

STATE OF SOUTH CAROLINA)
)
COUNTY OF BARNWELL)

ORDINANCE NO. 2017-2-336-0

AN ORDINANCE AUTHORIZING PURSUANT TO TITLE 12, CHAPTER 44 OF THE CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED, THE EXECUTION AND DELIVERY OF AN AMENDED AND RESTATED FEE-IN-LIEU OF AD VALOREM TAXES AGREEMENT, BY AND BETWEEN BARNWELL COUNTY, SOUTH CAROLINA AND BARNWELL SOLAR, LLC, AS SPONSOR, AND ONE OR MORE SPONSOR AFFILIATES TO PROVIDE FOR A FEE-IN-LIEU OF AD VALOREM TAXES INCENTIVE AND CERTAIN SPECIAL SOURCE REVENUE CREDITS; TO PROVIDE FOR ONE OR MORE SPONSOR AFFILIATES; AND OTHER RELATED MATTERS.

WHEREAS, Barnwell County, South Carolina (the "County"), acting by and through its County Council (the "County Council") is authorized by Title 12, Chapter 44 of the Code of Laws of South Carolina 1976, as amended (the "Act"), and Article VIII, Section 13 of the South Carolina Constitution (i) to enter into agreements with qualifying companies to encourage investment in projects constituting economic development property through which the economic development of the State of South Carolina (the "State") will be promoted by inducing new and existing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ manpower and other resources of the State; (ii) to covenant with such industry to accept certain fee payments in lieu of *ad valorem* taxes ("FILOT") with respect to such investment ("FILOT Payments"); (iii) to provide credits to qualifying companies to offset qualifying infrastructure related expenditures pursuant to Sections 4-1-175, 4-29-68 and 12-44-70 of the Code of Laws of South Carolina 1976, as amended ("Infrastructure Credit Act"); (iv) under Section 4-1-170 of the Code of Laws of South Carolina 1976, as amended ("MCIP Act") to create multi-county industrial parks with one or more contiguous counties and include certain properties therein, and, in its discretion, include within the boundaries of these parks the property of qualifying industries, and under the authority provided in the MCIP Act, the County has created previously a multi-county park with Allendale County, South Carolina, Bamberg County, South Carolina, and Hampton County, South Carolina ("Park") through that "Amended and Restated Master Agreement for the Establishment of the Quad-County Industrial Park I, Park II, and Park III," as amended (the "Park Agreement") dated May 6, 2013; and (v) to make and execute contracts of the type hereinafter described pursuant to Section 4-9-30 of the Code of Laws of South Carolina 1976, as amended; and

WHEREAS, Barnwell Solar, LLC, a South Carolina limited liability company, along with one or more existing, or to-be-formed or acquired subsidiaries, or affiliated or related entities, as Sponsor (collectively, "Company") and any Sponsor Affiliates (as defined under the Act and the Fee Agreement (defined below)) that the Sponsor may designate and have the County approve in accordance with the Act, contingent upon satisfaction of certain commitments made by and on behalf of the County, as set forth herein and to be further set forth in future agreements, and, to the extent allowed by law, plans to establish a solar facility in the County through the acquisition, lease, construction, and purchase of certain land, including the Project Property (defined below), buildings, furnishings, fixtures, apparatuses, and equipment (the "Project"), which will result in approximately \$8,000,000 in new investment in real and personal property in the County ("Investment"); and

WHEREAS, on March 8, 2016, County Council adopted Ordinance 2016-3-324-0 authorizing a Fee-in-Lieu of Ad Valorem Tax Agreement between the County and the Company ("2016 Fee Agreement"), the grant of Special Source Revenue Credits in amounts as more fully described in the 2016 Fee Agreement, the approval of Doyle and Carolyn Livingston, Lon Walsh, and Cynthia Griffitt as Sponsor Affiliates, and the inclusion of the Project in the multi-county industrial park ("Park III") as defined in the "Amended and Restated Master Agreement for Establishment of Quad County Industrial Park I, II, III" between the County and Allendale County, South Carolina, Bamberg County, South Carolina, and Hampton County, South Carolina adopted by the County on May 6, 2013; and

WHEREAS, since the execution of the 2016 Fee Agreement, the Company has not placed any economic development property into service nor made any investment contemplated by the 2016 Fee Agreement and the Company and County desire to amend and restate certain terms of the 2016 Fee Agreement, particularly the term of the Fee Agreement, the amount of the Special Source Revenue Credit(s), and the Investment; and

WHEREAS, by its Resolution adopted on January 12, 2016, the County identified the Project, as required by the Act; and

WHEREAS, the Project will comprise one or more parcels of real property or a portion thereof within such tax map parcels bearing Tax Map Numbers 092-01-01-008, 092-01-01-010 AND 092-01-01-009, with improvements thereon, a description of which is set forth on the attached **Exhibit A** ("Project Property"); and

WHEREAS, the County desires to confirm the prior placement of the Project Property in the boundaries of the Park and to ensure that the Project Property remains in the Park or any other multi-county park created under the MCIP Act for no less than the duration of the Amended and Restated Fee Agreement (defined herein); and

WHEREAS, the Company and the County have determined that each Phase Termination Date (as defined in the Amended and Restated Fee Agreement) shall be the last day of a property tax year that is 29 years following the first property tax year in which an applicable piece of economic development property is placed in service, and, the Company has requested a 10 year extension in addition thereto, and the County, finding that such an extension would result in a substantial public benefit, desires to grant the extension so that the total length of each Phase of the Project shall be 40 years; and

WHEREAS, in connection with the Project, the Company has requested the County to enter into incentive agreements, to the extent and subject to the conditions provided in those agreements, to establish the commitments of (i) the Company and any Sponsor Affiliate to make the Investment; and (ii) the County to provide certain incentives; and

WHEREAS, the County has determined: (i) to offer a FILOT arrangement and enter into a fee-in-lieu of *ad valorem* taxes agreement with the Company and, as applicable, any Sponsor Affiliate, the form of which is attached as **Exhibit B** ("Amended and Restated Fee Agreement"), but with the principal terms as follows: 40-year, 6.0% assessment ratio, and a fixed millage rate equal to that millage rate in effect at the Project Property, for all taxing entities, on June 30, 2015, which the parties hereto believe to be 454.4 mills for the entire term of the FILOT arrangement; (ii) to provide an annual credit against those FILOT payments made by the Company and any of the Sponsor Affiliates to the County for the Project which shall result in an aggregate annual net FILOT Payment due of \$48,600 during the entire term of the Amended and Restated Fee Agreement (each a "Special Source Revenue Credit"); and (iii) any other

incentives further set forth in the Amended and Restated Fee Agreement attached to this Ordinance (collectively, the “Incentives”); and

WHEREAS, the annual Special Source Revenue Credit arrangement above shall apply only to any Investment in the Project made in the initial five year investment period (as defined under the Act), or in the initial 10 years, pursuant to the County’s authority to extend under the Act; and

WHEREAS, the parties recognize and acknowledge that the Company would not otherwise locate the Project in the County but for the delivery of the amended Incentives.

