

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

**Monday, August 15, 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**

**8:00 A.M. - COUNCIL CHAMBERS**

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

**Bids/Purchases/RFPs**

- (1) One (1) Storage Area Network Drive - Information Services.....A
- (2) Motorola Portable Radios - Sheriff's Department..... B

**Ordinances**

- (1) Ordinance 11-09 - An Ordinance Authorizing, Pursuant to Sections 4-1-170 and 4-1-175 of the S.C. Code of Laws, 1976, as Amended, the Execution and Delivery of a Special Source Revenue Credit Agreement Between Lexington County, SC and S2P, LLC; and Matters Relating Thereto - 3<sup>rd</sup> & Final Reading .....C
- (2) Ordinance 11-11 - An Ordinance Authorizing, Pursuant to Sections 4-1-170 and 4-1-175 of the S.C. Code of Laws, 1976, as Amended, the Execution and Delivery of a Special Source Revenue Credit Agreement Between Lexington County, SC and Van Buren Farms, LLC; and Matters Relating Thereto - 3<sup>rd</sup> & Final Reading.....D
- (3) Ordinance 11-12 - An Ordinance Authorizing, Pursuant to Sections 4-1-170 and 4-1-175 of the S.C. Code of Laws, 1976, as Amended, the Execution and Delivery of a Special Source Revenue Credit Agreement Between Lexington County, SC and Severt & Sons Produce Columbia, Inc.; and Matters Relating Thereto - 3<sup>rd</sup> & Final Reading ..... E
- (4) Ordinance 11-13 - An Ordinance Authorizing, Pursuant to Sections 4-1-170 and 4-1-175 of the S.C. Code of Laws, 1976, as Amended the Execution and Delivery of a Special Source Revenue Credit Agreement Between Lexington County, SC and North Fork Properties, LLC; and Matters Relating Thereto - 3<sup>rd</sup> & Final Reading ..... F
- (5) Ordinance 11-15 - An Ordinance Authorizing, Pursuant to Sections 4-1-170 and 4-1-175 of The S.C. Code of Laws, 1976, as Amended, the Execution and Delivery of a Special Source Revenue Credit Agreement Between Lexington County, SC and Farmers Market Properties, LLC; and Matters Relating Thereto - First Reading .....G

**OLD BUSINESS/NEW BUSINESS**

**EXECUTIVE SESSION/LEGAL BRIEFING**

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

**ADJOURNMENT**

# COUNTY OF LEXINGTON

## Procurement Service

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**MEMORANDUM**

(O) 785-8319

(F) 785-2240

**DATE:** August 5, 2011

**TO:** Katherine L. Hubbard  
County Administrator

**THROUGH:** Jeffrey A. Hyde  
Procurement Manager

**FROM:** Angela M. Seymour  
Procurement Officer

**SUBJECT:** (1) Storage Area Network Drive  
Bid No. B08045-2/21/08S  
Information Services

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In 2008, competitive bids were solicited for one (1) Storage Area Network Drive for Information Services. The County had received at that time two bids (see attached bid tabulation).

In the bid package, the Total Cost of Ownership (TCO) pricing was requested for estimated future storage needs over a five year period, to include operating expenses. The total estimated project cost for all Phases (I-III) is shown on the attached spreadsheet (\$463,295.02). The vendor was required to hold their prices for five (5) years. Phase I (\$65,313.00) of this project was originally approved by Council on March 25, 2008.

The TCO pricing informs us of potential future expenses based on current estimates of storage needs. It does not commit the County to any additional purchases beyond what is being requested for Phase II. All future purchases are subject to the annual appropriation process for future budget years.

Mike Ujcich, Chief Information Officer; Jim Schafer, Information Technology Manager; and Angela M. Seymour, Procurement Officer evaluated the bids. It is our recommendation to approve the additional partial purchase from Veristor Systems, Inc. for fiscal year 2011 - 2012 for a total cost, including applicable sales tax, of \$49,495.30.

Funds are appropriated in the following accounts:

<u>Account Number</u>	<u>Account Description</u>	<u>Account Balance</u>
1000-102100-5AC030	(1) SAN Storage Shelf	\$49,496.00

I concur with the above recommendation and further recommend that this purchase be placed on County Council's agenda for their next scheduled meeting on August 15, 2011.

copy: Larry Porth, Director of Finance/Assistant County Administrator  
Mike Ujcich, Chief Information Officer  
Jim Schafer, Information Technology Manager  
Rick Van Sant, Information Services System Analyst

## County of Lexington

### Bid Tabulation

**BID: B08045-02/21/08S**

#### Storage Area Network Device

Qty	Description	Veristor Systems, Inc.			Data Network Solutions**	
		Requested Council Amount	Remaining Amount	Total	Unit Price	Total
1	Storage Area Network Device Phase I	\$ 65,313.00	\$ 18,860.00	\$ 84,173.00		\$ 164,259.76
1	Storage Area Network Device Phase II (Optional)	\$ 59,385.00	\$ 79,185.00	\$ 138,570.00		\$ 45,811.50
1	Storage Area Network Device Phase III (Optional)			\$ 210,243.00		\$111,862.95**
	Subtotal			\$ 432,986.00		\$ 210,071.26
	Tax			\$ 30,309.02		\$ 14,704.99
	Total			\$ 463,295.02		\$ 224,776.25

Options						
1	Additional TB of SAS			\$ 7,593.90		\$ 4,836.00
4	Additional TB SATA	\$ 3,250.00		\$ 13,000.00	\$ 1,818.00	\$ 7,272.00
	Subtotal			\$ 20,593.90		\$ 12,108.00
	Tax			\$ 1,441.57		\$ 847.56
	Options Total			\$ 22,035.47		\$ 12,955.56

\*\*Data Network Solutions was deemed nonresponsive because they did not comply to bid specifications that were required by the County.

Bid Opened: February 21, 2008

Angela M. Seymour  
Procurement Officer

# COUNTY OF LEXINGTON

## Procurement Services

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### MEMORANDUM

(O) 785-8319

(F) 785-2240

**DATE:** July 29, 2011

**TO:** Katherine L. Hubbard  
County Administrator

**THROUGH:** Jeffrey A. Hyde  
Procurement Manager

**FROM:** Angela M. Seymour  
Procurement Officer

**SUBJECT: Motorola Portable Radios  
Sheriff's Department**

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We have received one (1) requisition from the Sheriff's Department for the purchase of fifty (50) APX 6000 portable radios and accessories. These items will be purchased from the SC State Contract # DSIT.2009.01.

Major George Brothers has reviewed and recommended this purchase. The total cost, including applicable sales tax, is \$239,103.81.

