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**CONVERSION AND FEE-IN-LIEU OF AD VALOREM TAXES AGREEMENT**

*CONVERTING AND TRANSFERRING THE PROPERTY SUBJECT TO AN EXISTING FEE-IN-LIEU OF PROPERTY TAXES ARRANGEMENT UNDER TITLE 4, CHAPTER 12 OF THE SOUTH CAROLINA CODE, 1976 AS AMENDED TO A FEE-IN-LIEU OF PROPERTY TAXES ARRANGEMENT UNDER TITLE 12, CHAPTER 44, OF THE SOUTH CAROLINA CODE, AS AMENDED*

**BETWEEN**

**GREENVILLE COUNTY, SOUTH CAROLINA**

**AND**

**IVP, LLC**

**DATED AS OF SEPTEMBER 20, 2016**

**PREPARED BY:**

**PARKER POE ADAMS & BERNSTEIN LLP  
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## CONVERSION AND FEE-IN-LIEU OF *AD VALOREM* TAXES AGREEMENT

This CONVERSION AND FEE-IN-LIEU OF *AD VALOREM* TAXES AGREEMENT (“Fee Agreement”) is dated as of September 20, 2016, by and between Greenville County, South Carolina (“County”), a body politic and corporate and a political subdivision of the State of South Carolina (“State”), and IVP, LLC, a Delaware limited liability company (“Company,” together with the County, “Parties,” each, a “Party”).

### WITNESSETH:

(a) The County, acting by and through its County Council (“County Council”) is authorized and empowered under and pursuant to the provisions of Title 4, Chapter 12, Code of Laws of South Carolina, 1976, as amended (“Original Fee Act”), and Title 12, Chapter 44 Code of Laws of South Carolina, 1976, as amended (“Simple Fee Act”), (i) to enter into fee-in-lieu of *ad valorem* taxes (“FILOT”) arrangements with qualifying industry to encourage investment in projects constituting economic development property through which the industrial development of the State of South Carolina (“State”) will be promoted by inducing new and existing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ manpower and other resources of the State; and (ii) to covenant with such industry to accept certain FILOT payments with respect to such investment;

(b) Pursuant to the Original Fee Act, the County entered into a Lease Agreement with Perrigo Company of South Carolina, Inc. (“Perrigo”), dated as of November 1, 1997 (“Lease Agreement”), pursuant to which (i) Perrigo committed to invest in real and personal property in the County for the purpose of acquiring and constructing manufacturing facilities in the County (“Project”) and (ii) the County provided Perrigo with fee-in-lieu of *ad valorem* taxes (“FILOT”) benefits with respect to the Project (“Original Fee”);

(c) In connection with and in addition to the Lease Agreement, the County and Perrigo entered into an Indenture dated as November 1, 1997 (“Indenture”) by which the County issued a Special Source Revenue Bond, designated as “Greenville County, South Carolina, Special Source Revenue Bond, Series 1997 (Perrigo Company of South Carolina, Inc. Project),” and an Escrow Agreement between the County, Company, and Haynsworth, Marion, McKay and Guerard, L.L.P., dated as of November 1, 1997 (“Escrow Agreement”);

(d) In connection a business transaction occurring August 5, 2016, the Company and Perrigo entered into a Assignment and Assumption Agreement (“Assignment Agreement”) under which the Company assumed all of Perrigo’s rights, title, and interests in and to the Lease Agreement and the real and personal property constituting the Project (the “Transfer”), to which the County consented in a Resolution of County Council adopted July 12, 2016;

(e) A Memorandum of Lease and Assignment and Assumption Indenture was recorded on August 5, 2016 at Book \_\_\_ and Page \_\_\_ in the Greenville County property records;

(f) By way of letter dated August 3, 2016, the County consented to the Company granting a leasehold mortgage on the real property and a security interest in the personal property constituting the Project in order to effectuate a financing in combination with the Transfer (“Consent Letter”);

(g) The Original Fee Act requires that the County hold title to all of the assets subject to the Original Fee, and pursuant to the Lease Agreement, such assets have been leased back to the Company by the County, and the FILOT benefits have been provided to the Company thereunder;

(h) The Simple Fee Act permits the granting of FILOT benefits with respect to a project without the need for the County to hold title to all of the assets to be subject to the FILOT benefit;

(i) Under Section 12-44-170 of the Simple Fee Act, because the Company has an existing FILOT arrangement with the County pursuant to the Original Fee Act, the Company may elect to “convert” from an original title transfer FILOT arrangement to a non-title transfer FILOT arrangement;

(j) As provided under Section 12-44-170 under the Simple Fee Act, the Company has elected to transfer the Project from a FILOT arrangement under the Original Fee Act to a FILOT arrangement under the Simple Fee Act (“Conversion”), and the County has consented to the same, subject to the following conditions: (i) a continuation of the same FILOT payments required under the Original Fee for the time required for payments under the Original Fee; (ii) to the extent applicable, a carryover of minimum investment or employment requirements of the Original Fee to the FILOT arrangement under the Simple Fee Act; and (iii) the entering into of this Fee Agreement which continues the provisions and limitations of the Original Fee;

(k) The County, by Ordinance No. [ ] of the County Council, dated September 20, 2016 (“Fee Ordinance”), has authorized (i) the execution of this Fee Agreement with the Company to achieve the Conversion, (ii) the cancellation and termination of the Lease Agreement, Escrow Agreement, and the Indenture, and (iii) the reconveyance by the County to the Company of property previously conveyed by Perrigo to the County in connection with the FILOT arrangement; and (iv) ratification of the Consent Letter.

