In accordance with the Freedom of Information Act, the electronic and print media were duly notified.
CALL TO ORDER

During periods of discussion and/or presentations, minutes are typically condensed and paraphrased.

In accordance with the Freedom of Information Act, the electronic and print media were duly notified.

FIRST READING IN FINANCE COMMITTEE

1. BILL NO. 19-67, AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE-IN-LIEU OF TAX AGREEMENT BY AND BETWEEN BERKELEY COUNTY AND NUCOR CORPORATION BY AND THROUGH ITS NUCOR STEEL BERKELEY DIVISION WHEREBY BERKELEY COUNTY WILL ENTER INTO A FEE-IN-LIEU OF TAX AGREEMENT WITH NUCOR CORPORATION BY AND THROUGH ITS NUCOR STEEL BERKELEY DIVISION AND PROVIDING FOR PAYMENT BY NUCOR CORPORATION BY AND THROUGH ITS NUCOR STEEL BERKELEY DIVISION OF CERTAIN FEES-IN-LIEU OF AD VALOREM TAXES; PROVIDING FOR SPECIAL SOURCE REVENUE OR INFRASTRUCTURE IMPROVEMENT CREDITS; PROVIDING FOR THE ALLOCATION OF FEES-IN-LIEU OF TAXES PAYABLE UNDER THE AGREEMENT FOR THE ESTABLISHMENT OF A MULTI-COUNTY INDUSTRIAL/BUSINESS PARK; AND OTHER MATTERS RELATING THERETO.

01/27/20 County Council REFERRED

ADJOURNMENT

Catherine R. Windham, Clerk to Council
STAFF SUMMARY
FOR The Finance Committee

Topic: BILL NO. 19-67, AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE-IN-LIEU OF TAX AGREEMENT BY AND BETWEEN BERKELEY COUNTY AND NUCOR CORPORATION BY AND THROUGH ITS NUCOR STEEL BERKELEY DIVISION WHEREBY BERKELEY COUNTY WILL ENTER INTO A FEE-IN-LIEU OF TAX AGREEMENT WITH NUCOR CORPORATION BY AND THROUGH ITS NUCOR STEEL BERKELEY DIVISION AND PROVIDING FOR PAYMENT BY NUCOR CORPORATION BY AND THROUGH ITS NUCOR STEEL BERKELEY DIVISION OF CERTAIN FEES-IN-LIEU OF AD VALOREM TAXES; PROVIDING FOR SPECIAL SOURCE REVENUE OR INFRASTRUCTURE IMPROVEMENT CREDITS; PROVIDING FOR THE ALLOCATION OF FEES-IN-LIEU OF TAXES PAYABLE UNDER THE AGREEMENT FOR THE ESTABLISHMENT OF A MULTI-COUNTY INDUSTRIAL/BUSINESS PARK; AND OTHER MATTERS RELATING THERETO.

Prepared by: Catherine Windham, Clerk to Council
Date: 12/2/2019 1:05 PM

Fiscal Impact:

Attachments:
FILOT Ordinance (Project Kettle) 2020  (DOCX)
FILOT Fee Agreement (Project Kettle) 2020  (DOCX)
BILL NO. 19-67, AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE-IN-LIEU OF TAX AGREEMENT BY AND BETWEEN BERKELEY COUNTY AND NUCOR CORPORATION BY AND THROUGH ITS NUCOR STEEL BERKELEY DIVISION WHEREBY BERKELEY COUNTY WILL ENTER INTO A FEE-IN-LIEU OF TAX AGREEMENT WITH NUCOR CORPORATION BY AND THROUGH ITS NUCOR STEEL BERKELEY DIVISION AND PROVIDING FOR PAYMENT BY NUCOR CORPORATION BY AND THROUGH ITS NUCOR STEEL BERKELEY DIVISION OF CERTAIN FEES-IN-LIEU OF AD VALOREM TAXES; PROVIDING FOR SPECIAL SOURCE REVENUE OR INFRASTRUCTURE IMPROVEMENT CREDITS; PROVIDING FOR THE ALLOCATION OF FEES-IN-LIEU OF TAXES PAYABLE UNDER THE AGREEMENT FOR THE ESTABLISHMENT OF A MULTI-COUNTY INDUSTRIAL/BUSINESS PARK; AND OTHER MATTERS RELATING THERETO.
ORDINANCE NO.

AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE-IN-LIEU OF TAX AGREEMENT BY AND BETWEEN BERKELEY COUNTY AND NUCOR CORPORATION BY AND THROUGH ITS NUCOR STEEL BERKELEY DIVISION WHEREBY BERKELEY COUNTY WILL ENTER INTO A FEE-IN-LIEU OF TAX AGREEMENT WITH NUCOR CORPORATION BY AND THROUGH ITS NUCOR STEEL BERKELEY DIVISION AND PROVIDING FOR PAYMENT BY NUCOR CORPORATION BY AND THROUGH ITS NUCOR STEEL BERKELEY DIVISION OF CERTAIN FEES-IN-LIEU OF AD VALOREM TAXES; PROVIDING FOR SPECIAL SOURCE REVENUE OR INFRASTRUCTURE IMPROVEMENT CREDITS; PROVIDING FOR THE ALLOCATION OF FEES-IN-LIEU OF TAXES PAYABLE UNDER THE AGREEMENT FOR THE ESTABLISHMENT OF A MULTI-COUNTY INDUSTRIAL/BUSINESS PARK; AND OTHER MATTERS RELATING THERETO.

