

AN ORDINANCE

270.2015

FILED FOR RECORD

AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE AGREEMENT BY AND BETWEEN KERSHAW COUNTY, SOUTH CAROLINA, AND INVISTA S.À R.L., ITS AFFILIATES AND ASSIGNS TO PROVIDE FOR A FEE IN LIEU OF AD VALOREM TAXES INCENTIVE, AND OTHER MATTERS RELATED THERETO.

2015 DEC 14 PM 2:12  
JAY W. DONALD  
CLERK OF COURT  
KERSHAW COUNTY, S.C.

WHEREAS, Kershaw County, South Carolina ("County"), acting by and through its County Council ("County Council") is authorized and empowered under and pursuant to the provisions of Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended ("Act"), (i) to enter into agreements with qualifying industry to encourage investment in projects constituting economic development property through which the industrial development of the State of South Carolina 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; and (ii) to covenant with such industry to accept certain payments in lieu of *ad valorem* taxes ("FILOT") with respect to such investment; and

WHEREAS, INVISTA S.À R.L., a private limited liability company, organized and existing under the laws of the Country of Luxembourg, but authorized to and conducting business in South Carolina, along with one or more existing, or to-be-formed or acquired subsidiaries, or affiliated or related entities, including one or more Sponsor Affiliates, as defined in Section 12-44-30 of the Code, as amended (collectively, "Company"), is planning an investment consisting of the expenditure of approximately \$45,000,000 to purchase additional machinery and equipment and to renovate, upgrade, and add increased square footage to the Company's existing facilities within the County ("Project") and anticipating the creation of approximately 20, new, full-time equivalent jobs; and

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 either of 6%, with a fixed millage rate for 30 years, being the lesser of the millage rate in effect on June 30, 2014, or June 30, 2015, and a special source revenue credit. 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.

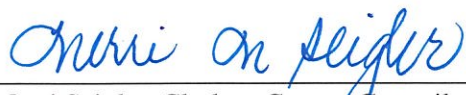
**Section 3. General Repealer.** All ordinances, resolutions, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed.

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

  
\_\_\_\_\_  
Julian Burns, Chairman of County Council  
Kershaw County, South Carolina

ATTEST:

  
\_\_\_\_\_  
Merri Seigler, Clerk to County Council  
Kershaw County, South Carolina

READINGS:

First Reading: 10-13-15  
Second Reading: 11-10-15  
Third Reading: 12-8-15  
Public Hearing: 11-10-15

**EXHIBIT A**

**Fee In Lieu of Ad Valorem Taxes Agreement**

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**FEE-IN-LIEU OF AD VALOREM TAXES AGREEMENT**

**BETWEEN**

**INVISTA S.À R.L.**

**AND**

**KERSHAW COUNTY, SOUTH CAROLINA**

**DATED AS OF DECEMBER 31, 2015**

FILED FOR RECORD  
2015 DEC 14 PM 2:12  
JOYCE McDONALD  
CLERK OF COURT  
KERSHAW COUNTY, S.C.

**PREPARED BY:**

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**FEE-IN-LIEU OF AD VALOREM TAXES AGREEMENT**

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THIS FEE-IN-LIEU OF AD VALOREM TAXES AGREEMENT ("Fee Agreement") is made and entered into as of December 31, 2015, 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 INVISTA S.À R.L., a private limited liability company, organized and existing under the laws of the Country of Luxembourg, but authorized to and conducting business in South Carolina, along with one or more existing, or to-be-formed or acquired subsidiaries, or affiliated or related entities, including one or more Sponsor Affiliates, as defined in Section 12-44-30 of the Code, as amended (collectively, "Company").

WITNESSETH:

(a) The County is authorized by Title 12, Chapter 44, Code of Laws of South Carolina, 2976, 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 machinery and equipment and to renovate, upgrade, and increase the square footage of the Company's existing facilities within the County ("Project"). The Company's total investment in the Project is estimated to be approximately \$80,000,000 over a ten-year period. The Company anticipates creating approximately 20, new, full-time equivalent jobs.

(d) Pursuant to an Ordinance adopted on December 8, 2015, the County Council identified the Project and, pursuant to that Ordinance ("Fee Ordinance"), authorized the County to enter into a Fee Agreement with the Company which identifies the property comprising the Project as Economic Development Project 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.

Carolina.

“Code” means the South Carolina Code of Laws, 2976, 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.

“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 3.6 of this Fee Agreement, (ii) a casualty to the Phase of the Project, or any part thereof, described in Section 3.7 of this Fee Agreement, or (iii) a condemnation to the Phase of the Project, or any part thereof, described in Section 3.8 of this 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 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 the South Carolina Department of Revenue and Taxation (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 Section 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.

“Initial Investment Period” means the period beginning December 31, 2015, and ending December 31, 2020. The minimum statutory investment of \$2,500,000 must be completed no later than December 31, 2020.

“Minimum Investment Requirement” shall mean an investment of at least \$45,000,000 in property subject to ad valorem taxation (in the absence of this Fee Agreement and/or a multi-county industrial development park) by the Company or any Sponsor Affiliate.

“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 thirty 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 of the year of the expiration of the maximum period of years that the annual fee payment is available to the Company under Section 12-44-30(20) of the Act, as amended.

“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.

“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 3.6 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 3.6 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 Sections 12-44-30(A) and 12-44-130 of 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 private limited liability company, duly organized and in good standing under the laws of the Country of Luxembourg, and is authorized and qualified to do business in 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 components for the automotive and other industries, 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 Section 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 on or before each December 31 through December 31, 2025, which includes the Initial Investment Period and an automatic five-year extension, in accordance with the Act. If the Company meets the \$2,500,000 statutory minimum investment within the first five years of the investment period the County shall automatically grant the extension of the investment period of this Fee Agreement without further action of County Council. However, under no circumstances may the period for compliance with the \$2,500,000 statutory minimum investment be extended beyond December 31, 2020.

(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 3.3 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 29 years 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 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 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 Fee Agreement.

- Step 2: Apply an assessment ratio either 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 29 years thereafter or such longer period of years that the annual fee payment is permitted to be made by the Company under the Act, as amended.
- Step 3: Use a millage rate of .3078 (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 or such longer period of years that the annual fee payment is permitted to be made by the Company under the Act, as amended.
- Step 4: For each of the first five FILOT Payments due and owing from the Company to the County under this Fee Agreement ("Credit Period"), the County subject to Section 3.2, hereby grants to the Company a Special Source Revenue Credit of 50% (each, an "SSRC"). The Company is required to use the SSRC to pay for or reimburse itself for eligible expenditures, which shall include the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the Company's property and for improved or unimproved real estate. In no event may the aggregate SSRC exceed the aggregate amounts eligible for this type of credit under applicable State law.

In such years in which the Company is entitled to claim an SSRC, the Company shall provide to the County Administrator, with a copy to the County Attorney, a form, substantially similar to that set forth in Appendix A, identifying the year for which the Company is claiming the credit(s) and the amount of the credit.

(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. Adjustment and Repayment of SSRC Benefits.

