

STATE OF SOUTH CAROLINA)
)
SUMTER COUNTY)

ORDINANCE NO.: 04-541

AN ORDINANCE AUTHORIZING CERTAIN ECONOMIC DEVELOPMENT INCENTIVES, INCLUDING PAYMENT OF A FEE IN LIEU OF PROPERTY TAXES AND OTHER RELATED MATTERS, PURSUANT TO A FEE AGREEMENT BETWEEN SUMTER COUNTY, SOUTH CAROLINA, AND PROJECT TRAILBLAZER

WHEREAS, Sumter County, South Carolina (the "County"), acting by and through its County Council (the "County Council"), is authorized and empowered under and pursuant to the provisions of the South Carolina Constitution (the "Constitution") and the Code of Laws of South Carolina 1976, as amended, (the "Code") and the case law of the Courts of the State of South Carolina, to offer and provide certain privileges, benefits, and incentives to prospective industries as inducements for economic development within the County; is authorized and empowered under and pursuant to the provisions of Title 12, Chapter 44, Code of Laws of South Carolina 1976, as amended (the "Act"), to enter into certain agreements with any industry that constructs, operates, maintains, and improves certain properties (which constitute "projects" as defined in the Act) and to accept any grants for such projects through which powers the industrial development of the State of South Carolina (the "State") will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State and thus use and employ the manpower, agricultural products, and natural resources of the State and benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise provided locally that provide for the exemption of such project from property taxes and provide for the payment of a fee in lieu of property taxes (a "fee agreement" as defined in the Act); and,

WHEREAS, the County and Lee County have heretofore established a multi-county industrial park in accordance with the provisions of Title 4, Chapter 1, Section 170 of the Code of Laws of South Carolina (the "Park"); and .

WHEREAS, PROJECT TRAILBLAZER, a corporation organized and existing under the laws of the State of New Jersey (the "Company"), desires to expand and modernize its manufacturing facilities located in the County (the "Project" as further defined herein) and has requested the County to assist the Project by providing certain economic development benefits; and

WHEREAS, the Project involves an anticipated investment by the Company of at least \$64,155,929; and

WHEREAS, the Project involves the possible creation of at least 120 new full-time jobs in the County; and

WHEREAS, the Company has invested and/or will invest an additional \$15 million in the County; provided, however, that such additional investment may not be part of the Project itself; and

WHEREAS, the County, by proper corporate action committed to providing certain economic development incentives by proper resolution of the County Council setting forth the commitment to and

the general terms of a Fee Agreement (the “Inducement Resolution”); and

WHEREAS, in connection with the economic development incentive hereby authorized, the County and the Company are prepared to enter into a fee agreement as set forth in the Act (the “Fee Agreement”) pursuant to which the property comprising the Project will be exempted from property tax and the Company shall make certain payments to the County in lieu of property taxes (“FILOT Payments”), as committed in the Inducement Resolution; and

WHEREAS, the County has reviewed the Fee Agreement, the form of which is attached to this ordinance and incorporated herein, and determined that that the same is appropriate in form and substance for execution by the County.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL OF SUMTER COUNTY, SOUTH CAROLINA, IN MEETING DULY ASSEMBLED:

Section 1. Findings and Determinations. It is hereby declared that the facts set forth in the recitals to this Ordinance are true and correct in all respects. It further is found, determined, and declared by the County Council, as follows:

(a) the Project is anticipated to benefit the general public welfare of the locality by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally.

(a) the Project gives rise to no pecuniary liability of the County or incorporated municipality or a charge against its general credit or taxing power.

(b) the purposes to be accomplished by the Project, including, without limitation, economic development, jobs creation, and expansion of the County’s tax base, are proper governmental and public purposes and the benefits of the Project are greater than the costs.

(d) the County is expected to derive substantial direct economic benefits and numerous indirect benefits, such as indirect employment, indirect payroll income generated through direct, indirect, and induced income, and indirect investment (all as determined under generally accepted economic impact methodology).

(e) the inducement of the Project within South Carolina by means of the economic development incentives authorized herein is of paramount importance.

(f) the Project will serve the purposes of the Act by promoting industrial development in the County and in the State of South Carolina.

(g) the form of the Fee Agreement between the County and the Company (the "Fee Agreement"), presented to this meeting and filed with the Clerk of the County Council (the “Clerk”), contains all provisions required by the Act, ensures that it gives no rise to a pecuniary liability of the county or a charge against its general credit or taxing power, and otherwise fully complies with applicable law.

Section 2. Approval of Fee Agreement. The Fee Agreement is approved as follows:

(a) The form, terms, and provisions of the Fee Agreement presented to this meeting and filed with the Clerk of the County Council (the “Clerk”) are approved and all of the terms, provisions, and conditions of the Fee Agreement are incorporated by reference. The Chairman or Chairwoman of the County Council (the “Chairwoman”) and the Clerk are authorized, empowered, and directed to execute, acknowledge, and deliver the Fee Agreement in the name of the County. The Chairman and the Clerk are further authorized, empowered, and directed to cause the Fee Agreement to be delivered to the Company.

(b) The Fee Agreement to be executed on behalf of the County shall be in substantially the form now before the County Council, and shall include only changes that are approved by the County officials executing the Fee Agreement. The County officials shall consult the County Attorney with respect to any changes to the Fee Agreement. The execution of the Fee Agreement by County officials shall constitute conclusive evidence that they have approved all changes to or revisions of the Fee Agreement now before this meeting.

