
FEE AGREEMENT

between

GREENVILLE COUNTY, SOUTH CAROLINA

and

**PROJECT CHERRY BLOSSOM, THE CODE NAME FOR A SOUTH CAROLINA
CORPORATION**

Dated as of _____, 2013

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EXHIBIT A – Form of Non-Disclosure Statement

FEE AGREEMENT

THIS FEE AGREEMENT (this “Agreement”) made and entered into as of _____, 2013 by and between **GREENVILLE COUNTY, SOUTH CAROLINA** (the “County”), a body politic and corporate and a political subdivision of the State of South Carolina, and **PROJECT CHERRY BLOSSOM**, the code name for a corporation organized and existing under the laws of the State of South Carolina (“Company”).

WITNESSETH:

WHEREAS, Chapter 44 of Title 12 Code of Laws of South Carolina 1976, as amended (the “Act”), empowers the several counties of the State of South Carolina to enter into agreements with industry whereby the industry would pay fees in lieu of *ad valorem* taxes with respect to qualified economic development property; through which powers the industrial development of the State of South Carolina will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate or remain in the State of South Carolina and thus utilize and employ the manpower, products and resources of the State and benefit the general public welfare of the County by providing services, employment, recreation or other public benefits not otherwise provided locally; and

WHEREAS, in accordance with an inducement resolution adopted _____, 2013 by Greenville County Council (the “Inducement Resolution”), the Company desires to provide for the acquisition by construction, purchase and/or leasing certain land, buildings, other improvements on the land, machinery, apparati, equipment, office facilities and furnishings to be installed therein for the purpose of operating a manufacturing and distribution facility in the County (the “Project”); and

WHEREAS, in accordance with the above-referenced resolution and the Act, the County has agreed to execute and deliver this Agreement with the Company in order to provide for payments in lieu of tax with respect to the Project by the Company; and

WHEREAS, the provisions of this Agreement are intended to supersede the provisions of the Inducement Resolution; and

WHEREAS, the County and the Company agree that (A) the following is a recapitulation of the remaining contents of this Agreement, with any capitalized terms used in this recapitulation having the meaning assigned to them elsewhere in this Agreement; provided, however, that in the event of a conflict between the language of the following recapitulation and the remaining provisions of this Agreement, said remaining provisions shall control:

(1) the legal name of each party to the Agreement: **Greenville County; Project Cherry Blossom, a code name for a South Carolina corporation.**

(2) the county and street address of the project and property to be subject to the Agreement: **Greenville County, South Carolina; _____, Greenville, South Carolina _____.**

(3) the minimum investment agreed upon: **\$10,000,000 (of otherwise fully taxable investment).**

(4) the length and term of the Agreement: **Twenty (20) years for each Project Increment but ending no later than _____, unless sooner terminated or extended pursuant to the provisions of the Act.**

(5) the assessment ratio applicable for each year of the Agreement: **six percent (6%).**

(6) the millage rate applicable for each year of the agreement: **a fixed millage rate of 0.2782 mills, to be fixed for a period of twenty (20) years.**

(7) a statement answering the following questions:

(a) Is the project to be located in a multi-county park formed pursuant to Chapter 1 of Title 4? **Yes**

(b) Is disposal of property subject to the fee allowed? **Yes**

(c) Will special source revenue bonds be issued or credits for infrastructure investment be allowed in connection with the project? **No**

(d) Will payment amounts be modified using a net present value calculation? **No**

(e) Do replacement provisions apply? **Yes**

and (B) the requirements of Sections 12-44-55(A)(7), (8), (10), (11) and (12) of the Act are hereby waived.

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained, the County and the Company agree as follows:

[Remainder of Page Intentionally Left Blank]

ARTICLE I
DEFINITIONS

Section 1.01 Definitions.

In addition to the words and terms elsewhere defined in this Agreement, the following words and terms as used herein and in the preambles hereto shall have the following meanings unless the context or use indicates another or different meaning or intent.

“**Act**” shall mean Chapter 44 of Title 12 of the Code, and all future acts amendatory thereof.

“**Additional Payments**” shall have the meaning provided in **Section 4.02** hereof.

“**Administration Expenses**” shall mean the reasonable and necessary expenses actually incurred by the County with respect to this Agreement, including without limitation reasonable and actual attorney 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.

“**Agreement**” shall mean this agreement as originally executed and from time to time supplemented or amended as permitted herein.

“**Code**” shall mean the Code of Laws of South Carolina 1976, as amended.

