



CHESTER COUNTY COUNCIL MEETING

R. Carlisle Roddey Chester County Government Complex

1476 J.A. Cochran Bypass Chester, SC 29706

Monday, February 6th, 2023 at 6:00 PM

Agenda

1. Call to Order

2. Pledge of Allegiance and Invocation

3. Approval of Minutes

- a. January 30th, 2023 Special Called Council Minutes.
- b. January 26th, 2023 Special Called Council minutes.
- c. January 17th, 2023 Council minutes.

4. Citizen's Comments

5. Ordinances/Resolutions/Proclamations

a. 2nd Reading of 2022-18 in Title Only An Ordinance Authorizing An Amendment to the Master Agreement Governing The York-Chester Industrial Park By And Between Chester County, South Carolina (The "County") And York County, South Carolina ("York County") To Enlarge The Boundaries Of The Joint County Industrial Park To Include Certain Real Property Located In Chester County; And Other Matters Related Thereto. Project Power

b. 2nd Reading Of 2023-1 An Ordinance Authorizing (1) The Execution And Delivery Of A Fee In Lieu Of Tax And Incentive Agreement By And Between Chester County, South Carolina (The "County") And [Project Phoenix22], Acting For Itself, One Or More Affiliates Or Other Project Sponsors (Collectively, The "Company"), Whereby The County Shall Covenant To Accept Negotiated Fees In Lieu Of *Ad Valorem* Taxes In Connection With The Acquisition, Improvement And Equipping Of Certain Facilities In The County (Collectively, The "Project"); (2) Special Source Revenue Credits In Connection With The Project; (3) The Benefits Of A Multi-County Industrial Or Business Park To Be Made Available To The Project; (4) The Allocation Of Fees In Lieu Of *Ad Valorem* Taxes Received From The Project; And (5) Other Matters Relating Thereto.

c. 2nd Reading of 2023-2 An Ordinance Authorizing An Amendment To The Agreement For Development Of Joint County Industrial And Business Park (York And Chester Counties) To Enlarge The Boundaries Of The Joint County Industrial Park To Include Certain Real Property Located In Chester County; And Other Matters Related Thereto. Phoenix 22

d. 2nd Reading of 2023-3 An Ordinance Authorizing The Execution And Delivery Of A Fee In Lieu Of Tax Agreement By And Between Chester County And [Project Power]; The Inclusion Of Certain Real Property Located In Chester County In A Multi-County Industrial Park; The Provision Of Credits Against Fee In Lieu Of Tax Payments; The Execution And Delivery Of Such Documents As May Be Necessary To Effect The Intent Of This Ordinance; And Other Matters Related Thereto.

e. **2nd Reading of 2023-4** An Ordinance To Repeal Chester County Code, Chapter 46, Streets, Sidewalks, and other Public Property, Article VII, Acceptance of Streets, Section 46-202 Street Lighting.

f. **1st Reading of 2023-5** An Ordinance To Amend Chester County Code, Chapter 46, Streets, Sidewalks, and other Public Property, Article VII, Acceptance of Streets, Section 46-202 Street Lighting.

g. **1st Reading of 2023-6 in Title Only** An Ordinance Authorizing The Execution And Delivery Of A Fee In Lieu Of Tax And Incentive Agreement By And Between Chester County, South Carolina And A Company Or Companies Known To The County At This Time As "Project Raven" With Respect To Certain Economic Development Property In The County, Whereby Such Property Will Be Subject To Certain Payments In Lieu Of Taxes, Including The Provision Of Payments For Certain Investments In Infrastructure And Providing For The Inclusion Of The Company Or Companies Property In A Multi-County Industrial And Business Park; And Other Matters Related Thereto.

h. **1st Reading of 2023-7 in Title Only** An Ordinance to Amend Chester County Code, Chapter 2, Administration, Article III, Section 2-59 Appearances by Citizens.

i. **1st Reading 2023-8 in Title Only** An Ordinance to Amend Chester County Code, Chapter 6, Animals.

6. Old Business

a. **2nd Reading of CCMA22-24** Jeremiah Kibbey request Tax Map #101-00-00-099-000 at 2115 Great Falls Hwy, Blackstock, SC 29014 to be rezoned Rural 2 (R2) to General Residential District (RG-2). Planning Commission voted 5-0 to approve.

b. **2nd Reading of CCMA22-25** Luck Companies request a portion (7.8 acres) of Tax Map #089-00-00-005-000 at 1207 Lancaster Hwy, Chester, SC 29706 to be rezoned from Rural Two District (R2) to General Commercial District (GC). Planning Commission voted 5-0 to approve.

c. **2nd Reading of CCMA22-26** Luck Companies request a portion (1.82 acres) of Tax Map #089-00-00-005-000 at 1207 Lancaster Hwy, Chester, SC 29706 to be rezoned from Rural Two District (R2) to Restricted Industrial District (ID-1). Planning Commission voted 5-0 to approve.

d. **2nd Reading of CCMA22-27** Luck Companies request a portion (48.89 acres) of Tax Map #089-00-00-008-000 at 1113 Lancaster Hwy, Chester, SC 29706 to be rezoned from Rural Two District (R2) to Restricted Industrial District (ID-1). Planning Commission voted 5-0 to approve.

e. **2nd Reading of CCMA22-28** Luck Companies request a portion (17.92 acres) of Tax Map #089-00-00-008-000 at 1113 Lancaster Hwy, Chester, SC 29706 to be rezoned from Rural Two District (R2) to General Commercial District (GC). Planning Commission voted 5-0 to approve.

f. **2nd Reading of CCMA22-29** Luck Companies request Tax Map #088-00-00-054-000 off Mallard Creek Dr., Chester, SC 29706 to be rezoned from Restricted Industrial District (ID-1) to Agricultural District (AG). Planning Commission voted 5-0 to approve.

g. **2nd Reading of CCMA22-30** Luck Companies request a portion (174.46 acres) of Tax Map #089-00-00-002-000 at 1421 Collie Lane, Chester, SC 29706 to be rezoned from Rural Two District (R2) to General Industrial District (ID-3). Planning Commission voted 5-0 to approve.

h. 2nd Reading of CCMA22-31 Luck Companies request a portion (19.35 acres) of Tax Map #089-00-00-002-000 at 1421 Collie Lane, Chester, SC 29706 to be rezoned from Rural Two District (R2) to Restricted Industrial District (ID-1). Planning Commission voted 5-0 to approve.

i. 2nd Reading of CCMA22-32 Luck Companies request Tax Map #089-00-00-025-000 off Lancaster Hwy, Chester, SC 29706 to be rezoned from Rural Two District (R2) to General Industrial District (ID-3). Planning Commission voted 5-0 to approve.

j. 2nd Reading of CCMA22-33 Luck Companies request a portion (9.35 acres) of Tax Map #089-00-00-001-000 at 1295 Lancaster Hwy, Chester, SC 29706 to be rezoned from Rural Two District (R2) to Restricted Industrial District (ID-1). Planning Commission voted 5-0 to approve.

k. 2nd Reading of CCMA22-34 Luck Companies request a portion (1.01 acres) of Tax Map #089-00-00-001-000 at 1295 Lancaster Hwy, Chester, SC 29706 to be rezoned from Rural Two District (R2) to General Industrial District (ID-3). Planning Commission voted 5-0 to approve.

7. New Business

a. Council to consider approval of \$ 61,645 dollars to purchase appraisal computer software for the Assessor's Office approved in the current capital budget. Rick Anderson.

b. Council to approve Chester County Animal Control to accept a \$22,000 dollar matching grant from the Lutz Foundation for the Spay and Neuter/ Lab program. Kellie Simoneau.

c. Council to authorize Chester County 250 Committee to apply for a \$3000 grant with no match to promote, engage and enhance tourism through places in Chester County during the American Revolutionary War.

8. Boards and Commissions

a. County Council Appointments and Reappointments

1. Reappointment to the Airport Commission.
2. Reappointments to the Burnt House Meeting Cemetery.
3. Resignation from the Catawba Regional Workforce Board.
4. Reappointments to Catawba Regional Workforce Board.
5. Reappointment to Fort Lawn Fire Protection District.
6. Reappointments to the Lando Fire Protection District.
7. Appointments to the Lando Fire Protection District.
8. Reappointment to the Lewis Fire District.
9. Appointment to the Richburg Fire Protection District.

b. Councilmember Mosley Appointments and Reappointments.

1. Reappointment to the Parks and Recreation Advisory.
2. Appointment to Zoning Board of Appeals Board.
3. Appointment to Chester County Library.

c. Councilmember Guy Appointments and Reappointments.

1. Reappointment to the Planning Commission.
2. Reappointment to the Parks and Recreation Board.
3. Appointment to the Rural Fire Commission.

d. Councilmember Agee Appointments and Reappointments.

1. Appointment to Tax Assessment Board of Appeals.

9. Executive Session

- a. To receive legal advice regarding Project 2269. Attorney Winters.
- b. To receive legal advice regarding Project 2242. Attorney Winters.
- c. To receive legal advice regarding Project 2302. Attorney Winters.
- d. To receive legal advice regarding a contractual matter. Attorney Winters.
- e. To receive legal advice regarding the hiring of the County Administrator. Attorney Winters.

10. Council Actions Following Executive Session

- a. Action taken regarding Project 2269.
- b. Action taken regarding Project 2242.
- c. Action taken regarding Project 2302.
- d. Action taken regarding a contractual matter.
- e. Action taken regarding the hiring of the County Administrator.

11. Council Comments

12. Adjourn

Pursuant to the Freedom of Information Act, the Chester News & Reporter, The Herald in Rock Hill, SC, WSOC-TV, Channel 9 Eyewitness News, the Mfg. Housing Institute of SC, WRHI Radio Station, C&N2 News, WCNC News and Capitol Consultants were notified, and a notice was posted on the bulletin board at the Chester County Government Building 24 hours prior to the meeting.

Guidelines for Addressing Council

Citizens Comments:

- Each citizen will be limited to three minutes.

Public Hearings:

- Each speaker will be limited to three minutes.

When introduced:

- Approach the podium, state your name and address.
- Speak loudly and clearly making sure that the microphone is not obstructed.

- Do not address the audience – direct all comments to Council.
- Do not approach the Council table unless directed.

Anyone addressing Council will be called out of order if you:

- Use profanity
- Stray from the subject
- Make comments personally attacking an individual member of Council



CHESTER COUNTY COUNCIL MEETING SPECIAL CALLED

R. Carlisle Roddey Chester County Government Complex

1476 J.A. Cochran Bypass Chester, SC 29706

Monday, January 30th, 2023 at 5:00 PM

Minutes

Present: Chairman Branham, Vice Chairman Wilson, Councilman Vaughn, Councilman Guy, Councilwoman Mosley, Councilman Agee, County Attorney Winters and Clerk to Council Lee. Councilman Killian arrived at 5:05pm.

1. **Call to Order-** Chairman Branham called the meeting to order.
2. **Executive Session**
Vice Chairman Wilson motioned to go into executive session, second by Councilwoman Mosley.
Vote 6-0 to approve.
 - a. To receive legal advice regarding the hiring of the County Administrator. Attorney Winters.
3. **Council actions following Executive Session.**
Councilman Guy motioned to go back to regular session, second by Councilman Killian.
Vote 7-0 to approve.
 - a. **Action taken regarding the hiring of the County Administrator.** Taken as information.
4. **Adjourn**
Councilman Vaughn motioned to adjourn, second by Councilwoman Mosley.
Vote. 7-0 to adjourn.



CHESTER COUNTY COUNCIL MEETING SPECIAL CALLED

R. Carlisle Roddey Chester County Government Complex

1476 J.A. Cochran Bypass Chester, SC 29706

Thursday, January 26th at 4:02 PM

MINUTES

Present: Chairman Branham, Vice Chairman Wilson, Councilman Vaughn, Councilman Killian, Councilman Guy, Councilwoman Mosley, Councilman Agee, County Attorney Winters and Clerk to Council Lee.

1. **Call to Order**-Chairman Branham called the meeting to order.

2. **Old Business**

From CTC:

a. **Action taken regarding the approval of \$4400.00 dollars to mark, line and add stop signs on Ligon Road and Britt Lane for safety purposes.** Councilman Vaughn motioned to approve \$4900 dollars which included adding rumble strips, second by Councilman Wilson. Vote 7-0 to approve.

3. **Executive Session**

Councilman Guy motioned to go into executive session, second by Councilwoman Mosley. Vote 7-0 to approve.

a. To receive legal advice regarding the hiring of the County Administrator. Attorney Winters.

b. To receive legal advice regarding electronic meetings. Attorney Winters.

c. To receive legal advice regarding Council's rules of procedure. Attorney Winters.

4. **Council actions following Executive Session.**

Councilman Vaughn motioned to go back to regular session, second by Councilman Killian. Vote 7-0 to approve.

a. **Action taken regarding the hiring of the County Administrator.** Taken as information.

b. **Action taken regarding electronic meetings.** Taken as information.

c. **Action taken regarding Council's rules of procedure.** Taken as information.

5. **Adjourn**

Councilman Wilson motioned to adjourn, second by Councilman Vaughn. Vote was unanimous.



CHESTER COUNTY COUNCIL MEETING MINUTES

R. Carlisle Roddey Chester County Government Complex

1476 J.A. Cochran Bypass Chester, SC 29706

Tuesday, January 17TH, 2023 at 6:00 PM

Minutes

Present: Chairman Branham, Vice Chairman Wilson, Councilman Vaughn, Councilman Killian, Councilman Guy, Councilwoman Mosley, Councilman Agee, County Attorney Winters and Clerk to Council Lee.

1. **Call to Order**-Chairman Branham called the meeting to order. He removed 6.a from the agenda " Update regarding the Burnt House Meeting Cemetery". Mr. Gaston could not make the meeting.
2. **Pledge of Allegiance and Invocation**-Pledge was recited in unison; invocation was given by Councilman Guy.
3. **Approval of Minutes**
 - a. **December 27th, 2022 Special Called Minutes.** Vice Chairman Wilson motioned to approve, second by Councilman Vaughn. Vote 4-0 to approve. Councilmembers Guy, Agee and Mosley were not present at the 12-27-2022 meeting did not vote and therefore they recused.
 - b. **January 3rd, 2023 Special Called Minutes.** Councilman Vaughn motioned to approve, second by Councilwoman Mosley. Vote 7-0 to approve.
4. **Citizen's Comments**

Debbie Parsons, 1051 Craigbrow Circle, Chester, SC addressed Council regarding being opposed to rezoning CCMA22-25 thru CCMA22-34.

Dan Huntsinger, 918 Craigbrow Circle, Chester, SC addressed Council regarding being opposed to rezoning CCMA22-25 thru CCMA22-34.

Ben Thompson, 1297 Lancaster Hwy addressed Council regarding being in favor of the rezoning of CCMA22-25 thru CCMA22-34.

