
FEE IN LIEU OF TAX AGREEMENT

by and between

GREENVILLE COUNTY, SOUTH CAROLINA

and

THE MARLEY LILLY LLC
a South Carolina Limited Liability Company

and

COMMERCIAL LAND MANAGEMENT LLC
a South Carolina Limited Liability Company

Dated as of August 1, 2015

TABLE OF CONTENTS

ARTICLE I DEFINITIONS..... 2
SECTION 1.01 DEFINITIONS. 2
SECTION 1.02 REFERENCES TO AGREEMENT. 4

ARTICLE II REPRESENTATIONS AND COVENANTS 5
SECTION 2.01 REPRESENTATIONS AND COVENANTS OF THE COUNTY. 5
SECTION 2.02 REPRESENTATIONS AND COVENANTS BY THE COMPANY. 5

ARTICLE III ACQUISITION OF PROJECT..... 7
SECTION 3.01 ACQUISITION OF PROJECT. 7
SECTION 3.02 RECORDS AND REPORTS, NON-DISCLOSURE. 7

ARTICLE IV AGREEMENT TERM AND PAYMENT PROVISIONS 8
SECTION 4.01 TERM. 8
SECTION 4.02 ADDITIONAL PAYMENTS. 8
SECTION 4.03 FILOT PAYMENTS SECURED BY TAX LIEN. 8

ARTICLE V MODIFICATION OF PROJECT; PAYMENTS IN LIEU OF TAXES 9
SECTION 5.01 MODIFICATION OF PROJECT. 9
SECTION 5.02 PAYMENTS IN LIEU OF TAXES. 9

ARTICLE VI CASUALTY; CONDEMNATION 11
SECTION 6.01 FILOT PAYMENTS IN THE EVENT OF DAMAGE AND DESTRUCTION OR CONDEMNATION. 11

ARTICLE VII PARTICULAR COVENANTS AND AGREEMENTS..... 12
SECTION 7.01 RIGHTS TO INSPECT. 12
SECTION 7.02 LIMITATION OF COUNTY’S LIABILITY. 12
SECTION 7.03 MERGERS, REORGANIZATIONS AND EQUITY TRANSFERS. 12
SECTION 7.04 INDEMNIFICATION COVENANTS. 12
SECTION 7.05 QUALIFICATION IN STATE. 13
SECTION 7.06 NO LIABILITY OF COUNTY’S PERSONNEL. 13
SECTION 7.07 OTHER TAX MATTERS. 13
SECTION 7.08 MULTI-COUNTY PARK 14

ARTICLE VIII ASSIGNMENT OF THIS AGREEMENT; SPONSOR AFFILIATES..... 15
SECTION 8.01 SUBLET OR ASSIGNMENT. 15
SECTION 8.02 SPONSOR AFFILIATES..... 15

ARTICLE IX EVENTS OF DEFAULT AND REMEDIES 16
SECTION 9.01 EVENTS OF DEFAULT. 16
SECTION 9.02 REMEDIES ON EVENT OF DEFAULT. 16
SECTION 9.03 COLLECTION OF FILOT PAYMENTS. 16

ARTICLE X MISCELLANEOUS..... 17
SECTION 10.01 TERMINATION. 17
SECTION 10.02 RIGHTS AND REMEDIES CUMULATIVE. 17
SECTION 10.03 SUCCESSORS AND ASSIGNS. 17
SECTION 10.04 NOTICES; DEMANDS; REQUESTS. 17
SECTION 10.05 APPLICABLE LAW; ENTIRE UNDERSTANDING. 18
SECTION 10.06 SEVERABILITY. 18
SECTION 10.07 HEADINGS AND TABLE OF CONTENTS; REFERENCES. 18
SECTION 10.08 MULTIPLE COUNTERPARTS. 18
SECTION 10.09 AMENDMENTS..... 18
SECTION 10.10 WAIVER. 19
SECTION 10.11 BUSINESS DAY..... 19

FEE IN LIEU OF TAX AGREEMENT

THIS FEE IN LIEU OF TAX AGREEMENT (this "Agreement") made and entered into as of August 1, 2015 by and between **GREENVILLE COUNTY, SOUTH CAROLINA** (the "County"), a body politic and corporate and a political subdivision of the State of South Carolina, **THE MARLEY LILLY LLC**, a South Carolina limited liability company (the "Operating Company") and **COMMERCIAL LAND MANAGEMENT LLC**, a South Carolina limited liability company (the "Landlord" and together with the Operating Company, the "Company").