“**Company**” shall mean Project Cherry Blossom, a South Carolina corporation, any surviving, resulting or transferee entity in any merger, consolidation or transfer of assets permitted under **Section 7.04** hereof; or any other person or entity which may succeed to the rights and duties of the Company hereunder in accordance with all applicable provisions hereof.

“**County**” shall mean Greenville County, South Carolina, a body politic and corporate and a political subdivision of the State, and its successors and assigns.

“**County Assessor**” shall mean the Greenville County Assessor, or the holder of any successor position.

“**County Auditor**” shall mean the Greenville County Auditor, or the holder of any successor position.

“**County Council**” shall mean the governing body of the County and its constituent members and their respective successors, or any successor body.

“**Default**” shall mean an event or condition, the occurrence of which would, with the lapse of time or the giving of notice or both, become an Event of Default as defined in **Section 9.01** hereof.

“**Department**” shall mean the South Carolina Department of Revenue, or any successor agency.

“**Equipment**” shall mean all machinery, equipment, furnishings and other personal property which is installed, affixed or used by the Company on the Land or the Improvements in connection with the Project.

“FILOT Payments” shall mean the payments in lieu of taxes which the Company is obligated to pay to the County pursuant to **Section 5.02** hereof.

“Improvements” shall mean those buildings, structures and fixtures on the Land as are directly or indirectly constructed or acquired by the Company and intended to be included as a part of the Project.

“Indemnified Party” shall have the meaning ascribed to it by **Section 7.05** of this Agreement.

“Independent Counsel” shall mean an attorney duly admitted to practice law before the highest court of any state.

“Land” shall mean the real property upon which the Plant is located.

“Person” shall mean and include any individual, association, corporation, partnership, unincorporated organization, limited liability company, joint venture, or government or agency or political subdivision thereof.

“Plant” shall mean the Company’s manufacturing and distribution facility located at _____, Greenville, South Carolina _____, which is constructed upon the Land.

“Project” shall mean (i) [the Land, (ii) the Improvements, (iii)] the Equipment, [(ii)(iv)] the Replacement Property, [(iii)(v)] any personal property acquired hereafter which becomes so attached, integrated or affixed to the Land, the Improvements or any item described in the foregoing clauses that it cannot be removed without impairing the operating utility of such item as originally designed or damaging such item, and [(iv)(vi)] to the extent not covered by the foregoing, anything qualifying as a Project under Section 12-44-30(16) of the Act.

“Project Increment Payment” shall be the payment described in **Section 5.02(b)** hereof.

“Project Increments” shall mean those increments of the Project which are completed and fit for their intended use as prescribed by Section 12-37-670 of the Code.

“Project Millage Rate” shall mean, for purposes of **Section 5.02(b)** hereof, a fixed millage rate of **0.2782** mills (which is the cumulative rate in effect for all taxing entities at the site of the Plant as of June 30, 2013), which rate shall be fixed for a period of twenty (20) years.

“Project Period” shall mean the period beginning on [January 1], 2013 and ending on the Threshold Date.

“Replacement Property” shall mean all property installed on the Land or in the buildings, improvements and personal property theretofore constituting part of the Project to the extent that Section 12-44-60 of the Act permits such property to be included in the Project.

“State” shall mean the State of South Carolina.

“Term” shall mean the duration of this Agreement as set forth in **Section 4.01** hereof.

“Threshold Date” shall mean five (5) years after the last day of the property tax year in which the initial Project Increment is placed in service.

“Transfer Provisions” shall mean the provisions of Section 12-44-120 of the Act, as amended or supplemented from time to time, and any successor provisions under the laws of the State.

Section 1.02 References to Agreement.

The words “hereof”, “herein”, “hereunder” and other words of similar import refer to this Agreement as a whole. Any words or terms used in this Agreement that are not defined in this Agreement shall have the meanings ascribed to such words and terms as set forth in the Act.

[End of Article I]

ARTICLE II

REPRESENTATIONS AND COVENANTS

Section 2.01 Representations and Covenants of the County.

The County Council makes the following representations and covenants, on behalf of itself and on behalf of the County, as the basis for the undertakings of the County herein contained:

(a) The County is a body politic and corporate and a political subdivision of the State of South Carolina and is authorized and empowered by the provisions of the Act to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. Based on information provided to it by the Company, the County has determined that the Project constitutes and will constitute “economic development property” and a “project” within the meaning of the Act. The County has determined that the County has been duly authorized to execute and deliver this Agreement, all for the purpose of promoting the industrial development, developing the trade, and utilizing and employing the manpower, agricultural products and natural resources of the State.

