

**FIRST AMENDMENT TO
AMENDED AND RESTATED
FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT**

by and between

LEXINGTON COUNTY, SOUTH CAROLINA

and

NEPHRON SC, INC.

Dated as of _____, 2021

This First Amendment pertains to that certain Amended and Restated Fee in Lieu of Tax and Incentive Agreement, dated as of June 23, 2020, between Lexington County, South Carolina and Nephron SC, Inc.

FIRST AMENDMENT TO AMENDED AND RESTATED FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

THIS FIRST AMENDMENT TO AMENDED AND RESTATED FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT (the “First Amendment”), dated as of _____, 2021 (the “Effective Date”), by and between **LEXINGTON COUNTY, SOUTH CAROLINA**, a body politic and corporate and a political subdivision of the State of South Carolina (the “County”), and **NEPHRON SC, INC.**, a corporation organized and existing under the laws of the State of South Carolina, acting for itself, any affiliates and any other project sponsors (collectively, the “Company”) (Each of the County and the Company, a “Party, and collectively, the “Parties”).)

W I T N E S S E T H:

WHEREAS, to induce companies to locate in the State of South Carolina (the “State”) and to encourage companies now located in the State to expand their investments and thus make use of and employ workers and other resources of the State, the County is authorized by the Code of Laws of South Carolina 1976, as amended (the “Code”) and particularly Title 12, Chapter 44 thereof (the “Fee Act”), to enter into fee agreements with companies meeting the requirements of the Fee Act which identifies certain property of such companies as economic development property, and the County is further authorized by Title 4, Chapter 1 of the Code (the “Multi-County Park Act” or, as to Sections 4-1-175 of the Multi-County Park Act and, by incorporation, Section 4-29-68 of the Code, the “Special Source Act”) and Article VIII, Section 13 of the Constitution of the State to designate properties as part of a multi-county industrial or business park (a “Multi-County Park”) and to use all or a portion of the payments-in-lieu-of-taxes resulting from such designation to pay, or reimburse such companies for paying, through the provision to such companies of special source revenue credits, the cost of infrastructure serving a project and of improved or unimproved real estate and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise (“Special Source Improvements”), all of which enhances the economic development of the County; and

WHEREAS, pursuant to an Ordinance duly enacted by the County Council of the County (the “County Council”) on June 23, 2020, and in order to induce the Company to continue to make, or cause to be made, new investment through the establishment and/or expansion of facilities located in the County (the “Project”), the County entered into that certain Amended and Restated Fee in Lieu of Tax and Incentive Agreement, dated as of June 23, 2020, with the Company (the “Amended and Restated Fee Agreement”) whereby the County will, under certain circumstances, accept certain negotiated payments-in-lieu-of-taxes with respect to the Project and further agreed to provide the Company and the Project with the benefits of certain special source revenue credits, to include and maintain the Project in a Multi-County Park, and to convey certain real property to the Company; and

WHEREAS, in consideration of the Company’s commitment to further invest, or cause further investment, in the Project and create additional employment, or cause additional employment, at the Project in the County, and in accordance with Section 12-44-40(K) of the Fee Act, the County has determined to approve certain modifications to the Amended and Restated Fee Agreement, all as memorialized, ratified, and detailed more particularly herein; and

WHEREAS, the County Council authorized the modifications to the Amended and Restated Fee Agreement referenced above and set forth in this First Amendment, and authorized the execution and delivery of this First Amendment, pursuant to Ordinance No. 21-09 duly enacted by the County Council on _____, 2021.

NOW, THEREFORE, in consideration of the foregoing recitals which are incorporated herein by reference and other lawful consideration, and respective representations and agreements hereinafter contained, the receipt and sufficiency of which are hereby acknowledged, the County and the Company agree as follows:

Section 1. Definitions. Defined terms utilized herein and not otherwise defined herein shall have the meanings ascribed to them in the Amended and Restated Fee Agreement.

Section 2. Amendment of Amended and Restated Fee Agreement. The Amended and Restated Fee Agreement is hereby amended as follows:

(a) Section 1.01 is hereby amended as follows:

- i. The definition of “Agreement” is deleted in its entirety and the following is substituted therefor:

“**Agreement**” means this Agreement dated as of June 23, 2020 between the County and the Company, as the same may be amended from time to time, including, without limitation, by that certain First Amendment to Amended and Restated Fee in Lieu of Tax and Incentive Agreement, by and between the County and the Company, dated as of _____, 2021.