WITNESSETH:

WHEREAS, Chapter 44 of Title 12, Code of Laws of South Carolina 1976, as amended (the "Act"), empowers the several counties of the State of South Carolina to enter into agreements with industry whereby the industry would pay fees in lieu of *ad valorem* taxes with respect to qualified economic development property; through which powers the industrial development of the State of South Carolina will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate or remain in the State of South Carolina and thus utilize and employ the manpower, products and resources of the State and benefit the general public welfare of the County by providing services, employment, recreation or other public benefits not otherwise provided locally; and

WHEREAS, in accordance with an inducement resolution adopted May 19, 2015 by Greenville County Council (the "Inducement Resolution"), with respect to the Company known to the County at that time as "Project Stitch" the Company desires to provide for the acquisition, construction and installation of land, buildings, improvements, fixtures, machinery, equipment, furnishings and other real and/or tangible personal property constituting a processing facility of the Company in the County (collectively, the "Project"); and

WHEREAS, in accordance with the Inducement Resolution and the Act, the County has agreed to execute and deliver this Agreement with the Company in order to provide for payments in lieu of tax with respect to the Project by the Company and any Sponsor Affiliates, within the meaning of the Act; and

WHEREAS, in connection with the above, the County and the Company agree that the requirements of Section 12-44-55(A) of the Act are hereby waived to the extent that, and so long as, the Company provides the County with copies of all filings and reports required to be made by the Company under the Act;

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained, 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 Chapter 44 of Title 12 of the Code, and all future acts amendatory thereof.

“**Additional Payments**” shall have the meaning provided in **Section 4.02** hereof.

“**Administration Expenses**” shall mean the reasonable and necessary expenses incurred by the County with respect to this Agreement, including without limitation reasonable attorney fees; provided, however, that no such expense shall be considered an Administration Expense until the County has furnished to the Company a statement in writing indicating the amount of such expense and the reason it has been or will be incurred.

“**Agreement**” shall mean this 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.

“**Company**” shall mean, collectively, the Operating Company and the Landlord. References herein to “a” or “any” Company shall mean the Operating Company and the Landlord individually.

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

“**County Assessor**” shall mean the Greenville County Assessor, or the holder of any successor position.

“**County Auditor**” shall mean the Greenville County Auditor, or the holder of any successor position.

“**County Council**” shall mean the governing body of the County and its constituent members and their respective successors, or any successor body.

“**County Treasurer**” shall mean the Greenville County Treasurer, or the holder of any successor position.

“**Default**” shall mean an event or condition, the occurrence of which would, with the lapse of time or the giving of notice or both, become an Event of Default as defined in **Section 9.01** hereof.

“**Department**” shall mean the South Carolina Department of Revenue, or any successor agency.

“**Economic Development Property**” shall have the meaning given such term pursuant to the Act, including, without limitation, the provisions of Sections 12-44-30(6), 12-44-40(C), and 12-44-110 of the Code.

“Equipment” shall mean all machinery, equipment, furnishings and other personal property which is installed by the Company and intended to be included as a part of the Project.

“FILOT Payments” shall mean the payments in lieu of taxes which the Company is obligated to pay to the County pursuant to **Section 5.02** hereof.

“Improvements” shall mean those buildings, structures and fixtures as are constructed or acquired by the Company and intended to be included as a part of the Project.

“Indemnified Party” shall have the meaning ascribed to it by **Section 7.05** of this Agreement.

“Independent Counsel” shall mean an attorney duly admitted to practice law in any state of the United States.

“Landlord” shall mean Commercial Land Management LLC, a South Carolina limited liability company, and any surviving, resulting or transferee entity in any merger, consolidation or transfer of assets permitted under **Section 7.04** hereof; or any other person or entity which may succeed to the rights and duties of the Company hereunder in accordance with all applicable provisions hereof.

“Multi-County Park” shall mean the joint county industrial and business park established pursuant to a Multi-County Park Agreement.

“Multi-County Park Act” shall mean Section 4-1-170, Code of Laws of South Carolina 1976, as amended.

“Multi-County Park Agreement” shall mean an agreement for establishment of joint county industrial and business park between the County and an adjoining county in the State delivered pursuant to the Multi-County Park Act.

“Operating Company” shall mean The Marley Lilly LLC, a South Carolina limited liability company, and any surviving, resulting or transferee entity in any merger, consolidation or transfer of assets permitted under **Section 7.04** hereof; or any other person or entity which may succeed to the rights and duties of the Company hereunder in accordance with all applicable provisions hereof.

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

“Project” shall mean (i) the Improvements, (ii) the Equipment, (iii) the Replacement Property, (iv) any personal property acquired hereafter and intended to be included as a part of the Project which becomes so attached, integrated or affixed to any item described in the foregoing clauses that it cannot be removed without impairing the operating utility of such item as originally designed or damaging such item, and (v) to the extent not covered by the foregoing, anything qualifying as a Project under Section 12-44-30(16) of the Act.

“Project Increment Payment” shall be the payment described in **Section 5.02(b)** hereof.

“Project Increments” shall mean those increments of the Project which are placed in service or are completed and fit for their intended use. With respect to Improvements constituting a portion of the Project,

such Improvements shall be deemed completed and fit for their intended use at such time as they could be listed and assessed for property tax in accordance with the provisions of Section 12-37-670 of the Code.

“Project Millage Rate” shall mean, for purposes of **Section 5.02(b)** hereof, the millage rate in effect for all taxing entities at the Project site as of June 30, 2015, which is understood by the parties hereto to be 279.9 mills.

