

**A G E N D A**  
**SPECIAL CALLED MEETING**  
**LEXINGTON COUNTY COUNCIL**

**Thursday, May 5, 2011**

**Second Floor - Dorothy K. Black Council Chambers - County Administration Building**  
**212 South Lake Drive, Lexington, South Carolina 29072**  
**Telephone - 803-785-8103 FAX - 803-785-8101**

**11:30 A.M. - COUNCIL CHAMBERS**

**Call to Order/Invocation**  
**Pledge of Allegiance**

**Ordinances**

- (1) Ordinance 11-04 - An Ordinance Authorizing (1) the Execution and Delivery of a Fee in Lieu of Tax and Incentive Agreement (the "Fee Agreement") Between Lexington County, South Carolina (the "County") and Michelin North America, Inc., Acting for Itself and Any Affiliates and any Other Project Sponsors, (Collectively, the "Company"), in Connection With the Expansion of Facilities in the County (the "Project"); (2) the County to Covenant in Such Fee Agreement to Accept Certain Negotiated Fees in Lieu of Ad Valorem Taxes With Respect to the Project; (3) Special Source Credits in Connection With the Project; (4) the Benefits of a Multi-County Industrial or Business Park to be Made Available to the Company and the Project; and (5) Other Matters Relating Thereto - 3<sup>rd</sup> and Final Reading .....A
- (2) Ordinance 11-08 - An Ordinance (1) to Amend Ordinance No. 95-12 as Amended by Subsequent Ordinances Relating to the Joint County Industrial Park of Lexington and Calhoun Counties so as to Enlarge the Park to Add Certain Property Owned by Michelin North America, Inc.; and (2) Approving and Authorizing Other Matters Related Thereto - 1<sup>st</sup> Reading ..... B
- (3) Ordinance 11-03 - An Ordinance Finding that the Irmo Fire District, South Carolina, May Issue a Not Exceeding \$3,000,000 General Obligation Bond and to Provide for the Publication of Notice of the Said Finding and Authorization - 3<sup>rd</sup> and Final Reading.....C

**OLD BUSINESS/NEW BUSINESS**

**EXECUTIVE SESSION/LEGAL BRIEFING**

**MATTERS REQUIRING A VOTE AS A RESULT OF EXECUTIVE SESSION**

**ADJOURNMENT**

## **ORDINANCE NO. 11-04**

**AN ORDINANCE AUTHORIZING (1) THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT (THE “FEE AGREEMENT”) BETWEEN LEXINGTON COUNTY, SOUTH CAROLINA (THE “COUNTY”) AND MICHELIN NORTH AMERICA, INC., ACTING FOR ITSELF AND ANY AFFILIATES AND ANY OTHER PROJECT SPONSORS, (COLLECTIVELY, THE “COMPANY”), IN CONNECTION WITH THE EXPANSION OF FACILITIES IN THE COUNTY (THE “PROJECT”); (2) THE COUNTY TO COVENANT IN SUCH FEE AGREEMENT TO ACCEPT CERTAIN NEGOTIATED FEES IN LIEU OF AD VALOREM TAXES WITH RESPECT TO THE PROJECT; (3) SPECIAL SOURCE CREDITS IN CONNECTION WITH THE PROJECT; (4) THE BENEFITS OF A MULTI-COUNTY INDUSTRIAL OR BUSINESS PARK TO BE MADE AVAILABLE TO THE COMPANY AND THE PROJECT; AND (5) OTHER MATTERS RELATING THERETO.**

**WHEREAS**, to induce companies to locate in the State of South Carolina (the “State”) and to encourage companies now located in the State to expand their investments and thus make use of and employ workers and other resources of the State, Lexington County, South Carolina (the “County”) is authorized by the Code of Laws of South Carolina 1976, as amended (the “Code”) and particularly Title 12, Chapter 44 thereof (the “Fee Act”), to enter into a fee agreement with companies meeting the requirements of the Fee Act which identifies certain property of such companies as economic development property, and the County is further authorized by Title 4, Chapter 1 of the Code (the “Multi-County Park Act” or, as to Sections 4-1-175 of the Multi-County Park Act and, by incorporation, Section 4-29-68 of the Code, the “Special Source Act”) and Article VIII, Section 13 of the Constitution of the State to designate properties as part of a multi-county industrial or business park (a “Multi-County Park”) and to use all or a portion of the payments-in-lieu-of-taxes resulting from such designation to pay, or reimburse such companies for paying, through the provision to such companies of special source revenue credits, the cost of infrastructure serving a project and of improved or unimproved real estate and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise (“Special Source Improvements”), all of which enhances the economic development of the County;

**WHEREAS**, pursuant to an Inducement Resolution for Project Blue dated February 8, 2011, and in order to induce Michelin North America, Inc., acting for itself, any affiliates and any other project sponsors (the “Company”), to make, or cause to be made, new or additional investment through the expansion of its facilities located in the County (the “Project”), the County agreed to enter into a fee agreement under the Fee Act with the Company whereby the County would, under certain circumstances, accept certain negotiated payments-in-lieu-of-taxes with respect to the Project and agreed to provide the Company and the Project with the benefits of certain special source revenue credits and to the inclusion and maintenance of the Project in a Multi-County Park;

**WHEREAS**, the Project is expected to provide significant economic benefits to the County, and in order to further induce the Company to locate the Project in the County, the County desires to enter into a Fee in Lieu of Tax and Incentive Agreement

(the “Fee Agreement”) with the Company in connection with the Project, which, amongst other things, establishes a negotiated payment-in-lieu-of-taxes (“Negotiated Payments-in-Lieu-of-Taxes”) arrangement and identifies the property comprising the Project as economic development property under the Fee Act, subject to the terms and conditions of the Fee Agreement and the provisions of the Fee Act, and which provides for certain special source revenue credits (“Special Source Credits”) to pay, or to reimburse the Company for payment of, the costs of certain Special Source Improvements related to the Project, all as set forth in greater detail in the Fee Agreement;

**WHEREAS**, the County Council of the County (the “County Council”) has caused to be prepared and presented to the County Council the form of the Fee Agreement between the County and the Company, which the County proposes to execute and deliver;

**WHEREAS**, the County has previously included a portion of the site on which the Project is or will be located within an existing Multi-County Park and, as further inducement to the Company, has determined to designate the Project, the remaining portion of such site, and any additional property upon which the Project is or will be located within a Multi-County Park and to maintain such designation with respect to the Project and the Project site as set forth in the Fee Agreement;

**WHEREAS**, it appears that the Fee Agreement now before this meeting is in appropriate form and is an appropriate instrument to be executed and delivered by the County for the purposes intended; and

**WHEREAS**, all such matters are to be undertaken in accordance with the terms and provisions of the Fee Agreement now before this meeting.

**NOW, THEREFORE, BE IT ORDAINED** by the County Council in meeting duly assembled as follows:

**Section 1.** Pursuant to the Fee Act and particularly Section 12-44-40(I) thereof, the County Council has previously made and hereby affirms and ratifies the following findings:

(a) The Project constitutes a “project” as said term is referred to and defined in Section 12-44-30 of the Fee Act;

(b) It is anticipated that the Project will benefit the general public welfare of the County by providing services, employment, recreation, or and other public benefits not otherwise adequately provided locally;

(c) The purposes to be accomplished by the Project are proper governmental and public purposes;

(d) The benefits of the Project to the public are greater than the costs to the public;

(e) Neither the Project nor any documents or agreements entered into by the County in connection therewith will give rise to any pecuniary liability of the County or incorporated municipality or to any charge against its general credit or taxing power; and

(f) Having evaluated the purposes to be accomplished by the Project as proper governmental and public purposes, the anticipated dollar amount and nature of the potential investment to be made, and the anticipated costs and benefits to the County, the County has determined that the Project will be properly classified as economic development property under the Fee Act, so long as such property meets the requirements of the Fee Act.

**Section 2.** In order to promote industry, develop trade and utilize the manpower, agricultural products and natural resources of the State, the form, terms and provisions of the Fee Agreement presented to this meeting and filed with the Clerk to County Council, including, without limitation, the Negotiated Payments-in-Lieu-of-Taxes arrangement and the Special Source Credits set forth therein, are hereby approved and all of the terms, provisions and conditions of the Fee Agreement are hereby incorporated herein by reference as if the Fee Agreement was set out in this Ordinance in its entirety. The Chair of County Council and the Clerk to County Council be and they are hereby authorized, empowered and directed to execute, acknowledge and deliver the Fee Agreement to the Company.

**Section 3.** The Fee Agreement is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall be not be materially adverse to the County or the Company and as shall be approved by the officials of the County executing the same, upon advice of counsel, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of Fee Agreement now before this meeting.

**Section 4.** The Chair of County Council and the County Administrator, for and on behalf of the County, are hereby each authorized and directed to do any and all things necessary to effect the execution and delivery of the Fee Agreement and the performance of all obligations of the County under and pursuant to the Fee Agreement, and to carry out the transactions contemplated thereby and by this Ordinance.

**Section 5.** The consummation of all transactions contemplated by the Fee Agreement is hereby approved.

**Section 6.** This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina.

**Section 7.** The provisions of this Ordinance are hereby declared to be separable and if any section, phrase 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, phrases and provisions hereunder.

**Section 8.** All orders, resolutions, ordinances and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed and this Ordinance shall take effect and be in full force from and after its passage and approval.

**[EXECUTION PAGE TO FOLLOW]**

**DONE, RATIFIED AND ADOPTED** this 5th day of May, 2011.

**LEXINGTON COUNTY, SOUTH CAROLINA**

---

James E. Kinard, Jr.  
Chair of Lexington County Council

ATTEST:

By: \_\_\_\_\_  
Diana W. Burnett  
Clerk to Lexington County Council

First Reading:     March 22, 2011  
Second Reading:   April 26, 2011  
Public Hearing:     April 12, 2011  
Third Reading:     May 5, 2011

EXECUTION COPY

**FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT**

**BETWEEN**

**LEXINGTON COUNTY, SOUTH CAROLINA**

**AND**

**MICHELIN NORTH AMERICA, INC.**

**DATED AS OF**

**MAY 5, 2011**

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## **FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT**

**THIS FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT** (“Fee Agreement”) is made and entered into as of May 5, 2011, by and between **LEXINGTON COUNTY, SOUTH CAROLINA** (the “County”), a body politic and corporate and a political subdivision of the State of South Carolina, acting by and through its County Council (the “County Council”) as governing body of the County, and **MICHELIN NORTH AMERICA, INC.**, a corporation organized and existing under the laws of the State of New York, acting for itself, any affiliates or other project sponsors (the “Company”).