NOW, THEREFORE, BE IT ORDAINED BY THE BARNWELL COUNTY COUNCIL DULY ASSEMBLED THAT:

Section 1. Findings. The County hereby finds and affirms, based on information provided by the Company: (i) the Project will benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise provided locally; (ii) the Project gives rise to no pecuniary liability of the County or any incorporated municipality and to no charge against its general credit or taxing power; (iii) the purposes to be accomplished by the Project are proper governmental and public purposes; and (iv) the benefits of the Project to the public are greater than the costs to the public; and (v) the Project will provide a substantial public benefit to the County.

Section 2. Authorization to Execute and Deliver Amended and Restated Fee Agreement. The form, terms, and provisions of the Amended and Restated Fee Agreement (which includes the provision of Special Source Revenue Credits) presented to this meeting and filed with the Clerk to County Council be and it is hereby approved, and all of the terms, provisions, and conditions thereof are hereby incorporated herein by reference as if the Amended and Restated Fee Agreement was set out in this Ordinance in its entirety. The Chairman of County Council and the Clerk to County Council be and they are hereby authorized, empowered, and directed to execute, acknowledge, and deliver the Amended and Restated Fee Agreement in the name and on behalf of the County, and thereupon to cause the Amended and Restated Fee Agreement to be delivered to the Company. The Amended and Restated Fee Agreement to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall not materially adversely affect the rights of the County thereunder and as shall be approved by the officials of the County executing the same upon the advice of the County Attorney, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of Amended and Restated Fee Agreement now before this meeting.

Section 3. Approval of 10 Year Extension to Project Phase(s). The County approves the Company’s request for a 10 year extension to the 30 year length of each Phase of the Project, for a resulting total of 40 years for each Phase of the Project.

Section 4. Inclusion and Maintenance of Project in Park III. The prior expansion of the Park III boundaries to include the Project Property, as described on the attached Exhibit A, is hereby confirmed and prior acts of Council with regard to the expansion are hereby ratified. The County Council shall ensure that the Project is incorporated into and will remain in the Park (or a successor multi-county industrial park) for no less than the term of the Amended and Restated Fee Agreement.

Section 5. Allocation of Park Revenue. The revenue generated by the Project, including the Project Property, shall be allocated among all tax districts within the County in a manner that is approved by the County Council.

Section 6. Confirmation of Sponsor Affiliates. The County confirms the Sponsor Affiliates' participation in the Amended and Restated Fee Agreement as contemplated under the Act and the Amended and Restated Fee Agreement.

Section 7. No Recapitulation Required. Pursuant to Section 12-44-55(B) of the Act, the County hereby agrees that no recapitulation information, as set forth in Section 12-44-55(A) of the Act is required to be provided by the Company in the Amended and Restated Fee Agreement, or in any other documents or agreements in connection with the fee-in-lieu of tax arrangement between the Company and the County, so long as the Company shall file a copy of the South Carolina Department of Revenue form PT-443, and any subsequent amendments thereto, and all filings required by the Act with the County after the execution of the Amended and Restated Fee Agreement by the County and the Company.

Section 8. Further Acts. The County Council authorizes the County Administrator, other County staff, and the County Attorney, along with any designees and agents who any of these officials deems necessary and proper, in the name of and on behalf of the County (each an "Authorized Individual"), to take whatever further actions, and enter into whatever further agreements, as any Authorized Individual deems to be reasonably necessary and prudent to effect the intent of this Ordinance and induce the Company to locate the Project in the County.

Section 9. General Repealer. All ordinances, resolutions, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed.

Section 10. Severability. Should any part, provision, or term of this Ordinance be deemed unconstitutional or otherwise unenforceable by any court of competent jurisdiction, such finding or determination shall not affect the rest and remainder of the Ordinance or any part, provision, or term thereof, all of which is hereby deemed separable.

This Ordinance takes effect and is in full force only after the County Council has approved this Ordinance following three readings and a public hearing.


BARNWELL COUNTY, SOUTH CAROLINA



(SEAL)



Lowell Jowers, Chairman
Barnwell County Council

ATTEST: 

Kim Futrell, Clerk to Council
Barnwell County, South Carolina

First Reading: January 10, 2017
Second Reading: January 13, 2017
Third Reading: February 14, 2017
Public Hearing: February 14, 2017

EXHIBIT A

Project Property Legal Description

A portion of that certain piece, parcel, or tract of land, with all improvements thereon, situate lying or being in the County of Barnwell, State of South Carolina, bearing Tax Map Numbers 092-01-01-008, 092-01-01-010, and 092-01-01-009.

EXHIBIT B

Amended and Restated Fee Agreement

[Attached]

AMENDED AND RESTATED FEE-IN-LIEU OF *AD VALOREM* TAXES AGREEMENT

BY AND AMONG

BARNWELL SOLAR, LLC

AND

BARNWELL COUNTY, SOUTH CAROLINA

February 14, 2017

PREPARED BY:

**PARKER POE ADAMS & BERNSTEIN LLP
1221 MAIN STREET, SUITE 1100
COLUMBIA, SOUTH CAROLINA 29201
(803) 255-8000**

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EXHIBIT B: Form of Joinder Agreement

AMENDED AND RESTATED FEE-IN-LIEU OF AD VALOREM TAXES AGREEMENT

THIS AMENDED AND RESTATED FEE-IN-LIEU OF AD VALOREM TAXES AGREEMENT ("Amended Fee Agreement") is made and entered into as of February 14, 2017, by and between Barnwell County, South Carolina ("County"), a body politic and corporate and a political subdivision of the State of South Carolina ("State"), acting by and through the Barnwell County Council ("County Council") as the governing body of the County, and Barnwell Solar, LLC, a South Carolina limited liability company, along with affiliated or related entities, and assigns, as Sponsor (collectively, "Company") and any other entity that may join as a Sponsor Affiliate as the term is defined in this Amended Fee Agreement (hereinafter, the County, the Company, and any Sponsor Affiliate are referred to individually as a "Party" and, collectively, as "Parties").

