

ARTICLE VI

PROPERTY TAX EXEMPTION AND ABATEMENT

SECTION 6.1. *Protection of Tax Exempt Status of the Project.* In order to insure that the Project is not and will not become subject to ad valorem property taxes under the laws of the State of South Carolina or any political subdivision thereof, the County and the Company covenant that:

- (a) all right and privileges granted to either party under this Fee Agreement or any other Documents shall be exercised so that if any conflict between this Section and any other provision in any document shall arise, then in that case, this Section shall control;
- (b) the County and the Company have not knowingly committed or permitted and will not knowingly commit or permit (as to any act over which either has control) any act which would cause the Project to be subject to ad valorem property taxes by the County or political subdivision of the State of South Carolina in which any part of the Project is located; and
- (c) the Company will maintain the identity of the Project as a "project" in accordance with the Act.

ARTICLE VII

EFFECTIVE DATE

SECTION 7.1. *Effective Date.* This Fee Agreement shall become effective upon its execution and delivery by the parties hereto unless a later date is specified herein.

ARTICLE VIII

SPECIAL COVENANTS

SECTION 8.1. The County acknowledges and understands that the Company or any Sponsor Affiliate may have and maintain at the Project certain confidential and proprietary information. The County agrees that, except as required by law, neither the County nor any employee, agent or contractor of the County: (i) shall request or be entitled to receive any such confidential or proprietary information, or (ii) shall request or be entitled to inspect the Project or any property associated therewith, in either case, unless they shall comply with the remaining provisions of this Section, or (iii) shall knowingly and intentionally disclose or otherwise divulge any such confidential or proprietary information to which it may become privy to any other person, firm, governmental body or agency, or any other entity unless specifically required to do so by State law and providing prompt notice thereof to the Company. 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, to the extent permitted by law, 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. In the event that the County is required to disclose any confidential or proprietary information obtained from the Company or any Sponsor Affiliate to any third party, the County agrees to provide the Company with reasonable advance notice of such requirement before making such disclosure, and to cooperate with any attempts by

the Company or any Sponsor Affiliate to obtain judicial or other relief from such disclosure requirement. Nothing in this Section shall be construed to limit the rights and abilities of the County to take those actions and to obtain such information as it is otherwise authorized by law to take or obtain in order to conduct its governmental functions, including but not limited to those functions related to property and other taxes.

SECTION 8.2. *Indemnification Covenants*

(a) The Company shall and agrees to hold the County and its County Council members, officers, agents and employees harmless from all pecuniary liability in connection with those reasons set forth in (i) or (ii) of Section 8.1 and to reimburse them for all reasonable expenses to which any of them might be subject due to the approval and entering into of the documents or the fulfillment of their obligations under this Fee Agreement in the implementation of its terms and provisions.

(b) Notwithstanding the fact that it is the intention of the parties that neither the County nor any of its members, officers, agents and employees shall incur any pecuniary liability to any third-party (i) by reason of the terms of this Fee Agreement or the undertakings of the County required hereunder, or (ii) by reason of the performance of any act in connection with the entering into and performance of the transactions described in the Documents, if the County or any of its members, officers, agents or employees should incur, or be notified that it might incur, any such pecuniary liability, then, in that event the Company shall indemnify and hold harmless the County and its members, officers, agents and employees against all pecuniary claims by or on behalf of any person, firm or Company, arising out of the same, and all costs and expenses incurred in connection with any such claim, and upon notice from the County, the Company at its own expense shall defend the County and its officers, agents and employees in any such action or proceeding.

(c) Notwithstanding the foregoing, the Company shall not be obligated to indemnify the County or any of its individual members, officers, agents and employees for expenses, claims, losses or damages arising from the intentional or willful misconduct or gross negligence of the County or any of its individual officers, agents or employees.

SECTION 8.3. *Assignment and Leasing.* With the County's consent, which shall not be unreasonably withheld, any or all of the Company's or any Sponsor Affiliate's interest in the Project and/or this Fee Agreement may be transferred or assigned by the Company, any such Sponsor Affiliate or any assignee to any other entity; provided, however, that such consent is not required in connection with financing-related transfers or any other transfers not requiring the consent of the County under the Act. The County hereby expressly consents to any transfer or assignment of all or part of their respective interests in the Project and/or this Fee Agreement among the Company and any Sponsor Affiliates. The County agrees that the County Council can provide any required consent by a resolution of County Council. The Chair of County Council and the County Administrator are hereby expressly jointly authorized to evidence the County's consent by executing such documents as the Company may reasonably request. Except as otherwise required by the Act or this Fee Agreement, a transaction or an event of sale, assignment, leasing, transfer of an interest herein, disposal, or replacement of all or part of the Project shall not be a termination of this Fee Agreement in whole or in part or a basis for changing the fee payments due under Section 12-44-50 of the Act.

