



Public Comment SIGN IN SHEET

January 19, 2016 ~ ~ ~ 6:00 PM

The Public Comment Sessions at this meeting is limited to a total of 40 minutes, 4 minutes per person. Please be advised that citizens not utilizing their full four [4] minutes may not "donate" their remaining time to another speaker.

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None

Everyone speaking before Council will be required to do so in a civil manner. Council will not tolerate personal attacks on individual council members, county staff or any person or group. Racial slurs will not be permitted. Council's number one priority is to conduct business for the citizens of this county. All citizens who wish to address Council and all Boards and Commission appointed by Council should do so in an appropriate manner.



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NONE

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STATE OF SOUTH CAROLINA
OCONEE COUNTY
ORDINANCE 2015-36

AN ORDINANCE CONSENTING TO THE CONVERSION BY THE COUNTY OF CERTAIN RIGHTS OF BORGWARNER TORQTRANSFER SYSTEMS, INC. (THE "COMPANY") UNDER AN EXISTING LEASE PURCHASE AGREEMENT WITH THE COUNTY TO A FEE AGREEMENT PURSUANT TO TITLE 12, CHAPTER 44, SOUTH CAROLINA CODE, 1976, AS AMENDED (THE "ACT"), AS PROVIDED IN THE ACT, AUTHORIZING THE EXECUTION AND DELIVERY OF SUCH FEE AGREEMENT BETWEEN THE COUNTY AND THE COMPANY IN PLACE OF SAID LEASE PURCHASE AGREEMENT, AND AUTHORIZING THE RECONVEYANCE BY THE COUNTY TO THE COMPANY OF THE PROPERTY SUBJECT TO SUCH LEASE PURCHASE AGREEMENT; AND OTHER MATTERS RELATING THERETO.

WHEREAS, pursuant to Section 4-12-30 of the Code of Laws of South Carolina, 1976, as amended (the "Lease Act"), Oconee County, South Carolina (the "County"), acting by and through the Oconee County Council (the "County Council") previously entered into a Fee-in-Lieu-of-Tax ("FILOT") Lease Purchase Agreement dated as of October, 1, 1996 (the "Lease Agreement") with Borg-Warner Automotive Powertrain Systems Corporation, the predecessor to BorgWarner Torqtransfer Systems, Inc. (the "Company"), for the purpose of inducing investment by the Company in its manufacturing facilities in the County (the "Facilities") (overall, the "Original Project") through the provision of certain fee in lieu of tax benefits thereunder; and

WHEREAS, Section 12-44-170 of the Code of Laws of South Carolina, 1976, as amended (the "Simplified FILOT Act") allows the Company to convert property constituting the Original Project to a fee in lieu of tax arrangement under the Simplified FILOT Act and, in so converting, to cause such property to be automatically considered economic development property as defined in Section 12-44-30(7) of the Simplified FILOT Act; and

WHEREAS, the qualifying investment period with respect to the Original Project has terminated pursuant to the terms of the Lease Agreement; and

WHEREAS, pursuant to the authority of Section 4-1-170 of the Code of Laws of South Carolina 1976, as amended and Article VIII, Section 13 of the South Carolina Constitution, the County has caused the Facilities to be located within a multi-county industrial and business park established by the County pursuant to qualifying agreement with Williamsburg County, South Carolina; and

WHEREAS, the County Council has caused to be prepared and presented to this meeting the form of a Fee in Lieu of Tax Agreement (Conversion) between the County and the Company (the "Conversion Fee Agreement") with respect to the Original Project which includes (i) the conversion of the Lease Agreement for the Original Project to a fee-in-lieu-of-tax agreement under the Simplified FILOT Act, (ii) the continuation, under the new fee-in-lieu-of-tax agreement, of the same fee payments required of the Company under the Lease Agreement, (iii) the reconveyance to the Company of the property of the Original Project currently under the Lease Agreement, to be treated as Economic Development Property (as defined in the Simplified FILOT Act) under the fee-in-lieu of-tax agreement, and (iv) the appropriate provisions and terms to continue the benefits and provisions of the Lease Agreement for the Original Project under the new fee-in-lieu-of-tax agreement; and

WHEREAS, it appears that the Conversion Fee Agreement above referred to is in appropriate form and is an appropriate instrument to be executed and delivered by the County for the purposes intended;

NOW, THEREFORE, BE IT ORDAINED by the County Council of Oconee County, South Carolina, in meeting duly assembled, as follows:

Section 1. It is hereby found, determined and declared by the County Council, based on information provided by the Company, as follows:

(a) The Original Project continues to constitute a "project" and "economic development property" as said terms are referred to and defined in the Simplified FILOT Act, and the County's actions herein will subserve the purposes and in all respects conform to the provisions and requirements of the Simplified FILOT Act;

(b) The Original Project is anticipated to continue to benefit the general public welfare of the County by providing services, employment, recreation or other public benefits not otherwise provided locally;

(c) The Original Project and the Conversion Fee Agreement will give rise to no pecuniary liability of the County or any incorporated municipality or a charge against the general credit or taxing power of either;

(d) The purposes to be accomplished by the Original Project, i.e., economic development, retention of jobs and addition to the tax base of the County, are and were proper governmental and public purposes; and

(e) The benefits of the Original Project have been and are anticipated to be greater than the costs.

Section 2. The terms of the Conversion Fee Agreement presented to this meeting and filed with the Clerk to the County Council are hereby approved and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if the Conversion Fee Agreement were set out in this Ordinance in its entirety. The Chairman of the County Council and the Clerk to County Council are hereby authorized, empowered and directed to execute, acknowledge and deliver the Conversion Fee Agreement in the name and on behalf of the County, and thereupon to cause the Conversion Fee Agreement to be delivered to the Company. The Conversion Fee Agreement shall be in substantially the form now before this meeting and hereby approved, or with such minor 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, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of Conversion Fee Agreement now before this meeting.

Section 3. It is the intention of the County Council and the Company that the replacement of the Lease Agreement with the Conversion Fee Agreement shall not diminish or enhance the value of the existing fee in lieu of tax arrangement between the County and the Company with regard to the Original Project. In these regards, if the Simplified FILOT Act is ever declared unconstitutional or otherwise found invalid by a court of competent jurisdiction, it is the intention of the County Council that pursuant to the terms of the Simplified FILOT Act as well as the terms of the Lease Act, the Company shall be afforded, at its expense, the maximum opportunity to convert the Simplified Fee Agreement back to a lease agreement pursuant to the Lease Act, pursuant to terms mutually agreeable to the parties, in order to preserve the benefits of the Company's fee in lieu of tax arrangements with the County.

Section 4. Pursuant to Section 12-44-170 of the Simplified FILOT Act, the County consents to the conversion of property from the Lease Agreement to the Conversion Fee Agreement. In this regard, the Chairman of the County Council and the Clerk to County Council, in compliance with the terms of the Lease Agreement and the Conversion Fee Agreement, are hereby authorized, empowered and directed to execute, acknowledge and deliver such documents, including all releases of leasehold interests and all deeds and bills of sale, as are necessary to reconvey the property comprising the Original Project to the Company in order that it might become Economic Development Property (as defined in the FILOT Act) under the Conversion Fee Agreement.

Section 5. The Chairman of County Council and the Clerk to County Council, for and on behalf of the County, are hereby each authorized and directed to do any and all things necessary to effect the execution and delivery of the Conversion Fee Agreement and the performance of all obligations of the County thereunder.

