

**“Ordinance”** means the Ordinance adopted by the County on July 31, 2013, authorizing this Fee Agreement.

**“Payments-in-Lieu-of-Taxes”** means the payments to be made by the Company pursuant to Section 5.1 of this Fee Agreement.

**“Project”** means the Equipment, Improvements, and Real Property, together with the acquisition, construction, installation, design and engineering thereof, including both (i) property which is eligible for inclusion as economic development property under the Act and becomes subject to this Fee Agreement, and (ii) other taxable property. The parties agree that Project property shall consist of such property so identified by the Company in connection with its annual filing with DOR of an SCDOR PT-300, or such comparable form, and with such schedules as DOR may provide in connection with projects subject to the Act (as such filing may be amended or supplemented from time to time) for each year within the Investment Period.

**“Real Property”** means the land identified on Exhibit A hereto, together with all and singular rights, members, hereditaments and appurtenances belonging or in any way incident or appertaining thereto to the extent such become a part of the Project under this Fee Agreement; all Improvements now or hereafter situated thereon; and all fixtures now or hereafter attached thereto, to the extent such Improvements and fixtures become part of the Project under this Fee Agreement. The parties understand and agree that, on the effective date of this Fee Agreement, the Company is subleasing, or plans to sublease, the Real Property from the Landlord, and that there is no present plan for the Company to own the Real Property. However, if the Company does come to own any or all of the Real Property, the Company may make any or all of such Real Property subject to this Fee Agreement if and as otherwise allowed by this Fee Agreement and the Act. The Real Property is noted here and in Exhibit A for the present purpose of identifying the land on which the Company’s investment in Equipment will be made.

**“Replacement Property”** means any property acquired or constructed after the Investment Period as a replacement for any property theretofore forming a part of the Project and disposed of, or deemed disposed of, as provided in Section 5.2 hereof.

**“SSRC Agreement”** means the August 1, 2013, Special Source Revenue Credit Agreement between the County and the Landlord.

**“Stage”** in respect of the Project means the year in which Equipment, Improvements and Real Property, if any, are placed in service during each year of the Investment Period.

**“State”** means the State of South Carolina.

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



**ARTICLE II**  
**LIMITATION OF LIABILITY; INDUCEMENT**

**SECTION 2.1. *Limitation of Liability.*** Any obligation which the County may incur for the payment of money as a result of the transactions described in the documents shall never constitute an indebtedness of the County within the meaning of any state constitutional provision or statutory limitation and shall never create a pecuniary liability of the County or a charge upon its general credit or against its taxing powers but shall be payable solely out of the funds received by it under the documents.

**SECTION 2.2. *Inducement.*** The County and the Company acknowledge that pursuant to the Act, and subject to the provisions of the Act and this Fee Agreement, no part of the Project will be subject to *ad valorem* property taxation in the State, and that the Company has indicated that this factor, among others, has induced the Company to enter into this Fee Agreement.

**ARTICLE III**  
**REPRESENTATIONS, WARRANTIES AND COVENANTS**

**SECTION 3.1. *Representations and Warranties of the County.*** The County makes the following representations and warranties to the Company and covenants with the Company as follows:

(a) The County is a body politic and corporate and a political subdivision of the State and is authorized and empowered by the Act to execute the Documents to which it is a party and to fulfill its obligations described in the Documents. By proper action, the County Council has duly authorized the execution and delivery of the Documents to which the County is a party and has taken all such action as is necessary to permit the County to enter into and fully perform the transactions required of it under the Documents.

(b) Neither the execution and delivery of the Documents, nor the consummation and performance of the transactions described in the Documents, violate, conflict with or will, to its knowledge, result in a material breach of any of the material terms, conditions or provisions of any agreement, restriction, statute, law, rule, order or regulation to which the County is now a party or by which it is bound.

(c) Neither the existence of the County nor the rights of any members of County Council to their offices is being contested and none of the proceedings taken to authorize the execution, delivery and performance of such of the Documents as require execution, delivery and performance by the County has been repealed, revoked, amended or rescinded.

(d) All consents, authorizations and approvals required on the part of the County in connection with the execution, delivery and performance by the County of such of the Documents as require execution, delivery and performance by the County have been obtained and remain in full force and effect as of the date hereof or will be obtained.



(e) The Documents to which the County is a party are (or, when executed, will be) legal, valid and binding obligations of the County enforceable against the County in accordance with their respective terms, except as such terms may be limited by laws affecting creditors' rights generally.

(f) Based on information supplied by the Company, the Project constitutes a "project" within the meaning of the Act.

