

INDUCEMENT AND MILLAGE RATE AGREEMENT

THIS INDUCEMENT AND MILLAGE RATE AGREEMENT (the "Agreement"), dated as of November 6, 2012, between GREENVILLE COUNTY, SOUTH CAROLINA, (the "County") a body politic and corporate and a political subdivision of the State of South Carolina (the "State"), and a company to be known to the County as PROJECT GINA, acting for itself, one or more affiliates or other project sponsors (the "Company");

WITNESSETH:

ARTICLE I

RECITATION OF FACTS

Section 1.1. As a means of setting forth the matters of mutual inducement which have resulted in the making and entering into of this Agreement, the following statements of fact are herewith recited:

(a) The County, acting by and through its County Council (the "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(D) 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, without limitation, 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 in order to afford certain enhanced income tax credits to such investors and to facilitate the grant of Special Source Credits.

(b) The Company proposes to invest in, or cause others to invest in, the expansion of certain manufacturing and related facilities at one or more locations in

the County (collectively, the “Expansion Project”) and anticipates that, should its plans proceed as presently contemplated, the Expansion Project will generate substantial investment and/or job creation in the County.

(c) The County and the Company have previously entered into a FILOT arrangement pursuant to which, amongst other things, the County has agreed to accept certain negotiated FILOT payments from the Company with respect to certain property (the “Existing Project”) located in the County (the “Existing Project Negotiated FILOT”).

(d) The County has given due consideration to the economic development impact of the Expansion Project, has determined on the basis of the information supplied to it by the Company that the Expansion Project would subserve the purposes of the Act and, would be directly and substantially beneficial to the County and its citizens and, pursuant to a resolution adopted by the County Council of the County on November 6, 2012 (the “Inducement Resolution”), has made certain findings in accordance with the provisions of the Act. Based upon such determinations and findings, and in consideration of the investment and/or jobs anticipated 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 County wishes to induce the Company to undertake the Expansion Project, and, in furtherance thereof and subject to the terms of this Agreement, proposes to make available to the Company the incentives set forth herein, all as approved by the Inducement Resolution.

ARTICLE II

UNDERTAKINGS ON THE PART OF THE COUNTY

Section 2.1. With regard to the Expansion Project, the County agrees as follows:

(a) The County hereby agrees, subject to the investment and other requirements set forth in the Negotiated FILOT Act, to enter into an agreement with the Company, whereby the Company will agree to satisfy, or cause satisfaction of, certain investment and/or job creation requirements within certain prescribed time periods set forth in the Negotiated FILOT Act, and the County will agree to accept negotiated payments in lieu of *ad valorem* taxes with respect to the Expansion Project as set forth in **paragraph (b)** below. Such agreement shall be in the form of a fee agreement pursuant to the Negotiated FILOT Act (such fee agreement hereinafter referred to as the “Expansion Project Incentive Agreement”). The Expansion Project Incentive Agreement shall contain such terms and conditions as are set forth hereinafter and as shall be mutually satisfactory to the County and the Company.

(b) Subject to the provisions of the Negotiated FILOT Act hereof, negotiated FILOT payments shall be made with respect to the Expansion Project (the “Expansion Project Negotiated FILOT”) as follows:

(i) The Company shall make, or cause to be made, Expansion Project Negotiated FILOT payments calculated as provided in this **Section 2.1(b)** for all economic development property (as further defined in the Negotiated FILOT Act, “Economic Development Property”) placed in service as part of the Expansion Project within an investment period, as set forth in Section 12-44-30(13) of the Negotiated FILOT Act (the “Investment Period”), which shall be equal to the period commencing on the first day Economic Development Property comprising all or a portion of the Expansion Project is purchased or acquired, whether before or after the effective date of this Agreement, and ending on the eighth anniversary of the end of the property tax year in which initial Economic Development Property comprising all or a portion of the Expansion Project is placed in service (the “Enhanced Investment FILOT Compliance Period”), or on the tenth such anniversary, if permitted by Section 12-44-30(13) of the Negotiated FILOT Act; provided, however, that, in the event that the Expansion Project fails to qualify as an “enhanced investment” within the Enhanced Investment FILOT Compliance Period pursuant to Section 12-44-30(7) of the Negotiated FILOT Act (“Enhanced Investment FILOT Project”), but nevertheless qualifies for the Expansion Project Negotiated FILOT pursuant to Section 12-44-30(14) of the Negotiated FILOT Act (“Standard FILOT Project”), such Investment Period shall end on the fifth such anniversary. Subject to the provisions of the Negotiated FILOT Act, the annual Expansion Project Negotiated FILOT payments shall commence with respect to the property tax year in which the initial Economic Development Property comprising all or a portion of the Expansion Project is placed in service and shall continue for a payment period of twenty (20) years as permitted under Section 12-44-40(21) of the Negotiated FILOT Act; provided, however, that in the event that aggregate investment in the Expansion Project amounts to at least \$200,000,000 (without regard to depreciation or other diminution in value) within the Enhanced Investment FILOT Compliance Period, then such payment period shall be automatically extended by ten (10) years. Accordingly, if the Expansion Project is placed in service during more than one year, each year’s investment in Economic Development Property during the Investment Period, shall be eligible for the Expansion Project Negotiated FILOT for a payment period of twenty (20) years and, if extended as set forth in the preceding sentence, for a payment period of thirty (30) years.