“Project Period” shall mean the period beginning January 1, 2015 and ending December 31, 2020.

“Replacement Property” shall mean all property installed, improvements and personal property theretofore constituting part of the Project to the extent that Section 12-44-60 of the Act permits such property to be included in the Project as replacement property.

“Sponsor Affiliate” shall have the meaning set forth in Section 12-44-30(2) of the Act.

“State” shall mean the State of South Carolina.

“Term” shall mean the duration of this Agreement as set forth in **Section 4.01** hereof.

“Transfer Provisions” shall mean the provisions of Section 12-44-120 of the Act, as amended or supplemented from time to time, concerning, among other things, the necessity of obtaining County consent to certain transfers.

Section 1.02 References to Agreement.

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

[End of Article I]

ARTICLE II

REPRESENTATIONS AND COVENANTS

Section 2.01 Representations and Covenants of the County.

The County Council makes the following representations and covenants, on behalf of itself and on behalf of the County, as the basis for the undertakings of the County 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. As represented by the Company, the Project constitutes and will constitute “economic development property” and a “project” within the meaning of the Act. The County has been duly authorized to execute and deliver this Agreement, all for the purpose of promoting the industrial development, developing the trade, and utilizing and employing the manpower, agricultural products and natural resources of the State.

(b) To the best of its knowledge, the County is not in default under any of the provisions of the laws of the State whereby any such default would adversely affect the execution and delivery of this Agreement or adversely affect its validity or enforceability; to the best of its knowledge, the authorization, execution and delivery of this Agreement, and the performance by the County of its obligations hereunder will not conflict with or constitute a breach of, or a default under, any existing law, court or administrative regulation, decree, order or any 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.

(c) To the best of its knowledge, 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 involve this Agreement.

Section 2.02 Representations and Covenants by the Company.

The Company makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Operating Company is a limited liability company, validly existing and in good standing, under the laws of the State of South Carolina. The Operating Company has the power to enter into this Agreement, and by proper action has been duly authorized to execute and deliver this Agreement.

(b) The Landlord is a limited liability company, validly existing and in good standing, under the laws of the State of South Carolina. The Landlord has the power to enter into this Agreement, and by proper action has been duly authorized to execute and deliver this Agreement.

(c) The Company’s tax year for federal income tax purposes begins January 1 and ends the following December 31.

(d) This Agreement constitutes a valid and binding commitment of the Company and the authorization, execution and delivery of this Agreement and the performance by the Company of its obligations hereunder will not conflict with or constitute a breach of, or a default under, (i) any existing law, court or administrative regulation, decree, or order, or (ii) any material agreement, mortgage, lease or other instrument, to which the Company is subject or by which it or its properties are bound which would have a

material adverse effect on the Company's ability to perform its obligations hereunder. The Company has obtained, or will obtain or cause to be obtained in due course, all governmental and third party consents, licenses and permits deemed by Company to be necessary or desirable for the acquisition, construction and operation of the Project as contemplated hereby, and will maintain all such consents, permits and licenses in full force and effect.

(e) No event has occurred and no condition currently exists with respect to the Company which would constitute a Default or an "Event of Default" as defined herein.

(f) The Company intends to operate the Project as a manufacturing facility in the County and for such other purposes permitted under the Act as the Company may deem appropriate. The Project constitutes a "project" and "economic development property" as provided under the Act.

(g) The execution and delivery of this Agreement by the County has been instrumental in inducing the Company to locate the Project in the County and in the State.

(h) To the best of the Company's knowledge, 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, any of which involve the possibility of any material and adverse effect upon the transactions contemplated by this Agreement or which would materially adversely affect the validity or enforceability of this Agreement or any agreement or instrument to which the Company is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby or thereby.

(i) The Company, together with any Sponsor Affiliates, will use commercially reasonable efforts to invest, in the aggregate, not less than \$10,000,000 in the aggregate in the Project during the Project Period. The Company expects, but is not required, to create approximately 69 new, full-time jobs with respect thereto.

[End of Article II]

ARTICLE III

ACQUISITION OF PROJECT

Section 3.01 Acquisition of Project.

(a) The Company hereby agrees to construct and acquire the Project, and to use commercially reasonable efforts to invest, together with any Sponsor Affiliates, an aggregate of not less than \$10,000,000 in the Project during the Project Period.

(b) Each year during the term of the Agreement, the Company shall deliver to the Clerk to County Council, County Auditor, County Treasurer, and County Assessor a copy of its most recent annual filings made with the Department with respect to the Project, not later than thirty (30) days following delivery thereof to the Department.

(c) The Company shall cause a copy of this Agreement, as well as a copy of the completed form PT-443 of the Department, to be filed with the County Auditor, the County Assessor, the County Treasurer, and the Department within thirty (30) days after the date of execution and delivery hereof.

Section 3.02 Records and Reports, Non-Disclosure.