Section 6. The provisions of this Ordinance are hereby declared to be separable and if any section, phrase or provisions 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 7. All orders, resolutions, ordinances and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed and this Ordinance shall take effect and be in full force from and after its passage and approval.

ORDAINED in meeting, duly assembled, this ____ day of _____, 2016.

ATTEST:

Elizabeth Hulse,
Clerk to Oconee County Council

Paul Cain,
Chairman, Oconee County Council

First Reading: December 15, 2015
Second Reading: January 19, 2016
Third Reading:
Public Hearing:

FEE-IN-LIEU OF TAX AGREEMENT (CONVERSION)

between

OCONEE COUNTY, SOUTH CAROLINA

and

BORGWARNER TORQTRANSFER SYSTEMS, INC.

Dated as of January 1, 2016,

CONTENTS

FEE-IN-LIEU-OF-TAX AGREEMENT (CONVERSION)..... 1
ARTICLE I..... 2
 DEFINITIONS 2
 SECTION 1.01. Definitions..... 2
ARTICLE II 6
 REPRESENTATIONS AND WARRANTIES..... 6
 SECTION 2.01. Representations and Warranties by County. 6
 SECTION 2.02. Representations and Warranties by Company..... 7
ARTICLE III..... 8
 UNDERTAKINGS OF COUNTY 8
 SECTION 3.01. Agreement to Accept FILOT Payments..... 8
 SECTION 3.02. No Warranties by County..... 8
 SECTION 3.03. Execution of Lease..... 8
 SECTION 3.04. Joint-County Industrial and Business Park. 9
ARTICLE IV..... 9
 INVESTMENT BY COMPANY IN PROJECT; JOBS CREATION; 9
 MAINTENANCE AND MODIFICATION OF PROJECT..... 9
 SECTION 4.01. Acquisition by Construction and Purchase of Project; Jobs Creation. 9
 SECTION 4.02. Maintenance of Project. 9
 SECTION 4.03. Modification of Project. 9
 SECTION 4.04. Records and Reports. 10
ARTICLE V 11
 PAYMENTS IN LIEU OF TAXES..... 11
 SECTION 5.01. Payments in Lieu of Taxes. 11
 SECTION 5.02. Reserved..... 12
ARTICLE VI..... 13
 PAYMENT OF EXPENSES BY COMPANY 13
 SECTION 6.01. Payment of Administration and Legal Expenses..... 13
 SECTION 6.02. Defaulted Payments. 13
ARTICLE VII 13
 CASUALTY AND CONDEMNATION 13
 SECTION 7.01. Damage and Destruction. 13
 SECTION 7.02. Condemnation. 13
 SECTION 7.03. Adjustments in the Event of Damage and Destruction or Condemnation. 14
ARTICLE VIII..... 14
 PARTICULAR COVENANTS AND AGREEMENTS 14
 SECTION 8.01. Use of Project for Lawful Activities. 14
 SECTION 8.02. Right to Inspect. 14
 SECTION 8.03. Limitation of Pecuniary Liability for County..... 14

| | |
|---|-----------|
| SECTION 8.04. Maintenance of Existence. | 15 |
| SECTION 8.05. Indemnification Covenants. | 15 |
| ARTICLE IX..... | 16 |
| TRANSFERS; FINANCING ARRANGEMENTS | 16 |
| SECTION 9.01. Transfers of Interest in Agreement and Economic Development Property; Transfers of Equity Interests; Financing Arrangements. | 16 |
| SECTION 9.02. Relative Rights of County and Financing Entities as Secured Parties. | 16 |
| ARTICLE X | 17 |
| TERM; TERMINATION | 17 |
| SECTION 10.01. Term. | 17 |
| SECTION 10.02. Termination. | 17 |
| ARTICLE XI..... | 17 |
| EVENTS OF DEFAULT AND REMEDIES | 17 |
| SECTION 11.01. Events of Default by Company. | 17 |
| SECTION 11.02. Remedies on Event of Default by Company. | 17 |
| SECTION 11.03. Application of Moneys Upon Enforcement of Remedies. | 18 |
| SECTION 11.04. Default by County. | 18 |
| ARTICLE XII | 18 |
| MISCELLANEOUS | 18 |
| SECTION 12.01. Rights and Remedies Cumulative. | 18 |
| SECTION 12.02. Successors and Assigns..... | 18 |
| SECTION 12.03. Notices; Demands; Requests. | 19 |
| SECTION 12.04. Applicable Law. | 19 |
| SECTION 12.05. Entire Understanding. | 19 |
| SECTION 12.06. Severability | 19 |
| SECTION 12.07. Headings and Table of Contents: References..... | 19 |
| SECTION 12.08. Multiple Counterparts. | 19 |
| SECTION 12.09. Amendments. | 20 |
| SECTION 12.10. Waiver..... | 20 |

FEE-IN-LIEU-OF-TAX AGREEMENT (CONVERSION)

THIS FEE IN LIEU OF TAX AGREEMENT (CONVERSION) (this "Agreement") made and entered into as of January ___, 2016 by and between **OCONEE COUNTY, SOUTH CAROLINA** (the "County"), a body politic and corporate and a political subdivision of the State of South Carolina, and **BORGWARNER TORQTRANSFER SYSTEMS, INC.**, a corporation duly organized and existing under the laws of the State of Delaware, (the "Company"), is entered into by the parties pursuant to Section 12-44-170, Code of Laws of South Carolina 1976, as amended, as a conversion of a Lease Agreement dated as of October 1, 1996 between the parties.

WITNESSETH:

WHEREAS, pursuant to the provisions of Section 4-12-30, Code of Laws of South Carolina 1976, as amended, (the "Lease Act") the County and the Company (through its predecessor, Borg-Warner Automotive Powertrain Systems Corporation, also a Delaware corporation) previously entered into a Lease Agreement dated as of October 1, 1996 (the "Lease Agreement") for purposes of providing a fee in lieu of tax incentive to the Company with respect to the Company's investment in certain land, improvements, fixtures, machinery, equipment and other tangible personal property (collectively, the "Original Project") at the Company's manufacturing facilities (the "Facilities") in the County, which investment was completed during the Investment Period provided in the Lease Agreement (the "Investment Period"); and

WHEREAS, pursuant to Section 12-44-170, Code of Laws of South Carolina 1976, as amended, (the "Simplified FILOT Act" or, simply, the "Act"), the Company, which has made the legally required minimum investment in the Project during the Investment Period to qualify for negotiated fee in lieu of tax treatment under Section 4-12-30(b)(3) and the Act, has notified the County of its desire to convert the Lease Agreement to a fee in lieu of tax agreement to be governed by the provisions of the Act, containing the same material provisions as the Lease Agreement in respect of fee in lieu of tax payments, term of the arrangement and other payment obligations of the Company; and

WHEREAS, the County, pursuant to ordinance of Oconee County Council enacted February 2, 2016, has consented to the conversion of the Lease Agreement to this fee in lieu of tax agreement pursuant to the Act; and

WHEREAS, the parties desire to (i) enter into this Agreement in order to provide for said conversion of the Lease Agreement to a fee in lieu of tax arrangement under the Act, and (ii) have this Agreement fully replace all provisions of the Lease Agreement and take effect upon the conveyance by the County to the Company of all portions of the Original Project currently titled in the name of the County under the Lease Agreement, upon payment by the Company of the purchase price therefor as prescribed in Section 10.03 of the Lease Agreement and the satisfaction of certain other conditions set forth herein; and