Funds are appropriated in the following account:

<u>Account Number</u>	<u>Account Description</u>	<u>Account Balance</u>
1000-151200-5AC216	(50) 800 MHz Radios (Replacement)	\$262,765.00

I concur with the above recommendation and further recommend that this purchase be placed on County Council's agenda for their next scheduled meeting on August 15, 2011.

copy: Larry Porth, Director of Finance/Assistant County Administrator  
Chief Keith Kirchner, Assistant Sheriff  
Colonel Alan Paavel, Sheriff's Department  
Major George Brothers, Sheriff's Department  
Sylvia Dillon, Sheriff's Department

**ORDINANCE**

**AN ORDINANCE AUTHORIZING PURSUANT TO SECTIONS 4-1-170 AND 4-1-175 SOUTH CAROLINA CODE OF LAWS, 1976, AS AMENDED, THE EXECUTION AND DELIVERY OF A SPECIAL SOURCE REVENUE CREDIT AGREEMENT BETWEEN LEXINGTON COUNTY, SOUTH CAROLINA AND S2P, LLC; AND MATTERS RELATING THERETO.**

**WHEREAS**, Lexington County (the “County” ), a public body corporate and politic under the laws of the State of South Carolina.

**WHEREAS, S2P, LLC** (the “Company”) has invested in the State Farm ers Market located in Lexington County.

**WHEREAS**, such investm ent was instrum ental in locating the State Farm ers Market in Lexington County.

**WHEREAS**, the County desires to enter into a Special S ource Revenue Credit Agreement (the “Agreem ent”) with the Com pany, which shall provide for a Spec ial Source Revenue credit pursuant to 4-1-175.

**WHEREAS**, Lexington County Council (the “County Council”) has caused to be prepared and presented to the County Council the Agreement between the County and the Company, which the County shall execute and deliver.

**WHEREAS**, the Com pany Proper ty is loca ted in a Join t Park cre ated with Calhoun County pursuant to S. C. Code Section 4-1-170.

**WHEREAS**, it appears that the docum ents a bove referred to are appropriate instruments to be executed and delivered or approved by the County for the purposes intended.

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

**Section 1.** The County Council has m ade and hereby m akes the following findings:

(a) The State Farm ers Market will provide a sig nificant eco nomic benefit to Lexington County.

(b) Neither the Project nor any documents or ag reements entered into by the County in connection therewith will g ive rise to any pecuniary liab ility of the County or incorporated municipality or to any charge against its general credit or taxing power; and

(c) Having evaluated the purposes to be accomplished by the Project as proper governmental and public purposes, the anticipated dollar amount and nature of the investment to be made, and the anticipated costs and benefits to the County, the County has determined that the Project is properly classified as economic development property.

**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 Agreement which is attached hereto and shall be executed and filed with the Clerk to County Council is hereby approved and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if the 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 Agreement to the Company.

**Section 3.** The Chair of County Council and 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 Agreement in a form substantially identical to the terms contemplated herein and the performance of all obligations of the County under and pursuant to the Agreement.

**Section 4.** This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina.

**Section 5.** 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 6.** 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.

**DONE, RATIFIED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 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: \_\_\_\_\_  
Second Reading: \_\_\_\_\_  
Public Hearing: \_\_\_\_\_  
Third Reading: \_\_\_\_\_

**SPECIAL SOURCE REVENUE CREDIT AGREEMENT**  
**BETWEEN LEXINGTON COUNTY, SOUTH CAROLINA**  
**AND**  
**S2P, LLC**  
**DATED AS OF**  
**AUGUST 15, 2011**

## **SPECIAL SOURCE REVENUE CREDIT AGREEMENT**

This Special Source Revenue Credit Agreement (the “Agreement”) is made and entered into as of August 15, 2011, by and between Lexington County, South Carolina (the “County”), a body Politic and political subdivision of the State of South Carolina, acting by and through its County Council as the governing body of the County and S2P, LLC (the “Company”).

**WHEREAS**, pursuant to S. C. Code Section 4-1-170, the subject property attached hereto as Exhibit A is located in a joint park with Calhoun County;

**WHEREAS**, the County is authorized by S.C. Code Section 4-1-175 to provide a credit against the revenues received from the fees collected from the company for the purpose outlined in 4-29-68.

Now, therefore, for an in consideration of the investment by the Company and the other mutual obligations and other value, the parties agree as follows:

### **ARTICLE I**

#### **RECAPITULATION AND DEFINITIONS**

**SECTION 1.1. Rules of Construction; Use of Defined Terms.** Unless the context clearly indicates otherwise, in this Agreement words and terms defined in Section 1.3 hereof are used with the meanings ascribed thereto. The definition of any document shall include any amendments to that document, unless the context clearly indicates otherwise.

From time to time herein, reference is made to the term taxes or *ad valorem* taxes. All or portions of the Project will be located in a Multi-County Industrial Park and are exempt from *ad valorem* taxation under and by virtue of the provisions of Paragraph D of Section 13 of Article VIII of the S.C. Constitution (the “MCIP Provision”). With respect to facilities located in a Multi-County Industrial Park, references to taxes or *ad valorem* taxes means the payments-in-lieu-of-taxes provided for in the MCIP Provision, and, where this Agreement refers to payments of taxes or Payments-in-Lieu-of-Taxes to County Treasurers, such references shall be construed to mean the payments to the counties participating in such a Multi-County Industrial Park.

#### **SECTION 1.2. Definitions.**

“**Act**” means Section 4-1-170 and 4-1-175 of the South Carolina Code, as in effect on the date hereof.

“**Company**” means **S2P, LLC**.

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

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

**“Documents”** means the Ordinance, this Agreement and the Multi-County Industrial and Business Park Agreement.

**“Investment”** means expenditures for all real property and improvements thereon. Investment does not include expenditures for personal property.

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

**“Special Source Revenue Credit Agreement”** means this Agreement dated as of August 15, 2011, between the County and the Company.

**“Multi-County Industrial and Business Park”** means an industrial and business park established for inclusion of the Project pursuant to the Multi-County Industrial and Business Park Agreement pursuant to Section 4-1-170 of the Code of Laws of South Carolina 1976, as amended, and Article VIII, Section 13, paragraph D of the Constitution of South Carolina.

**“Ordinance”** means the Ordinance adopted by the County on August 15, 2011, authorizing this Agreement.

**“Payments-in-Lieu-of-Taxes”** means the payments to be made by the Company pursuant to Section 5.1 of this Agreement.

**“Project”** shall mean the investment of both real property and improvements thereon as is described in the attached Exhibit A. Project does not include personal property.

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

**SECTION 1.3. Special Source Revenue Credit.** As reimbursement for investment in the Project and subject to the requirements of S.C. Code Section 4-1-175, the County agrees to provide to the Company a Special Source Revenue Credit of 33.33% against each of the first ten (10) annual aggregate fee payments for the Project. 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 and shall reduce the aggregate amount of payments in lieu of taxes by the amount of the Special Source Credits.