- ii. The definition of “County Spec Building” is included and inserted to read as follows:

“**County Spec Building**” shall mean the speculative building which the County, as of _____, 20__, has completed, acquired, constructed, and installed, or caused to be completed, acquired, constructed, and installed, on Parcel 10.

- iii. The definition of “First Enhanced Special Source Credits Threshold” is deleted in its entirety and the following is substituted therefor:

“**First Enhanced Special Source Credits Threshold**” shall mean, with respect to the Project, investment by the Company and/or any Affiliates, in the aggregate, of at least \$452,000,000 (without regard to depreciation, reassessment, or other diminution in value) within the Phase 2 Contractual Minimum Requirements Compliance Period.

- iv. The definition of “Investment Period” is deleted in its entirety and the following is substituted therefor:

“**Investment Period**” shall mean the period beginning with the first day

that economic development property (as defined in the Fee Act) is purchased or acquired for the Project, whether before or after the date of this Agreement, and ending on the last day of the thirteenth Property Tax Year following the Commencement Date, which such ending date the parties hereto acknowledge and agree is December 31, 2027.

- v. The definition of “Parcel 10” is included and inserted to read as follows:

“Parcel 10” means the real property identified as “Parcel 10” on **Exhibit A** attached hereto and now or hereafter comprising a portion of the Site pursuant to **Section 5.10** hereof.

- vi. The definition of “Phase 2 Contractual Minimum Requirements” is deleted in its entirety and the following is substituted therefor:

“Phase 2 Contractual Minimum Requirements” shall mean, with respect to the Project, (i) investment by the Company and/or any Affiliates, in the aggregate, of at least \$402,000,000 (without regard to depreciation, reassessment, or other diminution in value) and (ii) the creation by the Company and/or any Affiliates, in the aggregate, of at least 1,168 Full-Time Jobs, all within the Phase 2 Contractual Minimum Requirements Compliance Period.

- vii. The definition of “Phase 2 Contractual Minimum Requirements Compliance Period” is included and inserted to read as follows:

“Phase 2 Contractual Minimum Requirements Compliance Period” shall mean the period beginning with the first day that economic development property (as defined in the Fee Act) is purchased or acquired for the Project, whether before or after the date of this Agreement, and ending on the last day of the tenth Property Tax Year following the Commencement Date.

- viii. The definition of “Phase 3 Contractual Minimum Requirements” is included and inserted to read as follows:

“Phase 3 Contractual Minimum Requirements” shall mean, with respect to the Project, (i) investment by the Company and/or any Affiliates, in the aggregate, of at least \$502,000,000 (without regard to depreciation, reassessment, or other diminution in value) and (ii) the creation by the Company and/or any Affiliates, in the aggregate, of at least 1,418 Full-Time Jobs, all within the Phase 3 Contractual Minimum Requirements Compliance Period.

- ix. The definition of “Phase 3 Contractual Minimum Requirements Compliance Period” is included and inserted to read as follows:

“Phase 3 Contractual Minimum Requirements Compliance Period”

shall mean the period beginning with the first day that economic development property (as defined in the Fee Act) is purchased or acquired for the Project, whether before or after the date of this Agreement, and ending on the last day of the thirteenth Property Tax Year following the Commencement Date.

- x. The definition of “Project” is deleted in its entirety and the following is substituted therefor:

“Project” shall mean (i) the Site and all buildings structures, fixtures, and other improvements now or hereafter located at the Site including, without limitation, rail, water, sewage treatment and disposal facilities, and air and other pollution control facilities; (ii) all machinery, apparatus, equipment, fixtures, office facilities, furnishings, pollution control equipment and other personal property now or hereafter located at the Site, as well as the airplane and helicopter referenced in Resolution R-19-06 adopted by the County Council on August 27, 2019; and (iii) any Replacement Property; provided, however, except as to Replacement Property and any other property placed in service in the County in re-satisfaction of the investment maintenance levels as set forth in **Sections 5.6(a)(ii), 5.7(a)(ii), and 5.10(b)** hereof, the term Project shall be deemed to include such real property improvements and personal property, whether now existing or hereafter constructed or acquired, only to the extent placed in service during the Investment Period.

- xii. The definition of “Purchase and Sale Agreement” is included and inserted to read as follows:

“Purchase and Sale Agreement” shall have the meaning ascribed thereto in **Section 5.10** of this Agreement.