(ii) The Expansion Project Negotiated FILOT shall be determined using: (1) an assessment ratio of 4%; provided, that, in the event that the Expansion Project fails to qualify as an Enhanced Investment FILOT Project but nevertheless qualifies as a Standard FILOT Project, an assessment ratio of 6% shall be used; (2) the lowest millage rate or millage rates allowed with respect to the Expansion Project pursuant to Section 12-44-50(A)(1)(d) of the Negotiated FILOT Act, which millage rate or millage rates shall be fixed pursuant to Section 12-44-50(A)(1)(b)(i) of the Negotiated FILOT Act for the full term of the Expansion Project Negotiated FILOT; and (3) the fair market

value of the Expansion Project determined in accordance with the Negotiated FILOT Act.

(c) The Expansion Project Incentive Agreement shall contain, in substance, the following provisions in addition to the provisions specified elsewhere in this Agreement:

(i) The County and the Company agree to waive any requirement under the Negotiated FILOT Act that the Expansion Project Incentive Agreement contain a recapitulation of the terms thereof at the beginning of the Expansion Project Incentive Agreement subject to the following terms. The Company shall provide the County with a copy of the Form PT-443 to be filed with the South Carolina Department of Revenue and shall update such form from time to time to the extent that the information therein is no longer accurate. The Company shall also provide the County with copies of all filings which the Company is required to make with the South Carolina Department of Revenue pursuant to the Negotiated FILOT Act with regard to the Expansion Project.

(ii) The County and the Company will agree that the Company, at its discretion, may dispose of property and replace property subject to Expansion Project Negotiated FILOT payments to the maximum extent permitted by the Negotiated FILOT Act.

Section 2.2.

(a) As an additional incentive to induce the Company to undertake the Expansion Project, and as reimbursement for the Company's investment in Special Source Improvements and subject to the requirements of the Special Source Act, the County does hereby agree that the Company shall be entitled to receive, and the County shall provide, Special Source Credits against each Expansion Project Negotiated FILOT payment due in an amount equal to 40% of each Expansion Project Negotiated FILOT payment due with respect to the Expansion Project (as an anticipated Enhanced Investment FILOT Project) commencing with the property tax year for which the initial Expansion Project Negotiated FILOT payment is due (the "Enhanced Investment FILOT Special Source Credits"); provided, that, in the event the Expansion Project fails to qualify as an Enhanced Investment FILOT Project but nevertheless qualifies as a Standard FILOT Project, and subject to the provisions of **Section 2.2(b)** hereof, such Enhanced Investment FILOT Special Source Credits shall revert retroactively and prospectively to an amount equal to 60% of each Expansion Project Negotiated FILOT payment due with respect to the Expansion Project (as an actual Standard FILOT Project) commencing with the property tax year for which the initial Expansion Project Negotiated FILOT payment is due (the "Standard FILOT Special Source Credits").

(b) In the event that (1) the Enhanced Investment FILOT Special Source Credits to be provided by the County to the Company revert to the Standard FILOT Special Source Credits as set forth in **Section 2.2(a)** hereof, and (2) aggregate

(i) the applicable Standard FILOT Special Source Credits percentage shall be subject, retroactively and prospectively, to a pro-rata reduction based upon the percentage shortfall of the highest level of aggregate investment in the Expansion Project prior to the end of the time period set forth above in this **Section 2.2** as compared to the Minimum Standard FILOT Special Source Credits Investment Requirement.