Heath Cookendorfer, Ridgeway Town Hall, Fairfield, SC addressed Council regarding being in favor of the rezoning of CCMA22-25 thru CCMA22-34.
5. **Ordinances/Resolutions/Proclamations**
 - a. **2023-1 Resolution to Gift Service Weapon to Billy Wayne Alley.** Councilman Guy motioned to approve, second by Councilman Killian. Vote 7-0 to approve.

b. **2023-2 A Resolution Committing Chester County (1) To Enter Into, Execute And Deliver A Fee Agreement With A Company Identified Under The Code Name “Project Phoenix22” Pursuant To Which Chester County Shall Covenant To Accept Certain Negotiated Fees In Lieu Of Ad Valorem Taxes; (2) To Ensure The Benefits Of A Multi-County Industrial Or Business Park Be Made Available To Project Phoenix22; (3) To Provide Payments For Certain Investments In Infrastructure; And (4) Other Economic Development Incentives And Other Matters Related Thereto.** Councilman Vaughn motioned to approve, second by Councilman Agee. Vote 7-0 to approve.

c. **1st Reading of 2023-1 in Title Only An Ordinance Authorizing Chester County (1) To Enter Into, Execute And Deliver A Fee Agreement With A Company Identified Under The Code Name “Project Phoenix22” Pursuant To Which Chester County Shall Covenant To Accept Certain Negotiated Fees In Lieu Of Ad Valorem Taxes; (2) To Ensure The Benefits Of A Multi-County Industrial Or Business Park Be Made Available To Project Phoenix22; (3) To Provide Payments For Certain Investments In Infrastructure; And (4) Other Economic Development Incentives And Other Matters Related Thereto.** Councilman Vaughn motioned to approve, second by Councilwoman Mosley. Vote 7-0 to approve.

d. **2023-3 Inducement Resolution Providing Preliminary Approval For Certain Incentives To Induce One Or More Investors Identified For The Time Being As Project Power, Each Acting For Itself, One Or More Current Or Future Affiliates, And Other Project Sponsors (Collectively, “Company”) To Establish Facilities In Chester County, South Carolina (“County”), Such Incentives To Include (1) A Negotiated Fee In Lieu Of *Ad Valorem* Tax Arrangements; (2) Special Source Revenue Credits; (3) Multi-County Industrial Or Business Park Arrangements; And (4) Other Related Matters.** Councilman Guy motioned to approve, second by Councilman Agee. Vote 7-0 to approve.

e. **1st Reading of 2023-2 An Ordinance Authorizing An Amendment To The Agreement For Development Of Joint County Industrial And Business Park (York And Chester Counties) To Enlarge The Boundaries Of The Joint County Industrial Park To Include Certain Real Property Located In Chester County; And Other Matters Related Thereto.** Vice Chairman Wilson motioned to approve, second by Councilman Guy. Vote 7-0 to approve.

f. **1st Reading of 2023-3 An Ordinance Authorizing The Execution And Delivery Of A Fee In Lieu Of Tax Agreement By And Between Chester County And [Project Power]; The Inclusion Of Certain Real Property Located In Chester County In A Multi-County Industrial Park; The Provision Of Credits Against Fee In Lieu Of Tax Payments; The Execution And Delivery Of Such Documents As May Be Necessary To Effect The Intent Of This Ordinance; And Other Matters Related Thereto.** Councilman Agee motioned to approve, second by Councilman Killian. Vote 7-0 to approve.

g. **1st Reading of 2023-4 in Title Only An Ordinance To Repeal Chester County Code, Chapter 46, Streets, Sidewalks, and other Public Property, Article VII, Acceptance of Streets, Section 46-202 Street Lighting.** Attorney Winters stated the way the ordinance reads now the “County shall not provide street lighting on any highway, street or road until such time as sufficient funds are appropriated to provide that service county wide. Homeowners or homeowners’ associations may obtain street lighting through contractual agreements with the electric utility serving their areas”. So in essence what that says is the county is not going to provide street lighting anywhere in the county unless and until it can be done county wide so it's not going to be done in certain spots. There was a capital project sales tax that passed and one of the projects was street lighting up in the Richburg area. And the project was approved by the voter by referendum which allows the project to move forward. But you cannot use capital project sales tax money for operations. The capital project sales tax money could erect the lighting, but it couldn't pay for the lighting. Because this ordinance prohibits us from providing street lighting, we can't pay for the street

lighting with this ordinance. And so essentially to repeal it says that we can now provide street lighting on any highway street or road.

Chairman Branham stated if we pass this today, I know this has been an ongoing issue for a number of years. Mr. Agee how many people have been killed down in that section?

Councilman Agee stated he didn't know the exact number, but a significant number of people have been killed and injured at exit 65.

Chairman Branham stated when this intersection was originally looked at to provide lighting, we went with a solar type lighting which basically benefited nothing. It didn't serve any lighting to help pedestrians at all. He asked if this could be on a per basis for people who ask for street lighting and could it be approved by the county or does that ordinance state that also. He stated this wouldn't be a blanket order to provide street lighting, any circumstances anyway would have to be voted on by council each time.

Attorney Winters stated I think that council would have to decide on what that criteria would look like, it wouldn't be an area that's populated with X number of people or has X number of fatalities. I would hate to base it on fatalities, that's not the criteria we would want to use. If we repealed it entirely. It's open for anywhere. If we created an ordinance that had criteria, then that would supplant what we have right now but right now repealing it takes it off the books completely. And we could continue with repealing this ordinance, the way it's written and then I can come back with a draft at the next meeting for a recommended ordinance to replace this. Councilman Killian motioned to approve, second by Vice Chairman Wilson. Vote 7-0 to approve.

6. Old Business

- a. Update regarding the Burnt House Meeting Cemetery- Neely Gaston. **Removed**

b. From CCTC:

1. **Action taken regarding intersection work on Blaney Road, Kee Moore Drive, Secret Drive and Rocky Creek Road.** Vice Chairman Wilson motioned to approve \$461,000 dollars for intersection work, second by Councilman Guy. Vote 7-0 to approve.
2. **Action taken regarding Road Reimbursement of \$20,604.83 for road materials to the Road department.** Vice Chairman Wilson motioned to approve \$20,604.83 dollars for road materials, second by Councilman Agee. Vote 7-0 to approve.
3. **Action taken regarding Sign Reimbursement of \$13,794.73 for sign materials to the Recycling department.** Vice Chairman Wilson motioned to approve \$13,794.73 dollars for sign material, second by Councilwoman Mosley. Vote 7-0 to approve.

c. **Update on the Chester County Airport Overlay. Attorney Winters.**

Attorney Winters stated a date had been set for the public hearing for the airport overlay for February 23 at the airport. Notifications to all the residents in the area would be sent out very shortly. They're at the printer right now. This is for the airport overlay that we've been working on for a long time. There will be folks from state aeronautics, there will be folks from the airport, and certainly county council is

welcome to attend. I think the map is on the website if I'm not mistaken. And so, if anyone wants a copy of that map and it isn't on the website, please let us know. I'll make sure that Miss Lee has a copy of it so she can disperse to anyone who would like to see it in advance, but the map will be on the signs that are posted around the airport and the surrounding community. And we will have a lot of signs. I don't recall the time but it's early evening. We want to make sure everybody who wants to can attend.

Vice Chairman Wilson asked who would be taking the lead at the hearing.

Attorney Winters stated Stephen Allen from the COG. He's the gentleman who's been helping prepare the maps and he's helped put the public hearing together and this is really so the public can get an understanding of what an overlay is, how it affects them or not. A lot of folks it doesn't affect but the perception is that it might and so it's really to allow the public to get information. The COG and State Aeronautics will be there to answer questions. If this isn't done, we will probably not get any federal funding and our airport really relies heavily on federal funding for runway repair. Just general repairs. And I think we built a hangar several years ago based on a grant that we got.

7. New Business

a. 1st Reading of CCMA22-24 Jeremiah Kibbey request Tax Map #101-00-00-099-000 at 2115 Great Falls Hwy, Blackstock, SC 29014 to be rezoned Rural 2 (R2) to General Residential District (RG-2). Planning Commission voted 5-0 to approve. Councilman Vaughn motioned to approve, second by Councilwoman Mosley. Vote 7-0 to approve.

b. 1st Reading of CCMA22-25 Luck Companies request a portion (7.8 acres) of Tax Map #089-00-00-005-000 at 1207 Lancaster Hwy, Chester, SC 29706 to be rezoned from Rural Two District (R2) to General Commercial District (GC). Planning Commission voted 5-0 to approve. Mr. Thompson stated this would be the retail space. Councilman Killian motioned to approve, second by Councilwoman Mosley. Vote 7-0 to approve.

c. 1st Reading of CCMA22-26 Luck Companies request a portion (1.82 acres) of Tax Map #089-00-00-005-000 at 1207 Lancaster Hwy, Chester, SC 29706 to be rezoned from Rural Two District (R2) to Restricted Industrial District (ID-1). Planning Commission voted 5-0 to approve. Councilman Vaughn motioned to approve, second by Councilman Killian. Chairman Branham stated the applicant had provided conditions the company would meet for all the properties and take responsibilities to meet them for what they were asking to be rezoned. He stated he would like to include all the conditions with the approval of the applications. Councilman Killian withdrew his second, Councilman Vaughn withdrew his motion. Councilman Vaughn motioned to approve with all applicable conditions, second by Councilman Killian. Vote 7-0 to approve.

d. 1st Reading of CCMA22-27 Luck Companies request a portion (48.89 acres) of Tax Map #089-00-00-008-000 at 1113 Lancaster Hwy, Chester, SC 29706 to be rezoned from Rural Two District (R2) to Restricted Industrial District (ID-1). Planning Commission voted 5-0 to approve. Councilman Guy motioned to approve with all applicable conditions, second by Councilman Killian. Vote 7-0 to approve.

e. 1st Reading of CCMA22-28 Luck Companies request a portion (17.92 acres) of Tax Map #089-00-00-008-000 at 1113 Lancaster Hwy, Chester, SC 29706 to be rezoned from Rural Two District (R2) to General Commercial District (GC). Planning Commission voted 5-0 to approve. Councilwoman Mosley motioned to approve with all applicable conditions, second by Councilman Killian. Vote 7-0 to approve.

f. 1st Reading of CCMA22-29 Luck Companies request Tax Map #088-00-00-054-000 off Mallard Creek Dr., Chester, SC 29706 to be rezoned from Restricted Industrial District (ID-1) to Agricultural District (AG). Planning Commission voted 5-0 to approve. Councilman Agee motioned to approve with all applicable conditions, second by Vice Chairman Wilson. Vote 7-0 to approve.

g. 1st Reading of CCMA22-30 Luck Companies request a portion (174.46 acres) of Tax Map #089-00-00-002-000 at 1421 Collie Lane, Chester, SC 29706 to be rezoned from Rural Two District (R2) to General Industrial District (ID-3). Planning Commission voted 5-0 to approve. Councilman Vaughn motioned to approve with all applicable conditions, second by Councilman Killian. Councilman Guy stated the plan that Luckstone provided had phase one, two, and three where they would start blasting. He would like to see phase one moved to where phase two was. He stated if you move phase one to where phase two was it would be 23 acres away from the Craighrow community.

Mr. Thompson stated there were some state requirements attached to that, but if that was an opportunity and easy one, they would be willing.

Councilman Guy stated he wanted a reverter clause added to that area so if they could get phase one moved to phase two just in case if this passes and Luckstone decides to sell or go bankrupt or anything to that nature it would revert back to the original zoning. He stated he had visited their sites and knows that they were environmentally sound, and they try to do things the right way. But we don't know who might come in here if you leave. And we might get someone in here who's not environmentally sound and then we would have a mess in the county. I like to see phase one moved to where phase two is and I like a reverter clause added if anything ever happened and Luckstone left or sold that property or business it would revert back to the original zoning.

Mr. Thompson stated we can provide language to Ms. Winters on that for the next meeting. The reverter clause is something that we can manage in an internal conversation, the only reason I pause on phase one to phase two is because that does involve speaking to DHEC. I'm not saying it's a concern or an issue. I think that's completely fair. I can stand up here with complete confidence and say we never have any intention of another operator being present other than us. I will be prepared at the next meeting to speak to that. Councilman Killian withdrew his second, Councilman Vaughn withdrew his motion. Councilman Vaughn motioned to uphold the planning commission and the conditions that Luckstone agreed to on all properties along with adding a reverter clause and if DHEC agrees with changing of the phases of the project that Luckstone would do that, second by Councilman Killian.

Attorney Winters asked Mr. Thompson if you're going to come back with some additional information, if you could discuss, just briefly reclamation when you do that as well. I think that's relevant to this whole discussion.

Vice Chairman Wilson stated he wanted to thank all the people who've given me a call within the last week and I appreciate all the respectful dialogues that we've had. I want you to know that I've taken this vote and this responsibility very seriously. I've spent hours reading over the planning commission minutes and studying application and doing research online and talking to people on all sides of the issue. I've driven through all the nearby neighborhoods and even walked homeowners' property near the site. So I want to start by saying that I've lived by a quarry my entire life. My farm borders a quarry. Going to the Lowrys quarry that's run by Hanson to by a load of rock is something I've done for more than 20 years now.

I see some changes that Luck has made since their last application for rezoning and I think they are all improvements. The additional land, some of it being zoned down to agriculture, is a good thing. Category One is those types of environmental permits granted from the South Carolina Department of Health. They really are the experts when it comes to our air and water quality. I'm not trained to do that. Category Two is everything else. And this is the second category where I want to focus my attention more. So as for as traffic, I've heard complaints about the traffic, and I get it. But I believe the four lanes of highway nine is where it belongs. And some of this traffic is traffic that's already happening. That actually has to travel secondary roads to get to the primary roads. And so in some ways, and other and some places it will actually help traffic in certain places, but I do realize some of the traffic's going out. Going up toward York County, Lancaster County, so it's going to be traffic but highway nine I believe that's where the four lanes is where that heavy traffic belongs.

So one issue that ranks high on my list of concerns is noise from the quarry. I want to make sure that we hold Luckstone on to some really high standards here. There will be some noise, but how much noise, how late and how much on the weekends. It's important. I have some ideas for how we might tighten some of that up. And just make sure we're setting the standard high in that regard. I want to have conversations with representatives from Luck about this. I want our conversations to be with the planning director, president and maybe the county attorney, to see what avenues there are to make sure we're using high standards when it comes to noise. One thing that I really want to understand before final reading is how do we hold Luck accountable. I've had conversations about this with staff, but I think we need to work out more details. They have made a lot of promises. And I just want to make sure we can hold them to those promises. Especially if things move forward new people from Luckstone will run the Chester operations and I imagine we'll be seeing a lot less of Mr. Thompson and his associates who were the ones who made those promises. I want to understand exactly what happens when they break a promise. For example, how will we know if their monitors show that they went over the decimal limit for noise? What will happen if that promise is broken? And at what point would they be shut down for not correcting it? And of course, how would this work? How are we going to enforce these promises? I know when time goes by promises made so long ago can, sometimes are never enforced and we can't do that.

We've got to keep them to their promises. And so that's something Mrs. Winters I'm going to need some help with. I want to understand exactly how we're going to tell them and maybe we need to make sure we have the procedures is a fine first is that they have a certain number of opportunities to fix it or shutdown for how long? What would it take to reopen to correct these problems. So that's just something I just think we really need to spend a little bit more time on. I'll be voting to approve the first reading because I think I'm more in favor of it than not. But I do have more work to do. And again, I promise I'm keeping an open mind. And we'll be listening and thinking critically about the information as it comes before.

When we think about what time the mining will take place during the time of day, in the day of the week, your hours of operation in the special conditions that are set forth you're breaking into the extraction area, primary plant and equipment, you say 6am to 9pm Monday through Saturday. It seems like it would be helpful if we could reduce that time on Saturday. I think to do it six days a week is a bit much. I think it would be helpful for the resident for Saturday's. Saturday's either about two o'clock on the day on Saturdays or not at all.

Mr. Thompson stated he was comfortable in committing to two o'clock on Saturdays. [Vote 7-0 to approve.](#)

h. 1st Reading of CCMA22-31 Luck Companies request a portion (19.35 acres) of Tax Map #089-00-00-002-000 at 1421 Collie Lane, Chester, SC 29706 to be rezoned from Rural Two District (R2) to Restricted Industrial District (ID-1). Planning Commission voted 5-0 to approve. Councilman Guy motioned to approve with all applicable conditions, second by Councilwoman Mosley. Vote 7-0 to approve.

i. 1st Reading of CCMA22-32 Luck Companies request Tax Map #089-00-00-025-000 off Lancaster Hwy, Chester, SC 29706 to be rezoned from Rural Two District (R2) to General Industrial District (ID-3). Planning Commission voted 5-0 to approve. Councilman Guy motioned to approve with all applicable conditions, second by Councilwoman Mosley. Vote 7-0 to approve.

j. 1st Reading of CCMA22-33 Luck Companies request a portion (9.35 acres) of Tax Map #089-00-00-001-000 at 1295 Lancaster Hwy, Chester, SC 29706 to be rezoned from Rural Two District (R2) to Restricted Industrial District (ID-1). Planning Commission voted 5-0 to approve. Councilwoman Mosley motioned to approve with all applicable conditions, second by Councilman Killian. Vote 7-0 to approve.

k. 1st Reading of CCMA22-34 Luck Companies request a portion (1.01 acres) of Tax Map #089-00-00-001-000 at 1295 Lancaster Hwy, Chester, SC 29706 to be rezoned from Rural Two District (R2) to General Industrial District (ID-3). Planning Commission voted 5-0 to approve. Vice Chairman Wilson motioned to approve with all applicable conditions, second by Councilman Vaughn. Vote 7-0 to approve.

l. Council to consider approval of the 2023 Council & CTC meeting dates. County Council. Vice Chairman Wilson motioned to approve the meeting dates with the addition of the last meeting in December would be if needed, second by Councilwoman Mosley. Vote 7-0 to approve.

8. Boards and Commissions

a. Councilmember Vaughn Appointments and Reappointments.

1. Appointment to Accommodation Tax Commission.

Councilman Vaughn motioned to appoint Jennifer Duly, second by Vice Chairman Wilson. Vote 7-0 to approve.

2. Reappointment to Tax Assessment Appeals Board.

Councilman Vaughn motioned to reappoint Rory McKeown, second by Councilman Agee. Vote 7-0 to approve.