No later than March 31 after the last day of the Initial Investment Period (which the Parties believe to be December 31, 2020), the Company shall submit the Initial Investment Period Certification Form attached hereto as Appendix B, which shall demonstrate the Company's compliance with the Minimum Investment Requirement as of the end of the Initial Investment Period. If the Overall Achievement Percentage, as defined below and as reported in the Initial Investment Period Certification Form, is equal to or greater than 90%, the Company shall be deemed by the County to have met its commitments under this Fee Agreement. If the Overall Achievement Percentage is less than 90%, the Company shall repay a proportionate amount of SSRCs received as of the end of the Investment Period, calculated as follows:

Repayment Amount = Amount of SSRCs Received x (100% - Investment Achievement Percentage)

Investment Achievement Percentage = New Investment (Without Regard to Depreciation) Invested by the Company as of the end of the Investment Period / Minimum Investment Requirement

For example, and by way of example only, if the Company invested \$30,000,000 as of the end of the Initial Investment Period and received an aggregate of \$500,000 in SSRCs, the Repayment Amount would equal \$129,650, calculated as follows:

Investment Achievement Percentage =  $\$30,000,000 / \$40,500,000^* = 74.07\%$

Overall Achievement Percentage = 74.07%

Repayment Amount =  $\$500,000 \times (100\% - 74.07\%) = \$129,650$

\*90% of the Minimum Investment Requirement.

**Section 3.3. 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 Section 12-44-60 of the Act, 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 thirty (30) (or, if greater, the maximum number of years for which the annual fee payments are available to the Company 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 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 3.4. Reductions in Payments of Taxes Upon Removal, Condemnation or Casualty.** In the event of a Diminution in Value of any Phase of the Project, 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 of FILOT Payments.** The Company shall make the above-described FILOT Payments directly to the County in accordance with applicable law.

**Section 3.6. 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 3.6(c) or Section 3.7(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 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 3.8. 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 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 3.9. 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 3.12 hereof. Such transfers are specifically approved and authorized by the County without any further action by the County Council.

**Section 3.10. 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 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 3.11. 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 3.12. 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 Section 12-44-120 of the Act and so long as the County consents by subsequent adoption of a Resolution.

**Section 3.13. 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 ninety (90) 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 Section 12-44-100 of the Act, so long as the Company has achieved the minimum statutory investment of \$2,500,000 on or before December 31, 2020 and complied with Section 3.2 herein.

**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 of such default and after the expiration of a thirty (30) day cure period, shall have the option to take any one or more of the following remedial actions:

(a) Terminate the 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 under this Fee Agreement.

**Section 3.15. 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 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.

**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.

#### **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:       INVISTA S.À R.L.  
ATTN: H. Gary Snipes,  
Energy and Government Interactions  
Post Office Box 7000  
Camden, South Carolina 29020  
Telephone: 803.425.3417  
Facsimile: 803.425.2495

AND

INVISTA S.À R.L.  
ATTN: Corporate Counsel  
4123 East 37th Street North

Wichita, KS 67220

WITH A COPY TO:

Michael E. Kozlarek, Esquire  
Parker Poe Adams & Bernstein LLP  
1201 Main Street, Suite 1450 (29201)  
Post Office Box 1509  
Columbia, South Carolina 29202-1509  
Telephone: 803.255.8000  
Facsimile: 803.255.8017

**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.

**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 herefrom, 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

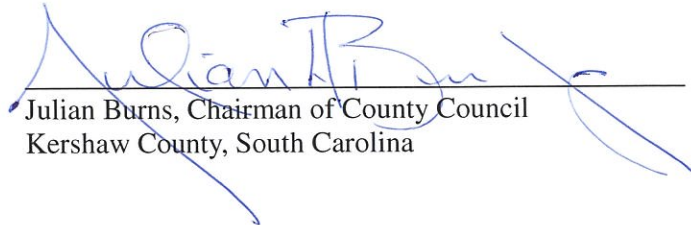
statutory accommodation to assist the Company in achieving the intended benefits and purposes of the Act. The County has made no independent legal or factual investigation regarding the particulars of this transaction and it executes in reliance upon representations by the Company that this document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

[TWO SIGNATURE PAGES FOLLOW]  
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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

  
Julian Burns, Chairman of County Council  
Kershaw County, South Carolina

ATTEST:

  
Merri 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.

INVISTA S.À R.L.

---

BY: Kyle Turner  
Its: Authorized Signatory

APPENDIX A  
[FORM OF]

CERTIFICATE OF SPECIAL SOURCE REVENUE CREDIT

Reference is made to the Fee-In-Lieu of *Ad Valorem* Taxes Agreement dated as of December 31, 2015 ("Fee Agreement"), between Kershaw County, South Carolina ("County"), and INVISTA S.À R.L. ("Company"). Each capitalized term not defined in this Certificate has the meaning ascribed in the Fee Agreement. In accordance with the terms of the Fee Agreement, the undersigned authorized agent of the Company certifies to the County:

1. The Company is entitled to claim a Special Source Revenue Credit ("SSRC") against each annual FILOT Payment as described in Section 3.1 of the Fee Agreement.

2. The invoice for the annual FILOT Payment for tax year 20\_\_, provided by the County Auditor, specifies the FILOT Payment due, with respect to the Project, on January 15, 2\_\_, to be \$\_\_\_\_\_.

3. The Company is entitled to a SSRC for this tax year of: \_\_\_\_\_ (SSRC).

4. The total amount payable from the County to the Company within 30 days of receipt of the Company's FILOT Payment with this Certificate is the Invoiced Amount less the SSRC, or: \$\_\_\_\_\_.

5. The SSRCs specified in this Certificate for the current tax year, together with the amount of all SSRCs previously claimed pursuant to the Fee Agreement, do not, in the aggregate, exceed the total cost of all infrastructure improvements funded by the Company and all investors, for which an SSRC is permitted under the Act.

IN WITNESS WHEREOF, I have executed this Certificate as of \_\_\_\_\_, \_\_\_\_\_, 20\_\_.

INVISTA S.À R.L.

\_\_\_\_\_  
By:  
Its:

**APPENDIX B**

**INITIAL INVESTMENT PERIOD CERTIFICATION FORM**

**MUST BE FILED NO LATER THAN MARCH 31 OF THE YEAR IMMEDIATELY  
FOLLOWING THE LAST YEAR OF THE INITIAL INVESTMENT PERIOD  
WITH THE KERSHAW COUNTY AUDITOR**

**ADDRESS:**

Government Center  
515 Walnut Street  
Room 120  
Camden, SC 29020

**WITH A COPY TO:**

Victor Carpenter, County Administrator  
Kershaw County Government Center  
515 Walnut Street  
Camden, SC 29020

Kershaw County Economic Development Office  
80 Campus Drive  
P.O. Box 763  
Camden, SC 29021

Reference is made to the Fee-In-Lieu of Ad Valorem Taxes Agreement, dated as of December 31, 2015 ("Agreement"), by and between Kershaw County, South Carolina ("County"), and INVISTA S.À R.L. ("Company"). Each capitalized term not defined in this Initial Investment Period Certification Form ("Certification") has the meaning contained in the Agreement.

According to the Agreement, the undersigned authorized agent of the Company certifies:

1. The Company is entitled to claim certain annual Special Source Revenue Credits against each annual Fee Payment during each year of the Initial Investment Period, with respect to investment made in the Project during the Initial Investment Period.

2. The Investment Achievement Percentage is calculated as follows:

Investment Achievement Percentage = New Investment (Without Regard to Depreciation) Invested by the Company as of the end of the Investment Period / Minimum Investment Requirement

The Company certifies that, it has achieved \$\_\_\_\_\_ in new investment (without regard to depreciation) as reported in its most recent property tax return.

The Investment Achievement Percentage is therefore equal to \_\_\_\_ %.

4. Which means, the Overall Achievement Percentage is \_\_\_\_\_%

IN WITNESS WHEREOF, I have executed this Certification as of \_\_\_\_\_, 20\_\_\_\_.

