

CLARENDON COUNTY
ORDINANCE NO. 2021-02

AUTHORIZING THE EXECUTION AND DELIVERY OF AN INFRASTRUCTURE CREDIT AGREEMENT BY AND BETWEEN CLARENDON COUNTY, SOUTH CAROLINA, AND [PROJECT MOBILE I]; PROVIDING FOR A SPECIAL SOURCE REVENUE CREDIT; AND OTHER RELATED MATTERS.

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE
DATE 4/16/21
Brenda H. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

WHEREAS, Clarendon County, South Carolina ("County") acting by and through its County Council ("County Council") is authorized and empowered pursuant to the provisions of Sections 4-1-175 and 4-29-68 of the Code of Laws of South Carolina, 1976, as amended ("Act"), to provide special source revenue financing, secured by and payable solely from revenues of the County derived from payments in lieu of taxes pursuant to Article VIII, Section 13 of the South Carolina Constitution, for the purpose of defraying the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the County, for improved or unimproved real estate and personal property including machinery and equipment used in the operation of a manufacturing facility or commercial enterprise to enhance the economic development of the County;

WHEREAS, [Project Mobile I], a limited liability company organized and existing under the laws of the State of South Carolina ("State") and authorized to do business in the State ("Company") intends to invest in the establishment of a commercial facility through the acquisition of land, a building, and improvements thereon ("Land and Building"); the construction of improvements thereon and/or therein; and/or the acquisition of personal property, including, but not limited to, equipment and furniture to be installed on and/or in the Land and Building;

WHEREAS, the Company expects to invest \$3,755,000 and create 211 full-time equivalent jobs over five years ("Project"), all as more fully set forth in the Infrastructure Credit Agreement attached hereto, and provided that approvals of various incentives contemplated for the Project are formalized by the State and/or County;

WHEREAS, the Company has caused to be prepared and presented to this meeting the form of the Infrastructure Credit Agreement by and between the County and the Company ("Infrastructure Credit Agreement"), which provides for a credit against the fee-in-lieu of tax payments ("FILOT Payments") made by the Company equal to 20% of such FILOT Payments for years 1-10;

WHEREAS, it appears that the Infrastructure Credit Agreement, which is now before this meeting, is in appropriate form and is an appropriate instrument to be executed and delivered by the County for the purposes intended;

WHEREAS, to induce the Company to locate in the County, the County Council understands that the Business Development Corporation of Clarendon County ("BDCCC") intends to transfer approximately 16.37 (worth approximately \$5,000 per acre) to the Company, at no cost to the Company ("Property Transfer"); and

WHEREAS, the County Council intends this Ordinance to serve as an acknowledgement of the terms of that Property Transfer:

NOW, THEREFORE, BE IT ORDAINED by the County Council in a meeting duly assembled as follows:

Section 1. To promote industry, develop trade, and utilize and employ the manpower, products, and natural resources of the State by assisting the Company to expand or locate an industrial facility in the State, the Infrastructure Credit Agreement is hereby authorized, ratified, and approved.

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Brenda Roberts, Clerk - Clarendon S.C.

Section 2. The form, terms, and provisions of the Infrastructure Credit Agreement presented to this meeting are hereby approved, and all of the terms, provisions, and conditions thereof are incorporated herein by reference as if the Infrastructure Credit Agreement were set out in this Ordinance in its entirety. The Chairman of the County Council and/or the County Administrator are authorized, empowered, and directed to execute, acknowledge, and deliver the Infrastructure Credit Agreement in the name of and on behalf of the County, and thereupon to cause the Infrastructure Credit Agreement to be delivered to the Company. The Infrastructure Credit Agreement is to be in substantially the form now before this meeting and hereby approved, with such changes therein as shall not be materially adverse to the County and as shall be approved by the officials of the County executing the same, upon the advice of counsel to the County, such official's execution thereof to constitute conclusive evidence of such official's approval of any and all changes or revisions therein from the form of the Infrastructure Credit Agreement now before this meeting.

Section 3. The County Council acknowledges that the BDCCC intends to enter into the Property Transfer with the Company subject to a grant agreement, the substantially final form of which is attached as Exhibit B.

Section 4. The Chairman of the County Council and/or the County Administrator, for and on behalf of the County, are hereby authorized and directed to do any and all things necessary to implement the execution and delivery of the Infrastructure Credit Agreement and the performance of all obligations of the County under and pursuant to the Infrastructure Credit Agreement.

Section 5. The provisions of this Ordinance are hereby declared to be separable, and if any section, phrase, or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases, and provisions hereunder.

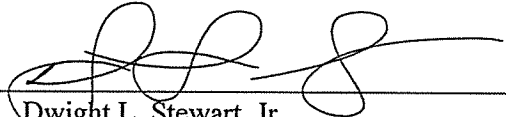
Section 6. Any prior ordinance, resolution, or order, the terms of which are in conflict with this Ordinance, are, only to the extent of that conflict, repealed.

Section 7. This Ordinance is effective after its third reading and public hearing.