As an example, assuming that the highest level of aggregate investment in the Expansion Project prior to the end of such period is \$100,000,000, the applicable Standard FILOT Special Source Credits percentage would be reduced, retroactively and prospectively, as follows:

$$\begin{aligned} & ((\$125,000,000/\$100,000,000)/\$125,000,000) \\ & = 20\% \text{ shortfall} \end{aligned}$$

The initial Standard FILOT Special Source Credits percentage of 60% would be reduced, retroactively and prospectively, by 20% down to 48%; and

(ii) the Company shall make, or cause to be made, payment to the County in an amount equal to the difference between the Expansion Project Negotiated FILOT Payments theretofore made by the Company with respect to the Expansion Project (as an anticipated Enhanced Investment FILOT Project) after application of the Enhanced Investment FILOT Special Source Credits, and the Expansion Project Negotiated FILOT Payments which would have been theretofore due from the Company with respect to the Expansion Project (as an actual Standard FILOT Project) after application of the Standard FILOT Special Source Credits, as reduced pursuant to **Section 2.2(b)(i)** hereof, which differential payment shall be due to the County within one hundred eighty (180) days from the Expansion Project Negotiated FILOT payment due date with respect to Expansion Project property placed in service as of the final property tax year of the time period set forth above in **Section 2.2** hereof.

(c) 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 by the Company in connection with the Expansion Project.

(c) THE SPECIAL SOURCE CREDITS AUTHORIZED HEREIN SHALL NOT CONSTITUTE A GENERAL OBLIGATION OF THE COUNTY, BUT SHALL BE A LIMITED OBLIGATION OF THE COUNTY PAYABLE SOLELY FROM THE FILOT PAYMENTS RECEIVED BY THE COUNTY WITH RESPECT TO THE EXPANSION PROJECT.

Section 2.3. The County will use its best efforts to insure that the Expansion Project will be included, if not already included, and will remain, within 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(D) of the Constitution of the State on terms which provide for all jobs created at the Expansion Project during the Investment Period, any additional jobs creation tax credits afforded by the laws of the State for projects located within multi-county industrial or business parks and on terms which facilitate the Special Source Credits described in **Section 2.2** hereof.

Section 2.4. The County will use its commercially reasonable efforts to assist the Company in securing and processing grants and other funding for infrastructure and other expenses in connection with the Expansion Project.

Section 2.5. As an additional incentive to induce the Company to undertake the Expansion Project, the County hereby finds that the Existing Project has and will have a substantial public benefit, and hereby agrees to approve a ten-year extension of the FILOT payment period term applicable to the Existing Project Negotiated FILOT from thirty (30) years to forty (40) years.

Section 2.6. In so far as is legally and practically possible, the County will perform such other acts and adopt such further proceedings as may be required to faithfully implement this Agreement. The Chairman of the Council and the Clerk to Council are authorized, empowered and directed to enter into any other documents or agreements consistent with the terms of this Agreement.

ARTICLE III

UNDERTAKINGS ON THE PART OF THE COMPANY

Section 3.1. If the plans for the execution of the Expansion Project Incentive Agreement proceed as contemplated herein, the Company agrees as follows:

(a) To enter into the Expansion Project Incentive Agreement, under the terms of which it will obligate itself to pay, or cause to be paid, to the County sums sufficient to make the Expansion Project Negotiated FILOT payments calculated in accordance with **Section 2.1** hereof, as and when the same become due and payable; such Expansion Project Incentive Agreement to be in form and to contain such provisions, consistent with those set forth herein, as shall be satisfactory to the County and to the Company;

(b) To perform such further acts and adopt such further proceedings as may be required faithfully to implement its undertakings and consummate the proposed Expansion Project;

(c) To reimburse the County for all reasonable and necessary expenses, including reasonable and necessary attorneys' fees, to which it might be put in (i) the review and completion of this Agreement, the Expansion Project Incentive

(d) To indemnify, defend and hold the County and its individual elected officials, officers, agents, employees and attorneys harmless against any claim, loss, damage or liability brought or asserted by a third party occurring in connection with the Company's performance of the Incentive Agreement or any action of the Company or its agents, assignees or sublessees in connection with the Expansion Project, or with respect to any condition of the Expansion Project, including any environmental condition.