(b) The authorization, execution and delivery of this Agreement and the performance by the County of its obligations hereunder will not conflict with or constitute a breach of, or a default under, (i) any existing law, court or administrative regulation, decree, or order, or (ii) any material agreement, mortgage, lease or other instrument, to which the County is subject or by which it or its properties are bound which would have a material adverse affect on County’s ability to perform its obligations hereunder.

(c) To the best of its knowledge, the County is not in default under any of the provisions of the laws of the State whereby any such default would adversely affect the execution and delivery of this Agreement or adversely affect its validity or enforceability; the authorization, execution and delivery of this Agreement, and the performance by the County of its obligations hereunder will not conflict with or constitute a breach of, or a default under, any existing law, court or administrative regulation, decree, order or any provision of the Constitution or laws of the State relating to the establishment of the County or its affairs, or any material agreement, mortgage, lease or other instrument to which the County is subject or by which it is bound.

(d) To the best of its knowledge, no actions, suits, proceedings, inquiries or investigations are pending or threatened against or affecting the County in any court or before any governmental authority or arbitration board or tribunal, any of which involve this Agreement.

Notwithstanding any other provision herein, the County is executing this Agreement as a statutory accommodation to assist the Company in achieving the intended benefits and purposes of the Act.

Section 2.02 Representations and Covenants of the Company.

The Company makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Company is a corporation, validly existing and in good standing, under the laws of its state of incorporation. The Company has the power to enter into this Agreement, and by proper action has been duly authorized to execute and deliver this Agreement.

(b) To the best of the Company's knowledge, the authorization, execution and delivery of this Agreement and the performance by the Company of its obligations hereunder will not conflict with or constitute a breach of, or a default under, (i) any existing law, court or administrative regulation, decree, or order, or (ii) any material agreement, mortgage, lease or other instrument, to which the Company is subject or by which it or its properties are bound which would have a material adverse affect on Company's ability to perform its obligations hereunder.

(c) To the best of its knowledge, no event has occurred and no condition currently exists with respect to the Company which would constitute a Default or an "Event of Default" as defined herein.

(d) The Company intends to construct and operate the Project as a manufacturing and distribution facility for the purpose of the manufacture and distribution of steel products and other materials and for such other purposes permitted under the Act as the Company may deem appropriate. The Project constitutes a "project" and "economic development property" as provided under the Act.

(e) The execution and delivery of this Agreement by the County has been instrumental in inducing the Company to locate its industrial facility in the County.

(f) To the best of Company's knowledge, no actions, suits, proceedings, inquiries or investigations are pending or threatened against or affecting the Company in any court or before any governmental authority or arbitration board or tribunal, any of which involve the possibility of any material and adverse effect upon the transactions contemplated by this Agreement or which would materially adversely affect the validity or enforceability of this Agreement or any agreement or instrument to which the Company is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby or thereby.

(g) The Company will use its reasonable efforts to invest not less than \$11,500,000 (whether otherwise fully taxable or not) in the Project during the Project Period.

[End of Article II]

ARTICLE III

ACQUISITION OF PROJECT

Section 3.01 Acquisition of Project.

(a) The Company hereby agrees to acquire the Project by acquiring, constructing, leasing and/or purchasing the same during the Project Period and to use its reasonable efforts to invest not less than \$11,500,000 (whether otherwise fully taxable or not) in the construction, equipping and acquisition of the Project. The Project will constitute a “project” and “economic development property” as defined in the Act. With respect to the matters governed by this Agreement, the Company agrees to make all annual filings with the Department of Revenue as required by law and to comply with Section 12-44-90(I) of the Act and any successor provisions.

(b) The Company shall cause a copy of this Agreement, as well as a copy of the completed form PT-443 of the Department, to be filed with the County Auditor, the County Assessor and the Department within thirty (30) days after the date of execution and delivery hereof.

Section 3.02 Records and Reports, Non-Disclosure.

The Company agrees to maintain complete books and records accounting for the acquisition, financing, construction and operation of the Project. Such books and records shall:

- (i) permit ready identification of the various Project Increments and components thereof;
- (ii) confirm the dates on which each Project Increment was placed in service;
and
- (iii) include copies of all filings made by the Company with the County Auditor or the Department with respect to property placed in service as part of the Project.