NOW, THEREFORE, AND IN CONSIDERATION of the respective representations and agreements hereinafter contained, the parties hereto agree as follows, with the understanding that no obligation of the County described herein shall create a pecuniary liability or charge upon its general credit or taxing powers, but shall be payable solely out of the sources of payment described herein and shall not under any circumstances be deemed to constitute a general obligation to the County:

## **ARTICLE I DEFINITIONS**

**Section 1.1. Terms.** The terms defined in this Article shall for all purposes of this Fee Agreement have the meaning herein specified, unless the context clearly requires otherwise.

“Applicable Millage Rate” means a millage rate that is allowed to increase or decrease every fifth year in step with the average cumulative actual millage rate applicable to the Project based upon the preceding five-year period. The Project is located in tax district 500, and such millage rate is currently believed to be 0.30724 based on years 2008, 2009, 2010, 2011, and 2012.

“Chairman” shall mean the Chairman of County Council.

“Clerk of County Council” shall mean the Clerk to County Council.

“Code” shall mean the Code of Laws of South Carolina, 1976, as amended.

“County Administrator” shall mean the County Administrator of the County.

“Diminution of Value” in respect of any Phase of the Project shall mean any reduction in the value based on original fair market value as determined in Step 1 of Section 4.1(a) of this Fee Agreement, of the items which constitute a part of the Phase which may be caused by (i) the Company’s removal of equipment pursuant to Section 4.6 of this Fee Agreement, (ii) a casualty to the Phase of the Project, or any part thereof, described in Section 4.7 of this Fee Agreement or (iii) a condemnation to the Phase of the Project, or any part thereof, described in Section 4.8 of this Fee Agreement.

“Economic Development Property” shall mean all items of real and tangible personal property comprising the Project which are eligible for inclusion as economic development property under Section 12-44-170(B) of the Simple Fee Act, and which are identified by the Company in connection with its annual filing of a SCDOR PT-300 or comparable forms with the South Carolina Department of Revenue (as such filing may be amended from time to time) for each year within the Investment Period. Title to all Economic Development Property shall at all times remain vested in the Company, except as maybe necessary to take advantage of the effect of Section 12-44-160 of the Simple Fee Act.

“Equipment” shall mean all of the machinery, equipment, furniture and fixtures, together with any and all additions, accessions, replacements and substitutions thereto or therefor acquired by the Company during the Investment Period and included as a part of the Project.

“Event of Default” shall mean any Event of Default specified in Section 5.1 of this Fee Agreement.

“Facilities” means the Economic Development Property and non-Economic Development Property to which the County holds title pursuant to the Original Fee.

“Fee Payment” means the payments in lieu of taxes which the Company is obligated to pay to the County pursuant to this Fee Agreement.

“Fee Term” or “Term” shall mean the period from the date of delivery of this Fee Agreement until the last Phase Termination Date unless sooner terminated.

“Improvements” means improvements, together with any and all additions, accessions, replacements and substitutions thereto acquired by the Company during the Investment Period and included as a part of the Project.

“Investment Period” shall mean the period commencing the first day that Economic Development Property was purchased or acquired and ending on December 31, 2002, which is five years from the last date of the year in which the Lease Agreement was executed, as set forth in Section 4.01 of the Lease Agreement.

“Phase” or “Phases” in respect of the Project shall mean for each year of the Investment Period the Equipment, Improvements and Real Property, if any, placed in service during such year.

“Phase Termination Date” shall mean with respect to each Phase of the Project the day 19 years after the last day of the property tax year in which each such Phase of the Project became subject to the terms of the Original Fee. Anything contained herein to the contrary notwithstanding, the last Phase Termination Date shall be December 31, 2022.

“Project” shall mean the Equipment, Improvements, and Real Property, together with the acquisition, construction, installation, design and engineering thereof, in Phases.

“Real Property” shall mean real property, together with all and singular the rights, members, hereditaments and appurtenances belonging or in any way incident or appertaining thereto, acquired or constructed by the Company during the Investment Period and included as a part of the Project.

“Removed Components” shall mean the following types of components or Phases of the Project or portions thereof, all of which the Company shall be entitled to remove from the Project with the result that the same shall no longer be subject to the terms of the Fee Agreement: (a) components or Phases of the Project or portions thereof which the Company, in its sole discretion, determines to be inadequate, obsolete, worn-out, uneconomic, damaged, unsuitable, undesirable or unnecessary; or (b) components or Phases of the Project or portions thereof which the Company in its sole discretion, elects to remove pursuant to Sections 4.6, 4.7 or 4.8 of this Fee Agreement.