SECTION 8.4. *Sponsor Affiliates.* The Company may designate from time to time additional Sponsor Affiliates pursuant to the provisions of Section 12-44-30(19) and Section 12-44-130 of the Act, which Sponsor Affiliates shall be entities which may join with the Company to make investments with respect to the Project, or which may participate in the financing of such investments, and which agree to

be bound by the terms and provisions of this Fee Agreement. All Sponsor Affiliates (not designated herein) which otherwise meet the requirements of Section 12-44-30(19) and Section 12-44-130 of the Act must be approved by resolution of the County Council and must execute a Joinder Agreement, in substantially the form attached hereto as Exhibit B, by which a Sponsor Affiliate agrees to be bound by terms of this Fee Agreement.

The Company shall provide the County and the Department of Revenue with written notice of any Sponsor Affiliate designated pursuant to this Section within 90 days after the end of the calendar year during which any such Sponsor Affiliate has placed in service assets to be used in connection with the Project, all in accordance with Section 12-44-130(B) of the Act.

ARTICLE IX

EVENT OF DEFAULT AND REMEDIES

SECTION 9.1. *Events of Default Defined.* The occurrence of any one or more of the following events shall be an "Event of Default" under this Fee Agreement:

(a) If the Company shall fail to make any Payment-in-Lieu-of-Taxes or any other amount required under this Fee Agreement; or

(b) If the Company or the County shall fail to observe or perform any covenant, condition or agreement required herein to be observed or performed by the Company or the County (other than as referred to in Section 9.1(a) hereof), and such failure shall continue for a period of 30 days after written notice of default has been given to the Company by the County or to the County by the Company; provided if by reason of "force majeure" as hereinafter defined the Company or the County is unable in whole or in part to carry out any such covenant, condition or agreement or if it takes longer than 30 days to cure such default and the Company or the County is diligently attempting to cure such default, there shall be no Event of Default during such inability. The term "force majeure" as used herein shall mean circumstances not reasonably within the control of the parties, such as without limitation, acts of God, strikes, lockouts or other industrial disturbances; war; acts of public enemies; mobilization or military conscription on a large scale; order of any kind of the government of the United States or any State, or any civil or military authority other than the County Council; insurrections; riots; landslides; earthquakes; fires; lightning; storms; droughts; floods; requisitions, confiscation, or commandeering of property; fuel restrictions; general shortages of transport, goods, or energy; or

(c) If any material representation or warranty on the part of the Company or the County made in the Documents, or in any report, certificate, financial or other statement furnished in connection with the Documents or the transactions described in the Documents shall have been false or misleading in any material respect.

SECTION 9.2. *Remedies on Default.* Whenever any Event of Default shall have happened and be subsisting the County may take whatever action at law or in equity may appear legally required or necessary or desirable to collect the payments and other amounts then due or to enforce performance and observance of any obligation, agreement or covenant of the Company, under the Documents. Although the parties acknowledge that the Project is exempt from ad valorem property taxes, the County and any other taxing entity affected thereby may, without limiting the generality of the foregoing, exercise the remedies provided by general law (Title 12, Chapter 49 and Title 12, Chapter 51) and the Act relating to the enforced collection of taxes.

SECTION 9.3. *No Additional Waiver Implied by One Waiver.* In the event any warranty, covenant or agreement contained in this Fee Agreement should be breached by the Company or the County and thereafter waived by the other party to this Fee Agreement, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach.

ARTICLE X

OPTION OF THE COMPANY

SECTION 10.1. *Option to Terminate.* From time to time (including without limitation any time during which there may be subsisting an Event of Default) and at any time upon at least 30 days notice, the Company may terminate this Fee Agreement with respect to the entire Project or any portion thereof, and a Sponsor Affiliate may terminate this Fee Agreement with respect to its Project property. Upon termination of all or part of this Fee Agreement, the Company will become liable for ad valorem property taxes on the Project or such portion thereof as is so terminated from inclusion in the Project, as well as for any amounts already due and owing under this Fee Agreement, which latter amounts, if any, shall be paid to the County with the next installment of Payments-in-Lieu-of-Taxes pursuant to Section 5.1(g), or, if the termination is of the entire Project, then within the date which is sooner of (i) the due date otherwise applicable under this Fee Agreement or (ii) 90 days of termination.