[ONE SIGNATURE PAGE AND TWO EXHIBITS FOLLOW]
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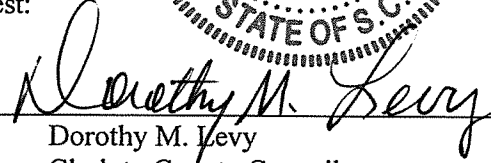
CLARENDON COUNTY, SOUTH CAROLINA



By: 
Dwight L. Stewart, Jr.
Chairman County Council

[SEAL]

Attest:

By: 
Dorothy M. Levy
Clerk to County Council

First Reading: February 8, 2021
Second Reading: March 8, 2021
Public Hearing: March 8, 2021
Third Reading: April 12, 2021

EXHIBIT A
FORM OF INFRASTRUCTURE CREDIT AGREEMENT

EXHIBIT B
FORM OF GRANT AGREEMENT

SOUTH CAROLINA)
CLARENDON COUNTY)

I, the undersigned, Clerk to County Council of Clarendon County, South Carolina ("County Council"), DO HEREBY CERTIFY:

That the foregoing constitutes a true, correct, and verbatim copy of an Ordinance adopted by the County Council. The Ordinance was read and received a favorable vote at three public meetings of the County Council on February 8, 2021, March 8, 2021, and April 12, 2021. At least one day passed between first and second reading, and at least seven days passed between second and third readings. A public hearing was held on March 8, 2021, and notice of the public hearing was published in *The Item* on January [], 2021. At each meeting, a quorum of County Council was present and remained present throughout the meeting.

Attached are excerpts of the minutes of the meetings of the County Council.

IN WITNESS WHEREOF, I have hereunto set my Hand and the Seal of Clarendon County, South Carolina, as of April 12, 2021.

[SEAL]



By: Dorothy M. Levy
Dorothy M. Levy
Clerk to County Council

GRANT AGREEMENT

This GRANT AGREEMENT, effective April 12, 2021 ("Agreement"), between the Business Development Corporation of Clarendon County ("BDCCC") and [Project Mobile I] ("Company," with BDCCC, collectively, "Parties," each, a "Party").

WITNESSETH:

WHEREAS, the Company has committed to making an investment of not less than \$3,755,000 in taxable property and creating not less than 211 new, full-time equivalent jobs to develop the Project, as more fully defined and described in the Infrastructure Credit Agreement, between Clarendon County, South Carolina, and the Company, dated April 12, 2021 ("Fee Agreement");

WHEREAS, to assist the Company in developing the Project, the BDCCC has determined to provide a grant in an amount of \$81,850 (in the form of a transfer of real property of approximately 16.37 acres with a value of \$5,000 per acre, "Real Property") to the Project to offset certain of the Company's "Cost" (defined below) associated with the Project ("Grant Value");

NOW, THEREFORE, in consideration of \$5.00, the respective representations and covenants contained in this Agreement and other good and valuable consideration the receipt of which each Party acknowledges, the Parties agree:

ARTICLE I
ADDITIONAL DEFINITIONS

Each term defined in this Article has the meaning specified.

"Cost" means the cost of acquiring, by construction or purchase, the Project, including the real property and the infrastructure, and shall be deemed to include, whether incurred prior to or after the date of this Agreement: (a) obligations incurred for labor, materials, and other expenses to contractors, builders, and materialmen in connection with the acquisition, construction, and installation of the Project; (b) the cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of construction of the Project which are not paid by the contractor or contractors or otherwise provided for; (c) the expenses for environmental investigations and remediation, test borings, surveys, test and pilot operations, estimates, plans and specifications and preliminary investigations therefor, and for supervising construction as well as for the performance of all other duties required by or reasonably necessary in connection with the acquisition, construction, and installation of the Project; (d) compensation of legal, accounting, financial, and printing expenses, fees, and all other expenses incurred in connection with the Project; (e) all other costs which the Company shall be required to pay under the terms of any contract or contracts for the acquisition, construction, and installation of the Project, including without limitation, development fees, bank fees, interest expense and professional engineering costs; and (f) any sums required to reimburse the Company for advances made for any of the above items, or for any other work done and costs incurred by the Company which are for the acquisition of land or property of a character subject to the allowance for depreciation provided for under Section 167 of the Internal Revenue Code of 1986, as amended, and included in the Project.

ARTICLE II
DISBURSEMENT OF GRAND FUNDS

SECTION 2.01. Property Transfer. Following the execution and delivery of a purchase and sale agreement ("PSA") related to the Real Property, the BDCCC shall transfer the Real Property subject to the terms of the PSA. The Company shall use the Real Property for the Project and for no other purpose.

SECTION 2.02. Certification of Cost. No more than 10 days after the BDCCC's demand for additional

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DATE: 4/16/21

Beulah S. Roberts
CLERK OF COURT
CLARENDON COUNTY, S.C.

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Beulah Roberts, Clerk-Clarendon S.C.

documentation, the Company shall provide the BDCCC with additional documentation establishing the Company's Cost.