The Company agrees to maintain complete books and records accounting for the acquisition, financing, construction and operation of the Project. Such books and records shall:

- (a) permit ready identification of the various Project Increments and components thereof;
- (b) confirm the dates on which each Project Increment was placed in service; and
- (c) include copies of all filings made by the Company with the County Auditor or the Department with respect to property placed in service as part of the Project.

Notwithstanding any other provision of this Agreement, the Company may designate, in writing, with respect to any filings or reports delivered to the County pursuant to the provisions of this Agreement, or segments thereof, that such filing or report contains proprietary, confidential or trade secret matters. Except as required by the South Carolina Freedom of Information Act or otherwise by law, the County Council, the County, its officers, elected officials and employees shall not willingly and knowingly disclose any such properly identified confidential information regarding the Project, the Company, the Company's operations and any other competitively sensitive information which is not generally and independently known by the public, without the prior written authorization of the Company. The County shall notify the Company in the event of the County's receipt of any South Carolina Freedom of Information Act request concerning the aforesaid identified, confidential information and, to the extent permitted by law, will not respond to such request until such time as the Company has reviewed the request and taken any action authorized by law to prevent its disclosure. If the Company fails to act to prevent any disclosure of such information under the South Carolina Freedom of Information Act within ten (10) days after the Company's receipt of notice of such request, or otherwise by the time which the County has identified by which it is required by law to provide such information, the County may provide such information as in its judgment is required to comply with such law and the County will have no liability to the Company in connection therewith.

[End of Article III]

ARTICLE IV

AGREEMENT TERM AND PAYMENT PROVISIONS

Section 4.01 Term.

Subject to the terms and provisions herein contained, with respect to each Project Increment, this Agreement shall be and remain in full force and effect for a term commencing on the date hereof, and ending at midnight on December 31 of the year which is the twenty-ninth (29th) year following the December 31 of the first tax year in which each Project Increment is placed in service, unless sooner terminated as herein permitted; provided that, if at the expiration of the Term payment of all FILOT Payments under **Section 5.02** hereof relating to the operation of the Project during the Term have not been made, the Term shall expire on such later date as such payments shall have been made in full or so provided for; provided, further, that such extension of the Term shall not increase the number of FILOT payments for which the Company qualifies under **Section 5.02** hereof.

Section 4.02 Additional Payments.

In addition to the Company's obligation under **Section 5.02** hereof to make payment of FILOT Payments and related amounts, the Company shall pay to the County, following receipt of such supporting documentation as may be necessary to evidence the County's right to receive payment, all other amounts, liabilities and obligations which such Company assumes or agrees to pay under this Agreement, including without limitation those obligations referred to in the immediately succeeding paragraph below (all such other amounts, liabilities and obligations hereinafter collectively called "Additional Payments"). In the event of any failure on the part of such Company to pay any Additional Payments, the County shall have all rights, powers and remedies provided for herein or by law or equity or otherwise.

The Company agrees to pay Administration Expenses to the County and indemnification payments pursuant to **Section 7.04** of this Agreement when and as they shall become due, but in no event later than the date which is the earlier of any payment date expressly provided for in this Agreement or the date which is forty-five (45) days after receiving written notice from the County or the Indemnified Party, as the case may be, accompanied by such supporting documentation as may be necessary to evidence the County's or Indemnified Party's right to receive such payment, specifying the nature of such expense and requesting payment of same.

Section 4.03 FILOT Payments Secured by Tax Lien.

The County's right to receive FILOT Payments hereunder shall have a first priority lien status pursuant to Section 12-44-90 of the Act and Chapters 4 and 54 of Title 12 of the Code.

[End of Article IV]

ARTICLE V

MODIFICATION OF PROJECT; PAYMENTS IN LIEU OF TAXES

Section 5.01 Modification of Project.

The Company 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 may renovate any portion of the Project and, in connection therewith, to the extent permitted by the Act, install Replacement Property in the Project. Notwithstanding anything in this Agreement to the contrary, the Company shall be entitled in its discretion from time to time to delete or remove any portions of the Project, or to add any (non-Project) property as may be used in conjunction with the Project or otherwise.

(ii) In any instance where the Company in its discretion determines that any items of Equipment have become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary for operations at the Project, the Company may remove such items of Equipment and sell, trade-in, exchange or otherwise dispose of them (as a whole or in part) without the consent of the County.

Notwithstanding anything herein to the contrary, and subject in all events to the terms and provisions of **Section 5.02** hereof, the FILOT Payments required under **Section 5.02** hereof shall, to the extent permitted by law, be reduced at such time to the extent that such payments are attributable to any of the Equipment, Improvements or Replacement Property which is removed or otherwise deleted from the Project and the Company shall not be required to repay any portion of the tax benefit received prior to such event.

Section 5.02 Payments in Lieu of Taxes.