WHEREAS, Berkeley County, South Carolina (the “County”) would like to enter into a Fee-in-Lieu of Tax Agreement with Nucor Corporation by and through its Nucor Steel Berkeley Division (the “Company”), as the Company has expressed its intent to the County to make a capital investment in Berkeley County and to hire full time employees in Berkeley County, i.e., the project;

WHEREAS, as a result of the Company’s desire to undergo the project, the Company has asked the County to enter into a Fee-in-Lieu of Tax Agreement by and between the County and the Company dated as of February 24, 2020 in order to encompass the terms of the project;

WHEREAS, the County, acting by and through its County Council (the “County Council”) is authorized and empowered under and pursuant to the provisions of Title 12, Chapter 44 of the Code of Laws of South Carolina 1976, as amended (the “FILOT Act”), to designate real and tangible personal property as “economic development property” and to enter into an arrangement which provides for payments-in-lieu of taxes (“Negotiated FILOT Payments”) for a project qualifying under the FILOT Act; and

WHEREAS, the County, acting by and through the County Council, is further authorized and empowered under and pursuant to the provisions of Title 4, Chapter 1 of the Code of Laws of South Carolina 1976, as amended (the “Multi-County Park Act” or, as to Section 4-1-175 thereof, the “Special Source Act”) (collectively, the “the MCIP Act”) to provide for payments-in-lieu of taxes (“FILOT Payments”) with respect to property located in a multi-county business or industrial park created under the MCIP Act and to permit investors to claim special source credits against their FILOT Payments (including Negotiated FILOT Payments) to reimburse such investors for expenditures for infrastructure serving Berkeley County and improved or unimproved real estate.
and personal property, including machinery and equipment, used or to be used in the operation of manufacturing or commercial enterprise in order to enhance the economic development of Berkeley County (“Infrastructure Improvements”); and to create, in conjunction with one or more other counties, a multi-county park in order to afford certain enhanced tax credits to such investors and facilitate the grant of special source or infrastructure improvement credits; and

WHEREAS, the Company proposes to develop a facility in Berkeley County by acquiring, constructing, equipping and furnishing machinery, equipment and other real and personal property (the “Negotiated FILOT Project”) which the Company has represented will likely consist of a capital investment of approximately $300,000,000 and creating employment for approximately 50 new, full time employees; and

WHEREAS, the FILOT Project is located entirely within Berkeley County and will be included in and subject to the multi-county park and fee-in-lieu of tax arrangements as described herein; and

WHEREAS, the County has made specific proposals, including proposals to offer certain economic development incentives set forth herein, for the purpose of inducing the Company to invest its funds to acquire and equip the Negotiated FILOT Project (the “Incentives”); and

WHEREAS, it is in the public interest, for the public benefit and in furtherance of the public purposes of the FILOT Act and the MCIP Act that the County Council provide approval for qualifying the Negotiated FILOT Project under the FILOT Act and the entire Negotiated FILOT Project under the MCIP Act for the Incentives;

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

Section 1. Evaluation of the Negotiated FILOT Project. County Council has evaluated the Negotiated FILOT Project on the following criteria based upon the advice and assistance of the South Carolina Department of Commerce and the South Carolina Department of Revenue:

(a) whether the purposes to be accomplished by the Negotiated FILOT Project are proper governmental and public purposes;

(b) the anticipated dollar amount and nature of the investment to be made; and

(c) the anticipated costs and benefits to the County.

Section 2. Findings by County Council. Based upon information provided by and representations of the Company, County Council’s investigation of the Negotiated FILOT Project, including the criteria described in Section 1 above, and the advice and assistance of the South Carolina Department of Commerce and the South Carolina Department of Revenue, as required, County Council hereby find that:

(a) the Negotiated FILOT Project continues to constitute a “project” as that term is defined in the FILOT Act;
(b) the Negotiated FILOT Project will continue to serve the purposes of the FILOT Act;

(c) The investment by the Company in the Negotiated FILOT Project is anticipated to be approximately $300,000,000 of which is expected to be invested within five (5) years from the end of the property tax year in which the Company and the County execute the FILOT Agreement (as defined herein);

(d) the Negotiated FILOT Project will be located entirely within the County;

(e) the Negotiated FILOT Project will benefit the general public welfare of the County by providing services, employment, recreation or other public benefits not otherwise adequately provided locally;

(f) the Negotiated FILOT Project will not give rise to a pecuniary liability of the County or any municipality nor a charge against its general credit or taxing power of the County or any municipality;

(g) the purposes to be accomplished by the Negotiated FILOT Project are proper governmental and public purposes;

(h) the inducement of the location of the Negotiated FILOT Project is of paramount importance; and

(i) the benefits of the Negotiated FILOT Project to the public are greater than the costs to the public.

Section 3. Fee-in-Lieu of Taxes Arrangement. Pursuant to the authority of the FILOT Act, the Negotiated FILOT Project is designated as “economic development property” under the FILOT Act and there is hereby authorized a fee-in-lieu of taxes arrangement with the Company which will provide Negotiated FILOT Payments to be made with respect to the Negotiated FILOT Project based upon a 6% assessment ratio and a millage rate of 290.7 mills, all as more fully set forth in the Fee-in-Lieu of Tax Agreement by and between the County and the Company (the “FILOT Agreement”).

Section 4. Special Source Revenue Credits. After the identification of qualifying Infrastructure Improvements located solely within the County and the costs thereof to the satisfaction of the County, the County will provide to the Company special source revenue or infrastructure improvement credits (“SSRCs”) under the Special Source Act as follows:

For the Negotiated FILOT Project, the Company shall be entitled to claim special source credits against the annual Negotiated FILOT Payments with respect to the Negotiated FILOT Project in an amount equal to thirty-three percent (33%) of such annual Negotiated FILOT Payments for thirty (30) years.
Section 5. Execution of the Fee Agreement. The form, terms and provisions of the FILOT Agreement presented to this meeting and filed with the Clerk of the County Council be and hereby are approved, and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if such FILOT Agreement were set out in this Ordinance in its entirety. The Supervisor/Chairman of the County Council and the Clerk of the County Council be and they are hereby authorized, empowered and directed to execute, acknowledge and deliver the FILOT Agreement in the name and on behalf of the County, and thereupon to cause the FILOT Agreement to be delivered to the Company. The FILOT Agreement is to be in substantially the form now before this meeting and hereby approved, or with any changes therein as shall not materially adversely affect the rights of the County thereunder and as shall be approved by the County Attorney and the officials of the County executing the same, their execution thereof to constitute conclusive evidence of their approval of all changes therein from the form of FILOT Agreement now before this meeting.