- xii. The definition of “Second Enhanced Special Source Credits Threshold” is deleted in its entirety and the following is substituted therefor:

“Second Enhanced Special Source Credits Threshold” shall mean, with respect to the Project, (i) investment by the Company and/or any Affiliates, in the aggregate, of at least \$529,910,000 (without regard to depreciation, reassessment, or other diminution in value) and (ii) the creation by the Company and/or any Affiliates, in the aggregate, of at least 1,303 Full-Time Jobs, all within the Phase 2 Contractual Minimum Requirements Compliance Period.

(b) Section 3.2(b) is hereby deleted in its entirety.

(c) The first two sentences of the fourth paragraph of Section 4.1 are hereby deleted in their entirety and the following is substituted therefor:

All investment in, and job creation at, the Project by the Company, by any Affiliate, including, without limitation, Nephron Pharmaceuticals Corporation, Nephron

Sterile Compounding Center LLC, Nephron Pharmacy LLC, Kennedy Campus LLC, Kennedy Family OZ Fund LLC, Kennedy Innovation Complex LLC, InjectEZ LLC, and Nephron Nitrile LLC, and by any third party to the extent that the Company and/or any Affiliate utilizes the property funded by such third party pursuant to any financing, lease, license, or other access arrangement, shall, to the extent permitted by law, count toward each investment and job requirement or threshold specified in this Agreement including, without limitation, the Phase 1 Contractual Minimum Requirements, the Enhanced Investment FILOT Minimum Requirements, the Standard FILOT Minimum Requirement, the Phase 2 Contractual Minimum Requirements, the First Enhanced Special Source Credits Threshold, the Second Enhanced Special Source Credits Threshold, and the Phase 3 Contractual Minimum Requirements. Notwithstanding anything in this Agreement or the other Documents to the contrary, each such Affiliate or third party, upon written notice by the Company to the County of the identity of such Affiliate or third party, which notice is hereby provided to the County with respect to Nephron Pharmaceuticals Corporation, Nephron Sterile Compounding Center LLC, Nephron Pharmacy LLC, Kennedy Campus LLC, Kennedy Family OZ Fund LLC, Kennedy Innovation Complex LLC, InjectEZ LLC, and Nephron Nitrile LLC shall hereby also be entitled, to the extent permitted by the Act, to all rights, interests, and benefits to which the Company is entitled under this Agreement including, without limitation, the Negotiated Payments-in-Lieu-of-Taxes and special source revenue credits arrangements and shall also be bound by all of the duties, restrictions, and obligations to which the Company has agreed upon under this Agreement, all only with respect to each such entity's portion of the Project.

- (d) The last sentence of Section 4.5 is hereby deleted in its entirety and the following is substituted therefor:

Not later than the April 30 following each property tax year corresponding to each tax year comprising the Special Source Credit payment period set forth in **Section 5.9(a)** hereof, the Company will furnish to the County Department of Economic Development a copy of the most recent quarterly UCE 120 report or reports, as applicable, filed with the South Carolina Department of Employment and Workforce with respect to employment at the Project by the Company and any Affiliates. The Company shall redact the following information from such UCE 120 report: any reference to individual employee's names, street addresses, Social Security Numbers, or payroll. The employees' resident zip codes shall not be redacted if provided in such UCE 120 report. Given that the UCE 120 report includes all employees who were paid during the reporting quarter, including former employees that are no longer working at the Project, the records on these former employees shall be clearly highlighted. The County will subtract the number of former employees from the total number of employees for the reporting quarter in determining the current head count for purposes of any job creation requirements or thresholds set forth herein.

- (e) Section 5.5 is hereby amended as follows:

- i. Subsection (a) is deleted in its entirety and the following is substituted therefor:

(a) In the event that either or both of the Phase 2 Contractual Minimum Requirements are not satisfied by the end of the Phase 2 Contractual Minimum Requirements Compliance Period, the Project shall continue to be eligible for the Negotiated Payments-in-Lieu-of-Taxes arrangement set forth in **Section 5.1** hereof, but the Fee Term as set forth in **Section 5.3** hereof shall revert for each Stage of the Project, to a period beginning from the last day of the Property Tax Year in which such Stage of the Project is placed in service through the last day of the Property Tax Year which is the twenty-ninth year following such year.