Notwithstanding any other provision of this Agreement, the Company may designate with respect to any filings or reports delivered to the County pursuant to the provisions of this Agreement, or segments thereof, that the Company believes contain proprietary, confidential or trade secret matters. Except as required by the South Carolina Freedom of Information Act, the County Council, the County, its officers and employees shall not disclose any such confidential information regarding the Project, the Company, Company’s operations and manufacturing processes, and any other competitively sensitive information which is not generally and independently known by the public, without the prior written authorization of the Company. The County shall notify the Company in the event of the County’s receipt of any Freedom of Information Act request concerning the aforesaid confidential information and, to the extent permitted by law, will not respond to such request until such time as the Company has reviewed the request and taken any action authorized by law to prevent its disclosure. If the Company fails to act to prevent any disclosure of such information under the South Carolina Freedom of Information Act within ten (10) days after the Company’s receipt of notice of such request, the County may provide such information as in its reasonable judgment is required to comply with such law and the County will have no liability to the Company in connection therewith.

[End of Article III]

ARTICLE IV

AGREEMENT TERM AND PAYMENT PROVISIONS

Section 4.01 Term.

Subject to the terms and provisions herein contained, with respect to each Project Increment, this Agreement shall be and remain in full force and effect for a term commencing on the date hereof, and ending at midnight on December 31 of the year which is the nineteenth (19th) year following the first year in which such Project Increment is placed in service, unless sooner terminated as herein permitted; provided that, if at the expiration of the Term, payment of all FILOT Payments under **Section 5.02** hereof relating to the operation of the Project during the Term have not been made, the Term shall expire on such later date as such payments shall have been made in full or so provided for.

Section 4.02 Additional Payments.

In addition to the Company's obligation under **Section 5.02** hereof to make payment of FILOT Payments and related amounts, the Company shall pay, as provided below, 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 the Company assumes or agrees to pay under this Agreement, including without limitation those obligations referred to in the immediately succeeding paragraph below (all such other amounts, liabilities and obligations hereinafter collectively called "Additional Payments"). In the event of any failure on the part of the Company to pay any Additional Payments, the County shall have all rights, powers and remedies provided for herein or by law or equity or otherwise.

The Company agrees to pay Administration Expenses to the County and indemnification payments pursuant to **Section 7.05** of this 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 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 same.

Section 4.03 FILOT Payments Secured by Tax Lien.

The County's right to receive FILOT Payments hereunder shall have a first priority lien status pursuant to Sections 12-44-90(E) and (F) of the Act and Chapters 4, 49, 51, 53 and 54 of Title 12 of the Code.

Section 4.04 Defaulted Payments.

In the event the Company should fail to make any of the payments required in this **Article IV** or in **Article V** hereof, the item or installment so in default shall continue as an obligation of the Company until the amount in default shall have been fully paid, and the Company agrees to pay the same with interest thereon (to the extent permitted by law) at a rate per annum equal to the statutory rate for nonpayment of taxes to accrue from the date the applicable Event of Default occurs, and, in the case of FILOT Payments, subject to the penalties provided by law until paid.

The foregoing and any other provision hereof to the contrary notwithstanding, to the extent, and only to the extent, the same may be permitted by law with respect to the payment of *ad valorem* taxes for

similar investments, if the Company shall first notify the County of its intention to do so, the Company may, at its own expense, contest FILOT Payments and any other related fees, taxes, assessments, and other charges and, in the event of any such contest, may permit the FILOT Payments and such taxes, assessments, or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom. The Company shall have all appeal and protest rights available to the Company under the Act and all other South Carolina statutory provisions. The Company's failure to make any such payments as allowed by the foregoing shall not constitute a default on the part of the Company nor give rise to an Event of Default, the foregoing and any other provision hereof to the contrary notwithstanding.

[End of Article IV]

ARTICLE V

MODIFICATION OF PROJECT; PAYMENTS IN LIEU OF TAXES; TAXES, UTILITIES AND OTHER CHARGES; INSURANCE

Section 5.01 Modification of Project.

The Company shall have the right at any time and from time to time during the Term hereof to undertake any of the following:

(i) The Company may renovate the Project and, in connection therewith, to the extent permitted by the Act, install Replacement Property in the Project. Notwithstanding anything in this Agreement to the contrary, the Company shall be entitled in its discretion from time to time to delete or remove any portions of the Project, or to add any (non-Project) property to the Plant as may be used in conjunction with the Project or otherwise.