WITNESSETH:

(a) The County acting by and through its County Council is authorized by Title 12 and Chapter 44 of the Code of Laws of South Carolina 1976, as amended (collectively "Act"), and Article VIII, Section 13 of the South Carolina Constitution (i) to enter into agreements with qualifying companies to encourage investment in projects constituting economic development property through which the economic development of the State will be promoted by inducing new and existing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ manpower and other resources of the State; (ii) to covenant with such industry to accept certain fee payments in lieu of *ad valorem* taxes ("FILOT") with respect to such investment; (iii) to provide credits to qualifying companies to offset qualifying infrastructure related expenditures pursuant to Sections 4-1-175, 4-29-68 and 12-44-70 of the Code of Laws of South Carolina 1976, as amended ("Infrastructure Credit Act"); (iv) under Section 4-1-170 of the Code of Laws of South Carolina 1976, as amended ("MCIP Act") to create multi-county industrial parks with one or more contiguous counties and include certain properties therein, and, in its discretion, include within the boundaries of these parks the property of qualifying industries, and under the authority provided in the MCIP Act, the County has created previously a multi-county park with Allendale County, South Carolina, Bamberg County, South Carolina, and Hampton County, South Carolina ("Park III") through that "Amended and Restated Master Agreement for the Establishment of the Quad-County Industrial Park I, Park II, and Park III" as amended (the "Park Agreement") dated May 6, 2013; and (v) to make and execute contracts of the type hereinafter described pursuant to Section 4-9-30 of the Code; and

(b) Pursuant to the Act, the County has determined that (i) the Project (as defined herein) will benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise provided locally; (ii) the Project will not give rise to any pecuniary liability of the County or any incorporated municipality or to any charge against any of their general credit or taxing power; (iii) the purposes to be accomplished by the Project are proper governmental and public purposes; and (iv) the benefits of the Project to the public will be greater than the costs to the public; and

(c) The Company, as Sponsor, along with one or more existing, or to-be-formed or acquired subsidiaries, or affiliated or related entities and any Sponsor Affiliates (as defined under the Act) that the Sponsor may designate and have the County approve in accordance with the Act, contingent upon satisfaction of certain commitments made by and on behalf of the County, as set forth herein to be further set forth in future agreements, and, to the extent allowed by law, plans to establish a solar facility in the County through the acquisition, lease, construction and purchase of certain land, buildings, furnishings, fixtures, apparatuses, and equipment (the "Project"), which will result in approximately \$8,000,000 in new investment in real and personal property in the County ("Investment"); and

(d) Pursuant to a Resolution adopted January 12, 2016, the County Council identified the Project, as required under the Act, and pursuant to County Council Ordinance No. 2016-3-324-0, adopted March 8, 2016, (“2016 Fee Ordinance”), authorized (i) the execution of a Fee-in-Lieu of Ad Valorem Tax Agreement between the County and the Company (“2016 Fee Agreement”), (ii) the approval of certain Sponsor Affiliates; (iii) the grant of Special Source Revenue Credits (defined below) in amounts as more fully described in the 2016 Fee Agreement; and (iv) the inclusion of the Project in the multi-county industrial park (“Park III”) as defined in the “Amended and Restated Master Agreement for Establishment of Quad County Industrial Park I, Park II, and Park III” between the County and Allendale County, South Carolina, Bamberg County, South Carolina, and Hampton County, South Carolina adopted by the County on May 6, 2013; and

(e) Since the execution of the 2016 Fee Agreement the Company has not placed any economic development property into service, nor made any investment contemplated by the 2016 Fee Agreement. The Company and the County have agreed to amend and restate certain terms of the 2016 Fee Agreement, particularly the term of the Fee Agreement, the amount of the Special Source Revenue Credit(s), and the Investment; and

(f) The Company and County have agreed the length of this Amended Fee Agreement shall be 30 years for each Phase (as defined herein). The Company has requested and the County has granted a 10 year extension, as permitted by the Act, so that the total length of this Amended Fee Agreement shall be 40 years for each Phase; and

(g) Pursuant to County Council Ordinance No. ____ adopted March 14, 2017, (“Amended Fee Ordinance”), County Council authorized (i) the execution and delivery of an Amended and Restated Fee Agreement with the Company; (ii) the grant of amended Special Source Revenue Credits (defined below) in amounts as more fully described in this Amended Fee Agreement; and (iii) confirmation of the Project’s inclusion in the multi-county industrial park (“Park”) defined in the “Amended and Restated Master Agreement for the Establishment of the Quad-County Industrial Park I, II, Park III” between the County and Allendale County, South Carolina, Bamberg County, South Carolina, and Hampton County, South Carolina, adopted by the County on May 6, 2013 (“MCIP Agreement”).

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

ARTICLE I DEFINITIONS

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

“Chair” means the Chair of the County Council.

“Clerk of County Council” means the Clerk to the County Council.

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

“Commencement Date” means the earlier of: (a) the last day of the first property tax year during which Economic Development Property (defined below) is placed in service; or (b) the last day of the

property tax year that is three years from the year in which the Parties entered into this Amended Fee Agreement.

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

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

“Department” means the South Carolina Department of Revenue.

“Diminution of Value” in respect of any Phase of the Project means any reduction in the value based on original fair market value as determined in Step 1 of Section 3.1 of this Amended Fee Agreement, of the items which constitute a part of the Phase which may be caused by (i) the Company’s removal of equipment pursuant to Section 3.6 of this Amended Fee Agreement, (ii) a casualty to the Phase of the Project, or any part thereof, described in Section 3.7 of this Amended Fee Agreement, or (iii) a condemnation to the Phase of the Project, or any part thereof, described in Section 3.8 of this Amended Fee Agreement.

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

“Equipment” means all machinery, apparatus, equipment, fixtures, office facilities, furnishings, and other personal property together with any and all additions, accessions, replacements, and substitutes thereto or therefor acquired by the Company and, as applicable, any Sponsor Affiliate, during the Investment Period as a part of the Project under this Amended Fee Agreement. The Equipment and its constituent parts together with any and all improvements or other features constructed on, or personal property installed or placed on the Real Property by or for the Company, or, as applicable, any Sponsor Affiliate, including without limitation, machinery, fixtures, trade fixtures, racking, inverters, cables, solar panels, and other personal property are personal property for purposes of applicable South Carolina law.

“Event of Default” means any Event of Default specified in Section 3.13 of this Amended Fee Agreement.

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

“FILOT” means fee in lieu of *ad valorem* tax(es).

“FILOT Payment(s)” means the payment(s) in lieu of *ad valorem* tax(es) which the Company and, as applicable, any Sponsor Affiliate, are obligated to pay to the County.

“Improvements” mean improvements, together with any and all additions, accessions, replacements, and substitutions thereto or therefor acquired by the Company and, as applicable, the Sponsor Affiliate, during the Investment Period as part of the Project.