SECTION 2.03. Repayment of Grant Value. If the Company does not meet either the Investment Commitment or the Job Commitment by the end of the Investment Period (all as defined and described in the Fee Agreement), then the Company shall repay a pro rata amount of the Grant Value received according to this Agreement calculated as follows:

Grant Value received *

$[(1-(\text{Actual Investment}/\text{Investment Requirement})) + (1-(\text{Actual Jobs}/\text{Job Requirement}))] / 2$

= Repayment Amount

For example, if the Company has received \$81,850 in Grant Value according to this Agreement, but does not meet the Investment Commitment or the Job Commitment by the end of the Investment Period, but instead only makes an investment of \$3,550,000 and creates 200 jobs by the end of the Investment Period, then the Company would be required to repay to the BDCC approximately \$4,366.70, calculated as follows:

$\$81,850 * [(1-(3,550,000 / 3,755,000)) + (1-(200 / 211))] / 2 = \$4,366.70$

Any payment made under this Section 2.03, shall be due no more than 30 days after the date after which *ad valorem* taxes become delinquent and shall be treated as a FILOT Payment under the Fee Agreement and shall be subject to statutory interest if not paid when due as if the Grant Value were taxes due pursuant to Section 12-54-25, Code of Law of South Carolina 1976, as amended. Further, if the Company fails to meet at least 50% of the Investment Commitment and 50% of the Job Commitment by the end of the Investment Period, then the Company shall repay 100% of the Grant Value received to the BDCCC.

ARTICLE III REMEDIES

SECTION 3.01. Remedies. If a Party fails to perform under this Agreement, then the other Party may take whatever action at law or in equity that the non-defaulting Party deems appropriate, necessary, or desirable to enforce performance and observance of this Agreement.

SECTION 3.02. Nonwaiver. No delay or omission to exercise any right or power accruing upon any continuing default hereunder shall impair any such right or power or is a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

ARTICLE IV MISCELLANEOUS

SECTION 4.1. Notices. Any notice, election, demand, request or other communication to be provided under this Agreement is 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 COMPANY: □
 □
 □
 □
 □

WITH COPY TO: □
(does not constitute notice) □
 □
 □

AS TO THE BDCCC: Business Development Corporation of
 Clarendon County
 Attn: Executive Director
 411 Sunset Boulevard
 Manning, South Carolina 29102

WITH COPIES TO: Michael E. Kozlarek, Esq.
(does not constitute notice) Kozlarek Law LLC
 Post Office Box 565
 Greenville, South Carolina 29602

 Clarendon County, South Carolina
 Attn: County Administrator
 411 Sunset Boulevard
 Manning, South Carolina 29102

SECTION 4.2. Binding Effect. This Agreement is binding on and inures to the Parties' benefit, and to their respective successors and assigns.

SECTION 4.3. Counterparts. This Agreement may be executed in any number of counterparts, in original, by facsimile or by other electronic means, and all of the counterparts taken together are deemed to constitute one and the same instrument.

SECTION 4.4. Governing Law. This Agreement and all documents executed in connection herewith are construed in accordance with and governed by the law of the State of South Carolina without regard to any conflict of law provision that would suggest the use of another jurisdiction's law.

SECTION 4.5. Amendments. The provisions of this Agreement may be modified or amended only in writing by an agreement or agreements entered into between Parties.

SECTION 4.6. Further Assurance. From time to time each Party agrees to execute and deliver to the other Party additional instruments as either Party may reasonably request to effectuate the purposes of this Agreement.

SECTION 4.7. Severability. If any provision of this 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 same benefit to be derived herefrom.

IN WITNESS OF THIS AGREEMENT, the BDCCC has caused this Agreement to be executed in its name; and the Company has caused this Agreement to be executed by its duly authorized officer, all as of the day and year first above written.

**BUSINESS DEVELOPMENT CORPORATION OF
CLARENDON COUNTY**

Signature: _____

Name: _____

Title: _____

[PROJECT MOBILE I]

Signature: _____

Name: _____

Title: _____

INFRASTRUCTURE CREDIT AGREEMENT

between

CLARENDON COUNTY, SOUTH CAROLINA

and

[PROJECT MOBILE I]

Dated as of April 12, 2021

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE

DATE

4/16/21

Beulah B. Roberts

CLERK OF COURT
CLARENDON COUNTY, SC

2021 APR 16 PM 2:17
Beulah Roberts, Clerk-Clarendon S.C.

INFRASTRUCTURE CREDIT AGREEMENT

THIS INFRASTRUCTURE CREDIT AGREEMENT, dated as of April 12, 2021 (“Agreement”), between CLARENDON COUNTY, SOUTH CAROLINA, a body politic and corporate, and a political subdivision of the State of South Carolina (“County”), and [PROJECT MOBILE I], a limited liability company organized and existing under the laws of the State of South Carolina (“Company”).

