion Investment. Beginning on the date of the Maintenance Failure, the Sponsors shall pay *ad valorem* property taxes for the Real Estate and Equipment invested in the Project as part of the Expansion Investment; however, a Maintenance Failure shall not require the Sponsor(s) to pay an additional amount equal to such Sponsor(s)’ total savings with regard to its/their investment in the Real Estate and Equipment for the Project as part of the Expansion Investment.

5. Exhibit A. Exhibit A to the 2010 Fee Agreement is hereby deleted in its entirety and replaced with Exhibit A attached to this Amendment.

6. Initial Investment Met; Expansion and Labor Investments Prospective. The County hereby acknowledges and agrees that the Sponsors have met the cumulative minimum Initial Investment as of the date of this Amendment. Exhibit B attached to this Amendment

shows the amounts that have been made to date as part of the Initial Investment. The Sponsors and the County agree that none of the investments shown on Exhibit B as part of the Initial Investment shall count toward the Expansion Investment. All investments made as part of the Expansion Investment and Labor Investment shall be made after the date of this Amendment.

7. Multi-County Industrial and Business Park. As provided in the 2010 Fee Agreement, the County has, with the appropriate consent of Lexington County Council and Calhoun County Council, amended an existing multi-county industrial and business park agreement (the “Multi-County Industrial and Business Park Agreement”) to include Parcel 1 as described on Exhibit A attached to this Amendment in such Multi-County Industrial and Business Park between the County and the County of Calhoun (the “Multi-County Park”), pursuant to Section 13 of Article VIII of the South Carolina Constitution and Section 4-1-170, Code of Laws of South Carolina 1976, as amended. In connection with this Amendment, the County has agreed, with the appropriate consent of Lexington County Council and Calhoun County Council, to further amend the Multi-County Industrial and Business Park Agreement to include Parcel 2 as shown on Exhibit A attached to this Amendment in such Multi-County Park, and to undertake and execute those procedures, instruments, ordinances, resolutions and documents as may be reasonably required to accomplish same.

8. Notice to Department of Revenue. The County agrees to cooperate with the Sponsors by filing a copy of this Amendment with the South Carolina Department of Revenue within thirty (30) days of the execution hereof by the County.

9. Ratification and Confirmation. The parties hereby ratify the 2010 Fee Agreement as amended by this Amendment, which represents the entire agreement of the parties.

10. Legal Effect. Except as modified herein, the 2010 Fee Agreement remains unchanged and in full force and effect in accordance with the terms and conditions stated therein.

11. Counterparts; Facsimile and Electronic Versions. This document may be executed simultaneously or in separate counterparts, and any of the parties to this document may execute it by signing counterpart signature pages, all of which taken together shall constitute one and the same document. Signatures transmitted by facsimile or as emailed PDF or other similar electronic version shall be binding as originals, and hereby waive any defenses to the enforcement of the terms of this document based upon the form of signature. If facsimile signatures or emailed PDF or other electronic copies are used to exchange signed documents, the Parties will each forward original counterpart signatures to the other promptly after delivery of the facsimile signatures or PDF copies, but the failure to do shall not invalidate this Amendment.

[REMAINDER OF DOCUMENT INTENTIONALLY LEFT BLANK –  
SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE FOR  
FIRST AMENDMENT TO FEE AGREEMENT

**IN WITNESS WHEREOF, LEXINGTON COUNTY, SOUTH CAROLINA, and the SPONSORS**, each pursuant to due authority, have duly executed this Amendment, all as of the date first above written.

**LEXINGTON COUNTY, SOUTH CAROLINA**

By: \_\_\_\_\_  
William B. Banning, Sr.  
Chair of Lexington County Council

**ATTEST:**

\_\_\_\_\_  
Diana W. Burnett  
Clerk, Lexington County Council

**RNDC SOUTH CAROLINA, LLC**

By: \_\_\_\_\_  
Peter G. Fawcett, President

**RNDC SOUTH CAROLINA RE HOLDINGS, LLC**

By: \_\_\_\_\_  
Paul L. Fine, Manager

## EXHIBIT A

### (Description of Property)

#### *Parcel 1:*

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND, together with improvements thereon, if any, situate, lying and being in County of Lexington, State of South Carolina, containing approximately 13.406 acres as shown on an ALTA/ACSM Land Title Survey prepared for RNDC South Carolina RE Holdings, LLC by Power Engineering Company, Inc., dated February 17, 2010 (the "Plat"), and recorded in the Office of the Lexington County ROD in Book 14109, page 197, and according to said plat having the following metes and bounds, to-wit:

Commencing at the centerline intersection of Sandhills Parkway and Foster Brothers Drive; thence turning and running S45°38'24"W for a distance of 65.18 feet to a 5/8" rebar and cap iron pin set on the western right-of-way of Foster Brothers Drive, said iron pin set being the Point of Beginning; thence turning and running along said western right-of-way of Foster Brothers Drive the following three courses: 1) S33°34'44"E for a distance of 28.11 feet to a 5/8" rebar and cap iron pin set; 2) along a curve to the right having a radius of 30.50 feet, a length of 47.97 feet, and being subtended by a chord bearing S78°19'08"E for a distance of 43.17 feet to a 1/2" rebar iron pin found; 3) S33°28'51"E for a distance of 571.52 feet to a 5/8" rebar and cap iron pin set at lands now or formerly of Foster Brothers Dixiana Sand Company; thence turning and running along lands now or formerly of Foster Brothers Dixiana Sand Company S79°08'51"W for a distance of 1,142.64 feet to a 5/8" rebar and cap iron pin set at lands now or formerly of Midway Logistics I, LLC; thence turning and running along lands now or formerly of Midway Logistics I, LLC, N11°17'37"W for a distance of 570.02 feet to a 5/8" rebar and cap iron pin set at lands now or formerly of Foster Brothers Dixiana Sand Company; thence turning and running along lands now or formerly of Foster Brothers Dixiana Sand Company N79°08'51"E for a distance of 876.39 feet to the place and Point of Beginning; said parcel containing 13.406 acres, all measurements being a little more or less.

Portions of: TMS 007997-04-001, 007997-04-002, and 005898-02-048

#### *Parcel 2:*

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND, together with improvements thereon, if any, situate, lying and being in County of Lexington, State of South Carolina, containing approximately 11.102 acres as shown on an ALTA/ACSM Land Title Survey prepared for RNDC South Carolina RE Holdings, LLC by Power Engineering Company, Inc., dated March 29, 2010, revised April 1, 2010 (the "Plat"), and recorded in the Office of the

Lexington County ROD in Book 14169, page 347, and according to said plat having the following metes and bounds, to-wit:

Commencing at the centerline intersection of Sandhills Parkway and Foster Brothers Drive; thence turning and running S45°38'24"W for a distance of 65.18 feet to a 5/8" rebar and cap iron pin found on the western right-of-way of Foster Brothers Drive, said iron pin set being the **Point of Beginning**; thence turning and running along lands now or formerly of RNDC South Carolina RE Holdings, LLC, S79°08'51"W for a distance of 876.39 feet to a 5/8" rebar and cap iron pin found at lands now or formerly of Midway Logistics I, LLC; thence turning and running along lands now or formerly of Midway Logistics I, LLC, N11°17'37"W for a distance of 247.02 feet to a Mag nail iron pin set on the southern right-of-way of Kelsey Court; thence along the eastern right of way of Kelsey Court the following two courses: 1) along a curve to the left having a radius of 70.00 feet, a length of 185.54 feet, and being subtended by a chord bearing N2°44'25"E for a distance of 135.80 feet to a 5/8" rebar and cap iron pin set; 2) N11°18'41"W for a distance of 259.89 feet to a 5/8" rebar and cap iron pin found at the southern right-of-way of Foster Brothers Drive; thence turning and running along the southern right-of-way of Foster Brothers Drive the following seven courses: 1) along a curve to the right having a radius of 30.50 feet, a length of 47.91 feet, and being subtended by a chord bearing N33°41'19"E for a distance of 43.13 feet to a 5/8" rebar and cap iron pin set; 2) N78°41'19"E for a distance of 126.88 feet to a 5/8" rebar and cap iron pin set; 3) along a curve to the right having a radius of 1,219.88 feet, a length of 360.11 feet, and being subtended by a chord bearing N87°07'01"E for a distance of 358.81 feet to a 1/2" rebar iron pin found; 4) along a curve to the right having a radius of 277.00 feet, a length of 246.24 feet, and being subtended by a chord bearing S58°54'46"E for a distance of 238.21 feet to a 5/8" rebar found disturbed; 5) S33°23'59"E for a distance of 404.99 feet to a 5/8" rebar and cap iron pin set; 6) along a curve to the right having a radius of 30.50 feet, a length of 47.91 feet, and being subtended by a chord bearing S11°40'01"W for a distance of 43.13 feet to a 5/8" rebar and cap iron pin set; 7) S33°34'44"E for a distance of 51.84 feet to the place and **Point of Beginning**; said parcel containing 11.102 acres, all measurements being a little more or less.

Portion of TMS Nos.: 007997-04-001; 007997-04-002; and 006898-02-048

## **EXHIBIT B**

### **(Initial Investment to Date)**

Real Estate: \$8,373,465 (\$670,300 raw land and \$7,703,165 improvements)

Equipment: [\$4,700,000]