

AN ORDINANCE # 301. 2017

JAMES C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

2017 FEB 24 PM 2:49

FILED FOR RECORD

AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE AGREEMENT BY AND BETWEEN KERSHAW COUNTY, SOUTH CAROLINA, AND RJR LAND GROUP, LLC ITS AFFILIATES AND ASSIGNS, TO PROVIDE FOR A FEE IN LIEU OF *AD VALOREM* TAXES INCENTIVE, AND OTHER MATTERS RELATED THERETO.

WHEREAS, the County, acting by and through its County Council ("Council"), is authorized and empowered, under and pursuant to the provisions of the *Code of Laws of South Carolina*, (1976, as amended) through the date hereof ("Code"), particularly Title 12, Chapter 44 thereof ("Fee in Lieu of Tax Simplification Act") and by Article VIII, Section 13 of the South Carolina Constitution: (i) to enter into agreements with certain investors to establish projects through which the economic development of the State of South Carolina ("State") will be promoted and trade developed, thus utilizing and employing the manpower, agricultural products, and natural resources of the State; and (ii) to covenant with such investors to accept certain fee in lieu of *ad valorem* tax ("FILOT") payments with respect to a project;

WHEREAS, RJR Land Group, LLC acting for itself, one or more current or future affiliates and other project sponsors (collectively, "Company") proposes to invest in, or cause others to invest in, the establishment of certain manufacturing and related facilities in the County ("Project"), which the Company expects will result in the investment of at approximately a minimum of \$2,500,000;

WHEREAS, the County hereby identifies the Project as a project or proposed project and intends this Ordinance to serve as the inducement resolution, as described by the Act; and

WHEREAS, the County has determined to offer the Company a FILOT incentive package at an assessment ratio of 6%, with a fixed millage rate for 20 years. The terms and conditions of each of these incentives are more fully described in the Fee Agreement ("Fee Agreement") attached hereto as Exhibit A.

NOW THEREFORE, BE IT ORDAINED, by the County Council as follows:

Section 1. Authorization to Execute and Deliver Fee Agreement. The Chairman of County Council and the County Administrator are hereby authorized and directed to execute the Fee Agreement which is in substantially final form as hereto attached, with any minor modifications and revisions as may be approved by the Chairman of County Council and the County Administrator, in the name of and on behalf of the County, and the Clerk to County Council is hereby authorized and directed to attest the same; and the Chairman of County Council and the County Administrator are hereby further authorized and directed to deliver the executed Fee Agreement to the Company.

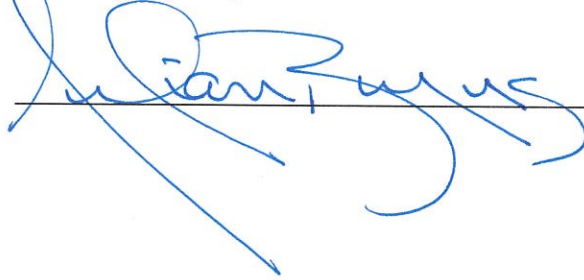
Section 2. Statutory Findings. Based on information provided by the Company, the County hereby finds: (i) the Project will benefit the general public welfare of the County by providing service, employment, recreation or other public benefits not otherwise provided

locally; (ii) the Project gives rise to no pecuniary liability of the County or incorporated municipality or 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.

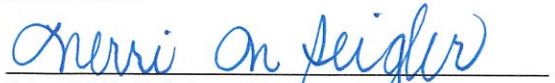
Section 3. General Repealer. All ordinances, resolutions, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed.

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

Kershaw County, South Carolina



ATTEST:


Merri M. Seigler, Clerk to County Council
Kershaw County, South Carolina

READINGS:

First Reading:	November 22, 2016
Second Reading:	December 13, 2016
Third Reading:	February 14, 2017
Public Hearing:	February 14, 2017

FEE AGREEMENT

AMONG

KERSHAW COUNTY, SOUTH CAROLINA

AND

RJR LAND GROUP, LLC

DATED
AS OF
December 31, 2016

FEE AGREEMENT

THIS FEE-IN-LIEU OF *AD VALOREM* TAXES AGREEMENT ("Fee Agreement") is made and entered into as of December 31, 2016, by and between Kershaw 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 Kershaw County Council ("County Council") as the governing body of the County, and RJR Land Group, LLC, a limited liability company, organized and existing under the laws of the State of South Carolina, along with one or more existing, or to-be-formed or acquired subsidiaries, or affiliated or related entities as defined in the *Code of Laws of South Carolina* §12-44-30, (1977, as amended) (collectively, "Company").