“Replacement Property” shall mean any property which is placed in service as a replacement for any Removed Component which is scrapped or sold by the Company and treated as a Removed Component under Section 4.2 hereof regardless of whether such property serves the same function as the property it is replacing and regardless of whether more than one piece of property replaces any item of Equipment or any Improvement.

Any reference to any agreement or document in this Article I or otherwise in this Fee Agreement shall be deemed to include any and all amendments, supplements, addenda, and modifications to such agreement or document.

## **ARTICLE II REPRESENTATIONS AND WARRANTIES**

**Section 2.1. *Representations of the County.*** The County hereby represents and warrants to the Company as follows:

(a) The County is a body politic and corporate and a political subdivision of the State which acts through the County Council as its governing body and by the provisions of the Simple Fee Act is authorized and empowered to enter into the transactions contemplated by this Fee Agreement and to carry out its obligations hereunder. The County has duly authorized the execution and delivery of this Fee Agreement and all other agreements of the County described herein.

(b) By due corporate action, the County has agreed that, subject to compliance with applicable laws, the items of real and tangible personal property comprising the Project subject to the FILOT arrangement provided in the Lease Agreement shall be considered Economic Development Property under the Simple Fee Act.

(c) In order to maintain the FILOT benefits the Company presently enjoys with respect to the Project, the County approves the conversion of the Project pursuant to the terms of Section 12-44-170 of the Simple Fee Act.

**Section 2.2. *Representations of the Company.*** The Company hereby represents and warrants to the County as follows:

(a) The Company is duly organized and in good standing under the laws of the State of Delaware, is qualified to do business in the State of South Carolina, and has power to enter into this Fee Agreement.

(b) The Company's execution and delivery of this Fee Agreement and its compliance with the provisions hereof will not result in a material default, not waived or cured, under any material company restriction or any material agreement or instrument to which the Company is now a party or by which it is bound.

(c) The Company intends to continue operating the Project as a manufacturing facility, and for such other purposes permitted under the Simple Fee Act as the Company may deem appropriate.

(d) The availability of the payment in lieu of taxes with regard to the Economic Development Property induced the Company to acquire the Project in the County.

(e) The Company has achieved the minimum investment threshold required by the Simple Fee Act.

### **ARTICLE III TERMINATION OF ORIGINAL FEE**

#### ***Section 3.1. Termination of Lease Agreement; Purchase and Conveyance of Project; Transfer and Conversion of Project.***

(a) Pursuant to Section 10.01 of the Lease Agreement, the Company elects to terminate the Lease Agreement. The County acknowledges the Company's exercise of its option to terminate the Lease Agreement and waives the 30 day notice provision of Section 10.02.

(b) Pursuant to Article X of the Lease Agreement, the Company elects to purchase the Facilities from the County for \$1.00. The County acknowledges the Company's exercise of its option to purchase the Project and certifies the purchase price is \$1.00. The County acknowledges there is (i) no outstanding Basic Rent, as defined in Section 5.01 of the Lease Agreement, or outstanding Additional Rent, as defined in Section 5.02 of the Lease Agreement, due to the County with respect to the Project; (ii) no outstanding payments-in-lieu of *ad valorem* taxes payable pursuant to Section 6.03 of the Lease Agreement with respect to the Project; and (iii) to its knowledge, no additional amounts due to the County under the Lease Agreement or otherwise.

(c) On receipt of the purchase price, the County shall deliver to the Company documents, prepared at the Company's expense, conveying to the Company the County's right, title and interest to such of the Facilities as have been conveyed by the Company to the County. The form of a Quitclaim Deed for purposes of conveying the County's right, title and interest to the real property portion of the Project is attached hereto as Exhibit A. The form of a Bill of Sale for purposes of conveying title to the personal property portion of the Project is attached hereto as Exhibit B.



(d) Pursuant to Section 12-44-170(B) of the Simple Fee Act, the Company elects and the County consents to the transfer of the portion of Project constituting Economic Development Property under the Lease Agreement to a FILOT arrangement under the Simple Fee Act as provided in this Fee Agreement. The Parties agree that the portion of the Project constituting Economic Development Property under the Lease Agreement shall be converted and considered automatically Economic Development Property under the Simple Fee Act and this Fee Agreement. This Fee Agreement continues the same FILOT payments required under the Lease Agreement for the time permitted for the FILOT payments under the Lease Agreement. The Parties agree that the minimum investment requirements of the Lease Agreement have been met by the Company. The Parties agree this Fee Agreement constitutes an “appropriate agreement” between the County and the Company to continue the provisions and limitations of the Lease Agreement.