WHEREAS, upon the payment of the purchase price and consummation of the conveyance referred to in the preceding paragraph, this Agreement shall supercede the provisions of the Lease Agreement and, at such time, the Lease Agreement shall be deemed terminated (except for those provisions expressly stated to survive termination, including, without limitation, all indemnification and hold harmless provisions thereof) and the fee in lieu of tax arrangement of the Lease Agreement shall be continued under the terms and provisions hereof; and

WHEREAS, in connection with the above, the County and the Company agree that the requirements of Section 12-44-55(A) of the Act are hereby waived to the extent that, and so long as, the Company provides the County Auditor, Treasurer and Assessor and the Oconee County Clerk to Council with copies of all filings and reports required to be made by the Company under the Act, within thirty (30) days of making and filing such filings and reports;

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

ARTICLE I

DEFINITIONS

SECTION 1.01. Definitions In addition to the words and terms elsewhere defined in this Agreement, the following words and terms as used herein and in the preambles hereto shall have the following meanings unless the context or use indicates another or different meaning or intent.

“Act” or “Simplified FILOT Act” shall mean Chapter 44 of Title 12 of the Code and all future acts amendatory thereof.

“Administration Expenses” shall mean the reasonable and necessary expenses including ordinary and reasonable attorneys’ fees, incurred by the County with respect to the Project and this Agreement; provided, however, that no such expense shall be considered an Administration Expense unless the County furnishes to the Company a statement in writing indicating the reason such expense has been or will be incurred and either estimating the amount of such expense or stating the basis on which the expense has been or will be computed.

“Affiliate” shall mean any corporation, limited liability company, partnership or other Person which owns all or part of the Company or which is owned in whole or in part by the Company or by any partner, shareholder or owner of the Company.

“Agreement” shall mean this Agreement as originally executed and from time to time supplemented or amended as permitted herein.

“Authorized Company Representative” shall mean any person or persons at the time designated to act on behalf of the Company by written certificate furnished to the County containing the specimen signature of each such person and signed on behalf of the Company by an officer or employee of the Company to whom the Company has delegated authority to administer this Agreement.

“Code” shall mean the Code of Laws of South Carolina, 1976, as amended through the date hereof unless the context clearly requires otherwise.

“Commencement Date” shall mean December 31, 1996, the last day of the initial property tax year during which Economic Development Property comprising part of the Project was first placed in service.

“Company” shall mean BorgWarner Torqtransfer Systems, Inc., a Delaware corporation; and its predecessor, Borg-Warner Automotive Powertrain Systems Corporation, also a Delaware Corporation; any surviving, resulting or transferee entity in any merger, consolidation or transfer of assets permitted under Section 9.01 hereof; or any other person or entity which may succeed to the rights and duties of the Company hereunder in accordance with all applicable provisions hereof.

“Cost” shall mean the cost of acquiring by construction and purchase, the Project, including any infrastructure improvements, and shall be deemed to include, to the extent permitted by the Act or the Lease Act, 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 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; 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; provided, however, such term shall include expenditures by the Company with respect to the Project only to the extent made during the Investment Period.

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

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

“County Official” shall include the Administrator, Auditor, Assessor, or Treasurer of the County.

“Department of Revenue” shall mean the South Carolina Department of Revenue and Taxation.

“Economic Development Property” shall mean each item of real and tangible personal property comprising a project within the meaning of Sections 12-44-30(6) or 12-44-40(C) of the Code. Economic Development Property shall include all items of property purchased or acquired during the Investment Period of the Original Project and for which the Company has made a return to the Department of Revenue as reflected in an applicable Form PT-300 Schedule S.

“Equipment” shall mean all machinery, equipment, furnishings, and other personal property acquired by the Company and placed in service as part of the Original Project during the Investment Period in accordance with the Lease Agreement and this Agreement.

“Event of Default” shall mean an Event of Default as defined in Section 11.01 hereof.

“Existing Property” shall mean property that does not qualify to become Economic Development Property pursuant to Section 12-44-110 of the Code.

“FILOT” shall mean the fee-in-lieu of taxes which the Company is obligated to pay to the County pursuant to Section 5.01 hereof.

“FILOT Payments” shall mean the payments to be made by the Company pursuant to Section 5.01 hereof.

“FILOT Revenues” shall mean the revenues received by the County from the Company’s payment of the FILOT.

“Infrastructure Costs” shall mean the costs of designing, acquiring, constructing, improving, or expanding the infrastructure serving the Project, and the improved and unimproved real property, buildings, and structural components of buildings and personal property, including machinery and equipment (all as described in Section 4-29-68(A)(2)(i)(a) and (b) of the Code), used in the operation of the Project.

“Investment Period” shall mean the period beginning with the first day that Economic Development Property comprising part of the Project was purchased or acquired and ending December 31, 2001, the date that was five (5) years after the Commencement Date.

“Joint-County Industrial and Business Park Act” shall mean Title 4, Chapter 1 of the Code, as amended through the date hereof.

“Land” shall mean the real estate upon which the Original Project is located, as described in EXHIBIT “A” attached hereto, as EXHIBIT “A” may be supplemented from time to time in accordance with the provisions hereof.

“Lease Act” shall mean Chapter 12 of Title 4 of the Code and all acts amendatory thereof.

“Lease Agreement” shall mean that certain fee-in-lieu-of-tax lease agreement under the Lease Act, between the County and the Company, dated as of October 1, 1996.

“Minimum Investment” shall have the meaning given to such term under Section 12-44-30(14) of the FILOT Simplification Act.

“Negotiated FILOT Payment” shall mean the FILOT due pursuant to Section 5.01(b)(ii) hereof with respect to that portion of the Project comprised of Economic Development Property and qualifying for the 6% assessment ratio and the millage rate described in subsection 5.01(c) of the Agreement.

“Non-Economic Development Property” shall mean that portion of the Project consisting of: (i) property as to which the Company incurred expenditures prior to the Investment Period or, except as to Replacement Property, after the end of the Investment Period; (ii) property not placed in service during the Investment Period; (iii) Existing Property; and (iv) any other property which fails or ceases to qualify for Negotiated FILOT Payments.

“Original Project” shall mean (i) the Land, (ii) the Improvements, (iii) the Equipment, (iv) the Replacement Property and (v) to the extent not covered by the foregoing, anything qualifying as a Project under Section 4-12-30(b)(3) of the Lease Act, to the extent it was addressed and covered by the Lease Agreement.

“Park” shall mean a joint county industrial and business park established pursuant to Article VIII, Section 13 of the Constitution of the State and Section 4-1-170 of the Code.

“Park Agreement” shall mean an agreement for the development of a joint-county industrial and business park by and between the County and one or more other counties to create or expand a Park, pursuant to Section 13 of Article VIII of the South Carolina Constitution and Section 4-1-170 of the Code.

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

“Project” shall mean, all property from the Original Project to the extent it is converted from the Original Project by this Agreement, and qualifies to be part of the Project under Section 12-44-30(16) of the Act.

