

ORDINANCE NO. _____

AUTHORIZING THE CONVERSION OF A FEE IN LIEU OF *AD VALOREM* TAXES ARRANGEMENT UNDER TITLE 4, CHAPTER 12, CODE OF LAWS OF SOUTH CAROLINA, 1976, AS AMENDED, BETWEEN GREENVILLE COUNTY AND GENERAL NUTRITION PRODUCTS, INC. TO A SIMPLIFIED FEE IN LIEU OF *AD VALOREM* TAXES ARRANGEMENT UNDER TITLE 12, CHAPTER 44 CODE OF LAWS OF SOUTH CAROLINA, 1976, AS AMENDED; THE CANCELLATION AND TERMINATION OF A LEASE AGREEMENT BETWEEN THE COUNTY AND GENERAL NUTRITION PRODUCTS, INC.; THE CONVEYANCE BY THE COUNTY OF RELATED PROPERTY TO GENERAL NUTRITION PRODUCTS, INC.; AND OTHER MATTERS RELATED THERETO.

WHEREAS, Greenville County, South Carolina (the "County"), acting by and through its County Council ("County Council"), as authorized and empowered under the provisions of Title 4, Chapter 12, Code of Laws of South Carolina, 1976, as amended (the "Original Fee Act"), entered into a Lease Agreement with General Nutrition Products, Inc. ("GNP"), dated as of November 1, 1998, (the "Lease Agreement"), pursuant to which (i) GNP committed to invest in real and personal property in the County for the purpose of acquiring and constructing manufacturing facilities in the County (the "Project") and (ii) the County provided GNP with fee-in-lieu of *ad valorem* taxes ("FILOT") benefits with respect to the Project (the "Original Fee"); and

WHEREAS, GNP and the County entered into an Inducement Agreement and Millage Rate Agreement dated November 4, 1997, as required under the Original Fee Act and as a precursor to the Lease Agreement; and

WHEREAS, the Lease Agreement was recorded on December 23, 1998 at Book 1807 and Page 0803 in the Greenville County property records; and

WHEREAS, through a series of transactions, Nutra Manufacturing, Inc., a Delaware corporation authorized to transact business in South Carolina, (the "Company") became and is currently the tenant under the Lease Agreement, which remains in full force and effect; and

WHEREAS, the Company requests of the County and the County desires to approve and ratify the assignments of the Lease Agreement and Original Fee to the Company as well as to its predecessors; and

WHEREAS, FILOT arrangements entered into pursuant to the Original Fee Act required that a county hold title to all of the assets subject to a FILOT arrangement; and

WHEREAS, the South Carolina General Assembly passed a new FILOT act, Title 12, Chapter 44, Code of Laws of South Carolina 1976, as amended (the "Simplified Fee Act") in 1997 that permits the granting of FILOT benefits without the need for a county to hold title to all of the assets subject to a FILOT arrangement; and

WHEREAS, under Section 12-44-170 of the Simplified Fee Act, a company with an existing FILOT arrangement entered into pursuant to the Original Fee Act, is permitted, under certain conditions, to "convert" from an original title transfer FILOT arrangement to a non-title transfer FILOT arrangement; and

WHEREAS, as provided under Section 12-44-170 under the Simplified Fee Act, the Company desires to and has elected to transfer the Project from a FILOT arrangement under the Original Fee Act to a

FILOT arrangement under the Simplified Fee Act (a “Conversion”), and the County has consented to the same, subject to the following conditions: (i) a continuation of the same fee payments required under the Original Fee for the time required for payments under the Original Fee, as amended; (ii) a carryover of minimum investment or employment requirements of the Original Fee to the FILOT arrangement under the Simplified Fee Act, as applicable; and (iii) the entering into of appropriate agreements and amendments between the Company and the County continuing the provisions and limitations of the Original Fee; and

WHEREAS, in connection with the above, the County Council desires to hereby authorize (i) the Conversion, (ii) the execution and delivery of a Conversion and Fee-in-Lieu of *Ad Valorem* Taxes Agreement pursuant to the Simplified Fee Act (“Fee Agreement”), (iii) the cancellation and termination of the Lease Agreement and the Inducement Agreement and Millage Rate Agreement; and (iv) the conveyance by the County to the Company of property previously conveyed to the County by GNP for purposes of the FILOT arrangement.

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

Section 1. *Consent to Conversion; Authorization to Execute and Deliver Fee Agreement; Termination of the Lease Agreement and Inducement Agreement and Millage Rate Agreement.* (a) The County approves the Conversion and, in connection therewith, hereby authorizes and directs the County Administrator and the Chairman of County Council to execute and deliver the Fee Agreement, in a form substantially similar to the form attached hereto as Exhibit A, in the name of and on behalf of the County, subject to any revisions thereto as are not materially adverse to the County as may be approved by the County Administrator and the Chairman of County Council on receipt of advice from counsel to the County, the Chairman of County Council and the County Administrator’s execution and delivery of the final Fee Agreement being conclusive of such matters.

(b) The County Administrator and the Chairman of County Council are further authorized to execute and deliver such (i) termination and cancellation agreements, documents and consents on behalf of the County as may be necessary to cause the termination and cancellation of the Lease Agreement and the Inducement Agreement and Millage Rate Agreement and the discharge of all obligations thereunder; and (ii) deeds and/or bills of sale on behalf of the County as may be necessary to convey to the Company such property previously conveyed to the County by GNP for purposes of the FILOT arrangement.

(c) The Clerk to County Council is hereby authorized to attest on behalf of the County any of the documentation referred to in paragraphs (a) and (b) above.

Section 2. *Approval of Assignment(s).* The County approves and ratifies the assignment of the Lease Agreement and Original Fee to the Company, as well as preceding assignments of the same by GNP.

Section 3. *Further Assurances.* Each of the County Administrator and the Chairman of County Council are hereby authorized and directed to take whatever further action and execute whatever further documents as may be necessary or appropriate to effect the intent of this Ordinance.

Section 4. *Severability.* If any portion of this Ordinance is deemed unlawful, unconstitutional or otherwise invalid, the validity and binding effect of the remaining portions shall not be affected thereby.

Section 5. *General Repealer.* All ordinances, resolutions, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed.

This Ordinance takes effect and is in full force only after the County Council has approved it following three readings and a public hearing.

GREENVILLE COUNTY, SOUTH CAROLINA

Butch Kirven, Chairman
Greenville County Council

(SEAL)

ATTEST:

Joseph Kernell
County Administrator

Regina McCaskill, Clerk to Council
Greenville County Council

READINGS:

First Reading:
Second Reading:
Third Reading:
Public Hearing:

EXHIBIT A

FORM OF FEE AGREEMENT