WITNESSETH :

(a) The County is authorized by Title 12, Chapter 44, *Code of Laws of South Carolina*, (1976, as amended) ("Act") to enter into a fee agreement with qualifying industries to induce such industries to locate in the State and to encourage industries now located in the State to expand their investments and thus make use of and employ manpower and other resources of the State.

(b) Pursuant to the Act, the County finds that (a) the Project (as defined herein) is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefit not otherwise adequately provided locally; (b) the Project gives rise to no pecuniary liability of the County or incorporated municipality and to no charge against its general credit or taxing power; (c) the purposes to be accomplished by the Project are proper governmental and public purposes; and (d) the benefits of the Project to the public are greater than the costs to the public.

(c) The Company has agreed to purchase additional land, building, machinery, and equipment within the County ("Project"). The Company's total investment in the Project is estimated to be approximately \$2,500,000 over a five-year period.

(d) Pursuant to an Inducement Resolution adopted as of December 13, 2016, the County Council identified the Project and, pursuant to an Ordinance adopted as of February 14, 2017 ("Fee Ordinance"), authorized the County to enter into a Fee Agreement dated December 31, 2016 with the Company which identifies the property comprising the Project as Economic Development Property under the Act subject to the terms and conditions hereof.

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 Fee Agreement have the meaning herein specified, unless the context clearly requires otherwise.

“Chairman” means the Chairman of the County Council of Kershaw County, South Carolina.

“Clerk of County Council” means the Clerk to the County Council of Kershaw County, South Carolina.

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

“County” means Kershaw 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 Kershaw County Council as the governing body of the County.

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

“Company” means RJR Land Group, LLC.

“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 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 3.5 of this Fee Agreement, (ii) a casualty to the Phase of the Project, or any part thereof, described in Section 3.6 of this Fee Agreement, or (iii) a condemnation to the Phase of the Project, or any part thereof, described in Section 3.7 of this Fee Agreement.

“DOR” means the South Carolina Department of Revenue and any successor thereto.

“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 the Fee Agreement, and which are identified by the Company in connection with their annual filing of a SCDOR PT-100, PT-300, or comparable forms with DOR (as such filing may be amended from time to time) for each year within the Investment Period. Title to all Economic Development Property shall at all times remain vested in the Company, except as may be necessary to take advantage of the effect of §12-44-160.

“Equipment” means all of the machinery, equipment, furniture, and fixtures, together with any and all additions, accessions, replacements, and substitutions thereto or therefor acquired by the Company during the Investment Period as a part of the Project.

“Event of Default” means any Event of Default specified in Section 3.12 of this Fee Agreement.

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

“FILOT Payments” means the payments in lieu of taxes which the Company is obligated to pay to the County.

“Improvements” means improvements, together with any and all additions, accessions, replacements and substitutions thereto or therefor acquired by the Company during the Investment Period.

“Investment Period” means the period beginning with the first day of any purchase or acquisition of Project Property, and ending December 31, 2021. The minimum statutory investment of \$2,500,000 must be completed no later than December 31, 2021.

“Minimum Statutory Investment Requirement” shall mean an investment of at least \$2,500,000 in real and tangible personal property subject to *ad valorem* taxation (in the absence of this Fee Agreement and/or a multi-county industrial development park) by the Company during the Investment Period.

“Personal Property” means all machinery, apparatus, equipment, fixtures, office facilities, furnishings, and other personal property, together with additions thereof, replacements thereof, and substitutions therefore, to the extent such property becomes a part of the Project under this Fee Agreement.

“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.

“Phase Termination Date” means with respect to each Phase of the Project the day twenty years after each such Phase of the Project becomes subject to the terms of this Fee Agreement. Anything contained herein to the contrary notwithstanding, the last Phase Termination Date shall be no later than December 31 in the nineteenth year following the year the last Phase of the Project is placed in service.

“Project” means the Equipment, Improvements, and Real Property, together with the acquisition, construction, installation, design and engineering thereof, in phases. The Project involves an initial investment of sufficient sums to qualify under the Act.