“Investment” shall mean that amount set forth in the recitals of this Amended Fee Agreement and shall include but not be limited to (i) taxable and non-taxable capital expenditures, without regard to depreciation, which are made by the Company and any Sponsor Affiliate towards or for the benefit of the Project; (ii) capital expenditures, whether considered Economic Development Property or non-Economic Development Property, without regard to the depreciation, which are made by the Company and any Sponsor Affiliate towards or for the benefit of the Project, regardless of the source of payment of such expenditures; (iii) the value of any assets leased by the Company and any Sponsor Affiliate, without regard to the depreciation, regardless of the source of payment of such expenditures so long as the value of such leased assets are reported by the Company and any Sponsor Affiliate on their respective SCDOR PT-100 or PT-300; and (iv) any other expenditures made by the Company and any Sponsor Affiliate that the County and the Company and, as applicable, any Sponsor Affiliate, may mutually agree upon in a writing that is executed by an authorized representative of the Company and the County Administrator. The Investment for purposes of the Investment stated herein shall include those expenditures made by both the Company and any Sponsor Affiliate prior to the end of the Investment Period.

“Investment Period” means the period beginning with the first day that Economic Development Property is purchased or acquired and ending five years after the Commencement Date. The minimum investment must be completed within five years of the Commencement Date. The Investment Period is expected to end December 31, 2022. Pursuant to Section 12-44-30(13) of the Act, the County may, at its discretion, extend this period.

“Minimum Investment” shall have the meaning given to such term under Section 12-44-30(14) of the Act.

“Net FILOT Payment” means a total annual payment of \$48,600, for the entire Term of this Amended Fee Agreement, for those years for which a FILOT Payment is due.

“Phase” or “Phases” in respect to the Project means the Equipment, Improvements, and Real Property, if any, placed in service during each year of the Investment Period, as extended.

“Phase Termination Date” means with respect to each Phase of the Project the day 39 years after each such Phase of the Project becomes subject to the terms of this Amended Fee Agreement. Anything contained herein to the contrary notwithstanding, the last Phase Termination Date shall be no later than December 31 of the year of the expiration of the 39th full calendar year, after the end of the Investment Period.

“Project” is further defined herein to mean the Equipment, Improvements, and Real Property, together with the acquisition, construction, installation, design, and engineering thereof, in phases.

“Real Property” means the real property upon which any part of the Project is to be constructed and expanded, as described in Exhibit A attached hereto and as supplemented from time to time, together with all and singular the rights, members, hereditaments, and appurtenances belonging or in any way incident or appertaining thereto acquired or constructed by the Company and, as applicable, any Sponsor Affiliate; all Improvements now or hereafter situated thereon; and all fixtures now or hereafter attached thereto, but only to the extent such Improvements and fixtures are deemed to become part of the Project under the terms of this Amended Fee Agreement.

“Removed Components” means the following types of components or Phases of the Project or portions thereof, all of which the Company and, as applicable, any Sponsor Affiliate, as the case may be, shall be entitled to remove from the Project with the result that the same shall no longer be subject to the terms of this Amended Fee Agreement: (a) components or Phases of the Project or portions thereof which the Company and, as applicable, any Sponsor Affiliate, in their sole discretion, determine to be inadequate, obsolete, worn-out, uneconomic, damaged, unsuitable, undesirable, or unnecessary; or (b) components or Phases of the Project or portions thereof which the Company and, as applicable, any Sponsor Affiliate, in their sole discretion, elect to remove pursuant to Section 3.7(c) or Section 3.8(b)(iii) of this Amended Fee Agreement.

“Replacement Property” means any property which is placed in service as a replacement for any item of Equipment or any Improvement which is scrapped or sold by the Company and, as applicable, any Sponsor Affiliate and treated as a Removed Component under Section 3.6 hereof regardless of whether such property serves the same function as the property it is replacing and regardless of whether more than one piece of property replaces any item of Equipment or any Improvement.

“Sponsor Affiliate” means an affiliate that joins with or is an affiliate of the Company, or that otherwise has a contractual relationship with the Company in respect of the Project, whose Investment with respect to the Project shall be considered part of the Investment and qualify for FILOT Payments pursuant to Section 3.1 hereof and Sections 12-44-30(20) and 12-44-130 of the Act and who joins and delivers a Joinder Agreement in a form substantially similar to that attached hereto as Exhibit B.

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

ARTICLE II REPRESENTATIONS AND WARRANTIES

Section 2.1 *Representations of the County.* The County hereby represents and warrants to the Company and any Sponsor Affiliate as follows:

(a) The County is a body politic and corporate and a political subdivision of the State which acts through the County Council as its governing body and by the provisions of the Act is authorized and empowered to enter into the transactions contemplated by this Amended Fee Agreement and to carry out its obligations hereunder. The County has duly authorized the execution and delivery of this Amended Fee Agreement and any and all other agreements described herein or therein.

(b) The Project constitutes a “project” within the meaning of the Act.

(c) 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 2.2 *Representations of the Company.* The Company hereby represents and warrants to the County as follows:

(a) The Company is a corporate entity, authorized or to be authorized to transact business under the laws of the State of South Carolina, and has the power to enter into this Amended Fee Agreement.

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

(c) The Company intends to operate the Project as a "project" within the meaning of the Act as in effect on the date hereof. The Company intends to operate the Project for such purposes as permitted under the Act, as the Company may deem appropriate.

(d) The availability of the FILOT and the allowance of Special Source Revenue Credits, with regard to the Economic Development Property authorized by the Act, along with other incentives provided by the County, have induced the Company to undertake the Project in the County.

Section 2.3 Representations of the Sponsor Affiliate. The Sponsor Affiliate hereby represents and warrants to the County as follows:

(a) The Sponsor Affiliate is organized as set forth in the Joinder Agreement, is authorized or will be authorized to transact business under the laws of the State of South Carolina, and has the power to enter into this Amended Fee Agreement.

(b) The Sponsor Affiliate's execution and delivery of this Amended Fee Agreement, or as applicable, the execution and delivery of a Joinder Agreement, and its compliance with the provisions hereof do not result in a default, not waived or cured, under any Sponsor Affiliate restriction or any agreement or instrument to which the Sponsor Affiliate is now a party or by which it is bound.

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

(d) The availability of the FILOT and the allowance of Special Source Revenue Credits, with regard to the Economic Development Property authorized by the Act, along with other incentives provided by the County, have induced the Sponsor Affiliate to undertake the Project in the County

ARTICLE III FILOT PAYMENTS

Section 3.1 Negotiated Payments.

(a) Pursuant to Section 12-44-50 of the Act, the Company and, as applicable, any Sponsor Affiliate, are required to make FILOT Payments on all Economic Development Property comprising the Project and placed in service, with respect to each Phase of the Project, on or before each December 31 within the Investment Period.