- ii. Subsection (b) is deleted in its entirety and the following is substituted therefor:

(b) In the event that the Phase 2 Contractual Minimum Requirements are satisfied by the end of the Phase 2 Contractual Minimum Requirements Compliance Period, but the Company and/or any Affiliates fail to, in the aggregate, complete, acquire, construct, and install, or cause the completion, acquisition, construction, and installation of, a building on Parcel 7 amounting to at least two hundred fifty thousand (250,000) square feet (the “Spec Building Square Footage Requirement”) by the end of the Phase 2 Contractual Minimum Requirements Compliance Period, the Company shall pay, or cause to be paid to, the County for the value of the Parcel 7 (36.00 acres) conveyance at the value of \$60,000 per acre, but any such amount shall be prorated based on the square footage of any such building constructed by the end of the Phase 2 Contractual Minimum Requirements Compliance Period, by using the following formula: a payment in an amount equal to the product of (y) the product of sixty thousand (\$60,000) dollars and the total number of acres comprising Parcel 7 (36.00 acres), multiplied by (z) a fraction, the numerator of which shall be the actual square footage of the building constructed on Parcel 7 by the end of the Phase 2 Contractual Minimum Requirements Compliance Period, and the denominator of which shall be the Spec Building Square Footage Requirement. Additionally, any such amount due to the County shall be paid to the County together with the Negotiated Payments-in-Lieu-of-Taxes due with respect to the Project for the Property Tax Year ending at the end of the Phase 2 Contractual Minimum Requirements Compliance Period.

For example, if by the end of the Phase 2 Contractual Minimum Requirements Compliance Period, a building of 200,000 square feet has been constructed on Parcel 7, the amount due to the County under such formula would be \$432,000, and in the event that the Phase 2 Contractual Minimum Requirements Compliance Period ends on December 31, 2024, such payment would be due to the County on or before January 15, 2026.

(f) Section 5.7(a) is hereby amended as follows:

- i. The first sentence of subsection (i) is deleted in its entirety and the following is substituted therefor:

Should either or both of the Phase 2 Contractual Minimum Requirements not be satisfied by the end of the Phase 2 Contractual Minimum Requirements Compliance Period, upon written notice by the County that such requirements have not been satisfied, the Company shall have until the end of the Property Tax Year following the Property Tax Year in which such written notice from the County is received by the Company to either show compliance or to come into compliance with any such requirement.

- ii. Subsection (ii) is deleted in its entirety and the following is substituted therefor:

(ii) Should the Phase 2 Contractual Minimum Requirements be satisfied by the end of the Phase 2 Contractual Minimum Requirements Compliance Period, or by the end of the cure period described in **Section 5.7(a)(i)** hereof, as the case may be, but within seven (7) Property Tax Years following the Property Tax Year in which such requirements are initially satisfied, investment in the Project, without regard to depreciation, reassessment, or other diminution in value, falls below the investment level set forth in the Phase 2 Minimum Contractual Requirements, the Company shall pay, or cause to be paid to, the County for the value of the Parcel 6 and Parcel 7 conveyance upon the terms set forth in **Section 5.7(a)(i)** hereof; provided, that, notwithstanding the foregoing, should, as a result, in whole or in part, of force majeure, acts of God, or other matters beyond the reasonable control of the Company, or other potential disaster(s) or catastrophe(s), such as epidemics or pandemics, investment in the Project, without respect to depreciation, reassessment, or other diminution in value, fall below the investment level set forth in the Phase 2 Minimum Contractual Requirements during the above-referenced seven-year period, the above-referenced payment shall only become due to the County if, within seven (7) Property Tax Years following the Property Tax Year during which such shortfall occurs, such investment level in the Project is not re-satisfied.

(g) Section 5.9 is hereby amended as follows:

- i. Subsection (a) is deleted in its entirety and the following is substituted therefor:

(a) As reimbursement for investment in Special Source Improvements related to the Project, and subject to the requirements of the Special Source Act and **Section 5.9(d)-(e)** hereof, the County agrees to provide to the Company, and the Company shall be entitled to receive, special source