“Project Property” shall mean all Real Property and Personal Property in the County that the Company determines to be necessary, suitable, or useful for the purposes that Section 2.2 describes, and that is first placed in service in calendar year 2016 or thereafter. The parties agree that Project Property shall consist of such property so properly identified by the Company in connection with its annual filing with the DOR of a SCDOR PT-300, or such comparable form,

and with such schedules as the DOR may provide in connection with projects subject to the Act (as such filing may be amended or supplemented from time to time) for each year within the Investment Period.

“Real Property” means real property, 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; 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 Fee Agreement.

“Removed Components” means the following types of components or Phases of the Project or portions thereof, all of which the Company, 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 the Fee Agreement: (a) components or Phases of the Project or portions thereof which the Company, in its sole discretion, determines 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 in its sole discretion, elects to remove pursuant to Section 3.5 of this 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 treated as a Removed Component under Section 3.5 or 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 whose investment with respect to the Project shall be considered part of the Investment and qualify for FILOT Payments and other benefits pursuant to Section 3.1 hereof and §§12-44-30(A) and 12-44-130 of the Act; provided such investment of the Company and Sponsor Affiliate is sufficient to qualify for FILOT Payments under the Act.

Any reference to any agreement or document in this Article I or otherwise in this 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 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 Fee Agreement and to carry out its obligations hereunder. The County has duly authorized the execution and delivery of this 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 corporation, duly organized and in good standing under the laws of the State of South Carolina and has power to enter into this Fee Agreement.

(b) The Company’s execution and delivery of this 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 the purpose of manufacturing and selling wood products, and for such other purposes permitted under the Act, as the Company may deem appropriate.

(d) The availability of the payment in lieu of taxes with regard to the Economic Development Property authorized by the Act has induced the Company to undertake the Project in the County.

ARTICLE III FILOT PAYMENTS

Section 3.1. Negotiated Payments.

(a) Pursuant to §12-44-50 of the Act, the Company is required to make payments in lieu of *ad valorem* taxes (“FILOT Payments”) on all Economic Development Property comprising the Project and placed in service, as follows: the Company shall make FILOT Payments in lieu of *ad valorem* taxes with respect to each Phase of the Project placed in service during the Investment Period. Under no circumstances may the period for compliance with the \$2,500,000 statutory minimum investment be extended beyond the Investment Period.

(b) The amount of such annual FILOT Payments shall be determined by the following procedure (subject, in any event, to the required procedures under the Act and to Section 3.2 hereof):

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 19 years using original income tax basis for State income tax purposes for any real property

(provided, if Real Property and Improvements are constructed for the fee or are purchased in an arms-length transaction, fair market value is deemed to equal the original income tax basis, otherwise, the Department of Revenue and Taxation 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 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 Fee Agreement, except that no extraordinary obsolescence shall be allowable but taking into account all applicable property tax exemptions which would be allowed to Company under State law, if the property were taxable, except those exemptions specifically disallowed under §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 Fee Agreement.

Step 2: Apply an assessment ratio of 6%, as provided in subsection (c), 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 19 years thereafter.

Step 3: Use a millage rate of .3392 (which millage rate shall be a fixed rate for the term of this 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.

(c) In the event that it is determined by a final order of a court of competent jurisdiction or by agreement of the parties that the minimum payment in lieu of taxes applicable to this transaction is to be calculated differently than described above, the payment shall be reset at the minimum permitted level so determined.

(d) In the event that the Act and/or the above-described FILOT Payments are declared invalid or unenforceable, in whole or in part, for any reason, the parties express their intentions that such payments and this Fee Agreement be reformed so as to most closely effectuate the legal, valid, and enforceable intent thereof and so as to afford the Company 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 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, 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 to the County hereunder, shall be reduced by the total amount of payments in lieu of *ad valorem* taxes made by the Company with respect to the Project pursuant to the terms hereof, and further reduced by any abatements provided by law.

Section 3.2. FILOT Payments on Replacement Property. If the Company elects 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 §12-44-60 of the Act and provided the Company meets or continues to meet the Minimum Statutory Investment Requirement, the Company 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 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 twenty (20) 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 with respect to the Excess Value shall be equal to the payment that would be due if the property were not Economic Development Property.

Section 3.3. Reductions in Payments of Taxes upon Removal, Condemnation, or Casualty. In the event of a Diminution in Value of any Phase of the Project, 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; provided however, the Company maintains a sufficient investment amount to meet the Minimum Statutory Investment Requirement.

Section 3.4. Place of FILOT Payments. The Company shall make the above-described FILOT Payments directly to the County in accordance with applicable law.