INVISTA S.À R.L.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



FEE AGREEMENT

Between

KERSHAW COUNTY, SOUTH CAROLINA

and

E.I DU PONT DE NEMOURS AND COMPANY

and

INVISTA S.À R.L.

Transferring property under an existing fee in lieu of taxes lease agreement to a fee agreement under Title 12, Chapter 44, S.C. Code of Laws, to be effective as of December 31, 1998

RECAPITULATION OF CONTENTS OF  
FEE AGREEMENT PURSUANT TO S.C. CODE ANN. §12-44-55(A)

The parties have agreed to waive this requirement pursuant to S.C. Code Ann. § 12-44-55(B).

## FEE AGREEMENT

THIS FEE AGREEMENT (the "Fee Agreement") is made and entered into as of October 29, 2015, but to be effective as of December 31, 1998, by and between KERSHAW COUNTY, SOUTH CAROLINA (the "County"), a body politic and corporate and a political subdivision of the State of South Carolina (the "State"), acting by and through the Kershaw County Council (the "County Council") as the governing body of the County, and E.I DU PONT DE NEMOURS AND COMPANY, a corporation organized and existing under the laws of the State of Delaware and authorized to transact business in the State of South Carolina ("DuPont") and INVISTA S.À R.L., a corporation organized and existing under the laws of the Country of Luxembourg but authorized to conduct and conducting business in the State of South Carolina (the "Company").

### RECITALS

WHEREAS, the County and DuPont are parties to a Lease Agreement dated as of December 31, 1998 (the "Lease Agreement"), and to related documents, pursuant to which certain real property and improvements thereto and certain machinery and equipment, fixtures, and other personal property installed thereon (collectively the "Project") were conveyed to the County pursuant to a FILOT arrangement under Title 4, Chapter 29, Code of Laws of South Carolina (1976), as amended (the "Title Act"); and

WHEREAS, on or about December 9, 2002, the County and DuPont amended the Lease Agreement to extend the investment period, reduce the target investment, and provide for additional incentives pursuant to Ordinance No. 13.2002; and

WHEREAS, the County recognizes that the real property constituting the Project has been subleased to the Company (the "Invista Sublease") and that it is anticipated the real property constituting the Project will be conveyed to the Company pursuant to the terms of the Invista Sublease; and

WHEREAS, it is anticipated that the Company will own the personal property, as well as, the real property comprising the Project and has assumed responsibility for operating the Project; and

WHEREAS, this Fee Agreement not only adds the Company as a party but makes the Company primarily responsible for the obligations under this Fee Agreement, as well as, the primary recipient of the benefits hereunder; and

WHEREAS, the County further recognizes that the County is party to a separate fee agreement with the Company (the "Invista Fee Agreement"); and

WHEREAS, the Company and/or DuPont invested not less than \$95,000,000 in the Project prior to December 31, 2005; and

WHEREAS, the County is authorized by Title 12, Chapter 44, Code of Laws of South Carolina (1976), as amended (the "Non-Title Act"), to enter into a fee agreement with companies

to (i) to induce industries to locate in the State; (ii) to encourage industries now located in the State to expand their investments and thus make use of and employ manpower, products, and other resources of the State; and (iii) to enter into a fee agreement with entities meeting the requirements of such Act, which identifies certain property of such entities as economic development property; and

WHEREAS, Section 12-44-170(B) of the Non-Title Act provides for an election by an entity to transfer its FILOT arrangement under the Title Act to a substantially similar arrangement under the Non-Title Act; and

WHEREAS, pursuant to an Ordinance enacted by the County on Sept. 22, 2015 (the "Ordinance"), the County has consented to the transfer of the FILOT arrangement under the Title Act to a FILOT arrangement under the Non-Title Act, and the execution of a Fee Agreement and all other documents necessary to evidence the transfer; and

WHEREAS, the County has found and determined that: the transfer of the FILOT arrangement under the Title Act to the Non-Title Act is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, and other public benefits not otherwise adequately provided locally; approval will give rise to no pecuniary liability of the County or incorporated municipality or any charge against its general credit or taxing power; the purposes to be accomplished by the Project are proper governmental and public purposes; and the benefits of the approval of the Project are greater than the costs.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the respective representations and agreements hereinafter contained, the parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS

Section 1.1 The terms that this Article defines shall for all purposes of this Fee Agreement have the meanings herein specified, unless the context clearly requires otherwise:

"Act Minimum Investment Requirement" shall mean an investment of at least \$2,500,000 by the Company and any Sponsors and Sponsor Affiliates of property within the Investment Period, provided, however, that in the event of a reduction of the minimum investment level in Section 12-44-30(14) or any successor section by legislative action, then the Act Minimum Investment Requirement shall equal such reduced amount.

"Company" shall mean Invista S.à r.l. and any surviving, resulting, or transferee entity in any merger, consolidation, or transfer of assets; or any other person or entity which may succeed to the rights and duties of the Company.

"County" shall mean Kershaw County, South Carolina, a body politic and corporate and a political subdivision of the State of South Carolina, its successors and assigns, acting by and through the County Council as the governing body of the County.

“County Council” shall mean the Kershaw County Council, the governing body of the County.

“Department” shall mean the South Carolina Department of Revenue.

“Diminution in Value” in respect of the Project or any Phase of the Project shall mean any reduction in the value using the original fair market value (without regard to depreciation) as determined in Step 1 of Section 4.1(a) of this Fee Agreement, of the items which constitute a part of the Project or such Phase and which are subject to FILOT payments which may be caused by (i) the Company’s removal and/or disposal of equipment pursuant to Section 4.6 of this Fee Agreement; (ii) a casualty to the Project, such Phase of the Project, or any part thereof, described in Section 4.7 of this Fee Agreement; or (iii) a condemnation of the Project, such Phase of the Project, or any part thereof, described in Section 4.8 of this Fee Agreement.

“DuPont” shall mean E.I. Du Pont de Nemours and Company and any surviving, resulting, or transferee entity in any merger, consolidation, or transfer of assets; or any other person or entity which may succeed to the rights and duties of DuPont.

“Economic Development Property” shall mean those items of real and tangible personal property of the Project which are eligible for inclusion as economic development property under the Act, selected and identified by the Company in its annual filing of a SCDOR PT-300S or comparable form with the Department (as such filing may be amended from time to time) for each year within the Investment Period.

“Equipment” shall mean all of the machinery, equipment, furniture, office equipment, and fixtures, together with any and all additions, accessions, replacements, and substitutions thereto or therefor used or to be used in the County by the Company for the purposes described in Section 2.2(b) hereof, provided, however, that repairs, alterations, or modifications to personal property which is not economic development property or property subject to a fee in lieu of taxes prior to this Fee Agreement, are not eligible to become Economic Development Property, except for modifications which constitute an expansion of existing real property improvements.

“Event of Default” shall mean any event of default specified in Section 5.1 of this Fee Agreement.

“Exemption Period” shall mean the period beginning on the first day of the property tax year after the property tax year in which an applicable piece of Economic Development Property is placed in service and ending on the Termination Date. In case there are Phases of the Project, the Exemption Period applies to each year’s investment made during the Investment Period.

“Fee,” “Fee in Lieu of Taxes,” “FILOT,” or “Payments in Lieu of Taxes” shall mean the amount paid or to be paid in lieu of *ad valorem* property taxes as provided herein.

“Fee Agreement” shall mean this Fee Agreement.

“Fee Term” shall mean the period from the date of this Fee Agreement until the Termination Date.