(a) In accordance with the provisions of Section 12-44-50 of the Act, during the Term of this Agreement the Company shall make with respect to the Project annual FILOT Payments in the amounts set forth in this Section at the times and places, and in the same manner and subject to the same penalty assessments as prescribed by the County or the Department for *ad valorem* taxes. Such annual payments shall be made on or before each January 15 of each year during the term of this Agreement, commencing January 15 of the year following the year immediately after the year in which any Project Increment is first placed in service. Subject to the provisions of the Act, each annual FILOT Payment shall be equal to the Project Increment Payment with respect to each Project Increment, including, subject to the provisions of the Act, Replacement Property for the Project originally included in such Project Increment, calculated as set forth in **Section 5.02(b)** hereof, for each of thirty (30) consecutive years (except to the extent that any portion of such Project Increment ceases to qualify for a negotiated fee in lieu of taxes under the Act) commencing with the year following the year in which the respective Project Increments are placed in service.

(b) Each Project Increment Payment shall be in an amount not less than the *ad valorem* taxes that would be due with respect to the applicable Project Increment if the same were taxable, but, to the extent such Project Increment constitutes Economic Development Property, using the following formula: each such Project Increment Payment shall be in an amount equal to the product which would result from multiplying the Project Millage Rate by an assessment ratio of six percent (6.0%) of the fair market value of the portion of the Project included within such Project Increment. Such fair market value shall be that determined by the Department on the basis provided in Section 12-44-50(A) of the Act, and shall, subject to

the provisions of the Act, include all Replacement Property and deductions for depreciation or diminution in value allowed by the Act or by the tax laws generally, and shall be subject to any reductions provided herein under **Sections 5.01** and **6.01** hereof, and includes all applicable *ad valorem* tax exemptions except the exemption allowed pursuant to Section 3(g) of Article X of the South Carolina Constitution and the exemptions allowed pursuant to Section 12-37-220(B) (32) and (34) of the Code.

(c) In the event that the Act and/or the above-described payments in lieu of taxes or any portion thereof, are declared invalid or unenforceable, in whole or in part, for any reason, the Company and the County express their intentions that such payments be reformed so as to afford the Company the maximum benefit then permitted by law, up to but not greater than the benefit afforded by this Agreement. In such event, the Company shall be entitled, to the extent allowed by law, (1) to enjoy the five-year exemption from *ad valorem* taxes (or fees in lieu of taxes) provided by South Carolina Constitution Article X, Section 3, and any other exemption allowed by law from time to time; and (2) to enjoy all allowable depreciation.

(d) In the event the Company, together with any Sponsor Affiliates, has not invested at least \$10,000,000 in the aggregate in the Project during the Project Period, the Project shall be subject, retroactively to the first year with respect to which FILOT Payments were to have been made, to *ad valorem* tax treatment required by law, calculated as set forth in the Act and in **Section 5.02(c)** hereof, and the Company shall make payment to the County, within ninety (90) days after the end of the Project Period, of the difference between the FILOT Payments actually made (including the use of any infrastructure credits) and the total retroactive amount of ad valorem tax treatment required by law referred to above, plus interest in the manner as provided in Section 12-54-25 of the Code, or any successor provision.

(e) If at any time during the Term of this Agreement (following the Investment Period, if the \$10,000,000 investment requirement was reached during the Investment Period) the Company and any Sponsor Affiliates no longer maintain an aggregate of at least \$10,000,000 of investment (without regard to depreciation) in the Project, the Project shall, beginning with the tax year in which such deficiency first occurs, no longer qualify for the payments in lieu of taxes referred to in paragraph (b) of this **Section 5.02**, and shall thereafter be subject to *ad valorem* tax treatment.

[End of Article V]

ARTICLE VI

CASUALTY; CONDEMNATION

Section 6.01 FILOT Payments in the Event of Damage and Destruction or Condemnation.

In the event that the Project is damaged or destroyed or the subject of condemnation proceedings, which damage, destruction and/or condemnation would substantially impair the operating ability of the Project, the parties hereto agree that the payments in lieu of taxes required pursuant to **Section 5.02** hereof shall be abated in the same manner and in the same proportion as with *ad valorem* taxes, subject in all events to the provisions of **Section 5.02** hereof.

[End of Article VI]

ARTICLE VII

PARTICULAR COVENANTS AND AGREEMENTS

Section 7.01 Rights to Inspect.

The Company agrees that the County and its authorized agents shall have the right at all reasonable times and upon prior reasonable notice to enter upon and examine and inspect the Project. The County and its authorized agents shall also be permitted, at all reasonable times and upon prior reasonable notice to have access to examine and inspect the Company's South Carolina property tax returns, as filed. The aforesaid rights of examination and inspection shall be exercised only upon such reasonable and necessary terms and conditions as the Company shall prescribe, which conditions shall be deemed to include, but not be limited to, those necessary to protect the Company's trade secrets and proprietary rights. Prior to the exercise of any right to inspect the Project, the County, at the request of the Company, shall cause its agents to sign a nondisclosure statement substantially in the form shown on Exhibit A attached hereto. In no way shall this requirement of a nondisclosure statement be deemed to apply to or restrict the rights of the United States Government and the State or its political subdivisions in the legitimate exercise of their respective sovereign duties and powers.

Section 7.02 Limitation of County's Liability.