### **Section 3.3. *Termination of Ancillary Agreements.***

(a) The Parties entered into the Inducement Agreement and Millage Rate Agreement executed by the County on August 5, 1997 and by Perrigo on September 22, 1997, as amended pursuant to the terms of Ordinance by County Council enacted November 4, 1997, as required under the Original Fee Act and as a precursor to the Lease Agreement. The Inducement Agreement and Millage Rate Agreement are hereby terminated as of the date of this Fee Agreement.

(b) The Indenture and Escrow Agreement are hereby terminated as of the date of this Fee Agreement and all obligations thereunder are satisfied.

(b) In addition to the Lease Agreement, the Inducement Agreement and Millage Rate Agreement, the Indenture, and the Escrow Agreement, to the extent the Parties entered into additional agreements in order to facilitate and effect the Original Fee (“Additional Agreements”), the Additional Agreements are hereby terminated with such termination to be effective on the date of this Fee Agreement.

## **ARTICLE IV FEE PAYMENTS**

### **Section 4.1. *Negotiated Payments.***

(a) The Company shall make Fee Payments on all Economic Development Property comprising each Phase of the Project.

(b) The annual Fee Payment due on each Phase is calculated as follows (subject, in any event, to the required procedures under the Simple Fee Act and to Sections 4.2 and 4.4 of this Fee Agreement):

Step 1: Determine the fair market value of the Phase of the Project by using original income tax basis for State income tax purposes for any real property (provided, if real property is constructed for the Project or is purchased in an arm’s length transaction, fair market value is deemed to equal the original income tax basis, otherwise, the Department of Revenue will determine fair market value by appraisal) and original income tax basis for State income tax purposes less depreciation for each year allowable to the Company, for any personal property as determined in accordance with Title 12 of the Code, as amended and in effect on December 31 of the year in which each Phase becomes subject to Original Fee, except that no extraordinary obsolescence shall be allowable but taking into account all applicable property tax exemptions which would be allowed to the Company under State

law, if the property were taxable, except those exemptions specifically disallowed under Section 12-44-50(A)(2) of the Simple Fee Act, as amended and in effect on December 31 of the year in which each Phase becomes subject to the Original Fee.

Step 2: Apply an assessment ratio of 6% to the fair market value as determined for each year in Step 1 to establish the taxable value of each Phase.

Step 3: Apply the Applicable Millage Rate (which Applicable Millage Rate increases or decreases every fifth year in step with the average cumulative actual millage rate applicable to the Project based upon the preceding five-year period); and

The Fee Payment is due on each Phase with respect to the period to and including the applicable Phase Termination Date. The annual Fee Payment is due on the payment dates prescribed by the County for such payments. If at any time, the Company no longer has the minimum level of investment at the Project, as required by Section 12-44-140(C) of the Act, then this Fee Agreement shall terminate and the Economic Development Property shall be immediately subject to *ad valorem* taxes.

In the event that it is determined by a final order of a court of competent jurisdiction or by agreement of the Parties that the minimum payment in lieu of taxes applicable to this transaction is to be calculated differently than described above, the payment shall be reset at the minimum permitted level so determined.

(b) In the event that the Simple Fee Act or the above-described Fee Payments are declared invalid or unenforceable, in whole or in part, for any reason, the Parties express their intentions that this Fee Agreement be reformed, at the Company's expense, so as to most closely effectuate the legal, valid, and enforceable intent thereof and so as to afford the Company with the benefits to be derived hereunder, it being the intention of the County and the Company to continue the FILOT benefits as provided under the Original Fee. In addition, if so requested by the Company and assuming such an arrangement would preserve the Company's FILOT benefits, the County would favorably consider invoking the provisions of Section 12-44-160 of the Simple Fee Act in order to convert this Fee Agreement to a lease arrangement as provided under Section 4-12-30 of the Code.

(c) If the Project is deemed to be subject to *ad valorem* taxation, then the Company shall pay to the County an amount equal to the *ad valorem* taxes that would be levied on the Project by the County, municipalities, school districts, and other political units as if the Project had not been Economic Development Property under the Simple Fee Act. In such event, any amount determined to be due and owing to the County from the Company, with respect to a year or years for which FILOT payments have been previously remitted by the Company to the County under this Fee Agreement or the Lease Agreement, shall be reduced by the total amount of FILOT payments made by the Company with respect to the Project pursuant to the terms of this Fee Agreement or the Lease Agreement, and further reduced by any abatements provided by law.

**Section 4.2. Fee Payments on Replacement Property.** If the Company elects to replace any Removed Components and to substitute such Removed Components with Replacement Property as a part of the Project, then, pursuant and subject to Section 12-44-60 of the Simple Fee Act, the Company shall make statutory Fee Payments with regard to such Replacement Property as follows:

(a) To the extent that the original income tax basis of the Replacement Property ("Replacement Value") is less than or equal to the original income tax basis of the Removed Components ("Original Value") the amount of the Fee Payments to be made by the Company with

respect to such Replacement Property shall be calculated in accordance with Section 4.1 hereof; provided, however, in making such calculations, the original cost to be used in Step 1 of Section 4.1 shall be equal to the lesser of (x) the Replacement Value or (y) the Original Value, and the Company shall make annual Fee Payments with respect to the Replacement Property with respect to the period to and including the Phase Termination Date of the oldest Removed Components disposed of in the same property tax year as the Replacement Property is placed in service; and

- (b) To the extent that the Replacement Value exceeds the Original Value of the Removed Components (“Excess Value”), the Company shall pay to the County, with respect to the Excess Value, an amount equal to the *ad valorem* taxes that would be due if the Replacement Property were not Economic Development Property.