(b) The amount of such annual FILOT Payments shall be determined by the following procedure:

Step 1: Determine the fair market value of the Phase of the Project placed in service in any given year for such year and for the following 39 years, unless extended by the Parties in accordance with the Act, using original income tax basis for State income tax purposes for any real property (provided, if real property is constructed for the fee or is purchased in an arms-length transaction, fair market value is deemed to equal the original income tax basis, otherwise, the Department will determine fair market value by appraisal) and original income tax basis for State income tax purposes less

depreciation for each year allowable to the Company and, as applicable, any Sponsor Affiliate, for any personal property as determined in accordance with Title 12 of the Code, as amended and in effect on December 31 of the year in which each Phase becomes subject to the Amended Fee Agreement, except that no extraordinary obsolescence shall be allowable but taking into account all applicable property tax exemptions which would be allowed to the Company, and, as applicable, any Sponsor Affiliate, under State law, if the property were taxable, except those exemptions specifically disallowed under Section 12-44-50(A)(2) of the Act, as amended and in effect on December 31 of the year in which each Phase becomes subject to the Amended Fee Agreement.

- Step 2: Apply an assessment ratio of 6.0% to the fair market value as determined for each year in Step 1 to establish the taxable value of each Phase of the Project in the year it is placed in service and in each of the 39 years thereafter or such longer period of years that the annual fee payment is permitted to be made by the Company and, as applicable, by any Sponsor Affiliate, under the Act.
- Step 3: Multiply the taxable value determined in the preceding step by a millage rate equal to 454.4 mills, which is believed to be that rate in effect on June 30, 2015, for all taxing entities for the Project site (which millage rate shall be a fixed rate for the term of this Amended Fee Agreement), to determine the amount of the FILOT Payments which would be due in each year of the Fee Term on the payment dates prescribed by the County for such payments for a total of forty (40) years for each item of eligible Project property, or such longer period of years that the annual fee payment is permitted to be made by the Company and, as applicable, any Sponsor Affiliate, under the Act.
- Step 4: With respect to the annual FILOT Payments paid to the County, the County shall subtract from the FILOT Payment to be invoiced to the Company an amount equal to the value of the annual Special Source Revenue Credits as further defined under Section 3.2 of this Amended Fee Agreement.

(c) The County agrees to use its best efforts to provide that the Project is incorporated and remains in the Park during the Fee Term. If, for any reason, the MCIP Agreement is modified, or otherwise terminated, then the County shall ensure that the Project shall be immediately placed into another multi-county park arrangement established pursuant to the MCIP Act, to which the County is a party and that would enable the Company to receive the benefits afforded by having the Project incorporated into a Park.

(d) In the event that the Act and/or the above-described FILOT Payments or Special Source Revenue Credits are declared invalid or unenforceable, in whole or in part, for any reason, the parties express their intentions that such payments and this Amended Fee Agreement be reformed so as to most closely effectuate the legal, valid, and enforceable intent thereof and so as to afford the Company and any Sponsor Affiliate, with the benefits to be derived hereunder. If the Project is deemed to be subject to *ad valorem* taxation, the payment in lieu of *ad valorem* taxes to be paid to the County by the Company and, as applicable, any Sponsor Affiliate, shall become equal to the amount which would result from taxes levied on the Project by the County, municipality or municipalities, school district or school districts, and other political units as if the Project was and had not been Economic Development Property under the Act. In such event, any amount determined to be due and owing to the County from the Company, and, as applicable, any Sponsor Affiliate, as the case may be, with respect to a year or years for which payments in lieu of *ad valorem* taxes have been previously remitted by the Company and, applicable, any Sponsor Affiliate, to the County hereunder, shall be reduced by the total amount of payments in lieu of *ad valorem*

taxes made by the Company, and, as applicable, any Sponsor Affiliate, with respect to the Project pursuant to the terms hereof, and further reduced by any abatements provided by law.

(e) If this Amended Fee Agreement is found to be invalid or unenforceable the Company may terminate this Amended Fee Agreement and avail itself of any and all available statutory *ad valorem* tax abatements; however, in no event may the Company terminate this Amended Fee Agreement and take advantage of any *ad valorem* tax abatement(s) that would reduce the Company's annual tax obligation, for the property subject to this Amended Fee Agreement, to an amount less than the Company's obligation(s) as calculated under this Amended Fee Agreement.

Section 3.2 *Special Source Revenue Credit.*

As an inducement for the Investment and in accordance with Section 12-44-70 of the Act, the County grants to the Company and any Sponsor Affiliate an annual Special Source Revenue Credit ("SSRC") in an amount equal to the annual FILOT Payment due under this Amended Fee Agreement, to be calculated as set forth in Section 3.1, minus the Net FILOT Payment. The County grants the SSRC for the entire Fee Term, beginning with the first property tax year for which a FILOT Payment becomes due, which the Parties anticipate to be 2017, to the extent that the Company has made expenditures in such amounts for qualifying expenditures under the Infrastructure Credit Act.

With respect to the SSRC, the County shall automatically reflect the SSRC against the FILOT Payment on those FILOT invoices provided by the County to the Company and any Sponsor Affiliate. The Company and any Sponsor Affiliate shall be permitted to utilize the SSRC to offset any qualifying expenditures as provided under the Code, including under the Act and the Infrastructure Credit Act.

Section 3.3 *FILOT Payments on Replacement Property.* If the Company and, as applicable, any Sponsor Affiliate elect to replace any Removed Components and to substitute such Removed Components with Replacement Property as a part of the Project, then, pursuant and subject to Section 12-44-60 of the Act, the Company, and, as applicable, any Sponsor Affiliate shall make statutory payments in lieu of *ad valorem taxes* with regard to such Replacement Property as follows:

(a) to the extent that the income tax basis of the Replacement Property ("Replacement Value") is less than or equal to the original income tax basis of the Removed Components ("Original Value") the amount of the FILOT Payments to be made by the Company and, as applicable, the Sponsor Affiliate, with respect to such Replacement Property, shall be calculated in accordance with Section 3.1 hereof; provided, however, in making such calculations, the original cost to be used in Step 1 of Section 3.1 shall be equal to the lesser of (x) the Replacement Value or (y) the Original Value, and the number of annual payments to be made with respect to the Replacement Property shall be equal to forty (40) (or, if greater, the maximum number of years for which the annual fee payments are available to the Company and any Sponsor Affiliate for each portion of the Project under the Act, as amended) minus the number of annual payments which have been made with respect to the oldest Removed Components disposed of in the same property tax year as the Replacement Property is placed in service; and

(b) to the extent that the Replacement Value exceeds the Original Value of the Removed Components ("Excess Value"), the FILOT Payments to be made by the Company and, as applicable, any Sponsor Affiliate, with respect to the Excess Value, shall be equal to the payment that would be due if the property were not Economic Development Property. Notwithstanding the existence of any Excess Value as a result of the installation of Replacement Property at the Project, the total amount of the annual payment(s) due to the County, including the Net FILOT Payment, for the Project shall not exceed in the aggregate the value of the Net FILOT Payment due under this Amended Fee Agreement. If legally necessary to ensure this obligation by the County to the Company or any Sponsor Affiliate, the County

would take necessary action, including but not limited to, the provision of additional property tax abatements against the payments due for the Excess Value.