3. Reappointment to Zoning Board of Appeals.

Councilman Vaughn motioned to reappoint. Mickey Walley, second by Councilman Guy. Vote 7-0 to approve.

4. Reappointment to Rural Fire Commission.

Councilman Vaughn motioned to reappoint Russ Collins, second by Councilman Killian. Vote 7-0 to approve.

5. Appointment to Library Board.

Councilman Vaughn motioned to appoint Frank Moore, second by Councilman Guy. Vote 7-0 to approve.

6. Reappointment to Planning Commission.

Councilman Vaughn motioned to reappoint Nancy Walley, second by Councilman Agee. Vote 7-0 to approve.

7. Reappointment Parks and Recreation.

Councilman Vaughn motioned to reappoint Justin Temple, second by Councilman Guy. Vote 7-0 to approve.

8. Appointment to Hazel Pittman Board.

Councilman Vaughn motioned to appoint Maxine Tate, second by Councilwoman Mosley. Vote 7-0 to approve.

b. Councilmember Mosley Appointments and Reappointments.

1. Appointment to the Accommodation Tax Commission.

Councilwoman Mosley motioned to appoint Samantha Gainer, second by Councilman Killian. Vote 7-0 to approve.

2. Appointment to the Rural Fire Commission.

Councilwoman Mosley motioned to appoint Jay Williams, second by Councilman Agee. Vote 7-0 to approve.

3. Appointment to the Planning Commission.

Councilwoman Mosley motioned to appoint Douglas Josey, second by Councilman Vaughn. Vote 7-0 to approve.

c. Councilmember Guy Appointments and Reappointments.

1. Reappointment to Accommodation Tax Commission.

Councilman Guy stated they had declined to be reappointed.

2. Reappointment to Zoning Board of Appeals.

Councilman Guy reappointed Wallace Hayes, second by Councilwoman Mosley. Vote 7-0 to approve.

d. Councilmember Agee Appointments and Reappointments.

1. Appointment to the Accommodation Tax Commission.

Councilman Agee motioned to appoint Maria Hedgpath, second by Councilman Guy. Vote 7-0 to approve.

2. Reappointment to Zoning Board of Appeals.

Councilman Agee motioned to reappoint Mike McBrayer, second by Councilwoman Mosley. Vote 7-0 to approve.

3. Appointment to Rural Fire Commission.

Councilman Agee motioned to appoint Darla Jordan, second by Councilman Killian. Vote 7-0 to approve.

4. Reappointment to the Library Board. Councilman Agee motioned to reappoint Ann Hicklin, second by Councilman Killian. Vote 7-0 to approve.

- 5. Appointment to the Planning Commission.** Councilman Agee motioned to appoint Shawn Hough, second by Councilman Killian. Vote 7-0 to approve.
- 6. Appointment to Parks and Recreation.** Councilman Agee motioned to appoint David Loflin, second by Councilman Killian. Vote 7-0 to approve.
- 7. Reappointment to Hazel Pittman Board.** Councilman Agee motioned to reappoint Michael Harrington, second by Councilwoman Mosley. Vote 7-0 to approve.
- 9. Executive Session-** Councilwoman Mosley motioned to go executive session, second by Councilman Guy. Vote 7-0 to approve.
- a. To receive legal advice regarding Project 22109. Attorney Winters.
 - b. To receive legal advice regarding Project 2298. Attorney Winters.
 - c. To receive legal advice regarding Chester County Airport. Attorney Winters.
- 10. Council Actions Following Executive Session-** Vice Chairman Wilson motioned to go back to regular session, second by Councilman Vaughn. Vote 7-0 to approve.
- a. **Action taken regarding Project 22109.** Councilman Guy motioned to go forward on Project 22109, second by Councilman Wilson. Vote 7-0 to approve.
 - b. **Action taken regarding Project 2298.** Councilman Agee motioned to go forward on Project 2298, second by Councilman Killian. Vote was 7-0 to approve.
 - c. **Action taken regarding Chester County Airport.** Taken as information only.
- 11. Council Comments**
- Councilman Guy stated talking about the zoning and rezoning for Luckstone. One of the things he wanted to make sure that Council also discusses with them in the areas that Council rezones anything that could be left wooded, it would remain wooded for more buffer for the community. It doesn't have to be pushed down, whatever remains buffer would stay buffer.
- Councilwoman Mosley stated she had one question just for council to consider. With the citizens' comments earlier there were so many people and quite a few wanted to speak. Is there something that we could do as a council to stipulate if there's so many people for or against a certain topic if, let's say 10 or more five are allowed to speak at three minutes apiece, that's only 15 minutes. Is there some parameter that we can use to kind of let more people be able to speak because there were a lot of people here tonight who wanted to voice their concerns, one way or another. So just to be fair, I don't know if that's something we could ponder for future meetings.
- Chairman Branham stated it was done to purely cut down on the time it was going to take and if everybody gets up and speaks on the same subject most of the time you hear the same thing repeatedly. They had the opportunity to speak at the public forum in zoning. He respected each voice and their opinion and how they feel about the situation.

Attorney Winters added to what Chairman Branham stated, they had their opportunity at the public hearing and were told at the public hearing that was there opportunity to speak. Council was provided with the minutes from that meeting from the Planning Commission all 18 pages. Everything that was said was documented and presented to Council.

Vice Chairman Wilson asked Attorney Winters to send Council the policy on citizens comments.

Attorney Winters stated she would, and that this council, like many other County Council's permit citizens comments, but it's not required. What is required is to permit the speaking at a public hearing. So y'all give courtesy at your council meetings.

Councilman Agee stated Mary Guy had asked him to participate in the Martin Luther King parade, he, and Ms. Delores Thomas who he has known for seventeen years rode in the parade together. He put his name on one side of the car and hers on the other side, they threw candy out and had a great time.

12. Adjourn-Councilwoman Mosley motioned to adjourn, second by Councilman Killian. Vote 7-0 to adjourn.

Time: 8:15 PM.

Pursuant to the Freedom of Information Act, the Chester News & Reporter, The Herald in Rock Hill, SC, WSOC-TV, Channel 9 Eyewitness News, the Mfg. Housing Institute of SC, WRHI Radio Station, C&N2 News, WCNC News and Capitol Consultants were notified, and a notice was posted on the bulletin board at the Chester County Government Building 24 hours prior to the meeting.

ORDINANCE NO. 2023-1

AN ORDINANCE AUTHORIZING (1) THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT BY AND BETWEEN CHESTER COUNTY, SOUTH CAROLINA (THE "COUNTY") AND [PROJECT PHOENIX22], ACTING FOR ITSELF, ONE OR MORE AFFILIATES OR OTHER PROJECT SPONSORS (COLLECTIVELY, THE "COMPANY"), WHEREBY THE COUNTY SHALL COVENANT TO ACCEPT NEGOTIATED FEES IN LIEU OF *AD VALOREM* TAXES IN CONNECTION WITH THE ACQUISITION, IMPROVEMENT AND EQUIPPING OF CERTAIN FACILITIES IN THE COUNTY (COLLECTIVELY, THE "PROJECT"); (2) SPECIAL SOURCE REVENUE CREDITS IN CONNECTION WITH THE PROJECT; (3) THE BENEFITS OF A MULTI-COUNTY INDUSTRIAL OR BUSINESS PARK TO BE MADE AVAILABLE TO THE PROJECT; (4) THE ALLOCATION OF FEES IN LIEU OF *AD VALOREM* TAXES RECEIVED FROM THE PROJECT; AND (5) OTHER MATTERS RELATING THERETO.

WHEREAS, Chester County, South Carolina (the "County"), acting by and through its County Council (the "County Council"), is authorized and empowered under and pursuant to the provisions of the Code of Laws of South Carolina 1976, as amended (the "Code"), particularly Title 12, Chapter 44 of the Code (the "Negotiated FILOT Act"); and Title 4, Chapter 1 of the Code (the "Multi-County Park Act", or as to Section 4-1-175 thereof, and, by incorporation, Section 4-29-68 of the Code, the "Special Source Act") (collectively, the "Act") and by Article VIII, Section 13 of the South Carolina Constitution: (i) to enter into agreements with certain investors to construct, operate, maintain, and improve certain projects through which the economic development of the State of South Carolina (the "State") will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ the manpower, agricultural products, and natural resources of the State; (ii) to covenant with such investors to accept certain fee in lieu of *ad valorem* tax ("FILOT") payments, including, but not limited to, negotiated FILOT ("Negotiated FILOT") payments made pursuant to the Negotiated FILOT Act, with respect to a project; (iii) to permit investors to claim special source revenue credits against their FILOT payments ("Special Source Credits") to reimburse such investors for expenditures in connection with infrastructure serving the County and improved or unimproved real estate and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County ("Special Source Improvements"); and (iv) to create, in conjunction with one or more other counties, a multi-county industrial or business park ("Multi-County Park") in order to afford certain enhanced income tax credits to such investors and to facilitate the grant of Special Source Credits; and

WHEREAS, one or more investors identified for the time being as Project Phoenix22, each acting for itself, one or more current or future affiliates, and other project sponsors (collectively, the "Company"), propose to invest in, or cause others to invest in, the acquisition,

improvement and equipping of certain facilities to be operated primarily for manufacturing facilities, at one or more locations in the County (the “Project”) and anticipates that, should its plans proceed as expected, the Project will generate aggregate investment in the County of approximately \$363,300,000 and expects to create, or cause to be created, approximately 180 new jobs at the Project; and

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

WHEREAS, in accordance with such findings and determinations and in order to induce the Company to locate the Project in the County, the County Council adopted a Resolution on January 17, 2023 (the “Inducement Resolution”), whereby the County identified the Project as a “project” within the meaning of the Act, and determined to provide certain negotiated FILOT, Special Source Credit, and Multi-County Park benefits with respect to the Project; and

WHEREAS, the County and the Company have agreed to specific terms and conditions of such arrangements as set forth herein and in a Fee in Lieu of Tax and Incentive Agreement by and between the County and the Company with respect to the Project (the “FILOT Agreement”), the form of which is presented to this meeting, and which is to be dated as of February 21, 2023 or such other date as the parties may agree; and

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

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

Section 1. Evaluation of the Project. Based solely on information provided by the Company, County Council has evaluated the Project on the following criteria and based upon the advice and assistance of the South Carolina Department of Commerce and the South Carolina Department of Revenue:

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

Section 2. Findings by County Council. Based solely on information provided by and representations of the Company and the advice and assistance of the South Carolina Department of Commerce and the South Carolina Department of Revenue, as required, the County Council hereby finds that:

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

(b) the Project, and the County's actions herein, will subserve the purposes of the Negotiated FILOT Act;

(c) the investment by the Company in the Project is anticipated to be approximately \$363,300,000, to be invested within 5 years form the "Commencement Date" as such terms are defined in the Negotiated FILOT Act;

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

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

(f) the Project will not give rise to a pecuniary liability of the County or any incorporated municipality nor a charge against its general credit or taxing power of the County or any incorporated municipality;

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

(h) the inducement of the location of the Project is of paramount importance;
and

(i) the benefits of the Project to the public are greater than the costs to the public.

Section 3. Fee-in-Lieu of Taxes Arrangement. Pursuant to the authority of the Negotiated FILOT Act, the Project is designated as "economic development property" under the Negotiated FILOT Act and there is hereby authorized a fee-in-lieu of taxes arrangement with the Company which will provide Negotiated FILOT payments to be made with respect to the Project based upon a 4% assessment ratio and a fixed millage rate of 488.4 mills, all as more fully set forth in the FILOT Agreement.

Section 4. Special Source Revenue Credits. As an additional inducement, and as reimbursement to the Company for expenditures on Special Source Improvements, the County will provide to the Company Special Source Credits under the Special Source Act as set forth in the FILOT Agreement.

Section 5. Execution of the FILOT Agreement. The form, provisions, terms, and conditions of the FILOT Agreement presented to this meeting and filed with the Clerk of Count Council be and hereby are approved, and all of the provisions, terms, and conditions thereof are hereby incorporated herein by reference as if such FILOT Agreement was set out in this Ordinance in its entirety. The Chairman of the County Council, the County Administrator and the Clerk of the County Council be and they are hereby authorized, empowered, and directed to execute, acknowledge, and deliver the FILOT Agreement in the name and on behalf of the County, and thereupon to cause the FILOT Agreement to be delivered to the Company. The FILOT Agreement is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall not materially adversely affect the rights of the County thereunder and as shall be approved by the County Attorney and the officials of the

County executing the same, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of the FILOT Agreement now before this meeting.

Section 6. Inclusion of Project in Multi-County Park. The County will use its best efforts to ensure the Project is included, if not already included, and will remain, in the boundaries of a multi-county industrial or business park pursuant to the provisions of the Multi-County Park Act and Article VIII, Section 13 of the State Constitution, as set forth in the FILOT Agreement.

Section 7. Miscellaneous.

(a) The Chairman of the County Council, the County Administrator, and all other appropriate officials of the County are hereby each authorized, empowered, and directed to execute, deliver, and receive any other agreements and documents as may be required by the County in order to carry out, give effect to, consummate the transactions authorized by this Ordinance, and do any and all things necessary or proper to effect the performance of all obligations of the County under and pursuant to the FILOT Agreement;

(b) This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina;

(c) This Ordinance shall become effective immediately upon approval following third reading by the County Council;

(d) The provisions of this Ordinance are hereby declared to be 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; and

(e) All orders, ordinances, resolutions, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed.

[SIGNATURE PAGE FOLLOWS]
[REMAINDER OF PAGE INTENTIONALLY BLANK]

Enacted and approved, in meeting duly assembled, this 21st day of February, 2023.

CHESTER COUNTY, SOUTH CAROLINA

By: _____
Joe Branham, Chairman, County Council
Chester County, South Carolina

Attest:

Karen Lee, Clerk to County Council
Chester County, South Carolina

First Reading: January 17, 2023
Second Reading: February 6, 2023
Public Hearing: February 21, 2023
Third Reading: February 21, 2023

FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

between

CHESTER COUNTY, SOUTH CAROLINA

and

PROJECT PHOENIX22

Dated as of February 21, 2023

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FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

THIS FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT (this “Agreement”) dated as of February 21, 2023, by and between CHESTER COUNTY, SOUTH CAROLINA (the “County”), a body politic and corporate and a political subdivision of the State of South Carolina, and [PROJECT PHOENIX22], acting for itself, one or more affiliates, and/or other project sponsors (the “Company”);

WITNESSETH:

WHEREAS, Chester County, South Carolina (the “County”), acting by and through its County Council (the “County Council”), is authorized and empowered under and pursuant to the provisions of the Code of Laws of South Carolina 1976, as amended (the “Code”), particularly Title 12, Chapter 44 of the Code (the “Negotiated FILOT Act”); and Title 4, Chapter 1 of the Code (the “Multi-County Park Act”, or as to Section 4-1-175 thereof, and, by incorporation, Section 4-29-68 of the Code, the “Special Source Act”) (collectively, the “Act”) and by Article VIII, Section 13 of the South Carolina Constitution: (i) to enter into agreements with certain investors to construct, operate, maintain, and improve certain projects through which the economic development of the State of South Carolina (the “State”) will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ the manpower, agricultural products, and natural resources of the State; (ii) to covenant with such investors to accept certain fee in lieu of *ad valorem* tax (“FILOT”) payments, including, but not limited to, negotiated FILOT (“Negotiated FILOT”) payments made pursuant to the Negotiated FILOT Act, with respect to a project; (iii) to permit investors to claim special source revenue credits against their FILOT payments (“Special Source Credits”) to reimburse such investors for expenditures in connection with infrastructure serving the County and improved or unimproved real estate and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County (“Special Source Improvements”); and (iv) to create, in conjunction with one or more other counties, a multi-county industrial or business park (“Multi-County Park”) in order to afford certain enhanced income tax credits to such investors and to facilitate the grant of Special Source Credits; and

WHEREAS, one or more investors identified for the time being as Project Phoenix22, each acting for itself, one or more current or future affiliates, and other project sponsors (collectively, the “Company”), propose to invest in, or cause others to invest in, the acquisition, improvement and equipping of certain facilities to be operated primarily for manufacturing facilities, at one or more locations in the County (the “Project”) and anticipates that, should its plans proceed as expected, the Project will generate aggregate investment in the County of approximately \$363,300,000 and expects to create, or cause to be created, approximately 180 new jobs at the Project; and

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

WHEREAS, in accordance with such findings and determinations, and in order to induce the Company to locate the Project in the County, the County Council adopted a Resolution on January 17, 2023 (the “Inducement Resolution”), whereby the County identified the Project as a “project” within the meaning of the Act, and agreed to provide the benefits of a negotiated FILOT, a multi-county industrial or business park, and Special Source Credits with respect to the Project, the terms of all of which are set forth in greater detail in this Agreement; and

WHEREAS, the County has determined that it is in the best interests of the County to enter into this Agreement with the Company, subject to the terms and conditions set forth herein and, by Ordinance No. 2023-1 enacted by the County Council on February 21, 2023, approved the form, terms and conditions of this Agreement and ratified all prior actions taken with respect to the Project.