(c) If under the Fee Agreement or the Act any future actions of the Company (including, without limitation, the supplementation of the Exhibits, the extension of the Investment Period, and/or any assignments of the Project) require the approval of the County, such approval can be given on behalf of the County by the County officials executing the Fee Agreement or their successors in office upon affirmative resolution of the County Council. The County officials shall consult the County Attorney with respect to such approval. The execution of a written approval by County officials shall constitute conclusive evidence that the County has approved the respective actions of the Company.

(d) THE FEE AGREEMENT AND THE RELATED DOCUMENTS SHALL BE LIMITED OBLIGATIONS OF THE COUNTY, PAYABLE SOLELY FROM THE REVENUES AND OTHER AMOUNTS DERIVED FROM THE PROJECT AND SHALL NOT UNDER ANY CIRCUMSTANCES BE DEEMED TO CONSTITUTE A GENERAL OBLIGATION OF THE COUNTY. THE FEE AGREEMENT AND THE RELATED DOCUMENTS DO NOT AND SHALL NEVER CONSTITUTE AN INDEBTEDNESS OF THE COUNTY WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL PROVISION OR STATUTORY LIMITATION AND SHALL NEVER CONSTITUTE NOR GIVE RISE TO A PECUNIARY LIABILITY OF THE COUNTY OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWER.

Section 3. Special Source Revenue Incentive. In connection with the execution of the Fee Agreement, the Company shall receive a credit against its annual FILOT Payment pursuant to Section 12-44-70 of the Act for offsetting improvement costs (“Special Source Revenue Credits” or “SSRC”) if the Company creates at least 120 new full-time jobs at the Project (the “New Job

Threshold”). If the New Job Threshold is reached, the Company shall receive a SSRC for six (6) consecutive years beginning in the year immediately following the year in which the New Job Threshold is reached equal to 25% of each of the Company’s respective annual FILOT payments.

Section 4. Waiver of Recapitulation Requirement. Pursuant to Section 12-44-55 (B) of the Act the County agrees to waive the recapitulation requirement in the Fee Agreement of the terms thereof and all the other items described in Section 12-44-55 of the Act.

Section 5. Execution of Documents. The Chairman, the County Administrator, the Clerk, and the County Attorney are each authorized and directed to do all things necessary to effect the execution and delivery of the Fee Agreement and the County’s performance of its obligations under the Fee Agreement..

Section 6. Severability. The provisions of this Ordinance are declared to be separable. If any section, phrase, or provision shall be declared by a court of competent jurisdiction to be invalid or unenforceable for any reason, the remaining sections, phrases, and provisions of the Ordinance shall remain valid.

Section 7. Repeal of Conflicting Ordinances. All orders, resolutions, and other ordinances in conflict with this Ordinance are repealed to the extent of such conflict.

Section 8. Effective Date. This Ordinance shall take effect upon the date of enactment.

Enacted this ____ day of _____, 2004.

SUMTER COUNTY COUNCIL

Naomi D. Sanders, Chairwoman

[Seal]

ATTEST

Mary W. Blanding, Clerk to Council

FEE AGREEMENT

by and between

SUMTER COUNTY, SOUTH CAROLINA

and

PROJECT TRAILBLAZER

Effective as of _____, 2004

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PROJECT TRAILBLAZER AND
SUMTER COUNTY, SOUTH CAROLINA**

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**FEE AGREEMENT
PROJECT TRAILBLAZER**

THIS FEE AGREEMENT (the "Fee Agreement") is made and entered into effective as of the Commencement Date (as defined hereinafter) by and between SUMTER COUNTY, SOUTH CAROLINA, a body politic and corporate and a political subdivision of the State of South Carolina (the "County"), and PROJECT TRAILBLAZER, a corporation organized and existing under the laws of the State of New Jersey (the "Company"). County and Company are sometimes jointly referred to in this Fee Agreement as the "parties", or severally referred to as a "party".

W I T N E S S E T H :

WHEREAS, the Act, as defined herein, empowers the several counties of the State of South Carolina to enter into fee agreements with an industry as an optional method of providing fee in lieu of property tax benefits for a project; and

WHEREAS, the County committed to entering into this Fee Agreement by passing an Inducement Resolution that summarizes the fee in lieu of property tax provisions to be incorporated in a fee agreement between the Company and the County; and

WHEREAS, the Company desires to expand and modernize its manufacturing facilities located in the County (the "Project") and has requested the County to assist the Project by providing certain economic development benefits and entering into this Fee Agreement; and

WHEREAS, the parties desire to define the terms under which the Project will qualify for fee in lieu of property tax treatment.

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained and the mutual benefits to be derived by the parties, the receipt and adequacy of which are acknowledged by the parties, the County and the Company agree as follows:

1. DEFINITIONS

1.1. Specific Definitions

In addition to the words and terms elsewhere defined in this Fee Agreement, the following words and terms as used herein shall have the following meanings unless the context or use indicates a different meaning or intent.

"Act" means the Fee in Lieu of Tax Simplification Act of 1997, S.C. Code § 12-44-10, et. seq., as amended from time to time.

"Additional Investment" shall have the meaning set forth in Section 3.5 of this Fee Agreement.

"Additional Payments" shall have the meaning set forth in Section 4.3 of this Fee Agreement.