## ARTICLE II

### LIMITATION OF LIABILITY; INDUCEMENT

**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.

### **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 affect 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) By due corporate action, the County has agreed that, subject to compliance with applicable laws, each item of property comprising the Project shall be considered economic development property under the Act.

(g) 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. 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 South Carolina. The Company has full corporate power to execute the Documents to which it is a party and to fulfill its obligations described in the 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 the 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 affect the Company or the consummation of the transactions described in the Documents.

(d) All consents, authorizations and approvals required on the part of the Company in connection with the Documents 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.

(f) The Company has invested **\$1,886,400.00** in the Project.

## **ARTICLE IV**

### **COMMENCEMENT AND COMPLETION OF THE PROJECT**

**SECTION 4.1. The Project.** The Company has acquired real property, constructed and/or installed or made plans for the acquisition, construction and/or installation of certain improvements which comprise the Project.

## ARTICLE V

### PAYMENTS-IN-LIEU-OF-TAXES; DISPOSITION OF PAYMENTS-IN-LIEU-OF-TAXES

**SECTION 5.1. Payments-in-Lieu-of-Taxes.** The parties acknowledge that under Section 13, Article VIII of the South Carolina Constitution, the Project is exempt from ad valorem property taxes assuming an Agreement is signed. However, the Company shall be required to make the Payments-in-Lieu-of-Taxes with respect to the Project. In accordance with the Act, and unless this Agreement is sooner terminated, the Company shall make annual 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 Act.

**SECTION 5.2. Multi-County Industrial and Business Park.** The County represents that the Company property, attached hereto as Exhibit A, is located in a Joint County Park with Calhoun County, pursuant to S. C Code Section 4-1-170.

## ARTICLE VI

### SPECIAL COVENANTS

#### SECTION 6.1. Indemnification Covenants.

(a) The Company shall and agrees to hold the County and its County Council members, officers, agents and employees harmless from all pecuniary liability in connection with those reasons set forth in (i) or (ii) of Section 8.1(b) and to reimburse them for all reasonable expenses to which any of them might be subject due to the approval and entering into of the documents or the fulfillment of their obligations under this Agreement in the implementation of its terms and provisions.

(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 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, firm or Company, arising out of the same, and all costs and expenses incurred in connection with 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 and employees for expenses, claims,

losses or damages arising from the intentional or willful misconduct or negligence of the County or any of its individual officers, agents or employees.

**SECTION 6.2. Assignment.** There shall be no assignment of this Agreement without the written approval by County Council.

## ARTICLE VII

### EVENT OF DEFAULT AND REMEDIES

**SECTION 7.1. Events of Default Defined.** The occurrence of any one or more of the following events shall be an "Event of Default" under this Agreement:

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

(b) If the Company or the County shall fail to observe or perform any covenant, condition or agreement required herein to be observed or performed by the Company or the County (other than as referred to in Section 9.1(a) hereof), and such failure shall continue for a period of 30 days after written notice of default has been given to the Company by the County or to the County by the Company; provided if by reason of "force majeure" as hereinafter defined the Company or the County is unable in whole or in part to carry out any such covenant, condition or agreement or if it takes longer than 30 days to cure such default and the Company or the County 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; 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, or in any report, certificate, financial or other statement furnished in connection with the Documents or the transactions described in the Documents shall have been false or misleading in any material respect.

**SECTION 7.2. Remedies on Default.** Whenever any Event of Default shall have happened and be subsisting the County may 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 the Act relating to the enforced collection of taxes.

**SECTION 7.3. No Additional Waiver Implied by One Waiver.** In the event any warranty, covenant or agreement contained in this Agreement should be breached by the Company or the County and thereafter waived by the other party to this Agreement, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach.

## **ARTICLE VIII**

### **MISCELLANEOUS**

**SECTION 8.1. Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon the County and the Company and their respective successors and assigns.

**SECTION 8.2. Invalidity and Severability.** In the event that the Act or the Payments-in-Lieu-of-Taxes arrangement described in Section 5.1 hereof is determined to be invalid 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 Agreement; otherwise, in the event any provision of this 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 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 Agreement under any then applicable law, including but not limited to Chapter 20 of Title 4 and Chapter 12 of Title 4, Code of Laws of South Carolina, as amended.

**SECTION 8.3. Amendments, Changes and Modifications.** Except as otherwise provided in this Agreement, this 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 may be provided by a resolution of County Council.

**SECTION 8.4. Execution of Counterparts.** This Agreement may be executed in several counterparts, only one of which shall be an original for Uniform Commercial Code perfection purposes; provided, however, that any action may be brought upon any counterpart of this Agreement or any counterpart of any document that is attached to this Agreement as an exhibit.

**SECTION 8.5. Law Governing Construction of Agreement.** The laws of the State of South Carolina shall govern the construction of this Agreement.

**SECTION 8.6. Filings.** Whenever the County shall be required to file or produce any reports, notices or other documents during the Term, the Company shall in due time furnish to the County the completed form of such report, notice or other required documents together with a certification by the Company that such document is accurate.

**SECTION 8.7. Headings.** The headings of the articles and sections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Agreement.

**IN WITNESS WHEREOF, LEXINGTON COUNTY, SOUTH CAROLINA, and the COMPANY**, each pursuant to due authority, have duly executed this 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

S2P, LLC\_\_\_\_\_

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

\_\_\_\_\_

Its: \_\_\_\_\_

## **EXHIBIT A**

All that certain unimproved piece, parcel or lot of land, comprising 4.08 acres, more or less, situate, lying and being in the County of Lexington, State of South Carolina, and situated at the Southeast corner of the intersection of Little Chris Lane and Produce Lane within the State Farmers Market, said property being shown and designated as **“LOT 12 4.08 ACRES 321 LEXINGTON ASSOCIATES WHOLESALE VENDOR (1)”** upon that Bonded Plat of the State Farmers Market prepared for 321 Lexington Associates, LLC and the State of South Carolina by Associated E & S, Inc., dated June 15, 2009, revised August 6, 2009, and recorded in the Office of Register of Deeds for Lexington County as an oversized plat, in Record Book 13796 at page 21, to which reference is here craved for specific metes and bounds; be all measurements being a little more or less.

TMS#: **007997-06-012**

**ORDINANCE**

**AN ORDINANCE AUTHORIZING PURSUANT TO SECTIONS 4-1-170 AND 4-1-175 SOUTH CAROLINA CODE OF LAWS, 1976, AS AMENDED, THE EXECUTION AND DELIVERY OF A SPECIAL SOURCE REVENUE CREDIT AGREEMENT BETWEEN LEXINGTON COUNTY, SOUTH CAROLINA AND VAN BUREN FARMS, LLC; AND MATTERS RELATING THERETO.**

**WHEREAS**, Lexington County (the “County” ), a public body corporate and politic under the laws of the State of South Carolina.

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**WHEREAS**, such investm ent was instrum ental in locating the State Farm ers Market in Lexington County.