NOW, THEREFORE, in consideration of the premises, the mutual covenants contained herein, the above recitals which are incorporated herein by reference, the potential investment to be made, or caused to be made, and the potential jobs to be created, or caused to be created, by the Company which contribute to the tax base and the economic welfare of the County, the respective representations and agreements hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the Company agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. In addition to the words and terms elsewhere defined in this Agreement, the following words and terms as used herein and in the preambles hereto shall have the following meanings unless the context or use indicates another or different meaning or intent.

“*Act*” shall mean, collectively, the Negotiated FILOT Act and the Multi-County Park Act, including, without limitation, the Special Source Act.

“*Administration Expenses*” shall mean the reasonable and necessary expenses incurred by the County in the fulfillment of its obligations under this Agreement and in the implementation of its terms and provisions, including reasonable and necessary attorney’s fees at the hourly rates which are standard for the applicable legal services to the County, but excluding any expenses incurred by the County in defending either challenges to the incentives provided herein by third parties or suits brought by the Company or any other Co-Investor under **Section 8.04** hereof; provided, however, that no such expense shall be considered an Administration

Expense unless the Company, or other Co-Investor, required to pay such expense hereunder, shall have first agreed, prior to the County incurring such expense, as to the maximum amount thereof or as to the basis for which such expenses will be incurred, and the County shall have furnished to such Company, or such other Co-Investor, as the case may be, an itemized statement of all such expenses incurred.

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

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

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

“*Co-Investor*” shall mean the Company, any other Sponsor or Sponsor Affiliate within the meaning of Sections 12-44-30(19) and (20) of the Negotiated FILOT Act. As of the date of the original execution and delivery of this Agreement, the Company is the only Co-Investor.

“*Company*” shall mean **[Project Phoenix22]**, and any surviving, resulting, or transferee entity in any merger, consolidation or transfer of assets permitted under **Sections 4.05** or **6.01** hereof or any other assignee hereunder which is designated by the Company and approved by the County.

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

“*Credit Eligible Entity*” shall have the meaning specified in **Section 3.02(a)** hereof.

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

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

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

“*Enhanced Investment FILOT Compliance Period*” shall mean the period commencing with the first day that Negotiated FILOT Property is purchased or acquired, whether before or after the date of this Agreement, and ending on the eighth anniversary of the end of the Property

Tax Year in which the initial Negotiated FILOT Property comprising all or a portion of the Project is placed in service, all as specified in Section 12-44-30(13) of the Negotiated FILOT Act. It is presently anticipated, but not required that the initial Negotiated FILOT Property comprising all or a portion of the Project will be placed in service in the Property Tax Year ending on December 31, 2023 and, in such event, the Enhanced Investment FILOT Compliance Period will end on December 31, 2031.

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

“Event of Default” shall mean an Event of Default, as set forth in **Section 8.01** hereof.

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

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

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

“Investment Period” shall mean the period for completion of the Project, which shall equal the Enhanced Investment FILOT Compliance Period (8 years), however, if the Company meets the Enhanced Investment FILOT Minimum Requirement of \$150,000,000 within the Enhanced Investment FILOT Compliance Period (8 years), the County agrees to consider approving the Company’s request for an extension of the Investment Period by five (5) years, which approval shall not be unreasonably withheld.

In the event that the initial Negotiated FILOT Property comprising all or a portion of the Project is, as presently anticipated, placed in service in the Property Tax Year ending on December 31, 2023, upon any such extension, the Investment Period will end, unless extended, on December 31, 2031.

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

“Minimum Special Source Credits Jobs Requirement” shall mean the creation of at least 75 new, full-time jobs in the County by the Company and all Co-Investors, in the aggregate, within the period commencing on January 1, 2023 and ending at the end of the Enhanced Investment FILOT Compliance Period.

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

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

“Multi-County Park Agreement” shall mean that certain Master Agreement governing the York-Chester Industrial Park by and between the County and York County, South Carolina dated as of December 31, 2012 as supplemented, modified or amended, and, as such agreement may be further supplemented, modified, amended, or replaced from time to time.

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

“Negotiated FILOT Act” shall mean Title 12, Chapter 44 of the Code.

“Negotiated FILOT Property” shall mean all Project property qualifying for the Negotiated FILOT as economic development property within the meaning of Section 12-44-30(6) of the Negotiated FILOT Act, including, without limitation, each item of real and tangible

personal property comprising the Project which is placed in service during the Investment Period and which meets the requirements of Sections 12-44-30(6) and 12-44-40(C) of the Negotiated FILOT Act, together with all Replacement Property, but excluding any Non-Qualifying Property, and any Released Property.

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

“Person” shall mean and include any individual, association, unincorporated organization, corporation, partnership, limited liability company, joint venture, or government or agency or political subdivision thereof.

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

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

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

“Replacement Property” shall mean all property placed in service on the Land in substitution of, or as replacement for, any Negotiated FILOT Property which becomes Released Property, regardless of whether such property serves the same function as the property it replaces and regardless of whether more than one piece of such property replaces a single piece of the

Negotiated FILOT Property, to the maximum extent that such property may be included in the calculation of the Negotiated FILOT pursuant to **Section 5.01(d)** hereof and Section 12-44-60 of the Negotiated FILOT Act.

“*Retroactive FILOT Payment*” shall mean a payment made by the Company or any other Co-Investor, to the County in an amount an amount equal to the difference between the FILOT Payments theretofore made, after application of the Special Source Credits, and the amount of the FILOT Payments which would have otherwise been due if determined with an assessment ratio of 6%, after application of the Special Source Credits.

“*Special Source Act*” shall mean Section 4-1-175 of the Code.

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

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

“*Sponsor*” and “*Sponsor Affiliate*” shall mean an entity whose investment with respect to the Project will qualify for the Negotiated FILOT pursuant to **Section 6.02** hereof and Sections 12-44-30(19) or (20) and Section 12-44-130 of the Negotiated FILOT Act if the statutory investment requirements are met. As of the original execution and delivery of the Agreement, the only Sponsor is the Company and there are no Sponsor Affiliates.

“*Standard FILOT Compliance Period*” shall mean the period commencing with the first day that Negotiated FILOT Property is purchased or acquired, whether before or after the date of this Agreement, and ending on the fifth anniversary of the end of the Property Tax Year in which the initial Negotiated FILOT Property comprising all or a portion of the Project is placed in service, all as specified in Section 12-44-30(13) of the Negotiated FILOT Act. It is presently anticipated, but not required that the initial Negotiated FILOT Property comprising all or a portion of the Project will be placed in service in the Property Tax Year ending on December 31, 2023 and, in such event, the Standard FILOT Compliance Period will end on December 31, 2028.

“*Standard FILOT Minimum Requirement*” shall mean investment in the Project of not less than \$2,500,000 within the Enhanced Investment FILOT Compliance Period, as set forth in by Section 12-44-30(14) of the Negotiated FILOT Act, which investment amount shall be calculated in accordance with, and subject to, Section 12-44-130 of the Negotiated FILOT Act and **Section 6.02** hereof.

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

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

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

Section 1.02. References to Agreement. The words “hereof”, “herein”, “hereunder”, and other words of similar import refer to this Agreement as a whole.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.01. Representations and Warranties by County. The County makes the following representations and warranties as the basis for the undertakings on its part herein contained:

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

(b) On the basis of information supplied to it by the Company, the County has determined the Project will subserve the purposes of the Act and has made all other findings of fact required by the Act in connection with the undertaking of the arrangements set forth herein.

(c) This Agreement has been duly authorized, executed and delivered on behalf of the County. The authorization, execution, and delivery of this Agreement and the performance by the County of its obligations hereunder will not, to the best knowledge of the County, conflict with or constitute a breach of, or a default under, any South Carolina law, court or administrative regulation, decree, order, provision of the Constitution or laws of the State relating to the establishment of the County or its affairs, or any material agreement, mortgage,

lease, or other instrument to which the County is subject or by which it is bound, nor, to the best knowledge of the County, any existing law or the provisions of the Constitution of the State.

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

(e) To the best knowledge of the County, the Project will not trigger a required traffic study by the South Carolina Department of Transportation or additional road improvements at the Project. However, if additional later traffic volumes around the Project trigger a required traffic study and/or additional road improvements around the Project, the County agrees that the Company is not responsible for the costs associated with any required traffic studies or road improvements around the Project that are not triggered by traffic volumes of the Company at the Project.

Section 2.02. Representations and Warranties by the Company. The Company makes the following representations and warranties as the basis for the undertakings on its part herein contained:

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

(b) The Company presently intends to operate the Project as facilities primarily for manufacturing of glass and fiberglass mats.

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

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

(e) The Company has retained legal counsel to advise, or has had a reasonable opportunity to consult legal counsel to advise, of its eligibility for the Negotiated FILOT and

other incentives granted by this Agreement and has not relied on the County, its officials, employees or legal representatives with respect to any question of eligibility or applicability of the Negotiated FILOT and other incentives granted by this Agreement.

ARTICLE III

COVENANTS OF COUNTY

Section 3.01. Agreement to Accept Negotiated FILOT Payments. The County hereby agrees to accept Negotiated FILOT Payments in accordance with the provisions of **Section 5.01** hereof in lieu of *ad valorem* taxes with respect to that portion of the Project consisting of Negotiated FILOT Property until this Agreement expires or is sooner terminated.

Section 3.02. Special Source Credits.

(a) As reimbursement for investment in Special Source Improvements and subject to the requirements of the Special Source Act, the County hereby agrees that the Company and each other Co-Investor (each, a “Credit Eligible Entity”) shall be entitled to receive, and the County shall provide, Special Source Credits against each FILOT Payment due from each such Credit Eligible Entity with respect to the Project for a period of ten (10) consecutive tax years, commencing with the tax year for which the initial Negotiated FILOT payment is due with respect to the Project, in an annual amount equal to fifty-five percent (55%) of each such year’s FILOT Payments for years one (1) through five (5) and in an amount equal to twenty-five percent (25%) of each such year’s FILOT Payments for years six (6) through ten (10). In accordance with the Special Source Act, the Special Source Credits authorized herein shall not, in the aggregate, exceed the aggregate cost of Special Source Improvements funded from time to time in connection with the Project by the Company and all other Credit Eligible Entities.

(b) The Special Source Credits to which a Credit Eligible Facility is entitled for each tax year of the period set forth in **Section 3.02(a)** hereof shall be reflected by the County on each bill sent by the County to such Credit Eligible Entity for each FILOT Payment due from such Credit Eligible Entity with respect to each such tax year, by reducing the total original FILOT Payment amount otherwise due from such Credit Eligible Entity for such tax year by the amount of Special Source Credits to which such Credit Eligible Entity is entitled for such tax year.

Section 3.03. Multi-County Park Designation. The County hereby represents and acknowledges that the property comprising the Land as of the original execution and delivery of the Incentive Agreement is located within the boundaries of the Multi-County Park. The County agrees to designate the Project as part of a Multi-County Park, if not already so designated, and agrees to use its best, commercially reasonable efforts to maintain the Project within the boundaries of the Multi-County Park for the duration of this Agreement pursuant to the provisions of the Multi-County Park Act and Article VIII, Section 13(D) of the State

Constitution. The County hereby further agrees to take such further actions as may be necessary to effect any such initial or continued Multi-County Park designation under and pursuant to the Multi-County Park Agreement.

Section 3.04. Commensurate Benefits. The parties acknowledge the intent of this Agreement, in part, is to afford the Company and each other Co-Investor the benefits specified in this Article III in consideration of the Company's decision to locate the Project within the County, and this Agreement has been entered into in reliance upon the enactment of the Act and the County's compliance with the requirements thereof. In the event that a court of competent jurisdiction holds that the Act is, in whole or in part, unconstitutional or this Agreement, the Multi-County Park Agreement, or agreements similar in nature to this Agreement or the Multi-County Park Agreement are invalid or unenforceable in any material respect, or should the Company determine there is a reasonable doubt as to the validity or enforceability of this Agreement or the Multi-County Park Agreement in any material respect, then at the request of the Company, the County agrees to use its best efforts, and to take such other steps as may be reasonably necessary, to extend to the Company and each other Co-Investor the intended benefits of this Agreement, including, but not limited to, the Negotiated FILOT and the Special Source Credits and agrees, if requested by the Company, to enter into a lease purchase agreement with the Company and each other Co-Investor pursuant to Section 12-44-160 of the Negotiated FILOT Act and Title 4, Chapter 29 or Title 4, Chapter 12 of the Code, as applicable, the terms of which shall be mutually agreeable to the County and the Company. In furtherance of this covenant, the County also agrees that, in the event that, for any reason, the Multi-County Park is declared by a court of competent jurisdiction to be invalid or unenforceable in whole or in part, the Company and the County express their intentions that tax or FILOT payments be reformed so as to best afford the Company and each other Co-Investor benefits commensurate with, but not in excess of, those intended under this Agreement, including, but not limited to, the Special Source Credits, as then permitted by law, including, without limitation, any benefits afforded under Title 12, Chapter 6, Title 4, Chapter 1 and Title 4, Chapter 29 of the Code, as applicable, to the extent allowed by law.

ARTICLE IV

COVENANTS OF COMPANY

Section 4.01. Investment in Project.

(a) The Company hereby agrees to acquire, construct, equip, or improve or cause to be acquired, constructed, equipped, or improved, the Project, as the same shall be determined from time to time by the Company in its sole discretion. As required by Section 12-44-30(2) of the Negotiated FILOT Act, at least a portion of the Negotiated FILOT Property comprising the Project shall be placed in service no later than the end of the Property Tax Year which is three years from the year in which this Agreement is entered, *i.e.*, the Property Tax Year ending on December 31, 2026.

(b) Notwithstanding anything herein to the contrary, and to the maximum extent permitted by law, investment in Negotiated FILOT Property and job creation in the County at the Project by any and all other permitted Co-Investors shall together with investment in Negotiated FILOT Property and job creation in the County at the Project by the Company, count to the full extent permitted by the Negotiated FILOT Act, the Enhanced Investment FILOT Minimum Requirement, the Minimum Special Source Credits Jobs Requirement, and the Standard FILOT Minimum Requirement. Aggregate investment shall generally be determined by reference to the property tax returns of the Company and each other Co-Investor filed with respect to the Project, including without limitation, each such entity's assets listed on a SCDOR PT-300 or such comparable forms, as the Department of Revenue may provide in connection with projects under the Act, without regard to depreciation or other diminution in value.

(c) Subject to the provision of **Sections 4.05** and **6.01** hereof, the Company and each other Co-Investor shall, retain title to, or other property rights in, its respective portion of the Project throughout the Term of this Agreement, and the Company and each other Co-Investor shall have full right to mortgage, lease, or encumber all or any portion of the Project, including without limitation, in connection with any financing transactions, all without the consent of the County.

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

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

(ii) Subject to the provisions of **Section 5.01(f)(ii)** hereof, in any instance when the Company or any other Co-Investor, in its discretion, determines any property included in the Project, including without limitation, any Negotiated FILOT Property, has become inadequate, obsolete, worn out, unsuitable, undesirable, or unnecessary for operations at the Project, the Company or such other Co-Investor may remove such property from the Project and sell, trade in, exchange, or otherwise dispose of them as a whole or in part without the consent of the County.

(iii) The Company and each other Co-Investor may, at any time and in its discretion by written notice to the County, remove any Project property including, but not limited to, Negotiated FILOT Property, real or personal, from the Project or from the provisions of this Agreement including, but not limited to, the Negotiated FILOT arrangement set forth in this Agreement and retain such property for use as part of its operations in the County, whether or not such property remains as part of the Project, and effective as of the date of any such removal, such property will be subject to *ad valorem* taxes, or to FILOT payments pursuant to the Multi-County Park Act, as the case may be; provided, that, any such notice requirement may be, but shall not be required to be, satisfied by property tax returns filed with respect to the

Project and any other such property, including without limitation, such entity's SCDOR PT-300 or such comparable forms, as the Department of Revenue may provide in connection with projects under the Act, and in such event, any such removal reflected by any such return shall be deemed to be effective as of the date of such removal.