“Improvements” shall mean all improvements to the Real Property, including buildings, building additions, roads, sewer lines, and infrastructure, together with any and all additions, fixtures, accessions, replacements, and substitutions thereto or therefor used or to be used in the County for the purposes described in Section 2.2(b) hereof; provided, however, that repairs, alterations, or modifications to real property which is not economic development property or property subject to a fee in lieu of taxes prior to this Fee Agreement, are not eligible to become Economic Development Property, except for modifications which constitute an expansion of existing real property improvements.

“Industrial Development Park” shall mean the industrial or business park developed by two or more counties as defined in Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended.

“Investment Period” shall mean the period beginning with the first day of any purchase or acquisition of Economic Development Property and ending on December 31, 2005.

“Invista Fee Agreement” shall have the definition assigned to such term in the Recitals section herein.

“Invista Sublease” shall have the definition assigned to such term in the Recitals section herein.

“Lease Agreement” means the Lease Agreement between the County and DuPont dated as of December 31, 1998.

“MCIP Act” shall mean Title 4, Chapter 1, Sections 170 et seq. of the Code of Laws of South Carolina, 1976, as amended.

“Non-Title Act” means Title 12, Chapter 44 of the Code of Laws of South Carolina, 1976, as amended.

“Ordinance” means the Ordinance adopted by the County on Sept. 22, 2015, which among other things, authorizes this Fee Agreement.

“Phase” or “Phases” in respect of the Project shall mean that the Equipment, Improvements, and/or Real Property of the Project are placed in service during more than one year in the Investment Period, and the word “Phase” shall therefore refer to the applicable portion of the Project placed in service in a given year in the Investment Period.

“Project” shall mean all the Equipment, Improvements, and/or Real Property located on the Real Property in the County and that the Company determines to be necessary, suitable, or useful for the purposes that Section 2.2(b) describes, and first placed in service in calendar year 1998 or thereafter.

“Real Property” shall mean real property that the Company uses or will use in the County for the purposes that Section 2.2(b) describes, and generally located on the land identified on Exhibit A hereto, together with all and singular the rights, members, hereditaments, and appurtenances belonging or in any way incident or appertaining thereto.

“Removed Components” shall mean the following types of components or Phases of the Project or portions thereof which are subject to FILOT payments, all of which the Company 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 pursuant to Section 4.6 hereof or otherwise; or (b) components or Phases of the Project or portions thereof which the Company in its sole discretion, elects to be treated as removed pursuant to Section 4.7(c) or Section 4.8(b)(iii) of this Fee Agreement.

“Replacement Property” shall mean any property which is placed in service as a replacement for any item of Equipment, any Improvement, or any Real Property previously subject to this Fee Agreement regardless of whether such property serves the same functions as the property it is replacing and regardless of whether more than one piece of property replaces any item of Equipment, any Improvement, or any Real Property, to the fullest extent that the Act permits.

“Sponsor” shall mean an entity that joins with or is an affiliate of, the Company and that participates in the investment in, or financing of, the Project and which meets the requirements under the Act to be entitled to the benefits of this Agreement with respect to its participation in the Project.

“Termination Date” shall mean in case the entire Project is placed in service in one year, the end of the last day of the property tax year which is the 27th year following the first property tax year in which the entire Project is placed in service, or in case there are Phases of the Project, the Termination Date shall mean with respect to each Phase of the Project the end of the last day of the property tax year which is the 27th year following the first property tax year in which such Phase of the Project is placed in service, provided, that the intention of the parties is that the Company will make at least 28 annual FILOT payments under Article IV hereof with respect to each Phase of the Project and provided further, that if this Fee Agreement is terminated earlier in accordance with the terms hereof, the Termination Date is the date of such termination.

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

Section 1.2 The term “investment” or “invest” as used herein shall include not only investments made by the Company, but also to the fullest extent permitted by law, those investments made by or for the benefit of the Company in connection with the Project through federal, state, or local grants, to the extent such investments are subject to *ad valorem* taxes or FILOT payments by the Company.

## ARTICLE II

### REPRESENTATIONS, WARRANTIES, AND AGREEMENTS

Section 2.1 Representations, Warranties, and Agreements of the County. The County hereby represents, warrants, and agrees as follows:

(a) The County is a body politic and corporate and a political subdivision of the State and acts through the County Council as its governing body. The Act authorizes and empowers the County to enter into the transactions that this Fee Agreement contemplates 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 and has obtained all consents from third parties and taken all actions necessary or that the law requires to fulfill its obligations hereunder.

(b) Based upon representations by the Company, the Project constitutes a “project” within the meaning of the Act, and the County is a County that the Act authorizes to enter into fee in lieu of tax agreements with companies that satisfy the Act Minimum Investment Requirement within the County.

(c) The County has agreed that each item of real and tangible personal property comprising the Project which is eligible to be economic development property under the Act and that the Company selects shall be considered Economic Development Property and is thereby exempt from *ad valorem* taxation in South Carolina.

(d) The millage rate in Section 4.1 hereof is 214.5 mills, the millage rate in effect with respect to the location of the proposed Project on June 30, 1998, as provided under Section 12-44-50(A)(1)(d) of the Act.

(e) The County will not be in default in any of its obligations (contractual or otherwise), including any violation of its statutory debt limit, as a result of entering into and performing under this Fee Agreement and/or as a result of creating an Industrial Development Park encompassing the Project.

(f) The County will take all reasonable action to include the Project in an Industrial Development Park.

(g) The County does not intend the transfer of the FILOT agreement under the Title Act to the Non-Title Act to have any effect on the Invista Sublease or the Invista Fee Agreement and will take such reasonable acts necessary to ensure the Invista Sublease and Invista Fee Agreement will not be adversely affected by such transfer.

Section 2.2 Representations, Warranties, and Agreements of the Company. The Company hereby represents, warrants, and agrees as follows:

(a) The Company is organized under the laws of the Country of Luxembourg, but is duly authorized to transact business in the State of South Carolina, has power to enter into this Fee Agreement, and has duly authorized the execution and delivery of this Fee Agreement.



(b) 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 nylon fiber manufacturing, and for such other purposes that the Act permits as the Company may deem appropriate.

(c) To the best knowledge of the Company, the acquisition and construction and purchase of the Project resulted in an investment of not less than \$95,000,000 prior to December 31, 2005.

Section 2.3 Reconveyance Documents. The County agrees to reconvey the Real Property and Improvements to DuPont by a reconveyance deed (the “Reconveyance Deed”), and to reconvey the Equipment to the Company by a reconveyance bill of sale (the “Reconveyance Bill of Sale”); and, upon delivery to DuPont and/or the Company of such reconveyance documents and delivery to the County of a duly executed termination of lease agreement and termination of memoranda of assignment (the “Termination of Lease Agreement”) and this Fee Agreement, the Lease Agreement shall terminate. The County, DuPont and the Company further agree to execute and deliver such additional documents as may be necessary to accomplish the reconveyance and to terminate the Lease Agreement and other documents executed in connection with the FILOT transaction under the Non-Title Act. The Company and/or DuPont shall be responsible for all costs and expenses associated with such reconveyance.

Section 2.4 Limitation of Liability. Any obligation which the County may incur for the payment of money as a result of the transactions described in the Ordinance, this Lease Agreement, the Reconveyance Deed, the Reconveyance Bill of Sale or the Termination of Lease Agreement, shall never constitute an indebtedness of the County within the meaning of any state constitutional provision or statutory limitation and shall never create a pecuniary liability of the County or a charge upon its general credit or against its taxing powers but shall be payable solely out of the funds received by it under such documents.