**Section 4.3. *Option to Terminate.*** From time to time and at any time, including during the continuance of an Event of Default, the Company may terminate this Agreement in whole or in part upon payment by the Company of all amounts due and payable to the County under this Fee Agreement as of such time. Upon termination of this Agreement, the Company will become liable for *ad valorem* property taxes on the Project.

**Section 4.4. *Reductions in Payments of Taxes Upon Removal, Condemnation or Casualty.*** In the event of a Diminution in Value of any Phase of the Project, the Fee Payment with regard to that Phase of the Project shall be reduced in the same proportion as the amount of such Diminution in Value bears to the original fair market value of that Phase of the Project as determined pursuant to Step 1 of Section 4.1 hereof.

**Section 4.5. *Place and Allocation of Fee Payments.*** The Company shall make the Fee Payments directly to the County in accordance with applicable law.

**Section 4.6. *Removal of Equipment, Improvements or Real Property.*** The Company is entitled to remove the following types of components or Phases of the Project from the Project with the result that said components or Phases (the “Removed Components”) shall be no longer considered a part of the Project and are no longer subject to the terms of this Fee Agreement: (a) components or Phases of the Project or portions thereof which the Company, in its sole discretion, determines to be inadequate, obsolete, uneconomic, worn-out, damaged, unsuitable, undesirable or unnecessary; or (b) components or Phases of the Project or portions thereof which the Company, in its sole discretion, elects to remove pursuant to Section 4.7(c) or Section 4.8(b)(iii) hereof.

**Section 4.7. *Damage or Destruction of Project.***

(a) *Election to Terminate.* If the Project is damaged by fire, explosion, or any other casualty, the Company is entitled to terminate this Agreement.

(b) *Election to Rebuild.* If the Project is damaged by fire, explosion, or any other casualty, and the Company does not elect to terminate this Agreement, then the Company may, in its sole discretion, commence to restore the Project with such reductions or enlargements in the scope of the Project, changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Company. All such restorations and replacements shall be considered part of the Project for all purposes hereof, including, but not limited to any amounts due by the Company to the County under Section 4.1 hereof.

(c) *Election to Remove.* In the event the Company elects not to terminate this Agreement pursuant to subsection (a) and elects not to rebuild pursuant to subsection (b), the damaged portions of the Project are deemed to be Removed Components.

**Section 4.8. Condemnation.**

(a) *Complete Taking.* If at any time during the Fee Term title to or temporary use of the entire Project should become vested in a public or quasi-public authority by virtue of the exercise of a taking by condemnation, inverse condemnation or the right of eminent domain, or by voluntary transfer under threat of such taking, or if title to a portion of the Project is taken and renders continued occupancy of the Project commercially infeasible in the judgment of the Company, then the Company may terminate this Fee Agreement as of the time of vesting of title by sending written notice to the County within a reasonable period of time following such vesting.

(b) *Partial Taking.* In the event of a partial taking of the Project or transfer in lieu thereof, the Company may elect: (i) to terminate this Fee Agreement; (ii) to repair and restore the Project, with such reductions or enlargements in the scope of the Project, changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Company; or (iii) to treat the portions of the Project so taken as Removed Components.

**Section 4.9. Maintenance of Existence.** The Company agrees (i) that it shall not take any action which will materially impair the maintenance of its corporate existence and (ii) that it will maintain its good standing under all applicable provisions of State law. Notwithstanding the foregoing, any changes in the Company's corporate existence that result from internal restructuring or reorganization of the Company, or its parent are specifically authorized hereunder. Likewise, benefits granted to the Company under this Fee Agreement shall, in the event of any such restructuring or reorganization, be transferred to the successor entity under the provisions of Section 4.12 hereof.

**Section 4.10. Indemnification Covenants.** (a) Notwithstanding any other provisions in this Fee Agreement or in any other agreements with the County, the Company agrees to indemnify, defend and save the County, its County Council members, elected officials, officers, 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 or the Land by the Company, its members, officers, shareholders, employees, servants, contractors, and agents during the Term, and, the Company further, shall indemnify, defend and save the Indemnified Parties harmless against and from all claims arising during the Term from (i) entering into and performing its obligations under this Fee Agreement, (ii) any condition of the Project, (iii) any breach or default on the part of the Company in the performance of any of its obligations under this Fee Agreement, (iv) any act of negligence of the Company or its agents, contractors, servants, employees or licensees, (v) any act of negligence of any assignee or lessee of the Company or any Sponsor Affiliate, or of any agents, contractors, servants, employees or licensees of any assignee or lessee of the Company, or (vi) any environmental violation, condition, or effect with respect to the Project. The Company shall indemnify, defend 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 with legal counsel acceptable to the County (the approval of which shall not be unreasonably withheld).