Section 6. Miscellaneous.

(a) The Supervisor/Chairman and all other appropriate officials of the County are hereby authorized to execute, deliver and receive any other agreements and documents as may be required by the County in order to carry out, give effect to and consummate the transactions authorized by this Ordinance;

(b) This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina;

(c) This Ordinance shall become effective immediately upon approval following third reading by the County Council;

(d) The provisions of this Ordinance are hereby declared to be severable and if any section, phrase or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, that declaration shall not affect the validity of the remainder of the sections, phrases and provisions hereunder; and

(e) All ordinances, resolutions and parts thereof in conflict herewith are, to the extent of the conflict, hereby repealed.

Section 7. Allocation of MCIP FILOT Revenues. (a) By separate ordinance of the County Council, the County, in cooperation with an adjacent county, shall use its best efforts to designate the site of the Negotiated FILOT Project as a multi-county park pursuant to Article VIII, Section 13 of the Constitution of South Carolina, the MCIP Act, and the terms of the Agreement for the Establishment of Multi-County Industrial/Business Park (the “MCIP Agreement”). In the FILOT Agreement, the County will agree to use its best efforts to maintain such designation for a term of at least thirty (30) years.

(b) Pursuant to the terms of the MCIP Act and the MCIP Agreement, the County hereby provides that for thirty (30) years, commencing the first year in which property that is a part of the Negotiated FILOT Project will be placed in service, the annual allocation of the fee-in-lieu of ad
valorem taxes payable to the County in accordance with the terms of the MCIP Agreement, after deducting any amounts distributed to the Partner County, will be distributed as follows:

(1) To the County, for providing the SSRCs, an amount equal to the annual SSRC with respect to the property as provided in Section 4 of this Ordinance and in the FILOT Agreement; and

(2) To the County and the other overlapping taxing entities, as set forth in greater detail in the MCIP Agreement and the related implementing ordinances of the County.

Section 8. 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 9. All ordinances, resolutions, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed. This Ordinance shall take effect and be in full force from and after its passage by the County Council.

[Signature Page to Follow]
BERKELEY COUNTY, SOUTH CAROLINA

By: __________________________________________
John P. Cribb
Supervisor/Chairman, Berkeley County Council
Berkeley County, South Carolina

ATTEST:

____________________________________
Catherine R. Windham
Clerk to Council, Berkeley County Council
Berkeley County, South Carolina
FEE-IN-LIEU OF TAX AGREEMENT

by and between

BERKELEY COUNTY, SOUTH CAROLINA,

and

NUCOR CORPORATION BY AND THROUGH ITS NUCOR STEEL BERKELEY DIVISION

Dated as of February 24, 2020
FEE-IN-LIEU OF TAX AGREEMENT

THIS FEE-IN-LIEU OF TAX AGREEMENT is dated as of February 24, 2020, by and between BERKELEY COUNTY, SOUTH CAROLINA, a body politic and corporate and a political subdivision of the State of South Carolina (the “County”) and NUCOR CORPORATION BY AND THROUGH ITS NUCOR STEEL BERKELEY DIVISION (the “Company”).

WITNESSETH:

WHEREAS, the County, acting by and through its County Council (the “Council”), is authorized and empowered under and pursuant to the provisions of Title 12, Chapter 44 (the “Act”) of the Code of Laws of South Carolina 1976, as amended (the “Code”) and Title 4, Chapter 1 of the Code (the “Multi-County Park Act”): (i) to enter into agreements with certain investors to construct, operate, maintain, and improve certain industrial and commercial properties through which the economic development of the State of South Carolina will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State of South Carolina and thus utilize and employ the manpower, agricultural products, and natural resources of the State; (ii) to covenant with such investors to accept certain payments in lieu of ad valorem taxes with respect to the project (a “FILOT”); and (iii) to maintain, create or expand, in conjunction with one or more other counties, a multi-county industrial park in order to afford certain enhanced income tax credits to such investors; and

WHEREAS, the Company proposes to expand its manufacturing operations in the County (the “Project”); and

WHEREAS, the Company anticipates that the Project will result in the creation of approximately 50 new, full time jobs and an investment of $40,000,000.00 in real property in the County and $260,000,000.00 in personal property in the County; and

WHEREAS, the Council approved an Ordinance enacted on ______________ authorizing the County to enter into this Agreement with the Company; and

WHEREAS, as a result of the Company contemplating locating its facility in the County, the Company requested that the County complete the FILOT arrangement referred to in that certain Ordinance referred to above and approved by County Council on ______________ by entering into this Fee-in-Lieu of Tax Agreement with the Company pursuant to the Act, and the Company elects to enter into such FILOT arrangement with the County in an effort to encompass the terms surrounding the Project and allowing the Company to make FILOT payments pursuant to the Act; and

WHEREAS, for the Project, the parties have also determined that the Company is a Project Sponsor, and that the Project constitutes Economic Development Property within the meaning of the Act; and

WHEREAS, this Fee-in-Lieu of Tax Agreement by and between the County and the Company and dated as of February 24, 2020 is referred to herein as the “Agreement”; and
WHEREAS, for the purposes set forth above, the County has determined that it is in the best interests of the County to enter into this Agreement with the Company, subject to the terms and conditions herein set forth.