revenue credits against any and all Payments-in-Lieu-of-Taxes due as to the Project with respect to twenty (20) consecutive Property Tax Years commencing with the Property Tax Year for which the initial Payment-in-Lieu-of-Taxes becomes due pursuant to **Section 5.1** hereof, as follows: (i) for the first ten consecutive (10) Property Tax Years, in an amount equal to twenty percent (20%) of each annual Payment-in-Lieu-of-Taxes due (the “Initial Special Source Credits”); and (ii) for the remaining ten consecutive (10) Property Tax Years, in an amount equal to fifteen percent (15%) of each annual Payment-in-Lieu-of-Taxes due (the “Additional Special Source Credits”); provided, however, if the First Enhanced Special Source Credits Threshold is satisfied within the Phase 2 Contractual Minimum Requirements Compliance Period, the County agrees that the Additional Special Source Credits percentage shall automatically increase from fifteen percent (15%) to twenty percent (20%) for each of the ten (10) Property Tax Years referenced above; provided further, however, if the Second Enhanced Special Source Credits Threshold is satisfied within the Phase 2 Contractual Minimum Requirements Compliance Period, the County agrees that the Additional Special Source Credits percentage shall automatically increase from fifteen percent (15%) to twenty-five percent (25%) for each of the ten (10) Property Tax Years referenced above.

- ii. The first sentence of the introductory paragraph of subsection (e) is deleted in its entirety and the following is substituted therefor:

(e) If either or both of the Phase 2 Contractual Minimum Requirements are not satisfied by the end of the Phase 2 Contractual Minimum Requirements Compliance Period, the Additional Special Source Credits shall terminate prospectively.

- (h) Section 5.10 is hereby included and inserted to read as follows:

SECTION 5.10. Property Conveyance – County Spec Building and Parcel 10.

The County hereby agrees, pursuant to that certain Purchase and Sale Agreement by and between the County and Kennedy Innovation Complex LLC to be dated of even date herewith or such other date as the parties thereto may agree (collectively, the “Purchase and Sale Agreement”), and subject to, and in accordance with, the terms and provisions set forth in the Purchase and Sale Agreement, to convey title to Parcel 10 together with the County Spec Building and other improvements located on Parcel 10 to Kennedy Innovation Complex LLC. The County hereby acknowledges and agrees that, upon such conveyance of Parcel 10 together with County Spec Building and other real property improvements located on Parcel 10, such land shall automatically comprise a portion of the Site, and such land and real property improvements shall automatically comprise a portion of the Project, both without further action, consent, or approval of the County.

- (a) Should either or both of the Phase 3 Contractual Minimum Requirements not be satisfied by the end of the Phase 3 Contractual

Minimum Requirements Compliance Period, upon written notice by the County that such requirements have not been satisfied, the Company shall pay, or cause to be paid to, the County (i) for the conveyance of the land comprising Parcel 10 ([16.7] acres) at the value of \$60,000 per acre, and (ii) an amount equal to \$400,000, within ninety (90) days after written notice from the County to the Company of the failure to satisfy such requirements.

(b) Should the Phase 3 Contractual Minimum Requirements be satisfied by the end of the Phase 3 Contractual Minimum Requirements Compliance Period, but within seven (7) Property Tax Years following the Property Tax Year in which such requirements are initially satisfied, investment in the Project, without regard to depreciation, reassessment, or other diminution in value, falls below the investment level set forth in the Phase 3 Minimum Contractual Requirements, the Company shall pay, or cause to be paid to, the County for the value of the land comprising Parcel 10 conveyed upon the terms set forth in **Section 5.10(a)** hereof; provided, that, notwithstanding the foregoing, should, as a result, in whole or in part, of force majeure, acts of God, or other matters beyond the reasonable control of the Company, or other potential disaster(s) or catastrophe(s), such as epidemics or pandemics, investment in the Project, without respect to depreciation, reassessment, or other diminution in value, falls below the investment level set forth in the Phase 3 Minimum Contractual Requirements during the above-referenced seven-year period, the above-referenced payment shall only become due to the County if, within seven (7) Property Tax Years following the Property Tax Year during which such shortfall occurs, such investment level in the Project is not re-satisfied.

(c) At the closing for conveyance of title to Parcel 10, as referenced above, the County and the Company shall execute a memorandum of this Agreement in substantially the form attached hereto as **Exhibit D**, and made a part hereof (the "Phase 3 Memorandum of Agreement"). The Phase 3 Memorandum of Agreement shall be recorded in the Office of the Register of Deeds for Lexington County, South Carolina. This Agreement shall not be recorded. The provisions contained in this **Section 5.10**, all of which are applicable only upon recordation of the deed conveying Parcel 10 as referenced above, shall be binding upon Parcel 10 and shall run with Parcel 10; provided, however, upon the compliance with the investment and job requirements set forth in this **Section 5.10**, the provisions of this **Section 5.10** shall thereafter be automatically void and of no further force and effect and in such event, the County shall, and hereby agrees to, file an appropriate termination of the Phase 3 Memorandum of Agreement in the Office of the Register of Deeds for Lexington County, South Carolina. The terms and provisions of this **Section 5.10** shall survive any termination of this Agreement under **Section 10.1** hereof.