(iv) If the Company or any other Co-Investor sells, leases, or otherwise disposes of any portion of, or adds to, the Land, or removes any portion of the Land from the Project while retaining such property for use as part of its operations in the County, all as permitted herein, the Company or such Co-Investor shall deliver to the County a revised **Exhibit A** to this Agreement or supplements to **Exhibit A** reflecting any such addition, disposal or removal and such revised or supplemented **Exhibit A** shall, effective as of the date of any such transaction, addition, disposal, or removal, be automatically made a part of this Agreement without further action or proceedings by the County or the Council; provided, that any requirement to provide such schedules or supplements to the County may be satisfied by property tax returns filed with respect to the Project and any other such property, including without limitation, such entity's SCDOR PT-300 or such comparable forms, as the Department of Revenue may provide in connection with projects under the Negotiated FILOT Act, and in such event, any such addition, disposal, or removal reflected by any such return, shall be automatically deemed effective as of the date of any such addition, disposal, or removal.

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

Section 4.02. Failure to Satisfy Minimum Special Source Credits Jobs Requirement. If the Minimum Special Source Credits Jobs Requirement is not satisfied by the end of the Enhanced Investment FILOT Compliance Period, each of the following subsections (a) – (c) shall apply:

(a) The Company and each other Sponsor or Sponsor Affiliate shall continue to be eligible for the Negotiated FILOT described in **Section 5.01** hereof so long as the Minimum Statutory Investment Requirement is nevertheless satisfied by the end of the Enhanced Investment FILOT Compliance Period.

(b) On behalf of each Credit Eligible Entity, the Company shall, to the extent required by the below provisions of this **Section 4.02(b)**, reimburse the County for any Special Source Credits previously received, or to be received (upon actual receipt), by each such Credit Eligible Entity for each tax year for which each such Credit Eligible Entity is entitled to receive Special Source Credits under **Section 3.02(a)** hereof and for which a Negotiated FILOT Payment has been, or will be, due to be paid without penalty with respect to the Project on or before the January 15 immediately following the end of the Enhanced Investment FILOT Compliance Period (collectively, the "Compliance Period Special Source Credits"), taking into account the highest number of new, full-time jobs created, in the aggregate, at the Project within the period set forth in the Minimum Special Source Jobs Requirement at any time during such period (the

“Actual Project Jobs”), as compared to the Minimum Special Source Credits Jobs Requirement, as further detailed and illustrated in the formula and examples set forth below:

Formula:

1. $\frac{\text{Actual Project Jobs}}{75 \text{ new, full-time jobs}} = \text{Jobs Satisfaction Percentage [JSP]}$
2. $100\% - \text{JSP} = \text{Jobs Satisfaction Factor [JSF]}$
3. In the event that determination of the Jobs Satisfaction Factor results in a positive percentage figure, the Jobs Satisfaction Factor shall be applied to the Compliance Period Special Source Credits received, or to be received (upon actual receipt), by each Credit Eligible Entity as set forth above to determine reimbursement amounts due to the County, if any, from the Company. Any such amounts shall be due to be paid by the Company within sixty (60) days of receipt by the Company of written notice from the County of such amounts being due.

(c) Each Credit Eligible Entity may continue to be eligible for Special Source Credits against each FILOT Payment due from such Credit Eligible Entity with respect to the Project for the remaining tax years of the period set forth in **Section 3.02(a)** hereof; provided, however, in the event that determination of the Jobs Satisfaction Factor pursuant to **Section 4.02(b)** hereof results in a positive percentage figure, the Special Source Credits percentage set forth in **Section 3.02(a)** hereof of twenty-five percent (25%) for Years 6-10 shall be reduced for the remaining such tax years by the percentage equal to such Jobs Satisfaction Factor, as further illustrated in the example set forth below:

Example:

As an example, assuming a Jobs Satisfaction Factor of twenty percent (20%) in Year 9, the Special Source Credits percentage applicable for the remaining period would be reduced from 25% by 20% of such initial Special Source Credits percentage, down to a Special Source Credits percentage of 20%.

Section 4.03. Payment of Administration Expenses. The Company or any other Co-Investor will reimburse, or cause reimbursement of, the County from time to time for the County’s Administration Expenses incurred in the fulfillment of its obligations hereunder, or in the implementation of this Agreement’s terms and provisions, with respect to the Company or such other Co-Investor, respectively, promptly upon written request therefor, but in no event later than ninety (90) days after receiving written notice from the County specifying the nature of such expense and requesting the payment of the same. The County acknowledges that it imposes no charges in the nature of impact fees or recurring fees in connection with the Project or the incentives authorized by this Agreement, and, aside from the attorneys’ fees set forth below, the

County anticipates no out of pocket expenses in connection with this Agreement and the transactions authorized hereby. The parties understand that the County has incurred, and will incur, legal fees and other expenses for review of the Inducement Resolution, this Agreement, the Multi-County Park Agreement and all resolutions, ordinances and other documentation related thereto in an amount not to exceed \$5,000.

Section 4.04. Use of Project for Lawful Activities. During the Term of this Agreement, the Company and each other Co-Investor may use the Project as it deems fit for any lawful purpose.

Section 4.05. Maintenance of Existence. Except in the event the resulting, surviving or transferee entity is the Company or an Affiliate of the Company, as to which such consolidation, merger, or transfer, the County hereby preapproves and consents, unless the County shall provide prior consent or subsequent ratification otherwise, which consent or ratification shall not be unreasonably withheld, conditioned, or delayed, the Company covenants that it will maintain its separate existence and will not dissolve or consolidate with, merge into or transfer, or otherwise dispose of substantially all of its property to any other entity or permit one or more other entities to consolidate with or merge into it or purchase substantially all of its property unless:

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

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

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

Upon any consolidation or merger or any conveyance or transfer of all or substantially all of the Company's assets in accordance with this **Section 4.05**, the successor entity formed by such consolidation or into which the Company is merged or to which such conveyance or transfer is made, shall succeed to, and be substituted for, and may exercise every right and power of the Company under this Agreement with the same effect as if such successor entity had been named as the Company herein, and thereafter the Company shall be relieved of all obligations and covenants under this Agreement.

If a consolidation, merger or conveyance or transfer is made as permitted by this Section, the provisions of this Section shall continue in full force and effect and no further consolidation, merger or conveyance or transfer shall be made except in compliance with the provisions of this **Section 4.05**.

The Company acknowledges transfers of this Agreement or the Negotiated FILOT Property may cause the Negotiated FILOT Property to become ineligible for a Negotiated FILOT or result in penalties under the Act absent compliance by the Company or any Co-Investor with the Transfer Provisions.

Section 4.06. Records and Reports. The Company and each other Co-Investor will maintain, or cause to be maintained, such books and records with respect to its respective portion of the Project as will permit the identification of those portions of the Project it places in service during the Investment Period, the amount of investment with respect thereto, and any computations of Negotiated FILOT Payments made by such entity hereunder, and will comply with all reporting requirements of the State and the County applicable to Negotiated FILOT Property under the Negotiated FILOT Act, including without limitation the reports required by 12-44-90 of the Negotiated FILOT Act (collectively, "Filings"); provided, however, that the parties hereby waive in its entirety the requirement under Section 12-44-55 of the Negotiated FILOT Act for a recapitulation of the terms of this Agreement. In addition, the following records shall be provided to the County:

(a) Upon direction of the governing body of the County, a County Official may request and obtain such financial books and records from the Company and any other Sponsor or Sponsor Affiliate that support the Negotiated FILOT returns of the Company or such other Sponsor or Sponsor Affiliate as may be reasonably necessary to verify the calculations of the Negotiated FILOT Payments by the Company or such other Sponsor or Sponsor Affiliate. For purposes of this Agreement, the term "County Official" shall include the Administrator, Auditor, Assessor, or Treasurer of the County.

(b) Each year during the Term hereof, the Company and each other Sponsor or Sponsor Affiliate shall deliver to the County Auditor, the County Assessor and the County Treasurer a copy of any form or return it files with the Department of Revenue with respect to the Project at the same time as delivery thereof to the Department of Revenue.

(c) The Company shall cause a copy of this Agreement, as well as a copy of the completed Form PT-443 required by the Department of Revenue, to be filed within thirty (30) days after the date of original execution and delivery hereof with the County Auditor, the County Assessor and the County Treasurer of the County and of each other county which is a party to the Multi-County Park Agreement, and with the Department of Revenue and shall update such Form PT-443 from time to time to the extent that the information therein is no longer accurate.

Notwithstanding any other provision of this Section, the Company and each other Co-Investor may, by clear, written designation, conspicuously marked, designate with respect to any Filings or other documents or information delivered to the County segments thereof that the Company or such other Co-Investor believes contains proprietary, confidential, or trade secret matters. The County shall comply with all reasonable, written requests made by the Company or any such other Co-Investor with respect to maintaining the confidentiality of such designated segments, to the extent allowed by law. Except to the extent required by law, unless the County has provided at least ten (10) days advance written notice to the Company or such other Co-Investor of such proposed release, the County shall not knowingly and voluntarily release any Filing, documents, or other information provided to the County by the Company or any other Co-Investor in connection with the Project, whether or not such information has been designated as confidential or proprietary by the Company or any other Co-Investor.

Section 4.07. Funding for Special Source Improvements. The Company and each other Co-Investor shall provide, or cause the provision of, funding for the Special Source Improvements related to its respective portion of the Project.

ARTICLE V

FEES IN LIEU OF TAXES

Section 5.01. Payment of Fees in Lieu of Ad Valorem Taxes.

(a) In accordance with the Negotiated FILOT Act, the parties hereby agree, during the Term hereof, that there shall be due annually with respect to that portion of the Project constituting Negotiated FILOT Property, whether owned by the Company or by any other Sponsor or Sponsor Affiliate, a Negotiated FILOT Payment calculated as set forth in this **Section 5.01**, at the places, in the manner and subject to the penalty assessments prescribed by the County or the Department of Revenue for *ad valorem* taxes. It is presently anticipated, but not required, that the initial Negotiated FILOT Payment, which shall be due under current Code requirements on the January 15 following the year in which the County adds the initial Negotiated FILOT Property to its tax rolls, will be due on January 15, 2025. If the Company designates any other Sponsor or Sponsor Affiliates, as the same shall have been consented to by the County, if such consent is required pursuant to **Section 6.02** hereof, the Company must notify the County in writing at the time of such designation as to whether such additional Sponsor or Sponsor Affiliate shall be primarily liable for the Negotiated FILOT Payments due hereunder

with respect to such Sponsor or Sponsor Affiliate's respective portion of the Negotiated FILOT Property. Unless and until such additional notification is received, the Company shall be primarily liable for all Negotiated FILOT Payments due with respect to such Negotiated FILOT Property.

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

(i) For each annual increment of investment in Negotiated FILOT Property, the annual Negotiated FILOT Payments shall initially be payable for a payment period of forty (40) years. Accordingly, if such Negotiated FILOT Property is placed in service during more than one year, each year's investment during the Investment Period shall be subject to the Negotiated FILOT for a payment period of forty (40) years.

(ii) The Negotiated FILOT shall be determined using: (1) an assessment ratio of 4%; provided, that, in the event that the Enhanced Investment FILOT Minimum Requirement is not satisfied by the end of the Enhanced Investment FILOT Compliance Period, but the Standard FILOT Minimum Requirement is satisfied by the end of the Standard FILOT Compliance Period, an assessment ratio of 6% shall be applicable retroactively and prospectively; (2) a fixed millage rate of 488.4 mills; and (3) the fair market value of such Negotiated FILOT Property as determined in accordance with Section 12-44-50(A)(1)(c) of the Negotiated FILOT Act, which, for typical arm's length construction or acquisition, uses the original income tax basis for any real property without regard to depreciation or reassessment and the original income tax basis for any personal property less allowable depreciation (except depreciation due to extraordinary obsolescence); provided, however, that the Company or any other Sponsor or Sponsor Affiliate and the County may agree, only in a writing approved by the Council, at a later date to amend this Agreement as to Negotiated FILOT property owned by the Company or such other Sponsor or Sponsor Affiliate so as to determine the fair market value of any such real property in accordance with any other method permitted by the Negotiated FILOT Act.

(iii) All such calculations shall take into account all deductions for depreciation or other diminution in value allowed by the Code or by the tax laws generally, as well as tax exemptions which would have been applicable if such property were subject to *ad valorem* taxes, except the five-year exemption from County taxes allowed for certain manufacturing, distribution, corporate headquarters and research and development facilities pursuant to Section 3(g) of Article X of the Constitution of the State and Sections 12-37-220(B)(32) and (34) of the Code; provided, however, the Company or any other Sponsor or Sponsor Affiliate shall not be entitled to extraordinary obsolescence with respect to Negotiated FILOT Property as set forth in Section 12-44-50(A)(1)(c)(ii) of the Negotiated FILOT Act.

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

(c) To the extent not prohibited by the Department of Revenue, Negotiated FILOT Payments are to be recalculated (subject, always to the continuing requirements of **Section 5.01(f)**, hereof):

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

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

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

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

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

(i) Such Replacement Property does not have to serve the same function as the Released Property it is replacing. Replacement Property is deemed to replace the oldest property subject to the Negotiated FILOT, whether real or personal, which is disposed of in the same Property Tax Year as the Replacement Property is placed in service. Replacement Property qualifies for Negotiated FILOT Payments up to the original income tax basis of the Released Property which it is replacing in the same Property Tax Year. More than one piece of property can replace a single piece of property. To the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the Released Property which it is replacing, the excess amount is subject to payments equal to the *ad valorem* taxes, or to the FILOT payments pursuant to the Multi-County Park Act, as the case may be, which would have been paid on such property but for this Agreement. Replacement Property is entitled to the Negotiated FILOT Payments for the remaining portion of the Negotiated FILOT Payment period set forth in **Section 5.01(b)(i)** hereof applicable to the Released Property

(ii) The Company or any other Sponsor or Sponsor Affiliate shall maintain, or cause to be maintained, records sufficient to identify all Replacement Property it

places in service, and the Negotiated FILOT Payments with respect thereto shall be calculated using the millage rate and assessment ratio provided on the property it is replacing.

(e) In the event that, for any reason, the Negotiated FILOT Act and/or the Negotiated FILOT or any portion thereof is, by a court of competent jurisdiction following allowable appeals, declared invalid or unenforceable in whole or in part, or the portion of the Project consisting of Negotiated FILOT Property is deemed not to be eligible for a Negotiated FILOT pursuant to the Act in whole or in part, the Company and the County express their intentions that such payments be reformed so as to afford the Company and each other Sponsor or Sponsor Affiliate benefits commensurate with those intended under this Agreement as then permitted by law, including without limitation any benefits afforded under Title 4, Chapter 12 and Title 4, Chapter 29 of the Code, as applicable, to the extent allowed by law. Absent the legal authorization to effect such reformation, the Company and the County agree that there shall be due hereunder with respect to the portion of the Negotiated FILOT Property affected by such circumstances *ad valorem* taxes or FILOT payments pursuant to the Multi-County Park Act, as the case may be, and that, to the extent permitted by law, the Company and any other Sponsor or Sponsor Affiliate shall be entitled: (1) to enjoy the five-year exemption from *ad valorem* taxes, or from FILOT payments pursuant to the Multi-County Park Act, as the case may be, provided by Article X, Section 3 of the Constitution of the State, and any other exemption allowed by law; (2) to enjoy all allowable depreciation; and (3) to receive all other tax credits which would be due if the Company and each other Sponsor or Sponsor Affiliate were obligated to pay *ad valorem* taxes, or make FILOT payments pursuant to the Multi-County Park Act, as the case may be, hereunder. To the extent that under such circumstances the Negotiated FILOT Payments hereunder are subject to retroactive adjustment, then there shall be due and payable from the Company and any other Sponsor or Sponsor Affiliate, as the case may be, with respect to such entity's portion of the Negotiated FILOT Property in question, an amount equal to the difference between the Negotiated FILOT Payments theretofore actually paid and the amount which would have been paid as *ad valorem* taxes, or as FILOT payments pursuant to the Multi-County Park Act, as the case may be, together with interest on such deficiency as provided in Section 12-54-25(D) of the Code (a "Deficiency Payment").

(f)

(i) In the event that the Enhanced Investment FILOT Minimum Requirement is not satisfied by the end of the Enhanced Investment FILOT Compliance Period, but the Standard FILOT Minimum Requirement is nevertheless satisfied by the end of the Standard FILOT Compliance Period, then the Project shall continue to be eligible for Negotiated FILOT Payments as set forth in **Section 5.01** hereof, but such Negotiated FILOT Payments shall be determined with an applicable assessment ratio of 6%, retroactively and prospectively. In such event, and subject to the provisions of **Section 3.02(a)** hereof, the Company and each Sponsor or Sponsor Affiliate, as the case may be, with respect to its portion of Negotiated FILOT Property, shall be required to remit the Retroactive FILOT Payment.