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained, and the sum of $10.00 in hand, duly paid by the Company to the County, the receipt and sufficiency of which are hereby acknowledged, the County and the Company agree as follows:

ARTICLE I

DEFINITIONS AND RECAPITULATION

Section 1.01. Statutorily Required Recapitulation.

(a) Pursuant to Section 12-44-55(B) of the Act, the County and the Company agree to waive the recapitulation requirements of Section 12-44-55 of the Act, except as expressly provided in paragraph (b) below, to the extent that and so long as the Company timely provides the County with copies of all filings required by the Act to be made by the Company with regard to the Project. If the Company should be required to retroactively comply with all of the recapitulation requirements of Section 12-44-55 of the Act, then the County agrees, to the extent permitted by law, to waive all penalties of the County for the Company’s noncompliance that are within the County’s control.

(b) Recapitulation.

1. Legal name of each initial party to this Agreement:
   Nucor Corporation by and through its Nucor Steel Berkeley Division and Berkeley County, South Carolina.

2. County and street address of the project and property to be subject to this Agreement:
   [to be updated]

3. Minimum investment agreed upon:
   $40,000,000.00 (real property)
   $260,000,000.00 (personal property)

4. Length and term of this Agreement:
   30 years for each annual increment of investment in the Project during the Investment Period.

5. Assessment ratio applicable for each year of this Agreement:
   6%

6. Millage rate applicable for each year of this Agreement:
   Every year of the term: 290.7 mills
7. Schedule showing the amount of the fee and its calculation for each year of this Agreement:
   Waived by the County and the Company

8. Schedule showing the amount to be distributed annually to each of the affected taxing entities:
   Waived by the County and the Company

9. Statements
   (a) The Project is to be located in a multi-county park;
   (b) Disposal of property, subject to Payments-in-Lieu-of-Taxes is allowed;
   (c) Special Source Revenue Credits shall be given to the Economic Development Property in an amount equal to 33% for 30 years.
   (d) Payment will not be modified using a net present value calculation; and
   (e) Replacement property provisions will apply.

10. Any other feature or aspect of this Agreement which may affect the calculation of items (7) and (8) of this Recapitulation.
    Waived by the County and the Company

11. Description of the effect upon the schedules required by items (7) and (8) of this Recapitulation of any feature covered by items (9) and (10) not reflected in the schedules for items (7) and (8)
    Waived by the County and the Company

12. Which party or parties to this Agreement are responsible for updating any information contained in this Recapitulation:
    The Company

Section 1.02. 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 Title 12, Chapter 44 of the Code, as amended through the date hereof.

“Administration Expense” shall mean the reasonable and necessary expenses actually incurred by the County with respect to this agreement, including without limitation reasonable and actual attorneys’ fees (such attorneys’ fees will not exceed $5,000.00 without prior written consent of the Company); provided, however, that no such expense shall be considered an Administration Expenses until the County has furnished to the Company a statement in writing indicating the amount of such expense and the reason it has been or will be incurred and the Company’s reimbursement of such expenses shall not exceed $10,000 excluding attorneys’ fees.
“Affiliate” shall mean any person or entity directly or indirectly controlling, controlled by, or under common control with such other person or entity. For purposes of this definition, “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the person or entity, whether through the ownership of voting securities, by contract, or otherwise.

“Agreement” shall mean this Agreement by and among the County and the Company, as originally executed and from time to time supplemented or amended as permitted herein, and dated as of February 24, 2020.

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

“Company” shall mean Nucor Corporation by and through its Nucor Steel Berkeley Division and any surviving, resulting, or transferee entity in any merger, consolidation, or transfer of assets permitted under Section 8.02 or Article IX hereof; or any assignee hereunder which is designated by the Company and approved or ratified by the County. Except as required by law, the County’s subsequent approval or ratification of an assignee hereunder shall not be required if the subsequent Assignee is a member of the Controlled Group.

“Company Affiliate” shall mean any affiliate of the Company which would qualify as a sponsor affiliate within the meaning of that term as defined and used in Section 12-44-30(20) of the Code; provided, however, that such affiliate must be specifically approved by the County as a sponsor affiliate and must agree in writing to be bound by this Agreement as to any investment by such sponsor affiliate to be subject to FILOT Payments hereunder.

“Controlled Group” shall mean the Company and all Company Affiliates.

“County” shall mean Berkeley 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.

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

“Economic Development Property” shall mean each item of real and tangible personal property comprising the Project, except Non-Qualifying Property, within the meaning of that term as defined and used in Sections 12-44-30(6) and 12-44-40(C) of the Code.

“Equipment” shall mean all machinery, equipment, fixtures, furnishings, office facilities, and other personal property acquired by the Controlled Group and installed as part of the Project during the Investment Period in accordance with this Agreement.

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

“Existing Property” shall mean property proscribed from becoming Economic Development Property pursuant to Section 12-44-110 of the Code, including, without limitation, property which has been subject to ad valorem taxes in the State prior to the execution and delivery
of this Agreement and property included in the Project as part of the repair, alteration, or modification of such previously taxed property; provided, however, that Existing Property shall not include: (a) property acquired or constructed by the Company or members of the Controlled Group during the Investment Period which has not been placed in service in this State prior to the Investment Period notwithstanding that ad valorem taxes have heretofore been paid with respect to such property; or (b) modifications which constitute an expansion of Existing Property.

“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.

“Investment Period” shall mean the period beginning with the first day that the Controlled Group purchased or purchases Economic Development Property and ending on the date that is five (5) years from the end of the property tax year in which this Agreement is executed by the Company and the County; unless extended by written agreement of the County and the Company pursuant to Section 12-44-30(13) of the Code.

“Investment Requirement” shall mean the minimum investment the Company shall make in the Project to receive the incentives described herein.

“Land” shall mean the real estate upon which the Project is to be located whether currently owned or to be acquired, as described in Exhibit A attached hereto, as Exhibit A may be supplemented from time to time in accordance with the provisions hereof.