Section 3.4 *Reductions in Payments of Taxes Upon Removal, Condemnation or Casualty.* In the event of a Diminution in Value of any Phase of the Project after the Investment Period and during the remainder of the Fee Term, the payment in lieu of taxes with regard to that Phase of the Project shall be reduced in the same proportion as the amount of such Diminution in Value bears to the original fair market value of that Phase of the Project as determined pursuant to Step 1 of Section 3.1 hereof.

Section 3.5 *Place and Allocation of FILOT Payments.* The Company and, as applicable, any Sponsor Affiliate, shall make the above-described FILOT Payments directly to the County in accordance with applicable law as to payment, collection and enforcement of FILOT Payments. FILOT Payments are to be allocated in accordance with the Act.

Section 3.6 *Removal of Equipment.* Subject always to Section 3.3, the Company and, as applicable, any Sponsor Affiliate, shall be entitled to remove the following types of components or Phases of the Project from the Project with the result that said components or Phases (“Removed Components”) shall no longer be considered a part of the Project and shall no longer be subject to the terms of this Amended Fee Agreement: (a) components or Phases which become subject to statutory payments in lieu of *ad valorem* taxes; (b) components or Phases of the Project or portions thereof which the Company, and, as applicable, any Sponsor Affiliate, in their sole discretion, determine to be inadequate, obsolete, uneconomic, worn-out, damaged, unsuitable, undesirable or unnecessary; or (c) components or Phases of the Project or portions thereof which the Company, and, as applicable, any Sponsor Affiliate, in their sole discretion, elect to remove pursuant to Section 3.7(c) or Section 3.8(b)(iii) hereof.

Section 3.7 *Damage or Destruction of Project.*

(a) *Election to Terminate.* In the event the Project is damaged by fire, explosion, or any other casualty, the Company and, as applicable, any Sponsor Affiliate, shall be entitled to terminate this Amended Fee Agreement in accordance with Section 3.21.

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

(c) *Election to Remove.* In the event the Company and, as applicable, any Sponsor Affiliate, elect not to terminate this Amended Fee Agreement pursuant to subsection (a) and elects not to rebuild pursuant to subsection (b), the damaged portions of the Project shall be treated as Removed Components.

Section 3.8 *Condemnation.*

(a) *Complete Taking.* If, at any time during the Fee Term, title to or temporary use of the entire Project should become vested in a public or quasi-public authority by virtue of the exercise of a taking by condemnation, inverse condemnation or the right of eminent domain, or by voluntary transfer

under threat of such taking, or in the event that title to a portion of the Project shall be taken rendering continued operation of the Project commercially infeasible in the judgment of the Company and, as applicable, any Sponsor Affiliate, then the Company or any Sponsor Affiliate (with respect to its Project property only) shall have the option to terminate this Amended Fee Agreement in accordance with Section 3.21.

(b) *Partial Taking.* In the event of a partial taking of the Project or transfer in lieu thereof, the Company and, as applicable, any Sponsor Affiliate, may elect: (i) to terminate this Amended Fee Agreement in accordance with Section 3.21 (with respect to its Project property only); (ii) to repair and restore the Project, with such reductions or enlargements in the scope of the Project, changes, alterations, and modifications (including the substitution and addition of other property) as may be desired by the Company and, as applicable, any Sponsor Affiliate; or (iii) to treat the portions of the Project so taken as Removed Components.

Section 3.9 *Maintenance of Existence.* The Company and, as applicable, any Sponsor Affiliate agree (i) that they shall not take any action which will materially impair the maintenance of their corporate existence and (ii) that they will maintain their good standing under all applicable provisions of State law. Notwithstanding the foregoing, any changes in the corporate existence of the Company or, as applicable, any Sponsor Affiliate, that result from internal restructuring or reorganization of the Company or, as applicable, any Sponsor Affiliate, or their parents are specifically authorized hereunder; and further, subject to the requirements to satisfy the minimum investment requirement under the Act, the Company and, as applicable, any Sponsor Affiliate are entitled to cease operations of the Project at any time without that cessation constituting an Event of Default under this Amended Fee Agreement. Likewise, benefits granted to the Company and, as applicable, any Sponsor Affiliate, under this Amended Fee Agreement shall, in the event of any such restructuring or reorganization, be transferred to the successor entity under the provisions of Section 3.12 hereof. Such transfers to a successor entity substantially similar in nature and function to the Company and, as applicable, any Sponsor Affiliate, are specifically approved and authorized by the County without any further action by the County Council.

Section 3.10 *Confidentiality/Limitation on Access to Project.* The Company acknowledges that the County is subject to the provisions of the South Carolina Freedom of Information Act. The County acknowledges and understands that the Company may have and maintain at the Project certain confidential and proprietary information. The County agrees that, except as permitted or required by law, neither the County nor any employee, agent, or contractor of the County (i) is entitled to receive any such confidential or proprietary information or (ii) is entitled to inspect the Project or any property associated therewith, in either case, unless they comply with the remaining provisions of this Section. The County agrees that it will not knowingly and intentionally disclose or otherwise divulge any such confidential or proprietary information (identified in writing to the County as confidential or proprietary) to which it may have become privy to any other person, firm, governmental body or agency, or any other entity unless required to do so by law. The County acknowledges that any information submitted by the Company pursuant to any obligation by law or its obligations under this Amended Fee Agreement shall be deemed confidential or proprietary and no such further action is required to identify such information as confidential or proprietary. Prior to disclosing any confidential or proprietary information or allowing inspections of the Project, 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 who would gather, receive, or review such information or conduct or review the results of any inspections. In the event the County is required to disclose any confidential or proprietary information obtained from the Company to a third party, the County agrees to provide the Company with maximum practicable advance notice of such requirement before making such disclosure, and to cooperate with any attempts by the Company to obtain judicial or other relief from disclosure required, all at the sole expense of the Company.

Section 3.11 *Addition of Sponsor Affiliates.* Upon request of and at the expense of the Company, the County may approve any future Sponsor Affiliate that qualifies under the Act for the benefits offered under this Amended Fee Agreement and which agrees to be bound by the provisions hereof to be further evidenced by such future Sponsor Affiliate entering into a Joinder Agreement in a form substantially similar to that attached to this Amended Fee Agreement subject to any reasonable changes not materially adverse to the County.

Section 3.12 *Assignment and Subletting.* This Amended Fee Agreement may be assigned in whole or in part and the Project may be subleased as a whole or in part by the Company and, as applicable, any Sponsor Affiliate, so long as such assignment or sublease is made in compliance with Section 12-44-120 of the Act. To the extent any consent of the County for such assignment or sublease is required by the Act and requested, the County may grant such consent in its sole discretion by adoption of a Resolution.