ARTICLE XI

MISCELLANEOUS

SECTION 11.1. *Notices.* All notices, approvals, consents, requests and other communications hereunder shall be in writing and may be delivered personally, or may be sent by facsimile or certified mail, return receipt requested, to the following addresses, unless the parties are subsequently notified of any change of address in accordance with this Section 11.1:

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| If to the Company: or any Sponsor Affiliate | Attn: Tax Department P.O. Box 764 Columbia, SC 29218 Attention: Barry Burnette Director – Corporate tax, Plans & Payroll Facsimile: 803-933-8149 |
| With A Copy To: | John C. von Lehe, Jr. or Jennifer W. Davis Nelson Mullins Riley & Scarborough LLP P.O. Box 1806 Charleston, SC 29402 Facsimile: 843-722-8700 |
| If to the County: | Fairfield County Council, South Carolina P.O. Drawer 60 Winnsboro, SC 29180 Attention: Clerk to Council Facsimile: 803-712-6510 |
| With A Copy To: (does not | Michael E. Kozlarek, Esquire Parker Poe Adams & Bernstein LLP |

constitute notice)

P.O. Box 1509
Columbia, SC 29202-1509
Facsimile: 803-255-8017

Any notice shall be deemed to have been received as follows: (1) by personal delivery, upon receipt; (2) by facsimile, 24 hours after confirmed transmission or dispatch; and (3) by certified mail, 3 business days after delivery to the U.S. Postal authorities by the party serving notice.

SECTION 11.2. *Binding Effect.* This Fee Agreement shall inure to the benefit of and shall be binding upon the County, the Company, and the Sponsor Affiliates and their respective successors and assigns.

SECTION 11.3. *Invalidity and Severability.* In the event that the Act or the Payments-in-Lieu-of-Taxes arrangement described in Section 5.1 hereof is determined to be invalid in its entirety, the parties hereby agree that except as the final judicial decision may otherwise require, the Company and the Sponsor Affiliates shall be entitled to retain any benefits received under or pursuant to this Fee Agreement; otherwise, in the event any provision of this Fee Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, that decision shall not invalidate or render unenforceable any other provision of this Fee Agreement, unless that decision destroys the basis for the transaction, in which event the parties shall in good faith attempt to preserve, to the maximum extent possible, the benefits provided and to be provided to the Company, and the Sponsor Affiliates hereunder by either restructuring or reconstituting this Fee Agreement under any then applicable law, including but not limited to Chapter 20 of Title 4 and Chapter 12 of Title 4, Code of Laws of South Carolina, as amended.

SECTION 11.4. *Payments Due on Saturday, Sunday and Holidays.* Whenever any payment to be made hereunder shall be stated to be due on a Saturday, a Sunday or a holiday, such payment shall be made on the next business day.

SECTION 11.5. *Fiscal Year; Property Tax Year.* If the Company's fiscal year changes in the future so as to cause a change in the Company's property tax year, the timing of the requirements set forth in this Fee Agreement shall be revised accordingly.

SECTION 11.6. *Amendments, Changes and Modifications.* Except as otherwise provided in this Fee Agreement, this Fee Agreement may not be amended, changed, modified, altered or terminated without the written consent of the County and the Company. To the maximum extent allowed by law, any such County consent may be provided by a resolution of County Council.

SECTION 11.7. *Execution of Counterparts.* This Fee Agreement may be executed in several counterparts, only one of which shall be an original for Uniform Commercial Code perfection purposes; provided, however, that any action may be brought upon any counterpart of this Fee Agreement or any counterpart of any document that is attached to this Fee Agreement as an exhibit.

SECTION 11.8. *Law Governing Construction of Agreement.* The laws of the State of South Carolina shall govern the construction of this Fee Agreement.

SECTION 11.9. *Filings.*

(a) The Company, and the Sponsor Affiliates shall provide the Fairfield County Auditor, with a copy of each to the County Administrator, with a copy of all annual filings made by the Company,

and the Sponsor Affiliates to DOR pursuant to this Fee Agreement and the Act. Further, the Company shall cause a copy of this Fee Agreement, as well as a copy of the completed Form PT-443 of DOR, to be filed with the Fairfield County Auditor, the Fairfield County Assessor and DOR, with a copy of each to the County Administrator, within thirty (30) days after the date of execution and delivery hereof.

(b) Notwithstanding any other provision of this Section, the Company, and the Sponsor Affiliates may designate with respect to any filings delivered to the County segments thereof that the Company or any Sponsor Affiliate believes contain proprietary, confidential or trade secret matters. The County shall conform with all reasonable, written requests made by the Company or any Sponsor Affiliate with respect to maintaining the confidentiality of such designated segments.

SECTION 11.10. *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 11.11. *Further Assurance.* From time to time the County agrees to execute and deliver to the Company such additional instruments as the Company may reasonably request to effectuate the purposes of this Fee Agreement.