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

(iii) In the event that the Enhanced Investment FILOT Minimum Requirement is satisfied by the end of the Enhanced Investment FILOT Compliance Period, but following the Enhanced Investment FILOT Compliance Period, investment in the Project, without regard to depreciation or other diminution in value, falls below the lowest investment level set forth in the Enhanced Investment FILOT Minimum Requirement by which the Project has qualified as an “enhanced investment” pursuant to Section 12-44-30(7) of the Negotiated FILOT Act, so long as investment in the Project, without regard to depreciation, reassessment, or other diminution in value, maintains the investment level set forth in the Standard FILOT Minimum Requirement, then the Project shall continue to be eligible for Negotiated FILOT Payments set forth in **Section 5.01** hereof, but such Negotiated FILOT Payments shall be determined with an applicable assessment ratio of 6%, prospectively, commencing with any Negotiated FILOT Payments due with respect to the first Property Tax Year following the Property Tax Year in which such deficiency occurs. In the event that the Enhanced Investment FILOT Minimum Requirement is not satisfied by the end of the Enhanced Investment FILOT Compliance Period, but the Project nevertheless continues to be eligible for Negotiated FILOT Payments pursuant to **Section 5.01** hereof, if following the Standard FILOT Compliance Period, investment in the Project, without regard to depreciation or other diminution in value, falls below the investment level set forth in the Standard FILOT Minimum Requirement, then the Project shall prospectively be subject to *ad valorem* taxes, or to FILOT payments pursuant to the Multi-County Park Act, as the case may be, calculated as set forth in paragraph (e) above, in accordance with Section 12-44-140(C) of the Negotiated FILOT Act commencing with any Negotiated FILOT Payments due with respect to Project property placed in service as of the end of the Property Tax Year in which such deficiency occurs.

(iv) In accordance with the provisions of **Sections 4.01(b)** and **6.02** hereof, except for Existing Property, the investment in all property utilized by the Company or any other Co-Investor at the Land, whether owned by the Company or any other Co-Investor outright or utilized by the Company or any other Co-Investor pursuant to any financing agreement or any lease or other arrangement with the Company or any other Co-Investor, which qualify as Negotiated FILOT Property shall be counted toward all investment obligations under this Agreement, including, to the extent permitted by law, investment obligations under the Negotiated FILOT Act.

(g) Except as otherwise set forth in this Agreement or as otherwise required by the Act, any amounts due to the County under this **Section 5.01** as a Deficiency Payment or other retroactive payment shall be paid within sixty (60) days following receipt by the Company or any other Sponsor or Sponsor Affiliate of notice from the County that such a Deficiency Payment or other retroactive payment is due from such entity.

The Company acknowledges that (i) the calculation of the annual Negotiated FILOT Payment due hereunder is a function of the Department of Revenue and is wholly dependent on the parties intended to receive benefits under this Agreement timely submitting the correct annual property tax returns to the Department of Revenue, (ii) the County has no responsibility for the submission of returns or the calculation of the annual Negotiated FILOT Payment, and (iii) failure by any party to timely submit the correct annual property tax return could lead to loss of all or a portion of the Negotiated FILOT benefits and other incentives provided by this Agreement.

Section 5.02. Statutory Lien. The parties acknowledge the County's right to receive Negotiated FILOT Payments hereunder and that the County is entitled to and shall have a statutory lien with respect to the Project pursuant to Section 12-44-90(E) of the Negotiated FILOT Act and Title 12, Chapter 54 of the Code relating to the collection and enforcement of *ad valorem* property taxes.

ARTICLE VI

THIRD PARTY ARRANGEMENTS

Section 6.01. Conveyance of Liens and Interests; Assignment. The County agrees that the Company and each other Co-Investor may at any time (a) transfer all or any of its rights and interests hereunder or with respect to all or any part of the Project to any Person; or (b) enter into any lending, financing, leasing, security, or similar arrangement or succession of such arrangements with any financing entity or other Person with respect to this Agreement or all or any part of the Project, including without limitation any sale-leaseback, equipment lease, build-to-suit lease, synthetic lease, nordic lease, defeased tax benefit or transfer lease, assignment, sublease or similar arrangement or succession of such arrangements, regardless of the identity of the income tax owner of such portion of the Project, whereby the transferee in any such arrangement leases the portion of the Project in question to the Company or any other Co-

Investor or operates such assets for the Company or any other Co-Investor or is leasing all or a portion of the Project in question from the Company or any other Co-Investor. In the event of any such transfer, lease, financing, or other transaction described above, the rights and interests of the Company or such other Co-Investor under this Agreement, including, without limitation, the benefits of the Negotiated FILOT and the Special Source Credits, with respect to any Project property so transferred, leased, financed, or otherwise affected shall be so transferred and preserved upon written approval of the County, which approval may take the form of a resolution or ordinance of the Council.

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

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

Section 6.02. Sponsors and Sponsor Affiliates. The Company may designate from time to time other Sponsors or Sponsor Affiliates pursuant to the provisions of Sections 12-44-30(19) or (20), respectively, and Section 12-44-130 of the Negotiated FILOT Act, which, in each case, must agree to be bound by the terms of this Agreement and must be approved by resolution of the Council. The Company shall provide the County and the Department of Revenue with written notice of any Sponsor or Sponsor Affiliate designated pursuant to this **Section 6.02** within ninety (90) days after the end of the calendar year during which any such Sponsor or Sponsor Affiliate has placed in service Negotiated FILOT Property to be used in connection with the Project, all in accordance with Section 12-44-130(B) of the Negotiated FILOT Act.

ARTICLE VII

TERM; TERMINATION

Section 7.01. Term. Unless sooner terminated pursuant to the terms and provisions herein contained, this Agreement shall be and remain in full force and effect for a term commencing on the date on which the Company executes this Agreement, and ending at midnight on the later of (i) the day the last Negotiated FILOT Payment is made hereunder or (ii) the day that all Special Source Credits due from the County hereunder have been fully provided by the County.

Section 7.02. Termination. In addition to the termination rights of the County under **Section 8.02(a)** hereof, the County and the Company may jointly agree to terminate this Agreement at any time, or the Company, may, at its option, unilaterally terminate this Agreement at any time, with respect to all, or any portion, of the Project in which event the Project, or such portion of the Project, shall be subject to *ad valorem* taxes, or to FILOT payments under the Multi-County Park Act, as the case may be, from the date of termination. Notwithstanding termination of this Agreement, the County shall have the same rights to receive payment for any retroactive *ad valorem* taxes, Deficiency Payments, interest or penalties, and the same enforcement rights with respect to such obligations as it would have with respect to *ad valorem* taxes, and the County's rights arising under **Section 5.01** prior to the time of such termination shall survive any such termination.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

Section 8.01. Events of Default. Any one or more of the following events (herein called an "Event of Default", or collectively "Events of Default") shall constitute an Event of Default by the Company or any Co-Investor (the "Defaulting Entity") but only with respect to such Defaulting Entity's rights, duties, and obligations contained herein:

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

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

(c) if a Cessation of Operations occurs after the Enhanced Investment FILOT Compliance Period. For purposes of this Agreement, a "Cessation of Operations" means a publicly announced closure made by the Company of the Company's facilities in the County, including, but not limited to, the Project.

Notwithstanding anything herein to the contrary, failure to meet any investment or job creation requirements, thresholds, or levels set forth in this Agreement shall not be deemed to be an Event of Default under this Agreement, but may terminate certain benefits hereunder or obligate the

Company or other Co-Investors, as the case may be, to make certain additional payments to the County, all as set forth in **Section 5.01(f)** hereof.

Section 8.02. Remedies on Event of Default. Upon the occurrence of any Event of Default, the following remedies may be exercised by the County only as to the Defaulting Entity:

(a) terminate this Agreement by delivery of written notice to the Defaulting Entity not less than thirty (30) days prior to the termination date specified therein;

(b) have access to and inspect, examine, and make copies of the books and , records of the Defaulting Entity pertaining to the construction, acquisition, or maintenance of the Project or calculation of the Negotiated FILOT as provided in **Section 4.06** hereof;

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

Section 8.03. Defaulted Payments. In the event the Company or any other Co-Investor should fail to make any of the payments required to be made by such entity under this Agreement, the item or installment so in default shall continue as an obligation of such entity until the amount in default shall have been fully paid. If any such default relates to its obligations to make Negotiated FILOT Payments hereunder, such entity shall pay the same with interest thereon at the rate per annum provided by the Code for late payment of *ad valorem* taxes together with any penalties provided by the Code for late payment of *ad valorem* taxes, all as provided in Section 12-44-90 of the Negotiated FILOT Act.

Section 8.04. Default by County. Upon the default of the County in the performance of any of its obligations hereunder, the Company and any other Co-Investor may take whatever action at law or in equity as may appear necessary or desirable to enforce its rights under this Agreement, including without limitation a suit for *mandamus* or specific performance.

ARTICLE IX

MISCELLANEOUS

Section 9.01. Rights and Remedies Cumulative. Each right, power, and remedy of the County or of the Company or any other Co-Investor provided for in this Agreement shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy provided for in this Agreement or now or hereafter existing at law or in equity, in any jurisdiction where such rights, powers, and remedies are sought to be enforced; and the exercise by the County or by the Company or any other Co-Investor of any one or more of the rights,

powers, or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the County or by the Company or any other Co-Investor of any or all such other rights, powers, or remedies.

Section 9.02. Successors and Assigns. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, any Co-Investor hereof, and their respective successors and assigns as permitted hereunder; provided, however, that notwithstanding anything herein to the contrary, the County may not assign any or all of its rights, duties, and obligations in, to, and under this Agreement without the written consent of the Company, which consent may be provided by the Company in its sole discretion.

Section 9.03. Notices; Demands; Requests. All notices, demands, and requests to be given or made hereunder to or by the County or the Company shall be in writing and shall be deemed to be properly given or made if sent by United States first class mail, postage prepaid, or via facsimile transmission or reputable courier service, to the following persons and addresses or to such other persons and places as may be designated in writing by such party.

(a) if to the County:

Chester County
Attn.: County Supervisor
PO Box 580
Chester, South Carolina 29706
Phone: (803) 436-2102

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

Joanie Winters, Esquire
Chester County Attorney
105 Main Street
Chester, South Carolina 29703
Phone: (803) 581-8190

(c) As to the Company:

Phone: _____

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

John F. Wall IV, Esq.

Burr & Forman LLP
1221 Main Street, Suite 1800
Columbia, South Carolina 29201
Phone: (803) 753-3206

Section 9.04. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State. To the extent of any conflict between the provisions of this Agreement and the Act, the Act controls.

Section 9.05. Entire Understanding. This Agreement expresses the entire understanding and all agreements of the parties hereto with each other and supersedes all prior and contemporaneous discussions of the parties, whether oral or written, and neither party hereto has made or shall be bound by any agreement or any warranty or representation to the other party which is not expressly set forth in this Agreement or in certificates delivered in connection with the execution and delivery hereof. Unless as otherwise expressly set forth herein, this Agreement will not confer any rights or remedies upon any Person other than the parties hereto and their respective successors and assigns as permitted hereunder.

Section 9.06. Severability. In the event that any clause or provisions of this Agreement shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.

Section 9.07. Headings and Table of Contents; References. The headings of the Agreement and any Table of Contents annexed hereto are for convenience of reference only and shall not define or limit the provisions hereof or affect the meaning or interpretation hereof. All references in this Agreement to particular articles or Sections or paragraphs of this Agreement are references to the designated articles or Sections or paragraphs of this Agreement.

Section 9.08. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument.

Section 9.09. Amendments. Subject to the limitations set forth in Section 12-44-40(K)(2) of the Negotiated FILOT Act, this Agreement may be amended, or the rights and interest of the parties hereunder surrendered, only by a writing signed by both parties.

Section 9.10. Waiver. Either party may waive compliance by the other party with any term or condition of this Agreement only in a writing signed by the waiving party.

Section 9.11. Further Proceedings. The parties intend any action to be taken hereinafter by the County pursuant to the express provisions of this Agreement may be undertaken by the Chairman of the Council without necessity of further proceedings. To the extent additional proceedings are required by law, however, the County agrees to undertake all

such steps as may be reasonably required or appropriate to effectuate the intent of this Agreement.

Section 9.12. Indemnification Covenants.

(a) Except as provided in paragraph (b) below, the Company shall indemnify and save the County, its employees, elected officials, officers and agents (each, an “Indemnified Party”) harmless against and from all third party claims arising from the County’s execution of this Agreement, performance of the County’s obligations under this Agreement or the administration of its duties pursuant to this Agreement, or otherwise by virtue of the County having entered into this Agreement. The Company shall indemnify, defend and save the County harmless from and against all reasonable costs and expenses incurred in or in connection with any such claim arising as aforesaid or in connection with any action or proceeding brought thereon, and upon notice from the County, the Company shall defend it in any such action, prosecution or proceeding with legal counsel of the Company’s choice, which is acceptable to the County (the approval of which shall not be unreasonably withheld or delayed); and whose purported representation of the County in such matters would not present an unwaivable conflict of interest under the South Carolina Rules of Professional Conduct, the waiveability of which shall be determined by the County, in its reasonable discretion; provided, however, that the Company shall be entitled to manage and control the defense of or respond to any claim, action, prosecution, or proceeding, for itself and any Indemnified Party; provided the Company is not entitled to settle any matter without the consent of that Indemnified Party (other than a settlement for money damages only that will be paid in full by the Company). To the extent any Indemnified Party desires to use separate legal counsel for any reason, that Indemnified Party is responsible for its independent legal costs and expenses, in whole.

(b) Notwithstanding anything herein to the contrary, the Company is not required to indemnify any Indemnified Party against or reimburse the County for costs arising from any claim or liability (i) occasioned by the acts of that Indemnified Party, which are unrelated to the execution of this Agreement, performance of the County’s obligations under this Agreement, or the administration of its duties under this Agreement, or otherwise by virtue of the County having entered into this Agreement; or (ii) resulting from that Indemnified Party’s own negligence, bad faith, fraud, deceit, or willful misconduct or breach of this Agreement. Additionally, the Company’s total liability under this Section 9.12 shall in no event exceed \$250,000.

(c) An Indemnified Party may not avail itself of the indemnification of costs provided in this Section unless it provides the Company with prompt notice, reasonable under the circumstances, of the existence or threat of any claim or liability, including, without limitation, copies of any citations, orders, fines, charges, remediation requests, or other claims or threats of claims, in order to afford the Company notice, reasonable under the circumstances, within which to defend or otherwise respond to a claim.

Section 9.13. No Liability of County Personnel. All covenants, stipulations, promises, agreements and obligations of the County contained in this Agreement are binding on members of the Council or any elected official, officer, agent, servant or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse for the payment of any moneys under this Agreement may be had against any member of the Council or any elected or appointed official, officer, agent, servant or employee of the County and no recourse for the payment of any moneys or performance of any of the covenants and agreements under this Agreement or for any claims based on this Agreement may be had against any member of Council or any elected or appointed official, officer, agent, servant or employee of the County except solely in their official capacity

Section 9.14. Limitation of Liability. The County is not liable to the Company for any costs, expenses, losses, damages, claims or actions in connection with this Agreement, except from amounts received by the County from the Company under this Agreement. Notwithstanding anything in this Agreement to the contrary, any financial obligation the County may incur under this Agreement is deemed not to constitute a pecuniary liability or a debt or general obligation of the County.

[Execution Pages to Follow]

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

CHESTER COUNTY, SOUTH CAROLINA

By: _____
Joseph Branham
Chairman, Chester County Council
Chester County, South Carolina

[SEAL]

ATTEST:

By: _____
Karen Lee
Clerk to County Council
Chester County, South Carolina

PROJECT PHOENIX22

By: _____
Name: _____
Its: _____

**EXHIBIT A
LAND DESCRIPTION**

Tax Map No. _____ & _____

**[A MORE DETAILED PROPERTY DESCRIPTION WILL BE INSERTED POST THIRD
READING]**

ORDINANCE NO. 2023-3

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AGREEMENT BY AND BETWEEN CHESTER COUNTY AND [PROJECT POWER]; THE INCLUSION OF CERTAIN REAL PROPERTY LOCATED IN CHESTER COUNTY IN A MULTI-COUNTY INDUSTRIAL PARK; THE PROVISION OF CREDITS AGAINST FEE IN LIEU OF TAX PAYMENTS; THE EXECUTION AND DELIVERY OF SUCH DOCUMENTS AS MAY BE NECESSARY TO EFFECT THE INTENT OF THIS ORDINANCE; AND OTHER MATTERS RELATED THERETO.