"Administrative Expenses" means the reasonable and necessary expenses incurred by the County in reviewing, implementing or amending this Fee Agreement and the Related Documents, including, without limitation, legal fees and expenses incurred by the County, but excluding the salaries and overhead of County personnel. Prior to an Event of Default, no expense shall be considered an Administrative Expense until the County has furnished to the Company a statement in writing indicating in reasonable detail the amount of such expense and the reason it has been or will be incurred. Expenses incurred in connection with a general taxpayer challenge to the validity of the Act shall not be deemed an Administrative Expense unless the Company requests the County to defend the suit on Company's behalf.

"Authorized Company Representative" means any person or persons at the time authorized to act on behalf of the Company including, without limitation, the President, any Vice President, the Secretary, and Treasurer of the Company.

"Code" means the Code of Laws of South Carolina, 1976, as amended.

"Commencement Date" means the last day of the Company's property tax year during which the Project or a portion of the Project is first placed in service as defined in the Act.

"Company" means PROJECT TRAILBLAZER, a New Jersey corporation, and any surviving, resulting or transferee limited liability company, corporation, partnership or other business entity in any merger, consolidation or transfer of assets permitted under this Fee Agreement.

"Completion Date" shall be either the last day of the Investment Period or an earlier date identified by the Company in a written notice to the County pursuant to Section 3.2 hereof.

"Confidential Information" shall have the meaning set forth in Section 8.11 of this Fee Agreement.

"Cost" or "Cost of the Project" means the cost to Company of acquiring the Project, by construction, purchase, or lease, and shall be deemed to include, whether incurred prior to or after the Commencement Date: (a) costs incurred for architects, engineers, designers, landscape architects, attorneys, estimators, and other Project consultants, (b) costs incurred for labor, materials and other expenses for contractors, builders and suppliers in connection with the

acquisition, construction and installation of the Project; (c) Project financing costs; (d) the cost of contract bonds and insurance of all kinds that may be required or necessary during the course of acquisition, construction and installation of the Project; (e) the expenses of the Company for tests, 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; (f) other costs that the Company shall be required to pay under the terms of any contract or contracts for the acquisition, construction and installation of the Project; (g) costs incurred by the Company for the acquisition and insuring of any interest in the land upon which the Project is located; (h) costs incurred for the project by third parties on behalf of the Company; and (i) any sums required to reimburse the Company for advances made by it for any of the above items, or for any other work done and costs incurred by the Company which are for the acquisition of 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, all whether or not reimbursed by the County or by third parties.

"County" means Sumter 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" means the governing body of the County and its successors.

"Default" means an event or condition, the occurrence of which would, after the passage of any time permitted for cure or the giving of notice or both, become an Event of Default as defined in Section 7.1 hereof.

"Department of Revenue" means the South Carolina Department of Revenue or its successor agency.

"Equipment" means all equipment, machinery, furnishings, and other personal property of Company that are made part of the Project by placing it in service in the County during the Investment Period and showing it as part of the Project on the appropriate returns, including, without limitation, all property described in *Exhibit B* attached hereto and made a part hereof, and all Replacement Property that is personal property of the Company.

"Event of Default" means any of those events set forth in Article 7 of this Fee Agreement.

"Fair Market Value" shall have the meaning set forth in Section 5.1 (B) of this Fee Agreement.

"Fee Agreement" means this Fee Agreement as originally executed and from time to time supplemented or amended as permitted herein.

"FILOT Arrangement" shall have the meaning set forth in Section 5.1 (F) of this Fee Agreement.

"FILOT Payments" shall have the meaning set forth in Section 5.1 of this Fee Agreement.

"Inducement Resolution" means the inducement resolution passed by County Council in which the County committed to the economic development incentives provided for in this Fee Agreement.

"Initial Investment Period" shall mean the 'investment period' as such term is defined in the Act without taking into account any extensions that may be granted by the County according to the Act.

"Investment Period" shall mean the 'investment period' as such term is defined in the Act, including any extensions that may be granted by the County according to the Act.

"Minimum Investment" shall have the meaning set forth in Section 3.5 of this Fee Agreement.

"Ordinance" means the ordinance of the County Council that authorizes execution and delivery of this Fee Agreement and other applicable Related Documents by the County.

"Park" shall have the meaning set forth in Section 2.1 (E) of this Fee Agreement.

"Person" means any individual, association, corporation, partnership, limited liability company, unincorporated organization, joint venture, trust, or government or agency or political subdivision thereof.

"Project" shall have the meaning set out in the recitals hereof, as further defined herein, and shall specifically mean the Real Property and the Equipment.

"Project Property" shall have the meaning set forth in Section 5.1 (B) of this Fee Agreement.

"Real Property" means the real property, if any, made part of the Project during the Investment Period, including any leasehold improvements or other capital expenditures of the Company that qualify as Economic Development Property under the Act, as more fully described in *Exhibit A* attached hereto, as from time to time supplemented by the Company, and all Replacement Property that is real property.

"Related Documents" means this Fee Agreement, the Ordinance, and any documents to which the County and/or the Company are parties that are reasonably required for the consummation of the transactions contemplated hereby or thereby.

"Replacement Property" means all property that is placed in service as a replacement for a portion of the Project, to the maximum extent permitted by the Act.

"Special Source Revenue Credits" or "SSRC" shall have the meaning set forth in Section

5.1 (C) of this Fee Agreement.

"State" means the State of South Carolina.

"Term" means the duration of this Fee Agreement.

"Title Transfer FILOT Acts" shall mean Section 4-12-30 et seq. and Section 4-29-67 of the Code.