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**Section 1.** The County Council has m ade and hereby m akes the following findings:

(a) The State Farm ers Market will provide a sig nificant eco nomic benef it to Lexington County.

(b) Neither the Project nor any documents or ag reements entered into by the County in connection therewith will g ive rise to any pecuniary liab ility of the County or incorporated municipality or to any charge against its general credit or taxing power; and

(c) Having evaluated the purposes to be accomplished by the Project as proper governmental and public purposes, the anticipated dollar amount and nature of the investment to be made, and the anticipated costs and benefits to the County, the County has determined that the Project is properly classified as economic development property.

**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 Agreement which is attached hereto and shall be executed and filed with the Clerk to County Council is hereby approved and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if the 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 Agreement to the Company.

**Section 3.** The Chair of County Council and 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 Agreement in a form substantially identical to the terms contemplated herein and the performance of all obligations of the County under and pursuant to the Agreement.

**Section 4.** This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina.

**Section 5.** 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 6.** 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.

**DONE, RATIFIED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 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: \_\_\_\_\_  
Second Reading: \_\_\_\_\_  
Public Hearing: \_\_\_\_\_  
Third Reading: \_\_\_\_\_

**SPECIAL SOURCE REVENUE CREDIT AGREEMENT**  
**BETWEEN LEXINGTON COUNTY, SOUTH CAROLINA**  
**AND**  
**VAN BUREN FARMS, LLC**  
**DATED AS OF**  
**AUGUST 15, 2011**

## **SPECIAL SOURCE REVENUE CREDIT AGREEMENT**

This Special Source Revenue Credit Agreement (the “Agreement”) is made and entered into August 15, 2011, by and between Lexington County, South Carolina (the “County”), a body politic and political subdivision of the State of South Carolina, acting by and through its County Council as the governing body of the County and Van Buren Farms, LLC (the “Company”).

**WHEREAS**, pursuant to S. C. Code Section 4-1-170, the subject property attached hereto as Exhibit A is located in a joint park with Calhoun County;

**WHEREAS**, the County is authorized by S.C. Code Section 4-1-175 to provide a credit against the revenues received from the fees collected from the company for the purpose outlined in 4-29-68.

Now, therefore, for an in consideration of the investment by the Company and the other mutual obligations and other value, the parties agree as follows:

### **ARTICLE I**

#### **RECAPITULATION AND DEFINITIONS**

**SECTION 1.1. Rules of Construction; Use of Defined Terms.** Unless the context clearly indicates otherwise, in this Agreement words and terms defined in Section 1.3 hereof are used with the meanings ascribed thereto. The definition of any document shall include any amendments to that document, unless the context clearly indicates otherwise.

From time to time herein, reference is made to the term taxes or *ad valorem* taxes. All or portions of the Project will be located in a Multi-County Industrial Park and are exempt from *ad valorem* taxation under and by virtue of the provisions of Paragraph D of Section 13 of Article VIII of the S.C. Constitution (the “MCIP Provision”). With respect to facilities located in a Multi-County Industrial Park, references to taxes or *ad valorem* taxes means the payments-in-lieu-of-taxes provided for in the MCIP Provision, and, where this Agreement refers to payments of taxes or Payments-in-Lieu-of-Taxes to County Treasurers, such references shall be construed to mean the payments to the counties participating in such a Multi-County Industrial Park.

#### **SECTION 1.2. Definitions.**

“**Act**” means Section 4-1-170 and 4-1-175 of the South Carolina Code, as in effect on the date hereof.

“**Company**” means **Van Buren Farms, LLC**.

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

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

**“Documents”** means the Ordinance, this Agreement and the Multi-County Industrial and Business Park Agreement.

**“Investment”** means expenditures for all real property and improvements thereon. Investment does not include expenditures for personal property.

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

**“Special Source Revenue Credit Agreement”** means this Agreement dated as of August 15, 2011, between the County and the Company.

**“Multi-County Industrial and Business Park”** means an industrial and business park established for inclusion of the Project pursuant to the Multi-County Industrial and Business Park Agreement pursuant to Section 4-1-170 of the Code of Laws of South Carolina 1976, as amended, and Article VIII, Section 13, paragraph D of the Constitution of South Carolina.

**“Ordinance”** means the Ordinance adopted by the County on August 15, 2011, authorizing this Agreement.

**“Payments-in-Lieu-of-Taxes”** means the payments to be made by the Company pursuant to Section 5.1 of this Agreement.

**“Project”** shall mean the investment of both real property and improvements thereon as is described in the attached Exhibit A. Project does not include personal property.

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

**SECTION 1.3. Special Source Revenue Credit.** As reimbursement for investment in the Project and subject to the requirements of S.C. Code Section 4-1-175, the County agrees to provide to the Company a Special Source Revenue Credit of 33.33% against each of the first ten (10) annual aggregate fee payments for the Project. 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 and shall reduce the aggregate amount of payments in lieu of taxes by the amount of the Special Source Credits.

## ARTICLE II

### LIMITATION OF LIABILITY; INDUCEMENT

**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.

### **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 affect 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) By due corporate action, the County has agreed that, subject to compliance with applicable laws, each item of property comprising the Project shall be considered economic development property under the Act.

(g) 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. 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 South Carolina. The Company has full corporate power to execute the Documents to which it is a party and to fulfill its obligations described in the 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 the 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 affect the Company or the consummation of the transactions described in the Documents.

(d) All consents, authorizations and approvals required on the part of the Company in connection with the Documents 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.

(f) The Company has invested **\$1,366,680.00** in the Project.

## **ARTICLE IV**

### **COMMENCEMENT AND COMPLETION OF THE PROJECT**

**SECTION 4.1. The Project.** The Company has acquired real property, constructed and/or installed or made plans for the acquisition, construction and/or installation of certain improvements which comprise the Project.

## ARTICLE V

### PAYMENTS-IN-LIEU-OF-TAXES; DISPOSITION OF PAYMENTS-IN-LIEU-OF-TAXES

**SECTION 5.1. Payments-in-Lieu-of-Taxes.** The parties acknowledge that under Section 13, Article VIII of the South Carolina Constitution, the Project is exempt from ad valorem property taxes assuming an Agreement is signed. However, the Company shall be required to make the Payments-in-Lieu-of-Taxes with respect to the Project. In accordance with the Act, and unless this Agreement is sooner terminated, the Company shall make annual 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 Act.

**SECTION 5.2. Multi-County Industrial and Business Park.** The County represents that the Company property, attached hereto as Exhibit A, is located in a Joint County Park with Calhoun County, pursuant to S. C Code Section 4-1-170.

## ARTICLE VI

### SPECIAL COVENANTS

#### SECTION 6.1. Indemnification Covenants.

(a) The Company shall and agrees to hold the County and its County Council members, officers, agents and employees harmless from all pecuniary liability in connection with those reasons set forth in (i) or (ii) of Section 8.1(b) and to reimburse them for all reasonable expenses to which any of them might be subject due to the approval and entering into of the documents or the fulfillment of their obligations under this Agreement in the implementation of its terms and provisions.