(i) The second sentence of Section 8.2 is hereby deleted in its entirety and the

following is substituted therefor:

The County hereby expressly pre-approves and consents to any transfer or assignment by the Company or any Affiliate of any or all of its interest in the Project and/or this Agreement to, or merger or consolidation with, any other Affiliate and to any resulting transfer or assignment of any or all of such interest among such entities including, without limitation, to one or more of Nephron Pharmaceuticals Corporation, Nephron Sterile Compounding Center LLC, Nephron Pharmacy LLC, Kennedy Campus LLC, Kennedy Family OZ Fund LLC, Kennedy Innovation Complex LLC, InjectEZ LLC, and Nephron Nitrile LLC.

(j) The following is hereby included and inserted on Exhibit A to read as follows:

Parcel 10

[TO BE INSERTED]

(k) The form of Exhibit D attached to this First Amendment is hereby included and inserted as Exhibit D to the Amended and Restated Fee Agreement.

Section 3. Remaining Terms and Provisions. Except as expressly amended hereby, the terms and provisions of the Amended and Restated Fee Agreement shall remain unchanged and in full force and effect.

Section 4. Entire Understanding. The Amended and Restated Fee Agreement, as amended by this First Amendment, expresses the entire understanding and all agreements of the parties hereto pertaining to the matters set forth herein and therein 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 the Amended and Restated Fee Agreement, as amended by this First Amendment, or in certificates delivered in connection with the execution and delivery hereof.

Section 5. Severability. In the event that any clause or provision of this First Amendment 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 6. Multiple Counterparts; Electronic Signatures. This First Amendment may be executed in multiple counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument. Signature pages may be delivered with original signatures or by photostatic reproduction, telephonic facsimile transmission, email or other electronic transmission or other similar means whereby each original signature has been reproduced (including pdf or any electronic signature complying with the U.S. federal E-SIGN Act of 2000, e.g., www.docuSign.com), and all reproduced signatures shall be deemed “electronic signatures” and equivalent to an original signature for all purposes.

[Signature Pages Follow]

IN WITNESS THEREOF, the parties hereto, each after due authorization, have executed this First Amendment to Amended and Restated Fee in Lieu of Tax and Incentive Agreement to be effective as of the Effective Date.

LEXINGTON COUNTY, SOUTH CAROLINA

(SEAL)

By: _____
M. Todd Cullum
Chair of Lexington County Council

ATTEST:

By: _____
Brittany M. Shumpert
Clerk to Lexington County Council

NEPHRON SC, INC.

By: _____
Name: _____
Title: _____

Form of Exhibit D to Amended and Restated Fee Agreement

See attached.

EXHIBIT D

FORM OF PHASE 3 MEMORANDUM OF AGREEMENT

STATE OF SOUTH CAROLINA)	
)	PHASE 3 MEMORANDUM OF
COUNTY OF LEXINGTON)	AGREEMENT
)	

THIS PHASE 3 MEMORANDUM OF AGREEMENT (this "Memorandum") is entered into by and between **COUNTY OF LEXINGTON, SOUTH CAROLINA**, a body politic and corporate and a political subdivision of the State of South Carolina (hereinafter referred to as "County"), and **NEPHRON SC, INC.**, a South Carolina corporation (hereinafter referred to as "Nephron"), to be effective as of the ___ day of _____, 2021.

WHEREAS, County and Nephron entered into that certain First Amendment to Amended and Restated Fee in Lieu of Tax and Incentive Agreement dated as of _____, 2021 (the "First Amendment"), concerning, in part, land located in Lexington County, South Carolina, as more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "Property").

NOW, THEREFORE, in consideration of TEN AND 00/100 Dollars (\$10.00), and other good and valuable consideration, the receipt and legal sufficiency of which is hereby expressly acknowledged, the parties hereto acknowledge and agree as provided below:

1. This Memorandum is entered into to place all parties on notice of the rights and interests of County and Nephron created pursuant to the First Amendment, as amended from time to time.
2. This Memorandum is intended to be only a memorandum in respect to the First Amendment, to which First Amendment reference is made for the full agreement between the parties.
3. This Memorandum is executed for the purpose of recordation in order to give notice of certain terms, provisions, and conditions of the First Amendment and is not intended, and shall not be construed, to define, limit or modify the First Amendment. In the event of any conflict between the provisions of this instrument and the First Amendment, the provisions of the First Amendment shall control.
4. This Memorandum may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument.