“Released Property” shall mean any Economic Development Property comprising any part of the Project removed, scrapped, traded in, sold, or otherwise disposed of pursuant to Section 4.03 hereof, any Economic Development Property comprising any part of the Project stolen, damaged, destroyed, or taken by condemnation, or eminent domain proceedings as described in Article VII hereof.

“Replaced Property” shall mean any Released Property for which the Company has substituted Replacement Property during the term hereof pursuant to Section 5.01(e) hereof.

“Replacement Property” shall mean, to the extent permitted by Section 12-44-60 of the Code, any portion of the Project substituted for Released Property pursuant to Section 5.01(e) hereof.

“Simplified FILOT Act or, simply “Act” shall mean, Title 12, Chapter 44 of the Code, as amended through the date hereof.

“State” shall mean the State of South Carolina.

“Term” shall mean the term of this Agreement, as set forth in Section 5.01 hereof.

“Threshold Date” shall mean December 31, 2001.

“Transfer Provisions” shall mean the provisions of Section 12-44-120 of the Code, as amended.

SECTION 1.02. References to Agreement The words “hereof”, “herein”, “hereunder”, and other words of similar import refer to this Agreement as a whole, unless the context clearly requires otherwise.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

SECTION 2.01. Representations and Warranties by County. The County makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) The County is a body politic and corporate and a political subdivision of the State and is authorized and empowered by the provisions of the Act to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder.

(b) The County, based on representations of the Company, has determined that the Project will subserve the purposes of the Act, and has made all other findings of fact required by the Act in connection with the undertaking of the Project.

(c) By proper action by the County Council, the County has duly authorized the execution and delivery of this Agreement and any and all actions necessary and appropriate to consummate the transactions contemplated hereby.

(d) This Agreement has been duly executed and delivered on behalf of the County.

(e) No actions, suits, proceedings, inquiries, or investigations known to the undersigned representatives of the County are pending or threatened against or affecting the County in any court or before any governmental authority which would materially adversely affect the validity or enforceability of this Agreement; provided, however, that no representation is made by or on behalf of the County as to the validity or enforceability of this Agreement.

(f) Notwithstanding any other provisions herein, the County is executing this Agreement as statutory accommodation to assist the Company in achieving the intended benefits and purposes of the Act. The County has made no independent legal or factual investigation regarding the particulars of this transaction and it executes this Agreement in reliance upon representations by the Company that the documents comply with all laws and regulations, particularly those pertinent to industrial development projects in South Carolina. No representation of the County is hereby made with regard to compliance by the Project or any Person with laws regulating: (i) the construction or acquisition of the Project, (ii) environmental matters pertaining to the Project, (iii) the offer or sale of any securities, or (iv) the marketability of title to any property, including the Land.

SECTION 2.02. Representations and Warranties by 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 Delaware corporation in good standing in the State of South Carolina; has all requisite power to enter into this Agreement; and by proper action has been duly authorized to execute and deliver this Agreement.

(b) The Company intends to operate the Project primarily for the purposes of manufacturing, and for other lawful purposes.

(c) The agreements of the County with respect to the FILOT were and have been instrumental in inducing the Company to locate and maintain the Project within the County and the State.

(d) No actions, suits, proceedings, inquiries, or investigations known to the undersigned representatives of the Company are pending or threatened against or affecting the Company in any court or before any governmental authority or arbitration board or tribunal, which could materially adversely affect the transactions contemplated by this Agreement or which could, in any way, adversely affect the validity or enforceability of this Agreement.

(e) The Company placed in service the first phase of the Economic Development Property portion of the Project during its fiscal year ending December 31, 1996.

ARTICLE III

UNDERTAKINGS OF COUNTY

SECTION 3.01. Agreement to Accept FILOT Payments. The County hereby agrees to accept FILOT Payments made by the Company in accordance with Section 5.01 hereof in lieu of *ad valorem* taxes with respect to the Project until this Agreement expires or is sooner terminated.

SECTION 3.02. No Warranties by County. The Company acknowledges that it has examined the Land and so much of the other property constituting the Project as is in existence on the date of execution and delivery hereof, as well as title thereto, prior to the making of this Agreement, and knows the condition and state thereof as of the day of the execution hereof, and accepts the same in said condition and state and subject to any existing encumbrances; that no warranties or representations as to the condition or state thereof have been made by representatives of the County; and that the Company in entering into this Agreement is relying solely upon its own examination thereof and of any portion of the Project acquired subsequent to the date hereof. The County makes no warranty, either express or implied, as to title to any part of the Project or any encumbrances (or lack thereof) or the design, capabilities, or condition of the Project or that it will be suitable for the Company's purposes or needs or as to the state of title to the Project.

SECTION 3.03. Execution of Lease. If necessary, the parties acknowledge that the intent of this Agreement is to afford the Company the benefits of the Negotiated FILOT Payments in consideration of the Company's decision to locate and maintain the Project within the County and that this Agreement has been entered into in reliance upon the Act. Notwithstanding any other provision of this Agreement, in the event that a court of competent jurisdiction holds that the Act is unconstitutional or that this Agreement or agreements similar in nature to this Agreement are invalid or unenforceable in any material respect or should the parties mutually determine that there is a reasonable doubt as to the validity or enforceability of this Agreement in any material respect, then the County, in accordance with Section 12-44-160 of the Act, upon the conveyance of title to the Project to the County at the expense of the Company, and to the extent permitted by law, agrees to lease, at the expense of the Company, the Project to the Company pursuant to the Lease Act. Any such lease shall contain such terms and conditions as are mutually-agreeable to the parties which shall include, but not be limited to: (1) full, complete, environmental indemnity by the Company in favor of the County; (2) suitable provisions for acquisition of the entire Project or part thereof for the consideration of \$1.00 at the completion or earlier termination of the lease if all terms and provisions of the lease have been met; and (3) to the extent applicable to a lease agreement permitted under the Lease Act, the same or substantially same provisions set forth in this Agreement. Any such conveyance and lease shall additionally be subject to receipt by the County of evidence reasonably satisfactory to the County that no environmental contamination exists with respect to the property being

conveyed and leased. The Company acknowledges that any such sale/leaseback arrangement may not preserve the benefits of the Lease Act with respect to any portion of the Project placed in service prior to the effective date of any such sale/leaseback arrangement with the County, to the extent that the effective date of such sale/leaseback arrangement is later than December 31 of the Company's tax year in which such portion of the Project is placed in service. However, the County agrees that it will, at the expense of the Company, and to the extent permitted by the Lease Act, assist in efforts by the Company to have any such Economic Development Property included within the sale/leaseback arrangement under the Lease Act due to the fact that such Economic Development Property will never have been subject to normal *ad valorem* taxation, but instead, will always have been subject to a fee-in-lieu of tax pursuant to a Park Agreement between the County and a partner county, established pursuant to Section 4-1-170 of the Code.

SECTION 3.04. Joint-County Industrial and Business Park. The Project is located on property which is currently designated as part of a Park existing pursuant to a Park Agreement executed and entered into by and between the County and Williamsburg County, South Carolina.

ARTICLE IV

INVESTMENT BY COMPANY IN PROJECT; JOBS CREATION; MAINTENANCE AND MODIFICATION OF PROJECT

SECTION 4.01. Acquisition by Construction and Purchase of Project; Jobs Creation.

(a) The Company initially agreed to expend upon the Cost of the Project an expected Thirty Million Dollars (\$30,000,000), during the Investment Period.