(ii) In any instance where the Company in its sole discretion determines that any part of the Project, including without limitation any items of Equipment, have become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary for operations at the Plant, the Company may remove such part of the Project, including without limitation any items of Equipment, and sell, trade-in, exchange or otherwise dispose of them (as a whole or in part) without the consent of the County.

No modification or disposition of the Project effected under the provisions of this Section shall by itself entitle the Company to any abatement or diminution of Additional Payments payable under **Section 4.02** hereof.

Notwithstanding anything herein to the contrary, the FILOT Payments required under **Section 5.02** hereof shall, to the extent permitted by law, be reduced at such time to the extent that such payments are attributable to any of the Equipment, Improvements or Replacement Property which is removed or otherwise deleted from the Project and the Company shall not be required to repay any portion of the tax benefit received prior to such event.

Section 5.02 Payments in Lieu of Taxes.

(a) In accordance with the provisions of Section 12-44-50 of the Act, during the Term of this Agreement the Company shall make with respect to the Project annual FILOT Payments in the amounts set forth in this Section at the times and places, and in the same manner and subject to the same penalty assessments as prescribed by the County or the Department for *ad valorem* taxes. Such annual payments shall be made on or before each January 15 of each year during the Term of this Agreement, commencing January 15 of the year following the first year after the first Project Increment is placed in service. Subject to the provisions of the Act, each annual payment in lieu of taxes shall be equal to the Project Increment Payment with respect to each Project Increment, including, subject to the provisions of the Act, Replacement Property for the Project originally included in such Project Increment, calculated as set forth in **Section 5.02(b)** hereof, for each of twenty consecutive years (except to the extent that any portion of such Project Increment ceases to qualify for a negotiated fee in lieu of taxes under the Act) commencing with the year following the year in which the respective Project Increments are placed in service.

(b) Each Project Increment Payment shall be in an amount not less than the *ad valorem* taxes that would be due with respect to the applicable Project Increment if the same were taxable, but, subject to the provisions of Section 12-44-110 of the Act, using the following formula: each such Project

Increment Payment shall be in an amount equal to the product which would result from multiplying the Project Millage Rate by six percent (6%) of the fair market value of the portion of the Project included within such Project Increment. Such fair market value shall be that determined by the Department on the basis provided in Section 12-44-50(A) of the Act, and shall, subject to the provisions of the Act, include all Replacement Property and deductions for depreciation or diminution in value allowed by the Act or by the tax laws generally, and shall be subject to any reductions provided herein under **Section 5.01**, this **Section 5.02** and **Section 6.01** hereof, and includes all applicable *ad valorem* tax exemptions except (i) the exemption allowed pursuant to Section 3(g) of Article X of the Constitution of the State of South Carolina and (ii) the exemptions allowed pursuant to Section 12-37-220(B)(32) and (34) of the Code.

(c) In the event that the Act and/or the above-described payments in lieu of taxes or any portion thereof, are declared invalid or unenforceable, in whole or in part, for any reason, the Company and the County express their intentions that such payments be reformed so as to afford the Company the maximum benefit then permitted by law. In such event, the Company shall be entitled (1) to enjoy the five-year exemption from *ad valorem* taxes (or fees in lieu of taxes) provided by South Carolina Constitution Article X, Section 3, and any other exemption allowed by law from time to time; and (2) to enjoy all allowable depreciation.

(d) In the event the Company has not invested at least \$10,000,000 of otherwise fully taxable investment in the Project during the Project Period, the Project shall be subject, retroactively to the first year with respect to which FILOT Payments were made, to *ad valorem* tax treatment required by law, calculated as set forth in **Section 5.02(d)** hereof, and the Company shall, within ninety (90) days of the end of the Threshold Date, make payment to the County of the difference between the FILOT Payments actually made and the total retroactive amount referred to above, plus interest in the manner as provided in Section 12-54-25 of the Code.

(e) If at any time during the Term of this Agreement the Company no longer maintains an otherwise fully taxable investment at or in excess of \$10,000,000 (without regard to depreciation) in the Project, 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 (b) of this **Section 5.02**, and shall thereafter be subject to *ad valorem* tax treatment.

[End of Article V]

ARTICLE VI

CASUALTY; CONDEMNATION

Section 6.01 FILOT Payments in the Event of Damage and Destruction or Condemnation.