[SIGNATURE PAGES ATTACHED]

[Remainder of page intentionally left blank]

EXHIBIT "A"

DESCRIPTION OF PROPERTY

Parcel 10

[TO BE INSERTED.]

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (“Agreement”) made and entered into this ____ day of May, 2021, by and between the **County of Lexington South Carolina** (“Seller”) and **Kennedy Innovation Complex LLC**, 4500 12th Street Extension, West Columbia, South Carolina 29172 (“Buyer”).

WHEREAS, Seller and Buyer desire to enter into an agreement whereby Buyer is to purchase the property hereinafter described upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that for and in consideration of the mutual promises hereinafter set forth and other valuable consideration, Seller and Buyer agree as follows:

1. SALE/PURCHASE. Seller shall sell and Buyer shall purchase all of Seller’s right, title and interest in and to the following real property: that certain approximately 16.7 acre parcel known as Lot 10 in the Saxe Gotha Industrial Park with improvements constituting a “shell” building totaling approximately 104,000 square feet, West Columbia, South Carolina 29172, more particularly described in Exhibit “A” attached hereto. Additionally, Seller shall sell and Buyer shall purchase all of Seller’s right, title and interest in and to all improvements attached thereto including, but not limited to the Lexington County Spec Building and related improvements. This purchase and sale is “As Is Where Is”.

The foregoing real property being sold shall be referred to collectively hereinafter as the “Premises”.

2. PURCHASE PRICE/PAYMENT. After application and deduction of all forgivable grants and tax credits and assuming the same are fully forgiven and credited, the

purchase price of the Premises shall be Four Million Eight Hundred Thousand and No/100 Dollars (\$4,800,000.00) (the “Purchase Price”) which shall be paid in cash at the Closing. Within four (4) business days of full execution of this Agreement, Buyer shall escrow with Nexsen Pruet LLC (“Escrow Agent”) the sum of Ten Thousand and no/100 Dollars (\$10,000.00) as an escrow deposit to be credited against the Purchase Price. Notwithstanding anything to the contrary, the terms and provisions of this Agreement are and shall be subject at all times to the terms and provisions of that certain First Amendment to the Amended and Restated Fee Agreement dated June ____, 2021 by and between Buyer et al and Seller.

3. For a period commencing on the date first written above and continuing for twenty (20) days after Seller has obtained all required approvals for the purchase and sale of the Premises (the “Inspection Period”), Buyer shall be entitled to conduct such investigations of the Premises as it deems necessary and advisable to include title, survey, wetlands and environmental. If Buyer discovers a materially adverse matter involving title, survey, wetlands and/or environmental during such Inspection Period, Buyer may elect to close or terminate this Agreement. If Buyer terminates, Escrow Agent shall return to Buyer the deposit referenced in Paragraph 2 above.

4. CLOSING/REQUIREMENTS. The closing shall take place as follows:

(a) Where/When:

(i) Location: Offices of Nexsen Pruet, 1230 Main Street, Suite 700, Columbia, South Carolina 29201;

(ii) Date: As soon as possible, but no later than twenty (20) days after (a) the Seller has obtained all required approvals; or (b) the end of the Inspection Period, whichever comes later; and

(iii) Time: At 10:00 a.m. or such other time as mutually agreed.

(b) Possession: Sole possession of the Premises will be given at closing or unless otherwise agreed in writing.

(c) Delivery of Deed: At closing, the Seller shall deliver to Buyer a Limited Warranty Deed, to the Premises in exchange for the consideration specified in Paragraph 2 hereinabove from Buyer.

(d) Seller shall be responsible, at its sole cost and expense, for obtaining a plat of survey (the “Survey”), in form and content acceptable to Buyer, of the Premises and obtaining all required approvals for the recordation thereof.