### **WITNESSETH:**

**WHEREAS**, to induce companies to locate in the State of South Carolina (the “State”) and to encourage companies now located in the State to expand their investments and thus make use of and employ workers and other resources of the State, the County is authorized by the Code of Laws of South Carolina 1976, as amended (the “Code”) and particularly Title 12, Chapter 44 thereof (the “Fee Act”), to enter into a fee agreement with companies meeting the requirements of the Fee Act which identifies certain property of such companies as economic development property, and the County is further authorized by Title 4, Chapter 1 of the Code (the “Multi-County Park Act” or, as to Sections 4-1-175 of the Multi-County Park Act and, by incorporation, Section 4-29-68 of the Code, the “Special Source Act”) (the Multi-County Park and the Special Source Act, together with the Fee Act, hereinafter collectively referred to as the “Act”) and Article VIII, Section 13 of the Constitution of the State to designate properties as part of a multi-county industrial or business park (a “Multi-County Park”) and to use all or a portion of the payments-in-lieu-of-taxes resulting from such designation to pay, or reimburse such companies for paying, through the provision to such companies of special source revenue credits, the cost of infrastructure serving a project and of improved or unimproved real estate and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise (“Special Source Improvements”), all of which enhances the economic development of the County;

**WHEREAS**, pursuant to the Fee Act, the County finds that (a) it is anticipated that the Project (as defined herein) will benefit the general public welfare of the County by providing services, employment, recreation or other public benefits not otherwise adequately provided locally; (b) neither the Project nor any documents or agreements entered into by the County in connection therewith will give rise to any pecuniary liability of the County or incorporated municipality or to any charge against its general credit or taxing power; (c) the purposes to be accomplished by the Project are proper governmental and public purposes; and (d) the benefits of the Project to the public are greater than the costs to the public;

**WHEREAS**, pursuant to an Inducement Resolution for Project Blue dated February 8, 2011 (the “Inducement Resolution”), and in order to induce the Company to make, or cause to be made, new or additional investment through the expansion of its facilities located in the County, the County agreed to enter into a fee agreement under the Fee Act with the Company whereby

the County would, under certain circumstances, accept certain negotiated payments-in-lieu-of-taxes with respect to the Project and agreed to provide the Company and the Project with the benefits of certain Special Source Credits (as defined herein) and to the inclusion and maintenance of the Project in a Multi-County Park; and

**WHEREAS**, pursuant to an Ordinance adopted on May 5, 2011 (the “Ordinance”), the County Council, authorized the County to enter into this Fee Agreement with the Company, which, establishes, amongst other things, a negotiated payment-in-lieu-of-taxes arrangement and identifies the property comprising the Project as economic development property under the Fee Act, subject to the terms and conditions hereof and the provisions of the Fee Act, and which provides for Special Source Credits to pay, or to reimburse the Company for payment of, the costs of certain Special Source Improvements related to the Project, all as set forth in greater detail herein.

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

## **ARTICLE I**

### **RECAPITULATION AND DEFINITIONS**

**SECTION 1.1. *Statutorily Required Recapitulation.*** Pursuant to Section 12-44-55(B) of the Fee Act, the County and the Company agree to waive the recapitulation requirements of Section 12-44-55 of the Fee Act. If the Company should be required to retroactively comply with the recapitulation requirements of Section 12-44-55 of the Fee Act, then the County agrees to waive any and all penalties and fees of the County for the Company’s noncompliance.

**SECTION 1.2. *Rules of Construction; Use of Defined Terms.*** Unless the context clearly indicates otherwise, in this Fee Agreement words and terms defined in **Section 1.3** hereof are used with the meanings ascribed thereto. The definition of any document or agreement shall include any amendments, supplements, addenda, and modifications to that document, unless the context clearly indicates otherwise.

#### **SECTION 1.3. *Definitions.***

“**Act**” means, collectively, Title 12 Chapter 44 of the Code (the “Fee Act”), Title 4, Chapter 1 of the Code (the “Multi-County Park Act”) including, without limitation, Section 4-1-175 of the Multi-County Park Act and, by incorporation, Section 4-29-68 of the Code, (the “Special Source Act”).

“**Affiliate**” shall mean any corporation, limited liability company, partnership or other Person or entity which owns all or part of the Company or which is owned in whole or in part by the Company or by any partner, shareholder or owner of the Company, and any subsidiary, affiliate or other Person, individual, or entity who bears a relationship to the Company as described in Section 267(b) of the Internal Revenue Code.

**“Aggregate Payments-in-Lieu-of-Taxes”** means the payments to be made with respect to the Project as Negotiated Payments-in-Lieu-of-Taxes pursuant to **Section 5.1** hereof together with any payments-in-lieu-of-taxes to be made with respect to the Project pursuant to the Multi-County Park Act.

**“Applicable Governmental Body”** means each governmental entity within the State having jurisdiction over or the right to approve or disapprove any or all of the Documents.

**“Chair”** means the Chair of County Council (or the person or persons authorized to perform the duties thereof in the absence of the Chair).

**“Clerk”** means the Clerk of County Council (or the person or persons authorized to perform the duties thereof in the absence of the Clerk).

**“Code”** means Code of Laws of South Carolina 1976, as in effect on the date hereof, as the same may be amended from time to time.

**“Commencement Date”** means the last day of the property tax year during which Project property consisting of economic development property (as defined under the Fee Act) is first placed in service, except that this date must not be later than the last day of the property tax year which is three (3) years from the year in which the County and the Company have entered into this Agreement. The parties presently anticipate that the Commencement Date may be, but shall not be required to be, December 31, 2012.

**“Company”** means **Michelin North America, Inc.**, a New York corporation, and its successors and assigns.

**“Compliance Period”** shall mean the period beginning with the first day that economic development property (as defined in the Fee Act) is purchased or acquired for the Project, whether before or after the date of this Fee Agreement, and ending on the last day of the fifth property tax year following the Commencement Date.

**“Contractual Minimum Requirement”** shall mean investment in the Project of at least \$100,000,000 (without regard to depreciation, reassessment, or other diminution in value) within the Compliance Period.

**“County”** means **Lexington County, South Carolina**, and its successors and assigns.

**“County Administrator”** means the County Administrator for the County (or the person or persons authorized to perform the duties thereof in the absence of the County Administrator).

**“County Council”** means the County Council of the County.

**“Documents”** means the Inducement Resolution, the Ordinance, the Multi-County Park Agreement, the Ordinances enacted by the County Council to create the Multi-County Park and to add the Site and the Project to the Multi-County Park and this Fee Agreement.

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

**“Enhanced Investment Compliance Period”** shall mean the period provided in Section 12-44-30(13) of the Fee Act for qualification of the Project as an enhanced investment pursuant to Section 12-44-30(7) of the Fee Act, which begins with the first day that economic development property (as defined under the Fee Act) for the Project is purchased or acquired, whether before or after the date of this Fee Agreement, and ends on the last day of the eighth property tax year following the Commencement Date.

**“Enhanced Investment Minimum Requirement”** shall mean either (a) investment in the Project of at least \$150,000,000 (without regard to depreciation, reassessment, or other diminution in value) and creation of at least 125 new full-time jobs at the Project within the Enhanced Investment Compliance Period or (b) investment in the Project of at least \$400,000,000 (without regard to depreciation, reassessment, or other diminution in value) within the Enhanced Investment Compliance Period, all in accordance with Section 12-44-30(7) of the Fee Act.

**“Event of Default”** shall mean any Event of Default specified in **Section 9.1** of this Fee Agreement.

**“Fee Agreement”** means this Fee Agreement dated as of April 26, 2011, between the County and the Company.

**“Fee Term”** shall mean the duration of the Negotiated Payments-in-Lieu-of-Taxes arrangement with respect to each Stage of the Project as specified in **Section 5.3** hereof.

**“Inducement Resolution”** shall mean the Inducement Resolution for Project Blue of the County Council adopted on February 8, 2011, committing the County to enter into the Fee Agreement and provide the incentives set forth herein.

**“Investment Period”** shall initially be equal to the longer of (a) the Compliance Period or, (b) in the event that the Enhanced Investment Minimum Requirement is satisfied by the end of the Enhanced Investment Compliance Period, the Enhanced Investment Compliance Period; provided that if the Contractual Minimum Requirement is satisfied by the end of the Compliance Period, the Investment Period shall hereby be automatically extended to end on the last day of the tenth property tax year following the Commencement Date, subject to any further extension of such period as provided in **Section 3.2(b)** hereof.

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

**“Multi-County Park Agreement”** shall mean the Agreement for Development of Joint County Industrial Park dated December 11, 1995 between the County and Calhoun County as

amended to include the Project and as further amended, supplemented, or replaced from time to time.

**“Negotiated Payments-in-Lieu-of-Taxes”** means the payments to be made pursuant to **Section 5.1** of this Fee Agreement with respect to that portion of the Project consisting of economic development property (as defined under the Fee Act).

**“Ordinance”** means the Ordinance adopted by the County on May 5, 2011, authorizing this Fee Agreement.

**“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) all buildings structures, fixtures, and other improvements now or hereafter located at the Site including, without limitation, water, sewage treatment and disposal facilities, and air and other pollution control facilities; (ii) all machinery, apparatus, equipment, fixtures, office facilities, furnishings, pollution control equipment and other personal property now or hereafter located at the Site; (iii) portions of the Site at which such real property improvements or personal property are placed in service during the Investment Period, which land shall be identified by the Company by written notice to the County attaching a plat describing such land (but, excluding (a) any land now or hereafter subject to an existing payments-in-lieu-of-taxes arrangement between the Company and the County which land is now, or will hereafter be, titled in the name of the County pursuant to such arrangement and is further presently described in **Exhibit B** and (b) any land located under a presently existing building in which personal property comprising a portion of the Project is placed in service during the Investment Period); 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, and shall be deemed to exclude any real property improvements and personal property presently placed in service at the Site.

**“Replacement Property”** means any property placed in service after the Investment Period as a replacement for any economic development property (as defined under the Fee Act) theretofore forming a part of the Project and disposed of, or deemed disposed of, as provided in **Section 5.2** hereof.

**“Site”** means collectively sites at which Project property is located in the County which Site is further described in **Exhibit A** and shall include future sites in the County which shall be noted by the Company on schedules or supplements to **Exhibit A**; provided, that any requirement that the Company provide such schedules or supplements with respect to future sites may be satisfied by the Company’s identification of such sites on filings with DOR of a SCDOR PT-300, or such comparable property tax or fee in lieu of tax forms, including any schedules thereto (as such filings may be amended or supplemented from time to time).

“**Stage**” in respect of the Project shall mean each annual increment of Project property, if any, placed in service during each year of the Investment Period.

“**Special Source Credits**” mean the special source revenue credits described in **Section 5.6** hereof.

“**Special Source Improvements**” means, to the extent paid for, or caused to be paid for, by the Company, or used by the Company pursuant to any financing, lease, license or other access arrangement, any infrastructure serving the economic development of the County and any improved and unimproved real property, buildings, structural components of buildings, fixtures or other real property improvements, 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, all in accordance with the Special Source Act. For purposes of this Fee Agreement, Special Source Improvements shall be deemed to include, without limitation, all roadwork, water, sewer, drainage, power and utility facilities serving the Project, as well as any land comprising the Site, the buildings, fixtures and other real property improvements at the Site, and the personal property, including machinery and equipment, located at the Site, and any additions or improvements to any of the foregoing, whether paid for by the Company directly or pursuant to any lease, license or other access arrangement.

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

“**Statutory Minimum Requirement**” shall mean investment in the Project of at least \$2,500,000 (without regarding to depreciation, reassessment, or other diminution in value) within the Compliance Period, in accordance with Section 12-44-30(14) of the Fee Act.

**SECTION 1.4. Internal References.** Any reference to any agreement or document in this Article I or otherwise in this Fee Agreement shall be deemed to include any and all amendments, supplements, addenda, and modifications to such agreement or document. References herein to Title, Chapters or Sections, except the references to Sections of this Fee Agreement or where the intent clearly requires otherwise, refer to Sections of the Code. The words “hereof”, “herein”, “hereunder”, and other words of similar impact refer to this Fee Agreement as a whole.

## **ARTICLE II**

### **LIMITATION OF LIABILITY; EXEMPTION FROM AD VALOREM TAXES**

**SECTION 2.1 Limitation of Liability.** Any obligation which the County may incur for the payment of money as a result of the transactions described in the Documents 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 the Documents.