(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 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, firm or Company, arising out of the same, and all costs and expenses incurred in connection with 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 and employees for expenses, claims,

losses or damages arising from the intentional or willful misconduct or negligence of the County or any of its individual officers, agents or employees.

**SECTION 6.2. Assignment.** There shall be no assignment of this Agreement without the written approval by County Council.

## ARTICLE VII

### EVENT OF DEFAULT AND REMEDIES

**SECTION 7.1. Events of Default Defined.** The occurrence of any one or more of the following events shall be an "Event of Default" under this Agreement:

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

(b) If the Company or the County shall fail to observe or perform any covenant, condition or agreement required herein to be observed or performed by the Company or the County (other than as referred to in Section 9.1(a) hereof), and such failure shall continue for a period of 30 days after written notice of default has been given to the Company by the County or to the County by the Company; provided if by reason of "force majeure" as hereinafter defined the Company or the County is unable in whole or in part to carry out any such covenant, condition or agreement or if it takes longer than 30 days to cure such default and the Company or the County 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; 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, or in any report, certificate, financial or other statement furnished in connection with the Documents or the transactions described in the Documents shall have been false or misleading in any material respect.

**SECTION 7.2. Remedies on Default.** Whenever any Event of Default shall have happened and be subsisting the County may 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 the Act relating to the enforced collection of taxes.

**SECTION 7.3. No Additional Waiver Implied by One Waiver.** In the event any warranty, covenant or agreement contained in this Agreement should be breached by the Company or the County and thereafter waived by the other party to this Agreement, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach.

## **ARTICLE VIII**

### **MISCELLANEOUS**

**SECTION 8.1. Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon the County and the Company and their respective successors and assigns.

**SECTION 8.2. Invalidity and Severability.** In the event that the Act or the Payments-in-Lieu-of-Taxes arrangement described in Section 5.1 hereof is determined to be invalid 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 Agreement; otherwise, in the event any provision of this 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 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 Agreement under any then applicable law, including but not limited to Chapter 20 of Title 4 and Chapter 12 of Title 4, Code of Laws of South Carolina, as amended.

**SECTION 8.3. Amendments, Changes and Modifications.** Except as otherwise provided in this Agreement, this 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 may be provided by a resolution of County Council.

**SECTION 8.4. Execution of Counterparts.** This Agreement may be executed in several counterparts, only one of which shall be an original for Uniform Commercial Code perfection purposes; provided, however, that any action may be brought upon any counterpart of this Agreement or any counterpart of any document that is attached to this Agreement as an exhibit.

**SECTION 8.5. Law Governing Construction of Agreement.** The laws of the State of South Carolina shall govern the construction of this Agreement.

**SECTION 8.6. Filings.** Whenever the County shall be required to file or produce any reports, notices or other documents during the Term, the Company shall in due time furnish to the County the completed form of such report, notice or other required documents together with a certification by the Company that such document is accurate.

**SECTION 8.7. Headings.** The headings of the articles and sections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Agreement.

**IN WITNESS WHEREOF, LEXINGTON COUNTY, SOUTH CAROLINA, and the COMPANY**, each pursuant to due authority, have duly executed this 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

Van Buren Farms, LLC

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

\_\_\_\_\_

Its: \_\_\_\_\_

## **EXHIBIT A**

All that certain unimproved piece, parcel or lot of land, comprising 4.08 acres, more or less, situate, lying and being in the County of Lexington, State of South Carolina, and situated on the North side of Ballard Court within the State Farmers Market, said property being shown and designated as **“LOT 13 4.08 ACRES 321 LEXINGTON ASSOCIATES WHOLESALE VENDOR (2)”** upon that Bonded Plat of the State Farmers Market prepared for 321 Lexington Associates, LLC and the State of South Carolina by Associated E & S, Inc., dated June 15, 2009, last revised August 6, 2009, and recorded in the Office of Register of Deeds for Lexington County as an oversized plat, in Record Book 13796 at page 121, to which reference is here craved for specific metes and bounds; be all measurements being a little more or less.

TMS#: **007997-06-013**

**ORDINANCE**

**AN ORDINANCE AUTHORIZING PURSUANT TO SECTIONS 4-1-170 AND 4-1-175 SOUTH CAROLINA CODE OF LAWS, 1976, AS AMENDED, THE EXECUTION AND DELIVERY OF A SPECIAL SOURCE REVENUE CREDIT AGREEMENT BETWEEN LEXINGTON COUNTY, SOUTH CAROLINA AND SEVERT & SONS PRODUCE COLUMBIA, INC.; AND MATTERS RELATING THERETO.**

**WHEREAS**, Lexington County (the “County” ), a public body corporate and politic under the laws of the State of South Carolina.

**WHEREAS, Severt & Sons Produce Columbia, Inc.** (the “Com pany”) has invested in the State Farmers Market located in Lexington County.

**WHEREAS**, such investm ent was instrum ental in locating the State Farm ers Market in Lexington County.

**WHEREAS**, the County desires to enter into a Special S ource Revenue Credit Agreement (the “Agreem ent”) with the Com pany, which shall provide for a Spec ial Source Revenue credit pursuant to 4-1-175.

**WHEREAS**, Lexington County Council (the “County Council”) has caused to be prepared and presented to the County Council the Agreement between the County and the Company, which the County shall execute and deliver.

**WHEREAS**, the Com pany Proper ty is loca ted in a Join t Park cre ated with Calhoun County pursuant to S. C. Code Section 4-1-170.

**WHEREAS**, it appears that the docum ents a bove referred to are appropriate instruments to be executed and delivered or approved by the County for the purposes intended.

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

**Section 1.** The County Council has m ade and hereby m akes the following findings:

(a) The State Farm ers Market will provide a sig nificant eco nomic benef it to Lexington County.

(b) Neither the Project nor any documents or ag reements entered into by the County in connection therewith will g ive rise to any pecuniary liab ility of the County or incorporated municipality or to any charge against its general credit or taxing power; and

(c) Having evaluated the purposes to be accomplished by the Project as proper governmental and public purposes, the anticipated dollar amount and nature of the investment to be made, and the anticipated costs and benefits to the County, the County has determined that the Project is properly classified as economic development property.

**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 Agreement which is attached hereto and shall be executed and filed with the Clerk to County Council is hereby approved and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if the 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 Agreement to the Company.

**Section 3.** The Chair of County Council and 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 Agreement in a form substantially identical to the terms contemplated herein and the performance of all obligations of the County under and pursuant to the Agreement.

**Section 4.** This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina.

**Section 5.** 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 6.** 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.