In the event that the Project is damaged or destroyed or the subject of condemnation proceedings, which damage, destruction and/or condemnation would substantially impair the operating ability of the Project, the parties hereto agree that the payments in lieu of taxes required pursuant to **Section 5.02** hereof shall be abated in the same manner and in the same proportion as with *ad valorem* taxes.

[End of Article VI]

ARTICLE VII

PARTICULAR COVENANTS AND AGREEMENTS

Section 7.01 Rights to Inspect.

The Company agrees that the County and its authorized agents shall have the right at all reasonable times during normal business hours and upon prior reasonable notice to enter upon and examine and inspect the Project. The County and its authorized agents shall also be permitted, at all reasonable times during normal business hours and upon prior reasonable notice, to examine the plans and specifications of the Company with respect to the Project and to have access to examine and inspect the Company's South Carolina property tax returns, as filed. The aforesaid rights of examination and inspection shall be exercised only upon such reasonable and necessary terms and conditions as the Company shall prescribe, which conditions shall be deemed to include, but not be limited to, those necessary to protect the Company's trade secrets and proprietary rights. Prior to the exercise of any right to inspect the Project or the plans and specifications and above referenced records of the Project, the County shall cause its agents to sign a nondisclosure statement substantially in the form shown on Exhibit A attached hereto.

Section 7.02 Limitation of County's Liability.

Anything herein to the contrary notwithstanding, any financial obligation the County may incur hereunder, including for the payment of money shall not be deemed to constitute a pecuniary liability or a debt or general obligation of the County; provided, however, that nothing herein shall prevent the Company from enforcing its rights hereunder by suit for *mandamus* or specific performance.

Section 7.03 Certain Reports, Notices and the Like.

Whenever the County shall be required by any governmental or financial entity to file or produce any reports, notices, returns, or other documents related to this transaction while this Agreement is in effect, the Company shall, upon request by the County, promptly furnish to the County through the Greenville County Administrator the completed form of such required documents, to the extent that the Company possesses the information necessary to complete such documents. In the event of the failure or refusal of the Company to comply with this provision, the Company shall pay the statement for attorney's fees presented by the County for producing and filing such documents, such statements to be paid within forty-five (45) days after presentation by the County, and to promptly pay any fees, penalties, assessments or damages imposed in accordance with law upon the County by reason of its failure to duly file or produce such documents.

Section 7.04 Maintenance of Corporate Existence.

The Company acknowledges that a transfer of an equity interest or other mergers, consolidations or reorganizations 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 Agreement to the contrary, it is not intended in this Agreement that the County shall impose transfer restrictions with respect to the Project as are any more restrictive than the Transfer Provisions.

Section 7.05 Indemnification Covenants.

(a) Notwithstanding any other provisions in this Agreement or in any other agreements with the County, the Company shall agree to indemnify and save the County, its County Council members, elected officials, officers, 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 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 Agreement, (iii) any act of negligence of the Company, or of any agents, contractors, servants, employees or licensees, (iv) except in such cases where the County has released the Company pursuant to **Section 8.01** 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 Company, and (v) any environmental violation, condition, or effect related 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; provided, however, that such indemnity shall not apply to the extent that any such claim is attributable to (i) the gross negligent acts or omissions or willful misconduct of the County, its agents, officers or employees, or (ii) any breach of this Agreement by the County.

(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 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 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 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, its agents, officers or employees 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 gross negligent acts or omissions or willful misconduct of the County, its agents, officers or employees, or (ii) any breach of this Agreement by the County.

(c) The above-referenced indemnification covenants shall be considered included in and incorporated by reference in subsequent documents after the delivery of this Agreement which the County is requested to sign on behalf of the Company with respect to the Project, and any other indemnification covenants in any subsequent documents shall not be construed to reduce or limit the above indemnification covenants.

(d) No termination of this Agreement pursuant to any provision elsewhere in this Agreement shall relieve the Company of its liability and obligations to make the payments required by this **Section 7.05**, all of which shall survive any such termination.

Section 7.06 No Liability of County's Personnel.

All covenants, stipulations, promises, agreements and obligations of the County contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of the County and shall be binding upon any member of the County Council or any officer, agent, servant or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse shall be had for the payment of any moneys hereunder against any member of the governing body of the County or any officer, agent, servants or employee of the County and no recourse shall be had against any member of the County Council or any officer, agent, servant or employee of the County for the performance of any of the covenants and agreements of the County herein contained or for any claims based thereon except solely in their official capacity.

Section 7.07 Other Tax Matters.

