

FEE IN LIEU OF TAX AGREEMENT

by and between

GREENVILLE COUNTY, SOUTH CAROLINA

and

SAGE AUTOMOTIVE INTERIORS, INC.

Dated as of December 8, 2015

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FEE IN LIEU OF TAX AGREEMENT

THIS FEE IN LIEU OF TAX AGREEMENT (this “Agreement”) dated as of December 8, 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, and SAGE AUTOMOTIVE INTERIORS, INC., a corporation organized and existing under the laws of the State of South Carolina, and a company identified for the time being as PROJECT PUMPKIN, acting for itself, one or more affiliates, and/or other project sponsors (the “Company”).

WITNESSETH:

WHEREAS, 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”): (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; and (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 payments made pursuant to the Negotiated FILOT Act, with respect to a project; and

WHEREAS, the Company is considering the establishment and/or expansion of certain facilities at one or more locations in the County (the “Project”), and anticipates that, should its plans proceed as expected, it will invest, or cause to be invested, at least \$5,000,000 in the Project by the end of the Compliance Period (as defined herein) as set forth in greater detail herein; and

WHEREAS, the County has determined 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 Council adopted a Resolution on November 3, 2015 (the “Inducement Resolution”), whereby the County agreed to provide the benefits of a negotiated FILOT 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 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 in an Ordinance enacted by the Council on December 8, 2015, approved the form, terms and conditions of this Agreement.

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, 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.

“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 attorneys’ 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 Sponsor or Sponsor Affiliate under **Section 8.04** hereof; provided, however, that no such expense shall be considered an Administration Expense unless the Company, or other Sponsor or Sponsor Affiliate, 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 other Sponsor or Sponsor Affiliate, 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 Sponsor or Sponsor Affiliate, as the case may be, or which is now or hereafter owned in whole or in part by the Company or any other Sponsor or Sponsor Affiliate, as the case may be, or by any partner, shareholder or owner of the Company or any other Sponsor or Sponsor Affiliate, 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 Sponsor or Sponsor Affiliate, 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, any Affiliate of the Company or of any such other Sponsor or Sponsor Affiliate, any developer in a build-to-suit arrangement or other leasing arrangement with respect to the Project, any lessor of equipment or other property comprising a part of the Project, and any financing entity or other third party investing in, or providing funds for, the Project. The Company shall notify the County in writing of the identity of any other Sponsor, Sponsor Affiliate or other Co-Investor and shall, to the extent the Company and any such other Sponsor, Sponsor Affiliate, or other Co-Investor intend

to extend the benefits of the Negotiated FILOT to property owned by any such other Co-Investor pursuant to **Section 6.02** hereof, comply with any additional notice requirements, or other applicable provisions, of the Negotiated FILOT Act. As of the date of original execution and delivery of this Agreement, the Company and Sage Properties, LLC, a limited liability company organized and existing under the laws of the State of South Carolina, are the only Co-Investors.

“*Company*” shall mean Sage Automotive Interiors, Inc., a South Carolina corporation, and a company previously identified as Project Pumpkin, and any surviving, resulting, or transferee entity in any merger, consolidation or transfer of assets permitted under **Sections 4.04** or **6.01** hereof or any other assignee or transferee hereunder which is designated by the Company and approved by the County.

“*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. The parties presently anticipate 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, 2015 and in such event, the Compliance Period will end on December 31, 2020.

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

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

“*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.

“*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, but not limited to, 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.

“*Investment Period*” shall mean the period for completion of the Project, which shall initially be equal to the Compliance Period.

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

“*Minimum Contractual Investment Requirement*” shall mean investment in the Project, within the period commencing on the first day that Project property comprising all or a portion of the Project is purchased or acquired, whether before or after the date of this Agreement, and ending at the end of the Compliance Period, by the Company together with all Co-Investors, in the aggregate, of at least \$5,000,000 (without regard to depreciation or other diminution in value).

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

“*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 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 facilities 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(e)(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 thereon; (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 such real property improvements and personal property, whether now existing or hereafter constructed, improved, acquired or equipped, only to the extent placed in service during 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(e)** 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 in or 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.

“*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 date of original execution and delivery of this Agreement the only Sponsor is the Company and the only Sponsor Affiliate is Sage Properties, LLC, a limited liability company organized and existing under the laws of the State of South Carolina.

“*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, as set forth herein, and 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.

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 South Carolina and is authorized to do business in the State of South Carolina, 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 intends to operate the Project as facilities primarily for the manufacture of automotive textile fabrics.

(c) The agreement with the County with respect to the Negotiated FILOT was a factor 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.

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 **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. Commensurate Benefits. The parties acknowledge the intent of this Agreement, in part, is to afford the Company and each other Sponsor or Sponsor Affiliate 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 Negotiated FILOT Act and the County's compliance with the requirements thereof. In the event that a court of competent jurisdiction holds that the Negotiated FILOT Act is unconstitutional or this Agreement or agreements similar in nature to this 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 in any material respect, then at the request of the Company, the County agrees to use its best efforts to extend to the Company and each other Sponsor or Sponsor Affiliate the intended benefits of this Agreement, including, without limitation, the Negotiated FILOT, if requested by the Company, and to enter into a lease purchase agreement with the Company and each other Sponsor or Sponsor Affiliate 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, and to take such other steps as may be appropriate to extend to the Company and each other Sponsor or Sponsor Affiliate the intended benefits of this Agreement, including, but not limited to, the Negotiated FILOT. The Company acknowledges, if a court of competent jurisdiction holds all or part of the Negotiated FILOT Act is

unconstitutional or otherwise illegal, the Negotiated FILOT Act currently provides that the Company and each other Sponsor or Sponsor Affiliate must transfer their respective portion of the Negotiated FILOT Property to the County within one hundred eighty (180) days following such determination in order for the Negotiated FILOT benefits to continue to apply to such property. In any lease purchase agreement, as referred above, the County, upon the conveyance of title to the Project to the County at the expense of the Company or any other Sponsor or Sponsor Affiliate, as the case may be, agrees to lease the Project to the Company or any such other Sponsor or Sponsor Affiliate, as the case may be. At the end of the term of any such lease purchase agreement, and upon payment of all outstanding obligations incurred under such lease purchase agreement, each of the Company and any such other Sponsor or Sponsor Affiliate shall have the option to purchase its respective portion of the Project from the County for Ten Dollars (\$10.00).

ARTICLE IV

COVENANTS OF THE 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, 2018.

(b) Notwithstanding anything herein to the contrary, and to the maximum extent permitted by law, investment by any and all other Co-Investors shall together with investment by the Company, count toward all investment and job creation requirements, thresholds, and levels set forth in this Agreement, including, but not limited to, the Minimum Contractual Investment Requirement and, to the full extent permitted by the Negotiated FILOT Act, the Minimum Statutory Investment 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 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) Intentionally Omitted.

(d) The Company and each other Co-Investor shall, subject to their rights set forth in **Section 4.04** and **Section 6.01** hereof, 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 but not limited to, in connection with any financing transactions, all without the consent of the County.

(e) 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, but not limited to, 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, but not limited to, 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 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 such removal, such property will be subject to *ad valorem* taxes; 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 Negotiated FILOT 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. Payment of Administration Expenses. The Company or any other Sponsor or Sponsor Affiliate 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 Sponsor or Sponsor Affiliate, 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 and this Agreement, and all resolutions, ordinances and other documentation related thereto in an amount not to exceed \$5,000.00.

Section 4.03. 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 4.04. 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 4.04**, 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 4.04**.

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 with the Transfer Provisions.

Section 4.05. Records and Reports. The Company and each other Sponsor and Sponsor Affiliate 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 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 Sponsor or Sponsor Affiliate 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 Sponsor or Sponsor Affiliate 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 Sponsor or Sponsor Affiliate with respect to maintaining the confidentiality of such designated segments. Except to the extent required by law, and unless the County has provided at least fifteen (15) days advance written notice to the Company or such other Sponsor or Sponsor Affiliate 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 Sponsor or Sponsor Affiliate in connection with the Project, whether or not such information has been designated as confidential or proprietary by the Company or any other Sponsor or Sponsor Affiliate.

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, 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 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, 2018. If the Company designates any other Sponsor or Sponsor Affiliate, 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 other 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 twenty (20) 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 twenty (20) years up to an aggregate of twenty-five (25) years.

(ii) The Negotiated FILOT shall be determined using (1) an assessment ratio of 6%; (2) the lowest millage rate or rates allowed with respect to the Project pursuant to Section 12-44-50(A)(1)(d) of the Negotiated FILOT Act, which (i) the parties believe to be, with respect to all Negotiated FILOT Property comprised of, or located on, each parcel of the Land, the millage rate or rates as set forth in **Exhibit A** attached hereto, (ii) based on the parcels comprising the Land as of the original execution and delivery of this Agreement, the parties believe to be (a) 257.3 mills with respect to all Negotiated FILOT Property comprised of, or located on, Parcel 1 of the Land and (b) 329.1 mills with respect to all Negotiated FILOT Property comprised of, or located on, Parcel 2 of the Land, and (iii) shall be fixed in accordance with Section 12-44-50(A)(1)(b)(i) of the Negotiated FILOT Act for the entire term of the Negotiated FILOT; 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 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.

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

(c) The Negotiated FILOT Payments are to be recalculated:

(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(e)(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.

(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 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 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 fees in lieu of taxes) 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 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, together with interest on such deficiency as provided in Section 12-54-25(D) of the Code (a "Deficiency Payment"). Any Deficiency Amount shall be paid to the County within 120 days of the end of the Compliance Period.

(f)

(i) In the event that the Minimum Statutory Investment Requirement is not satisfied by the end of the Compliance Period, then this Agreement shall terminate retroactively and prospectively and all Negotiated FILOT Payments shall revert retroactively to *ad valorem* taxes, 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 by all Sponsors and Sponsor Affiliates does not exceed \$5,000,000 by the end of the Compliance Period and any Sponsor or Sponsor Affiliate does not satisfy the Minimum Statutory Investment 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 non-qualifying Sponsor or Sponsor Affiliate shall revert retroactively to *ad valorem* taxes calculated and paid 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 (i) due to failure to satisfy the Minimum Statutory Investment 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.

(ii) In the event that the Minimum Statutory Investment Requirement is satisfied by the end of the Compliance Period, but the Minimum Contractual Investment Requirement is not satisfied by the end of the Compliance Period, the County may, in its sole discretion, terminate this Agreement retroactively and/or prospectively. In the event of any such retroactive termination, all Negotiated FILOT Payments shall revert retroactively to *ad valorem* taxes, calculated and paid 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 of any such prospective termination, all Negotiated FILOT Payments shall revert prospectively to *ad valorem* taxes, calculated as set forth in paragraph (e) above, commencing with such payment due with respect to Project property placed in service as of the end of the final Property Tax Year comprising the Compliance Period.

(iii) Intentionally Omitted.

(iv) In the event that the Minimum Statutory Investment Requirement is satisfied by the end of the Compliance Period, but following the Compliance Period, investment in the Project, without regard to depreciation or other diminution in value, falls below the investment level set forth in the Minimum Statutory Investment Requirement, then the Project shall prospectively be subject to *ad valorem* taxes, calculated and paid 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.

(v) 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 and whether or not subject to this Agreement, shall be counted toward all investment obligations under this Agreement, including, to the maximum 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 one hundred eighty (180) 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.

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 Sponsor or Sponsor Affiliate 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 (with such consent to be evidenced by a resolution of the County Council); 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 Sponsor or Sponsor Affiliate or operates such assets for the Company or any other Sponsor or Sponsor Affiliate or is leasing all or a portion of the Project in question from the Company or any other Sponsor or Sponsor Affiliate. In the event of any such transfer, lease, financing, or other transaction described above, the rights and interests of the Company or such other Sponsor or Sponsor Affiliate under this Agreement, including, without limitation, the benefits of the Negotiated FILOT, with respect to any Project property so transferred, leased, financed, or otherwise affected shall be so

transferred and preserved, automatically, without further action of the County or the Council, subject to the following provisions: (i) except in connection with any transfer to any other Sponsor or Sponsor Affiliate or an Affiliate of the Company or any other Sponsor or Sponsor Affiliate, or transfers, leases, or financing arrangements pursuant to clause (b) above, as to all of which transfers and other transactions the County hereby consents, the Company shall obtain the prior consent or subsequent ratification of the County (via resolution of the County Council), which consent or subsequent ratification of the County shall not be unreasonably conditioned, withheld, or delayed; (ii) except when a financing entity which is the income tax owner of all or part of the Project property is the transferee pursuant to clause (b) above and such financing entity assumes in writing the obligations of the Company or any such other Sponsor or Sponsor Affiliate hereunder, or when the County consents in writing or when the transfer relates to Released Property pursuant to Section 4.01(e) hereof, no such transfer shall affect or reduce any of the obligations of the Company or any such other Sponsor or Sponsor Affiliate hereunder; (iii) to the extent the transferee or financing entity shall become obligated to make Negotiated FILOT payments hereunder, the transferee shall assume the then current basis of the Company or any such other Sponsor or Sponsor Affiliate (or prior transferee) in the Negotiated FILOT Property transferred; (iv) the Company or any such other Sponsor or Sponsor Affiliate, transferee or financing entity shall, within sixty (60) days thereof, furnish or cause to be furnished to the County and the Department of Revenue notice of any such transfer agreement; and (v) the Company or any such other Sponsor or Sponsor Affiliate and the transferee shall comply with all other requirements of the Transfer Provisions in order to preserve the benefits of the Negotiated FILOT.

Subject to County consent when required under this Section 6.01, and at the expense of the Company or any such other Sponsor or Sponsor Affiliate, 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 Sponsor or Sponsor Affiliate under this Agreement and/or any release of the Company or any other Sponsor or Sponsor Affiliate 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 Sponsor or Sponsor Affiliate 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 Sponsors or 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 Affiliates of the Company or other Persons described in **Section 6.01(b)** hereof. All other Sponsors or Sponsor Affiliates who otherwise meet the requirements of Section 12-44-30 (19) or (20) and Section 12-44-130 of the Negotiated FILOT Act must be approved by Resolution of the County Council. To the extent that a Sponsor or Sponsor Affiliate invests an amount equal to the Minimum Statutory Investment Requirement at the Project by the end of the Compliance Period all investment by

such Sponsor or Sponsor Affiliate shall qualify for the Negotiated FILOT payable under **Section 5.01** hereof (subject to the other conditions set forth therein) in accordance with Section 12-44-30(19) of the Negotiated FILOT Act. To the extent that the aggregate investment in the Project by the end of the Compliance Period by the Company, all Sponsors and Sponsor Affiliates and, to the extent provided by law, other Co-Investors, exceeds \$5,000,000 as provided in Section 12-44-30(19) of the Negotiated FILOT Act, all investment by such Sponsors and Sponsor Affiliates during the Investment Period shall qualify for the Negotiated FILOT pursuant to **Section 5.01** of this Agreement (subject to the other conditions set forth therein) regardless of whether each such entity invested amounts equal to the Minimum Statutory Investment Requirement by the end of the Compliance Period. 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 the day the last Negotiated FILOT Payment is made hereunder.

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 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; INDEMNIFICATION

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 other Sponsor or Sponsor Affiliate (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, indemnification payments under Section 8.05 hereof, or

payment of Administration Expenses, which default shall not have been cured within thirty (30) days following receipt of written notice of such default from the County; or

(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.

Notwithstanding anything herein to the contrary, failure to meet any investment 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 Sponsor or Sponsor Affiliate, 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) the County may terminate this Agreement by delivery of written notice to the Defaulting Entity not less than sixty (60) days prior to the termination date specified therein;

(b) the County may 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 4.05** hereof;

(c) the County may 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 Sponsor or Sponsor Affiliate 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 Sponsor or Sponsor Affiliate 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.

Section 8.05 Indemnification. The Company releases the County including the members of the governing body of the County, and the elected officials, employees, officers, and agents of the County (herein collectively referred to as the “Indemnified Parties”) from, agrees that Indemnified Parties shall not be liable for, and agrees to hold Indemnified Parties harmless against, any loss or damage to property or any injury to or death of any person or any liability whatsoever, including without limitation, liability under any environmental or other regulatory laws, that may be occasioned by any cause whatsoever pertaining to this Agreement, the Project, or the use thereof except for that occasioned by grossly negligent or intentional acts of an Indemnified Party. The Company further agrees to indemnify and save harmless Indemnified Parties against and from any and all costs, liabilities, expenses, including, but not limited to, attorney’s fees, and claims arising from the performance of an Indemnified Party of any obligations of the County under this Agreement or any breach or default on the part of the Company in the performance of any covenant or agreement on the part of the Company to be performed pursuant to the terms of this Agreement or arising from any act or negligence of, or failure to act by, the Company, or any of its agents, contractors, servants, employees, or licensees, and from and against all cost, liability, and expenses, including, but not limited to, attorney’s fees, incurred in or in connection with any such claim or action or proceeding brought thereon.

Notwithstanding the fact that it is the intention of the Indemnified Parties hereto that none of them shall incur any pecuniary liability by reason of the terms of this Agreement, any related agreements or the undertakings required of the County hereunder by reason of the performance of any act requested of the County 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 any Indemnified Party shall 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 or other legal entity arising out of the same and all costs and expenses, including, but not limited to, attorney’s fees, incurred in connection with any such claim or in connection with any action or proceeding brought thereon. If any action, suit, or proceeding is brought against any Indemnified Party, such Indemnified Party shall promptly notify the Company and the Company shall have the sole right and duty to assume, and shall assume, the defense thereof, at its expense, with full power to litigate, compromise, or settle the same in its sole discretion; provided the Company shall obtain the prior written consent of the County to settle any such claim unless such claim is for monetary damages for which the Company has the ability to, and does, pay. Notwithstanding the foregoing, if the Indemnified Party is the County, in the event the County reasonably believes there are defenses available to it that are not being pursued or that the counsel engaged by the Company reasonably determines that a conflict of interest exists between the County and the Company, the County may, in its sole discretion, hire independent counsel to pursue its own defense, and the Company shall be liable for the reasonable cost of such counsel.

The indemnity specified in this Section 8.05 shall be in addition to any heretofore

extended by the Company to any Indemnified Party and shall survive the termination of this Agreement with respect to liability arising out of any event or act occurring prior to such termination

Section 8.06 Limitation of Pecuniary Liability for County. Anything herein to the contrary notwithstanding: (a) the Project shall not give rise to any pecuniary liability of the County or charge against its general credit or taxing powers; and (b) the County may require as a condition to the participation by it with the Company in any contests or in obtaining any license or permits or other legal approvals a deposit by the Company of such amount as reasonably determined by the County to be appropriate to assure the reimbursement to the County of the costs incurred by it in such participation, with any amount of such deposit in excess of such costs to be returned to the Company; provided, however, that nothing herein shall prevent the Company from enforcing its rights hereunder by suit for mandamus or specific performance or any other remedy available at law or in equity.

Section 8.07. Obligations of County Representatives. 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 not of any member of the County Council or any elected official, officer, agent, servant, or employee of the County in his individual capacity, and, absent bad faith, no recourse shall be had for the payment of any moneys hereunder or the performance of any of the covenants and agreements of the County herein contained or for any claims based thereon against any member of the governing body of the County or any elected official, officer, agent, servant, or employee of the County.

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 Sponsor or Sponsor Affiliate 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 Sponsor or Sponsor Affiliate 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 Sponsor or Sponsor Affiliate 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 Sponsor or Sponsor Affiliate 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) As to the County:

Greenville County
Attn.: County Administrator
County Square, Suite 2400
Greenville, South Carolina 29601
Phone: (864) 467-7105
Fax: (864) 467-7358

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

Mark W. Tollison, Esq.
Greenville County Attorney
301 University Ridge, Suite 2400
Greenville, South Carolina 29601
Phone: (864) 467-7110
Fax: (864) 467-5964

(c) As to the Company:

Sage Automotive Interiors, Inc.
Attn: Patrick Thomasson, Corporate Controller
3 Research Drive
Greenville, South Carolina 2967
Phone: (864) 987-7845
Fax: (864) 987-7820

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

Tushar V. Chikhliker, Esq.
Nexsen Pruet, LLC
P.O. Drawer 2426
1230 Main Street, Suite 700 (29201)
Columbia, South Carolina 29202
Phone: (803) 540-2188
Fax: (803) 727-1469

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.

[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.

GREENVILLE COUNTY, SOUTH CAROLINA

By: _____
Bob Taylor, Chairman, County Council
Greenville County, South Carolina

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

[SEAL]

Attest:

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

SAGE AUTOMOTIVE INTERIORS, INC.

By: _____
Name: _____
Its: _____

EXHIBIT A
LAND DESCRIPTION

Parcel 1:

All that certain piece, parcel of land, situate, lying and being on the northern side of SC 288 (Pumpkintown Road) in Greenville County, South Carolina and being identified as "Lot 1" as shown, delineated and defined on Boundary Survey for Sage Properties, LLC (Lot 1) and Milliken & Company (Lot 2), prepared by Freeland & Associates, Inc., date drawn of August 20, 2010, and recorded on September 3, 2010 in the Office of the Register of Deeds for Greenville County in Plat Book 1109 Pages 12-15, and as further described by the following metes and bounds description:

Commencing at an iron pin located on the northern right of way of SC Hwy. 288 (66' right of way) and being the common corner of Pacolet Milliken Enterprises (Deed Book 2316, page 825) and Caroline Shedd (Deed Book 2178, page 1419); thence along said right of way, S 81-24-57 W for 1698.99 feet to an iron pin being the Point of Beginning, thence continuing along said right of way S 81-24-57 W for 402.03 feet to an iron pin; thence leaving said northern right of way and with the common line of Lot 2 along a curve concave to the northwest having a radius of 164.00 feet, an arc length of 257.64 feet, and a chord bearing and distance of N 36-21-42 E for 231.95 feet to an iron pin; thence N 08-44-37 W for 266.70 feet to an iron pin; thence S 81-19-55 W for 177.83 feet to an iron pin; thence N 08-39-15 W for 232.60 feet to an iron pin; thence S 80-09-49 W for 656.66 feet to an iron pin; thence N 09-46-36 W for 278.93 feet to an iron pin; thence N 59-16-27 W for 27.31 feet to an iron pin; thence S 82-24-54 W for 105.30 feet to an iron pin; thence N 33-38-57 W for 46.31 feet to an iron pin; thence N 10-07-00 W for 481.15 feet to an iron pin; thence N 15-24-09 E for 334.93 feet to an iron pin; thence N 76-58-00 E for 99.73 feet to an iron pin; thence S 14-33-52 E for 48.62 feet to an iron pin; thence N 79-45-14 E for 63.40 feet to an iron pin; thence N 13-02-06 W for 51.73 feet to an iron pin; thence N 76-56-59 E for 128.27 feet to an iron pin; thence N 17-57-57 W for 99.60 feet to an iron pin; thence N 79-45-06 E for 38.27 feet to an iron pin; thence S 62-50-03 E for 64.08 feet to an iron pin; thence S 12-01-59 E for 47.06 feet to an iron pin; thence N 81-40-04 E for 81.66 feet to an iron pin; thence S 18-05-05 E for 141.05 feet to an iron pin; thence S 29-54-29 E for 26.47 feet to an iron pin; thence S 26-02-56 E for 213.06 feet to an iron pin; thence S 19-07-19 E for 38.96 feet to an iron pin; thence S 34-05-23 E for 52.85 feet to an iron pin; thence S 20-17-19 E for 12.45 feet to an iron pin; thence N 76-16-58 E for 73.41 feet to an iron pin; thence N 09-14-48 W for 40.56 feet to an iron pin; thence N 82-38-39 E for 119.79 feet to an iron pin; thence S 36-26-49 E for 112.30 feet to an iron pin; thence N 81-42-44 E for 139.94 feet to an iron pin; thence S 12-19-28 E for 79.58 feet to a Mag nail; thence S 51-28-13 W for 310.63 feet to an iron pin; thence S 10-02-42 E for 75.74 feet to an iron pin; thence along a curve concave to the southwest having a radius of 418.67 feet, an arc length of 495.60 feet, and a chord bearing and distance of S 42-27-25 E for 467.17 feet to an iron pin; thence S 08-43-54 E for 442.79 feet to an iron pin; thence along a curve concave to the northeast having a radius of 139.00 feet, an arc length of 231.01 feet, and a chord bearing and distance of S 50-54-42 E for 205.33 feet to the Point of Beginning. Said tract contains 23.52 Acres more or less.

Applicable Negotiated FILOT Millage Rate: 257.3 mills

Parcel 2:

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND SITUATE, LYING AND BEING IN THE CITY OF GREENVILLE, COUNTY OF GREENVILLE, STATE OF SOUTH CAROLINA CONTAINING 2.07 ACRES AS SHOWN ON A PLAT ENTITLED, "BOUNDARY SURVEY FOR LICAR LLC", DATED 10-27-09, AND HAVING ACCORDING TO SAID PLAT THE FOLLOWING METES AND BOUNDS TO WIT:

BEGINNING AT AN IRON PIN SET 5/8" REBAR LOCATED ON THE COMMON LINE WITH CLEMSON UNIVERSITY PROPERTY N/F (LOT 2D-1B) AND AT THE JOINT CORNER WITH LICAR LLC PROPERTY N/F (PT. LOT 2D-2C). SAID IRON PIN ALSO LOCATED +/- 326' FROM MILLENNIUM BLVD. THENCE RUNNING ALONG THE COMMON LINE WITH SAID LICAR LLC PROPERTY (PT. LOT 2D-2C) S 42-31-56 W, 165.68' TO AN IRON PIN SET 5/8" REBAR. THENCE S 55-04-06 W, 136.73' TO AN IRON PIN SET 5/8" REBAR LOCATED ON THE COMMON LINE WITH GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION PROPERTY N/F (PARCEL 7). THENCE TURNING AND RUNNING ALONG THE COMMON LINE WITH SAID GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION PROPERTY (PARCEL 7) N 59-30-54 W, 284.73' TO AN IRON PIN SET 5/8" REBAR. THENCE AROUND A CURVE TO THE RIGHT WITH A RADIUS OF 1412.71' AND A CHORD BEARING AND DISTANCE OF N 58-10-39 W, 69.84' TO A IRON PIN OLD 5/8" REBAR LOCATED AT THE JOINT CORNER WITH CLEMSON UNIVERSITY PROPERTY N/F (LOT 2D-3 & LOT 2D-3A). THENCE TURNING AND RUNNING ALONG THE COMMON LINE WITH SAID CLEMSON UNIVERSITY PROPERTY (LOT 2D-3 & LOT 2D-3A) N 72-10-02 E, 509.03' TO AN IRON PIN OLD 5/8" REBAR LOCATED ON THE R/W OF RESEARCH DRIVE AND AT THE JOINT CORNER OF CLEMSON UNIVERSITY PROPERTY N/F (LOT 2D-1B). THENCE LEAVING SAID R/W AND RUNNING ALONG THE COMMON LINE WITH SAID CLEMSON UNIVERSITY PROPERTY (LOT 2D-1B) S 17-55-30 E, 143.76' TO THE POINT OF BEGINNING.

Applicable Negotiated FILOT Millage Rate: 329.1 mills