### ARTICLE III

#### COMMENCEMENT AND COMPLETION OF THE PROJECT

Section 3.1 The Project. DuPont and/or the Company have invested in Equipment, Improvements, and/or Real Property, which together comprise the Project. Such investment is in an amount not less than \$95,000,000.

Pursuant to the Act and subject to Section 4.2 hereof, the Company and the County hereby agree that the Company shall identify annually those assets which are eligible for FILOT payments under the Act and which the Company selects for such treatment by listing such assets on the applicable schedule in its annual PT-300 form (or comparable form) to be filed with the Department (as such may be amended from time to time) and that by listing such assets, such assets shall automatically become Economic Development Property and therefore be exempt from all *ad valorem* taxation during the Exemption Period. Anything contained in this Fee Agreement to the contrary notwithstanding, the Company shall not be obligated to complete the acquisition of the Project. However, if the Company does not meet the Act Minimum

Investment Requirement, this Fee Agreement shall be terminated as provided in Section 4.2 hereof.

Section 3.2 Sponsor. The parties hereby acknowledge that DuPont is a Sponsor to this Fee Agreement and those portions of the Project owned by DuPont shall be entitled to the benefits described in this Fee Agreement and the Act, and subject to the obligations described in this Fee Agreement and the Act.

Section 3.3 Diligent Completion. The Company caused the completion of the Project prior to the end of the Investment Period.

Section 3.4 Filings and Reports.

(a) Each year during the term of the Fee Agreement, the Company shall deliver to the County, the County Auditor, the County Assessor, and the County Treasurer, a copy of its most recent annual filings with the Department with respect to the Project, not later than 30 days following delivery thereof to the Department.

(b) The Company shall cause the filing of a copy of this Fee Agreement, as well as a copy of the completed Form PT-443 of the Department (to the extent required), to be filed with the County Auditor and the County Assessor of the County and any partner county, when the Project is placed in a joint county industrial and business park, and the Department within 30 days after the date of execution and delivery hereof by all parties hereto.

(c) The Company agrees to maintain complete books and records accounting for the acquisition, financing, construction, and operation of the Project. Such books and records shall (i) permit ready identification of the various Phases and components thereof; (ii) confirm the dates on which each Phase was placed in service; and (iii) include copies of all filings made by the Company in accordance with Section 3.3(a) or (b) above with respect to property placed in service as part of the Project.

(d) Whenever the County shall be required by any governmental or financing entity to file or produce any reports, notices, returns, or other documents related to this transaction while this Fee Agreement is in effect, the Company shall promptly furnish to the County through the County Administrator the completed form of such required documents, to the extent that the Company possesses the information necessary to complete the documents.

## ARTICLE IV

### PAYMENTS IN LIEU OF TAXES

Section 4.1 Negotiated Payments.

(a) Pursuant to Section 12-44-50 of the Act, the Company is required to make payments in lieu of *ad valorem* taxes to the County with respect to the Economic Development Property. Inasmuch as the Company anticipates an initial investment of sums sufficient for the Project to qualify for a fee in lieu of tax arrangement under Section 12-44-50(A)(1) of the Act, the County and the Company have negotiated the amount of the Payments in Lieu of Taxes in

accordance therewith. The Company shall make payments in lieu of *ad valorem* taxes on all Economic Development Property which comprises the Project and is placed in service, as follows: the Company shall make payments in lieu of *ad valorem* taxes during the Exemption Period with respect to the Economic Development Property or, if there are Phases of the Economic Development Property, with respect to each Phase of the Economic Development Property, said payments to be made annually and to be due and payable and subject to penalty assessments on the same dates and in the same manner as prescribed by the County for *ad valorem* taxes. The determination of the amount of such annual Payments in Lieu of Taxes shall be in accordance with the following procedure (subject, in any event, to the procedures that the Act requires):

- Step 1: Determine the fair market value of the Economic Development Property (or Phase of the Economic Development Property) placed in service during the Exemption Period using original income tax basis for State income tax purposes for any Real Property and Improvements without regard to depreciation (provided, the fair market value of real property, as the Act defines such term, that the Company obtains by construction or purchase in an arms length transaction is equal to the original income tax basis, and otherwise, the determination of the fair market value is by appraisal) and original income tax basis for State income tax purposes for any personal property less depreciation for each year allowable for property tax purposes, except that no extraordinary obsolescence shall be allowable. The fair market value of the Real Property for the first year of the Fee Term remains the fair market value of the Real Property for the life of the Fee Term. The determination of these values shall take into account all applicable property tax exemptions that State law would allow to the Company if the property were taxable, except those exemptions that Section 12-44-50(A)(2) of the Act specifically disallows.
- Step 2: Apply an assessment ratio of six percent (6 %) to the fair market value in Step 1 to establish the taxable value of the Economic Development Property (or each Phase of the Economic Development Property) in the year it is placed in service and in each of the 27 years thereafter or such longer period of years in which the Act permits the Company to make annual fee payments.
- Step 3: Use a fixed millage rate equal to 214.5 mills during the Exemption Period against the taxable value to determine the amount of the Payments in Lieu of Taxes due during the Exemption Period on the payment dates that the County prescribes for such payments or such longer period of years in which the Act permits the Company to make annual fee payments.

(b) In the event that a final order of a court of competent jurisdiction or an agreement of the parties determines that the calculation of the minimum Payment in Lieu of Taxes

applicable to this transaction is to be other than by the procedure herein, the payment shall be reset at the minimum permitted level so determined.

In the event that a final order of a court of competent jurisdiction from which no further appeal is allowable declares the Act and/or the herein-described Payments in Lieu of Taxes invalid or unenforceable, in whole or in part, for any reason, the parties express their intentions to reform such payments so as to effectuate most closely the intent thereof and so as to afford the Company with the benefits to be derived herefrom, the intention of the County being to offer the Company a strong inducement to locate the Project in the County. If the Economic Development Property is deemed to be subject to *ad valorem* taxation, this Fee Agreement shall terminate, and the Company shall pay the County regular *ad valorem* taxes from the date of termination, but with appropriate reductions equivalent to all tax exemptions which are afforded to the Company. Any amount determined to be due and owing to the County from the Company, with respect to a year or years for which the Company previously remitted Payments in Lieu of Taxes to the County hereunder, shall (i) take into account all applicable tax exemptions to which the Company would be entitled if the Economic Development Property was not and had not been Economic Development Property under the Act; and (ii) be reduced by the total amount of Payments in Lieu of Taxes the Company had made with respect to the Project pursuant to the terms hereof. Notwithstanding anything contained herein to the contrary, neither the Company nor any successor in title or interest shall be required to pay FILOT payments and *ad valorem* taxes for the same property over the same period in question.

(c) The County's right to receive FILOT payments hereunder shall have a first priority lien status pursuant to Sections 12-44-90(E) and (F) of the Act and Chapters 4, 49, 51, 53, and 54 of Title 12 of the Code of Laws of South Carolina, 1976, as amended.

(d) In the event the Company should fail to make any of the payments that this Article IV requires, the item or installment so in default shall continue as an obligation of the Company until the Company shall have fully paid the amount, and the statutory interest and statutory penalties applicable to property taxes shall apply to the FILOT payments.