WITNESSETH:

WHEREAS, the County, acting by and through its County Council (“County Council”) is authorized by Sections 4-1-175 and 4-29-68 of the Code of Laws of the State of South Carolina (“State”) 1976, as amended (“Code”), to provide special source revenue financing, secured by and payable solely from revenues of the County derived from payments in lieu of taxes pursuant to Article VIII, Section 13 of the South Carolina Constitution, for the purpose of defraying the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving Clarendon County, for improved or unimproved real estate and personal property including machinery and equipment used in the operation of a manufacturing facility or commercial enterprise in order to enhance the economic development of Clarendon County;

WHEREAS, the Company has determined that it intends to develop, construct, or cause to be constructed and furnished and equipped, a manufacturing facility or commercial enterprise on the land described on the attached Exhibit A (“Project”);

WHEREAS, the County and Sumter County have established a joint industrial and business park (“Park”) by entering into a Master Agreement Governing the Sumter-Clarendon Industrial Park (“Park Agreement”), dated December 31, 2010, pursuant to the provisions of Article VIII, Section 13 of the South Carolina Constitution;

WHEREAS, the Park Agreement encompasses, or will encompass, the property on which the Project is located;

WHEREAS, pursuant to the provisions of the Park Agreement, the Company is obligated to make or cause to be made payments in lieu of taxes (“Fee Payments”) which will be distributed to Clarendon County and to Sumter County, except as otherwise provided below, in the total amount equivalent to the ad valorem property taxes that would have been due and payable but for the location of the Project within the Park;

WHEREAS, in exchange for the Company’s investment and job created as described below, the County has agreed to provide certain special source revenue credits (collectively, the “SSRC”) for the Company to acquire and construct certain infrastructure, real estate, and improvements thereon with respect to the Project (“Infrastructure”) by means of providing a credit against the Fee Payments equal to 20% of such Fee Payments in year 1-10; and

WHEREAS, the County Council has duly authorized execution and delivery of this Agreement by ordinance duly enacted by the County Council on April 12, 2021, following a public hearing held on February 8, 2021, in compliance with the terms of the Act.

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained, the County and the Company agree as follows:

ARTICLE I DEFINITIONS

The terms defined in this Article I shall for all purposes of this Agreement have the meanings herein specified, unless the context clearly otherwise requires. Except where the context otherwise requires, words importing the singular number shall include the plural number and *vice versa*.

“Act” means, collectively, Title 4, Chapter 29 and Title 4, Chapter 1 of the Code, and all future acts amendatory thereof.

“Administration Expenses” means the expenses the County charges arising out of and relating to in the negotiation, approval and implementation of the terms and provisions of this Agreement, including reasonable attorney’s and consultant’s fees. Administration Expenses does not include any costs, expenses, including attorney’s fees, incurred by the County (i) in defending challenges to the Fee Payments or other incentives provided by this Agreement brought by third parties or the Company or its affiliates and related entities, or (ii) in connection with matters arising at the request of the Company outside of the immediate scope of this Agreement, including amendments to the terms of this Agreement.

“Agreement” means this Agreement, as the same may be amended, modified, or supplemented in accordance with the terms hereof.

“Company” means [Project Mobile I], its successors and assigns.

“Cost” or “Cost of the Infrastructure” means the cost of acquiring, by construction and purchase, the Infrastructure and shall be deemed to include, whether incurred prior to or after the date of the Agreement: (a) obligations incurred for labor, materials, and other expenses to builders and materialmen in connection with the acquisition, construction, and installation of the Infrastructure; (b) the cost of construction bonds and of insurance of all kinds that may be required or necessary during the course of construction and installation of the Infrastructure, which is not paid by the contractor or contractors or otherwise provided for; (c) the expenses for test borings, surveys, test and pilot operations, estimates, plans and specifications, and preliminary investigations therefor, and for supervising construction, as well as for the performance of all other duties required by or reasonably necessary in connection with the acquisition, construction, and installation of the Infrastructure; and (d) all other costs which shall be required under the terms of any contract for the acquisition, construction, and installation of the Infrastructure.

“County” means Clarendon County, South Carolina, a body politic and corporate and a political subdivision of the State and its successors and assigns.

“Event of Default” means, with reference to this Agreement, any of the occurrences described in Section 5.01 hereof.

“Infrastructure” means the Project’s infrastructure, real estate, and all improvements thereon, and personal property including machinery and equipment used in the operation thereof, as are permitted under the Act.

“Minimum Investment Requirement” means an aggregate investment of not less than \$3,755,000.00 in the Project within 5 years from the effective date of this Agreement.

“Minimum Jobs and Investment Requirement Period” means the period beginning on the date of this Agreement and ending five years thereafter.

“Minimum Jobs Requirement” means the creation of at least 211 new, full-time equivalent jobs. Full time equivalent jobs shall include full time jobs and part time jobs that equal a full-time job.

“Ordinance” means Ordinance No. 2021-[] enacted by the County Council on April 12, 2021, authorizing the execution and delivery of this Agreement.

“Park” means the Sumter-Clarendon Industrial Park established pursuant to the terms of the Park Agreement.

“Park Agreement” means the Master Agreement Governing the Sumter-Clarendon Industrial Park, dated December 31, 2010, between the County and Sumter County, South Carolina, as amended or supplemented.