**DONE, RATIFIED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 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: \_\_\_\_\_  
Second Reading: \_\_\_\_\_  
Public Hearing: \_\_\_\_\_  
Third Reading: \_\_\_\_\_

**SPECIAL SOURCE REVENUE CREDIT AGREEMENT  
BETWEEN LEXINGTON COUNTY, SOUTH CAROLINA  
AND  
SEVERT & SONS PRODUCE COLUMBIA, INC.  
DATED AS OF  
AUGUST 15, 2011**

## **SPECIAL SOURCE REVENUE CREDIT AGREEMENT**

This Special Source Revenue Credit Agreement (the “Agreement”) is made and entered into as of August 15, 2011, by and between Lexington County, South Carolina (the “County”), a body Politic and political subdivision of the State of South Carolina, acting by and through its County Council as the governing body of the County and Severt & Sons Produce Columbia, Inc. (the “Company”).

**WHEREAS**, pursuant to S. C. Code Section 4-1-170, the subject property attached hereto as Exhibit A is located in a joint park with Calhoun County;

**WHEREAS**, the County is authorized by S.C. Code Section 4-1-175 to provide a credit against the revenues received from the fees collected from the company for the purpose outlined in 4-29-68.

Now, therefore, for an in consideration of the investment by the Company and the other mutual obligations and other value, the parties agree as follows:

### **ARTICLE I**

#### **RECAPITULATION AND DEFINITIONS**

**SECTION 1.1. Rules of Construction; Use of Defined Terms.** Unless the context clearly indicates otherwise, in this Agreement words and terms defined in Section 1.3 hereof are used with the meanings ascribed thereto. The definition of any document shall include any amendments to that document, unless the context clearly indicates otherwise.

From time to time herein, reference is made to the term taxes or *ad valorem* taxes. All or portions of the Project will be located in a Multi-County Industrial Park and are exempt from *ad valorem* taxation under and by virtue of the provisions of Paragraph D of Section 13 of Article VIII of the S.C. Constitution (the “MCIP Provision”). With respect to facilities located in a Multi-County Industrial Park, references to taxes or *ad valorem* taxes means the payments-in-lieu-of-taxes provided for in the MCIP Provision, and, where this Agreement refers to payments of taxes or Payments-in-Lieu-of-Taxes to County Treasurers, such references shall be construed to mean the payments to the counties participating in such a Multi-County Industrial Park.

#### **SECTION 1.2. Definitions.**

“**Act**” means Section 4-1-170 and 4-1-175 of the South Carolina Code, as in effect on the date hereof.

“**Company**” means **Severt & Sons Produce Columbia, Inc.**

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

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

“**Documents**” means the Ordinance, this Agreement and the Multi-County Industrial and Business Park Agreement.

“**Investment**” means expenditures for all real property and improvements thereon. Investment does not include expenditures for personal property.

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

“**Special Source Revenue Credit Agreement**” means this Agreement dated as of August 15, 2011, between the County and the Company.

“**Multi-County Industrial and Business Park**” means an industrial and business park established for inclusion of the Project pursuant to the Multi-County Industrial and Business Park Agreement pursuant to Section 4-1-170 of the Code of Laws of South Carolina 1976, as amended, and Article VIII, Section 13, paragraph D of the Constitution of South Carolina.

“**Ordinance**” means the Ordinance adopted by the County on August 15, 2011, authorizing this Agreement.

“**Payments-in-Lieu-of-Taxes**” means the payments to be made by the Company pursuant to Section 5.1 of this Agreement.

“**Project**” shall mean the investment of both real property and improvements thereon as is described in the attached Exhibit A. Project does not include personal property.

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

**SECTION 1.3. Special Source Revenue Credit.** As reimbursement for investment in the Project and subject to the requirements of S.C. Code Section 4-1-175, the County agrees to provide to the Company a Special Source Revenue Credit of 33.33% against each of the first ten (10) annual aggregate fee payments for the Project. 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 and shall reduce the aggregate amount of payments in lieu of taxes by the amount of the Special Source Credits.

## **ARTICLE II**

### **LIMITATION OF LIABILITY; INDUCEMENT**

**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.

### **ARTICLE III**

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

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(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 affect 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) By due corporate action, the County has agreed that, subject to compliance with applicable laws, each item of property comprising the Project shall be considered economic development property under the Act.

(g) 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. 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 South Carolina. The Company has full corporate power to execute the Documents to which it is a party and to fulfill its obligations described in the 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 the 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 affect the Company or the consummation of the transactions described in the Documents.

(d) All consents, authorizations and approvals required on the part of the Company in connection with the Documents 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.

(f) The Company has invested \$\_\_\_\_\_ in the Project.

## **ARTICLE IV**

### **COMMENCEMENT AND COMPLETION OF THE PROJECT**

**SECTION 4.1. The Project.** The Company has acquired real property, constructed and/or installed or made plans for the acquisition, construction and/or installation of certain improvements which comprise the Project.

## ARTICLE V

### PAYMENTS-IN-LIEU-OF-TAXES; DISPOSITION OF PAYMENTS-IN-LIEU-OF-TAXES

**SECTION 5.1. Payments-in-Lieu-of-Taxes.** The parties acknowledge that under Section 13, Article VIII of the South Carolina Constitution, the Project is exempt from ad valorem property taxes assuming an Agreement is signed. However, the Company shall be required to make the Payments-in-Lieu-of-Taxes with respect to the Project. In accordance with the Act, and unless this Agreement is sooner terminated, the Company shall make annual 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 Act.

**SECTION 5.2. Multi-County Industrial and Business Park.** The County represents that the Company property, attached hereto as Exhibit A, is located in a Joint County Park with Calhoun County, pursuant to S. C Code Section 4-1-170.

## ARTICLE VI

### SPECIAL COVENANTS

#### SECTION 6.1. Indemnification Covenants.

(a) The Company shall and agrees to hold the County and its County Council members, officers, agents and employees harmless from all pecuniary liability in connection with those reasons set forth in (i) or (ii) of Section 8.1(b) and to reimburse them for all reasonable expenses to which any of them might be subject due to the approval and entering into of the documents or the fulfillment of their obligations under this Agreement in the implementation of its terms and provisions.

(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 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, firm or Company, arising out of the same, and all costs and expenses incurred in connection with 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 and employees for expenses, claims,

losses or damages arising from the intentional or willful misconduct or negligence of the County or any of its individual officers, agents or employees.

**SECTION 6.2. Assignment.** There shall be no assignment of this Agreement without the written approval by County Council.

## ARTICLE VII

### EVENT OF DEFAULT AND REMEDIES

**SECTION 7.1. Events of Default Defined.** The occurrence of any one or more of the following events shall be an "Event of Default" under this Agreement:

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

(b) If the Company or the County shall fail to observe or perform any covenant, condition or agreement required herein to be observed or performed by the Company or the County (other than as referred to in Section 9.1(a) hereof), and such failure shall continue for a period of 30 days after written notice of default has been given to the Company by the County or to the County by the Company; provided if by reason of "force majeure" as hereinafter defined the Company or the County is unable in whole or in part to carry out any such covenant, condition or agreement or if it takes longer than 30 days to cure such default and the Company or the County 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; 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, or in any report, certificate, financial or other statement furnished in connection with the Documents or the transactions described in the Documents shall have been false or misleading in any material respect.