The Company shall be entitled to all state and federal investment tax credits, allowances for depreciation and other similar tax provisions allowable by applicable federal or State law with respect to the Project.

[End of Article VII]

ARTICLE VIII

ASSIGNMENT OF THIS AGREEMENT; SURVIVAL OF COMPANY'S OBLIGATION

Section 8.01 Lease or Assignment.

The Company may at any time assign or otherwise transfer all of its rights and interests hereunder to any lessee or assignee, as the case may be, selected by the Company on such terms as the Company may determine in its sole discretion, provided (a) that no assignment, transfer or lease shall (i) be effective unless consented to by the County if, and only if, such consent is required under applicable statutory law and is not otherwise permitted hereunder, and (ii) affect or reduce any of the obligations of the Company hereunder unless consented to by the County, which consent shall not be unreasonably withheld, conditioned or delayed and (b) that the Company or lessee shall give the County and the Department written notice of any such assignment, transfer or lease and within sixty (60) days thereafter shall furnish or cause to be furnished to the County a true and complete copy of any such lease, assignment or other transfer which shall include indemnity as provided in **Section 7.05** hereof. The Company acknowledges that such a transfer of an interest under this Agreement 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 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. Notwithstanding anything contained herein to the contrary, the County hereby consents to any transfers or assignments by the Company to any affiliate of the Company at any time. For such purposes, "affiliate" shall include any person or entity directly or indirectly controlling, controlled by or under common control with the Company. The County shall, if the Company requests, acknowledge the receipt and sufficiency of any such notice.

[End of Article VIII]

ARTICLE IX

EVENTS OF DEFAULT AND REMEDIES

Section 9.01 Events of Default.

Any one or more of the following events (herein called an “Event of Default”, or collectively “Events of Default”) shall constitute an Event of Default by the Company:

(a) if default shall be made in the due and punctual payment of any FILOT Payments or related material payments under **Section 5.02** hereof, or any material Additional Payments, which default shall not have been cured within thirty (30) days following receipt of written notice thereof by the Company from the County;

(b) if default shall be made by the Company in the due performance of or compliance with any of the material terms hereof, including payment, other than those referred to in the foregoing subdivision (a), and such default shall (i) continue for ninety (90) days after the County shall have given the Company written notice of such default, or (ii) in the case of any such default which can be cured but which cannot with due diligence be cured within such 90-day period, if the Company shall fail to proceed promptly to cure the same and thereafter prosecute the curing of such default with due diligence, it being intended in connection with the default not susceptible of being cured with due diligence within ninety (90) days that the time of the Company within which to cure the same shall be extended for such period as may be necessary to complete the curing of the same with all due diligence; or

(c) if any material representation or warranty made by the Company herein or any statement, certificate or indemnification furnished or delivered by the Company in connection with the execution and delivery of this Agreement, proves untrue in any material respect as of the date of the issuance or making thereof or knowingly violated or breached, as the case may be.

Section 9.02 Remedies on Event of Default.

Upon the occurrence of any Event of Default, the County may: (i) terminate this Agreement by thirty (30) days’ notice to the Company in writing specifying the termination date; (ii) upon providing a signed nondisclosure statement substantially in the form attached as Exhibit A hereto, have access to and inspect, examine and make copies of, the books, records and accounts of the Company pertaining to the Project; or (iii) take whatever action at law or in equity as may appear necessary or desirable to collect any FILOT Payments and Additional Payments then due or to enforce observance or performance of any covenant or agreement of the Company under this Agreement, including without limitation enforcement of a statutory lien on the Project for any non-payment of FILOT Payments hereunder.

Section 9.03 Collection of FILOT Payments.

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 Agreement to the contrary, the County may exercise the remedies provided by general law (including Title 12, Chapter 49, of the Code) relating to the enforced collection of *ad valorem* taxes to collect any FILOT Payments due hereunder.

[End of Article IX]

ARTICLE X

MISCELLANEOUS

Section 10.01 Termination.

Prior to the stated expiration of the Term of this Agreement, the Company may, at any time by written notice to the County, terminate this Agreement, effective immediately upon giving such notice; provided that any such termination shall not affect any liabilities of the Company as may have accrued as of the date of termination under this Agreement or under law. Upon any such termination, and subject to any provisions herein which shall by their express terms be deemed to survive any termination of this Agreement, the sole consequence to the Company shall be that it shall no longer be entitled to the benefit of the fee in lieu of payments provided herein and the property constituting the Project shall thereafter be subject to the *ad valorem* tax treatment required by law and, except as may be expressly provided herein (including without limitation the provisions of Section 5.02(d) hereof), in no event shall the Company be required to repay to the County the amount of any tax benefit previously received hereunder.