“Person” means an individual, a corporation, a partnership, an association, a joint stock company, a trust, any unincorporated organization, or a government or political subdivision.

“Special Source Revenue Credits” or “SSRC” means the credits to the Company’s fee in lieu of tax payments to reimburse the Company for the Cost of the Infrastructure in the amounts set forth in Section 3.03 hereof.

ARTICLE II REPRESENTATIONS AND WARRANTIES

SECTION 2.01. Representations by the County. The County makes the following representations and covenants 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 the transactions contemplated by this Agreement and to carry out its obligations hereunder. By proper action by the County Council, the County has been duly authorized to execute and deliver this Agreement, and all agreements collateral thereto.

(b) The County proposes to reimburse the Company for the construction of the Infrastructure for the purpose of promoting the economic development of Clarendon County, South Carolina.

(c) The County is not in default under any of the provisions of the laws of the State, where any such default would affect the validity or enforceability of this Agreement.

(d) The authorization, execution, and delivery of this Agreement, and the compliance by the County with the provisions hereof, will not, to the best of the County’s knowledge, conflict with or constitute a breach of, or a default under, any existing law, court or administrative regulation, decree, order or any provision of the Constitution or laws of the State relating to the establishment of the County or its affairs, or any agreement, mortgage, lease, or other instrument to which the County is subject or by which it is bound.

(e) The execution and delivery of this Agreement, the enactment of the Ordinance, and performance of the transactions contemplated hereby and thereby do not and will not, to the best of the County’s knowledge, conflict with, or result in the violation or breach of, or constitute a default or require any consent under, or create any lien, charge, or encumbrance under the provisions of (i) the Constitution of the State or any law, rule, or regulation of any governmental authority, (ii) any agreement to which the County is a party, or (iii) any judgment, order, or decree to which the County is a party or by which it is bound. The County has not received written notice of any action, suit, proceeding, inquiry, or investigation, at law or in equity, or before or by any court, public body, or public board which is pending or threatened challenging the creation, organization, or existence of the County or its governing body or the power of the County to enter into the transactions contemplated hereby or wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated hereby or would affect the validity, or adversely affect the enforceability, of this Agreement, or any other agreement or instrument to which the County is a party and which is to be used in connection with or is contemplated by this Agreement, nor to the best of the County’s knowledge is there any basis therefor.

(f) The County covenants that it will from time to time and at the expense of the Company execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the purpose of this Agreement; provided, however, that such instruments or actions shall never create or constitute an indebtedness of the County within the meaning of any state constitutional provision (other than the provisions of Article X, Section 14(10) of the South Carolina Constitution) or statutory limitation and shall never constitute or give rise to a pecuniary liability of the County or a charge against its general credit or taxing power or pledge the credit or taxing power of the State, or any other political subdivision of the State.

SECTION 2.02. Representations 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 duly organized, validly existing, and in good standing, under the laws of the State Carolina, has power to enter into this Agreement, and by proper company action has been duly authorized to execute and deliver this Agreement.

(b) This Agreement has been duly executed and delivered by the Company and constitutes the legal, valid, and binding obligation of the Company, enforceable in accordance with its terms except as enforcement thereof may be limited by bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally. If the Company files for bankruptcy protection during the term of this Agreement, the Company hereby admits for purposes of the bankruptcy protection proceedings that the Company's pre-and post-petition fee in lieu of tax payments are to be accorded the same treatment and priority as property tax payments.

(c) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, will result in a material breach of any of the terms, conditions, or provisions of any corporate restriction or any agreement or instrument to which the Company is now a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of the Company, other than as may be created or permitted by this Agreement.

(d) The financing of the Infrastructure by the County has been instrumental in inducing the Company to acquire and construct the Project in Clarendon County and in the State.

SECTION 2.03. Statement of Intent. The Company anticipates that within the Minimum Jobs and Investment Requirement Period it will invest the Minimum Investment Requirement and create the Minimum Jobs Requirement.

ARTICLE III SPECIAL SOURCE REVENUE CREDITS

SECTION 3.01. Payment of Costs of Infrastructure. The Company agrees to pay, or cause to be paid, all costs of the Infrastructure as and when due. The Company agrees to complete the acquisition and construction of the Infrastructure pursuant to the plans and specifications approved by the Company. The plans and specifications for the Infrastructure may be modified from time to time as deemed necessary by the Company.

SECTION 3.02. Completion of Infrastructure. The Company shall notify the County of the date on which the Infrastructure is substantially completed and certify that all costs of acquisition and construction of the Infrastructure then or theretofore due and payable have been paid and the amounts which the Company shall retain for payment of Costs of the Infrastructure not yet due or for liabilities which the Company is contesting or which otherwise should be retained.

SECTION 3.03. Special Source Revenue Credits.