**SECTION 2.2. *Exemption from Ad Valorem Taxes.*** The County and the Company acknowledge that pursuant to the Act, upon execution of this Fee Agreement, no part of the Project will be subject to *ad valorem* property taxation in the State, and that this factor, among others, is the basis upon which the Company has entered into this Fee Agreement.

### **ARTICLE III**

#### **REPRESENTATIONS, WARRANTIES AND COVENANTS**

**SECTION 3.1 *Representations and Warranties of the County.*** The County makes the following representations and warranties to the Company and covenants with the Company as follows:

(a) The County is a body politic and corporate and a political subdivision of the State and is authorized and empowered by the Act to execute the Documents to which it is a party and to fulfill its obligations described in the Documents. By proper action, the County Council has duly authorized the execution and delivery of the Documents to which the County is a party and has taken all such action as is necessary to permit the County to enter into and fully perform the transactions required of it under the Documents.

(b) Neither the execution and delivery of the Documents, nor the consummation and performance of the transactions described in the Documents, violate, conflict with or will result in a breach of any of the material terms, conditions or provisions of any agreement, restriction, law, rule, order or regulation to which the County is now a party or by which it is bound.

(c) There is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any judicial or administrative court or agency, public board or body, pending or threatened, against or affecting the County, wherein an unfavorable decision, ruling or finding may or would materially adversely affect the validity or enforceability of the Documents, the County's obligations hereunder, or the consummation of the transactions described in the Documents.

(d) Neither the existence of the County nor the rights of any members of County Council to their offices is being contested and none of the proceedings taken to authorize the execution, delivery and performance of such of the Documents as require execution, delivery and performance by the County has been repealed, revoked, amended or rescinded.

(e) All consents, authorizations and approvals required on the part of the County, State and all other Applicable Governmental Bodies in connection with the execution, delivery and performance by the County of such of the Documents as require execution, delivery and performance by the County have been obtained and remain in full force and effect as of the date hereof or will be obtained.

(f) The Project constitutes a "project" within the meaning of the Act.

(g) By due corporate action, the County has agreed that, subject to compliance with applicable provisions of the Fee Act, each item of real and personal property comprising the Project shall be considered economic development property (as defined under the Fee Act).

(h) The Documents to which the County is a party are (or, when executed, will be) legal, valid and binding obligations of the County enforceable against the County under present law in accordance with their respective terms, except as such terms may be limited by laws affecting creditors' rights generally.

**SECTION 3.2. *Covenants by the County.*** The County covenants with the Company as follows:

(a) The County agrees to do all things deemed reasonably necessary as requested by the Company in writing in connection with the Project including but not limited to the execution, delivery and performance of its obligations in the Documents and in accordance with the Act, all for the purposes of promoting industrial development, developing trade, and utilizing and employing the manpower and natural resources of the County and the State.

(b) To the extent permitted by law, the Company may request of the County, and the County may approve in its sole discretion, an extension of the Investment Period, beyond the extension of the Investment Period provided for in **Section 1.3** hereof, in accordance with and up to the limits permitted under Section 12-44-30(13) of the Fee Act. The grant of any such extension by the County may be approved by a resolution of County Council. Upon the granting of any such extension the County agrees to, at the Company's expense, cooperate with the Company in assisting the Company to file with the DOR a copy of such extension within thirty (30) days of the date of execution thereof by the County.

**SECTION 3.3. *Representations and Warranties of the Company.*** The Company makes the following representations and warranties to the County:

(a) The Company is a corporation authorized to transact business in the State. The Company has full corporate power to execute the Documents to which it is a party and to fulfill its obligations described in such Documents and, by proper corporate action, has authorized the execution and delivery of the Documents to which it is a party.

(b) Neither the execution and delivery of the Documents to which the Company is a party, nor the consummation and performance of the transactions described in such Documents violate, conflict with, or will, to its knowledge, result in a material breach of any of the material terms, conditions or provisions of any agreement, restriction, law, rule, order or regulation to which the Company is now a party or by which it is bound.

(c) There is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any judicial or administrative court or agency, public board or body, pending or threatened, against or affecting the Company wherein an unfavorable decision, ruling or finding would adversely and materially affect the consummation of the transactions described in the Documents to which the Company is a party.

(d) All consents, authorizations and approvals required on the part of the Company in connection with the execution, delivery, and performance by the Company of Documents to which the Company is a party and the transactions contemplated thereby and the acquisition, construction and installation of the Project have been obtained and remain in full force and effect or will be obtained.

(e) The Documents to which the Company is a party are (or, when executed, will be) legal, valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms, except as such terms may be limited by laws affecting creditors' rights generally.

## ARTICLE IV

### COMMENCEMENT AND COMPLETION OF THE PROJECT AND THE SPECIAL SOURCE IMPROVEMENTS

**SECTION 4.1. *The Project.*** The Company has acquired, constructed and/or installed or made plans for the acquisition, construction and/or installation of certain real property improvements and machinery, equipment, and other personal property which comprise a portion of the Project. The parties agree that Project property shall consist of such property and any additional real and personal property as may be identified by the Company, its Affiliates, or other third parties that have entered into any financing, lease, license or other access arrangement with the Company or any of its Affiliates with respect to Project property, in connection with annual filings with the DOR of a SCDOR PT-300, or comparable property tax or fee in lieu of tax forms, including any schedules thereto (as such filings may be amended or supplemented from time to time), for each year within the Investment Period and, with respect to Replacement Property, for each year thereafter during the term of this Fee Agreement.

Pursuant to the Fee Act, the Company and the County hereby agree that the property comprising the Project shall be economic development property (as defined under the Fee Act), so long as such property meets the requirements of the Fee Act.

Notwithstanding any other provision of this Fee Agreement, the Company may place property into service at any time under this Fee Agreement, but such property may only qualify as economic development property (as defined under the Fee Act) if it is placed in service during the Investment Period, including any additional extension period, or is Replacement Property.

All investment in the Project by the Company, by any of its Affiliates, and by any third party to the extent that the Company or any of its Affiliates utilizes the property funded by such third party pursuant to any financing, lease, license, or other access arrangement shall, to the extent permitted by law, count toward any investment requirement or threshold specified in this Fee Agreement including, without limitation, the Enhanced Investment Minimum Requirement, the Contractual Minimum Requirement, the Statutory Minimum Requirement, and the investment thresholds set forth in **Section 5.6** hereof in connection with the Special Source Credits. Any such Affiliate or third party shall hereby be entitled, to the extent permitted by the Fee Act, to all rights and benefits set forth in this Fee Agreement including, without limitation,

the Negotiated Payments-in-Lieu-of-Taxes arrangement specified in **Section 5.1** hereof (but excluding the benefits of the Special Source Credits arrangement specified in **Section 5.6** hereof) and shall be bound by all of the terms and provisions of this Fee Agreement related thereto, all with respect to each such entity's portion of the Project. The Company shall notify DOR in writing of all such entities to benefit from the Negotiated Payments-in-Lieu-of-Taxes arrangement in accordance with Section 12-44-130(B) of the Fee Act. Any other entity to whom the Company intends to extend the benefits of the Negotiated Payments-in-Lieu-of-Taxes arrangement may, at the request of the Company, be approved by a resolution passed by the County Council, in its sole discretion.

The parties acknowledge that certain real and personal property located at the Site is subject to an existing payments-in-lieu-of-taxes arrangement pursuant to that certain Lease Agreement dated as of December 1, 1996, between the County and the Company, as amended, modified, or supplemented through the date hereof (the "Prior Agreement"). In the interest of clarity, the County consents to the following provisions regarding allocation of property between the Prior Agreement and this Fee Agreement:

(a) all real and personal property placed in service at the Site on or before December 31, 2011 shall be allocated to the Prior Agreement; and

(b) all real and personal property placed in service at the Site after December 31, 2011, except such property the Company deems to be replacement property under the Prior Agreement, shall be allocated to this Fee Agreement.

**SECTION 4.2. Diligent Completion.** The Company agrees to use its reasonable efforts to cause the acquisition, construction and installation of the Project to be completed; however, notwithstanding anything contained in this Fee Agreement to the contrary, the Company shall not be obligated to complete, or cause the completion of, the acquisition, construction, and installation of the Project and may terminate this Fee Agreement with respect to all or a portion of the Project as set forth in **Article X** herein.

**SECTION 4.3. Modifications to Project.** The Company may make, or cause to be made, from time to time any additions, modifications or improvements to the Project that it may deem desirable for its business purposes.

**SECTION 4.4. Special Source Improvements.** The Company agrees to provide, or cause to be provided, the funding for the designing, acquiring, constructing, improving, or expanding of Special Source Improvements related to the establishment of the Project.

**SECTION 4.5. Reports, Filings.** In accordance with Section 12-44-90 of the Fee Act, the Company shall cause a copy of this Fee Agreement, as well as a copy of the completed Form PT-443 of DOR, to be filed with the County Auditor, the County Assessor, the County Treasurer and DOR within thirty (30) days after the date of execution and delivery hereof and shall also cause a copy of this Fee Agreement to be filed with the County Auditor and the County Assessor of Calhoun County. In addition, the Company shall provide the County Auditor, the County

Assessor, and the County Treasurer with a copy of all annual filings made by the Company to DOR pursuant to this Fee Agreement and the Fee Act.

## ARTICLE V

### NEGOTIATED PAYMENTS-IN-LIEU-OF-TAXES; DISPOSITION OF NEGOTIATED PAYMENTS-IN-LIEU-OF-TAXES; SPECIAL SOURCE CREDITS

**SECTION 5.1. *Negotiated Payments-in-Lieu-of-Taxes.*** The parties acknowledge that under Article X, Section 3 of the Constitution of the State, the Project is exempt from *ad valorem* property taxes. However, the Company shall be required to make, or cause to be made, Negotiated Payments-in-Lieu-of-Taxes with respect to the Project as provided in this **Section 5.1** hereof. In accordance with the Fee Act, and unless this Fee Agreement is sooner terminated, the Company shall make, or cause to be made, annual Negotiated Payments-in-Lieu-of-Taxes with respect to the Project, said payments being due and payable and subject to penalty assessments in the manner prescribed by the Fee Act. Such amounts shall be calculated and payable as follows:

(a) Subject to the provisions of **Section 5.4**, the County has agreed to accept, and the Company has agreed to make, or cause to be made, annual Negotiated Payments-in-Lieu-of-Taxes with respect to the Project in an amount equal to the property taxes that would be due with respect to such property, if it were taxable, but using (i) an assessment ratio of 4%; (ii) a millage rate which is fixed at **434.680** mills for years 1 through 20 of each 30-year payment period applicable to each Stage, as set forth in **Section 5.1(d)** hereof, and which millage rate shall be reset and fixed with respect to each Stage for years 21 through 30 of each 30-year payment period applicable to such Stage at the prevailing millage rate applicable to the Project for year 21 thereof; and (iii) the fair market value of such property which shall be determined in accordance with Section 12-44-50(A)(1)(c) of the Fee Act as follows:

- (i) for real property if such real property is constructed for the fee or is purchased in an arm's length transaction, by utilizing the original income tax basis for South Carolina income tax purposes without regard to depreciation, reassessment, or other diminution in value; provided, however, that the Company and the County may agree to hereafter amend this Agreement as to Project real property so as to determine the fair market value of any such real property in accordance with any other method permitted by the Fee Act; and
- (ii) for personal property, using the original income tax basis for South Carolina income tax purposes less depreciation, reassessment, or other diminution in value, allowable for property tax purposes, except that the Company is not entitled to extraordinary obsolescence.