Section 10.02 Rights and Remedies Cumulative.

Each right, power and remedy of the County or of the Company provided for in this Agreement shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Agreement or now or hereafter existing at law or in equity, in any jurisdiction where such rights, powers and remedies are sought to be enforced, and the exercise by the County or by the Company of any one or more of the rights, powers or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the County or by the Company of any or all such other rights, powers or remedies.

Section 10.03 Successors and Assigns.

Subject to **Section 8.01** of this Agreement, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Section 10.04 Notices; Demands; Requests.

All notices, demands and requests to be given or made hereunder to or by the County or the Company, shall be in writing, and shall be deemed to be properly given or made if sent by United States first class mail, postage prepaid addressed as follows or at such other places as may be designated in writing by such party.

- (a) As to the County:

Greenville County, South Carolina
County Square, Suite 2400
301 University Ridge
Greenville, South Carolina 29601
Attention: County Administrator

With a copy to

Greenville County, South Carolina
County Square, Suite 2400
301 University Ridge
Greenville, South Carolina 29601
Attention: County Attorney

(b) As to the Company:

Section 10.05 Applicable Law; Entire Understanding.

This Agreement shall be governed exclusively by the provisions hereof and by the applicable laws of the State of South Carolina. This Agreement expresses the entire understanding and all agreements of the parties hereto with each other, and neither party hereto has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth in this Agreement or in certificates delivered in connection with the execution and delivery hereof.

Section 10.06 Severability.

In the event that any clause or provisions of this Agreement shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.

Section 10.07 Headings and Table of Contents; References.

The headings of this Agreement and any Table of Contents or Index annexed hereto are for convenience of reference only and shall not define or limit the provisions hereof or affect the meaning or interpretation hereof. All references in this Agreement to particular Articles or Sections or subdivisions of this Agreement are references to the designated Articles or Sections or subdivision of this Agreement.

Section 10.08 Multiple Counterparts.

This Agreement 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. Electronic, facsimile or PDF copies of signature pages shall constitute original signature pages.

Section 10.09 Amendments.

This Agreement may be amended only by a writing signed by all of the parties hereto.

Section 10.10 Waiver.

Either party may waive compliance by the other party with any term or condition of this Agreement only in a writing signed by the waiving party.

Section 10.11 Business Day.

In the event that any action, payment or notice is, by the terms of this Agreement, required to be taken, made or given on any day which is a Saturday, Sunday or a legal holiday in the jurisdiction in which the person obligated to act is domiciled, such action, payment or notice may be taken, made or given on the following business day with the same effect as if given as required hereby, and no interest shall accrue in the interim.

[End of Article X]

IN WITNESS WHEREOF, Greenville County, South Carolina, has executed this Agreement by causing its name to be hereunto subscribed by the Chairman of its County Council and its County Administrator and to be attested to by the Clerk of its County Council and the Company has executed this Agreement by its authorized officers, all being done as of the day and year first above written.

GREENVILLE COUNTY, SOUTH CAROLINA

(SEAL)

By: _____
Chairman, County Council of Greenville County

By: _____
Greenville County Administrator

Attest:

Clerk, County Council of Greenville County

[Company signature to follow on next page]

_____, a South Carolina
corporation

By: _____ (L.S.)

Name: _____

Title: _____

EXHIBIT A

FORM OF NON-DISCLOSURE STATEMENT

I, _____, _____ of Greenville County, South Carolina, acknowledge and understand that _____ (“Company”) utilizes confidential and proprietary “state-of-the-art” processes and techniques and that any disclosure of any information relating to such processes and techniques would result in substantial harm to the Company and could thereby have a significant detrimental impact on the Company and its employees. Consequently, to the extent permitted by law, I agree to keep confidential the nature, description and type of the machinery, equipment, processes and techniques, as well as financial statements of the Company, which I observe. I agree that I shall not disclose the nature, description or type of such machinery, equipment, processes or techniques, or the information contained in such financial statements of the Company, to any person or entity other than in accordance with the terms of the Fee Agreement between the Company and Greenville County, South Carolina, dated as of _____, 2013, or as may be required by the laws of the State of South Carolina.

GREENVILLE COUNTY, SOUTH CAROLINA

By: _____

Title: _____

Date: _____