1.2. References to Fee Agreement

The words "hereof," "herein," "hereunder" and other words of similar import refer to this Fee Agreement.

2. REPRESENTATIONS AND WARRANTIES

2.1. Representations and Warranties by the County

The County warrants that:

(A) The County is a body politic and corporate and a political subdivision of the State of South Carolina and is authorized and empowered by the provisions of the Act to enter into the transactions contemplated by this Fee Agreement and to carry out the County's obligations hereunder. The Project constitutes or will constitute a "project" within the meaning of the Act. By proper action by County Council, the County has been duly authorized to execute and deliver this Fee Agreement and the other Related Documents.

(B) Prior to the delivery of this Fee Agreement, the County has enacted the Ordinance.

(C) The execution and delivery of the Related Documents and compliance by the County with the terms and conditions thereof, will not constitute a material breach of, or a material default under any existing law, regulation, decree, or order, or any material agreement, mortgage, lease or other instrument to which the County is subject or by which it is bound.

(D) To the best of its knowledge, no actions, suits, proceedings, inquiries or investigations are pending or threatened against or affecting the County in any court or before any governmental authority or arbitration board or tribunal, that would materially, adversely affect the validity or enforceability of the Related Documents.

(E) The County and Lee County have heretofore established a multi-county industrial park in accordance with the provisions of Title 4, Chapter 1, Section 170 of the Code of Laws of South Carolina (the "Park") and the Project will be located in such Park.

2.2. Representations and Warranties by Company

The Company represents and warrants that:

(A) The Company is a corporation organized and in good standing under the laws of the State of New Jersey, is qualified to do business in the State of South Carolina, has power to enter into this Fee Agreement, and, by proper action, has been duly authorized to execute and deliver the Related Documents.

(B) The execution and delivery of the Related Documents and compliance by Company with the terms and conditions thereof, will not constitute a material breach of, or a material default under (i) any existing law, regulation, decree, or order, or (ii) any material term, condition, or provision of any corporate restriction or any agreement or instrument to which the Company is now a party or by which it is bound; and will not 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 that would materially restrict the Company's ability to make any payments hereunder, other than as may be permitted by the Related Documents;

(C) No event has occurred and no condition exists with respect to the Company that would constitute an "Event of Default" as described in Section 7.1 hereof;

(D) The Company intends to operate the Project for the purposes permitted by this Fee Agreement or the Act;

(E) The execution of this Fee Agreement by the County and the Company has been instrumental in inducing the Company to locate the Project in the County and in the State; and

(F) To the best of its knowledge, no actions, suits, proceedings, inquiries or investigations are pending or threatened against or affecting the Company in any court or before any governmental authority or arbitration board or tribunal that would materially and adversely affect the validity or enforceability of the Related Documents.

3. CONSTRUCTION AND PURCHASE OF PROJECT

3.1. Construction and Purchase of Project

The Company shall acquire or construct the Project and shall do all other things deemed necessary by the Company in connection with the Project. The Company shall identify in writing, to the extent required by the Department of Revenue, any portion of the Project placed in service that is not then already adequately described in this Fee Agreement or supplements thereto as a portion of the Project. The Company shall maintain such records in connection with the construction or acquisition of the Project as are reasonably necessary to (i) permit ready identification thereof and (ii) confirm the date(s) on which the Project or portions of the Project were placed in service.

3.2. Completion Certificate

Upon request by the County, the Completion Date(s) shall be evidenced to the County by a written statement by an Authorized Company Representative certifying the Completion Date and stating that, to the best of his knowledge and information, the acquisition or construction of the Project, or a phase thereof, has been completed and placed in service as of the stated Completion Date and shall state the total Cost, any other investment at the Project Site during the Investment Period, and the total number of Jobs at the Project as of the Completion Date. The certificate of completion may state that it is given without prejudice to any rights against third parties that exist at the date of such certificate or which may subsequently come into being.

3.3. Completion of the Project

The Company shall cause the Project to be completed and shall pay or cause to be paid all of the Cost of the Project, provided that this shall not be deemed to preclude financing of some or all of the Cost of the Project on such terms as the Company shall determine.

3.4. Amendments to Exhibits

The Company may supplement *Exhibit A* and *Exhibit B* from time to time provided that the supplements are consistent with the terms of this Fee Agreement and the Act and notice of such supplement is given to the County in accordance with the notice provisions of this Fee Agreement.

3.5. Minimum Investment

Before the Completion Date, the Company intends to invest at least \$64,155,929 in the Project (the "Minimum Investment"), and an additional \$15,000,000 in the County, which may be included in the Project (the "Additional Investment"), all within the Investment Period.

3.6. Licenses, Permits

The Company will in its own responsibility apply for, and use its best efforts to obtain, all permits, licenses, authorizations and approvals required by all governmental authorities in connection with the acquisition, construction, operation and use of the Project.

4. TERM, FEES AND ADDITIONAL PAYMENTS

4.1. Term

Subject to the provisions herein, this Fee Agreement shall be and remain in full force and effect for a term (the "Term") commencing on the Commencement Date (as defined in Section 1.1), and, unless earlier terminated in accordance with this Fee Agreement, ending at midnight on September 30 of the twentieth (20th) year (or such longer period as may subsequently be permitted by applicable law) after the last year during which any portion of the Project is placed in service.

4.2. FILOT Payments

The Company shall pay to the County all amounts due and payable as FILOT Payments

pursuant to Section 5.1 hereof. Unless otherwise expressly provided in the Act, returns for the FILOT Payments shall be filed and FILOT Payments shall be payable at the same time that ad valorem property tax returns and tax payments for the Project would otherwise be due under applicable State law and regulations in the absence of this Fee Agreement.