Anything herein to the contrary notwithstanding, any financial obligation the County may incur hereunder, including for the payment of money shall not be deemed to constitute a pecuniary liability or a debt or general obligation of the County; provided, however, that nothing herein shall prevent a Company from enforcing its rights hereunder by suit for *mandamus* or specific performance.

Section 7.03 Mergers, Reorganizations and Equity Transfers.

The Company acknowledges that any mergers, reorganizations or consolidations of the Company may cause the Project to become ineligible for negotiated fees in lieu of taxes under the Act absent compliance by the Company with the Transfer Provisions; provided that, to the extent provided by Section 12-44-120 of the Act or any successor provision, any financing arrangements entered into by the Company with respect to the Project and any security interests granted by the Company in connection therewith shall not be construed as a transfer for purposes of the Transfer Provisions. Notwithstanding anything in this Agreement to the contrary, it is not intended in this Agreement that the County shall impose transfer restrictions with respect to the Company or the Project as are any more restrictive than the Transfer Provisions.

Section 7.04 Indemnification Covenants.

(a) Notwithstanding any other provisions in this Agreement or in any other agreements with the County, the Company agrees to indemnify and save the County, its County Council members, elected officials, employees, servants and agents (collectively, the "Indemnified Parties") harmless against and from all claims by or on behalf of any person, firm or corporation arising from the conduct or management of, or from any work or thing done on the Project by the Company, its members, officers, employees, servants, contractors, and agents during the Term, and, the Company further, shall indemnify and save the Indemnified Parties harmless against and from all claims arising during the Term from (i) any condition of the Project, (ii) any breach or default on the part of the Company in the performance of any of its obligations under this Agreement, (iii) any act of negligence of the Company or any of its agents, contractors, servants, employees or licensees pertaining to the Project or this Agreement, (iv) except in such cases where the County has released the Company pursuant to **Section 8.01** hereof, any act

of negligence of any assignee or sublessee of the Company, or of any agents, contractors, servants, employees or licensees of any assignee or sublessee of the Company pertaining to the Project or this Agreement, or (v) any environmental violation, condition, or effect with respect to the Project. The Company shall indemnify and save the County harmless from and against all 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.

(b) Notwithstanding the fact that it is the intention of the parties that the Indemnified Parties shall not incur pecuniary liability by reason of the terms of this Agreement, or the undertakings required of the County hereunder, by reason of the granting of the fee in lieu of tax, by reason of the execution of this Agreement, by reason of the performance of any act requested of it by the Company, or by reason of the County's relationship to the Project or by the operation of the Project by the Company, including all claims, liabilities or losses arising in connection with the violation of any statutes or regulations pertaining to the foregoing, nevertheless, if the County or any other Indemnified Party should incur any such pecuniary liability, then in such event the Company shall indemnify and hold them harmless against all claims by or on behalf of any person, firm or corporation, arising out of the same, and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon, and upon notice, the Company shall defend them in any such action or proceeding; provided, however, that such indemnity shall not apply to the extent that any such claim is attributable to (i) the grossly negligent acts or omissions or willful misconduct of the County, its agents, officers or employees, or (ii) any material breach of this Agreement by the County.

(c) Notwithstanding anything in this Agreement to the contrary, the above-referenced covenants insofar as they pertain to costs, damages, liabilities or claims by any Indemnified Party resulting from any of the above-described acts of or failure to act by the Company, shall survive any termination of this Agreement with respect to the Company.

Section 7.05 Qualification in State.

The Company warrants that it is duly qualified to do business in the State, and covenants that it will continue to be so qualified so long as it operates any portion of the Project.

Section 7.06 No Liability of County's Personnel.

All covenants, stipulations, promises, agreements and obligations of the County contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of the County and shall be binding upon any member of the County Council or any 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 shall be had for the payment of any moneys hereunder against any member of the governing body of the County or any officer, agent, servants or employee of the County and no recourse shall be had against any member of the County Council or any officer, agent, servant or employee of the County for the performance of any of the covenants and agreements of the County herein contained or for any claims based thereon except solely in their official capacity.

Section 7.07 Other Tax Matters.

The Company shall be entitled to all state and federal investment tax credits, allowances for depreciation and other similar tax provisions allowable by applicable federal or State law with respect to the Project, to the extent allowed or otherwise not prohibited by the Act.

Section 7.08 Multi-County Park.

The County agrees to use its best commercially reasonable efforts to cause the Land to be included in a duly authorized Multi-County Park created pursuant to a qualified Multi-County Park Agreement, which agreement (as extended, or any successor Multi-County Park Agreement) shall terminate no earlier than the termination date of this Agreement.

[End of Article VII]

ARTICLE VIII

ASSIGNMENT OF THIS AGREEMENT; SPONSOR AFFILIATES

Section 8.01 Sublet or Assignment.