Section 4.2 Payments in Lieu of Taxes 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 Economic Development Property, or the Company otherwise utilizes Replacement Property, then, pursuant and subject to Section 12-44-60 of the Act, the Company shall make statutory payments in lieu of *ad valorem* taxes with regard to such Replacement Property in accordance with the following:

(i) Replacement Property does not have to serve the same function as the Economic Development Property it is replacing. Replacement Property is deemed to replace the oldest Economic Development Property subject to the Fee, whether real or personal, which is disposed of in the same property tax year in which the Replacement Property is placed in service. Replacement Property qualifies as Economic Development Property only to the extent of the original income tax basis of Economic Development Property which is being disposed of in the same property tax year. More than one piece of property can replace a single piece of Economic Development Property. To the extent that the income

tax basis of the Replacement Property exceeds the original income tax basis of the Economic Development Property which it is replacing, the excess amount is subject to annual payments calculated as if the exemption for Economic Development Property were not allowable. Replacement Property is entitled to treatment under the Fee Agreement for the period of time remaining during the Exemption Period for the Economic Development Property which it is replacing; and

(ii) The new Replacement Property which qualifies for the Fee shall be recorded using its income tax basis, and the calculation of the Fee shall utilize the millage rate and assessment ratio in effect with regard to the original property subject to the Fee.

Section 4.3 Reductions in Payments of Taxes Upon Removal, Condemnation, or Casualty. In the event of a Diminution in Value of the Economic Development Property or any Phase of the Economic Development Property, the Payment in Lieu of Taxes with regard to the Economic Development Property or that Phase of the Economic Development Property shall be reduced in the same proportion as the amount of such Diminution in Value bears to the original fair market value of the Economic Development Property or that Phase of the Economic Development Property as determined pursuant to Step 1 of Section 4.1(a) hereof; *provided, however,* that if at any time subsequent to the end of the Investment Period, the total value of the Project based on the original income tax basis of the Equipment, Real Property, and Improvements contained therein, without deduction for depreciation, is less than the Act Minimum Investment Requirement, beginning with the first payment thereafter due hereunder and continuing until the end of the Fee Term, the Company shall no longer be entitled to the incentive provided in Section 4.1, and the Company shall therefore commence to pay regular *ad valorem* taxes on the Economic Development Property part of the Project.

Section 4.4 Place and Allocation of Payments in Lieu of Taxes. The Company shall make the above-described Payments in Lieu of Taxes directly to the County in accordance with applicable law.

Section 4.5 Removal of Equipment. Subject, always, to the other terms and provisions hereof, the Company shall be entitled to remove and dispose of components or Phases of the Project from the Project in its sole discretion with the result that said components or Phases shall no longer be considered a part of the Project and, to the extent such constitute Economic Development Property, shall no longer be subject to the terms of this Fee Agreement to the fullest extent allowed by the Act, as amended. Economic Development Property is disposed of only when it is scrapped or sold or it is removed from the Project. If it is removed from the Project, it is subject to *ad valorem* property taxes to the extent the Property remains in the State and is otherwise subject to *ad valorem* property taxes.

Section 4.6 Damage or Destruction of Economic Development Property.

(a) Election to Terminate. In the event the Economic Development Property is damaged by fire, explosion, or any other casualty, the Company shall be entitled to terminate this Fee Agreement. The Company shall only be required to make FILOT payments as to all or any

part of the tax year in which the damage or casualty occurs to the extent property subject to *ad valorem* taxes would otherwise have been subject to such taxes under the same circumstances for the period in question.

(b) Election to Rebuild. In the event the Economic Development Property is damaged by fire, explosion, or any other casualty, and if the Company does not elect to terminate this Fee Agreement, the Company may commence to restore the Economic Development Property with such reductions or enlargements in the scope of the Economic Development Property, 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, to the fullest extent permitted by law and this Fee Agreement, substitutions of the destroyed portions of the Economic Development Property and shall be considered part of the Economic Development Property for all purposes hereof, including, but not limited to, any amounts due by the Company to the County under Section 4.1 hereof.

(c) Election to Remove. In the event the Company elects not to terminate this Fee Agreement pursuant to subsection (a) and elects not to rebuild pursuant to subsection (b), the damaged portions of the Economic Development Property shall be treated as Removed Components.

#### Section 4.7 Condemnation.

(a) Complete Taking. If at any time during the Fee Term title to or temporary use of the Economic Development Property 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; by voluntary transfer under threat of such taking; or by a taking of title to a portion of the Economic Development Property which renders continued use or occupancy of the Economic Development Property commercially unfeasible in the judgment of the Company, the Company shall have the option to terminate this Fee Agreement by sending written notice to the County within a reasonable period of time following such vesting. The Company shall only be required to make FILOT payments as to all or any part of the tax year in which the taking occurs to the extent property subject to *ad valorem* taxes would otherwise have been subject to such taxes under the same circumstances for the period in question.

(b) Partial Taking. In the event of a partial taking of the Economic Development Property or a transfer in lieu thereof, the Company may elect: (i) to terminate this Fee Agreement; (ii) subject to the Act and the terms and provisions of this Fee Agreement, to repair and restore the Economic Development Property, with such reductions or enlargements in the scope of the Economic Development Property, changes, alterations, and modifications (including the substitution and addition of other property) as the Company may desire, and all such changes, alterations, and modifications shall be considered as substitutions of the taken parts of the Economic Development Property; or (iii) to treat the portions of the Economic Development Property so taken as Removed Components.

(c) The Company shall only be required to make FILOT payments as to all or any part of the tax year in which the taking occurs to the extent property subject to *ad valorem* taxes

would otherwise have been subject to such taxes under the same circumstances for the period in question.

Section 4.8 Confidentiality/Limitation on Access to Project. The County shall have access to the Project, and the books and records of the Company with respect thereto, for purposes of determining compliance by the Company with this Fee Agreement, valuing the assets comprising the Project, and verifying the accuracy of the Payments in Lieu of Taxes. The County acknowledges and understands that the Company utilizes confidential and proprietary processes and materials, services, equipment, trade secrets, and techniques (herein "Confidential Information") and that any disclosure of Confidential Information concerning the Company's operations may 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. The Company acknowledges that the County is subject to the Freedom of Information Act, and, as a result, must disclose certain documents and information on request absent an exemption. For these reasons, the Company shall clearly label all Confidential Information it delivers to the County "Confidential Information." Therefore, the County agrees that, except as required by law, neither the County nor any employee, agent, or contractor of the County shall (i) request or be entitled to receive any such Confidential Information, or (ii) disclose or otherwise divulge any such Confidential Information to any other person, firm, governmental body or agency, or any other entity unless specifically required to do so by law; provided, however, that the County shall have no less rights concerning information relating to the Project and the Company than concerning any other property or property taxpayer in the County, and, provided further, that the confidentiality of such confidential or proprietary information is clearly disclosed to the County in writing as previously described. Prior to disclosing any Confidential Information, subject to the requirements of law, 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. In the event that the County is required to disclose any Confidential Information obtained from the Company to any third party, the County agrees to provide the Company with as much advance notice as possible of such requirement before making such disclosure, and to cooperate reasonably with any attempts by the Company to obtain judicial or other relief from such disclosure requirement.

Section 4.9 Assignment. With the prior written consent of the County or a subsequent written ratification by the County, which consent or ratification the County will not unreasonably withhold unless Section 12-44-120 of the Act or any successor provision expressly does not require consent, and in accordance with the Act, the Company may assign this Fee Agreement in whole or in part. The Company agrees to notify the County and the Department of the identity of such transferee within 60 days of the transfer. In case of a transfer, the transferee assumes the transferor's basis in the Project for purposes of calculating the Fee. No approval is required for transfers to sponsor affiliates or other financing related transfers, as defined in the Act.

Section 4.10 No Double Payment; Future Changes in Legislation. Notwithstanding anything contained herein to the contrary, and except as expressly required by law, neither the Company nor any Sponsor shall ever be required to make a Payment in Lieu of Taxes in addition to a regular property tax payment in the same year over the same piece of property, nor shall the

Company or any Sponsor be required to make a Payment in Lieu of Taxes on property in cases where, absent this Fee Agreement, property taxes would otherwise not be due on such property.

In case there is any legislation enacted which provides for more favorable treatment for property to qualify as, or for the calculation of the fee related to, Economic Development Property under Sections 4.4, 4.6, 4.7, 4.8, or the calculation of the Investment Period, the County agrees to give expedient and full consideration to such legislation, with a view to allow for such more favorable treatment or calculation.

## ARTICLE V

### DEFAULT

Section 5.1 Events of Default. The following shall be “Events of Default” under this Fee Agreement, and the term “Events of Default” shall mean, whenever used with reference to this Fee Agreement, any one or more of the following occurrences:

(a) Failure by the Company to make the Payments in Lieu of Taxes described in Section 4.1 hereof, which failure shall not have been cured within 30 days following receipt of written notice thereof from the County; *provided, however*, that the Company shall be entitled to all redemption rights granted by applicable statutes; or

(b) A representation or warranty made by the Company which is deemed materially incorrect when deemed made; or

(c) Failure by the Company to perform any of the terms, conditions, obligations, or covenants hereunder (other than those under (a) above), which failure shall continue for a period of 30 days after written notice from the County to the Company specifying such failure and requesting that it be remedied, unless the Company shall have instituted corrective action within such time period and is diligently pursuing such action until the default is corrected, in which case the 30-day period shall be extended to cover such additional period during which the Company is diligently pursuing corrective action; or

(d) A representation or warranty made by the County which is deemed materially incorrect when deemed made; or

(e) Failure by the County to perform any of the terms, conditions, obligations, or covenants hereunder, which failure shall continue for a period of 30 days after written notice from the Company to the County specifying such failure and requesting that it be remedied, unless the County shall have instituted corrective action within such time period and is diligently pursuing such action until the default is corrected, in which case the 30-day period shall be extended to cover such additional period during which the County is diligently pursuing corrective action; or

### Section 5.2 Remedies on Default.

(a) Whenever any Event of Default by the Company shall have occurred and shall be continuing, the County may take any one or more of the following remedial actions:



- (1) terminate the Fee Agreement; or
- (2) take whatever action at law or in equity may appear necessary or desirable to collect the amounts due hereunder. In no event shall the Company be liable to the County or otherwise for monetary damages resulting from the Company's failure to meet the Act Minimum Investment Requirement, other than as expressly set forth herein.

In addition to all other remedies provided herein, the failure to make FILOT payments shall give rise to a lien for tax purposes as Section 12-44-90 of the Act provides. In this regard, and notwithstanding anything in this Fee Agreement to the contrary, the County may exercise the remedies that general law (including Title 12, Chapter 49 of the Code of Laws of South Carolina, 1976, as amended) provides with regard to the enforced collection of *ad valorem* taxes to collect any FILOT payments due hereunder.

(b) Whenever any Event of Default by the County shall have occurred or shall be continuing, the Company may take one or more of the following actions:

- (1) bring an action for specific enforcement;
- (2) terminate the Fee Agreement; or
- (3) in case of a materially incorrect representation or warranty, take such action as is appropriate, including legal action, to recover its damages, to the extent allowed by law.

Section 5.3 Reimbursement of Legal Fees and Expenses and Other Expenses. Upon the occurrence of an Event of Default hereunder, should a party be required to employ attorneys or incur other reasonable expenses for the collection of payments due hereunder or for the enforcement of performance or observance of any obligation or agreement, the successful party shall be entitled, within 30 days of demand therefor, to reimbursement of the reasonable fees of such attorneys and such other reasonable expenses so incurred.

Section 5.4 No Waiver. No failure or delay on the part of any party hereto in exercising any right, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy hereunder. No waiver of any provision hereof shall be effective unless the same shall be in writing and signed by the waiving party hereto.

## ARTICLE VI

### MISCELLANEOUS

Section 6.1 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:

**IF TO THE COMPANY:**

Invista S.a r.l.  
Attn: Legal Department  
643 Highway 1 South  
Lugoff, SC 29078

**WITH A COPY TO**

H. Gary Snipes  
PO Box 7000  
Camden, SC 29021

**IF TO DUPONT:**

E. I. du Pont de Nemours and Company  
Attn: Corporate Real Estate  
974 Centre Road  
Chestnut Run Plaza 730/3160-4  
Wilmington, DE 19805

**IF TO THE COUNTY:**

Kershaw County, South Carolina  
Attn: Office of the County Administrator  
515 Walnut Street  
Camden, SC 29020

Section 6.2 Binding Effect. This Fee Agreement and each document contemplated hereby or related hereto shall be binding upon and inure to the benefit of the Company, 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 6.3 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 6.4 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 6.5 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 6.6 Amendments. The provisions of this Fee Agreement may only be modified or amended in writing by any agreement or agreements entered into between the parties.

Section 6.7 Further Assurance. From time to time, and at the expense of the Company, to the extent any expense is incurred, the County agrees to execute and deliver to the Company such additional instruments as are authorized by law and reasonably within the purposes and scope of the Act and Fee Agreement to effectuate the purposes of this Fee Agreement.

Section 6.8 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, fires, floods, inability to obtain materials, conditions arising from governmental orders or regulations, war or national emergency, acts of God, and any other cause, similar or dissimilar, beyond the Company's reasonable control.

Section 6.9 Termination by Company. The Company is authorized to terminate this Fee Agreement at any time with respect to all or part of the Project upon providing the County with 30 days' notice; *provided, however*, that (i) any monetary obligations existing hereunder and due and owing at the time of termination to a party hereto; and (ii) any provisions which are intended to survive termination shall survive such termination. In the year following such termination, all property shall be subject to ad valorem taxation or such other taxation or fee in lieu of taxation that would apply absent this agreement. The Company's obligation to make fee in lieu of tax payments under this Fee Agreement shall terminate in the year following the year of such termination pursuant to this section.

Section 6.10 Entire Understanding. This Fee Agreement expresses the entire understanding and all agreements of the parties hereto with each other, and neither party hereto has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth in this Fee Agreement or in certificates delivered in connection with the execution and delivery hereof.

Section 6.11 Waiver. Either party may waive compliance by the other party with any term or condition of this Fee Agreement only in a writing signed by the waiving party.

Section 6.12 Business Day. In the event that any action, payment, or notice is, by the terms of this Fee Agreement, required to be taken, made, or given on any day which is a Saturday, Sunday, or legal holiday in the jurisdiction in which the person obligated to act is domiciled, such action, payment, or notice may be taken, made, or given on the following business day with the same effect as if given as required hereby, and no interest shall accrue in the interim.

Section 6.13 Limitation of Liability. Anything herein to the contrary notwithstanding, any financial obligation the County may incur hereunder, including for the payment of money

shall not be deemed to constitute a pecuniary liability or a debt or general obligation of the County; provided, however, that nothing herein shall prevent the Company from enforcing its rights hereunder by suit for *mandamus* or specific performance.

## ARTICLE VII

### INDEMNIFICATION, INDIVIDUAL LIABILITY

#### Section 7.1 Indemnification Covenants.

(a) Notwithstanding any other provisions in this Fee Agreement or in any other agreements with the County (i) the Company shall agree to indemnify and save the County, its members, officers, employees, servants, and agents (collectively, the “Indemnified Parties”), harmless against and from all claims by or on behalf of any person, firm, or corporation arising from the conduct or management of, or from any work or thing done on the Project during the Fee Term, and, the Company further shall indemnify and save the Indemnified Parties harmless against and from all claims arising during the Fee Term from (A) any condition of the Project, (B) any breach or default on the part of the Company in the performance of any of its obligations under this Fee Agreement, (C) any act of negligence of the Company, or of any agents, contractors, servants, employees, or licensees, (D) except in such cases where the County has released the Company, any act of negligence of any assignee or sublessee of the Company, or of any agents, contractors, servants, employees, or licensees of any assignee or sublessee of Company, and/or (E) any environmental violation, condition, or effect. The Company shall indemnify and save the County harmless from and against all costs and expenses incurred in or in connection with any such claim arising as aforesaid or in connection with any action or proceeding brought thereon, and upon notice from the County, the Company shall defend it in any such action, prosecution, or proceeding.

(b) Notwithstanding the fact that it is the intention of the parties that the Indemnified Parties shall not incur pecuniary liability by reason of the terms of this Fee Agreement, or the undertakings required of the County hereunder, by reason of the granting of the Fee, by reason of the execution of this Fee Agreement, by reason of the performance of any act requested of it by the Company, or by reason of the County’s relationship to the Project or the operation of the Project by the Company, including all claims, liabilities, or losses arising in connection with the violation of any statutes or regulations pertaining to the foregoing, nevertheless, if the County, its agents, officers, or employees should incur any such pecuniary liability, then in such event the Company shall indemnify and hold them harmless against all claims by or on behalf of any person, firm, or corporation, arising out of the same, and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon, and upon notice, the Company shall defend them in any such action or proceeding; provided, however, that such indemnity shall not apply to the extent that any such claim is attributable to (i) the gross negligent acts or omissions or willful misconduct of the County, its agents, officers, or employees, or (ii) any breach of this Fee Agreement by the County.

(c) The above-referenced indemnification covenants shall be considered included in and incorporated by reference in subsequent documents after the delivery of this Fee Agreement which the County is requested to sign on behalf of the Company with respect to the Project, and

any other indemnification covenants in any subsequent documents shall not be construed to reduce or limit the above indemnification covenants.

(d) No termination of this Fee Agreement pursuant to any provision elsewhere in this Fee Agreement shall relieve the Company of its liability and obligations to make the payments required by this Section 7.1, all of which shall survive any such termination.

Section 7.2 No Liability of County Personnel. All covenants, stipulations, promises, agreements, and obligations of the County contained herein shall be deemed to be covenants, stipulations, promises, agreements, and obligations of the County and shall be binding upon any member of the County Council or any officer, agent, servant, or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse shall be had for the payment of any moneys hereunder against any member of the governing body of the County or any officer, agent, servant, or employee of the County, and no recourse shall be had against any member of the County Council or any officer, agent, servant, or employee of the County for the performance of any of the covenants and agreements of the County herein contained or for any claims based thereon except solely in their official capacity.

(Signature Page Follows)

IN WITNESS WHEREOF, the County, acting by and through the County Council, has caused this Fee Agreement to be executed in its name and behalf by the Chairman and to be attested by the Clerk of the 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**

Signature: [Handwritten Signature]  
Name: Julian Burns, Jr.  
Title: Chairman

ATTEST:

Cherri M. Seigler  
Merr M. Seigler  
Clerk to County Council  
Kershaw County, South Carolina

**INVISTA S.À R.L.**

Signature: [Handwritten Signature]  
Name: Juan Flores  
Title: Site Manager

E.I. Du Pont de Nemours and Company, a Delaware corporation, hereby consents to its inclusion as a Sponsor under this Fee Agreement.

**E.I. DU PONT DE NEMOURS AND COMPANY**

Signature: [Handwritten Signature]  
Name: Christopher J. Heck  
Title: Manager- Global Real Estate  
and Workplace Planning

**EXHIBIT A  
LEGAL DESCRIPTION**

All that certain piece, parcel or lot of land with improvements thereon, situate, lying and being in the State of South Carolina, County of Kershaw and being shown as Tract "A" on a composite sketch plan prepared for E. I. du Pont de Nemours & Co. by Daniel Riddick & Associates, Inc., dated December 22, 1998, and having the following metes and bounds to wit:

Beginning at a point located at the intersection of the southeastern right-of-way of U.S. Highway #1 and the mean high water mark of the Wateree River, said point being the northernmost point of the property and the POINT OF BEGINNING; thence turning and running S 51°01'57" E along the Wateree River for a distance of 3,796.13 feet to a point; thence turning and running S 49°42'15" W along property shown as C.S.X. Transportation 100' R-O-W for a distance of 50 feet; thence turning and running S 49°42'15" W along said C.S.X. Transportation 100' R-O-W for a distance of 2,161.30 feet; thence turning and running along the arc of a curve to the right with a chord bearing of S 51°38'15" W, a radius of 5,679.65 and a chord distance of 383.20 feet to a point; thence turning and running S 53°34'15" W along said C.S.X. Transportation 100' R-O-W for a distance of 4,395.42 feet to a point; thence turning and running N 40°12'22" W along property N/F Union Carbide Corp. for a distance of 400.00 feet to a point; thence turning and running S 53°34'15" W along property N/F Union Carbide Corp. for a distance of 545.68 feet to a point; thence turning and running N 40°12'22" W along Lachicotte Road (S-28-133) for a distance of 458.94 feet to a point; thence turning and running along the arc of a curve to the right with a chord bearing of N 37°42'22" W, a radius of 2831.93 and a chord distance of 247.05 feet to a point; thence turning and running N 35°12'22" W along Lachicotte Road (S-28-133) for a distance of 1684.57 feet to a point; thence turning and running N 65°35'30" E along property N/F H. F. Boykin for a distance of 658.71 feet to a point; thence turning and running S 74°26'30" W along property N/F H. F. Boykin for a distance of 478.52 feet to a point; thence turning and running N 16°20'30" W along property N/F H. F. Boykin for a distance of 177.50 feet to a point; thence turning and running N 45°20'00" E along the right-of-way of U. S. Highway #1 for a distance of 2822.03 feet to a point; thence turning and running S 44°40'00" E along the right-of-way of U. S. Highway #1 for a distance of 20.00 feet to a point; thence turning and running N 45°20'00" E along the right-of-way of U. S. Highway #1 for a distance of 1258.92 feet to a point; thence turning and running S 44°40'00" E along the right-of-way of U. S. Highway #1 for a distance of 50.00 feet to a point; thence turning and running N 45°20'00" E along the right-of-way of U. S. Highway #1 for a distance of 2316.29 feet to a point; said point being the POINT OF BEGINNING. Said property contains 541.80 acres.

Derivation: This being the same property conveyed to the Grantor herein by virtue of the following deeds:

1. Deed from Martha K. Kirk, recorded in the Office of the Kershaw County Clerk of Court in Deed Book DP at Page 78;
2. Deed from H. G. Carrison, et al., recorded in the Office of the Kershaw County Clerk of Court in Deed Book DP at Page 79;
3. Deed from C. C. Whitaker, et al., recorded in the Office of the Kershaw County Clerk of Court in Deed Book DP at Page 80; and
4. Deed from Sallie P. Brown, recorded in the Office of the Kershaw County Clerk of Court in Deed Book DP at Page 85.

Tax Map Number: Portion of 297-00-00-001