(a) Commencing in the year after improvements are first placed in service, the County hereby promises to provide a credit equal to 20% of the Fee Payments in years 1-10 (collectively, "Credits"). THIS AGREEMENT AND THE SPECIAL SOURCE REVENUE CREDITS BECOMING DUE HEREON ARE LIMITED OBLIGATIONS OF THE COUNTY PROVIDED BY THE COUNTY SOLELY FROM THE FEE PAYMENTS DERIVED BY THE COUNTY PURSUANT TO THE PARK AGREEMENT, AND DO NOT AND SHALL NEVER CONSTITUTE AN INDEBTEDNESS OF THE COUNTY WITHIN THE MEANING OF ANY CONSTITUTIONAL PROVISION (OTHER THAN THE PROVISIONS OF ARTICLE X, SECTION 14(10) OF THE SOUTH CAROLINA CONSTITUTION) OR STATUTORY LIMITATION AND DO NOT AND SHALL NEVER CONSTITUTE OR GIVE RISE TO A

PECUNIARY LIABILITY OF THE COUNTY OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWER. THE FULL FAITH, CREDIT, AND TAXING POWER OF THE COUNTY ARE NOT PLEDGED FOR THE SPECIAL SOURCE REVENUE CREDITS.

(b) If the Company does not (i) invest the Minimum Investment Requirement in the County during the Minimum Jobs and Investment Requirement Period, and (ii) create the Minimum Jobs Requirement in the County during the Minimum Jobs and Investment Requirement Period, then the Company shall repay the County an amount based on the Clawback Percentage, as described below, no more than 60 days after the end of the Minimum Jobs and Investment Requirement Period, calculated as follows:

Clawback Percentage=100%-Overall Achievement Percentage

Overall Achievement Percentage=(Investment Achievement Percentage+Jobs Achievement Percentage)/2

Investment Achievement Percentage=Investment Achieved (Without Regard to Depreciation) at the end of the Minimum Jobs and Investment Requirement Period/Minimum Investment Requirements

Jobs Achievement Percentage=New, Full-Time Equivalent Jobs Created in the County by the Company & Maintained at the end of the Minimum Jobs and Investment Requirement Period/Minimum Jobs Requirement

For example, and by way of example only, if by the end of the Minimum Jobs and Investment Requirement Period the Company created and maintained 200 new, full-time equivalent jobs in the County and invested \$3,550,000, then the Clawback Percentage would equal 5.335% determined as follows:

$$\begin{aligned} &100\% - ((\$3,550,000.00/\$3,755,000.00) + (200/211))/2\% \\ &100\% - [(.9454 + .9479)/2]\% = .94665 \\ &100\% - 94.665\% = 5.335\% \end{aligned}$$

For example, and by way of example only, regarding the Repayment Amount, if the County provided \$75,000 in Credits during the Minimum Jobs and Investment Requirement Period, then the Repayment amount would be calculated as follows:

$$\begin{aligned} \text{Clawback Percentage} &= 5.335\% \\ \text{Repayment Amount} &= \$75,000 \times 5.335\% = \$4,001.25 \end{aligned}$$

(c) No breach by the County of this Agreement shall result in the imposition of any pecuniary liability upon the County or any charge upon its general credit or against its taxing power. The liability of the County under this Agreement or of any warranty herein included or for any breach or default by the County of any of the foregoing shall be limited solely and exclusively to the Special Source Revenue Credits against the Fee Payments. The County shall not be required to execute or perform any of its duties, obligations, powers, or covenants hereunder except to the extent of the Fee Payments.

(d) No later than 60 days after the end of the Minimum Jobs and Investment Requirement Period, the Company shall certify and submit to the County the amount of investment and jobs created as of the last day of the Minimum Jobs and Investment Requirement Period. The certificate shall include any Repayment Amount based upon the formula set forth herein. A copy shall be separately sent to the County Administrator and the County Economic Development Director with a copy to the attorney provided in the Section 6.05 hereof.

(e) As an inducement for the County to offer the Special Source Revenue Credits, the Company, to the fullest extent permitted by law shall waive and does waive all other *ad valorem* property tax exemptions which would have been applicable if such property were subject to *ad valorem* taxes, specifically 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. To the extent the referenced exemption applies,

then (a) the Company shall automatically (without further action by either Party) receive a negative Special Source Revenue Credit, from year to year (if and as necessary), to such an amount as to offset, in aggregate, the full amount of any exemption received, (b) the Special Source Revenue Credits offered under this Agreement shall be automatically reduced (without further action by either Party), from year to year, to such an amount as to offset, in aggregate, the full amount of any exemption received; or (c) a combination of (a) and (b) so as to ensure the total amount of any reduction in each Fee Payment is limited to no more than 20% of what the Fee Payment would have been absent the exemption.

In the event a negative Special Source Revenue Credit results in an additional Fee Payment being due from the Company to the County, then the Company shall make such payment with and as part of the Company's payment of the Fee Payment due for the then-current tax year.