The Company may at any time assign or otherwise transfer all of its rights and interest hereunder to any sublessee or assignee, as the case may be, selected by the Company on such terms as the Company may determine in its sole discretion, provided (a) that no assignment, transfer or sublease shall affect or reduce any of the obligations of the Company hereunder, but all obligations of the Company hereunder shall continue in full force and effect as the obligations of a principal and not of a guarantor or surety, except that the Company shall be released from its obligations hereunder upon the written consent and release of the County, which shall not be unreasonably withheld, to any sublease, assignment or transfer, and (b) that the Company or sublessee shall give the County written notice of any such assignment, transfer or sublease and within thirty (30) days thereafter shall furnish or cause to be furnished to the County a true and complete copy of any such sublease, assignment or other transfer which shall include assumption of the indemnity as provided in **Section 7.04** hereof, and all other provisions of this Agreement. The Company acknowledges that such a transfer of an interest under this Agreement may cause the applicable portion of the Project to become ineligible for negotiated fees in lieu of taxes under the Act absent compliance by the Company with the Transfer Provisions; provided that, to the extent permitted by Section 12-44-120 of the Act, or any successor provision, any financing arrangements entered into by the Company with respect to the Project and any security interests granted by the Company in connection therewith shall not be construed as a transfer for purposes of the Transfer Provisions. The County hereby consents to any transfers by the Company to any affiliate of the Company at any time. For such purposes, "affiliate" shall mean any person or entity directly or indirectly controlling, controlled by or under common control with the Company. Consent to such transfer, however, shall not constitute a release by the County under the first sentence of this Section, which release must be separately obtained from the County. The County shall, if the Company requests, acknowledge the receipt and sufficiency of any such notice.

Section 8.02 Sponsor Affiliates.

The Company may designate from time to time Sponsor Affiliates pursuant to the provisions of Section 12-44-30(20) and Section 12-44-130 of the Act, which Sponsor Affiliates shall be persons who join with the Company and make investments with respect to the Project, or who participate in the financing of such investments, who agree to be bound by the terms and provisions of this Agreement, and who shall be direct affiliates of the Company or other persons described in **Section 8.01** hereof. All Sponsor Affiliates must meet the requirements of said Section 12-44-30(20) and Section 12-44-130 of the Code and be approved by Resolution of the County Council. To the extent permitted by the Act (and specifically Section 12-44-130 thereof), the investment by any such Sponsor Affiliate shall qualify for the FILOT Payments payable under **Section 5.02** hereof (subject to the other conditions set forth therein). The Company shall provide the County and the Department with written notice of any Sponsor Affiliate designated pursuant to this **Section 8.02** within ninety (90) days after the end of the calendar year during which any such Sponsor Affiliate has placed in service assets to be used in connection with the Project, all in accordance with Section 12-44-130(B) of the Act.

[End of Article VIII]

ARTICLE IX

EVENTS OF DEFAULT AND REMEDIES

Section 9.01 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:

(a) if default shall be made in the due and punctual payment of any FILOT Payments or related payments under **Section 5.02** hereof, or any Additional Payments, which default shall not have been cured within thirty (30) days following receipt of written notice thereof from the County;

(b) if default shall be made by the Company in the due performance of or compliance with any of the material terms hereof, including payment, other than those referred to in the foregoing subdivision (a), and such default shall (i) continue for ninety (90) days after the County shall have given the Company written notice of such default, or (ii) in the case of any such default which can be cured but which cannot with due diligence be cured within such 90-day period, if the Company shall fail to proceed promptly to cure the same and thereafter prosecute the curing of such default with due diligence, it being intended in connection with the default not susceptible of being cured with due diligence within ninety (90) days that the time of the Company within which to cure the same shall be extended for such period as may be necessary to complete the curing of the same with all due diligence; or

(c) if any material representation or warranty made by the Company herein or any statement, certificate or indemnification furnished or delivered by the Company in connection with the execution and delivery of this Agreement, proves untrue in any material respect as of the date of the issuance or making thereof or knowingly violated or breached, as the case may be.

Section 9.02 Remedies on Event of Default.

Upon the occurrence of any Event of Default, the County may: (i) terminate this Agreement by provision of thirty (30) days’ notice to the Company in writing specifying the termination date; (ii) upon providing, at the Company’s request, but subject in all events to the necessary exercise by the County of its sovereign duties and powers, a signed nondisclosure statement substantially in the form attached as Exhibit A hereto, have access to and inspect, examine and make copies of, the books, records and accounts of the Company pertaining to the Project; or (iii) take whatever action at law or in equity as may appear necessary or desirable to collect any FILOT Payments and Additional Payments then due or to enforce observance or performance of any covenant condition or agreement of the Company under this Agreement, including without limitation enforcement of a statutory lien on the Project for any non-payment of FILOT Payments hereunder.

Section 9.03 Collection of FILOT Payments.

In addition to all other remedies herein provided, the nonpayment of FILOT Payments shall constitute a lien for tax purposes as provided in Section 12-44-90 of the Act. In this regard, and notwithstanding anything in this Agreement to the contrary, the County may also exercise the remedies provided by general law (including, without limitation, Title 12, Chapter 49, of the Code) relating to the enforced collection of *ad valorem* taxes to collect any FILOT Payments due hereunder, in addition to the remedies provided herein.