(b) The Company shall retain title to the Project throughout the Term of this Agreement.

SECTION 4.02. Maintenance of Project. The Company at its own expense during the Term of this Agreement will keep and maintain the Project in good operating condition. The Company will promptly make, or cause to be made, all repairs, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, that are necessary to keep the Project in good and lawful order and in good operating condition (wear and tear from reasonable use excepted) whether or not such repairs are due to any laws, rules, regulations, or ordinances hereafter enacted which involve a change of policy on the part of the government body enacting the same.

SECTION 4.03. Modification of Project.

(a) As long as no Event of Default exists hereunder, the Company shall have the right at any time and from time to time during the Term hereof to undertake any of the following:

(i) The Company may, at its own expense, add to the Project all such real and personal property as the Company in its discretion deems useful or desirable.

(ii) In any instance where the Company in its discretion determines that any items included in the Project have become inadequate, obsolete, worn-out, unsuitable, undesirable, or unnecessary for operations at the Project, the Company may remove such items or portions from the Project and sell, trade in, exchange, or otherwise dispose of them (as a whole or in part) without the consent of the County. The Company may sell, lease, or otherwise dispose of any portion of the Land, in which event the Company shall deliver to the County, within 30 days thereafter, a new EXHIBIT "A" to this Agreement.

(b) No release of Project property effected under the provisions of Section 7.01 or 7.02 hereof or of this Section 4.03 shall entitle the Company to any abatement or diminution of the amounts payable by the Company hereunder except the FILOT payments as specified in Section 5.01(d) hereof.

SECTION 4.04. Records and Reports.

(a) The Company agrees to maintain such books and records with respect to the Project as will permit the identification of those portions of the Project placed in service in each property tax year during the Investment Period, the amount of investment with respect thereto and its computations of all Payments made hereunder and as will comply with all reporting requirements of the State and the County applicable to property subject to FILOT Payments under the FILOT Act, including without limitation the reports, and copies thereof to be filed with the specified County Officials, required by Section 12-44-90 of the Code (collectively, the "Filings").

Upon direction of the governing body of the County, a County Official may request and obtain such financial books and records from the Company that support the FILOT returns of the Company as may be reasonably necessary to verify the calculations of the FILOT Payments by the Company.

(b) Notwithstanding any other provision of this Section 4.04, the Company may designate with respect to any Filings delivered to the County segments thereof that the Company believes contain proprietary, confidential, or trade secret matters. The County shall make its best, commercially reasonable efforts to conform with all reasonable, written requests made by the Company with respect to maintaining the confidentiality of such designated segments, to the extent allowed by law, including, but not limited to, the South Carolina Freedom of Information Act.

(c) Whenever the County shall be required by any governmental or financial entity to file or produce any reports, notices, returns or other documents with regard to the Project, while this

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.

(d) Any actions to be undertaken or instruments to be executed by the Company under this Agreement may be undertaken or executed by an Authorized Company Representative.

ARTICLE V

PAYMENTS IN LIEU OF TAXES

SECTION 5.01. Payments in Lieu of Taxes.

(a) In accordance with the Act, the parties hereby agree that, during the Term of the Agreement, the Company shall continue to pay, as it did under the Lease Agreement, with respect to the Project annually a FILOT in the amount calculated as set forth in paragraph (b) below, on or before January 15 of the year following the first calendar year after the close of the accounting period regularly employed by the Company for income tax purposes and in which accounting period a portion of the Project was first placed in service, and at the places, in the manner, and subject to the penalty assessments as prescribed by the County or the Department of Revenue for *ad valorem* taxes.

(b) The FILOT Payment due with respect to each property tax year shall equal, to the extent permitted by law, the sum of: (i) with respect to any portion of the Project consisting of undeveloped land or Non-Economic Development Property, a payment equal to the taxes that would otherwise be due on such undeveloped land or Non-Economic Development Property were it taxable; (ii) with respect to those portions of the Project (other than undeveloped land and Non-Economic Development Property) placed in service during the Investment Period, for each of the twenty (20) consecutive years following the year in which such portion of the Project was placed in service, a payment calculated each year as set forth in paragraphs (c) through (e) below (a "Negotiated FILOT"); and (iii) with respect to increments of the Project constituting Economic Development Property after such 20-year period, a payment equal to the *ad valorem* taxes then due on such property taking into account any exemption allowed by the law. With respect to clause (ii) above: there shall be excluded any Released Property and any other portion of the Project which ceases to qualify for a FILOT hereunder or under the Act, subject to the continuing requirement to maintain a minimum of \$2.5 Million (without regard to depreciation) in the Project once the Investment Period has ended.

(c) (i) The Negotiated FILOT Payment with respect to any property tax year shall be calculated in accordance with subparagraph (c)(ii) or (c)(iii) below.

(ii) The Negotiated FILOT Payments shall be calculated with respect to each property tax year based on: (1) the fair market value of real property (using the original income tax basis for South Carolina income tax purposes without regard to depreciation) and Equipment included within the Project theretofore placed in service (less, for Equipment, depreciation allowable for property tax purposes); (2) a millage rate, for all taxing entities within whose taxing jurisdiction the Project falls, of the original millage rate for the Project site continued in the Lease Agreement, which the Parties hereto believe to be 180 mills, and (3) an assessment ratio of six percent (6%). The millage rate and the assessment ratio shall remain fixed for the duration of this Agreement, except as otherwise provided herein. All such calculations shall take into account all deductions for depreciation or diminution in value allowed by the Code or by the tax laws generally, as well as tax exemptions which would have been applicable if such property were subject to *ad valorem* taxes, except the exemption allowed pursuant to Section 3(g) of Article X of the Constitution of the State and the exemption allowed pursuant to Sections 12-37-220(B)(32) and (34) of the Code.

(iii) If taxes on real and personal property shall be abolished in the County or in the State, the Company may terminate this Agreement immediately without further obligation other than to make any payments due hereunder at the time of termination, if any.

(d) Subject, always to the statutory requirement to maintain the statutory minimum investment in the Project in order to maintain the FILOT approved hereby, the FILOT Payments are to be recalculated: (i) to reduce such payments in the event the Company disposes of any part of the Project within the meaning of Section 12-44-50(B) of the Code, as provided in Section 4.03, by the amount thereof applicable to the Released Property; provided, however, that any disposal of Released Property need not result in a recalculation of the FILOT Payments unless the Company so elects; or (ii) to increase such payments in the event the Company adds property (other than Replacement Property) to the Project.

(e) Upon the Company's installation of any Replacement Property for any portion of the Project removed under Section 4.03 hereof and sold, scrapped, or disposed of by the Company, such Replacement Property shall become subject to FILOT Payments to the extent permitted by the Act.

SECTION 5.02. Reserved.

ARTICLE VI

PAYMENT OF EXPENSES BY COMPANY

SECTION 6.01. Payment of Administration and Legal Expenses. The Company will pay to the County from time to time amounts equal to the Administration Expenses of the County promptly upon written request therefor, but in no event later than forty-five (45) days after receiving written notice from the County specifying the nature of such expenses and requesting payment of the same. The Company shall also pay all reasonable attorneys fees incurred by the County in connection with this Agreement, the Inducement Agreement and all other related documents necessary to provide the Company with the incentives provided herein and therein.