(g) By due corporate action, the County has agreed that, subject to compliance with applicable laws, each item of real and tangible personal property comprising the Project shall be considered economic development property under the Act.

**SECTION 3.2. *Covenants by the County.*** The County covenants with the Company as follows:

(a) The County agrees to do all things deemed reasonably necessary by the Company in connection with this Fee Agreement, including but not limited to performance of its obligations in the Documents, all for the purposes of promoting industrial development, developing trade, and utilizing and employing the manpower and natural resources of the County and the State.

(b) The County agrees to use its best efforts to place the Project in a Multi-County Industrial Park before December 31, 2013, and to maintain the Project in such Multi-County Industrial Park for the Fee Term.

(c) Upon receipt of written request from the Company, the County agrees to give due and proper consideration to any request the Company may make for one or more extensions of the Investment Period in accordance with and up to the limits permitted under Section 12-44-30(13) of the Act. Such extension, if any, may be authorized by a resolution of County Council. Upon the granting of any such extension the County agrees to cooperate with the Company in assisting the Company to file with the DOR a copy of such extension within the time period required under the Act.

**SECTION 3.3. *Representations and Warranties of the Company.*** The Company makes the following representations and warranties to the County:

(a) The Company is a limited partnership duly organized and validly existing under the laws of the State of Delaware and qualified to do business in the State of South Carolina. The Company has full corporate power to execute the Documents to which it is a party and to fulfill its obligations described in the Documents and, by proper corporate action, has authorized the execution and delivery of the Documents to which it is a party.

(b) Neither the execution and delivery of the Documents to which the Company is a party, nor the consummation and performance of the transactions described in the Documents violate, conflict with, or will, to its knowledge, result in a material breach of any of the material



terms, conditions or provisions of any agreement, restriction, statute, law, rule, order or regulation to which the Company is now a party or by which it is bound.

(c) All consents, authorizations and approvals required on the part of the Company in connection with the Documents and the transactions contemplated thereby and the acquisition, construction and installation of the Project have been obtained and remain in full force and effect or will be obtained unless the failure to have or obtain such consent, authorization or approval does not have a material adverse effect on the Company.

(d) The Documents to which the Company is a party are (or, when executed, will be) legal, valid and binding obligations of the Company enforceable against the Company in accordance with their respective terms, except as such terms may be limited by laws affecting creditors' rights generally.

**ARTICLE IV  
COMMENCEMENT AND COMPLETION OF THE PROJECT; MODIFICATIONS**

**SECTION 4.1. *The Project.***

(a) The Company has acquired, constructed and/or installed or made plans for the acquisition, construction and/or installation of certain economic development property which comprises the Project.

(b) Pursuant to the Act, the Company and the County hereby agree that all qualifying property comprising the Project shall be economic development property as defined under the Act.

(c) Notwithstanding any other provision of this Fee Agreement, the Company may place real property and/or personal property into service at any time under this Fee Agreement, but only real property and/or personal property placed into service during the Investment Period (and Replacement Property) will qualify as economic development property under the Act.

**SECTION 4.2. *Diligent Completion.*** The Company agrees to use its reasonable efforts to cause the acquisition, construction and installation of the Project to be completed. Anything contained in this Fee Agreement to the contrary notwithstanding, the Company shall not be obligated to complete the acquisition of the Project and may terminate this Fee Agreement with respect to all or a portion of the Project as set forth in Article X.

**SECTION 4.3. *Modifications to Project.*** The Company may make or cause to be made from time to time any additions, modifications or improvements to the Project that it may deem desirable for its business purposes.

**ARTICLE V  
PAYMENTS-IN-LIEU-OF-TAXES; DISPOSITION OF  
PROPERTY; REPLACEMENT PROPERTY; FEE TERM; MINIMUM INVESTMENT**



**SECTION 5.1. *Payments-in-Lieu-of-Taxes.*** The parties acknowledge that under the MCIP Law, the Project is exempt from *ad valorem* property taxes. However, the Company shall be required to make the Payments-in-Lieu-of-Taxes with respect to the Project as provided in this Section. In accordance with the Act, and unless this Fee Agreement is sooner terminated, the Company shall make annual Payments-in-Lieu-of-Taxes with respect to the Project, said payments being due and payable and subject to penalty assessments in the manner prescribed by the Act. Such amounts shall be calculated and payable as follows:

(a) The Company has agreed to make annual Payments-in-Lieu-of-Taxes with respect to the Project in an amount equal to the property taxes that would be due with respect to such property, if it were taxable, but using an assessment ratio of 6.0% and, to the extent allowed by the Act, a millage rate equal to the applicable millage rate for each year during the term of this Fee Agreement; provided, however, that, pursuant to the Act, in no event may the applicable millage rate for a particular year be lower than the applicable millage rate for the Project site on June 30, 2013, or June 30, 2012, whichever is lower. Subject in all events to the provisions of the Act, the fair market value of the Project shall be determined as follows:

- (i) for any real property, if real property is constructed for the fee or is purchased in an arm's length transaction, using the original income tax basis for South Carolina income tax purposes without regard to depreciation; otherwise, real property must be reported at its fair market value for *ad valorem* property taxes as determined by appraisal; and
- (ii) for personal property, using the original tax basis for South Carolina income tax purposes less depreciation allowable for property tax purposes, except that the Company is not entitled to extraordinary obsolescence.

(b) The Payments-in-Lieu-of-Taxes must be made on the basis that the Project property, if it were otherwise subject to *ad valorem* property taxes, would be allowed all applicable exemptions from those taxes, except for the exemptions allowed under Section 3(g) of Article X of the South Carolina Constitution and Section 12-37-220(B)(32) and (34) of the Code of Laws of South Carolina, as amended.

(c) The Company shall make Payments-in-Lieu-of-Taxes for each year during the term hereof beginning with respect to the property tax year following the year in which Project property is first placed in service. The Payments-in-Lieu-of-Taxes shall be made to the County Treasurer on the due dates which would otherwise be applicable for *ad valorem* property taxes for the Project, with the first payment being due on the first date following the delivery of this Fee Agreement when, but for this Fee Agreement, such taxes would have been paid with respect to the Project.

(d) Any property placed in service as part of the Project during the Investment Period shall be included in the calculation of payments pursuant to subsections (a) and (b) above for a period not exceeding 30 years following the year in which such property is placed in service.



Pursuant to and subject to the Act, (i) Replacement Property shall be included (using its income tax basis) in the calculation of payments pursuant to subsections (a), (b) and (c), above, but only up to the original income tax basis of property which is being disposed of in the same property tax year; (ii) to the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the property which it is replacing, the portion of such property allocable to the excess amount shall be subject to annual payments calculated as if the exemption for economic development property under the Act were not allowed; (iii) more than one piece of Replacement Property can replace a single piece of economic development property; (iv) Replacement Property does not have to serve the same function as the property it is replacing; (v) Replacement Property is entitled to the Payments-in-Lieu-of-Taxes pursuant to subsections (a) and (b) above for the period of time remaining on the 30-year period for the property which it is replacing; and (vi) Replacement Property is deemed to replace the oldest property subject to this Fee Agreement, whether real or personal, which is disposed of in the same property tax year as the Replacement Property is placed in service.

(e) If by the end of the Investment Period, the Company and the Landlord have, in the aggregate, (i) invested less than \$7.5 million but more than \$6.0 million in taxable property at the site of the Project (without regard to whether some or all of the investment is subject to this Fee Agreement or to the SSRC Agreement) or (ii) created fewer than 500 Jobs but at least 400 Jobs, then the assessment ratio shall be prospectively increased for the remainder of the Fee Term from 6% to 7%.

(f) If by the end of the Investment Period, the Company and the Landlord have, in the aggregate, (i) invested less than \$6.0 million but more than \$5.25 million in taxable property at the site of the Project (without regard to whether some or all of the investment is subject to this Fee Agreement or the SSRC Agreement) or (ii) created fewer than 400 Jobs but at least 350 Jobs, then the assessment ratio shall be prospectively increased for the remainder of the Fee Term from 6% to 8%.

(g) If by the end of the Investment Period, the Company and the Landlord have, in the aggregate, (i) invested less than \$5.25 million in taxable property at the site of the Project (without regard to whether some or all of the investment is subject to this Fee Agreement or to the SSRC Agreement) or (ii) created fewer than 350 Jobs, then this Fee Agreement shall terminate and the Company shall make the payments to the County required by Section 12-44-140(A) of the Act.

## **SECTION 5.2. *Disposal of Property; Replacement Property.***

(a) In any instance where the Company in its sole discretion determines that any item or items of property included in the Project have become, in whole or in part, inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company may remove such item (or such portion thereof as the Company shall determine) or items and sell, trade in, exchange or otherwise dispose of it or them (as a whole or in part) without any responsibility or accountability to the County therefor. The loss or removal from the Project of any property, or any portion thereof, as a result of fire or other casualty or by virtue of the exercise or threat of the