4.3. *Additional Payments*

In addition to the FILOT Payments and other amounts payable under Section 5.1, the Company shall pay, as “Additional Payments”, to or on behalf of the County any Administrative Expenses, as defined in Section 1.1, above, and any other amounts payable by the Company under this Agreement, including without limitation any payments due under Section 6.10 hereof. Such Additional Payments shall be payable by the Company within forty-five (45) calendar days of receipt by the Company from the County of a statement in writing indicating in reasonable detail the amount of such Additional Payments and the reason they have been incurred or will be incurred within the next sixty (60) days. The Company shall also pay any applicable ad valorem taxes attributable to the Additional Investment.

4.4. *Failure to Pay in a Timely Manner*

If the Company fails to make in a timely manner any of the payments required in this Article 4, 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, together with interest thereon (to the extent permitted by law) from the date the payment was due, at the rate per annum which is equal to the Prime Rate or, in the case of the FILOT Payments, an amount equal to any interest and penalties required by law for late payment of comparable ad valorem property taxes. In the event of any failure on the part of the Company to pay any such amounts, liabilities or obligations, the County shall have all rights, powers and remedies provided for herein, by law, equity or otherwise, including without limitation with respect to non-payment of fee payments hereunder the imposition and enforcement of a lien against the Project for tax purposes, as provided in Section 12-44-90 of the Act.

5. FEE PAYMENTS AND TAX CREDITS

5.1. *FILOT Payments; Calculation and Timing; Special Source Revenue Credits*

(A) The parties acknowledge that during the Term of this Fee Agreement, the Project is exempt from ad valorem property taxes. However, in lieu of ad valorem property taxes, the Company shall make twenty (20) annual FILOT Payments for each portion of the Project placed in service each year during the Investment Period.

(B) The amount of FILOT Payments due and payable shall be that which would be due in ad valorem property taxes if the Project were subject to ad valorem property taxes, but using (i) an assessment ratio of six percent (6%), a millage rate of initially 301.5 that will be adjusted every fifth (5th) year pursuant to the average cumulative actual millage rate applicable to the Project site based upon the preceding five-year period, and the fair market value of the property

that is part of the Project (the “Project Property”) to be determined according to the Act (the “Fair Market Value”).

(C) The Company shall receive a credit against its annual FILOT Payment pursuant to Section 12-44-70 of the Act for offsetting improvement costs (“Special Source Revenue Credits” or “SSRC”) if the Company creates at least 120 new full-time jobs at the Project (the “New Job Threshold”). If the New Job Threshold is reached, the Company shall receive a SSRC for six (6) consecutive years beginning in the year immediately following the year in which the New Job Threshold is reached equal to 25% of each of the Company’s respective annual FILOT payments.

(D) Pursuant to Section 12-44-60 of the Act, the Company may elect to include Replacement Property as part of the Project to the maximum extent permitted by the Act.

(E) Any part of the Project subject to the FILOT payment may be disposed and the Fair Market Value of the Project used to calculate FILOT Payments shall be reduced by the Fair Market Value of the disposed property.

(F) (1) If the Act, any portion of the Act, and/or the FILOT Payments are declared invalid or unenforceable, in whole or in part, for any reason, the Company and the County intend that this Fee Agreement be reformed so as to afford the Company the maximum benefit then permitted by law. The parties further Agree to convert this fee-in-lieu-of-tax arrangement (“FILOT Arrangement”) at the option of the Company from a FILOT Arrangement under the Act to a FILOT Arrangement pursuant to Sections 4-12-30 et seq. or 4-29-67 of the Code (the “Title Transfer FILOT Acts”) by transferring title to the Project to the County and leasing it back from the County retaining this Fee Agreement at the option of the Company as an inducement agreement as such term is defined in the Title Transfer FILOT Acts and by entering into a separate lease according to the requirements of Title Transfer FILOT Acts.

(2) If the Project is not eligible for FILOT Payments or for a conversion to a FILOT pursuant to the Title Transfer FILOT Acts, the Company shall be entitled (i) to receive the five-year exemption from ad valorem taxes (or fees in lieu of taxes) provided by South Carolina Constitution Article X, Section 3, and any other exemption allowed by law from time to time; (ii) to receive all allowable depreciation, allowances and adjustments to Fair Market Value; and (iii) to receive such other credits, abatements and exemptions from ad valorem taxes, as are allowed by law.

(G) Pursuant to Section 12-44-140 (B) of the Act, if the Company does not meet the minimum investment required by the Act by the end of the Initial Investment Period, the Project shall revert retroactively to ad valorem taxation required by the Code, but subject to the provisions of Section 5.1(F)(2) of this Fee Agreement. If the Fee Agreement is terminated pursuant to this provision, the Company shall pay to the County an additional payment equal to the difference between (i) the total amount of property taxes that would have been paid by the Company had the Project been taxable, taking into account the provisions of Section 5.1(F)(2) of this Fee Agreement, and (ii) the total amount of FILOT Payments actually made by the

Company.

5.2. *Tax Deductions, Credits and Exemptions*

Unless otherwise precluded by the Act, applicable law or judicial decision, the Company shall be entitled to all applicable federal, state and local investment tax credits, exemptions, allowances and deductions for depreciation and diminution in value, and other similar tax relief provisions relating to the Project. At the request of the Company, the County shall do all reasonable things as are necessary or proper to confirm and receive these benefits, provided the Company shall pay the expenses incurred in that undertaking.