SECTION 6.02. Defaulted Payments. In the event the Company should fail to make any of the payments required under this Agreement, the item or installment so in default shall continue as an obligation of the Company until the amount in default shall have been fully paid. If any such default relates to its obligations to make FILOT Payments or payments of Administration Expenses hereunder, the Company agrees to pay the same with interest thereon at the rate per annum provided by the Code for late payment of *ad valorem* taxes together with any penalties provided by the Code for late payment of *ad valorem* taxes or for non-payment of FILOT Payments.

ARTICLE VII

CASUALTY AND CONDEMNATION

SECTION 7.01. Damage and Destruction. If all or any part of the Project shall be lost, stolen, destroyed, or damaged, the Company in its discretion may repair or replace the same. If the Company shall determine to repair or replace the Project, the Company shall forthwith proceed with such rebuilding, repairing, or restoring and shall notify the County upon the completion thereof. The County shall not have any responsibility to complete the work thereof or pay any portion of the costs thereof. The Company shall not by reason of any such damages or destruction or the payment of any costs be entitled to any reimbursement from the County or any abatement or diminution of the amounts payable hereunder.

SECTION 7.02. Condemnation. In the event that title to or the temporary use of the Project, or any part thereof, shall be taken in condemnation or by the exercise of the power of eminent domain, there shall be no abatement or reduction in the payments required by be made by the Company hereunder except as set forth in Section 7.03 hereof. The Company shall promptly notify the County, as to the nature and extent of such taking and, as soon as practicable thereafter, notify the County whether it has elected to restore the Project. If it shall be

determined to restore the Project, the Company shall forthwith proceed with such restoration, and shall notify the County, upon the completion thereof.

SECTION 7.03. Adjustments in the Event of Damage and Destruction or Condemnation. In the event that the Project or any portion thereof is damaged or destroyed, lost or stolen, or the subject of condemnation proceedings, which damage, destruction, loss, theft and/or condemnation would substantially impair the operating ability of the Project or such portion thereof, the parties hereto agree that the FILOT Payments required pursuant to Section 5.01 hereof shall be abated in the same manner and in the same proportion as if *ad valorem* taxes were payable with respect to the Project, subject, always, to the requirements of Section 5.01 hereof.

ARTICLE VIII

PARTICULAR COVENANTS AND AGREEMENTS

SECTION 8.01. Use of Project for Lawful Activities. The Company is hereby granted and shall have the right during the Term of this Agreement to occupy and use the Project for any lawful purpose authorized pursuant to the FILOT Act. Insofar as it is practicable under existing conditions from time to time during the Term of this Agreement, the Project shall be used primarily as a manufacturing facility.

SECTION 8.02. Right to Inspect. The Company agrees that the County and its authorized agents shall have the right at all reasonable times and upon prior reasonable notice to enter upon and examine and inspect the Project and to have access to and examine and inspect all the Company's books and records pertaining to the Project. The County and its authorized agents shall also be permitted, at all reasonable times and upon prior reasonable notice, to examine the plans and specifications of the Company with respect to the Project. The aforesaid rights of examination and inspection shall be exercised only upon such reasonable and necessary terms and conditions as the Company shall prescribe, which conditions shall be deemed to include, but not be limited to, those necessary to protect the Company's trade secrets and proprietary rights. In no way shall this requirement of confidentiality be deemed to apply to or restrict the rights of the United States Government and the State of South Carolina or its political subdivisions in the exercise of their respective sovereign duties and powers.

SECTION 8.03. Limitation of Pecuniary Liability for County. Anything herein to the contrary notwithstanding: (a) the Project gives rise to no pecuniary liability of the County or charge against its general credit or taxing powers; (b) any obligation of the County created by or arising under the Agreement shall be a limited obligation of the County, payable by the County solely from the proceeds derived hereunder and shall not under any circumstances be deemed to constitute a general obligation of the County under the meaning of any constitutional or statutory limitation; and (c) the County may require as a condition to the participation by it with the Company in any contests or in obtaining any license or permits or other legal approvals a deposit by the Company of such amount as reasonably determined by the County to be appropriate to assure the reimbursement to the County of the costs incurred by it in such participation, with any

amount of such deposit in excess of such costs to be returned to the Company; provided, however, that nothing herein shall prevent the Company from enforcing its rights hereunder by suit for *mandamus* or specific performance or any other remedy available at law or in equity.

SECTION 8.04. Maintenance of Existence. The Company covenants that any alteration of its separate existence, dissolution, consolidation, merger, transfer, or disposition of substantially all of its assets to any other entity shall be done in accordance and compliance with the Transfer Provisions. The Company may permit one or more other Affiliates to consolidate or merge into it without the consent of the County, provided no default shall have occurred and be continuing at the time of such proposed transaction or would result therefrom.

SECTION 8.05. Indemnification Covenants.

(a) The Company shall and agrees to indemnify and save the County, including the members of the governing body of the County, and the employees, officers and agents of the County (herein collectively referred to as the "Indemnified Parties") harmless against and from all claims by or on behalf of any person, firm, company or legal entity arising from the conduct or management of, or from any work or thing done on the Project during the Term, and, Company further, shall indemnify and save the Indemnified Parties harmless against and from all claims arising from any act, error or omission occurring during the Term from: (i) any condition of the Project, (ii) any breach or default on the part of Company in the performance of any of its obligations under this Agreement, (iii) any act of the Company or any of its agents, contractors, servants, employees or licensees, related to the Project, (iv) any act of any assignee or sublessee of the Company, or of any agents, contractors, servants, employees or licensees of any assignee or sublessee of the Company, related to the Project, or (v) any environmental violation, condition, or effect of, upon or caused by the Project. Company shall indemnify, defend and save the Indemnified Parties 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 an Indemnified Party, Company shall defend it in any such action, prosecution or proceeding, with counsel reasonably acceptable to the County.

(b) Notwithstanding the fact that it is the intention of the parties that the Indemnified Parties not incur pecuniary liability by reason of the terms of this Agreement, or the undertakings required of the County hereunder, by reason of the execution of this Agreement, by reason of the performance of any act requested of it by the Company, or by reason of the 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 Indemnified Parties should incur any such pecuniary liability, then in such event the Company shall indemnify and hold them harmless against all claims by or on behalf of any person, firm, corporation or other legal entity, arising out of the same, and all costs and expenses, including, but not limited to, attorneys fees, incurred in connection with any such claim or in connection with any action or proceeding brought thereon, and upon notice, the Company shall have the sole right and duty to assume, and shall assume, the defense thereof, at its expense, with full power to litigate, compromise, or settle the same in its sole discretion; provided the Company shall obtain

the prior written consent of the County to settle any such claim unless such claim is for monetary damages for which the Company has the ability to, and does, pay. Notwithstanding the foregoing, if the Indemnified Party is the County, in the event the County reasonably believes there are defenses available to it that are not being pursued or that the counsel engaged by the Company reasonably determines that a conflict of interest exists between the County and the Company, the County may, in its sole discretion, hire independent counsel to pursue its own defense, and the Company shall be liable for the reasonable cost of such counsel.

These indemnification covenants shall be considered included in and incorporated by reference in subsequent documents after the closing which the County is requested to sign, and any other indemnification covenants in any subsequent documents shall not be construed to reduce or limit the above indemnification covenants.