ARTICLE IV
CONDITIONS TO DELIVERY OF AGREEMENT;
TITLE TO INFRASTRUCTURE

SECTION 4.01. Documents to be Provided by County. Prior to or simultaneously with the execution and delivery of this Agreement, the County shall provide to the Company:

(a) A copy of the Ordinance, duly certified by the Clerk of the County Council under its corporate seal to have been duly enacted by the County and to be in full force and effect on the date of such certification; and

(b) Such additional certificates (including appropriate no-litigation certificates and certified copies of ordinances, resolutions, or other proceedings adopted by the County), instruments or other documents as the Company may reasonably request.

SECTION 4.02. Transfers of Project. The County hereby acknowledges that the Company may from time to time and in accordance with applicable law, sell, transfer, lease, convey, or grant the right to occupy and use the Project, in whole or in part, to others; provided however, any assignment of this Agreement shall be subject to the consent of the County, such consent not to be unreasonably withheld. No sale, lease, conveyance, or grant shall relieve the County from the County's obligations to provide Special Source Revenue Credits to the Company, or its assignee of such payments, under this Agreement.

ARTICLE V
EVENTS OF DEFAULT; REMEDIES; NONWAIVER

SECTION 5.01. Events of Default. If the County shall fail duly and punctually to perform any covenant, condition, agreement, or provision contained in this Agreement on the part of the County to be performed, which failure shall continue for a period of 30 days after written notice by the Company specifying the failure and requesting that it be remedied is given to the County by first-class mail, the County shall be in default under this Agreement (an "Event of Default"). Except with respect to any payment due and owing under this Agreement (which is recoverable according to the regular enforcement for *ad valorem* taxes), if the Company shall fail duly and punctually to perform any covenant, condition, agreement, or provision contained in this Agreement on the part of the Company to be performed, which failure shall continue for a period of 30 days after written notice by the County specifying the failure and requesting that it be remedied is given to the Company by first-class mail, the Company shall be in default under this Agreement (likewise an "Event of Default").

SECTION 5.02. Legal Proceedings. Upon the happening and continuance of any Event of Default (except for failure by the Company to invest the Minimum Investment Requirement and create the Minimum Jobs Requirement, which is addressed in Section 3.03), then and in every such case the Company or the County, as the case may be, in its discretion may:

(a) by mandamus, or other suit, action, or proceeding at law or in equity, enforce all its rights and require the other party to carry out any agreements with or for its benefit and to perform its or their duties under the Act and this Agreement;

(b) bring suit upon this Agreement;

(c) by action or suit in equity require the other party to account as if it were the trustee of an express trust for the Company or the County, as the case may be;

(d) exercise any or all rights and remedies provided by the Uniform Commercial Code in effect in the State, or other applicable law, as well as all other rights and remedies possessed by the Company or the County, as the case may be; or

(e) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of its rights.

SECTION 5.03. Remedies Not Exclusive. No remedy in this Agreement conferred upon or reserved to either party is intended to be exclusive of any other remedy or remedies, and each such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.

SECTION 5.04. Nonwaiver. No delay or omission of either party to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default, or an acquiescence therein; and every power and remedy given by this Article V to either party may be exercised from time to time and as often as may be deemed expedient.

ARTICLE VI MISCELLANEOUS

SECTION 6.01. Successors and Assigns. All the covenants, stipulations, promises, and agreements in this Agreement contained, by or on behalf of, or for the benefit of, the County, shall bind or inure to the benefit of the successors of the County from time to time and any officer, board, commission, agency, or instrumentality to whom or to which any power or duty of the County, shall be transferred.

SECTION 6.02. Provisions of Agreement for Sole Benefit of County and Company. Except as in this Agreement otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any Person other than the County and the Company any right, remedy, or claim under or by reason of this Agreement, this Agreement being intended to be for the sole and exclusive benefit of the County and the Company.

SECTION 6.03. Severability. In case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, the illegality or invalidity shall not affect any other provision of this Agreement, and this Agreement and the Credits shall be construed and enforced as if the illegal or invalid provisions had not been contained herein or therein.

SECTION 6.04. No Liability for Personnel of County or Company. No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any member, agent, or employee of the County or its governing body or the Company or any of its officers, employees, or agents in his individual capacity, and neither the members of the governing body of the County nor any official executing this Agreement shall be liable personally on the Credits or the Agreement or be subject to any personal liability or accountability by reason of the issuance thereof.

SECTION 6.05. Notices. All notices, certificates, requests, or other communications under this Agreement shall be sufficiently given and shall be deemed given, unless otherwise required by this

Agreement, when (i) delivered or (ii) sent by facsimile and confirmed by United States first-class registered mail, postage prepaid, addressed as follows:

- (a) if to the County: Clarendon County, South Carolina
Attn: Clarendon County Administrator
411 Sunset Drive
Manning, South Carolina 29102-2423

- with a copy to: Kozlarek Law LLC
(does not constitute notice) Attn: Michael E. Kozlarek, Esq.
Post Office Box 565
Greenville, South Carolina 29602-0565

- (b) if to the Company: [Project Mobile I]
Attn:

- with a copy to:
(does not constitute notice)

The County and the Company may, by notice given under this Section 6.05, designate any further or different addresses to which subsequent notices, certificates, requests, or other communications shall be sent.