WHEREAS, Chester County, South Carolina (“County”), acting by and through its County Council (“County Council”), is authorized and empowered, under and pursuant to the provisions of the Code of Laws of South Carolina 1976, as amended through the date hereof (“Code”), particularly Title 12, Chapter 44 thereof (“Negotiated FILOT Act”) and Title 4, Chapter 1 of the Code (“Multi-County Park Act” or, as to Section 4-1-175 thereof, and, by incorporation, Section 4-29-68 of the Code, “Special Source Act”) (collectively, “Act”), and by Article VIII, Section 13 of the South Carolina Constitution: (i) to enter into agreements with certain investors to establish projects through which the economic development of the State of South Carolina (“State”) will be promoted and trade developed, thus utilizing and employing the manpower, agricultural products, and natural resources of the State; (ii) to covenant with such investors to accept certain fee in lieu of *ad valorem* tax (“FILOT”) payments including, but not limited to, negotiated FILOT (“Negotiated FILOT”) payments, with respect to a project; and (iii) to permit investors to claim special source revenue credits against their FILOT payments (“Special Source Credits”) to reimburse such investors for expenditures in connection with certain infrastructure and other qualifying property related to a project (“Special Source Improvements”); (iv) to create, in conjunction with one or more other counties, a multi-county industrial or business park to allow certain enhanced income tax credits to such investors and to facilitate the grant of Special Source Credits;

WHEREAS, one or more investors identified for the time being as Project Power, each acting for itself, one or more current or future affiliates, and other project sponsors (collectively, “Company”) propose to invest in, or cause others to invest in, the establishment of certain facilities to be operated primarily for logistical operations, at one or more locations in the County (the “Project”), which the Company expects will result in aggregate investment of at least \$110,000,000 in the Project; and

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

WHEREAS, in accordance with such findings and determinations, and in order to induce the Company to locate the Project in the County, the County Council adopted a Resolution on [January 17, 2023], whereby the County formally identified the Project as a “project” within the meaning of the Act, and, subject to certain conditions described therein, authorized County officials to provide the benefits of a negotiated FILOT, a multi-county industrial or business park, and Special Source Credits with respect to the Project; and

WHEREAS, the County and the Company have agreed to specific terms and conditions of such arrangements as set forth herein and in a Fee in Lieu of Tax and Incentive Agreement by and among the County and the Company with respect to the Project (“FILOT Agreement”), the form of which is

presented to this meeting, which Incentive Agreement is to be dated as of [_____], 2023], or such other date as the parties may agree; and

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

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

Section 1. Evaluation of the Project. Based solely on information provided by the Company, County Council has evaluated the Project on the following criteria and based upon the advice and assistance of the South Carolina Department of Commerce and the South Carolina Department of Revenue:

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

Section 2. Findings by County Council. Based solely on information provided by and representations of the Company and the advice and assistance of the South Carolina Department of Commerce and the South Carolina Department of Revenue, as required, County Council hereby finds that:

- (a) the Project constitutes a “project” as that term is defined in the FILOT Act;
- (b) the Project will serve the purposes of the FILOT Act;
- (c) the investment by the Company in the project is anticipated to be approximately \$110,000,000, to be invested within 5 years from the “Commencement Date” as such term is defined in the Negotiated FILOT Act;
- (d) the Project will be located entirely within the County;
- (e) the Project will benefit the general public welfare of the County by providing services, employment, recreation or other public benefits not otherwise adequately provided locally;
- (f) the Project will not give rise to a pecuniary liability of the County or any municipality nor a charge against its general credit or taxing power of the County or any municipality;
- (g) the purposes to be accomplished by the Project are proper governmental and public purposes;
- (h) the inducement of the location of the Project is of paramount importance; and
- (i) the benefits of the Project to the public are greater than the costs to the public.

Section 3. Fee-in-Lieu of Taxes Arrangement. Pursuant to the authority of the Negotiated FILOT Act, the Project is designated as “economic development property” under the Negotiated FILOT Act and there is hereby authorized a fee-in-lieu of taxes arrangement with the Company which will provide Negotiated FILOT payments to be made with respect to the Project based upon a 6% assessment ratio and a fixed millage of rate of 453.6 mills, all as more fully set forth in the FILOT Agreement.

Section 4. Special Source Revenue Credits. As reimbursement to the Company for expenditures on Special Source Improvements, the County will provide to the Company Special Source Credits under the Special Source Act as set forth in the FILOT Agreement.

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

Section 6. Inclusion of Project in Multi-County Park. The County will use its best efforts to ensure the Project is included, if not already included, and will remain, in the boundaries of a multi-county industrial or business park pursuant to the provisions of the Multi-County Park Act and Article VIII, Section 13 of the State Constitution, as set forth in the FILOT Agreement.

Section 7. Miscellaneous.

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

(b) This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina;

(c) This Ordinance shall become effective immediately upon approval following third reading by the County Council;

(d) The provisions of this Ordinance are hereby declared to be severable and if any section, phrase or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, that declaration shall not affect the validity of the remainder of the sections, phrases and provisions hereunder; and

(e) All ordinances, resolutions and parts thereof in conflict herewith are, to the extent of the conflict, hereby repealed.

**[SIGNATURE PAGE FOLLOWS]
[REMAINDER OF PAGE INTENTIONALLY BLANK]**

CHESTER COUNTY, SOUTH CAROLINA

By: _____
Joe Branham Chairman, County Council
Chester County, South Carolina

Attest:

Karen Lee, Clerk to County Council
Chester County, South Carolina

First Reading: January 17, 2023
Second Reading: _____, 2023
Public Hearing: _____, 2023
Third Reading: _____, 2023



STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTER)

Ordinance No. 2023-4

AN ORDINANCE TO REPEAL CHESTER COUNTY CODE §46-202 ENTITLED “STREET LIGHTING”

WHEREAS, Chester County Council has determined it is necessary to repeal a section of the Chester County Code; and

WHEREAS, Chester County Council is empowered by the provisions of S.C. Code Ann. §§44-55-1010, *et seq.*, and S.C. Code Ann. §4-9-35, as amended (the “Enabling Acts”), to enact ordinances relating to the management of the County in accordance with existing laws, policies and regulations; and

WHEREAS, the County enacted Ordinance §46-202 as an ordinance meant to only fund street lighting County-wide when fiscally possible; and

WHEREAS, the Ordinance states with specificity, *The county shall not provide street lighting on any highway, street or road until such time as sufficient funds are appropriated to provide that service county-wide. Homeowners or homeowner's associations may obtain street lighting through contractual arrangements with the electric utility serving their area;* and

WHEREAS, the County wishes to provide operational funding for street lighting in certain designated areas; and

WHEREAS, in the interest of this purpose, Chester County Council has determined that §46-202 should be repealed and reissued as a new ordinance to express the desire of this Council; and

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL FOR CHESTER COUNTY, SOUTH CAROLINA, DULY ASSEMBLED THAT THE FOLLOWING ORDINANCE IS HEREBY REPEALED:

Chester County Council does hereby determine that Chester County Code §46-202 does not reflect the wish of this Council and is hereby repealed in its entirety.

This repeal of this Ordinance shall be effective upon adoption by the Chester County Council on the date of the final reading approval.

Enacted and approved this ____ day of _____, 2023.

CHESTER COUNTY, SOUTH CAROLINA

By: _____

Joseph R. Branham
Chair, Chester County Council

Attest:

By: _____
Karen Lee, Clerk to County Council
Chester County, South Carolina

First Reading: _____, 2023
Second Reading: _____, 2023
Public Hearing: _____, 2023
Third Reading: _____, 2023

Chester County, South Carolina

a unanimous vote for such provision. The County shall ensure adequate funds are appropriated at that time and for future funding. Homeowners or homeowner's associations may obtain street lighting through contractual arrangements with the electric utility serving their area; and

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL FOR CHESTER COUNTY, SOUTH CAROLINA, DULY ASSEMBLED THAT THE FOLLOWING ORDINANCE IS HEREBY ENACTED:

The county shall provide street lighting on highways, streets, or roads as determined appropriate by Chester County Council during a duly called meeting and with a unanimous vote for such provision. The County shall ensure adequate funds are appropriated at that time and for future funding.

This enactment of this Ordinance shall be effective upon adoption by the Chester County Council on the date of the final reading approval.

Enacted and approved this ____ day of _____, 2023.

CHESTER COUNTY, SOUTH CAROLINA

By: _____
Joseph R. Branham
Chair, Chester County Council

Attest:

By: _____
Karen Lee, Clerk to County Council
Chester County, South Carolina

First Reading: _____, 2023

Second Reading: _____, 2023

Public Hearing: _____, 2023

Third Reading: _____, 2023

Chester County, South Carolina

Chester County Planning Commission Minutes

December 20, 2022

CCMA22-24 Jeremiah Kibbey requests Tax Map# 101-00-00-099-000 at 2115 Great Falls Hwy., Blackstock, SC 29014 to be rezoned from Rural 2 (R2) to General Residential District (RG-2).

Jeremiah John Kibbey stated he lives at 2115 Great Falls Hwy., Blackstock, SC 29014 and his request is to rezone his property from R2 to RG-2 to allow another residence on the property which is just under 4 acres. His parents are getting older and having health problems and need his assistance.

Vice Chairman Smith asked if anyone had any questions. There were none. Vice Chairman Smith motioned to approve, second by Commissioner Howell. Vote 5-0 Approved.



Chester County, South Carolina
 Department of Planning, Building & Zoning
 1476 J.A. Cochran Bypass
 Chester, SC 29706

Zoning Map Amendment (Rezoning) Application

Fee: Residential \$150.00, Non-Residential \$300.00, Planned Development \$1000.00

Meeting Date: 12.20.22 Case # CCMA22-24 Invoice# 5845

The applicant hereby requests that the property described to be rezoned from R-2 to RG-2

Please give your reason for this rezoning request:

I would like to add A mobile home to my property for my Parents who have health conditions and require help. I have 3.996 Acres with one dwelling on property Now.

Copy of plat must be presented with the application request

Designation of Agent (complete only if owner is not applicant): I (we) hereby appoint the person named as applicant as my (our) agent to represent me (us) in this request for rezoning. A Corporate Resolution letter or a permission letter must be presented at the time of application request. NAICS CODE: _____

Property Address Information

Property address: 2115 Great Falls Rd Blackstock SC 29014
 Tax Map Number: ~~101-00-00-011-000~~ Acres: 3.996
101-00-00-011-000

Any structures on the property: yes no . If you checked yes, draw locations of structures on plat or blank paper.

PLEASE PRINT:

Applicant(s): Jeremiah Kibbey
 Address 2115 Great Falls Rd Blackstock SC 29014
 Telephone: _____ cell _____ work _____
 E-Mail Address: _____

Owner(s) if other than applicant(s): _____
 Address: _____
 Telephone: _____ cell _____ work _____
 E-Mail Address: _____

I (we) hereby agree that this information I (we) have presented is correct. Insufficient information may result in a denial of your request.

Owner's signature: Jeremiah Kibbey Date: 10/20/2022
 Applicant signature: Jeremiah Kibbey Date: 10/20/2022

Make 110 pg. 111

110 pg. 111

PLAT OF SURVEY FOR
HEYWARD MOSER
BEING A 3.996 ACRE PORTION OF
MARILYN L. MOSER PROPERTY
LOCATED ON S.C. HWY. 97

RCPT# 011fl ... /tl'°
CI: ...
CHEST= ...
SEP 4 1 07 PM '97

HAZELWOOD TOWNSHIP, CHESTER COUNTY, SOUTH CAROLINA
MARCH 10, 1997
REFERENCE: TAX MAP/1101-0-0-52
PLAT BOOK "WPG. 89

FILED

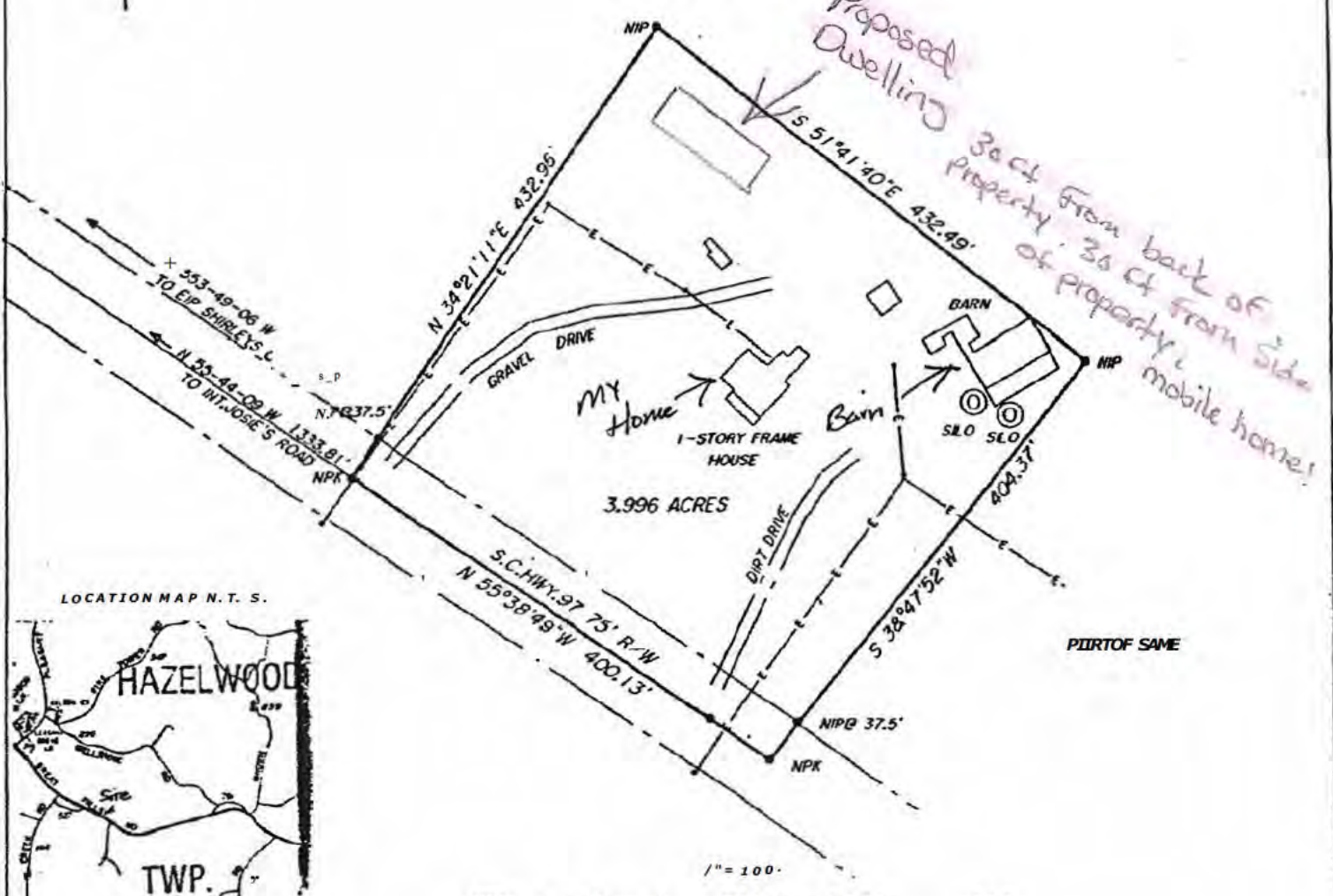
MAGNETIC NORTH

094415

Time 1:07 pm
Recorded
Month 9 Date 1997
Page 68
Book 115
Clerk of Court
Chester Co. SC

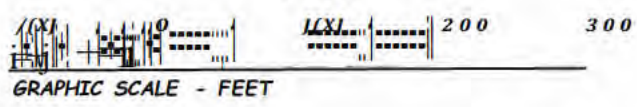
The publication of this map has been approved by the County Land Development and Planning Commission of Chester County
9/2/97
181/c
Chester County Planning Commission

TAX MAP 1101-0-0-5
MARILYN L. MOSEH
0.8.404 PG. 509: P.B. 74 PG. 89



Proposed Dwelling
36 ft from back of property
36 ft from side of property
mobile home!