(b) The Negotiated Payments-in-Lieu-of-Taxes shall be made on the basis that the Project property, if it were otherwise subject to *ad valorem* property taxes, would be allowed all applicable exemptions from those taxes, except for the exemptions allowed under Section 3(g) of Article X of the South Carolina Constitution and Section 12-37-220(B)(32) and (34) of the Code.

(c) The Company shall make, or cause to be made, Negotiated Payments-in-Lieu-of-Taxes for each year during the term hereof beginning with the property tax year following the year Project property consisting of economic development property (as defined under the Fee Act) is first placed in service. The Negotiated Payments-in-Lieu-of-Taxes shall be made to the County Treasurer on the due dates which would otherwise be applicable for *ad valorem* property taxes for the Project, with the first payment being due on the first date following the delivery of this Fee Agreement when, but for this Fee Agreement, such taxes would have been paid with respect to the Project.

(d) Any economic development property (as defined under the Fee Act) placed in service as part of the Project during the Investment Period shall be included in the calculation of payments pursuant to paragraphs (a), (b) and (c), above, for a period not exceeding thirty (30) years following the year in which such property was placed in service. Pursuant to and subject to the Fee Act: (i) Replacement Property shall be included (using its income tax basis) in the calculation of payments pursuant to paragraphs (a), (b) and (c), above, but only up to the original income tax basis of property which is being disposed of in the same property tax year; (ii) Replacement Property shall be deemed to replace the oldest property subject to the fee which is disposed of in the same property tax year that the Replacement Property is placed in service; (iii) more than one piece of property can replace a single piece of property; (iv) Replacement Property does not have to serve the same function as the Project property it is replacing; (v) to the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the Project property which it is replacing, the portion of such property allocable to the excess amount shall be subject to annual payments calculated as if the exemption for economic development property (as defined under the Fee Act) were not allowed; and (vi) Replacement Property is entitled to Negotiated Payments-in-Lieu-of-Taxes pursuant to this **Section 5.1** hereof for the remaining portion of the thirty-year payment period referred to in this **Section 5.1(d)** hereof applicable to the property which it is replacing.

**SECTION 5.2. *Disposal of Property; Replacement Property.***

(a) In any instance where the Company in its sole discretion determines that any item or items of property included in the Project have become, in whole or in part, inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company may remove such item (or such portion thereof as the Company shall determine) or items and sell, trade in, exchange or otherwise dispose of it or them (as a whole or in part) without any responsibility or accountability to the County therefor. The loss or removal from the Project of any property, or any portion thereof, as a result of fire or other casualty or by virtue of the exercise or threat of the power of condemnation or eminent domain shall be deemed to be a disposal of such property, or portion thereof, pursuant to this **Section 5.2**. Subject to the provisions of **Section 5.4** hereof with regard to the maintenance of certain investment levels, and this **Section 5.2** with respect to Replacement Property, the Negotiated Payments-in-Lieu-of-Taxes required by **Section 5.1** hereof shall be reduced by the amount thereof applicable to any property included in the Project, or part thereof, disposed of, or deemed disposed of, pursuant to this **Section 5.2**.

(b) The Company may, in its sole discretion, replace, renew or acquire and/or install other property in substitution for, any or all property or portions thereof disposed of, or deemed

disposed of, pursuant to **Section 5.2(a)** hereof. Any such property may, but need not, serve the same function, or be of the same utility or value, as the property being replaced.

**SECTION 5.3. *Fee Term.*** The applicable term of this Fee Agreement shall be measured for each Stage beginning from the last day of the property tax year in which such Stage of the Project is placed in service through the last day of the property tax year which is the twenty-ninth year following such year; provided, that the maximum term of this Fee Agreement shall not be more than thirty (30) years from the end of the last year of the Investment Period. This Fee Agreement shall terminate, as to the Negotiated Payments-in-Lieu-of-Taxes arrangement, with respect to the Project or any Stage or part thereof, upon the earlier to occur of (a) payment of the final installment of Negotiated Payments-in-Lieu-of-Taxes pursuant to **Section 5.1** hereof, or (b) exercise by the Company of its option to terminate pursuant to **Section 10.1** hereof.

**SECTION 5.4. *Failure to Achieve or Maintain Investment Requirements.***

(a) In the event that the Enhanced Investment Minimum Requirement is not satisfied by the end of the Enhanced Investment Compliance Period, but the Contractual Minimum Requirement is nevertheless satisfied by the end of the Compliance Period, then the Project shall continue to be eligible for the Negotiated Payments-in-Lieu-of-Taxes arrangement set forth in **Section 5.1** hereof, but with an applicable assessment ratio of 6%, retroactively and prospectively. In such event, within one hundred eighty (180) days of the end of the Enhanced Investment Compliance Period, the Company shall make, or cause to be made, payment to the County in an amount equal to the difference between the Negotiated Payments-in-Lieu-of-Taxes theretofore made and the amount of Negotiated Payments-in-Lieu-of-Taxes which would have otherwise been due in the case of an applicable assessment ratio equal to 6%.

(b) In the event that the Contractual Minimum Requirement is not satisfied by the end of the Compliance Period, then the Negotiated Payments-in-Lieu-of-Taxes shall revert retroactively to *ad valorem* property taxation and the County shall terminate this Fee Agreement; provided, however that notwithstanding the foregoing provisions of this **Section 5.4(b)**, as long as the Statutory Minimum Requirement is nevertheless satisfied by the end of the Compliance Period, upon request of the Company, the County may by resolution of the County Council, in its sole discretion, elect to not terminate this Fee Agreement and may approve the continued eligibility of the Project for the Negotiated Payments-in-Lieu-of-Taxes arrangement set forth in **Section 5.1** hereof with a 6% assessment ratio. In the event that the County terminates this Fee Agreement, within one hundred eighty (180) days of the end of the Compliance Period, the Company shall, if deemed due by the County, make, or cause to be made, payments to the County in an amount equal to the difference between the Negotiated Payments-in-Lieu-of-Taxes theretofore made and the amount of *ad valorem* property taxes which would otherwise have been due, subject to **Section 5.4(d)** hereof.

(c) In the event that the Enhanced Investment Minimum Requirement is satisfied by the end of the Enhanced Investment Compliance Period, but following the Enhanced Investment Compliance Period, investment in the Project, without regard to depreciation, reassessment, or

other diminution in value, falls below the lowest investment level set forth in the Enhanced Investment Minimum Requirement by which the Project has qualified as an enhanced investment pursuant to Section 12-44-30(7) of the Fee Act, so long as investment in the Project, without regard to depreciation, reassessment, or other diminution in value, maintains the investment level set forth in the Contractual Minimum Requirement, or such lower level as may be agreed to by the County, then the Project shall continue to be eligible for the Negotiated Payments-in-Lieu-of-Taxes arrangement set forth in **Section 5.1** hereof, but with an applicable assessment ratio of 6%, prospectively. In the event that the Enhanced Investment Minimum Requirement is not satisfied by the end of the Enhanced Investment Compliance Period, but the Project nevertheless continues to be eligible for the Negotiated Payments-in-Lieu-of-Taxes arrangement pursuant to **Section 5.4** hereof, if following the Compliance Period, investment in the Project, without regard to depreciation, reassessment, or other diminution in value, falls below the investment level set forth in the Contractual Minimum Requirement, or such lower level as may be agreed to by the County, then the Project shall prospectively be subject to *ad valorem* property taxation or payments-in-lieu-of-taxes pursuant to the Multi-County Park Act, as the case may be, subject to **Section 5.4(d)** hereof.

(d) In the event that the Company is required to make, or to cause to be made, any differential payment to the County or is no longer eligible for Negotiated Payments-in-Lieu-of-Taxes, pursuant to **paragraphs (b), or (c) of Section 5.4** hereof, in calculating any such differential payment or prospective *ad valorem* property tax or payments-in-lieu-of-taxes pursuant to the Multi-County Park Act due from the Company, the Company shall be entitled: (1) to enjoy the five-year exemption from *ad valorem* property taxes (or fees in lieu of property taxes) provided by Article X, Section 3 of the Constitution of the State, and any other property tax exemption that would have been available to the Company; (2) to enjoy all allowable depreciation; and (3) to receive all other tax credits which would be due if the Company were obligated to pay *ad valorem* property taxes hereunder or under the Fee Act.

(e) Notwithstanding anything herein to the contrary, including without limitation the provisions of **Section 9.2** hereof, the remedies stated in this **Section 5.4** hereof shall be the County's sole remedies for failure to meet any required investment, or, if applicable, job creation, level hereunder or under the Fee Act.

**SECTION 5.5. Multi-County Park Designation.** The County represents that Parcel 1 of the Site is presently included in a Multi-County Park. The County agrees to include, if not already included, and to maintain, the Project and the Site in a Multi-County Park, pursuant to Section 13 of Article VIII of the Constitution of the State and the Multi-County Park Act, on terms which provide any additional job tax credits afforded by the laws of the State for projects located within multi-county industrial or business parks for all jobs created at the Site and the Project during the Investment Period and which facilitate the Special Source Credits, and to undertake and execute those procedures, instruments, ordinances, resolutions and documents as may be reasonably required to accomplish same.

**SECTION 5.6. Special Source Credits.** As reimbursement for investment in Special Source Improvements related to the Project, and subject to the requirements of the Special

Source Act, the County agrees to provide to the Company for each \$100,000,000 increment of investment in the Project during the Investment Period (up to a maximum cumulative investment of \$400,000,000), without regard to depreciation, reassessment, or other diminution in value, Special Source Credits in the amount of \$842,500 to be applied in equal installments of \$84,250 against each of the first ten (10) annual Aggregate Payments-in-Lieu-of-Taxes comprised in whole, or in part, of such payments-in-lieu-of-taxes due with respect to each such \$100,000,000 increment of investment in the Project (up to a maximum cumulative amount of Special Source Credits of \$3,370,000). The amount of the total annual Special Source Credits due to the Company shall be reflected on each annual bill sent by the County to the Company for such Aggregate Payments-in-Lieu-of-Taxes due from the Company with respect to the Project for each property tax year by reducing the amount of Aggregate Payments-in-Lieu-of-Taxes otherwise due by the total amount of the Special Source Credits to which the Company is entitled for such property tax year. In accordance with the Special Source Act, the Special Source Credits authorized herein shall not, in the aggregate, exceed the aggregate cost of Special Source Improvements funded in connection with the Project from time to time during the Investment Period by or on behalf of the Company. THE SPECIAL SOURCE CREDITS AUTHORIZED HEREIN SHALL NOT CONSTITUTE A GENERAL OBLIGATION OF THE COUNTY, BUT SHALL BE AN OBLIGATION PAYABLE SOLELY FROM THE AGGREGATE PAYMENTS-IN-LIEU-OF-TAXES RECEIVED BY THE COUNTY HEREUNDER WITH RESPECT TO THE PROJECT.

## ARTICLE VI

### PROPERTY TAX EXEMPTION AND ABATEMENT

**SECTION 6.1. *Protection of Tax Exempt Status of the Project.*** In order to insure that the Project is not and will not become subject to *ad valorem* property taxes under the laws of the State or any political subdivision thereof, the County and the Company covenant that:

(a) all right and privileges granted to either party under this Fee Agreement or any other Documents shall be exercised so that if any conflict between this Section and any other provision in any document shall arise, then in that case, this Section shall control;

(b) the County and the Company have not knowingly committed or permitted and will not knowingly commit or permit (as to any act over which either has control) any act which would cause the Project to be subject to *ad valorem* property taxes by the County or political subdivision of the State of South Carolina in which any part of the Project is located; and

(c) the Company will maintain the identity of the Project as a “project” in accordance with the Act.