SECTION 6.06. Applicable Law. The laws of the State, without regard to any conflict of laws provisions that would require the use of another jurisdiction’s laws, shall govern the construction of this Agreement.

SECTION 6.07. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same instrument.

SECTION 6.08. Amendments. This Agreement may be amended only by written agreement of the parties hereto.

SECTION 6.09. 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 6.10. Administration Expenses. The Company will reimburse, or cause reimbursement to, the County for Administration Expenses in the amount of \$5,000. The Company will reimburse the County for its Administration Expenses on receipt of a written request from the County or at the County’s direction, which request shall include a general statement of the amount and nature of the Administration Expense. The Company shall pay the Administration Expense as set forth in the written request no later than 30 days following receipt of the written request from the County. The payment by the Company of the County’s Administration Expenses shall not be construed as prohibiting the County from engaging, at its discretion, the counsel of the County’s choice.

SECTION 6.11. Indemnification Covenants.

(a) Except as provided in paragraph (d) below, the Company shall indemnify and save the County, its employees, elected officials, officers and agents (each, an “Indemnified Party”) harmless against and from all liability or claims arising from the County’s execution of this Agreement, performance of the County’s

obligations under this Agreement or the administration of its duties pursuant to this Agreement, or otherwise by virtue of the County having entered into this Agreement.

(b) The County is entitled to use counsel of its choice and the Company shall reimburse the County for all its reasonable costs, including reasonable attorneys' fees, incurred in connection with the response to or defense against such liability or claims as described in paragraph (a), above. The County shall provide a statement of the costs incurred in the response or defense, and the Company shall pay the County within 30 days of receipt of the statement. The Company may request reasonable documentation evidencing the costs shown on the statement. However, the County is not required to provide any documentation which may be privileged or confidential to evidence the costs.

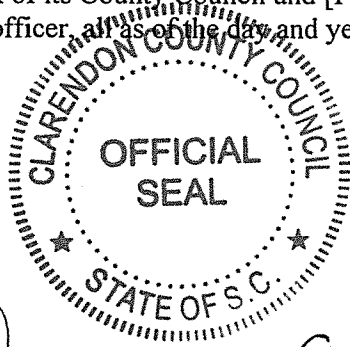
(c) The County may request the Company to resist or defend against any claim on behalf of an Indemnified Party. On such request, the Company shall resist or defend against such claim on behalf of the Indemnified Party, at the Company's expense. The Company is entitled to use counsel of its choice, manage, and control the defense of or response to such claim for the Indemnified Party; provided the Company is not entitled to settle any such claim without the consent of that Indemnified Party.

(d) Notwithstanding anything in this Section or this Agreement to the contrary, the Company is not required to indemnify any Indemnified Party against or reimburse the County for costs arising from any claim or liability (i) occasioned by the acts of that Indemnified Party, which are unrelated to the execution of this Agreement, performance of the County's obligations under this Agreement, or the administration of its duties under this Agreement, or otherwise by virtue of the County having entered into this Agreement; or (ii) resulting from that Indemnified Party's own negligence, bad faith, fraud, deceit, or willful misconduct.

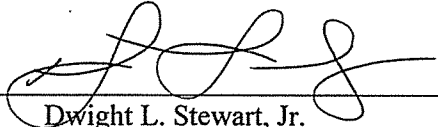
(e) An Indemnified Party may not avail itself of the indemnification or reimbursement of costs provided in this Section unless it provides the Company with prompt notice, reasonable under the circumstances, of the existence or threat of any claim or liability, including, without limitation, copies of any citations, orders, fines, charges, remediation requests, or other claims or threats of claims, in order to afford the Company notice, reasonable under the circumstances, within which to defend or otherwise respond to a claim.

[ONE SIGNATURE PAGE AND ONE EXHIBIT FOLLOW]
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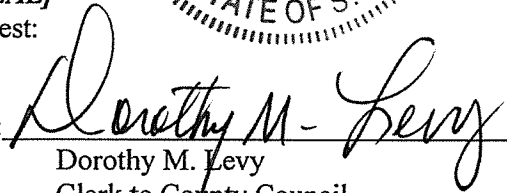
IN WITNESS WHEREOF, Clarendon County, South Carolina, has caused this Agreement to be executed by the Chairman of its County Council and its corporate seal to be hereunto affixed and attested by the Clerk of its County Council and [Project Mobile I] has caused this Agreement to be executed by its authorized officer, all as of the day and year first above written.



CLARENDON COUNTY, SOUTH CAROLINA

By: 
Dwight L. Stewart, Jr.
Chairman County Council

[SEAL]
Attest:

By: 
Dorothy M. Levy
Clerk to County Council

[PROJECT MOBILE I]

Signed: _____
Name: _____
Title: _____

EXHIBIT A
PROPERTY DESCRIPTION

All that certain piece, parcel, or tract of land, lying and being in the County of Clarendon, State of South Carolina, [].

Said premises having Clarendon County RMS #122-00-03-014-00. Said premises also being known as a portion of 1315 20th Century Drive, Manning, South Carolina.