(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 Fee Agreement, or the undertakings required of

the County hereunder, by reason of the granting of the FILOT, by reason of the execution of this Fee Agreement, by the 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 of the other Indemnified Parties should incur any such pecuniary liability, then in such event the Company shall indemnify, defend 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 with legal counsel acceptable to the County (the approval of which shall not be unreasonably withheld); 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 breach of this Fee Agreement by the County.

(c) Notwithstanding anything in this Fee 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 Fee Agreement.

**Section 4.11. Confidentiality/Limitation on Access to Project.** The County acknowledges and understands that the Company and, as applicable, any Sponsor Affiliate, utilize confidential and proprietary "state-of-the-art" information and data in their operations, and that a disclosure of any information, including, but not limited to, disclosures of financial or other information concerning the Company's operations and, as applicable, any Sponsor Affiliate' operations, could result in substantial harm to them and could thereby have a significant detrimental impact on their employees and also upon the County. Therefore, the County agrees that, except as required by law and pursuant to the County's police powers, neither the County nor any employee, agent or contractor of the County: (i) shall request or be entitled to receive any such confidential or proprietary information; (ii) shall request or be entitled to inspect the Project or any property associated therewith; provided, however, that if an Event of Default shall have occurred and be continuing hereunder, the County shall be entitled to inspect the Project provided they shall comply with the remaining provisions of this Section; or (iii) shall knowingly and intentionally disclose or otherwise divulge any such confidential or proprietary information to any other person, firm, governmental body or agency, or any other entity unless specifically required to do so by State law. Notwithstanding the foregoing, whenever the County shall be required by any governmental or financial entity to file or produce any reports, notices, returns or other documents while the Fee Agreement is in effect, the Company or owner of the Project at the time shall promptly furnish to the County through the County Attorney the completed form of such required documents together with a certification by the Company or owner that such documents are accurate and not in violation of any provisions of law or of the other documents of this transaction, and that the documents meet the legal requirements of such filing or delivery. In the event of the failure or refusal of the Company or owner to comply with this provision, the Company or owner agrees to pay the statement for attorneys fees and administrative time presented by the County for producing and filing such documents, such statement to be paid within thirty (30) days after presentation by the County, and to promptly pay any fees, penalties, assessments or damages imposed upon the County by reason of its failure to duly file or produce such documents. Prior to disclosing any confidential or proprietary information or allowing inspections of the Project or any property associated therewith, the Company and, as applicable, any Sponsor Affiliate, may require the execution of reasonable, individual, confidentiality and non-disclosure agreements by any officers, employees or agents of the County or any supporting or cooperating governmental agencies who would gather, receive or review such information or conduct or review the results of any inspections.

**Section 4.12. *Transfer and Leasing.*** This Fee Agreement may be assigned in whole or in part and the Project may be leased as a whole or in part by the Company so long as such assignment or sublease is made in compliance with Section 12-44-120 of the Simplified Fee Act, which may be granted or ratified by resolution of the County Council. The County hereby consents to the assignment of this Fee Agreement by the Company to any entity directly or indirectly controlling, controlled by or under common control with the Company.

## **ARTICLE V DEFAULT**

**Section 5.1. *Events of Default.*** The following shall be “Events of Default” under this Fee Agreement, and the term “Events of Default” shall mean, whenever used with reference to this Fee Agreement, any one or more of the following occurrences:

(a) Failure by the Company to make, upon levy, the Fee Payments described in this Fee Agreement, or to pay any other amounts payable to the County under this Fee Agreement; provided, however, that the Company, as the case may be, shall be entitled to all redemption rights granted by applicable statutes; or

(b) Failure by a Party to perform any of the other material terms, conditions, obligations or covenants of such Party hereunder, which failure shall continue for a period of ninety (90) days after written notice from the non-defaulting Party specifying such failure and requesting that it be remedied.

**Section 5.2. *Remedies on Default.*** Whenever any Event of Default shall have occurred and shall be continuing, the Parties, after having given written notice to the non-defaulting Party of such default and after the expiration of a ninety (90) day cure period shall have the option to take any one or more of the following remedial actions:

(a) Terminate the Fee Agreement; or

(b) Take whatever action at law or in equity that may appear necessary or desirable to collect the other amounts due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of the parties under this Fee Agreement.

In addition to all other remedies herein provided, the nonpayment of Fee 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 Fee Agreement to the contrary, the County may 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 Fee Payments due hereunder.

**Section 5.3. *Remedies Not Exclusive.*** No remedy conferred upon or reserved to the Parties under this Fee Agreement is intended to be exclusive of any other available remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other lawful remedy now or hereafter existing. No delay or omission to exercise any right or power accruing upon any continuing default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

**Section 5.4. *Addition of Sponsor Affiliate.*** Upon request of and at the expense of the Company, the County may approve any future Sponsor Affiliate that qualifies under the Simplified Fee Act for the benefits offered under this Fee Agreement and which agrees to be bound by the provisions hereof to be further evidenced by such future Sponsor Affiliate entering into a Joinder Agreement in the form attached

to this Fee Agreement subject to any changes approved by the County Council Chairman that are not materially adverse to the County.

**Section 5.5. *Leased Equipment.*** To the extent that applicable law allows or is revised or construed to allow the benefits of the Simplified Fee Act, in the form of FILOT payments as described in Section 4.1 hereof, to be applicable to personal property to be installed at the Project and leased to but not purchased by the Company from at least one third party, under any form of lease, then that personal property, at the Company's sole election, will become subject to FILOT payments to the same extent as the Equipment under this Fee Agreement, upon proper application of the law and applicable procedures by the Company, and so long as the value of such leased assets are reported by the Company SCDOR PT-300.

## **ARTICLE VI MISCELLANEOUS**

**Section 6.1. *Notices.*** Any notice, election, demand, request or other communication to be provided under this Fee Agreement shall be effective when delivered to the party named below or when deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed as follows (or addressed to such other address as any party shall have previously furnished in writing to the other party), except where the terms hereof require receipt rather than sending of any notice, in which case such provision shall control:

AS TO THE COUNTY:                    Greenville County, South Carolina  
  ATTN: Joseph Kernell  
  County Administrator  
  Greenville County  
  301 University Ridge, Suite 2400  
  Greenville County Square  
  Greenville, South Carolina 29601  
  Telephone: (864) 467-7105  
  Facsimile: (864) 467-7358  
  Email: JKernell@greenvillecounty.org

WITH A COPY TO:                    Greenville County, South Carolina  
(shall not constitute notice)       ATTN: Mark W. Tollison  
  County Attorney  
  301 University Ridge, Suite 2400  
  Greenville County Square  
  Greenville, South Carolina 29601  
  Telephone: (864) 467-7110  
  Facsimile: (864) 467-7358  
  Email: MTollison@greenvillecounty.org

AS TO THE COMPANY: IVP, LLC  
ATTN: Jeff Moran, VP Finance  
11010 Hopkins Street,  
Mira Loma, California 91752  
Telephone: (951) 749-4415  
Email: Jeff.Moran@ivcinc.com

WITH COPIES TO: Parker Poe Adams & Bernstein LLP  
Attn: Sam Moses, Esq.  
1221 Main Street, Suite 1100  
Columbia, South Carolina 29201  
Telephone: (803) 255.8000  
Facsimile: (803) 255.8017  
Email: sammoses@parkerpoe.com

**Section 6.2. *Administrative Expenses.*** The Company shall reimburse the County for its reasonable costs, including attorneys' fees and costs, incurred in the negotiation and approval of this Fee Agreement and the on-going administration hereof, exclusive of normal County overhead, including costs and salaries related to administrative, staff employees and similar costs and fees, 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 Fee Agreement or the date which is 45 days after receiving written notice from the County, accompanied by such supporting documentation as may be necessary to evidence the County's right to receive such payment, specifying the nature of such expense and requesting payment of same. The costs reimbursable with respect to the negotiation and administration of this Fee Agreement are not to exceed \$5,000 in the aggregate.

**Section 6.3 *Filings.*** The Company shall notify the South Carolina Department of Revenue, as required by section 12-44-90 of the Act, of the execution of this Fee Agreement. The Company shall deliver a copy of such notification, as well as of a copy of all forms or returns with respect to the Project, filed with the South Carolina Department of Revenue, to the County Auditor, County Assessor and County Treasurer.

**Section 6.4 *Binding Effect.*** This Fee Agreement is binding, in accordance with its terms, on and inures to the benefit of the Company and the County and their respective successors and assigns. In the event of the dissolution of the County or the consolidation of any part of the County with any other political subdivision or the transfer of any rights of the County to any other such political subdivision, all of the covenants, stipulations, promises and agreements of this Fee Agreement shall bind and inure to the benefit of the successors of the County from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of the County has been transferred.

**Section 6.5. *Counterparts.*** This Fee Agreement may be executed in any number of counterparts, and all of the counterparts taken together shall be deemed to constitute one and the same instrument.

**Section 6.6. *Governing Law.*** This Fee Agreement and all documents executed in connection herewith shall be construed in accordance with and governed by the laws of the State, exclusive of the conflict of law provisions which would refer the governance of this Fee Agreement to another jurisdiction.



**Section 6.7. Headings.** The headings of the articles and sections of this Fee Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Fee Agreement.

**Section 6.8 Amendments.** The provisions of this Fee Agreement may only be modified or amended in writing by an agreement or agreements entered into between the parties.

**Section 6.9. Further Assurance.** From time to time the County agrees to execute and deliver to the Company such additional instruments as the Company may reasonably request to effectuate the purposes of this Fee Agreement.

**Section 6.10. Severability.** If any provision of this Fee Agreement is declared illegal, invalid or unenforceable for any reason, the remaining provisions hereof shall be unimpaired and such illegal, invalid or unenforceable provision shall be reformed so as to most closely effectuate the legal, valid and enforceable intent thereof and so as to afford the Company with the maximum benefits to be derived herefrom, it being the intention of the County to continue the FILOT benefits as provided under the Original Fee.

**Section 6.11. Limited Obligation.** ANY OBLIGATION OF THE COUNTY CREATED BY OR ARISING OUT OF THIS FEE AGREEMENT SHALL BE A LIMITED OBLIGATION OF THE COUNTY, PAYABLE BY THE COUNTY SOLELY FROM THE PROCEEDS DERIVED UNDER THIS FEE AGREEMENT AND SHALL NOT UNDER ANY CIRCUMSTANCES BE DEEMED TO CONSTITUTE A GENERAL OBLIGATION OF THE COUNTY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY LIMITATION.

**Section 6.12. Force Majeure.** The Company shall not be responsible for any delays or non-performance caused in whole or in part, directly or indirectly, by strikes, accidents, freight embargoes, fire, floods, inability to obtain materials, conditions arising from government orders or regulations, war or national emergency, acts of God, and any other similar cause beyond the Company's reasonable control.

**Section 6.13. Waiver of Recapitulation Requirements.** As permitted under Section 12-44-55 of the Code, the Company and the County hereby waive application of any and all of the recapitulation requirements set forth in Section 12-44-55 of the Code.

*[Remainder of Page Intentionally Left Blank]  
[Signature Page Follows.]*

IN WITNESS WHEREOF, the County, acting by and through the County Council, has caused this Fee Agreement to be executed in its name and on its behalf by the Chair of County Council and the County Administrator and to be attested by the Clerk to County Council; and the Company has caused this Fee Agreement to be executed by its duly authorized officer, all as of the day and year first above written.

GREENVILLE COUNTY, SOUTH CAROLINA

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Bob Taylor, Chairman  
Greenville County Council

---

Joseph Kernell  
County Administrator

(SEAL)

ATTEST:

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Theresa B. Kizer  
Greenville County, South Carolina

IN WITNESS WHEREOF, the County, acting by and through the County Council, has caused this Fee Agreement to be executed in its name and on its behalf by the Chair of County Council and the County Administrator and to be attested by the Clerk to County Council; and the Company has caused this Fee Agreement to be executed by its duly authorized officer, all as of the day and year first above written.

IVP, LLC

\_\_\_\_\_

BY \_\_\_\_\_

ITS \_\_\_\_\_

DATE \_\_\_\_\_

**EXHIBIT A**

**FORM OF QUIT-CLAIM DEED**



WITNESS the Grantor's hand and seal as of this \_\_\_\_ day of \_\_\_\_\_, 2016.

SIGNED, sealed and delivered in the presence of:

WITNESSES:

GREENVILLE COUNTY, SOUTH CAROLINA

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Joseph Kernell  
County Administrator

STATE OF SOUTH CAROLINA     )  
  )  
COUNTY OF GREENVILLE     )

ACKNOWLEDGMENT

I, \_\_\_\_\_, Notary Public for the State of South Carolina, do hereby certify that the above-named Greenville County, South Carolina by and through Joseph Kernell, County Administrator, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Notary Public \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

ATTACHMENT A

All that certain piece, parcel or tract of land located at 4615 Dairy Drive, Greenville, South Carolina and listed as Tax Map Parcel No. 15-500-M14.2-1-26.4 and delineated on that certain plat prepared by Piedmont Engineers and Architects entitled "Property of Wenwood South, Inc., " prepared on February 6, 1970 and recorded in Plat Book 4H at page 107 in the RMC Office for Greenville County, South Carolina.





9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 2016.

Notary Public for \_\_\_\_\_

My commission expires: \_\_\_\_\_

### **INFORMATION**

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interest in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;

(7) that constitute a contract for the sale of timber to be cut;

(8) transferring realty to a corporation, partnership, or a trust in order to become, or as, a stockholder, partner or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;

(9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, and the spouses and lineal descendants of any the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A).

(10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;

(11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,

(12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed.

**EXHIBIT B**

**FORM OF BILL OF SALE**



IN WITNESS WHEREOF, the undersigned has executed this Bill of Sale as of the date first above written.

**GREENVILLE COUNTY, SOUTH CAROLINA**

\_\_\_\_\_  
County Administrator

*Attest:*

\_\_\_\_\_  
Clerk to County Council

ATTACHMENT A

All that certain piece, parcel or tract of land located at 4615 Dairy Drive, Greenville, South Carolina and listed as Tax Map Parcel No. 15-500-M14.2-1-26.4 and delineated on that certain plat prepared by Piedmont Engineers and Architects entitled "Property of Wenwood South, Inc., " prepared on February 6, 1970 and recorded in Plat Book 4H at page 107 in the RMC Office for Greenville County, South Carolina.