## ARTICLE VII

### EFFECTIVE DATE

**SECTION 7.1. *Effective Date.*** This Fee Agreement shall become effective as of the date first written above.

## ARTICLE VIII

### SPECIAL COVENANTS

#### **SECTION 8.1. *Indemnification Covenants***

(a) The Company shall and agrees to hold the County and its County Council members, officers, agents and employees harmless from pecuniary liability in connection with those reasons set forth in (i) or (ii) of **Section 8.1(b)** hereof.

(b) Notwithstanding the fact that it is the intention of the parties that neither the County nor any of its members, officers, agents and employees shall incur any pecuniary liability to any third party (i) by reason of the terms of this Fee Agreement or the undertakings of the County required hereunder, or (ii) by reason of the performance of any act in connection with the entering into and performance of the transactions described in the Documents, if the County or any of its members, officers, agents or employees should incur any such pecuniary liability, then, in that event the Company shall indemnify and hold harmless the County and its members, officers, agents and employees against all pecuniary claims by or on behalf of any Person, arising out of the same, and all reasonable costs and expenses, including reasonable attorney's fees, incurred in connection with defending against any such claim, and upon notice from the County, the Company at its own expense shall defend the County and its officers, agents and employees in any such action or proceeding.

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

**SECTION 8.2. *Assignment and Leasing.*** Subject to and pursuant to the Fee Act, including Section 12-44-120 thereof, with the County's consent, which shall not be unreasonably withheld, any or all of the Company's interest in the Project and/or this Fee Agreement may be transferred or assigned by the Company or any assignee to any other entity; provided, however, that such consent is not required in connection with financing-related transfers or any other transfers not requiring the consent of the County under the Fee Act. The County hereby expressly consents to any transfer or assignment by the Company of any or all of its interest in the Project and/or this Fee Agreement to any Affiliates of the Company and to any transfer or assignment of any or all of such interest among such entities. Except as otherwise required by

the Fee Act or this Fee Agreement, a transaction or an event of sale, assignment, leasing, transfer of an interest herein, disposal, or replacement of all or part of the Project shall not be a termination of this Fee Agreement in whole or in part or a basis for changing the fee payments due under Section 12-44-50 of the Fee Act. Notwithstanding any provision of this Section to the contrary, if and to the extent that the future consent of the County is required in connection with a transfer, assignment or other action referenced in this Section, the County hereby expressly agrees that, to the extent permitted by the Fee Act, such approval may be provided by a letter or other writing executed by the Chair or the County Administrator, and each of those two officials are hereby expressly authorized to provide such consent on behalf of the County. If, notwithstanding the foregoing sentence, the Company elects to obtain additional action by County Council indicating such consent, a resolution passed by County Council shall be sufficient to indicate such additional County Council consent.

**SECTION 8.3. *Commensurate Benefits.*** The parties acknowledge the intent of this Fee Agreement, in part, is to afford the Company the benefits specified in **Article V** in consideration of the Company's decision to locate the Project within the County, and this Fee Agreement has been entered into in reliance upon the enactment of the Fee Act and the County's compliance with the requirements thereof. In the event that a court of competent jurisdiction holds that the Fee Act is unconstitutional or this Fee Agreement, the Multi-County Agreement or agreements similar in nature to this Fee Agreement or the Multi-County Park Agreement are invalid or unenforceable in any material respect, or should the Company determine there is a reasonable doubt as to the validity or enforceability of this Fee Agreement in any material respect, then at the request of the Company, the County agrees to extend to the Company the intended benefits of this Fee Agreement and agrees, if requested, to enter into a lease purchase agreement or similar arrangement with the Company pursuant to Section 12-44-160 of the Fee Act, under Title 4, Chapter 29 or Title 4, Chapter 12 of the Code, as applicable, and to take such other steps as may be appropriate to extend to the Company the intended benefits of this Fee Agreement, including, without limitation, the provision of a special source revenue credit which is commensurate to the benefits which would otherwise accrue to the Company under the Fee Agreement.

**SECTION 8.4. *Confidentiality.*** The County acknowledges and understands that the Company may have and maintain at the Project certain confidential and proprietary information. The County agrees that neither the County nor any employee, agent or contractor of the County: (i) shall request or be entitled to receive any such confidential or proprietary information, or (ii) shall request or be entitled to inspect the Project or any property associated therewith. To the extent that the Company has heretofore provided confidential and proprietary information regarding the Project in the County which has been provided under written designation of the Company as "Confidential", the County shall not knowingly and intentionally disclose or otherwise divulge any such confidential or proprietary information to any other person, firm, governmental body or agency, or any other entity unless specifically required to do so by State law. In the event that the County is required to disclose any confidential or proprietary information obtained from the Company to any third party, the County agrees to provide the Company with maximum possible advance notice of such requirement before making such

disclosure, and to cooperate with any attempts by the Company to obtain judicial or other relief from such disclosure requirement, at the expense of the Company.

## ARTICLE IX

### EVENT OF DEFAULT AND REMEDIES

**SECTION 9.1. *Events of Default Defined.*** The occurrence of any one or more of the following events shall be an “Event of Default” under this Fee Agreement:

(a) If the Company shall fail to make, or cause to be made, any Negotiated Payments-in-Lieu-of-Taxes or any other amount required under this Fee Agreement and such failure shall continue for thirty (30) days after receiving written notice of default from the County; or

(b) If the Company shall fail to observe or perform any covenant, condition or agreement required herein to be observed or performed by the Company (other than as referred to in **Section 9.1(a)** hereof), and such failure shall continue for a period of thirty (30) days after written notice of default has been given to the Company by the County; provided if by reason of “force majeure” as hereinafter defined, the Company is unable in whole or in part to carry out any such covenant, condition or agreement or if it takes longer than thirty (30) days to cure such default and the Company is diligently attempting to cure such default, there shall be no Event of Default during such inability. The term “force majeure” as used herein shall mean circumstances not reasonably within the control of the parties, such as without limitation, acts of God, strikes, lockouts or other industrial disturbances; war; acts of public enemies; mobilization or military conscription on a large scale; order of any kind of the government of the United States or any State, or any civil or military authority other than the County Council or other County authority; insurrections; riots; landslides; earthquakes; fires; lightning; storms; droughts; floods; requisitions, confiscation, or commandeering of property; fuel restrictions; general shortages of transport, goods, or energy; or

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

Anything herein to the contrary notwithstanding, failure to meet any investment requirements set forth herein shall not be deemed to be an Event of Default under this Fee Agreement, but may terminate certain benefits hereunder or obligate the Company to make certain additional payments to the County, all as set forth in **Section 5.4** hereof.

**SECTION 9.2. *Remedies on Default.*** Whenever any Event of Default shall have happened and be subsisting, the County may (i) terminate this Fee Agreement by providing at least thirty (30) days written notice to the Company specifying the termination date; or (ii) take whatever action at law or in equity may appear legally required or necessary or desirable to collect the payments and other amounts then due or to enforce performance and observance of any obligation, agreement or covenant of the Company, under the Documents. Although the parties acknowledge that the Project 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 the remedies provided by general law (Title 12, Chapter 49 and Title 12, Chapter 51) and any act relating to the enforced collection of taxes. The County's right to receive Negotiated Payments-in-Lieu-of-Taxes shall have a first priority lien status pursuant to Section 12-44-90 of the Fee Act and Title 12, Chapters 4 and 54 of the Code. Upon the default of the County in the performance of any of its obligations hereunder, the Company may take whatever action at law or in equity as may appear necessary or desirable to enforce its rights under this Fee Agreement, including, without limitation, a suit for mandamus or specific performance.

Each right, power, and remedy of the County or the Company provided for in this Fee Agreement shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy provided for in this Fee 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 the Company of any one or more of the rights, powers, or remedies provided for in this Fee 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 the Company of any or all such other rights, powers, or remedies.

**SECTION 9.3. *No Additional Waiver Implied by One Waiver.*** In the event any warranty, covenant or agreement contained in this Fee Agreement should be breached by the Company or the County and thereafter waived by the other party to this Fee Agreement, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach.

## ARTICLE X

### OPTION TO TERMINATE

**SECTION 10.1. *Option to Terminate*** . From time to time (including without limitation any time during which there may be subsisting an Event of Default) and at any time upon at least 30 days notice, the Company may terminate this Fee Agreement with respect to the entire Project or any portion thereof. Upon termination of all or part of this Fee Agreement, the Company will become liable for *ad valorem* property taxes, or payments-in-lieu-of-taxes pursuant to the Multi-Count Park Act, as the case may be, on the Project or such portion thereof as is so terminated from inclusion in the Project, as well as for any amounts already due and owing under this Fee Agreement, which latter amounts, if any, shall be paid to the County with the next installment of Payments-in-Lieu-of-Taxes pursuant to **Section 5.1**, or, if the termination is of the entire Project, then within one hundred eighty (180) days of termination.

## ARTICLE XI

### MISCELLANEOUS

**SECTION 11.1. *Notices.*** All notices, approvals, consents, requests and other communications hereunder shall be in writing and may be delivered personally, or may be sent

by facsimile or certified mail, return receipt requested, to the following addresses, unless the parties are subsequently notified of any change of address in accordance with this **Section 11.1**:

If to the Company: Michelin North America, Inc.  
Attention: Vice President of Tax  
One Parkway South  
Greenville, SC 28615  
Facsimile: 864-458-4355

With A Copy To: Burnet R. Maybank, III  
Tushar V. Chikhliker  
Nexsen Pruet, LLC  
1230 Main Street, Suite 700 (29201)  
P. O. Drawer 2426  
Columbia, S.C. 29202-2426  
Facsimile: 803-253-8277

If to the County: Lexington County Council, South Carolina  
Attention: Clerk to Council  
212 South Lake Drive  
Lexington, SC 29072  
Facsimile: 803-785-8101

With A Copy To: Jeff M. Anderson  
Nicholson Davis Frawley Anderson & Ayer  
140 E. Main Street  
P.O. Box 489  
Lexington, SC 29071-0489  
Facsimile: 803-359-7478

Any notice shall be deemed to have been received as follows: (1) by personal delivery, upon receipt; (2) by facsimile, 24 hours after confirmed transmission or dispatch; and (3) by certified mail, 3 business days after delivery to the U.S. Postal authorities by the party serving notice.

**SECTION 11.2. *Binding Effect.*** This Fee Agreement shall inure to the benefit of and shall be binding upon the County and the Company and their respective successors and assigns.

**SECTION 11.3. *Invalidity and Severability.*** In the event that the Fee Act or the Negotiated Payments-in-Lieu-of-Taxes arrangement described in **Section 5.1** hereof is determined to be invalid or unenforceable in its entirety, the parties hereby agree that except as the final judicial decision may otherwise require, the Company shall be entitled to retain any benefits received under or pursuant to this Fee Agreement; otherwise, in the event any provision of this Fee Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, that decision shall not invalidate or render unenforceable any other provision of this

Fee Agreement, unless that decision destroys the basis for the transaction, in which event the parties shall in good faith attempt to preserve, to the maximum extent possible, the benefits provided and to be provided to the Company hereunder by either restructuring or reconstituting this Fee Agreement under any then applicable law, including but not limited to Chapter 29 of Title 4 and Chapter 12 of Title 4 of the Code.