“Multi-County Park” shall mean the multi-county industrial/business park established pursuant to a qualifying agreement with Williamsburg County, dated April 24, 1995, as amended (the “Multi-County Park Agreement”).

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

“Negotiated FILOT Payment” shall mean the FILOT due pursuant to Section 5.01(b) hereof with respect to that portion of the Project consisting of Economic Development Property.

“Non-Qualifying Property” shall mean that portion of the Project, if any, consisting of: (i) property as to which the Company or any members of the Controlled Group incurred expenditures prior to the Investment Period or, except as to Replacement Property, after the end of the Investment Period; (ii) Existing Property; and (iii) any Released Property or other property which fails or ceases to qualify for Negotiated FILOT Payments, including without limitation property as to which the Company has terminated the Negotiated FILOT pursuant to Section 4.03(a)(iii) hereof. The Company agrees that the real estate improvements on the Land as of the date of this Agreement shall constitute Non-Qualifying Property for purposes of this Agreement.
“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, collectively herein, the Project, and shall include the buildings and other improvements on the Land to the extent placed thereon by the Company or any member of the Controlled Group including water, sewer treatment and disposal facilities, and other machinery, apparatus, equipment, office facilities, and furnishings which are necessary, suitable, or useful, including the Equipment; and any Replacement Property.

“Project Commitments” shall mean the investment and job commitments of the Company with respect to the Project as set forth in Section 2.02(d) of this Agreement.

“Released Property” shall mean any portion of the Project removed, scrapped, traded in, sold, or otherwise disposed of pursuant to Section 4.03 hereof, any portion of the Project stolen, damaged, destroyed, or taken by condemnation or eminent domain proceedings as described in Article VII hereof, and any infrastructure which the Company dedicates to the public use (within the meaning of that phrase as used in Section 12-6-3420(C) of the Code).

“Replacement Property” shall mean all property installed in or on the Land in substitution of, or as replacement for, any portion of the Project, but only to the extent that such property may be included in the calculation of the Negotiated FILOT pursuant to Section 5.01(f) hereof and Section 12-44-60 of the Code.

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

“Special Source Revenue Credits” shall mean the Special Source Revenue Credits described in Section 5.01 hereof.

“State” shall mean the State of South Carolina.

“Streamlined FILOT Act” shall mean Title 4, Chapter 12 of the Code, as amended through the date hereof.

“Term” shall mean the term of this Agreement, as set forth in Section 10.01 hereof.

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

Section 1.03. References to Agreement. The words “hereof”, “herein”, “hereunder”, and other words of similar import refer to this Agreement as a whole.

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 of South Carolina 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 serve the purposes of the Act, and has made all other findings of fact required by the Act in order to designate the Project (other than the Non-Qualifying Property) as Economic Development Property.

(c) By proper action of 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) The County agrees to use its best faith efforts to cause the Land to be located within the Multi-County Park, and the County will use its best faith efforts to ensure that the Project will continuously be included within the boundaries of the Multi-County Park or another multi-county park in order that the maximum tax benefits afforded by the laws of the State for projects in the County located within multi-county industrial parks will be available to the Company.

(f) 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 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.

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) Nucor Corporation by and through its Nucor Steel Berkeley Division is a corporation, validly existing and in good standing under the laws of the State of Delaware and authorized to do business in the State; 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 agreements with the County with respect to the FILOT have been instrumental in inducing the Company to locate the Project within the County and the State.
(c) 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.

(d) For the Project, the Company hereby commits to an Investment Requirement of Forty Million Dollars ($40,000,000.00) in land, buildings, and other real property and Two Hundred Sixty Million Dollars ($260,000,000.00) in machinery, equipment, and other personal property at the Project by the end of the Investment Period. The investment amount shall not include any amount paid by the Company for real estate improvements on the land existing as of the date of this Agreement. The Company agrees to meet and maintain the real property investment commitment throughout the entire term of the FILOT.

(e) If the Company fails to meet the Investment Requirement, then the Fee Agreement shall terminate and the Company shall repay the benefits received for any of the previous years constituting the Investment Period as if the Investment Requirement was not met.

(f) The income tax year of the Company, and accordingly the property tax year, for federal income tax purposes is calendar.

(g) No event has occurred and no condition currently exists with respect to the Company, which would constitute a Default or an “Event of Default” as defined herein.

(h) The Company intends to operate the Project as a manufacturing facility, and for such other purposes permitted under the Act as it may deem appropriate. The Project constitutes a “project” and “economic development property” as provided under the Act.

ARTICLE III

UNDERTAKINGS OF THE 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 the County has made no warranties or representations, either express or implied, as to the condition or state of the Project or as to the design or capabilities of the Project or that it will be suitable for the Company’s purposes or needs. 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.

Section 3.03. Execution of Lease. 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 the Project within Berkeley County and that this Agreement has been entered into in reliance upon the enactment of the Simplified FILOT Act. In the event that a court of competent jurisdiction holds that the Simplified FILOT 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 determine that there is a reasonable doubt as to the validity or enforceability of this Agreement in any material respect, then the County, upon the provision by the Company of evidence acceptable to the County that the Project is free from environmental contamination and the conveyance of title to the Project to the County at the expense of the Company, agrees to lease the Project to the Company pursuant to the Streamlined FILOT Act and, to the extent permitted under the law in effect at such time, use its best efforts to ensure that the Company receives the benefits of the Negotiated FILOT as contemplated by this Agreement.

In addition to and notwithstanding the foregoing paragraph, the County shall not be obligated to perform any of its obligations or promises under this Section 3.03 unless the Company has otherwise complied with or provides satisfactory evidence to the County that it intends to comply with its obligations and responsibilities under this Agreement.