**SECTION 7.2. Remedies on Default.** Whenever any Event of Default shall have happened and be subsisting the County may 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 the Act relating to the enforced collection of taxes.

**SECTION 7.3. No Additional Waiver Implied by One Waiver.** In the event any warranty, covenant or agreement contained in this Agreement should be breached by the Company or the County and thereafter waived by the other party to this Agreement, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach.

## **ARTICLE VIII**

### **MISCELLANEOUS**

**SECTION 8.1. Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon the County and the Company and their respective successors and assigns.

**SECTION 8.2. Invalidity and Severability.** In the event that the Act or the Payments-in-Lieu-of-Taxes arrangement described in Section 5.1 hereof is determined to be invalid 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 Agreement; otherwise, in the event any provision of this 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 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 Agreement under any then applicable law, including but not limited to Chapter 20 of Title 4 and Chapter 12 of Title 4, Code of Laws of South Carolina, as amended.

**SECTION 8.3. Amendments, Changes and Modifications.** Except as otherwise provided in this Agreement, this 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 may be provided by a resolution of County Council.

**SECTION 8.4. Execution of Counterparts.** This Agreement may be executed in several counterparts, only one of which shall be an original for Uniform Commercial Code perfection purposes; provided, however, that any action may be brought upon any counterpart of this Agreement or any counterpart of any document that is attached to this Agreement as an exhibit.

**SECTION 8.5. Law Governing Construction of Agreement.** The laws of the State of South Carolina shall govern the construction of this Agreement.

**SECTION 8.6. Filings.** Whenever the County shall be required to file or produce any reports, notices or other documents during the Term, the Company shall in due time furnish to the County the completed form of such report, notice or other required documents together with a certification by the Company that such document is accurate.

**SECTION 8.7. Headings.** The headings of the articles and sections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Agreement.

**IN WITNESS WHEREOF, LEXINGTON COUNTY, SOUTH CAROLINA, and the COMPANY**, each pursuant to due authority, have duly executed this 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

Severt \_\_\_\_\_ & Sons Produce Columbia, Inc.

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

\_\_\_\_\_

Its: \_\_\_\_\_

## **EXHIBIT A**

All that certain piece, parcel or lot of land, with all improvements thereon, lying, situated and being near the town of Cayce, in Lexington County, South Carolina, containing four and ninety/hundredths **(4.90) ACRES**, more or less, as shown and delineated as **LOT NUMBER SIX (6)** on that certain Bonded Plat of the State Farmers Market prepared for 321 Lexington Associates by Associated E & S, Inc., dated June 15, 2009, last revised August 6, 2009, and recorded on August 18, 2009 in **Record Book 13796 at page 121**, and having the boundaries and measurements as shown on said plat; reference being craved thereto for a more accurate and complete description.

TMS#: **007997-06-006**

**ORDINANCE**

**AN ORDINANCE AUTHORIZING PURSUANT TO SECTIONS 4-1-170 AND 4-1-175 SOUTH CAROLINA CODE OF LAWS, 1976, AS AMENDED, THE EXECUTION AND DELIVERY OF A SPECIAL SOURCE REVENUE CREDIT AGREEMENT BETWEEN LEXINGTON COUNTY, SOUTH CAROLINA AND NORTH FORK PROPERTIES, LLC; AND MATTERS RELATING THERETO.**

**WHEREAS**, Lexington County (the “County” ), a public body corporate and politic under the laws of the State of South Carolina.

**WHEREAS**, North Fork Properties, LLC (the “Company”) has invested in the State Farmers Market located in Lexington County.

**WHEREAS**, such investment was instrumental in locating the State Farmers Market in Lexington County.

**WHEREAS**, the County desires to enter into a Special Source Revenue Credit Agreement (the “Agreement”) with the Company, which shall provide for a Special Source Revenue credit pursuant to 4-1-175.

**WHEREAS**, Lexington County Council (the “County Council”) has caused to be prepared and presented to the County Council the Agreement between the County and the Company, which the County shall execute and deliver.

**WHEREAS**, the Company Property is located in a Joint Park created with Calhoun County pursuant to S. C. Code Section 4-1-170.

**WHEREAS**, it appears that the documents above referred to are appropriate instruments to be executed and delivered or approved by the County for the purposes intended.

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

**Section 1.** The County Council has made and hereby makes the following findings:

(a) The State Farmers Market will provide a significant economic benefit to Lexington County.

(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; and

(c) Having evaluated the purposes to be accomplished by the Project as proper governmental and public purposes, the anticipated dollar amount and nature of the investment to be made, and the anticipated costs and benefits to the County, the County has determined that the Project is properly classified as economic development property.

**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 Agreement which is attached hereto and shall be executed and filed with the Clerk to County Council is hereby approved and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if the 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 Agreement to the Company.

**Section 3.** The Chair of County Council and 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 Agreement in a form substantially identical to the terms contemplated herein and the performance of all obligations of the County under and pursuant to the Agreement.

**Section 4.** This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina.

**Section 5.** 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 6.** 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.

**DONE, RATIFIED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 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: \_\_\_\_\_  
Second Reading: \_\_\_\_\_  
Public Hearing: \_\_\_\_\_  
Third Reading: \_\_\_\_\_

**SPECIAL SOURCE REVENUE CREDIT AGREEMENT**  
**BETWEEN LEXINGTON COUNTY, SOUTH CAROLINA**  
**AND**  
**NORTH FORK PROPERTIES, LLC**  
**DATED AS OF**  
**AUGUST 15, 2011**

## **SPECIAL SOURCE REVENUE CREDIT AGREEMENT**

This Special Source Revenue Credit Agreement (the “Agreement”) is made and entered into as of August 15, 2011, by and between Lexington County, South Carolina (the “County”), a body Politic and political subdivision of the State of South Carolina, acting by and through its County Council as the governing body of the County and North Fork Properties, LLC (the “Company”).

**WHEREAS**, pursuant to S. C. Code Section 4-1-170, the subject property attached hereto as Exhibit A is located in a joint park with Calhoun County;

**WHEREAS**, the County is authorized by S.C. Code Section 4-1-175 to provide a credit against the revenues received from the fees collected from the company for the purpose outlined in 4-29-68.

Now, therefore, for an in consideration of the investment by the Company and the other mutual obligations and other value, the parties agree as follows:

### **ARTICLE I**

#### **RECAPITULATION AND DEFINITIONS**

**SECTION 1.1. Rules of Construction; Use of Defined Terms.** Unless the context clearly indicates otherwise, in this Agreement words and terms defined in Section 1.3 hereof are used with the meanings ascribed thereto. The definition of any document shall include any amendments to that document, unless the context clearly indicates otherwise.