Section 3.5. Removal of Equipment. The Company 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 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, in its sole discretion, determines 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, in its sole discretion, elects to remove pursuant to this Section 3.5(c) or Section 3.6(c) hereof.

Section 3.6. 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 shall be entitled to terminate this Agreement.

(b) *Election to Rebuild.* In the event the Project is damaged by fire, explosion, or any other casualty, and if the Company does not elect to terminate this Agreement, the Company may, in its 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. 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 to the County under Section 3.1 hereof.

(c) *Election to Remove.* In the event the Company elects not to terminate this 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 3.7. 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, 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 occupancy of the Project commercially infeasible in the judgment of the Company, the Company shall have the option to terminate this Fee Agreement as of the time of vesting of title by sending written notice to the County within a reasonable period of time following such vesting.

(b) *Partial Taking.* In the event of a partial taking of the Project or transfer in lieu thereof, the Company may elect: (i) to terminate this Fee Agreement; (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; or (iii) to treat the portions of the Project so taken as Removed Components.

Section 3.8. Maintenance of Existence. The Company agrees (i) that it shall not take any action which will materially impair the maintenance of its corporate existence and (ii) that it will maintain its good standing under all applicable provisions of State law. Notwithstanding the foregoing, any changes in the Company's corporate existence that result from internal restructuring or reorganization of the Company or its parent are specifically authorized hereunder. Likewise, benefits granted to the Company under this Fee Agreement shall, in the event of any such restructuring or reorganization, be transferred to the successor entity under the provisions of Section 3.11 hereof. Such transfers are specifically approved and authorized by the County without any further action by the County Council; provided such does not require this Fee Agreement to be assigned or the Project subleased in whole or part as provided in Section 3.11. In such event, the provisions of Section 3.11 will control.

Section 3.9. Indemnification Covenants.

(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 this Agreement, performance of the County's obligations under this Agreement or the administration of its duties pursuant to this Agreement, or otherwise by virtue of the County having entered into this 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 this Agreement, performance of the County's obligations under this Agreement, or the administration of its duties under this Agreement, or otherwise by virtue of the County having entered into this Agreement; (2) resulting from that Indemnified Party's own gross 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.

Section 3.10. Confidentiality/Limitation on Access to Project. The County acknowledges and understands that the Company utilizes confidential and proprietary "state-of-the-art" manufacturing equipment and techniques and that a disclosure of any information relating to such equipment or techniques, including, but not limited to, disclosures of financial or other information concerning the Company's operations, would result in substantial harm to the Company and could thereby have a significant detrimental impact on the Company's employees and also upon the County. Therefore, the County agrees that, except as required by law and pursuant to the County's police powers, neither the County nor any employee, agent, or contractor of the County: (i) shall request or be entitled to receive any such confidential or proprietary information; (ii) shall request or be entitled to inspect the Project or any property associated therewith; provided, however, that if an Event of Default shall have occurred and be continuing hereunder, the County shall be entitled to inspect the Project provided they shall comply with the remaining provisions of this Section; or (iii) shall disclose or otherwise divulge

any such confidential or proprietary information to any other person, firm, governmental body or agency, or any other entity unless specifically required to do so by State law.

Prior to disclosing any confidential or proprietary information or allowing inspections of the Project or any property associated therewith, the Company may require the execution of reasonable, individual, confidentiality and non-disclosure agreements by any officers, employees, or agents of the County or any supporting or cooperating governmental agencies who would gather, receive, or review such information or conduct or review the results of any inspections.

Section 3.11. Assignment and Subletting. This 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 so long as such assignment or sublease is made in compliance with §12-44-120 of the Act and so long as the County consents by subsequent adoption of a Resolution.

Section 3.12. Events of Default. The following are “Events of Default” under this Fee Agreement, and the term “Events of Default” means, whenever used with reference to this Fee Agreement, any one or more of the following occurrences:

(a) Failure by the Company to make, upon levy, the FILOT Payments described in Section 3.1 hereof; provided, however, that the Company shall be entitled to all redemption rights granted by applicable statutes; or

(b) Failure by the Company to perform any of the other material terms, conditions, obligations or covenants of the Company hereunder, which failure shall continue for a period of thirty (30) days after written notice from the County to the Company 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. The benefits of the Company shall continue hereunder, as provided for under §12-44-100 of the Act, so long as the Company has achieved the minimum statutory investment of \$2,500,000 on or before August 1, 2021 and complied with Section 3.1 herein.