ARTICLE IV

INVESTMENT BY COMPANY IN PROJECT; MAINTENANCE AND MODIFICATION OF PROJECT

Section 4.01. Investment by Company in Project. For the Project, the Company agrees to invest approximately Forty Million Dollars ($40,000,000.00) in land, buildings, and other real property and Two Hundred Sixty Million Dollars ($260,000,000.00) in machinery, equipment, and other personal property at the Project by the end of the initial Investment Period. The investment amount shall not include any amount paid by the Company for real estate improvements on the Land existing as of the date of this Agreement. The Company agrees to meet and maintain the real property investment commitment throughout the entire term of the FILOT.

Section 4.02. Reporting and Filing.

(a) The Company agrees to provide a copy of Form PT-443 filed with the Department of Revenue not later than 30 days after execution and delivery of this Agreement to the County Treasurer, Assessor, Economic Development Director and County Attorney. Each year during the term of this Agreement, the Company shall deliver to the County Auditor, County Treasurer, Assessor, Economic Development Director and County Attorney a copy of their most recent annual filings made with the Department of Revenue with respect to the Project, not later than thirty (30) days following delivery thereof to the Department of Revenue.

(b) The Company agrees to obtain the written consent of the County prior to applying for a reclassification of, or attempting to reclassify, any asset(s) previously reported to the Department of Revenue.
(c) 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 FILOT Payments made hereunder and will comply with all reporting requirements of the State and the County applicable to property subject to FILOT Payments under the Act, including the reports described in paragraph (a) (collectively, “Filings”).

(d) Notwithstanding any other provision of this Section, 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. To the maximum extent permitted by law, the County shall conform to all written requests made by the Company with respect to maintaining the confidentiality of such designated segments. If the County receives a request for information under Title 30, Chapter 4 of the Code, the County shall notify the Company of the request and, subject to the time constraints imposed by such law, give the Company the opportunity to designate those portions of the Project, which the Company believes to be confidential or proprietary. To the extent permitted by law, the County shall not release information which has been designated as confidential or proprietary by the Company.

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 any 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; as such may be permitted under the Simplified FILOT Act.

(iii) The Company may, at any time in its discretion by written notice to the County, remove any real or personal property from the Negotiated FILOT (as defined in Section 5.01) set forth in this Agreement, and thereafter such property will be considered Non-Qualifying Property and will be subject to FILOT Payments as set forth in Section 5.01(b) hereof.

ARTICLE V

PAYMENTS IN LIEU OF TAXES

Section 5.01 Payments in Lieu of Ad Valorem Taxes.
(a) In accordance with the Act, the parties hereby agree that, during the Term of the Agreement, the Company shall pay annually, with respect to the Project, a FILOT in the amount calculated as set forth in this Section, on or before the date, and at the places, in the manner, and subject to the penalty assessments prescribed by the County or the Department of Revenue for ad valorem taxes.

(b) The FILOT Payment due for the Project with respect to each property tax year shall equal:

(i) With respect to any portion of the Project consisting of Non-Qualifying Property, as long as such property is located in the Multi-County Park, a payment equal to the ad valorem taxes that would otherwise be due on such Non-Qualifying Property were it taxable giving effect to all credits, exemptions, rebates and abatement that would be available if such undeveloped land or Non-Qualifying Property were taxable; plus

(ii) With respect to those portions of the Project consisting of Economic Development Property, for each of the thirty (30) consecutive years following the year in which such portion of the Project is placed in service, a payment calculated each year as set forth in paragraphs (c) below (a “Negotiated FILOT”); less Special Source Revenue Credits given to the Economic Development Property in amounts equal to thirty three (33)% for thirty (30) consecutive years.

(c) The Negotiated FILOT Payments shall be calculated with respect to each property tax year based on: (1) the fair market value (determined in accordance with Section 12-44-50(A)(1)(c) of the Code) of the improvements to real property and Equipment included within the Project theretofore placed in service (less, for Equipment, depreciation allowable for property tax purposes as provided in Section 12-44-50(A)(1)(c) of the Code), (2) a fixed millage rate of 290.7 for the entire term of this Agreement, and (3) an assessment ratio of six percent (6%). 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 of South Carolina and the exemptions allowed pursuant to Sections 12-37-220(B)(32) and (34) of the Code.

(d) 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 and as provided in Section 4.03 hereof, by the amount applicable to the Released Property;

(ii) to increase such payments in the event the Company adds property (other than Replacement Property) to the Project; or

(iii) to adjust such payments if the Company elects to convert any portion of the Project from the Negotiated FILOT to the FILOT required by Section 5.01(b) above, as permitted by Section 4.03(a)(iii).
(e) To the extent permitted by law, because the FILOT Payments agreed to herein are intended to be paid by the Company to the County in lieu of taxes, it is agreed that said FILOT Payments shall not, as to any year, be in any amount greater than what would otherwise be payable by the Company to the County in property taxes if the Company had not entered into a fee-in-lieu of taxes arrangement with the County (except it is not intended that said FILOT Payments would necessarily be less than such property taxes to the extent that the constitutional abatement of property taxes would otherwise apply).

(f) 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 Negotiated FILOT Payments to the fullest extent allowed by law, subject to the following rules:

(i) Replacement Property does not have to serve the same function as Economic Development Property it is replacing. Replacement Property is deemed to replace the oldest property subject to the FILOT, whether real or personal, which is disposed of in the same property tax year as the Replacement Property is placed in service. Replacement Property qualifies for Negotiated FILOT Payments up to the original income tax basis of Economic Development Property which it is replacing. More than one piece of property can replace a single piece of property. To the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the Economic Development Property which it is replacing, the excess amount is subject to payments equal to the ad valorem taxes which would have been paid on such property but for this Agreement. Replacement property is entitled to the FILOT payment for the period of time remaining on the twenty-year FILOT period for the property which it is replacing.