**SECTION 11.4. *Payments Due on Saturday, Sunday and Holidays.*** Whenever any payment to be made hereunder shall be stated to be due on a Saturday, a Sunday or a holiday, such payment shall be made on the next business day.

**SECTION 11.5. *Fiscal Year; Property Tax Year.*** If the Company's fiscal year changes in the future so as to cause a change in the Company's property tax year, the timing of the requirements set forth in this Fee Agreement shall be revised accordingly, except that Negotiated Payments-in-Lieu-of-Taxes shall always be required to be made at the same time and subject to the same conditions, penalties, and enforcement, as with *ad valorem* property taxes.

**SECTION 11.6. *Amendments, Changes and Modifications.*** Except as otherwise provided in this Fee Agreement, this Fee Agreement may not be amended, changed, modified, altered or terminated without the written consent of the County and the Company. To the maximum extent allowed by law, any such County consent including, without limitation, any County consent specifically referred to in this Fee Agreement, may be provided by a resolution of County Council.

**SECTION 11.7. *Execution of Counterparts.*** This Fee Agreement may be executed in several counterparts, only one of which shall be an original; provided, however, that any action may be brought upon any counterpart of this Fee Agreement or any counterpart of any document that is attached to this Fee Agreement as an exhibit.

**SECTION 11.8. *Entire Understanding.*** This Fee Agreement expresses the entire understanding and all agreements of the parties hereto with each other, and neither party hereto has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth in this Fee Agreement or in certificates delivered in connection with the execution and delivery thereof.

**SECTION 11.9. *Law Governing Construction of Agreement.*** The laws of the State shall govern the construction of this Fee Agreement.

**SECTION 11.10. *Headings.*** The headings of the articles and sections of this Fee Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Fee Agreement.

**SECTION 11.11. *Further Assurance.*** From time to time the County agrees to execute and deliver to the Company such additional instruments and undertaking further proceedings as the Company may reasonably request to effectuate the purposes of this Fee Agreement.

[EXECUTION PAGE TO FOLLOW]

**IN WITNESS WHEREOF, LEXINGTON COUNTY, SOUTH CAROLINA, and the COMPANY**, each pursuant to due authority, has duly executed this Fee Agreement, all as of the date first above written.

**LEXINGTON COUNTY, SOUTH CAROLINA**

\_\_\_\_\_  
James E. Kinard, Jr.  
Chair of Lexington County Council

**ATTEST:**

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

**MICHELIN NORTH AMERICA, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT A**  
**SITE**  
**LEGAL DESCRIPTION**

**PARCEL 1:**

ALL that certain piece, parcel or lot of land situate, lying and being on the northern side of Two Notch Road (S.C. Road S-32-70) in the County of Lexington, State of South Carolina, containing 213.85 acres, more or less, as shown on plat of survey of property of Michelin Tire Corporation dated March 30, 1979, by John A. Simmons, R.L.S., and having, according to said plat, the following metes and bounds, to-wit:

BEGINNING at an iron pin in the center of the intersection of Two Notch Road (S.C. Road S-32-70) and Long's Pond Road (S.C. Road S-32-204) and running thence with the center of Long's Pond Road N. 1-18 W. 1,400 feet to a nail; thence continuing with the center of said road as follows: N. 2-33 W. 100 feet to a nail; N. 7-35 W. 100 feet to a nail, N. 13-36 W. 100 feet to a nail, N. 19-56 W. 100 feet to a nail, N. 25-42 W. 100 feet to a nail, N. 29-43 W. 65 feet to a nail, and N. 30-54 642.83 feet to a nail at the intersection of said road with the right-of-way of the Southern Railway Company; thence running with the right-of-way of said Southern Railway as follows: N. 65-03 E. 184.76 feet to an iron pin, N. 66-13 E. 200 feet to an iron pin; N. 67-13 E. 200 feet to an iron pin, N. 68-07 E. 200 feet to an iron pin, N. 68-56 E. 200 feet to an iron pin, N. 70-00 E. 200 feet to an iron pin, N. 71-03 E. 200 feet to an iron pin, N. 72-08 E. 141 feet to an iron pin, N. 72-31 E. 2,159.81 feet to an old concrete monument at the corner of property now or formerly belonging to Owens Industrial Products, Inc.; thence leaving said railroad right-of-way and running S. 55-36 E. 1,291.72 feet to an old iron pin; thence S. 48-12 W. 552.96 feet to an old iron pin; thence S. 25-26 E. 630.52 feet to a nail in the center of Two Notch Road; thence with the center of Two Notch Road as follows: S. 58-36 W 2,486.98 feet to a nail, S. 60-41 W. 100 Feet to a nail, S 64-21 W. 100 feet to a nail, S 66-56 W. 100 feet to a nail, S. 69-48 W. 135 feet to a nail, S. 70-47 W. 670 feet to a nail, S. 68-44 W. 200 feet to a nail, S. 66-00 W. 200 feet to a nail, and S. 64-03 W. 411-4 feet to a nail in the center of the intersection of Two Notch Road with Long's Pond Road, the point of beginning.

TMS#s 006400-02-001; 006400-02-018; 006400-02-019; 006400-02-020; 006400-02-022; 006400-02-024; 006400-02-025; 006400-02-026; 006400-02-027; 006400-02-028; 006400-02-036; 006400-02-039

**PARCEL 2:**

All that certain piece, parcel or tract of land, situate, lying and being on the northwestern side of Two Notch Road in the County of Lexington, State of South Carolina, containing 10.755 acres, more or less, and having according to plat of survey entitled, "ALTA/ACSM Land Title Survey for Michelin North America, Inc. and Fisher Tank Company" prepared by Freeland & Associates, Inc., dated September 24, 2008, last revised June 10, 2009 and recorded on June 17, 2009 in the Office of the Register of Deeds for Lexington County, South Carolina in Plat Book 13672 at Page 85, the following metes and bounds to wit: Beginning at an iron pin located on the northwestern right-of-way of SC Highway 70 (Two Notch Road 66'; right-of-way) and being the common corner of Owen Industrial Products, Inc. (Deed Book 18V, Page 340); thence along said

right-of-way S59°09'38"W for 853.10 feet to an iron pin; thence leaving said right-of-way along the common line of Michelin Tire Corp. (Deed Book 331, Page 274) N24°59'00"W for 598.01 feet to a concrete monument; thence N48°40'38"E for 552.78 feet to a concrete monument located on the common line of Owen Industrial Products, Inc.; thence along said line, S55°09'27" E for 240.50 feet to an iron pin; thence S51°18'36"E for 454.33 feet to an iron pin; thence S20°19'22"E for 51.53 feet to the point of beginning.

TMS# 006400-02-007

## **EXHIBIT B**

### **LEGAL DESCRIPTION**

All those certain pieces, parcels or lots of land situate, lying and being on the northern side of Two Notch Road (S.C. Road S.32-70) in the County of Lexington, State of South Carolina, as shown on plat of survey of property of Michelin Tire Corporation dated December 28, 1988, by John A. Simmons, R.L.S., and having, according to said plat, a common point of commencing, to-wit, a nail in the center of Two Notch Road (S.C. Road S.32-70) at a joint corner of property now or formerly of Fisher Tank Company and property of Michelin Tire Corporation (the "Point of Commencing"):

#### Building 235

Commencing at the Point of Commencing and proceeding thence with the center of Two Notch Road S. 58-36 W. a distance of 1087.50 feet; thence leaving said road and proceeding N. 31-24 W. 1389.78 feet to a point marking the POINT OF BEGINNING; thence S. 58-36 W. 340.00 feet to a point; thence N. 31-24 W. 359.00 feet to a point; thence N. 58-36 E. 340.00 feet to a point; thence S. 31-24 E. 359.00 feet to the point marking the POINT OF BEGINNING.

#### 42,000 Square Foot Parking Area

Commencing at the Point of Commencing and proceeding thence with the center of Two Notch Road S. 58-36 W. a distance of 1150.20 feet; thence leaving said road and proceeding N. 31-24 W. 931.00 feet to a point marking the POINT OF BEGINNING; thence S. 58-36 W. 150.00 feet to a point; thence N. 31-24 W. 280.00 feet to a point; thence N. 58-36 E. 150.00 feet to a point; thence S 31-24 E. 280.00 feet to the point marking the POINT OF BEGINNING.

#### 154,414 Square Foot Parking Area

Commencing at the Point of Commencing and proceeding thence with the center of Two Notch Road S. 58-36 W. a distance of 1568.50 feet; thence leaving said road and proceeding N. 31-24 W. 273.00 feet to a point marking the POINT OF BEGINNING, thence S. 58-36 W. 437.00 feet to a point; thence N. 31-24 W. 384.00 feet to a point; thence N. 58-36 E. 400.00 feet to a point; thence S. 31-24 E. 362.00 feet to a point; thence N. 58-36 E. 37.00 feet to a point; thence S. 31-24 E. 22.00 feet to the point marking the POINT OF BEGINNING.

#### Building 100

Commencing at the Point of Commencing and proceedings thence with the center of Two Notch Road S. 58-36 W. a distance of 2072.58 feet; thence leaving said road and proceeding N. 31-24 W. 103.17 feet to a point marking the point of beginning; thence S. 58-36 W. 135.50 feet to a point; thence N. 31-24 W. 65.00 feet to a point; thence N. 58-36 E. 135.50 feet to a point; thence S 31-24 E. 65.00 feet to the point marking the POINT OF BEGINNING.

TMS#s 006400-02-019; 006400-02-022; 006400-02-020; 006400-02-018

All those certain pieces, parcels or lots of land situate, lying and being on the northern side of Two Notch Road (S.C. Road S.32-70) in the County of Lexington, State of South Carolina, as shown on plat of survey of property of Michelin Corporation dated December 28, 1988, revised December 7, 1990, by John A. Simmons, R.L.S., and having according to said plat a common point of commencing, to-wit, a nail in the center of Two Notch Road (S.C. Road S.32-70) at a joint corner of property now or formerly of Fisher Tank Company and property of Michelin Tire Corporation (the "POINT OF COMMENCING"):

Building 645

Commencing at the point of commencing and proceeding thence with the center of Two Notch Road S. 58-36 W. 2076.58 feet; thence leaving said road and proceeding N. 31-24 W. 1536.25 feet to a point marking the POINT OF BEGINNING; thence S. 58-36 W. 252.0 feet to a point; thence N. 31-24 W. 141.00 feet to a point; thence N. 58-36 E. 252.00 feet to a point; thence S. 31-24 E. 13.25 feet to a point; thence N. 58-36 E. 80 feet to a point; thence S. 31-24 E. 14.13 feet to a point; thence S. 58-36 W. 80.0 feet to a point; thence S. 31-24 E. 113.62 feet a point, the POINT OF BEGINNING.

Building 643

Commencing at the point of commencing and proceeding thence with the center of Two Notch Road S. 58-36 W. 2076.58 feet to a point; thence leaving said road and proceeding N. 31-24 W. 1536.25 feet and S. 58-36 W. 252.2 feet to a point marking the POINT OF BEGINNING; thence S. 58-36 W. 156 feet to a point; thence N. 31-24 W. 118 feet to a point; thence N. 31-24 W. 23 feet to a point; thence N. 58-36 E. 156.0 feet to a point, thence S. 31-24 E. 141.00 feet to a point, the POINT OF BEGINNING.