From time to time herein, reference is made to the term taxes or *ad valorem* taxes. All or portions of the Project will be located in a Multi-County Industrial Park and are exempt from *ad valorem* taxation under and by virtue of the provisions of Paragraph D of Section 13 of Article VIII of the S.C. Constitution (the “MCIP Provision”). With respect to facilities located in a Multi-County Industrial Park, references to taxes or *ad valorem* taxes means the payments-in-lieu-of-taxes provided for in the MCIP Provision, and, where this Agreement refers to payments of taxes or Payments-in-Lieu-of-Taxes to County Treasurers, such references shall be construed to mean the payments to the counties participating in such a Multi-County Industrial Park.

#### **SECTION 1.2. Definitions.**

“**Act**” means Section 4-1-170 and 4-1-175 of the South Carolina Code, as in effect on the date hereof.

“**Company**” means **North Fork Properties, LLC**.

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

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

“**Documents**” means the Ordinance, this Agreement and the Multi-County Industrial and Business Park Agreement.

“**Investment**” means expenditures for all real property and improvements thereon. Investment does not include expenditures for personal property.

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

“**Special Source Revenue Credit Agreement**” means this Agreement dated as of August 15, 2011, between the County and the Company.

“**Multi-County Industrial and Business Park**” means an industrial and business park established for inclusion of the Project pursuant to the Multi-County Industrial and Business Park Agreement pursuant to Section 4-1-170 of the Code of Laws of South Carolina 1976, as amended, and Article VIII, Section 13, paragraph D of the Constitution of South Carolina.

“**Ordinance**” means the Ordinance adopted by the County on August 15, 2011, authorizing this Agreement.

“**Payments-in-Lieu-of-Taxes**” means the payments to be made by the Company pursuant to Section 5.1 of this Agreement.

“**Project**” shall mean the investment of both real property and improvements thereon as is described in the attached Exhibit A. Project does not include personal property.

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

**SECTION 1.3. Special Source Revenue Credit.** As reimbursement for investment in the Project and subject to the requirements of S.C. Code Section 4-1-175, the County agrees to provide to the Company a Special Source Revenue Credit of 33.33% against each of the first ten (10) annual aggregate fee payments for the Project. 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 and shall reduce the aggregate amount of payments in lieu of taxes by the amount of the Special Source Credits.

## **ARTICLE II**

### **LIMITATION OF LIABILITY; INDUCEMENT**

**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.

### **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 affect 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) By due corporate action, the County has agreed that, subject to compliance with applicable laws, each item of property comprising the Project shall be considered economic development property under the Act.

(g) 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. 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 South Carolina. The Company has full corporate power to execute the Documents to which it is a party and to fulfill its obligations described in the 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 the 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 affect the Company or the consummation of the transactions described in the Documents.

(d) All consents, authorizations and approvals required on the part of the Company in connection with the Documents 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.

(f) The Company has invested **\$999,800.00** in the Project.

## **ARTICLE IV**

### **COMMENCEMENT AND COMPLETION OF THE PROJECT**

**SECTION 4.1. The Project.** The Company has acquired real property, constructed and/or installed or made plans for the acquisition, construction and/or installation of certain improvements which comprise the Project.

## ARTICLE V

### PAYMENTS-IN-LIEU-OF-TAXES; DISPOSITION OF PAYMENTS-IN-LIEU-OF-TAXES

**SECTION 5.1. Payments-in-Lieu-of-Taxes.** The parties acknowledge that under Section 13, Article VIII of the South Carolina Constitution, the Project is exempt from ad valorem property taxes assuming an Agreement is signed. However, the Company shall be required to make the Payments-in-Lieu-of-Taxes with respect to the Project. In accordance with the Act, and unless this Agreement is sooner terminated, the Company shall make annual 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 Act.

**SECTION 5.2. Multi-County Industrial and Business Park.** The County represents that the Company property, attached hereto as Exhibit A, is located in a Joint County Park with Calhoun County, pursuant to S. C Code Section 4-1-170.

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#### SECTION 6.1. Indemnification Covenants.

(a) The Company shall and agrees to hold the County and its County Council members, officers, agents and employees harmless from all pecuniary liability in connection with those reasons set forth in (i) or (ii) of Section 8.1(b) and to reimburse them for all reasonable expenses to which any of them might be subject due to the approval and entering into of the documents or the fulfillment of their obligations under this Agreement in the implementation of its terms and provisions.

(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 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, firm or Company, arising out of the same, and all costs and expenses incurred in connection with 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 and employees for expenses, claims,

losses or damages arising from the intentional or willful misconduct or negligence of the County or any of its individual officers, agents or employees.

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(b) If the Company or the County shall fail to observe or perform any covenant, condition or agreement required herein to be observed or performed by the Company or the County (other than as referred to in Section 9.1(a) hereof), and such failure shall continue for a period of 30 days after written notice of default has been given to the Company by the County or to the County by the Company; provided if by reason of "force majeure" as hereinafter defined the Company or the County is unable in whole or in part to carry out any such covenant, condition or agreement or if it takes longer than 30 days to cure such default and the Company or the County 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; 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, or in any report, certificate, financial or other statement furnished in connection with the Documents or the transactions described in the Documents shall have been false or misleading in any material respect.

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### **MISCELLANEOUS**

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**SECTION 8.2. Invalidity and Severability.** In the event that the Act or the Payments-in-Lieu-of-Taxes arrangement described in Section 5.1 hereof is determined to be invalid 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 Agreement; otherwise, in the event any provision of this 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 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 Agreement under any then applicable law, including but not limited to Chapter 20 of Title 4 and Chapter 12 of Title 4, Code of Laws of South Carolina, as amended.

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**SECTION 8.7. Headings.** The headings of the articles and sections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Agreement.

**IN WITNESS WHEREOF, LEXINGTON COUNTY, SOUTH CAROLINA, and the COMPANY**, each pursuant to due authority, have duly executed this 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

North

\_\_\_\_\_  
Fork Properties, LLC

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

\_\_\_\_\_

Its:

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## **EXHIBIT A**

All that certain unimproved piece, parcel or lot of land, comprising 2.80 acres, more or less, situate, lying and being in the County of Lexington, State of South Carolina, said property being shown and designated as **“LOT 8 2.80 ACRES 321 ASSOCIATES WHOLESALE VENDOR (5)”** upon that Bonded Plat of the State Farmers Market prepared for 321 Lexington Associates, LLC & the State of South Carolina by Associated E & S, Inc., dated June 15, 2009, last revised March 3, 2010, and recorded in the Office of Register of Deeds for Lexington County in Record Book 14123 at page 123, to which reference is here craved for specific metes and bounds; be all measurements being a little more or less.

TMS#: **007997-06-008**

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