5.3. *Abating FILOT Payments*

If the Project is damaged or destroyed, the subject of condemnation proceedings, or otherwise adversely impacted by theft, casualty, or other cause, and the damage, destruction, condemnation, or adverse impact reduces the Project's fair market value, the FILOT Payments shall be abated in the same manner as ad valorem property taxes would be abated if the Project were subject to ad valorem property taxes to the fullest extent allowed by the Act.

6. OTHER COVENANTS

6.1. *Use of Project*

The Company shall have the right during the Term of this Fee Agreement to use the Project for any lawful purpose authorized by the Act. At the time of entering into this Fee Agreement, however, it is the intent of the Company to use the Project for the primary purpose of manufacturing medical products and related activities.

6.2. *Limitation of County's Liability*

Anything herein to the contrary notwithstanding, any obligation the County may incur hereunder, including an obligation for the payment of money, shall not be deemed to constitute a debt or general obligation of the County but shall be payable solely and exclusively from the revenues and receipts derived by the County from this Fee Agreement.

6.3. *No Liability of County Personnel*

All covenants, agreements and obligations of the County contained herein shall be deemed to be covenants, agreements and obligations of the County and not of any member of the County Council or any officer, agent, servant or employee of the County in his individual capacity.

6.4. *Transfer of Project; Financing*

Pursuant to Section 12-44-120 (A) of the Act, (a) an interest in this Fee Agreement and the Project, or (b) an equity interest or other interest in an entity with an interest in this Fee Agreement or the Project, or both, may be transferred or assigned, in whole or in part, to another entity at any time. Whenever consent of the County is required under the Act of this Fee Agreement for any of the foregoing transactions, such consent shall not be unreasonably

withheld. Such consent shall be deemed to have been given if notice thereof is given to the County pursuant to Section to 8.3(a) or (c), no objection by the County is received by the Company within fourteen (14) days of receipt of the notice, and such notice specifies that consent shall be deemed to have been given if no objection is received by the Company within fourteen (14) days of the date notice is given.

6.5. *Financing*

Financing, lending, security, sale-leaseback, assignments, leases, subleases, or similar arrangements are permitted in accordance with Sections 12-44-120 (B) and (C) of the Act. The Company shall cause the County and the Department of Revenue to be notified of a financing-related transfer of the Fee Agreement or the Project within sixty (60) days of such transfer. Such notice shall be in writing and shall include the identity of each transferee and any other information required by the Department of Revenue with any appropriate returns.

6.6. *Leasing of Project*

The Company may at any time lease or sublease the Project or portions of the Project on such terms as the Company may determine in its sole discretion, provided that such terms are not inconsistent with this Fee Agreement. No lease or sublease shall reduce any of the obligations of the Company hereunder unless expressly approved in writing by the County.

6.7. *Company's Legal Existence*

During the Term of this Fee Agreement, the Company or its successor entity shall maintain its separate existence as an entity authorized to conduct business in the State of South Carolina. Except as provided in Sections 6.4 and 6.5 or any other provision of this Fee Agreement, the Company shall not (a) dissolve or otherwise dispose of all or substantially all of its assets, or (b) consolidate with or merge into any other corporation, limited liability company, partnership or other business entity if the result of such consolidation or merger would, immediately after such consolidation or merger, have a material adverse effect on the ability of the Company or its successor entity to meet the Company's obligations under this Fee Agreement; provided, however, that the offering or repurchase of stock or equity interests, the issuance of debt, or use of similar financing mechanisms by the Company or any successor entity, shall not be deemed to have such a material adverse effect.

6.8. *Assistance in Obtaining Permits and Licenses*

If any application is made to a governmental or other agency by the Company or the County for any permit, license, or approval to do or to perform certain things necessary for the proper performance of this Fee Agreement, the Company and the County shall execute, upon the request of the other party, such applications as may reasonably be requested or required.

6.9. *Filing of Annual Report of Investment in Project*

Upon request of the County, the Company shall provide to the County a copy of the annual return to the Department of Revenue showing the investment of the Company in the Project (currently, Form PT-300S). The County shall accord this information the same degree of confidentiality as is required for the Department.

6.10. Indemnification

The Company shall indemnify and save harmless the County against and from any and all costs, liabilities, expenses, claims, and reasonable attorneys' fees incurred directly in connection with the County's reasonable actions reasonably required in connection with the fulfillment of its obligations contained within this Fee Agreement, as well as those arising from any breach or default on the part of the Company in the performance of any covenant or agreement on the part of the Company to be performed pursuant to the terms of this Fee Agreement and from and against all cost, liability and expenses incurred in or in connection with any such claim or action or proceeding brought thereon, and in case any action or proceeding is brought against the County by reason of any such claim, the Company upon notice from the County covenants to resist or defend such action or proceedings at the Company's expense.