Building 561

Commencing at the point of commencing and proceeding thence with the center of Two Notch Road S. 58-36 a distance of 2076. 58 feet to a point; thence leaving said road and proceeding N. 31-24 W. 1536.25 feet to a point; thence S. 58-36 W. 408.00 feet to a point marking the POINT OF BEGINNING; thence S. 58-36 W. 521 feet to a point; thence N. 31-24 W. 118.00 feet to a point; thence N. 58-36 E. 521.00 feet to a point, thence S. 31-24 E. 118.00 feet to a point, the POINT OF BEGINNING.

Building 523

Commencing at the point of commencing and proceeding thence with the center of Two Notch Road S. 58-36 W. 2076.58 feet to a point; thence leaving said road and proceeding N. 31-24 W. 1536.25 feet to a point; thence S. 58-36 W. 929.00 feet to a point marking the POINT OF BEGINNING; thence S. 58-36 W. 281.00 feet to a point; thence S. 31-24 E. 70.25 feet to a point; thence S. 58-36 W. 40 feet to a point; thence N. 31-24 W. 260.25 feet to point; thence No. 58-36

E. 321.00 feet to a point; thence S. 31-24 E. 72.0 feet to a point; thence S. 31-24 E. 118.00 feet to a point, the POINT OF BEGINNING.

TMS#s 006400-02-027; 006400-02-026; 006400-02-025; 006400-02-024

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ALL that piece, parcel or tract of land containing approximately 8.89 Acres, being a portion and within the boundaries of that certain tract of land lying on the northern side of Two Notch Road in Lexington County, South Carolina containing 213.85 Acres, owned by Michelin North America, Inc. (formerly Michelin Tire Corporation) shown and designated on a plat of survey prepared by John A. Simons, RLS, dated March 30, 1979, recorded in the Office of the Clerk of Court/RMC for said County in Plat Book 173-G at Page 38, said 8.89 Acre parcel being described as follows:

Commencing at a point in the center of the track of now or formerly Southern Railway, being the northeastern corner of that tract shown on P.B. 173-G Pg. 38 and running with the eastern boundary of Michelin tract S 55°36'28" E for a distance of 82.53 feet more or less to an existing concrete monument; thence continuing with the eastern boundary S 55°37'28" E for a distance of 203.59 feet more or less to a point; thence leaving boundary and running S 58°33'46" W for a distance of 666.16 feet more or less to a building corner which is the Point of Beginning (which is the terminus of the first course in D.B. 3904 Pg. 245); thence from the Point of Beginning running the following ten courses to-wit: S 31°26'14" E for distance of 295.40 feet to a point; thence S 58°33'46" W for a distance of 260.00 feet to a point; thence S 31°26'14" E for a distance of 111.42 feet to a point; thence N 58°33'46" E for a distance of 116.00 feet to a point; thence S 31°26'14" E for a distance of 408.09 feet to a point; thence S 58°33'46" W for distance of 62.67 feet to a point; thence S 31°26'14" E for a distance of 336.40 feet to a point (terminus of the 8<sup>th</sup> course in D.B. 3904 Pg. 245); thence S 58°33'46" W for distance of 266.33 feet to a point; thence N 31°26'14" W for a distance of 1151.31 feet to a point; thence N 58°33'46" E for a distance of 473.00 feet to the Point of Beginning. Contains 8.89 Acres more or less.

The foregoing description is based upon a Plat of Survey for Michelin North America, Inc. prepared by Freeland-Clinkscales & Associates, Inc. of N.C., dated October 30, 1998.

TMS# 006400-02-039

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All that piece, parcel or tract of land containing approximately 12.08 acres, being a portion and within the boundaries of that certain tract of land lying on the northern side of Two Notch Road in Lexington County, South Carolina, containing 213.85 acres, owned by Michelin North America, Inc. (formerly Michelin Tire Corporation) shown and designated on a plat of survey prepared by John A. Simmons, RLS, dated March 30, 1979, recorded in the Office of the Clerk of Court/RMC for said County in Plat Book 173-G at page 38, said 12.08 acre parcel being described as follows:

Beginning at a point located by commencing at the northeastern-most corner of the 213.85 acre tract described above in the center line of the track of the Southern Railway railroad and running

thence S. 55-36 E. 82.53 feet to an old concrete monument on the southern right of way of said railroad, thence S. 21-26 W. 306.00 feet to the Point of Beginning; thence from said Point of Beginning running twelve (12) new courses to-wit: S. 58-36-00 W. for 338.67 feet to a point; thence S. 31-24-00 E. for 295.00 feet to a point; thence S. 58-36-00 W. for 260.00 feet to a point; thence S. 31-24-00 E. for 111.67 feet to a point; thence N. 58-36-00 E. 116.00 feet to a point; thence S. 31-24-00 E. for 409.00 feet to point; thence S. 58-36-00 for 62.67 feet to a point; thence S. 31-24-00 E. for 334.00 feet to point; thence No. 58-36-00 E. for 307.33 feet to a point; thence N. 31-24-00 W. for 84.00 feet to a point; thence N. 58-36-00 E. for 238.00 feet to a point; thence N. 31-24-00 W. for 1065.67 feet to a point which is the point of Beginning.

The foregoing description is based upon a Compiled Plat for Michelin Tire Corporation prepared by Freeland-Clinkscales & Assoc. dated 9-25-96, based on a plat recorded in Plat Book 173G, page 38, and is not the result of a field survey.

TMS# 006400-02-036

**ORDINANCE NO. 11-08**

**AN ORDINANCE (1) TO AMEND ORDINANCE NO. 95-12 AS AMENDED BY SUBSEQUENT ORDINANCES RELATING TO THE JOINT COUNTY INDUSTRIAL PARK OF LEXINGTON AND CALHOUN COUNTIES SO AS TO ENLARGE THE PARK TO ADD CERTAIN PROPERTY OWNED BY MICHELIN NORTH AMERICA, INC.; AND (2) APPROVING AND AUTHORIZING OTHER MATTERS RELATED THERETO.**

**WHEREAS**, pursuant to Ordinance No. 95-12 enacted September 11, 1995, by Lexington County Council, Lexington County entered into an Agreement for Development of Joint County Industrial Park dated as of December 11, 1995, with Calhoun County (the “Original Agreement”), which Original Agreement has been amended through the date hereof, pursuant to the authority contained in subsequent ordinances enacted by Lexington County Council for Amendments to the Original Agreement (collectively referred to as the “Park Agreement”); and

**WHEREAS**, pursuant to Section 3 of the Park Agreement, the boundaries of the park created therein (the “Park”) may be enlarged pursuant to ordinances of the respective County Councils of Calhoun County and Lexington County; and

**WHEREAS**, it is now desired that the boundaries of the Park be enlarged; and

**WHEREAS**, the expansion of the Park shall include certain tracts of real estate located in Lexington County and described in the schedule attached to this Ordinance as Exhibit A (the “Additional Property”), which is presently owned by Michelin North America, Inc. (the “Company”) ; and

**WHEREAS**, pursuant to Ordinance No. 96-20, Lexington County Council approved the enlargement of the Park to include certain other real estate presently owned by, or leased to, the Company or one or more of its affiliates, which is located in Lexington County, which is described in the schedule attached to this Ordinance as Exhibit B (the “Prior Property”); and

**WHEREAS**, Calhoun County and Lexington County (collectively, the “Counties”) have determined that it is in the best interest of the Counties, and desire, to amend the Park Agreement to so enlarge the Park and to provide that the Park Agreement may not be terminated, without the written consent of the Company, prior to December 31, 2035, all as set forth in greater detail in the Amendment to Agreement for Development of Joint County Industrial Park (Michelin North America, Inc.) presented to this meeting.

**NOW, THEREFORE** be it ordained by Lexington County Council that:

1. The Park Agreement is hereby and shall be amended to include the Additional Property within the Park.

2. Lexington County hereby ratifies and confirms that the Prior Property was included within the Park pursuant to Ordinance No. 96-20 previously enacted by Lexington County Council and continues to be included in the Park.

3. The form, provisions, terms and conditions of the Amendment now before this meeting and filed with the Clerk to Lexington County Council be and they are hereby approved, and all of the provisions, terms and conditions thereof are hereby incorporated herein by reference as if the Amendment were set out in this Ordinance in its entirety.

4. The Amendment is 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 Lexington County thereunder and as shall be approved by the officials of Lexington County executing the same, upon advice of counsel to Lexington County, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of the Amendment now before this meeting.

5. The Chairman of Lexington County Council is hereby authorized, empowered, and directed to execute the Amendment in the name and on behalf of Lexington County; the Clerk to Lexington County Council is hereby authorized and directed to attest the same; and the Chairman of Lexington County Council is further authorized, empowered, and directed to deliver the Amendment to Calhoun County. The Chairman of Lexington County Council, and the Clerk to Lexington County Council, for and on behalf of Lexington 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 Lexington County under and pursuant to the Amendment, and to carry out the transactions contemplated thereby and by this Ordinance.

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

7. All orders, ordinances, resolutions, and parts thereof in conflict herewith are to the extent of such conflict hereby repealed. This Ordinance shall be effective after third and final reading.

*[Signature page follows]*

DONE in meeting duly assembled this \_\_\_\_ day of \_\_\_\_\_, 2011

**LEXINGTON COUNTY, SOUTH CAROLINA**

(SEAL)

By: \_\_\_\_\_  
James E. Kinard, Jr., Chairman of County Council  
Lexington County, South Carolina

ATTEST:

By: \_\_\_\_\_  
Diana W. Burnett, Clerk to County Council  
Lexington County, South Carolina

First Reading: May 5, 2011  
Second Reading: \_\_\_\_\_  
Public Hearing: \_\_\_\_\_  
Third Reading: \_\_\_\_\_



## EXHIBIT A

### LEGAL DESCRIPTION OF ADDITIONAL PROPERTY

All that certain piece, parcel or tract of land, situate, lying and being on the northwestern side of Two Notch Road in the County of Lexington, State of South Carolina, containing 10.755 acres, more or less, and having according to plat of survey entitled, "ALTA/ACSM Land Title Survey for Michelin North America, Inc. and Fisher Tank Company" prepared by Freeland & Associates, Inc., dated September 24, 2008, last revised June 10, 2009 and recorded on June 17, 2009 in the Office of the Register of Deeds for Lexington County, South Carolina in Plat Book 13672 at Page 85, the following metes and bounds to wit: Beginning at an iron pin located on the northwestern right-of-way of SC Highway 70 (Two Notch Road 66'; right-of-way) and being the common corner of Owen Industrial Products, Inc. (Deed Book 18V, Page 340); thence along said right-of-way S59°09'38"W for 853.10 feet to an iron pin; thence leaving said right-of-way along the common line of Michelin Tire Corp. (Deed Book 331, Page 274) N24°59'00"W for 598.01 feet to a concrete monument; thence N48°40'38"E for 552.78 feet to a concrete monument located on the common line of Owen Industrial Products, Inc.; thence along said line, S55°09'27" E for 240.50 feet to an iron pin; thence S51°18'36"E for 454.33 feet to an iron pin; thence S20°19'22"E for 51.53 feet to the point of beginning.