5. CONDITIONS OF TITLE. At the closing, the Premises shall be conveyed with good and marketable fee simple title, free and clear from all liens and encumbrances. Notwithstanding the foregoing, Buyer acknowledges that Seller will retain an non-exclusive access easement for pedestrian, vehicular and truck ingress and egress over and across the Premises, for the benefit of property adjacent to the Premises and retained by Seller (Parcel 11), the form of which reciprocal easement agreement will be mutually agreeable to the parties (the “REA”). The exact location and dimensions of the retained access easement shall be shown on the Survey. Additionally, Seller acknowledges that Seller will grant Buyer an easement to drain surface water runoff from the Premises across, through, in, and under the stormwater retention/detention facilities located on Seller’s property adjacent to the Premises (Parcel 11), which drainage rights will also be covered in the REA. The parties acknowledge that the REA shall be in a commercially reasonable form customarily executed in similar circumstances and shall provide *inter alia* as follows: (i) the access easement will be non-exclusive and shall serve and benefit the Premises as well as the parcel retained by Seller; (ii) the first party desiring to use

the easement area shall have the right to construct the driveway improvements in a commercially reasonable fashion and the non-constructing party shall reimburse the constructing party one-half of all costs and expenses incurred in connection with designing, permitting and constructing the driveway improvements; and (iii) the cost of maintaining, repairing and rebuilding the driveway or portions thereof, over time and whenever needed, shall be borne equally by the parties; provided, however, Buyer shall perform all required maintenance and repairs and seek reimbursement of one-half of the costs thereof. For purposes of defining “Parties” in this Section, a subsequent owner of adjacent Parcel 11 shall replace the Seller herein for any obligations set forth in this Section.

6. WARRANTIES OF SELLER. The Seller warrants and discloses to Buyer the following:

(a) Seller has full power and authority to enter into this Agreement and to convey the Premises in accordance with the terms hereof.

(b) Condition of Premises: “As Is”.

(c) Detention/Retention Ponds: Purchaser accepts responsibility for all maintenance and repair of all detention/retention ponds located on the property described herein in Exhibit A and as set forth in the Permanent Stormwater System Maintenance and Responsibility Agreement recorded in Book 20928 at page 4929 in the ROD Office for Lexington County.

(d) Further Completion of County Permitting Requirement: Purchaser shall complete any remaining County permitting requirements, including but not limited to, grassing stabilization.

(e) Utilities: Purchaser shall be responsible for completion of all utilities to the spec building.

7. EXPENSES. Expenses of the transaction shall be borne as follows:

(a) Pro rata expenses: All property taxes, if any, for the calendar year in which the closing takes place shall be prorated to the date of closing.

(b) Other expenses: Each party shall pay for its own attorney's fees. Buyer shall bear all costs and expenses of the closing and recordation of the transfer documents except for the cost of preparing a deed, which cost will be borne by Seller.

8. DEFAULT. The remedies of the parties in the event of default are as follows:

(a) Buyer's default: In the event of default by Buyer under the terms of this Agreement, Seller shall be entitled to pursue any other remedy available at law or in equity.

(b) Seller's default: In the event of default by Seller, Buyer may pursue any remedy available at law or in equity except as otherwise provided herein in the event of a title defect.

9. RISK OF LOSS. The risk of loss to the Premises shall be borne by Seller from the date hereof to the date of closing.

10. BROKERAGE FEES. Seller and Buyer represents that neither has and shall not incur any brokerage or similar real estate commission or other commission with respect to the transaction which is the subject of this Agreement for which the other party may be responsible.

11. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the signatories hereto, their respective heirs, executors, administrators, successors and assigns.

12. MODIFICATIONS. This Agreement shall not be amended or terminated by agreement unless made in writing signed by Buyer and Seller.

13. NOTICES. Any notice required from one party to the other under this Agreement shall be sufficient if mailed to the party concerned by certified mail, return receipt requested, at the following address:

(1) Seller:

County Administrator
212 South Lake Drive
Lexington, South Carolina 29072

(2) Buyer:

4500 12th Street Extension
West Columbia, South Carolina 29172
Attn: Lou Wood Kennedy

14. SURVIVAL. The terms and provisions of this Agreement shall survive the closing described in Paragraph 4 above.

15. ASSIGNMENT. All rights hereunder shall be freely assignable by Buyer and if assigned by it any and all acts performed by it hereunder may be performed by his assigns.

(SIGNATURE PAGE TO FOLLOW)

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the day and year first above written.

SELLER:

County of Lexington, South Carolina

By:

Name: _____

Its: _____

BUYER:

Kennedy Innovation Complex LLC,
a South Carolina limited liability company

By: _____

Name: Lou Wood Kennedy

Its: Manager

By: _____

Name: William P. Kennedy

Its: Manager

EXHIBIT A