Section 3.13 *Events of Default.* The following are “Events of Default” under this Amended Fee Agreement, and the term “Events of Default” means, whenever used with reference to this Amended Fee Agreement, any one or more of the following occurrences:

(a) Failure by the Company or, as applicable, any Sponsor Affiliate, to make, upon levy, the FILOT Payments described in Section 3.1 hereof; provided, however, that the Company or, as applicable, the Sponsor Affiliate, shall be entitled to all redemption rights for non-payment of taxes granted by applicable statutes; or

(b) Failure of the Company or, as applicable, any Sponsor Affiliate, to make payment of any other amounts payable to the County under this Amended Fee Agreement, of which default has not been cured within ninety (90) days of written notice of nonpayment from the County.

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

Section 3.14 *Remedies on Default.* Whenever any Event of Default shall have occurred and shall be continuing, the County, after having given written notice to the Company or, as applicable, any Sponsor Affiliate(s), of such default and after the expiration of a ninety (90) day cure period shall have the option to take any one or more of the following remedial actions:

(a) Terminate the Amended Fee Agreement; or

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

Section 3.15 *Collection of FILOT Payments.* In addition to all other remedies herein provided, the nonpayment of FILOT Payments shall constitute a lien on the Project for tax purposes as provided in Section 12-44-90 of the Act. In this regard, and notwithstanding anything in this Amended Fee 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 (the “Tax

Statute”) to collect any FILOT Payments due hereunder. The Company expressly acknowledges that in the event of its failure to make the required FILOT Payments, that the County is only required to give notice thereof in accordance with the Tax Statute, and that no further notice is required hereunder in order to enforce the remedies set forth in this Section 3.14.

Section 3.16 Remedies Not Exclusive. No remedy conferred upon or reserved to the County under this Amended Fee Agreement is intended to be exclusive of any other available remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other lawful remedy now or hereafter existing. No delay or omission to exercise any right or power accruing upon any continuing default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the County to exercise any remedy reserved to it, it shall not be necessary to give notice, other than such notice as may be herein expressly required and such notice required at law or equity which the Company is not competent to waive.

Section 3.17 Leased Equipment. To the extent that applicable law allows or is revised or construed to allow the benefits of the Act, in the form of FILOT Payments as described in Section 3.1 hereof, to be applicable to personal property to be installed at the Project and leased to but not purchased by the Company and, as applicable, any Sponsor Affiliate, from at least one third party, under any form of lease, then that personal property, at the Company’s or Sponsor Affiliates’ sole election, will become subject to FILOT Payments to the same extent as the Equipment under this Amended Fee Agreement, upon proper application of the law and applicable procedures by the Company, and, as applicable, any Sponsor Affiliate and so long as the value of such leased assets are reported by the Company or any Sponsor Affiliate, as applicable, on their respective SCDOR PT-300.

Section 3.18 Waiver of Recapitulation Requirements. As permitted under Section 12-44-55 of the Act, the Company and County hereby waive application of any of the recapitulation requirements as set forth in Section 12-44-55, to the extent that, and so long as, the Company provides the County with copies of all filings which the Company is required to make pursuant to the Act.

Section 3.19 Fiscal Year; Property Tax Year. If the Company’s and, as applicable, any Sponsor Affiliate’s, fiscal year changes so as to cause a change in the Company’s or Sponsor Affiliate’s property tax year, then the timing of the requirements of this Amended Fee Agreement are automatically revised accordingly.

Section 3.20 Reports; Filings.

(a) Each year during the term of this Amended Fee Agreement, the Company shall deliver to the Barnwell County Auditor a copy of their most recent annual property tax returns filed with the Department with respect to the applicable portions of the Project.

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

Section 3.21 Termination. Prior to the stated expiration of the Term of this Amended Fee Agreement, the Company may, at any time by written notice to the County, provide for the termination of this Amended Fee Agreement, effectively immediately upon giving such notice or upon such date as may be specified in the notice; provided that the Company shall have made payment to the County of all applicable payments payable under this Amended Fee Agreement as of such time. Upon any such

termination, and subject to any provisions herein which shall by their express terms be deemed to survive any termination of this Amended Fee Agreement, the sole consequence to the Company shall be that it shall no longer be entitled to the benefit of the FILOT Payments provided herein and the property constituting the Project shall thereafter be subject to ad valorem tax treatment required by law and, except as may be expressly provided herein, in no event shall the Company be required to repay to the County the amount of any tax benefit previously received hereunder.

Section 3.22 Indemnification.

(a) Except as provided in paragraph (b) below, the Company shall indemnify and save the County, its past, present, and future employees, elected officials, officers and agents (each, an "Indemnified Party") harmless against and from all claims by or on behalf of any person arising from the County's execution of the Amended Fee Agreement, performance of the County's obligations under the Amended Fee Agreement or the administration of its duties pursuant to the Amended Fee Agreement, or otherwise by virtue of the County having entered into the Amended Fee Agreement. If such a claim is made against any Indemnified Party, then subject to the provisions of (b) below, the Company shall defend the Indemnified Party in any action or proceeding.

(b) Notwithstanding anything herein to the contrary, the Company is not required to indemnify any Indemnified Party against any claim or liability (1) occasioned by the acts of that Indemnified Party, which are unrelated to the execution of the Amended Fee Agreement, performance of the County's obligations under the Amended Fee Agreement, or the administration of its duties under the Amended Fee Agreement, or otherwise by virtue of the County having entered into the Amended Fee Agreement; (2) resulting from that Indemnified Party's own negligence, bad faith, fraud, deceit, or willful misconduct.

(c) An Indemnified Party may not avail itself of the indemnification provided in this Section unless it provides the Company with prompt notice, reasonable under the circumstances, of the existence or threat of any claim or liability, including, without limitation, copies of any citations, orders, fines, charges, remediation requests, or other claims or threats of claims, in order to afford the Company notice, reasonable under the circumstances, within which to defend or otherwise respond to a claim.

(d) Following this notice, the Company shall resist or defend against any claim or demand, action or proceeding, at its expense, using counsel of its choice. The Company is entitled to manage and control the defense of or response to any claim, charge, lawsuit, regulatory proceeding or other action, for itself and the Indemnified Party; provided the Company is not entitled to settle any matter at the separate expense or liability of any Indemnified Party without the consent of that Indemnified Party. To the extent any Indemnified Party desires to use separate counsel for any reason, other than a conflict of interest, that Indemnified Party is responsible for its independent legal fees.

(e) In no event, shall the Company's liability under this Indemnification provision exceed the actual, aggregate accrued value of the tax abatements provided to the Company pursuant to this Amended Fee Agreement at the time of the event that triggers the Indemnified claim.