7. EVENTS OF DEFAULT AND REMEDIES

7.1. Events of Default by Company

Any one or more of the following events shall constitute an "Event of Default" by Company:

(A) if default shall occur in the due and punctual payment of any Additional Payments to the County, which default shall not have been cured within thirty (30) days following receipt of written notice thereof from the County;

(B) if FILOT Payments, together with any interest or penalties thereon, shall not have been paid within the maximum time that would be permitted by law if the Project were subject to ad valorem property taxes;

(C) if the Company shall fail to perform or comply with any of the terms of this Fee Agreement, other than those referred to in Section 3.5 and the foregoing Subsections (A) or (B), and such default shall (i) continue for thirty (30) calendar days after the County has given the Company written notice of such default, or (ii) in the case of any such default that can be cured, but cannot be cured with due diligence within such thirty (30) day period, if the Company shall fail to proceed promptly and with due diligence to cure the same within such additional period as may be necessary to complete the curing of the same with all due diligence;

(D) if the Company shall file a voluntary petition seeking an order for relief in bankruptcy; or shall be adjudicated insolvent; or shall file any petition or answer or commence a case seeking reorganization, composition, readjustment, liquidation or similar order for relief for itself under any present or future statute, law or regulation; or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of the Company or of the Project; or shall make any general assignment for the benefit of creditors; or shall admit in writing its inability to pay its debts generally as they become due;

(E) if a petition shall be filed or a case shall be commenced against the Company seeking an order for relief in bankruptcy or any reorganization, composition, readjustment, liquidation or similar relief under any present or future statute, law or regulation, and shall remain undismissed or unstayed for an aggregate of ninety (90) days (whether or not consecutive); or if any trustee, receiver or liquidator of the Company or of all or any substantial part of its properties or of the Project shall be appointed without the consent or acquiescence of the Company and such appointment shall remain unvacated or unstayed for an aggregate of ninety (90) days (whether or not consecutive); or

(F) if any material representation or warranty made by the Company herein, or any statement, certificate or indemnification furnished or delivered by the Company in connection with the execution and delivery of this Fee Agreement proves untrue in any material and adverse respect as of the date of making the representation or warranty.

7.2. Remedies on Event of Default by Company

Upon the occurrence of any Event of Default, the County, may, at its option, take any one or more of the following actions: (i) terminate this Fee Agreement by thirty (30) days notice in writing specifying the termination date; (ii) take whatever action at law or in equity as may appear necessary or desirable to collect the sums under Article 4 then due and thereafter to become due, but no in event may the County collect more than it is entitled to collect under Section 5.1(F) and (G). In all events, if the Company fails to make FILOT Payments due under Section 5.1, the County shall have the same enforcement, lien, and collection rights and remedies as it would have had for the non-payment of ad valorem taxes.

7.3. Default by County

Upon the failure of the County to perform any obligation it may have under this Fee Agreement or the Related Documents in a timely manner, or if no time for performance is specified, then within thirty (30) days following written notice thereof from the Company to the County, the Company may pursue any remedy permitted by this Fee Agreement or available by law or in equity, including, but not limited to, specific performance or suit for *mandamus*.

8. MISCELLANEOUS

8.1. Rights and Remedies Cumulative

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

8.2. Successors and Assigns

The terms and provisions of this Fee Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

8.3. 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 (a) personally delivered by any entity which provides written evidence of such delivery, or (b) sent by United States first class mail, postage prepaid (in which event notice shall be deemed to occur two (2) calendar days after the date postmarked), or (c) sent by United States registered or certified mail, return receipt requested, postage prepaid (in which event notice shall be deemed to occur on the date on which delivery was accepted or rejected by the recipient). Notices, demands and requests shall be addressed as follows or to such other places as may be designated in writing by such party by proper notice to the other party.

(a) As to the County:

Sumter County
13 East Canal Street (3rd Floor Admin. Building)
Sumter, South Carolina 29150
Attention: County Administrator
Telephone: 803-436-2102
Facsimile: 803-436-2108

(b) As to the Company:

PROJECT TRAILBLAZER
Attention: Plant Manager
P.O. Box 2128
1575 Airport Road
Sumter, South Carolina 29151
Telephone:
Facsimile:

With a Copy to:

McNair Law Firm, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
Attention: Erik P. Doerring
Telephone: (803) 799-9800
Fax: (803) 376-2277

8.4. *Next Succeeding Business Day*

Unless otherwise expressly provided by applicable law, in any case in which the last date for action by or notice to a party falls on a Saturday, Sunday or date that is an official state or federal holiday in the place in which the address is located, then the action required or notice to be given may be made or given on the next succeeding business day with the same effect as if given as required by this Fee Agreement.

8.5. *Applicable Law; Entire Understanding*

This Fee Agreement shall be governed exclusively by the provisions hereof and by the applicable laws of the State of South Carolina. This Fee Agreement expresses the entire understanding and all agreements of the parties hereto with each other 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 Fee Agreement or in certificates delivered in connection with the execution and delivery hereof.

8.6. *Severability*

If any material provision of this Fee 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 unless the effect thereof would render enforcement of the remaining provisions unconscionable.

8.7. *Headings and Table of Contents; References*

The headings of the Fee Agreement and any Table of Contents or Index annexed hereto are for convenience of reference only and shall not define or limit the provisions hereof or affect the meaning or interpretation hereof. Unless otherwise clearly indicated by the context, all references in this Fee Agreement to particular Articles, Sections or Subsections are references to the designated Articles, Sections or Subsections of this Fee Agreement.

8.8. *Multiple Counterparts*

This Fee 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.

8.9. *Amendments*

This Fee Agreement may be amended only by a writing signed by all parties hereto.

8.10. *Waiver*

Any party hereunder may waive compliance by the other party with any term or condition of this Fee Agreement only in a writing signed by the waiving party.