ARTICLE IX

TRANSFERS; FINANCING ARRANGEMENTS

SECTION 9.01. Transfers of Interest in Agreement and Economic Development Property; Transfers of Equity Interests; Financing Arrangements. The Transfer Provisions shall apply to this Agreement and the Economic Development Property, except as otherwise provided in this Agreement. Pursuant to the Transfer Provisions, the County's prior approval or subsequent ratification of the transfer of this Agreement or any Economic Development Property to which this Agreement relates may be evidenced by a letter or other writing of the County Administrator. To the extent permitted by the Act, the County approves that equity interests in the Company may be transferred (directly or through merger, consolidation or other reorganization) to another Person at any time, with or without notice to the County; provided, however, that in the event of such a transfer, the Company shall maintain its legal existence and duly perform and comply with the terms of this Agreement. Pursuant to the Transfer Provisions, the Company may enter into lending, financing, security, leasing, or similar arrangements, or succession of such arrangements, with a financing entity concerning all or part of the Project at any time. Any release of liability of the Company in connection with any transfer shall be subject to the County's consent, not to be unreasonably withheld, and the County's consent to such release may be evidenced by a resolution adopted by the County Council of the County to that effect.

SECTION 9.02. Relative Rights of County and Financing Entities as Secured Parties. The parties acknowledge that the County's right to receive FILOT Revenues hereunder shall have a first priority lien status pursuant to Section 12-44-90 of the Code, and Chapters 4 and 54 of Title 12 of the Code. The County consents and agrees that its rights under this Agreement, except for its rights to receive FILOT Payments or any other amounts payable to the County hereunder, Administration Expenses and indemnification pursuant to Section 8.05, shall be subordinate to the rights of the secured party or parties under any financing arrangements undertaken by the Company with respect to the Project pursuant to Section 9.01 hereof, such subordination to be effective without any additional consent or action on the part of the County; provided, however, that the County hereby agrees to, at the Company's expense, execute such

agreements, documents, and instruments as may be helpful or reasonably required by such secured party or parties to effectuate or document such subordination. The County hereby authorizes the then-current County Administrator to execute such agreements, documents, and instruments as necessary or useful therefor.

ARTICLE X

TERM; TERMINATION

SECTION 10.01. Term. Unless sooner terminated pursuant to the terms and provisions herein contained, this Agreement shall be and remain in full force and effect for a term commencing on the date on which the Company executes the Lease Agreement, and ending at midnight on the last day of the property tax year in which the last Negotiated FILOT Payment is due hereunder. The County's rights to receive indemnification and payment of Administration Expenses pursuant hereto shall survive the expiration or termination of this Agreement.

SECTION 10.02. Termination. The Company may terminate this Agreement at any time, in which event the Project shall be subject to *ad valorem* taxes from the date of termination. This Agreement shall automatically terminate (subject to the provisions of Section 5.01(f) hereof) if the Act and/or the FILOT are declared invalid or unenforceable.

ARTICLE XI

EVENTS OF DEFAULT AND REMEDIES

SECTION 11.01. Events of Default by Company. Any one or more of the following events (herein called an "Event of Default", or collectively "Events of Default") shall constitute an Event of Default by the Company:

(a) if default shall be made in the due and punctual payment of any FILOT Payments, indemnification payments under Section 8.05, Administration Expenses or any other amount payable hereunder, which default shall not have been cured within thirty (30) days following receipt of written notice thereof from the County; or

(b) if default shall be made by the Company in the due performance of or compliance with any of the terms hereof, including payment, other than those referred to in the foregoing paragraph (a), and such default shall continue for ninety (90) days after the County shall have given the Company written notice of such default, the Company shall fail to proceed promptly to cure the same.

SECTION 11.02. Remedies on Event of Default by Company. Upon the occurrence of any Event of Default, the County may exercise any one or more of the following remedies, any of which may be exercised at any time during the periods permitted under the following clauses:

(i) declare immediately due and payable FILOT Payments, Administration Expenses, or any other amounts due hereunder;

(ii) terminate this Agreement by delivery of written notice to the Company not less than thirty (30) days prior to the termination date specified therein;

(iii) have access to and inspect, examine, and make copies of the books, records, and accounts of the Company pertaining to the construction, acquisition, or maintenance of the Project; or

(iv) take whatever action at law or in equity as may appear necessary or desirable to collect the amounts then due and thereafter to become due or to enforce observance or performance of any covenant, condition, or agreement of the Company under this Agreement.

SECTION 11.03. Application of Moneys Upon Enforcement of Remedies. Any moneys received by the County upon enforcement of its rights hereunder shall be applied as follows: first, to the reasonable costs associated with such enforcement proceedings including reasonable attorneys fees; second, to pay Administration Expenses; and third, to pay the FILOT.

SECTION 11.04. Default by County. Upon the default of the County in the performance of any of its obligations hereunder, the Company may take whatever action at law or in equity as may appear necessary or desirable to enforce its rights under this Agreement, including without limitation a suit for *mandamus* or specific performance.

ARTICLE XII

MISCELLANEOUS

SECTION 12.01. Rights and Remedies Cumulative. Each right, power, and remedy of the County or of the Company provided for in this Agreement shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy provided for in this Agreement or now or hereafter existing at law or in equity, in any jurisdiction where such rights, powers, and remedies are sought to be enforced, and the exercise or the failure to exercise by the County or by the Company of any one or more of the rights, powers, or remedies provided for in this Agreement or now or hereafter existing by law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the County or by the Company of any or all such other rights, powers, or remedies.

SECTION 12.02. Successors and Assigns. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns as permitted hereunder.

SECTION 12.03. Notices; Demands; Requests. All notices, demands, and requests to be given or made hereunder to or by the County or the Company shall be in writing and shall be deemed to be properly given or made if sent by United States first class mail, postage prepaid, or via facsimile transmission or reputable courier service, addressed as follows or to such other persons and places as may be designated in writing by such party.

(a) As to County:

Oconee County, South Carolina
Oconee County Administrator
415 S. Pine Street
Walhalla, SC 29691

(b) As to Company:

Borgwarner Torqtransfer Systems, Inc.
Attn: _____

SECTION 12.04. Applicable Law. This Agreement shall be governed by and construed in accordance with the law of the State.

SECTION 12.05. Entire Understanding. This Agreement expresses the entire understanding and all agreements of the parties hereto with each other as to its subject matter, and neither party hereto has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth in this Agreement or in certificates delivered in connection with the execution and delivery hereof.

SECTION 12.06. Severability. In the event that any clause or provision of this Agreement shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.

SECTION 12.07. Headings and Table of Contents: References. The headings of the Agreement are for convenience of reference only and shall not define or limit the provisions hereof or affect the meaning or interpretation hereof. All references in this Agreement to particular Articles or Sections or subdivisions of this Agreement are references to the designated Articles or Sections or subdivisions of this Agreement.

SECTION 12.08. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument. Facsimile signatures may be relied upon as if originals.

SECTION 12.09. Amendments. Subject to the limitations set forth in Section 12-44-40(J)(2) of the FILOT Simplification Act, this Agreement may be amended, or the rights and interests of the parties hereunder surrendered, only by a writing signed by both parties.