**ARTICLE IV
MISCELLANEOUS**

Section 4.1 Notices. Any notice, election, demand, request, or other communication to be provided under this Amended Fee Agreement shall be effective when delivered to the party named below or three business days after deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed as follows (or addressed to such other address as any party shall

have previously furnished in writing to the other party), except where the terms hereof require receipt rather than sending of any notice, in which case such provision shall control:

AS TO THE COUNTY: Barnwell County, South Carolina
ATTN: Pickens Williams
County Administrator
57 Wall Street
Barnwell, South Carolina 29812-1584
Telephone: (803) 541-1010
Email: fpwilliams@barnwellsc.com

AS TO THE COMPANY: ATTN: General Counsel
Pine Gate Renewables, LLC
1111 Hawthorne Lane, Suite 201
Charlotte, NC 28205

WITH A COPY TO: Parker Poe Adams & Bernstein LLP
(shall not constitute notice) ATTN: Sam C. Moses, Esquire
1221 Main Street, Suite 1100
Columbia, South Carolina 29201
Telephone: (803) 255-8000
Facsimile: (803) 255-8017
Email: sammoses@parkerpoe.com

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

Section 4.3 Counterparts. This Amended Fee Agreement may be executed in any number of counterparts, and all of the counterparts taken together shall be deemed to constitute one and the same instrument.

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

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

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

Section 4.7 Further Assurance. From time to time, and at the Company's and Sponsor Affiliates' expense, the County agrees to execute and deliver to the Company and Sponsor Affiliates such additional instruments as either may reasonably request to effectuate the purposes of this Amended Fee Agreement.

Section 4.8 Severability. If any provision of this Amended Fee Agreement is declared illegal, invalid or unenforceable for any reason, the remaining provisions hereof shall be unimpaired, and such illegal, invalid, or unenforceable provision shall be reformed so as to most closely effectuate the legal, valid, and enforceable intent thereof and so as to afford the Company, and, as applicable, any Sponsor Affiliate, with the maximum benefits to be derived herefrom, it being the intention of the County to offer the Company and, as applicable, any Sponsor Affiliate, the strong inducement to locate the Project in the County.

Section 4.9 Limited Obligation. NEITHER THE PROJECT NOR THE NEGOTIATION, EXECUTION, DELIVERY, OR IMPLEMENTATION OF THIS AMENDED FEE AGREEMENT SHALL GIVE RISE TO ANY PECUNIARY LIABILITY OF THE COUNTY OR ANY INCORPORATED MUNICIPALITY NOR TO ANY CHARGE AGAINST THEIR GENERAL CREDIT OR TAXING POWER.

Section 4.10 Force Majeure. The Company shall not be responsible for any delays or non-performance caused in whole or in part, directly or indirectly, by strikes, accidents, freight embargoes, fire, floods, inability to obtain materials, conditions arising from government orders or regulations, war or national emergency, acts of God, and any other cause, similar or dissimilar, beyond the Company's reasonable control.

[signatures on following pages]

IN WITNESS WHEREOF, the County, acting by and through the County Council, has caused this Amended Fee Agreement to be executed in its name and on its behalf by the Chair of County Council and the County Administrator and to be attested by the Clerk to County Council; and the Company has caused this Amended Fee Agreement to be executed by its duly authorized officer, all as of the day and year first above written.

BARNWELL COUNTY, SOUTH CAROLINA

Charles Lowell Jowers, Sr.
Charles Lowell Jowers, Sr, Chairman
Barnwell County Council

February 14, 2017
Date

(SEAL)

ATTEST:

Kim Futrell
Kim Futrell, Clerk to Council
Barnwell County, South Carolina



IN WITNESS WHEREOF, the County, acting by and through the County Council, has caused this Amended Fee Agreement to be executed in its name and on its behalf by the Chair of County Council and the County Administrator and to be attested by the Clerk to County Council; and the Company has caused this Amended Fee Agreement to be executed by its duly authorized officer, all as of the day and year first above written.

BARNWELL SOLAR, LLC

BY _____

ITS _____

DATED _____

EXHIBIT A

DESCRIPTION OF PROPERTY

A portion of that certain piece, parcel, or tract of land, with all improvements thereon, situate lying or being in the County of Barnwell, State of South Carolina, bearing Tax Map Numbers 092-01-01-008, 092-01-01-010, and 092-01-01-009.

EXHIBIT "B"

JOINDER AGREEMENT

Reference is hereby made to (i) that certain Amended and Restated Fee Agreement effective _____, 2017 ("Amended Fee Agreement"), between Barnwell County, South Carolina ("County") and Barnwell Solar, LLC ("Company").

1. Joinder to Amended Fee Agreement.

The undersigned hereby (a) joins as a party to, and agrees to be bound by and subject to all of the terms and conditions of, the Amended Fee Agreement except the following: _____; (b) acknowledges and agrees that (i) in accordance the Amended Fee Agreement, the undersigned has been designated as a Sponsor Affiliate by the Company for purposes of the Project and such designation has been consented to by the County in accordance with the Act (as defined in the Amended Fee Agreement); (ii) the undersigned qualifies or will qualify as a Sponsor Affiliate under the Amended Fee Agreement and Section 12-44-30(20) and Section 12-44-130 of the Act; and (iii) the undersigned shall have all of the rights and obligations of a Sponsor Affiliate as set forth in the Amended Fee Agreement.

The Company (a) agrees to be responsible for all repayment obligations that arise pursuant to the Amended Fee Agreement, unless otherwise agreed to through a separate agreement in writing by and between the Company and [Landowner] (including any lease agreements that have been or will be assigned to the Company in connection with the Project); and (b) agrees to indemnify [Landowner] against all claims brought against it arising from the Amended Fee Agreement, provided that such repayment obligation is not an obligation of [Landowner] under a separate agreement in writing as set forth above or the claim is not a result of [Landowner]'s own negligence, bad faith, fraud, deceit, or willful misconduct.

2. Capitalized Terms.

All capitalized terms used but not defined in this Joinder Agreement shall have the meanings set forth in the Amended Fee Agreement.

3. Governing Law.

This Joinder Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina, without regard to principles of choice of law.

4. Notice.

Notices under Section 4.1 of the Amended Fee Agreement shall be sent to:

[]

IN WITNESS WHEREOF, the undersigned has executed this Joinder Agreement to be effective as of the date set forth below.

Date

Name of Entity

By: _____
Name: _____
Its: _____
Address: _____

IN WITNESS WHEREOF, the Company consents to the addition of the above-named entity becoming a Sponsor Affiliate under the Amended Fee Agreement effective as of the date set forth above.

By: _____
Name: _____
Its: _____
Date: _____
Address: _____