(ii) The new Replacement Property which qualifies for the Negotiated FILOT payment shall be recorded using its income tax basis, and the Negotiated FILOT Payment shall be calculated using the millage rate and assessment ratio provided on the original property subject to FILOT payment.

(g) In the event that the Act or the FILOT or any portion thereof, are declared, by a court of competent jurisdiction following allowable appeals, invalid or unenforceable, in whole or in part, for any reason, the Company and the County express their intentions that such payments be reformed so as to afford the Company the maximum benefit then permitted by law, including, without limitation, the benefits afforded under Section 12-44-50 of the Code and, specifically, that the Company may, at the Company’s expense, exercise the rights granted by Section 12-44-160 of the Code. If the Project is deemed not to be eligible for a Negotiated FILOT pursuant to the Act in whole or in part, the Company and the County agree that the Company shall pay an alternate fee-in-lieu of tax calculated in the manner set forth in Section 5.01(b)(i) hereof. In such event, the Company shall be entitled, to the extent permitted by law: (1) to enjoy the five-year exemption from ad valorem taxes (or fees in lieu of taxes) provided by Section 3(g) of Article X of the Constitution of the State of South Carolina, and any other exemption allowed by law; and (2) to enjoy all allowable depreciation.
ARTICLE VI

DEFAULT

Section 6.01. 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 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, all as provided in Section 12-44-90 of the Code.

Section 6.02. Failure to Reach Investment Requirement. If the Company fails to meet the Investment Requirement, then the Agreement shall terminate and the Company shall repay the benefits received for any of the previous years constituting the Investment Period as if the Act Minimum Investment Requirement was not met.

ARTICLE VII

CASUALTY AND CONDEMNATION

Section 7.01. 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, the Company, in its sole discretion, may determine whether or not to repair or replace the same. The parties hereto agree that if the Company decides not to repair or replace all or any portion of the Project pursuant to this Section, the FILOT 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.

ARTICLE VIII

PARTICULAR COVENANTS AND AGREEMENTS

Section 8.01. Use of Project for Lawful Activities. During the Term of this Agreement, the Company shall use the Project for any lawful purpose authorized pursuant to the Act.

Section 8.02. Assignment. The County agrees that, to the maximum extent allowable under the Act (or any amendments thereto), the Company may assign (including, without limitation, absolute, collateral, and other assignments) all or a part of its rights or obligations under this Agreement, and any lease agreement, lease purchase agreement, or fee agreement, as the case may be, or any other agreement related hereto or thereto, or transfer any and all assets of the Company, to one or more Related Entities (as defined in Section 9.01 below) without adversely affecting the benefits of the Company or its assignees pursuant to any such assignment.
agreement or the Act. The County agrees that, to the extent permitted by law, the investments in the Project by any Affiliate related to the Company (except that the investment set for in Section 4.01 hereof must be met in accordance with the terms therein) shall be considered as an investment by the Company in the Project. The Company shall provide the County and the Department of Revenue with notice of any such assignment, transfer, or investment in accordance with the Act, and the County agrees, upon the request of the Company, to take all further action necessary to implement such assignment, transfer, or investment in accordance with the provisions of the Act.

Section 8.03. Indemnification. The Company releases the County, including the members of the governing body of the County, and the employees, officers, attorneys and agents of the County (herein collectively referred to as the “Indemnified Parties”) from, agrees that the Indemnified Parties shall not be liable for, and agrees to hold the Indemnified Parties harmless against, any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to this Agreement, the Project or the use thereof, except for that occasioned by grossly negligent, reckless or intentional acts of an Indemnified Party. The Company further agrees to indemnify and save harmless Indemnified Parties against and from any and all costs, liabilities, expenses, and claims 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 Agreement or arising from any act or negligence of, or negligent failure to act where there is a duty to do so by, the Company, or any of its agents, attorneys, contractors, servants, employees, or licensees, and from and against all cost, liability, and expenses incurred in or in connection with any such claim or action or proceeding brought thereon.

All covenants, stipulations, promises, agreements, and obligations of the County contained herein shall be deemed to be covenants, stipulations, promises, agreements, and obligations of the County and not of any member of the County Council or any officer, agent, attorney, servant, or employee of the County in his or her individual capacity, and, absent bad faith, no recourse shall be had for the payment of any moneys hereunder or the performance of any of the covenants and agreements of the County herein contained or for any claims based thereon against any member of the governing body of the County or any officer, attorney, agent, servant, or employee of the County.

Notwithstanding the fact that it is the intention of the Indemnified Parties hereto that none of them shall incur any pecuniary liability by reason of the terms of this Agreement, any related agreements or the undertakings required of the County hereunder by reason of the performance of any act requested of the County 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 any Indemnified Party shall incur any such pecuniary liability directly related to the terms of this Agreement, then in such event the Company shall indemnify and hold them harmless against all claims by or on behalf of any Person, firm, or corporation or other legal entity arising out of the same and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon provided, however, that nothing herein shall absolve the Indemnified Parties from, or entitle the Indemnification Parties to indemnification from, any obligation such Indemnified Party has specifically agreed to undertake (including, without limitation, the obligation to place and maintain the Land within a multi-county park). If any action, suit, or proceeding is brought against any Indemnified Party to which such
Indemnified Party is entitled to indemnification, such Indemnified Party shall promptly notify the Company, and 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.

The indemnity specified in this Section shall be in addition to any heretofore extended by the Company to any Indemnified Party and shall survive the termination of this Agreement with respect to liability arising out of any event directly related to the terms of this Agreement or act occurring prior to such termination until the expiration of the statute of limitations associated with such underlying claim.

ARTICLE IX

FINANCING ARRANGEMENTS; CONVEYANCES; ASSIGNMENTS

Section 9.01. Conveyance of Liens and Interests; Assignment. The Company may at any time: (a) transfer all or any of its rights and interests hereunder or with respect to the Project to any Person; or (b) enter into any lending, financing, security, or similar arrangement or succession of such arrangements with any financing entity with respect to the Agreement or the Project, including without limitation any sale, leaseback, or other financing lease arrangement; provided that, in connection with any of the foregoing transfers: (i) except in connection with any transfer to another member of the Controlled Group, any of the Company Affiliates (collectively, the “Related Entities”), or transfers pursuant to clause (b) above (as to which such transfers the County hereby consents), the Company shall first obtain the prior written consent or subsequent ratification of the County; (ii) except where a financing entity, which is the income tax owner of all or part of the Project, is the transferee pursuant to clause (b) above and such transferee or financing entity assumes in writing the obligations of the Company hereunder, or where the County consents in writing, no such transfer shall affect or reduce any of the obligations of the Company hereunder, but all obligations of the Company hereunder shall continue in full force and effect as the obligations of a principal and not of a guarantor or surety; (iii) the Company, transferee, or financing entity shall, within 60 days thereof, furnish or cause to be furnished to the County and the Department of Revenue a true and complete copy of any such transfer agreement; and (iv) the Company and the transferee shall comply with all other requirements of the Transfer Provisions. The County agrees that, to the extent allowed by law, any consent hereunder (such consent shall be in the sole discretion of the County) may be approved and evidenced by a resolution of County Council.

The Company acknowledges that such a transfer of an interest under this Agreement or in the Project may cause the Project to become ineligible for a Negotiated FILOT or result in penalties under the Act absent compliance by the Company with the Transfer Provisions.
Section 9.02. Relative Rights of County and Financing Entities as Secured Parties.
The parties acknowledge the application of the provisions of Section 12-44-90 of the Act, and that
the County’s right to receive FILOT Payments hereunder shall be the same as its rights conferred
under Title 12, Chapter 49 and 54, among others, of the Code relating to the collection and
enforcement of ad valorem property taxes. The County’s rights under this Agreement, except for
its rights to receive FILOT revenues, shall be subordinate to the rights of any 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 action
on the part of the County; provided, however, that the County hereby agrees, at the Company’s
expense, to execute such agreements, documents, and instruments as may be reasonably required
by such secured party or parties to effectuate or document such subordination.

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 this 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 Project has a term of thirty (30) years, as calculated pursuant to the respective
dates when the relevant portions of the Project are placed in service, and as discussed in greater
detail in this Agreement. The County’s rights to receive indemnification and payment of
Administration Expenses pursuant hereto shall survive the expiration or termination of this
Agreement until the expiration of the statute of limitations associated with such underlying claim.

Section 10.02. Termination. The County and the Company may agree in writing to
terminate this Agreement at any time, or the Company, may, at its option, terminate this Agreement
at any time upon providing the County thirty (30) days’ written notice of such termination, in
which event the Project shall be subject to ad valorem taxes from the date of termination.

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, or Administration Expenses, which default shall not
have been cured within thirty (30) days following receipt of written notice thereof from the
County;

(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, provided, the
Company shall have such longer period of time as necessary to cure such default if the
Company proceeds promptly to cure such default and thereafter to prosecute the curing of
such default with due diligence; or

(c) a cessation of operations at the Project.

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

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

(b) 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

(c) 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. 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. Provided, however, that anything
herein to the contrary notwithstanding, any financial obligation the County may incur hereunder,
including for the payment of money, shall not be deemed to constitute a pecuniary liability or a
debt or general obligation of the County.

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 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 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.
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 or other commonly-used electronic 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 the County:

Berkeley County, South Carolina
Attn: Barry H. Jurs
Economic Development Director
1003 Highway 52
P.O. Box 6122
Moncks Corner, South Carolina 29461
Phone: (843) 719-4096

With a copy to (which shall not constitute notice):

Berkeley County, South Carolina
Attn: John O. Williams II
Berkeley County Attorney
Post Office Box 6122
Moncks Corner, South Carolina 29461
Phone: (843) 719-4010

(b) As to the Company:

[to be updated]

With a copy to:

XXXXXXXXXXXX
XXXXXXXXXXXX
XXXXXXXXXXX
XXXXXXXXXXXX

Section 12.04. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

Section 12.05. Entire Understanding. This 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 Agreement or in certificates delivered in connection with the execution and delivery hereof.

Section 12.06. Severability. In the event that any clause or provisions 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 and any Table of Contents annexed hereto 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 paragraphs of this Agreement are references to the designated articles or Sections or paragraphs 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 one and the same instrument.

Section 12.09. Amendments. Subject to the limitations set forth in the Act, this Agreement may be amended, or the rights and interest 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 a writing signed by the waiving party.

Section 12.11. Force Majeure. The Company shall not be responsible for any delays or non-performance caused in whole or in part, directly or indirectly, by strikes, accidents, freight embargoes, labor shortages, fire, floods, inability to obtain materials, conditions arising from government orders or regulations, war or national emergency, acts of God, unforeseen market forces and any other cause, similar or dissimilar, beyond the Company's reasonable control.

[SIGNATURE PAGE TO FOLLOW]
IN WITNESS THEREOF, the parties hereto, each after due authorization, have executed this Fee-in-Lieu of Tax Agreement to be effective as of the 10th day of February, 2020.

BERKELEY COUNTY, SOUTH CAROLINA

(SEAL)

By: ____________________________
Name: John P. Cribb
Title: Supervisor/Chairman, Berkeley County Council

ATTEST:

By: ____________________________
Name: Catherine R. Windham
Title: Clerk to Berkeley County Council

NUCOR CORPORATION BY AND THROUGH ITS NUCOR STEEL BERKELEY DIVISION

By: ____________________________
Name: ____________________________
Title: ____________________________
EXHIBIT A
PROPERTY DESCRIPTION

[To be updated]