SECTION 12.10. Waiver. Either party may waive compliance by the other party with any term or condition of this Agreement only in writing signed by the waiving party.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

[Execution Pages Follow]

OCONEE COUNTY, SOUTH CAROLINA

By: _____
Chairman of County Council

(SEAL)

ATTEST:

Clerk to County Council
Oconee County, South Carolina

**BORGWARNER TORQTRANSFER
SYSTEMS, INC.**

BY: _____

ITS: _____

EXHIBIT "A"

LAND DESCRIPTION

[To be provided by Borgwarner Torqtransfer Systems, Inc.]

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE
ORDINANCE 2015-35

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A REFORMED AND RESTATED GROUND LEASE AGREEMENT BETWEEN OCONEE COUNTY, AS LESSOR, AND HANGAR III, LLC, AS LESSEE, AND AUTHORIZING THE CONTEMPORANEOUS EXECUTION AND DELIVERY OF A RELEASE AND STIPULATION OR ORDER OF DISMISSAL WITH PREJUDICE, ENDING THE LITIGATION CAPTIONED *OCONEE COUNTY, KEVIN ROBINSON, OCONEE COUNTY DELINQUENT TAX COLLECTOR V. HANGAR III, LLC, 25 EP CORP., BDS, JERRY EDWARDS, AND STEVE EDWARDS*, C.A. NO. 2014-CP-37-539; AND OTHER MATTERS RELATING THERETO.

WHEREAS, Oconee County, South Carolina (the "County") is a body politic and corporate and a political subdivision of the State of South Carolina and is authorized by the provisions of Title 4, Chapter 9 of the Code of Laws of South Carolina 1976, as amended, to lease real property and to make and execute contracts; and,

WHEREAS, the County is authorized by the provisions of Title 4, Chapter 1 of the Code of Laws of South Carolina 1976, as amended, to sue and be sued, and consequently resolve such litigation; and,

WHEREAS, the County currently desires to execute and enter into a Reformed and Restated Ground Lease (the "Lease") with Hangar III, LLC by which the County will reform and restate that certain lease agreement of May of 2001, the County thereby leasing certain land situated at the Oconee County Airport to Hangar III, LLC; and

WHEREAS, the County desires that contemporaneous to the execution and delivery of the Lease, that a Settlement Agreement and Release (the "Release") be executed and delivered, thereby effecting the resolution of that certain litigation captioned Oconee County, Kevin Robinson, Oconee County Delinquent Tax Collector v. Hangar III, LLC, 25 EP Corp., BDS, Jerry Edwards, and Steve Edwards, C.A. No. 2014-CP-37-539, the parties thereto having mutually agreed to resolve all claims which they asserted or could have asserted against each other, and in order to avoid the uncertainty, time, cost, and expense associated with further litigation; and

WHEREAS, the Lease and the Release are congruous to one another, and there exists a significant nexus between the subject matter thereof; and

WHEREAS, the Oconee County Council (the "Council") has reviewed the form of the Lease, attached hereto as **Exhibit A**, and the Release, attached hereto as **Exhibit B**, and determined that it is in the best interest of the County and its residents and citizens for the County to execute and enter into both the Lease and the Release, and the Council wishes to approve the same and to authorize the County Administrator to execute and deliver the Lease and the Release and all related agreements and documents necessary or incidental thereto, including a stipulation or order of dismissal with prejudice.

NOW THEREFORE, be it ordained by Council in meeting duly assembled that:

Section 1. Lease Approved. The Lease is hereby approved, and the County Administrator is hereby authorized to execute and deliver the Lease in substantially the same form as **Exhibit A**, attached hereto, with

only such changes as may be approved by the County Administrator and deemed in his sole discretion to be necessary and which are not materially adverse to the County.

Section 2. Release Approved. The Release is hereby approved, and the County Administrator is hereby authorized to execute and deliver the Release in substantially the same form as **Exhibit B**, attached hereto, with only such changes as may be approved by the County Administrator and deemed in his sole discretion to be necessary and which are not materially adverse to the County.

Section 3. Related Documents and Instruments; Future Acts. The County Administrator is hereby authorized to negotiate any all documents and instruments which may be necessary or incidental to the Lease and/or the Release and to execute and deliver any such documents and instruments on behalf of the County, including a stipulation or order of dismissal with prejudice.

Section 4. Severability. Should any term, provision, or content of this Ordinance be deemed unconstitutional or otherwise unenforceable by any court of competent jurisdiction, such determination shall have no effect on the remainder of this Ordinance. Notwithstanding the foregoing, however, as there exists a significant nexus between the subject matter of the Lease and the Release, if the approval of one or the other is deemed unconstitutional or otherwise unenforceable, then this Ordinance shall be void in its entirety.

Section 5. General Repeal. All ordinances, orders, resolutions, and actions of the Oconee County Council inconsistent herewith are, to the extent of such inconsistency only, hereby repealed, revoked, and superseded.

Section 6. Effective Date. This Ordinance shall become effective and be in full force and effect from and after public hearing and third reading in accordance with the Code of Ordinances of Oconee County, South Carolina.

ORDAINED in meeting, duly assembled, this ____ of _____, 2016.

OCONEE COUNTY, SOUTH CAROLINA

Wayne McCall, Chairman, County Council
Oconee County, South Carolina

ATTEST:

Elizabeth G. Hulse, Clerk to County Council
Oconee County, South Carolina

First Reading: January 5, 2016
Second Reading:
Public Hearing:
Third & Final Reading:

Exhibit A

Document to be attached for public dissemination on third reading.

Protections afforded by the attorney client privilege, attorney work product doctrine, and as to settlement negotiations are hereby reserved.

Exhibit B

Document to be attached for public dissemination on third reading.

Protections afforded by the attorney client privilege, attorney work product doctrine, and as to settlement negotiations are hereby reserved.



NOTES TRANSPORTATION COMMITTEE MEETING

January 12, 2016

COMMITTEE MEMBERS

Mr. Joel Thrift, District IV, Chairman

Ms. Edda Cammick, District I

Mr. Wayne McCall, District II

Discussion regarding potential road standard ordinance to address sub-standard roads

Mr. Thrift requested the County Attorney and Mr. Kelly address specifics in the draft Resolution [copy filed with these minutes] presented for the Committee's review. Lengthy discussion followed.

Mr. Thrift made a motion, seconded by Ms. Cammick, approved 2-0 to have the Resolution finalized and placed on the agenda at the next available Council meeting.

Discussion regarding Engineering Services Priorities

Mr. Thrift addressed concerns regarding priorities for engineering services that were approved at the recent January 5, 2015 regular Council meeting. He noted that Coneross Farm Road only serves one citizen; stating that he felt further review by the Committee was needed. Mr. Kelly and Mr. Reid presented maps [copies filed with these minutes] for several potential projects to replace Coneross Farm Road for the Committee's consideration. Lengthy discussion followed.

MOTION TO AFFIRM COMMITTEES RECOMMENDATION TO FULL COUNCIL TO reconsider the January 5th approval; removing Coneross Farm Road and replacing it with Kelly Ridge Road [amount of project to be determined at January 19, 2016 regular meeting].

Department Activity Update:

Mr. Kelly provided the Committee with a written report [copy filed with these minutes] outlining the department activity and special project.

Other: Long Creek Fishing & Boating Club

Ms. Cammick noted receipt of a letter [copy filed with these minutes] dated January 5, 2016 regarding speed limit sign installation on Jumping Branch Road. Discussion followed. Mr. Kelly noted that he had previously provided a traffic study and did not identify speeding issues but stated he would contact community to again study to identify need.