[End of Article IX]

ARTICLE X

MISCELLANEOUS

Section 10.01 Termination.

Prior to the stated expiration of the Term of this Agreement, the Company may, at any time by written notice to the County, provide for the termination of this Agreement, effective immediately upon giving such notice or upon such date as may be specified in the notice; provided that the Company shall have made payment to the County of all applicable payments payable under this Agreement as of such time. Upon any such termination, and subject to any provisions herein which shall by their express terms be deemed to survive any termination of this Agreement, the sole consequence to the Company shall be that it shall no longer be entitled to the benefit of the fee in lieu of payments provided herein and the property constituting the Project shall thereafter be subject to the *ad valorem* tax treatment required by law and, except as may be expressly provided herein, in no event shall the Company be required to repay to the County the amount of any tax benefit previously received hereunder.

Section 10.02 Rights and Remedies Cumulative.

Each right, power and remedy of the County or of the Company 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 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 of any or all such other rights, powers or remedies.

Section 10.03 Successors and Assigns.

The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Section 10.04 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 certified first class mail, return receipt requested, postage prepaid and addressed as follows or at such other places as may be designated in writing by such party.

- (a) As to the County:
Greenville County, South Carolina
301 University Ridge, Suite 2400
Greenville, South Carolina 29601
Attn: County Administrator

With a copy to (which shall not constitute notice to the County):

Greenville County, South Carolina
301 University Ridge, Suite 2400
Greenville, South Carolina 29601
Attn: County Attorney

- (b) As to the Company:
The Marley Lilly LLC
601 High Tech Court
Greer, South Carolina 29650
Attn: Chief Executive Officer

With a copy to (which shall not constitute notice to the Company):

Haynsworth Sinkler Boyd, P.A.
ONE North Main Street
Greenville, South Carolina 29601
Attn: Seph Wunder, Esq.

Section 10.05 Applicable Law; Entire Understanding.

This Agreement shall be governed exclusively by the provisions hereof and by the applicable laws of the State of South Carolina. This Agreement expresses the entire understanding and all agreements of the parties hereto with each other, and neither party hereto has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth in this Agreement or in certificates delivered in connection with the execution and delivery hereof.

Section 10.06 Severability.

In the event that any clause or provisions of this Agreement shall be held to be invalid by any court of competent jurisdiction, such clause or provisions shall be reformed to provide as near as practicable the legal effect intended by the parties hereto, and the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.

Section 10.07 Headings and Table of Contents; References.

The headings of this Agreement and any Table of Contents or Index 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 subdivisions of this Agreement are references to the designated Articles or Sections or subdivision of this Agreement.

Section 10.08 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 10.09 Amendments.

This Agreement may be amended only by a writing signed by all of the parties.

Section 10.10 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 10.11 Business Day.

In the event that any action, payment or notice is, by the terms of this Agreement, required to be taken, made or given on any day which is a Saturday, Sunday or a legal holiday in the jurisdiction in which the person obligated to act is domiciled, such action, payment or notice may be taken, made or given on the following business day with the same effect as if given as required hereby, and no interest shall accrue in the interim.

[End of Article X]

IN WITNESS WHEREOF, Greenville County, South Carolina, has executed this Agreement by causing its name to be hereunto subscribed by the Chairman of its County Council and its County Administrator and to be attested to by the Clerk of its County Council, The Marley Lilly LLC and Commercial Land Management LLC have executed this Agreement by their authorized officers, all being done as of the day and year first above written.

GREENVILLE COUNTY, SOUTH CAROLINA

(SEAL)

By: _____
Chairman of County Council

By: _____
County Administrator
Greenville County, South Carolina

ATTEST:

By: _____
Clerk to County Council
Greenville County, South Carolina

THE MARLEY LILLY LLC

(SEAL)

By: _____

Name: _____

Title: _____

COMMERCIAL LAND MANAGEMENT LLC

(SEAL)

By: _____

Name: _____

Title: _____

FORM OF NON-DISCLOSURE STATEMENT

I, _____, _____ of Greenville County, South Carolina, acknowledge and understand that The Marley Lilly LLC (“Operating Company”) and Commercial Land Management LLC (“Landlord” and together with Operating Company, the “Company”) utilize confidential and proprietary “state-of-the-art” processes and techniques and that any disclosure of any information relating to such processes and techniques could result in substantial harm to Company and could thereby have a significant detrimental impact on Company and its employees. Consequently, to the extent permitted by law, I agree to keep confidential the nature, description and type of the machinery, equipment, processes and techniques, as well as financial statements of the Company, which I observe. I agree that I shall not willfully and knowingly disclose the nature, description or type of such machinery, equipment, processes or techniques, or the information contained in such financial statements of the Company, to any person or entity other than in accordance with the terms of the Fee in Lieu of Tax Agreement dated as of August 1, 2015 by and between the Company and Greenville County, South Carolina, or as may be required by the laws of the State of South Carolina.

By: _____

Date: _____