8.11. *Non-Disclosure of Company Information*

The County, and County Council, acknowledges and understands that the Company utilizes confidential and proprietary "state-of-the-art" manufacturing processes and techniques

and that any disclosure of any information relating to such processes and techniques and the economics thereof would result in substantial harm to the Company and could thereby have a significant detrimental impact on Company and its employees. Consequently, The County agrees to keep confidential, and to cause employees, agents and representatives of the County to keep confidential, the nature, description and type of the machinery, equipment, processes and techniques, and financial information relating thereto (“Confidential Information”), which may be obtained from the Company, its agents or representatives, except as may otherwise expressly be required by applicable law. The County, and County Council, shall not disclose and shall cause all employees, agents and representatives of the County not to disclose such Confidential Information to any person or entity other than in accordance with the terms of the Fee Agreement.

8.12. Waiver of Recapitulation Requirement

Pursuant to Section 12-44-55 (B) of the Act the parties agree to waive the recapitulation requirement of the terms hereof and all the other items described in Section 12-44-55 of the Act.

IN WITNESS WHEREOF, the parties have executed this Fee Agreement effective as of the Commencement Date.

SUMTER COUNTY, SOUTH CAROLINA

By: _____
Naomi D. Sanders, Chairwoman
County Council of Sumter County, South
Carolina

ATTEST:

Mary W. Blanding, Clerk to County Council
Sumter County, South Carolina

PROJECT TRAILBLAZER

By: _____
Name: _____
Title _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

ACKNOWLEDGMENT

I, _____, Notary Public for the State of South Carolina, hereby certify that Naomi D. Sanders and Mary W. Blanding, on behalf of Sumter County, South Carolina, personally appeared before me and acknowledged the due execution of the above Fee Agreement.

SUBSCRIBED TO AND SWORN to before me this ____ day of _____, 2004.

(SEAL)

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission expires:

STATE OF _____)
)
COUNTY OF _____)

ACKNOWLEDGMENT

I, _____, Notary Public for the State of _____, hereby certify that _____, on behalf of PROJECT TRAILBLAZER, personally appeared before me and acknowledged the due execution of the above Fee Agreement.

SUBSCRIBED TO AND SWORN to before me this ____ day of _____, 2009.

(SEAL)

NOTARY PUBLIC FOR _____
My Commission expires: _____

EXHIBIT A: REAL PROPERTY

Legal Description

EXHIBIT B: DESCRIPTION OF EQUIPMENT

All trade fixtures, furnishings, equipment, machinery, facilities and other personal property owned by Company that are located on or in the Real Property described in the Fee Agreement or are used in connection with the Project, and are acquired or installed during the Investment Period, together with any Replacement Property that is personal property.

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

CERTIFICATE OF INCUMBENCY

I, the undersigned Clerk to County Council of Sumter County, South Carolina, do hereby certify:

1. The individuals set forth on the attached Exhibit A were during _____ 2004 members of the County Council of the County and the term of office of each of said members had not expired by December 31.

2. Naomi D. Sanders is Chairwoman of the County Council, her term of office having commenced in _____ and will expire in _____.

3. William T. Noonan is the County Administrator, his term of office having commenced on _____ and expires at the pleasure of the County Council.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal of the County this ____ day of _____, 2004.

Mary W. Blanding
Clerk to County Council, Sumter County, South Carolina

(SEAL)

The undersigned, County Administrator of Sumter County, South Carolina, hereby certifies Mary W. Blanding is the duly appointed Clerk to County Council, her term of office having commenced on _____ and expires at the pleasure of the County Council.

William T. Noonan
County Administrator, Sumter County, South Carolina

Exhibit A

NAME	POSITION	PHONE	ADDRESS	CITY	ZIP
Naomi D. Sanders	Council Chairman	803-499-3947	5605 Borden Road	Rembert	29128-9338
James A. Campbell	Council Vice Chairman	803-773-5180	1026 Robinhood Drive	Sumter	29153-5185
Artie Baker	County Council	803-469-3638	3680 Bakersfield Lane	Dalzell	29040
Carol Burr	County Council	803-481-9079	1910 Hideaway Drive	Sumter	29154-8993
Charles T. Edens	County Council	803-775-0044	760 Henderson Street	Sumter	29150
Louis Fleming	County Council	803-775-7841	256 E. Red Bay Road	Sumter	29150-6944
Vivian Fleming-McGhaney	County Council	803-436-2107	13 E. Canal Street	Sumter	29150

CERTIFICATE OF THE CLERK
OF THE COUNTY COUNCIL OF SUMTER COUNTY
AS TO EXCERPTS OF MINUTES

I, the undersigned, Mary W. Blanding, Clerk to the County Council of Sumter County, South Carolina (the "County"), do hereby certify:

1. I am the duly qualified Clerk to the County Council.
2. Attached hereto as Exhibit A are excerpts of the minutes of the meetings of the County Council held on _____, _____, and _____ relating to and Inducement Resolution and Ordinance No. _____ authorizing the Fee Agreement with PROJECT TRAILBLAZER.
3. Each of the above-referenced meetings was duly called, and at each a quorum was present and acting throughout.
4. I have compared the exhibits with the official minute records of the meetings on the specified dates in my custody in my official capacity as the Clerk to the County Council and the excerpts are true, correct and complete transcripts from the original minute records insofar as they relate to Ordinance No. _____ and the Fee Agreement between Sumter County, South Carolina and **PROJECT TRAILBLAZER** and the respective Inducement Resolution.

WITNESS my official signature this ___ day of _____, 2004.

Mary W. Blanding
Clerk to the County Council,
Sumter County, South Carolina