Section 3.13. Remedies on Default. Whenever any Event of Default shall have occurred and shall be continuing, the County shall have the option to take the following remedial actions:

(a) Terminate the Fee Agreement; and

(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 under this Fee Agreement.

Section 3.14. Remedies Not Exclusive. No remedy conferred upon or reserved to the County under this 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 3.16. Waiver of Recapitulation Requirements. As permitted under §12-44-55 of the Act, the Company and County hereby waive application of any of the recapitulation requirements as set forth in §12-44-55.

Section 3.17. Payment of Administrative Expenses. The Company will reimburse, or cause reimbursement to, the County from time to time for reasonable and necessary amounts that are customary and standard, including reasonable attorney's fees and costs, actually incurred, or that will be actually incurred, by the County with respect to the County's fulfillment of its obligations under the Fee Agreement and other documents in connection with the Project ("Transaction Documents") in the implementation of its terms and provisions ("Administrative Expenses"). The Company will make such reimbursement of Administrative Expenses upon written request therefor, but in no event later than sixty (60) days after receiving written notice from the County specifying the nature of such expense and requesting the payment of the same. The County acknowledges that it imposes no charges in the nature of impact fees or recurring fees in connection with the incentives authorized by the Transaction Documents. The parties understand that counsel to the County may invoice the Company for those expenses related to the review of the Transaction Documents and all resolutions, ordinances and other documentation related thereto in an amount not to exceed \$8,000.

Section 3.18. Filings and Reports. Each year during the term of the Fee Agreement, the Company shall deliver to the County, a copy of the most recent annual filings with DOR with respect to the Project, no later than 30 days following delivery thereof to DOR.

ARTICLE IV MISCELLANEOUS

Section 4.1. Notices. Any notice, election, demand, request, or other communication to be provided under this Fee Agreement shall be effective when delivered to the party named below or when 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: Kershaw County, South Carolina
Victor Carpenter, County Administrator
515 Walnut Street
Camden, South Carolina 29020
Telephone: 803.425.1501
Facsimile: 803.425.1546

WITH COPIES TO: J. Kennedy Dubose, Jr., Esquire

County Attorney
Post Office Drawer 39
Camden, South Carolina 29020
Telephone: 803.432.2992
Facsimile: 803.432.0784

AS TO THE COMPANY: RJR Land Group, LLC
Post Office Box 1300
Lugoff, SC 29078

WITH COPIES TO: Charles B. Baxley, Esquire
Baxley, Pratt & Wells, P.A.
Post Office Box 10
Lugoff, South Carolina 29078
Telephone: 803.438.4200
Facsimile: 803.438.5090

Section 4.2. Binding Effect. This Fee Agreement is binding, in accordance with its terms, upon and inure to the benefit of the Company and the County, and their respective successors and assigns. 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 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 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 Fee Agreement and all documents executed in connection herewith shall be construed in accordance with and governed by the laws of the State of South Carolina.

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

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

Section 4.7. Further Assurance. From time to time the County agrees to execute and deliver to the Company such additional instruments as either may reasonably request to effectuate the purposes of this Fee Agreement.

Section 4.8. Severability. If any provision of this 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 with the maximum benefits to be derived, it being the intention of the County to offer the Company the strongest inducement possible to locate the Project in the County.

Section 4.9. Limited Obligation. THE PROJECT SHALL GIVE RISE TO NO PECUNIARY LIABILITY OF THE COUNTY OR ANY INCORPORATED MUNICIPALITY NOR TO ANY CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWER.

Section 4.10. Force Majeure. 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 Company's reasonable control.

Section 4.11. Execution Disclaimer. Notwithstanding any other provision, the County is executing as statutory accommodation to assist the Company in achieving the intended benefits and purposes of the Act. The County has made no independent legal or factual investigation regarding the particulars of this transaction and it executes in reliance upon representations by the Company that this document complies with all laws and regulations, particularly those pertinent to industrial development projects in South Carolina.


[TWO SIGNATURE PAGES FOLLOW]

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

Kershaw County, South Carolina

A handwritten signature in blue ink, appearing to read "Julian Byers", written over a horizontal line. The signature is stylized and extends above and below the line.

ATTEST:


Merri M. Seigler, Clerk to County Council
Kershaw County, South Carolina

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

RJR Land Group, LLC



By: Russell Brazell
Its: Managing Member