Section 3.2. The County hereby authorizes the Company, at its option, to cause all or part of the Expansion Project to be constructed and/or acquired by any developer in a build-to-suit arrangement or by an Affiliate (as defined below) of the Company (including, without limitation, a Sponsor or Sponsor Affiliate within the meaning of Sections 12-44-30(19) and (20) of the Negotiated FILOT Act) and to enter into financing arrangements with respect to the Expansion Project, including without limitation equipment leases and other financing arrangements where a financing entity is the owner of all or part of the Expansion Project for income tax purposes. Expenditures by the Company or by any such developer, Affiliate or financing entity with respect to the Expansion Project shall count toward all investment requirements referenced hereunder, Special Source Credits, and other incentives, to the extent permitted by and in accordance with the law, under the Code. To the extent permitted by and in accordance with the fact, the Expansion Project Negotiated FILOT authorized herein shall be applicable to investments with respect to the Expansion Project by any such developer, Affiliate or financing entity.

ARTICLE IV

GENERAL PROVISIONS

Section 4.1. Notwithstanding anything else in this Agreement to the contrary, all commitments of the County under Articles I and II hereof are subject to all of the provisions of the Code and to other laws of general state and local application, including without limitation any requirement thereunder for the adoption of ordinances by the County as a prerequisite to fulfilling such commitments, and to existing agreements.

Section 4.2. All commitments of the County and the Company hereunder are mutually dependent, each on the other, and are subject to the condition that the County and the Company agree on mutually acceptable terms and conditions of all documents, the execution and delivery of which are contemplated by the provisions hereof.

Section 4.3. If for any reason this Agreement is not executed and delivered by the Company within two years from the date of adoption of the Inducement Resolution, the provisions of this Agreement shall be canceled and neither party shall have any rights against the other. The parties understand that, even after execution of this Agreement, the Company may choose not to proceed with the Expansion Project or not to enter into the Expansion Project Incentive Agreement, as the case may be, in which event neither party shall have any further rights against the other, except to the extent set forth in **Sections 3.1(c) and 3.1(d)** hereof.

Section 4.4. To the extent allowable under the Code, the Company may assign all or a part of its rights and/or obligations under this Agreement, the Expansion Project Incentive Agreement or any other agreement related hereto or thereto, or transfer any and all of its property comprising the Expansion Project to any corporation, limited liability company, partnership or other person or entity which owns all or part of the Company or which is owned in whole or in part by the Company or by any partner, shareholder or owner of the Company (“Affiliates”), or to any person or company which subleases the Expansion Project to the Company or any of its Affiliates and any of the foregoing conveyances are hereby approved by the County. The Company shall provide the County and the South Carolina Department of Revenue with notice of any such assignment, transfer, or investment in accordance with the Negotiated FILOT Act, and the County agrees, upon the request of the Company, to take all further action necessary to implement such assignment, transfer, or investment in accordance with the provisions of the Negotiated Act.

Section 4.5 This Agreement may not be modified or amended except by a writing signed by or on behalf of all parties by their duly authorized officers. No amendment, modification, or termination of the Agreement, and no waiver of any provisions or consent required hereunder shall be valid unless consented to in writing by the parties.

Section 4.6 Nothing in this Agreement is intended to create nor should it be construed or interpreted as creating any third party beneficiary rights in any form whatsoever, nor any form of partnership or any other legal entity relationship between the County and the Company.

Section 4.7 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 4.8 This Agreement constitutes the entire Agreement between the parties regarding the matters set forth herein. This Agreement shall be interpreted pursuant to the laws of the State of South Carolina.

[Signature Page to Follow]

IN WITNESS THEREOF, the parties hereto, each after due authorization, have executed this Agreement on the respective dates indicated below.

GREENVILLE COUNTY, SOUTH CAROLINA

By: _____
Herman G. Kirven, Jr., Chairman, County Council
Greenville County, South Carolina

By: _____
Joseph Kernell, County Administrator
Greenville County, South Carolina

[SEAL]

Attest:

By: _____
Theresa B. Kizer, Clerk to County Council,
Greenville County, South Carolina

PROJECT GINA

By: _____
Name: _____
Its: _____