TMS# 006400-02-007

## EXHIBIT B

### LEGAL DESCRIPTION OF PRIOR PROPERTY

ALL that certain piece, parcel or lot of land situate, lying and being on the northern side of Two Notch Road (S.C. Road S-32-70) in the County of Lexington, State of South Carolina, containing 213.85 acres, more or less, as shown on plat of survey of property of Michelin Tire Corporation dated March 30, 1979, by John A. Simmons, R.L.S., and having, according to said plat, the following metes and bounds, to-wit:

BEGINNING at an iron pin in the center of the intersection of Two Notch Road (S.C. Road S-32-70) and Long's Pond Road (S.C. Road S-32-204) and running thence with the center of Long's Pond Road N. 1-18 W. 1,400 feet to a nail; thence continuing with the center of said road as follows: N. 2-33 W. 100 feet to a nail; N. 7-35 W. 100 feet to a nail, N. 13-36 W. 100 feet to a nail, N. 19-56 W. 100 feet to a nail, N. 25-42 W. 100 feet to a nail, N. 29-43 W. 65 feet to a nail, and N. 30-54 642.83 feet to a nail at the intersection of said road with the right-of-way of the Southern Railway Company; thence running with the right-of-way of said Southern Railway as follows: N. 65-03 E. 184.76 feet to an iron pin, N. 66-13 E. 200 feet to an iron pin; N. 67-13 E. 200 feet to an iron pin, N. 68-07 E. 200 feet to an iron pin, N. 68-56 E. 200 feet to an iron pin, N. 70-00 E. 200 feet to an iron pin, N. 71-03 E. 200 feet to an iron pin, N. 72-08 E. 141 feet to an iron pin, N. 72-31 E. 2,159.81 feet to an old concrete monument at the corner of property now or formerly belonging to Owens Industrial Products, Inc.; thence leaving said railroad right-of-way and running S. 55-36 E. 1,291.72 feet to an old iron pin; thence S. 48-12 W. 552.96 feet to an old iron pin; thence S. 25-26 E. 630.52 feet to a nail in the center of Two Notch Road; thence with the center of Two Notch Road as follows: S. 58-36 W. 2,486.98 feet to a nail, S. 60-41 W. 100 Feet to a nail, S. 64-21 W. 100 feet to a nail, S. 66-56 W. 100 feet to a nail, S. 69-48 W. 135 feet to a nail, S. 70-47 W. 670 feet to a nail, S. 68-44 W. 200 feet to a nail, S. 66-00 W. 200 feet to a nail, and S. 64-03 W. 411-4 feet to a nail in the center of the intersection of Two Notch Road with Long's Pond Road, the point of beginning.

TMS#s 006400-02-001; 006400-02-018; 006400-02-019; 006400-02-020; 006400-02-022; 006400-02-024; 006400-02-025; 006400-02-026; 006400-02-027; 006400-02-028; 006400-02-036; 006400-02-039

STATE OF SOUTH CAROLINA	)	AMENDMENT TO
	)	AGREEMENT FOR DEVELOPMENT
COUNTY OF LEXINGTON	)	OF JOINT COUNTY INDUSTRIAL PARK
COUNTY OF CALHOUN	)	(MICHELIN NORTH AMERICA, INC.)

This Amendment to Agreement for Development of Joint County Industrial Park (the "Amendment") is made and entered into by and between Calhoun County, South Carolina ("Calhoun County") and Lexington County, South Carolina ("Lexington County"), each a body politic and corporate and political subdivision of the State of South Carolina (collectively the "Counties"), and is to be effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

WITNESSETH:

WHEREAS, under the authority granted to the Counties pursuant to Article VIII, Section 13(D) of the Constitution of the State of South Carolina and Section 4-1-170 of the Code of Laws of South Carolina 1976, as amended, and pursuant to that certain Agreement for Development of Joint County Industrial Park (as amended or modified through the date hereof, the "Park Agreement") entered into by the Counties as of December 11, 1995, where the Counties agreed to develop a multi-county industrial or business park (the "Park"), a portion of which is located in Lexington County as described on Exhibit A to the Park Agreement (the "Lexington Property") and a portion of which is located in Calhoun County as described on Exhibit B to the Park Agreement (the "Calhoun Property"); and

WHEREAS, the Counties have determined that it is in the best interest of the Counties to enlarge the boundaries of the Park as authorized by Section 3 of the Park Agreement and the Counties desire to amend the Agreement to enlarge the boundaries of the Park to include certain real estate which is located in Lexington County and described on Exhibit A hereto (the "Additional Property"), which is presently owned by Michelin North America, Inc. (the "Company"), and to provide that the Park Agreement may not be terminated without the written consent of the Company, all as set forth in greater detail herein; and

WHEREAS, Calhoun County and Lexington County have, respectively, authorized the execution and delivery of this Amendment by Calhoun County Council Ordinance No. \_\_\_\_\_ enacted on \_\_\_\_\_, 2011 and Lexington County Council Ordinance No. \_\_\_\_ enacted on \_\_\_\_\_, 2011.

NOW THEREFORE, in consideration of the mutual agreement, representations and benefits contained in this Amendment and for other good and valuable consideration, the adequacy of which is hereby acknowledged, the parties hereby agree as follows:

1. Exhibit A to the Park Agreement, which describes the boundaries of the Park located in Lexington County, is hereby amended by adding the Additional Property.

2. Unless otherwise consented to in writing by the Company, the Park Agreement shall not be terminated prior to December 31, 2035; provided that, if the Counties have agreed to a longer term, or a later date prior to which the Park Agreement may not be terminated, in connection with the addition of other properties to the Park, such longer term or later date shall apply.

3. Except as expressly amended or modified herein, the remaining terms and conditions of the Park Agreement shall remain in full force and effect.

In WITNESS WHEREOF, the duly authorized and appointed officers of Calhoun County, South Carolina and Lexington County, South Carolina have set their hand and seals hereto to be effective as of the above written date.

CALHOUN COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_

Name: David K. Summers, Jr.

Title: Chairman, Calhoun County Council

(SEAL)

ATTEST:

By: \_\_\_\_\_

Name: Donna R. Allread

Title: Clerk to Calhoun County Council

LEXINGTON COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_

Name: James E. Kinard, Jr.,

Title: Chairman, Lexington County Council

(SEAL)

ATTEST:

By: \_\_\_\_\_

Name: Diana W. Burnett

Title: Clerk to Lexington County Council

## **EXHIBIT A**

### **LEGAL DESCRIPTION OF ADDITIONAL PROPERTY**

All that certain piece, parcel or tract of land, situate, lying and being on the northwestern side of Two Notch Road in the County of Lexington, State of South Carolina, containing 10.755 acres, more or less, and having according to plat of survey entitled, "ALTA/ACSM Land Title Survey for Michelin North America, Inc. and Fisher Tank Company" prepared by Freeland & Associates, Inc., dated September 24, 2008, last revised June 10, 2009 and recorded on June 17, 2009 in the Office of the Register of Deeds for Lexington County, South Carolina in Plat Book 13672 at Page 85, the following metes and bounds to wit: Beginning at an iron pin located on the northwestern right-of-way of SC Highway 70 (Two Notch Road 66'; right-of-way) and being the common corner of Owen Industrial Products, Inc. (Deed Book 18V, Page 340); thence along said right-of-way S59°09'38"W for 853.10 feet to an iron pin; thence leaving said right-of-way along the common line of Michelin Tire Corp. (Deed Book 331, Page 274) N24°59'00"W for 598.01 feet to a concrete monument; thence N48°40'38"E for 552.78 feet to a concrete monument located on the common line of Owen Industrial Products, Inc.; thence along said line, S55°09'27" E for 240.50 feet to an iron pin; thence S51°18'36"E for 454.33 feet to an iron pin; thence S20°19'22"E for 51.53 feet to the point of beginning.

TMS# 006400-02-007

## ORDINANCE NO. 11-03

**FINDING THAT THE IRMO FIRE DISTRICT, SOUTH CAROLINA, MAY ISSUE A NOT EXCEEDING \$3,000,000 GENERAL OBLIGATION BOND AND TO PROVIDE FOR THE PUBLICATION OF NOTICE OF THE SAID FINDING AND AUTHORIZATION.**

**WHEREAS**, by action previously taken, the County Council of Lexington County, South Carolina, which is the governing body of Lexington County, South Carolina (hereinafter called the “*County Council*”), ordered that a public hearing on the question of the issuance of a not exceeding \$3,000,000 general obligation bond (the “*Bond*”) of the Irmo Fire District, South Carolina (the “*District*”), be held in the Lexington County Council Chambers on the second floor of the County Administration Building located at 212 South Lake Drive, Lexington, South Carolina 29072, on the 12th day of April, 2011, at 6:00 p.m., and notice of such hearing has been duly published once a week for three successive weeks in *The State*, a newspaper of general circulation in Lexington County; and

**WHEREAS**, the said public hearing has been duly held at the above time, date and place and said public hearing was conducted publicly and both proponents and opponents of the proposed action were given full opportunity to be heard and it is now in order for the County Council to proceed, after due deliberation, in accordance with the provisions of Act No. 1189, enacted at the 1974 Session of the South Carolina General Assembly and approved July 9, 1974, now codified as Article 5 of Chapter 11 of Title 6 (Sections 6-11-810 through 6-11-1050, inclusive) (hereinafter called the “*Enabling Act*”) of the Code of Laws of South Carolina, 1976, as amended, to make a finding as to whether or not the Bond should be issued; and

**NOW THEREFORE, BE IT ORDAINED**, by the County Council in a meeting duly assembled:

**Section 1.** It is found and determined that each statement of fact set forth in the preamble of this ordinance (this “*Ordinance*”) is in all respects true and correct.

**Section 2.** On the basis of the facts adduced at the public hearing held on April 12, 2011, it is found and determined that the Board of Fire Control of the Irmo Fire District, the governing body of the District (the “*Board of Fire Control*”), should be authorized to issue the Bond.

**Section 3.** The County Council finds that the Board of Fire Control should issue the Bond in the amount of not exceeding \$3,000,000 as a single issue or from time to time as several separate issues, as the District shall determine.

**Section 4.** The County Council hereby authorizes the Board of Fire Control to issue the Bond in the aggregate principal amount of not exceeding \$3,000,000 as a single issue or from time to time as several separate issues, as the Board of Fire Control shall determine, to defray: (A) the costs of purchasing (i) a ladder truck, (ii) two pumper trucks, (iii) equipment to outfit the foregoing fire trucks, and (iv) other firefighting equipment; (B) the costs of refurbishing certain firefighting equipment; (C) the cost of refunding a certain lease-purchase financing between United Financial of NC, Inc. and the District (the foregoing items listed in (A), (B) and (C), collectively, the “*Project*”); and (D) the costs of issuance of the Bond. The Board of Fire Control estimates that the cost of acquiring, designing, engineering, constructing, and equipping the Project and the costs of issuance of the Bond, will be an amount not exceeding \$3,000,000. For the payment of the principal of and interest on the Bond as it matures, and for the creation of such sinking fund as may be necessary therefor, the full faith, credit and taxing power of the District shall be irrevocably pledged, and there shall be levied annually a tax without limit on all taxable property within the area of the District sufficient to pay such principal of and interest on the Bond as it matures, and to create such sinking fund.

**Section 5.** The Chairman and other officers of the County Council are herewith authorized and empowered to take such further action as may be necessary to fully implement the action taken by this Ordinance.

**Section 6.** A certified copy of this Ordinance shall forthwith be transmitted to the Board of Fire Control to advise it of the action taken by the County Council, whereby the Board of Fire Control has been authorized to issue, pursuant to the provisions of the Enabling Act, the Bond in the aggregate principal amount of not exceeding \$3,000,000.

DONE AT LEXINGTON, SOUTH CAROLINA, this \_\_\_\_ day of \_\_\_\_\_, 2011.

**LEXINGTON COUNTY, SOUTH CAROLINA**

(SEAL)

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Chairman of County Council

Attest:

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Clerk to County Council

First Reading:        March 22, 2011  
Public Hearing:        April 12, 2011  
Second Reading:      April 26, 2011  
Third Reading: