

STATE OF SOUTH CAROLINA
COUNTY COUNCIL FOR KERSHAW COUNTY
ORDINANCE NO. 220.2014

FILED FOR RECORD
2014 MAR 21 PM 2:44
CLERK OF COURT
KERSHAW COUNTY, S.C.

AN ORDINANCE AUTHORIZING PURSUANT TO TITLE 12 CHAPTER 44 OF THE CODE OF LAWS OF SOUTH CAROLINA, 1976, AS AMENDED, THE EXECUTION AND DELIVERY OF A FEE-IN-LIEU OF *AD VALOREM* TAXES AGREEMENT, BY AND BETWEEN KERSHAW COUNTY, SOUTH CAROLINA, AND WEYLICHEM US INC., AS SPONSOR, AND ONE OR MORE SPONSOR AFFILIATES, TO PROVIDE FOR A FEE-IN-LIEU OF *AD VALOREM* TAXES INCENTIVE AND OTHER RELATED MATTERS.

WHEREAS, Kershaw County ("County"), a public body corporate and politic under the laws of the State of South Carolina ("State") is authorized under the provisions of Title 12, Chapter 44, of the Code of Laws of South Carolina, 1976, as amended ("Act") (i) to enter into agreements with qualifying industry to encourage investment in projects constituting economic development property through which the industrial development of the State will be promoted by inducing new and existing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ manpower and other resources of the State; and (ii) to covenant with such industry to accept fee payments in lieu of *ad valorem* taxes ("Fee Payments") with respect to such investment;

WHEREAS, the County is further authorized pursuant to Title 4, Chapter 1, of the Code of Laws of South Carolina, 1976, as amended ("MCIP Act") to create, in conjunction with one or more other counties, a multi-county industrial or business park in order to afford certain benefits and incentives to investors and facilities located in a multi-county industrial or business park;

WHEREAS, on April 27, 1999, the County and Sumter County, South Carolina (collectively, "Counties"), as authorized under the MCIP Act, jointly developed a multi-county industrial business park by entering an agreement, as subsequently amended ("Park Agreement"), to govern the operation of a multi-county industrial business park ("Park");

WHEREAS, Welychem US Inc., its affiliates and related entities (collectively, the "Company"), organized and existing under the laws of the State of Minnesota and authorized to transact business in the State, is planning an investment in the County consisting of expenditures, which are anticipated to be at least \$10,820,000, to expand an existing facility located in the County ("Project");

WHEREAS, the Company intends to create 49 new full-time or full-time equivalent jobs in the County in connection with the Project;

WHEREAS, to induce the Company to expand its facility in the County, the County desires to enter into a fee-in-lieu of *ad valorem* taxes agreement ("Fee Agreement"), pursuant to which the Company will make fee-in-lieu of *ad valorem* tax payments with respect to the Project;

WHEREAS, as further inducement to the Company, the County desires to expand the boundaries of the Park to include the Project and the site on which the Project is located ("Property"), as more particularly described in Exhibit A, in the Park;

WHEREAS, the Project is expected to provide significant economic benefits to the County and surrounding areas;

WHEREAS, pursuant to a resolution adopted December 17, 2013, the Kershaw County Council (“County Council”) approved an Inducement Resolution providing for, among other things, the commitment of the County, to: (i) enter into a negotiated FILOT agreement with the Company pursuant to the Act for the Project; and (ii) include the Project in a Park; and

WHEREAS, the County Council has caused to be prepared and presented to this meeting the form of a Fee Agreement between the County and the Company, a copy of which is attached as Exhibit B.

THE COUNTY COUNCIL OF KERSHAW COUNTY, SOUTH CAROLINA, ORDAINS:

Section 1. Pursuant to the Act, particularly Section 12-44-40(I), based on information provided by the Company without independent investigation by the County, the County Council makes the following findings:

- (a) The Project constitutes a “project” as that term is referred to and defined in Section 12-44-30 of the Act;
- (b) It is anticipated that the Project will benefit the general public welfare of the County by providing services, employment, recreation and other public benefits not otherwise adequately provided locally;
- (c) the Project gives rise to no pecuniary liability of the county or incorporated municipality or a charge against its general credit or taxing power;
- (d) the purposes to be accomplished by the Project are proper governmental and public purposes and the benefits of the project to the public are greater than the costs to the public;
- (e) it is anticipated that the cost of planning, designing, constructing and expanding the Project will require expenditures of at least \$10,820,000, and that the Company intends to create 49 new full-time or full-time equivalent jobs in the County in connection with the Project; and
- (f) having evaluated the purposes to be accomplished by the Project as proper governmental and public purposes, the anticipated dollar amount and nature of the investment to be made, and the anticipated costs and benefits to the County, the County has determined that the Project is properly classified as economic development property.

Section 2. The form and terms of the Fee Agreement, as Exhibit B, that is before this meeting is approved and all of the Fee Agreement’s terms are incorporated in this Ordinance by reference as if the Fee Agreement was set out in this Ordinance in its entirety.

Section 3. The County authorizes and approves the expansion of the Park boundaries to include the Project and the Property. The County Council authorizes the Chairman and the Clerk to the County Council to execute documents and take further actions as may be necessary to complete the expansion of the Park and the inclusion of the Project and the Property in the Park. The expansion of the Park and inclusion of the Property in the Park is complete on the adoption of this Ordinance by the County Council and adoption of a companion ordinance by Sumter County.

Section 4. Pursuant to Section 12-44-130 of the Act, the Company may request the addition of one or more Sponsor Affiliates to the Fee Agreement. Following each request, if the proposed Sponsor Affiliate agrees to be bound by the Fee Agreement, then following approval of the proposed Sponsor Affiliate by subsequent County Council resolution, the proposed Sponsor Affiliate shall be eligible for the benefits under, and become a party to, the Fee Agreement, to the extent permitted under the Act.

Section 5. The consummation of all transactions contemplated by this Ordinance and the Fee Agreement is approved.

Section 6. The Chairman of the County Council is authorized and directed to execute the (a) Fee Agreement and (b) other agreements reflecting any State-based or any other third-party incentives related to the Project, all subject to the approval of any revisions, which are not materially adverse to the County, by the County Administrator and the County Attorney; and the Clerk of the County Council is authorized and directed to attest the Fee Agreement; and the County Administrator is further authorized and directed to deliver the Fee Agreement to the Company.

Section 7. The County Administrator (and his designated appointees) is authorized and directed, in the name of and on behalf of the County, to take whatever further actions and execute whatever further documents as the County Administrator (and his designated appointees) deems to be reasonably necessary and prudent to effect the intent of this Ordinance.

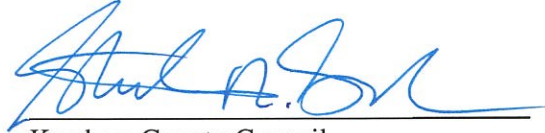
Section 8. The provisions of this Ordinance are separable. If any part of this Ordinance is, for any reason, unenforceable then the validity of the remainder of this Ordinance is unaffected.

Section 9. Any prior ordinance, resolution or order, the terms of which are in conflict with this Ordinance, is, only to the extent of that conflict, repealed.

Section 10. This Ordinance is effective after its third reading and public hearing.


[execution page follows]

KERSHAW COUNTY, SOUTH CAROLINA



Kershaw County Council

(SEAL)
ATTEST:



Merri M. Seigler, Clerk
Kershaw County Council

First Reading: December 17, 2013
Second Reading: February 25, 2014
Public Hearing: February 25, 2014
Third Reading: March 11, 2014

**EXHIBIT A
PROPERTY DESCRIPTION**

Location	Acres	Map #
2034 Larry Jeffers Rd	1.76	360-00-00-029
2104 Larry Jeffers Rd	9.80	360-00-00-095
2124 Larry Jeffers Rd	7.00	359-00-00-060
2052 Larry Jeffers Rd	8.75	360-00-00-028
2144 J L Moak Rd	0.97	360-00-00-017
2211 J L Moak Rd	3.75	360-00-00-085
2045 Larry Jeffers Rd	0.68	360-00-00-038
2055 Larry Jeffers Rd	0.56	360-00-00-040
1973 Larry Jeffers Rd	7.30	360-00-00-024A
1947 Larry Jeffers Rd	2.00	360-00-00-083
1983 Larry Jeffers Rd	1.00	360-00-00-024
1993 Larry Jeffers Rd	9.00	360-00-00-023
793 White Pond Rd	23.42	360-00-00-027
793A White Pond Rd	4.13	360-00-00-060
793B White Pond Rd	65.14	360-00-00-025
2114 Larry Jeffers Rd	67.24	360-00-00-041

**EXHIBIT B
FEE AGREEMENT**

FEE-IN-LIEU OF AD VALOREM TAXES AGREEMENT

BETWEEN

WEYLICHEM US INC.

AND

KERSHAW COUNTY, SOUTH CAROLINA

EFFECTIVE: MARCH 11, 2014

PREPARED BY:

**PARKER POE ADAMS & BERNSTEIN LLP
1201 MAIN STREET, SUITE 1450 (29201)
POST OFFICE BOX 1509
COLUMBIA, SOUTH CAROLINA 29202-1509
(803) 255-8000**

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FEE-IN-LIEU OF AD VALOREM TAXES AGREEMENT

THIS FEE-IN-LIEU OF AD VALOREM TAXES AGREEMENT ("Fee Agreement") is effective January 28, 2014, between Kershaw County, South Carolina ("County"), a body politic and corporate and a political subdivision of the State of South Carolina ("State"), acting through the Kershaw County Council ("County Council") as the governing body of the County, and Weylchem US Inc., a Minnesota corporation authorized to transact business in the State, as Sponsor, its affiliates and related entities (collectively, "Company" and with the County, the "Parties," each, a "Party").

WITNESSETH:

(a) The County is authorized by Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended ("Act"), to enter into a fee agreement with qualifying industries to induce such industries to locate in the State and to encourage industries now located in the State to expand their investments and make use of and employ the manpower and other resources of the State;

(b) Pursuant to the Act, the County has determined that (i) the Project (as defined below) will benefit the general public welfare of the County by providing services, employment, recreation and other public benefits not otherwise adequately provided locally; (ii) the Project gives rise to no pecuniary liability of the County or incorporated municipality and to no charge against its general credit or taxing power; (iii) the purposes to be accomplished by the Project are proper governmental and public purposes; and (iv) the benefits of the Project to the public are greater than the costs to the public;

(c) During the Investment Period (defined below), the Company is planning an investment in the County consisting of expenditures, which are anticipated to be at least \$10,820,000 ("Investment Requirement"), to expand an existing facility located in the County ("Project");

(d) During the Investment Period, the Company intends to create 49 new full-time or full-time equivalent jobs in the County in connection with the Project; and

(e) Pursuant to an Ordinance adopted on March 11, 2014 ("Fee Ordinance"), the County Council formally identified the Project as a "project" as defined in the Act and authorized (i) the execution and delivery of this Fee Agreement with the Company and (ii) the inclusion of the Project in a multi-county industrial/business park.

NOW, THEREFORE, AND IN CONSIDERATION of the respective representations and agreements hereinafter contained, Parties agree as follows, with the understanding that no obligation of the County described herein shall create a pecuniary liability or charge upon its general credit or taxing powers, but shall be payable solely out of the sources of payment described herein and shall not under any circumstances be deemed to constitute a general obligation to the County:

ARTICLE I DEFINITIONS

Section 1.1. Terms. The terms defined in this Article shall for all purposes of this Fee Agreement have the meaning herein specified, unless the context clearly requires otherwise.

"Additional Payments" shall have the meaning provided in Section 3.2 hereof.

"Administration Expenses" shall mean the reasonable and necessary expenses incurred by the County with respect to this Fee Agreement, including without limitation reasonable attorneys' fees; provided, however, that no such expense shall be considered an Administration Expense 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.

“Chairman” means the Chairman of the County Council of Kershaw County, South Carolina.

“Clerk of County Council” means the Clerk to County Council of Kershaw County, South Carolina.

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

“Commencement Date” means the earlier of: (a) the last day of the property tax year during which Economic Development Property (defined below) is placed in service, which is anticipated to be December 31, 2013, and (b) the last day of the property tax year that is three years from the year in which the Parties entered into this Fee Agreement.

“County” means Kershaw County, South Carolina, a body politic and corporate and political subdivision of the State of South Carolina, its successors and assigns, acting through its County Council as the governing body of the County.

“County Council” means the Kershaw County Council, the governing body of the County.

“Diminution of Value,” in respect to any Phase of the Project, means any reduction in the value based on original fair market value as determined in Step 1 of Section 3.1 of this Fee Agreement, of the items which constitute a part of the Phase which may be caused by (a) the Company’s removal of equipment pursuant to Section 3.7 of this Fee Agreement, (b) a casualty to the Phase of the Project, or any part thereof, described in Section 3.8 of this Fee Agreement, or (c) a condemnation to the Phase of the Project, or any part thereof, described in Section 3.9 of this Fee Agreement.

“Economic Development Property” means all items of real and tangible personal property comprising the Project which qualify as economic development property under the Act, which become subject to the Fee Agreement, and which are identified by the Company in connection with their annual filing of a SCDOR PT-100, PT-300 or comparable forms with the South Carolina Department of Revenue (as such filing may be amended from time to time) for each year within the Investment Period, as that period may be extended. Title to all Economic Development Property shall at all times remain vested in the Company, except as may be necessary to take advantage of the effect of Section 12-44-160.

“Equipment” means all of the machinery, equipment, furniture and fixtures, together with any and all additions, accessions, replacements and substitutions thereto or therefor acquired by the Company during the Investment Period, as that period may be extended, as a part of the Project.

“Event of Default” means any Event of Default specified in Section 3.15 of this Fee Agreement.

“Fee Term” or “Term” means the period from the date of delivery of this Fee Agreement until the last Phase Termination Date unless sooner terminated or extended pursuant to the terms of this Fee Agreement.

“FILOT Payment” means each payment in lieu of taxes which the Company is obligated to pay to the County.

“Improvement” means each improvement, together with any and all additions, accessions, replacements and substitutions thereto or therefor acquired by the Company during the Investment Period, as that period may be extended.

“Indemnified Party” and “Indemnified Parties” shall have the meaning set forth for such term in Section 3.14 of this Fee Agreement.

"Investment Period" means the period commencing on the first day Economic Development Property is purchased or acquired, which must be no later than the Commencement Date, and ending on the last day of the fifth property tax year following the Commencement Date (such ending date is anticipated to be December 31, 2018); provided a later date may apply in accordance with Section 3.1 of this Fee Agreement, or may otherwise be agreed to by the Company and County pursuant to the Act.

"Phase," in respect to the Project, means the Equipment, Improvements and Real Property, if any, placed in service during each year of the Investment Period.

"Phase Termination Date" means, with respect to each Phase of the Project, the day 20 years after each such Phase of the Project becomes subject to the terms of this Fee Agreement.

"Project" means Equipment, Improvements, and Real Property, together with the acquisition, construction, installation, design and engineering thereof, in phases. The Project involves an initial investment of sufficient sums to qualify under the Act.

"Real Property" means real property, together with all and singular rights, members, hereditaments and appurtenances belonging or in any way incident or appertaining thereto acquired or constructed by the Company; all Improvements now or hereafter situated thereon; and all fixtures now or hereafter attached thereto, but only to the extent such Improvements and fixtures are deemed to become part of the Project under the terms of this Fee Agreement.

"Removed Component" means the following types of components or Phases of the Project or portions thereof, all of which the Company, as the case may be, shall be entitled to remove from the Project with the result that the same shall no longer be subject to the terms of the Fee Agreement: (a) components or Phases of the Project or portions thereof which the Company in its sole discretion, determines to be inadequate, obsolete, worn-out, uneconomic, damaged, unsuitable, undesirable or unnecessary; or (b) components or Phases of the Project or portions thereof which the Company in its sole discretion, elects to remove pursuant to Section 3.7 or Section 3.9(b)(iii) of this Fee Agreement.

"Replacement Property" means any property which is placed in service as a replacement for any item of Equipment or any Improvement which is scrapped or sold by the Company and treated as a Removed Component under Section 3.7 hereof regardless of whether such property serves the same function as the property it is replacing and regardless of whether more than one piece of property replaces any item of Equipment or any Improvement.

"Transfer Provisions" shall mean the provisions of Section 12-44-120 of the Act, as amended or supplemented from time to time, concerning, among other things, the necessity of obtaining County consent to certain transfers.

Any reference to any agreement or document in this Article I or otherwise in this Fee Agreement are deemed to include any and all amendments, supplements, addenda, and modifications to such agreement or document.

ARTICLE II REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations of the County. The County hereby represents and warrants to the Company:

(a) the County is a body politic and corporate and a political subdivision of the State which acts through the County Council as its governing body and by the provisions of the Act is authorized and empowered to

enter into the transactions contemplated by this Fee Agreement and to carry out its obligations hereunder. The County has duly authorized the execution and delivery of this Fee Agreement and any and all other agreements described herein or therein; and

(b) by due corporate action, the County has agreed that, subject to compliance with applicable laws and to the extent permitted by the Act, each item of real and tangible personal property comprising the Project shall be considered Economic Development Property under the Act.

Section 2.2. Representations of the Company. The Company hereby represents and warrants to the County:

(a) the Company is qualified to do business in the State and has power to enter into this Fee Agreement;

(b) the Company's execution and delivery of this Fee Agreement and its compliance with the provisions hereof will not result in a default, not waived or cured, under any the Company restriction or any agreement or instrument to which the Company is now a party or by which it is bound; and

(c) the Company intends to operate the Project as a "project" within the meaning of the Act as in effect on the date hereof.

ARTICLE III FILOT PAYMENTS

Section 3.1. Negotiated FILOT Payments.

(a) Pursuant to Section 12-44-50 of the Act, the Company is required to make FILOT Payments on all Economic Development Property comprising the Project and placed in service during the Investment Period. The amount of such annual FILOT Payments shall be determined by the following procedure:

Step 1: Determine the fair market value of the Phase of the Project placed in service in any given year for such year and for the following 19 years using original income tax basis for State income tax purposes for any real property (provided, if real property is constructed for the fee or is purchased in an arms-length transaction, fair market value is deemed to equal the original income tax basis, otherwise, the Department of Revenue will determine fair market value by appraisal) and original income tax basis for State income tax purposes less depreciation for each year allowable to the Company for any personal property as determined in accordance with Title 12 of the Code, as amended and in effect on December 31 of the year in which each Phase becomes subject to the Fee Agreement, except that no extraordinary obsolescence shall be allowable but taking into account all applicable property tax exemptions which would be allowed to the Company under State law, if the property were taxable, except those exemptions specifically disallowed under Section 12-44-50(A)(2) of the Act, as amended and in effect on December 31 of the year in which each Phase becomes subject to the Fee Agreement.

Step 2: Multiply the fair market value by an assessment ratio of 6% to establish the taxable value of each Phase of the Project in the year it is placed in service and in each of the 19 years thereafter or such longer period of years that the annual fee payment is permitted to be made by the Company under the Act, as amended.

Step 3: Multiply the taxable value for each year by .3073, which is intended to be the lower of the millage rate on June 30, 2013, or the millage rate applicable on June 30th of the year in which this Fee Agreement is executed (which millage rate shall be a fixed rate for the Fee Term),

to determine the amount of the FILOT Payments which would be due in each year of the Fee Term on the payment dates prescribed by the County for such payments or such longer period of years that the annual fee payment is permitted to be made by the Company under the Act, as amended.

(b) In the event the Company invests not less than \$2,500,000 in the aggregate in the Project during the Investment Period, but fails to invest at least \$10,820,000 in the aggregate in the Project during the Investment Period, then the Project shall be subject to normal *ad valorem* tax treatment effective as of the end of the Investment Period. Without limitation of the foregoing, in the event the Company anticipates that it may not make the required \$10,820,000 investment in the Project during the Investment Period, the Company shall have the opportunity to make a written request to meet with the Chairman and/or County Administrator to discuss the anticipated shortfall and whether the County would consider the retention of some or all of the Fee benefits afforded the Company under this Fee Agreement provided that such request is made by the Company not later than 90 days prior to the end of the Investment Period. In such event, if the discussions between the Company and the County fail to result in an amendment to the Fee Agreement to address the shortfall by the end of the Investment Period for any reason, then the Project shall be subject to normal *ad valorem* tax treatment effective as of the end of the Investment Period. In the event the Company fails to invest at least \$2,500,000 in the aggregate in the Project during the Investment Period, the Project shall be subject, retroactively to the first year with respect to which FILOT Payments were to have been made, to normal *ad valorem* tax treatment, and the Company shall make payment to the County, within ninety (90) days after the end of the Investment Period of the difference between the FILOT Payments actually made and the total retroactive amount of normal *ad valorem* tax treatment referred to above, plus interest in the manner as provided in Section 12-54-25 of the Code, or any successor provision.

(c) If at any time after the expiration of the Investment Period the Company no longer maintains an aggregate investment equal to at least eighty percent (80%) of the Investment Requirement, without regard to depreciation, the Project shall, beginning with the tax year in which such deficiency first occurs, no longer qualify for the payments in lieu of taxes referred to in paragraph (a) of this Section 3.1, and shall thereafter be subject to normal *ad valorem* tax treatment.

(d) If the above-described FILOT Payments are declared invalid or unenforceable, in whole or in part, for any reason, the Parties express their intention that such payments and the Fee Agreement be reformed so as to most closely effectuate the legal, valid, and enforceable intent thereof and so as to afford the Company the benefits to be derived hereunder. If the Project is deemed to be subject to *ad valorem* taxation (including by operation of subsections (b) or (c) above), the payment in lieu of *ad valorem* taxes to be paid to the County by the Company shall be equal to the amount which would result from taxes levied on the Project by the County, municipality or municipalities, school district or school districts, and other political units as if the Project were and had not been Economic Development Property as defined under the Act. In such event, any amount determined to be due and owing to the County from the Company, as the case may be, with respect to a year or years for which payments in lieu of *ad valorem* taxes have been previously remitted by the Company to the County hereunder, shall be reduced by the total amount of payments in lieu of *ad valorem* taxes made by the Company with respect to the Project pursuant to the terms hereof, and further reduced by any abatements provided by law.

Section 3.2. Additional Payments. In addition to the Company's obligation under Section 3.1 hereof to make payment of FILOT Payments and related amounts, the Company shall pay to the County, following receipt of such supporting documentation as may be necessary to evidence the County's right to receive payment, all other amounts, liabilities and obligations which such Company assumes or agrees to pay under this Fee Agreement, including without limitation those obligations referred to in the immediately succeeding paragraph below (all such other amounts, liabilities and obligations collectively being "Additional Payments").

The Company agrees to pay Administration Expenses to the County and indemnification payments pursuant to Section 3.14 of this Fee Agreement when and as they shall become due, but in no event later than the date which is the earlier of any payment date expressly provided for in this Fee Agreement or the date which is forty-five (45) days after receiving written notice from the County or the Indemnified Party, as the case may be, accompanied by such supporting documentation as may be necessary to evidence the County's or Indemnified Party's right to receive such payment, specifying the nature of such expense and requesting payment of the same. With respect to the review of this Fee Agreement, the Administration Expenses, including for the legal fees and costs in connection with the County's legal counsel(s), shall not exceed \$7,500.

In the event of any failure on the part of the Company to pay any Additional Payments (including, but not limited to, Administration Expenses or indemnification payments), the County shall have all rights, powers and remedies provided for herein by law or equity or otherwise, including, but not limited to, the rights and remedies set forth in Section 3.16 of this Fee Agreement.

Section 3.3. [Reserved]

Section 3.4. FILOT Payments on Replacement Property. If the Company elects to replace any Removed Components and to substitute such Removed Components with Replacement Property as a part of the Project, then, pursuant and subject to Section 12-44-60 of the Act, the Company shall make statutory payments in lieu of *ad valorem* taxes with regard to such Replacement Property as follows:

(a) to the extent that the income tax basis of the Replacement Property ("Replacement Value") is less than or equal to the original income tax basis of the Removed Components ("Original Value") the amount of the FILOT Payments to be made by the Company with respect to such Replacement Property shall be calculated in accordance with Section 3.1 hereof; provided, however, in making such calculations, the original cost to be used in Step 1 of Section 3.1 shall be equal to the lesser of (x) the Replacement Value or (y) the Original Value, and the number of annual payments to be made with respect to the Replacement Property shall be equal to 20 minus the number of annual payments which have been made with respect to the oldest Removed Components disposed of in the same property tax year as the Replacement Property is placed in service; and

(b) to the extent that the Replacement Value exceeds the Original Value of the Removed Components ("Excess Value"), the FILOT Payments to be made by the Company with respect to the Excess Value shall be equal to the payment that would be due if the property were not Economic Development Property.

Section 3.5. Reductions in Payments of Taxes Upon Removal, Condemnation or Casualty. In the event of a Diminution in Value of any Phase of the Project, the FILOT Payment with regard to that Phase of the Project shall be reduced in the same proportion as the amount of such Diminution in Value bears to the original fair market value of that Phase of the Project as determined pursuant to Step 1 of Section 3.1 hereof.

Section 3.6. Place and Allocation of FILOT Payments. The Company shall make the above-described FILOT Payments directly to the County in accordance with applicable law.

Section 3.7. Removal of Equipment. The Company shall be entitled to remove, in its sole discretion, components of or Phases of the Project from the Project with the result that said components or Phases ("Removed Components") shall no longer be considered a part of the Project and shall no longer be subject to the terms of this Fee Agreement.

Section 3.8. Damage or Destruction of Project.

(a) *Election to Terminate.* In the event the Project is damaged by fire, explosion, or any other casualty, the Company shall be entitled to terminate this Fee Agreement.

(b) *Election to Rebuild.* In the event the Project is damaged by fire, explosion, or any other casualty, and if the Company does not elect to terminate this Fee Agreement, the Company may in its sole discretion commence to restore the Project with such reductions or enlargements in the scope of the Project, changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Company. All such restorations and replacements shall be considered substitutions of the destroyed portions of the Project and shall be considered part of the Project for all purposes hereof, including, but not limited to any amounts due by the Company to the County under Section 3.1 hereof.

(c) *Election to Remove.* In the event the Company elects not to terminate this Fee Agreement pursuant to subsection (a) and elects not to rebuild pursuant to subsection (b), the damaged portions of the Project shall be treated as Removed Components, to the extent allowed by law.

Section 3.9. Condemnation.

(a) *Complete Taking.* If at any time during the Fee Term title to or temporary use of the entire Project should become vested in a public or quasi-public authority by virtue of the exercise of a taking by condemnation, inverse condemnation or the right of eminent domain, or by voluntary transfer under threat of such taking, or in the event that title to a portion of the Project shall be taken rendering continued occupancy of the Project commercially infeasible in the judgment of the Company, the Company shall have the option to terminate this Fee Agreement as of the time of vesting of title by sending written notice to the County within a reasonable period of time following such vesting.

(b) *Partial Taking.* In the event of a partial taking of the Project or transfer in lieu thereof, the Company may elect: (i) to terminate this Fee Agreement; (ii) to repair and restore the Project, with such reductions or enlargements in the scope of the Project, changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Company; or (iii) to treat the portions of the Project so taken as Removed Components.

Section 3.10. Maintenance of Existence. The Company agrees (a) that it shall not take any action which will materially impair the maintenance of its corporate existence and (b) that it will maintain its good standing under all applicable provisions of State law. Notwithstanding the foregoing provisions, the Company may at any time engage on an as-needed basis in any corporate restructuring or merger activities, the result of which may be the transfer or assignment of the benefits granted hereunder to a new entity. The Company acknowledges that any mergers, reorganizations or consolidations of the Company may cause the Project to become ineligible for negotiated fees in lieu of taxes under the Act absent compliance by the Company with the Transfer Provisions; provided that, to the extent provided by Section 12-44-120 of the Act or any successor provision, any financing arrangements entered into by the Company with respect to the Project and any security interests granted by the Company in connection therewith shall not be construed as a transfer for purposes of the Transfer Provisions. Notwithstanding anything in this Fee Agreement to the contrary, it is not intended in this Fee Agreement that the County shall impose transfer restrictions with respect to the Company or the Project as are any more restrictive than the Transfer Provisions.

Section 3.11. Confidentiality/Limitation on Access to Project. The County acknowledges and understands that the Company utilizes confidential and proprietary "state-of-the-art" manufacturing equipment and techniques and that a disclosure of any information relating to such equipment or techniques, including, but not limited to, disclosures of financial or other information concerning the Company's operations would result in substantial harm to the Company and could thereby have a significant detrimental impact on the Company's employees and also upon the County. Therefore, the County agrees that, except as required by law and pursuant to the County's police powers, neither the County nor any employee, agent

or contractor of the County: (a) shall request or be entitled to receive any such confidential or proprietary information; (b) shall request or be entitled to inspect the Project or any property associated therewith; provided, however, that if an Event of Default shall have occurred and be continuing hereunder, the County shall be entitled to inspect the Project provided they shall comply with the remaining provisions of this Section; or (c) shall disclose or otherwise divulge any such confidential or proprietary information to any other person, firm, governmental body or agency, or any other entity unless specifically required to do so by State law. Prior to disclosing any confidential or proprietary information or allowing inspections of the Project or any property associated therewith, the Company may require the execution of reasonable, individual, confidentiality and non-disclosure agreements by any officers, employees or agents of the County or any supporting or cooperating governmental agencies who would gather, receive or review such information or conduct or review the results of any inspections.

Section 3.12. Assignment and Subletting. This Fee Agreement may be assigned in whole or in part and the Project may be subleased as a whole or in part by the Company, provided that: (a) such assignment or sublease is made in compliance with Section 12-44-120 of the Act; (b) no assignment, transfer or sublease 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, except that the Company shall be released from its obligations hereunder upon the written consent and release of the County, which shall not be unreasonably withheld, conditioned or delayed, to any sublease, assignment or transfer; and (c) the Company or the assignee or sublessee shall give the County written notice of any such assignment or transfer and within thirty (30) days thereafter shall furnish or cause to be furnished to the County a true and complete copy of any such sublease, assignment or other transfer which shall include assumption of the indemnity as provided in Section 3.14 hereof, and all other provisions of this Fee Agreement. The Company acknowledges that such a transfer of an interest under this Fee Agreement may cause the applicable portion of the Project to become ineligible for negotiated fees in lieu of taxes under the Act absent compliance by the Company with the Transfer Provisions; provided that, to the extent permitted by Section 12-44-120 of the Act, or any successor provision, any financing arrangements entered into by the Company with respect to the Project and any security interests granted by the Company in connection therewith shall not be construed as a transfer for purposes of the Transfer Provisions. The County hereby consents to any transfers by the Company to any affiliate of the Company at any time. For such purposes, "affiliate" shall mean any person or entity directly or indirectly controlling, controlled by or under common control with the Company. Consent to such transfer, however, shall not constitute a release by the County under the first sentence of this Section, which release must be separately obtained from the County. The County shall, if the Company requests, acknowledge the receipt and sufficiency of any such notice.

Section 3.13. Leased Equipment. To the extent that applicable law allows or is revised or construed to allow the benefits of the Act, in the form of FILOT Payments as described in Section 3.1 hereof, to be applicable to personal property to be installed in the buildings and leased to but not purchased by the Company from at least one third party, under any form of lease, then that personal property, at the Company's sole election, is subject to FILOT Payments to the same extent as the Equipment under this Fee Agreement. This Fee Agreement is interpreted or modified as appropriate to give proper application to this Fee Agreement to the additional personal property without any amendment to this Fee Agreement; therefore, no action by County Council is required. The County Administrator, after consulting with the County Attorney, is authorized to make modifications, if any, as may be appropriate to give effect to this Section.

Section 3.14 Indemnification Covenants.

(a) Notwithstanding any other provisions in this Fee Agreement or in any other agreements with the County, the Company agrees to indemnify and save the County, its County Council members, elected

officials, employees, servants and agents (collectively, the "Indemnified Parties") harmless against and from all claims by or on behalf of any person, firm or corporation arising from the conduct or management of, or from any work or thing done on the Project by the Company, its members, officers, employees, servants, contractors, and agents during the Term, and, the Company further shall indemnify and save the Indemnified Parties harmless against and from all claims arising during the Term from (i) any condition of the Project, (ii) any breach or default on the part of the Company in the performance of any of its obligations under this Fee Agreement, (iii) any act of negligence of the Company or any of its agents, contractors, servants, employees or licensees pertaining to the Project or this Fee Agreement, (iv) except in such cases where the County has released the Company pursuant to Section 3.12 hereof, any act of negligence of any assignee or sublessee of the Company, or of any agents, contractors, servants, employees or licensees of any assignee or sublessee of the Company pertaining to the Project or this Fee Agreement, or (v) any environmental violation, condition, or effect with respect to the Project. The Company shall indemnify and save the County harmless from and against all costs and expenses incurred in or in connection with any such claim arising as aforesaid or in connection with any action or proceeding brought thereon, and upon notice from the County, the Company shall defend it in any such action, prosecution or proceeding.

(b) Notwithstanding the fact that it is the intention of the parties that the Indemnified Parties shall not incur pecuniary liability by reason of the terms of this Fee Agreement, or the undertakings required of the County hereunder, by reason of the granting of the fee in lieu of tax, by reason of the execution of this Fee Agreement, by reason of the performance of any act requested of it by the Company, or by reason of the County's relationship to the Project or by the operation of the Project by the Company, including all claims, liabilities or losses arising in connection with the violation of any statutes or regulations pertaining to the foregoing, nevertheless, if the County or any other Indemnified Party should incur any such pecuniary liability, then in such event the Company shall indemnify and hold them harmless against all claims by or on behalf of any person, firm or corporation, 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, and upon notice, the Company shall defend them in any such action or proceeding; provided, however, that such indemnity shall not apply to the extent that any such claim is attributable to (i) the grossly negligent acts or omissions or willful misconduct of the County, its agents, officers or employees, or (ii) any material breach of this Fee Agreement by the County.

(c) Notwithstanding anything in this Fee Agreement to the contrary, the above-referenced covenants insofar as they pertain to costs, damages, liabilities or claims by any Indemnified Party resulting from any of the above-described acts of or failure to act by the Company, shall survive any termination of this Fee Agreement with respect to the Company.

Section 3.15. Events of Default. The following shall be "Events of Default" under this Fee Agreement, and the term "Events of Default" shall mean, whenever used with reference to this Fee Agreement, any one or more of the following occurrences:

(a) Failure by the Company to make, upon levy, the FILOT Payments described in Section 3.1 hereof; provided, however, that the Company shall be entitled to all redemption rights granted by applicable statutes; or

(b) Failure by the Company to perform any of the other material terms, conditions, obligations or covenants of the Company hereunder, which failure shall continue for a period of ninety (90) days after written notice from the County to the Company specifying such failure and requesting that it be remedied, unless the County shall agree in writing to an extension of such time prior to its expiration.

Section 3.16. Remedies on Default. Whenever any Event of Default shall have occurred and shall be continuing, the County, after having given written notice to the Company of such default and after the

expiration of a 30 day cure period, shall have the option to take any one or more of the following remedial actions:

(a) Terminate the Fee Agreement; or

(b) Take whatever action at law or in equity that may appear necessary or desirable to collect any FILOT Payments, Additional Payments and other amounts due and thereafter to become due hereunder or to enforce performance and observance of any obligation, agreement or covenant of the Company under this Fee Agreement.

In addition to all other remedies herein provided, the nonpayment of FILOT Payments shall constitute a lien for tax purposes as provided in Section 12-44-90 of the Act. In this regard, and notwithstanding anything in this Fee Agreement to the contrary, the County may exercise the remedies provided by general law (including, without limitation, Title 12, Chapter 49, of the Code) relating to the enforced collection of *ad valorem* taxes to collect any FILOT Payments due hereunder.

Section 3.17. Future Filings. As permitted under Section 12-44-55 of the Act, the Company and County hereby waive application of any of the recapitulation requirements as set forth in Section 12-44-55. Whenever the Company shall be required by any governmental or financial entity to file or produce any reports, notices, returns, or other documents while this Fee Agreement is in effect, the Company or owner of the Project at the time shall promptly furnish to the County through the County Attorney the completed form of such required documents together with a certification by the Company or owner of the Project that such documents are accurate and not in violation of any provisions of law or of the other documents of this transaction, and that the documents meet the legal requirements of such filing or delivery. In the event of the failure or refusal of the Company or owner to comply with this provision, the Company or owner agrees to pay the statement for reasonable attorneys' fees and administrative time presented by the County for producing and filing such documents, such statement to be paid within 30 days after presentation by the County, and to promptly pay any fees, penalties, assessments or damages imposed upon the County by reason of its failure to duly file or produce such documents.

Section 3.18. Fiscal Year; Property Tax Year. If the Company's fiscal year changes so as to cause a change in the Company's property tax year, then the timing of the requirements of this Fee Agreement are automatically revised accordingly.

ARTICLE IV MISCELLANEOUS

Section 4.1. Notices. Any notice, election, demand, request or other communication to be provided under this Fee Agreement shall be effective when delivered to the party named below or when deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed as follows (or addressed to such other address as any party shall have previously furnished in writing to the other party), except where the terms hereof require receipt rather than sending of any notice, in which case such provision shall control:

AS TO THE COUNTY:

Kershaw County, South Carolina
County Administrator
515 Walnut Street
Camden, South Carolina 29020
Telephone: 803.425.1501
Facsimile: 803.425.1546

WITH A COPY TO:
(does not constitute notice)

Kershaw County Attorney
Ken Dubose, Esquire
515 Walnut Street
Camden, South Carolina 29020
Telephone: 803.432.1992
Facsimile: 803.425.1546

AS TO THE COMPANY:

Weylchem US Inc.
Gary Henderson
2114 Larry Jeffers Rd.
Elgin South Carolina 29045
Telephone: 803.438.7767
Facsimile: 803.438.4498

WITH A COPY TO:
(does not constitute notice)

Parker Poe Adams & Bernstein LLP
Sam C. Moses, Esquire
1201 Main Street, Suite 1450
Columbia, South Carolina 29201
Telephone: 803.255.8000
Facsimile: 803.255.8017
Email: sammoses@parkerpoe.com

Section 4.2. *Binding Effect.* This Fee Agreement shall be binding, in accordance with its terms, upon and inure to the benefit of the Company and the County, and their respective successors and assigns. In the event of the dissolution of the County or the consolidation of any part of the County with any other political subdivision or the transfer of any rights of the County to any other such political subdivision, all of the covenants, stipulations, promises and agreements of this Fee Agreement shall bind and inure to the benefit of the successors of the County from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of the County has been transferred.

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

Section 4.4. *Governing Law.* This Fee Agreement and all documents executed in connection herewith shall be construed in accordance with and governed by the laws of the State.

Section 4.5. *Headings.* The headings of the articles and sections of this Fee Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Fee Agreement.

Section 4.6. *Amendments.* The provisions of this Fee Agreement may only be modified or amended in writing by an agreement or agreements entered into between Parties.

Section 4.7. *Further Assurance.* From time to time the County agrees to execute and deliver to the Company such additional instruments as either may reasonably request to effectuate the purposes of this Fee Agreement.

Section 4.8. *Severability.* If any provision of this Fee Agreement is declared illegal, invalid or unenforceable for any reason, the remaining provisions hereof shall be unimpaired, and such illegal, invalid or unenforceable provision shall be reformed so as to most closely effectuate the legal, valid and enforceable intent thereof and so as to afford the Company with the maximum benefits to be derived herefrom, it being

the intention of the County to offer the Company the strongest inducement possible to locate the Project in the County.

Section 4.9. *Limited Obligation.* ANY OBLIGATION OF THE COUNTY CREATED BY OR ARISING OUT OF THIS FEE AGREEMENT SHALL BE A LIMITED OBLIGATION OF THE COUNTY, PAYABLE BY THE COUNTY SOLELY FROM THE PROCEEDS DERIVED UNDER THIS FEE AGREEMENT AND SHALL NOT UNDER ANY CIRCUMSTANCES BE DEEMED TO CONSTITUTE A GENERAL OBLIGATION OF THE COUNTY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY LIMITATION.

Section 4.10. *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, fire, floods, inability to obtain materials, conditions arising from government orders or regulations, war or national emergency, acts of God, and any other cause, similar or dissimilar, beyond the Company's reasonable control.

Section 4.11. *Execution Disclaimer.* Notwithstanding any other provision, the County is executing as statutory accommodation to assist the Company in achieving the intended benefits and purposes of the Act. The County has made no independent legal or factual investigation regarding the particulars of this transaction and it executes in reliance upon representations by the Company that this document complies with all laws and regulations, particularly those pertinent to industrial development projects in South Carolina.

*[TWO SIGNATURE PAGES FOLLOW]
[REMAINDER OF PAGE INTENTIONALLY BLANK]*

IN WITNESS WHEREOF, the County, acting by and through the County Council, has caused this Fee Agreement to be executed in its name and on its behalf by the County Council Chairman and to be attested by the Clerk to County Council, effective as of the day and year first above written.

KERSHAW COUNTY, SOUTH CAROLINA



(SEAL)
ATTES.

By: [Signature]
Kershaw County, South Carolina

By: [Signature]
Merri M. Seigler, Clerk to County Council
Kershaw County, South Carolina

IN WITNESS WHEREOF, the Company, acting by and through its duly authorized officer, has caused this Fee Agreement to be executed in its name and on its behalf, effective as of the day and year first above written.

Weylchem US Inc.

By: Tomás Harinich
Name: HAWICH
Title: CHAIRMAN WEYLCHEN US INC.