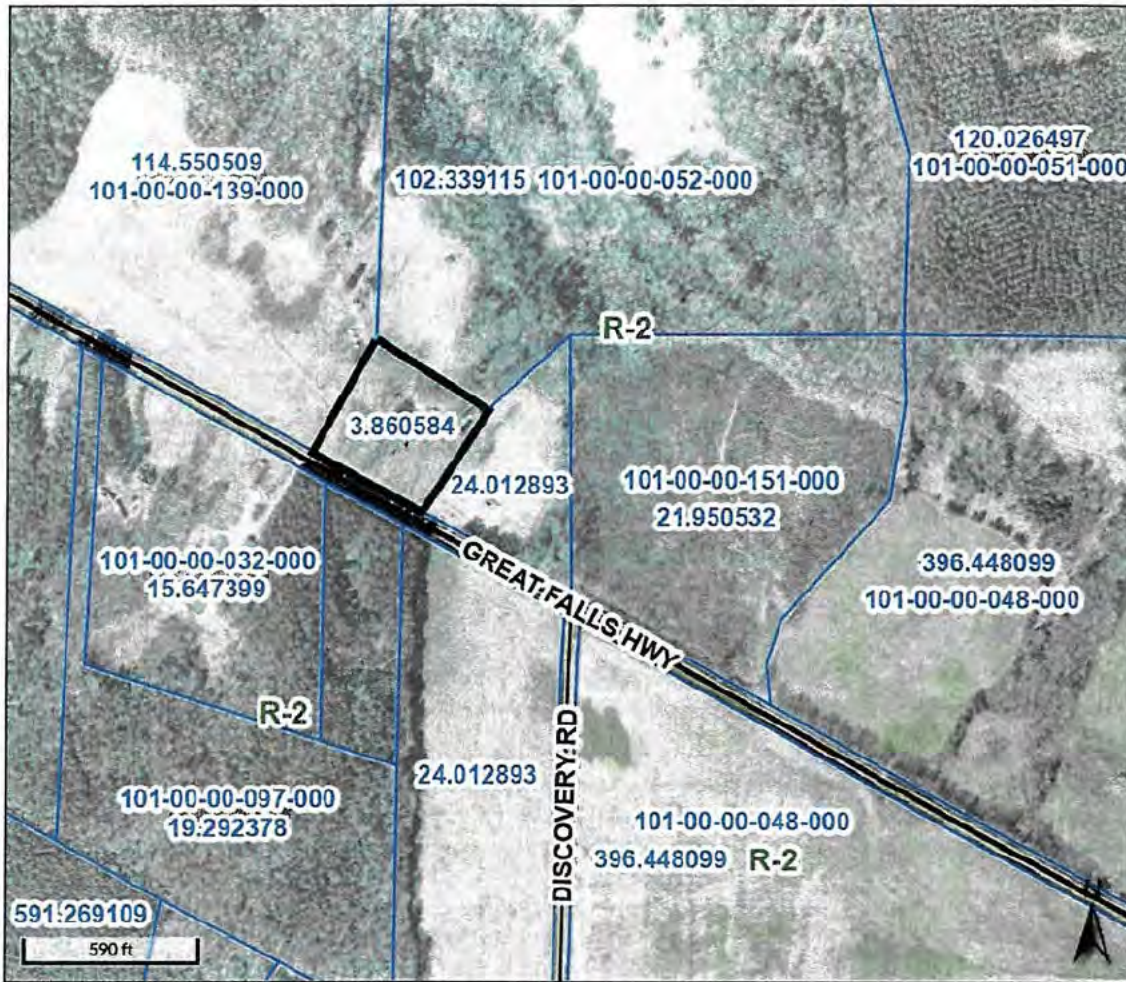
LOCATION MAP N. T. S.



NOTE:
EIP = EXISTING IRON PIN
NIP = NEW IRON PIN
/.. = ...

INFORMATION: SHOWN HEREON IS THE RESULT OF A SURVEY...
FOR THE PURPOSE OF THE SURVEY...
CONDUCTED OR I/I DAIC - MOBILE...
ALSO...
OF I/N/O SURVEYING...
C/V/C III 11ne 04Y13P... IY n 5-1, ST... uao. h1;

OqPublic.net^M Chester County, SC



Overview



Parcel ID	101-00-00-099-000	Alternate ID	n/a	Owner Address	RALLINGSARNOLD HANNAH
Sec/Twp/Rng	n/a	Class	R		ELIZABETH
Property Address	2115 GREAT FALLS HWY	Acres	3.861		2115 GREATFALLS HIGHWAY
					BLACKSTOCK SC 29014

District 01
Brief Tax Description n/a
 (Note: Not to be used on legal documents)

Date created: 10/24/2022
 LastData Uploaded: 10/24/2022 3:29:24AM

Developed by, L. **Schneider**
 GEOSPATIAL

Next Year (2023) Changes

Search Options

Map Number 101-00-00-099-000 Real 100336197

History Year 1

Name 1 KIBBEY JEREMIAH J

Other Map Number

find

Alerts

Has Additional Comments
Current Year Record Exists

Owner Information

Post Initials	1	Reason for Change		Activity Date	09/27/2022
Name2				Land Value	1 39,900
Address 1	2m GREAT FALLS HWY			Building Value	293,900
Address 2	BLACKSTOCK SC			Total Market Value	1 333,800
Zip Code	129014 1			Total Tax Value	1 333,800

Codes

District	r01	Fire Code	1sc 3 jsOUTHCHESTER
Town		Neighborhood	IR2 3 IRURAL2
Subdivision	3	Use Class	1 i j
Description			
Legal			

Location Street Number 2115 Street Name GREAT FALLS HWY Suffi 1 Direction j

Additional Information

Appraisal Appeal	31	Owner Occupied	1	TIF	r	Base	
Agricultural Use	r3' 1	Reappraisal Notice	r-3 1	MCIP	r	Industrial Park ID	
Rollback	! 1			EMempt	r		

MEMO

TO: County Council Members
FROM: Mike Levister 
DATE: February 3, 2023
RE: Luck Stone Application for Rezoning

Luck Stone provided certain restrictions and conditions they were willing to meet with their application for rezoning. Following several meetings with Ben Thompson and Katie Kosloski of Luck Stone, they have agreed to amend several of those conditions that are more favorable to the County. I am attaching a copy of the redline version for the following parcels so that you can see the changes they have made:

1. CCMA22-25 & CCMA22-26 Tax Map# 089-00-00-005-000
2. CCMA22-27 & CCMA22-28 Tax Map# 089-00-00-008-000
3. CCMA22-29 Tax Map# 088-00-00-054-000
4. CCMA22-30 & CCMA22-31 Tax Map# 089-00-00-002-000
5. CCMA22-32 Tax Map# 089-00-00-025-000
6. CCMA22-33 & CCMA22-33 Tax Map# 089-00-00-001-000

This will provide you with additional information necessary as we have second reading on Monday evening.

I am happy to answer any questions you may have.

cc: Joanie Winters, Chester County Attorney
Karen Lee, Clerk to Chester County Council

Conditions applicable to properties included within the Luck Stone Corporation (the “Applicant”) application for rezoning of properties located in Chester County, South Carolina shown on the plan dated November 11, 2022, entitled “Proposed Zoning and Special Exception Plan” as (i) “ID1” containing 79.41 acres (the “ID1 Property”), (ii) “GC” containing 25.72 acres (the “GC Property”), (iii) “ID3” containing 247.87 acres (the “ID3 Property”) and (iv) “AG” containing 90.39 acres (the “AG Property”).

Condition applicable to all properties:

Prior to issuance of any County permits for development of the parcels included within the application for rezoning, the Applicant shall submit an application for subdivision/boundary line adjustment of all parcels included within the application for rezoning to provide for the adjustment of parcel boundaries by zoning classification so that no parcel shall be split-zoned (include more than one zoning classification) and that all parcels are in compliance with the County subdivision ordinance.

Conditions applicable to the ID1 Property:

1. **Prohibited Uses.** No portion of the ID1 Property shall be used for any of the following uses:
 - i. Grain Milling
 - ii. Reconstituted wood products
 - iii. Converted Paper Products
 - iv. Mineral and Earth
 - v. Misc. Nonmetallic Mineral
 - vi. Aluminum Production
2. **Dedication of Easement for Public Park.** Subject to and upon approval of the rezoning of the ID3 Property, approval of a special exception for mining activities and related uses on the ID3 Property and commencement of mining activities on the ID3 Property, the Applicant shall offer for dedication to the County an easement over an across the area containing approximately fifteen (15) acres (the “Park and Trail Easement”) shown on the plan included in this application dated November 11, 2022 and entitled “Updated and Compiled General Development Plan” (the “GDP”) on commercially reasonable terms and conditions for a public park and trail system along Rocky Creek together with a right of access to and from Highway 9 as shown on the GDP. The County may accept the offer of dedication at any time within five (5) years after commencement of mining activities on the ID3 Property. If the offer of dedication is not accepted within such period, the offer of dedication shall be void and of no further effect. The Applicant shall be responsible for preparation, at its expense, of a survey of the Park and Trail Easement and payment of costs to prepare and record the easement agreement.
3. **Entrance Landscaping and Beautification.** The entrance to the ID1 Property from Highway 9 shall be landscaped in accordance with a plan to be submitted by the Applicant to the County as part of the site plan for development of the ID1 Property. The design and materials included in the landscape plan for this entrance shall be similar to the design and materials included in the landscape plans for entrances to the GC Property and the ID3 Property to provide a consistent appearance for all such entrances.

4.

Conditions applicable to all areas rezoned to the GC classification (the “GC Property”):

1. Dedication of Property for Governmental Use. Subject to and upon approval of the rezoning of the ID3 Property, approval of a special exception for mining activities and related uses on the ID3 Property and commencement of mining activities on the ID3 Property, the Applicant shall offer for dedication to the County of one or more parcels containing a total of not less than fifteen (15) acres for governmental uses (the “Governmental Use Property”) as generally shown on the plan included in this application entitled “Updated and Compiled General Development Plan”. The County may accept the offer of dedication at any time within ~~five~~six (56) years after delivery by Applicant to the County of written notice of the commencement of mining activities on the ID3 Property; provided, however, that if the County does not respond to the offer of dedication, then Applicant shall send the County a written notice at the end of the 6-year period and the County shall have one (1) additional year to accept the offer of dedication. If the offer of dedication is not accepted within such period, the offer of dedication shall be void and of no further effect. The Applicant shall be responsible for preparation, at its expense, of a current survey of the Governmental Use Property and payment of costs to prepare and record the deed of dedication. The deed of dedication shall restrict use of the Governmental Use Property to use by the County or other governmental entities unless otherwise approved by the owner of the ID3 Property. For purposes of this condition, all written notices to the County shall be delivered to the County attorney, with copies to each of the County’s zoning administrator, the clerk of the County Council, and the County’s administrator (or their equivalents at the time of such notice).
2. Entrance Landscaping and Beautification. The entrance to the GC Property from Highway 9 shall be landscaped in accordance with a plan to be submitted by the Applicant to the County as part of the site plan for development of the GC Property. The design and materials included in the landscape plan for this entrance shall be similar to the design and materials included in the landscape plans for entrances to the ID1 Property and the ID3 Property to provide a consistent appearance for all such entrances.
3. Cemetery Access. The cemetery located on the GC Property will remain undisturbed and reasonable access will be provided to relatives and descendants of persons buried in the cemetery for the limited purposes of visiting graves, maintaining the gravesite or cemetery or conducting genealogy research. Such access shall not include the right to operate motor vehicles on the GC Property other than within any driveways and parking areas as may be located on the GC Property from time to time.

Condition applicable to the area rezoned to the AG classification (the “AG Property”):

The Applicant will enter into discussions with representatives of the County schools to explore the use of a portion of the AG Property for an agricultural education program which may include the cultivation of trees or other crops to provide a hands-on learning experience. If the County schools are interested, the Applicant will work with the County schools in good faith to agree upon the terms and conditions of a lease of up to one half (1/2) of the AG Property for

Luck Companies - Chester County, SC: Rezoning and Special Exception Conditions

\$1.00/year for a term of up to fifteen (15) years or as may otherwise be agreed upon by the County schools and the Applicant.

Conditions applicable to all areas rezoned to the ID3 classification (the “ID3 Property”):

1. No portion of the ID3 Property shall be used for any of the following uses:
 - i. Biological and allied wholesaling
 - ii. Manufacturing of animal, chemical, gas, or arms and munitions
 - iii. Petroleum storage for wholesaling (except to supply uses on the ID3 Property)
 - iv. Fuel dealers, retail (except to supply uses on the ID3 Property)
 - v. Hazardous waste carriers
 - vi. Municipal solid waste landfill
 - vii. Airport

2. Entrance Landscaping and Beautification. The entrance to the ID3 Property from Highway 9 shall be landscaped in accordance with a plan to be submitted by the Applicant to the County as part of the site plan for development of the ID3 Property. The design and materials included in the landscape plan for this entrance shall be similar to the design and materials included in the landscape plans for entrances to the ID1 Property and the GC Property to provide a consistent appearance for all such entrances.

3. Screening and Visual Line of Sight. Mining activities and related uses on the ID3 Property shall be screened from visibility from Highway 9 using berms and landscaping or other means proposed by the Applicant and approved by the County in connection with the review and approval of a site plan for development of the ID3 Property.

5. Dedication of Easement for Public Park. Subject to and upon approval of the rezoning of the ID3 Property, approval of a special exception for mining activities and related uses on the ID3 Property and commencement of mining activities on the ID3 Property, the Applicant shall offer for dedication to the County an easement over an across the area containing approximately fifteen (15) acres (the “Park and Trail Easement”) shown on the plan included in this application dated November 11, 2022 and entitled “Updated and Compiled General Development Plan” (the “GDP”) on commercially reasonable terms and conditions for a public park and trail system along Rocky Creek together with a right of access to and from Highway 9 as shown on the GDP. The County may accept the offer of dedication at any time within five (5) years after commencement of mining activities on the ID3 Property. If the offer of dedication is not accepted within such period, the offer of dedication shall be void and of no further effect. The Applicant shall be responsible for preparation, at its expense, of a survey of the Park and Trail Easement and payment of costs to prepare and record the easement agreement.

Conditions for a Special Exception to Allow Mining Operations and Associated Uses on the ID3 Property ("Mining Operations")

Development and use of the ID3 Property for Mining Operations pursuant to the requested Special Exception shall be subject to the following conditions:

1. Hours of Operation. Hours of operation shall be limited as follows:
 - (a) Extraction Area, Primary Plant and Equipment: 6:00 a.m. to 9:00 p.m. Monday through ~~Saturday ("Standard Operating Hours")~~ Friday only except as provided below.
 - (b) Shipping, Loading and Limited Processing: 6:00 a.m. to 9:00 p.m. Monday through Friday and 7:00 a.m. to 2:00 p.m. Saturday ("Standard Operating Hours") except as otherwise required in the event a federal, state or local agency or authority requests or requires that such activities be conducted during other hours.
 - (c) Processing Plant (secondary, tertiary and/or finishing phases of plant operations): Hours of operation for the processing plant shall be unrestricted when operated without the use of trucks and loaders utilizing audible back-up alarms (when operated with trucks and loaders utilizing audible back-up alarms, Standard Operating Hours shall apply). Any vehicular operations during hours other than Standard Operating Hours shall be for processing activities only and shall not be for extraction activities.
 - (d) Blasting. Blasting shall not occur before 9:30 a.m. or after 5:00 p.m. Monday through Friday, except when a blasting charge has been set before 5:00 p.m. and is delayed due to reasons beyond the reasonable control of Operator or due to safety considerations. In such a case, Operator may then complete the blast after 5:00 p.m. but no later than thirty (30) minutes after sunset. There shall be no blasting on Saturdays or Sundays except to complete a blast where the charge was set and blasting delayed as described above.
2. Buffers. Buffers shall be provided in the locations and of the widths shown on the on the plan included in this application dated November 11, 2022 and entitled "Updated and Compiled General Development Plan" (the "GDP"). Buffers shall consist of undisturbed natural vegetation supplemented by berms, additional vegetation or otherwise as necessary to comply with the requirements of the mining permit (the "State Mining Permit") issued to Operator for Mining Operations by the South Carolina Department of Health and Environmental Control ("DHEC"). Encroachments into buffers shall be allowed for utility lines, roads, access points and such other encroachments or breaks as necessary to conduct Mining Operations in accordance with the State Mining Permit.
3. No Trespassing Signs. "No Trespassing" signs shall be posted and perpetually maintained around the perimeter of the processing and extraction areas. Signs shall not be more than 300 feet apart.
4. Wetlands. All necessary permits to allow disturbance of jurisdictional wetlands on the ID3 Property shall be obtained from the applicable governmental authority (e.g., U.S. Army Corps. of Engineers, Chester County Government, or DHEC).
5. DHEC Mining, Water Discharge and Air Permits.
 - (a) Prior to commencement of any land disturbance associated with Mining Operations, Operator shall obtain the State Mining Permit from DHEC. The State Mining Permit shall address all relevant issues including soil erosion, stormwater management,