

STATE OF SOUTH CAROLINA
COUNTY COUNCIL FOR KERSHAW COUNTY
ORDINANCE NO.193.2012

AN ORDINANCE AUTHORIZING PURSUANT TO TITLE 12, CHAPTER 44 OF THE CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED, THE EXECUTION AND DELIVERY OF A FEE-IN-LIEU OF TAX AGREEMENT, BY AND BETWEEN KERSHAW COUNTY, SOUTH CAROLINA, AND ACCURIDE EMI, LLC, AS SPONSOR, AND ONE OR MORE SPONSOR AFFILIATES, TO PROVIDE FOR A FEE-IN-LIEU OF AD VALOREM TAXES INCENTIVE AND OTHER RELATED MATTERS.

WHEREAS, Kershaw County ("County"), a public body corporate and politic under the laws of the State of South Carolina ("State") is authorized under the provisions of Title 12, Chapter 44, of the 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 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 fee payments in lieu of *ad valorem* taxes ("Fee Payments") with respect to such investment;

WHEREAS, the County is further authorized pursuant to Title 4, Chapter 1, of the Code of Laws of South Carolina, 1976, as amended ("MCIP Act") to create, in conjunction with one or more other counties, a multi-county industrial or business park in order to afford certain benefits and incentives to investors and facilities located in a multi-county industrial or business park;

WHEREAS, on April 27, 1999, the County and Sumter County, South Carolina (collectively, "Counties"), as authorized under the MCIP Act, jointly developed a multi-county industrial business park by entering an agreement ("Park Agreement") to govern the operation of a multi-county industrial business park ("Park");

WHEREAS, Accuride EMI, LLC ("Company") is planning an investment in the County consisting of expenditures, which are anticipated to be at least \$8,730,000, to expand an existing facility and the creation of 25 new, full-time jobs (collectively, "Project");

WHEREAS, to induce the Company to expand its investment in the County, the County desires to enter into a Fee Agreement (as defined in the Act), pursuant to which the Company will make Fee Payments with respect to the Project;

WHEREAS, as further inducement to the Company, the County desires to expand the boundaries of the Park to include the Project and the site on which the Project is located ("Property"), as more particularly described in Exhibit A, in the Park;

WHEREAS, the Project is expected to provide significant economic benefits to the County and surrounding areas; and

WHEREAS, Kershaw County Council ("County Council") has caused to be prepared and presented to this meeting the form of a Fee Agreement between the County and the Company, a copy of which is attached as Exhibit B.

FILED
2013 JAN - 2
KERSHAW COUNTY
CLERK OF COURTS
JOYCE L. GOSWAMI
KERSHAW COUNTY

THE COUNTY COUNCIL OF KERSHAW COUNTY, SOUTH CAROLINA, ORDAINS:

Section 1. Pursuant to the Act, particularly Section 12-44-40(I), based on information provided by the Company, the County Council makes the following findings:

- (a) The Project constitutes a "project" as that term is referred to and defined in Section 12-44-30 of the Act;
- (b) It is anticipated that the Project will benefit the general public welfare of the County by providing services, employment and other public benefits not otherwise adequately provided locally;
- (c) The purposes to be accomplished by the Project are proper governmental and public purposes;
- (d) It is anticipated that the cost of planning, designing, constructing and expanding the Project will require expenditures of at least \$8,730,000 and provide for the creation of at least 25 new, full-time jobs;
- (e) The benefits of the Project to the public are greater than the costs to the public;
- (f) Neither the Project nor any documents or agreements entered into by the County in connection therewith will give rise to any pecuniary liability of the County or incorporated municipality or to any charge against its general credit or taxing power; and
- (g) Having evaluated the purposes to be accomplished by the Project as proper governmental and public purposes, the anticipated dollar amount and nature of the investment to be made, and the anticipated costs and benefits to the County, the County has determined that the Project is properly classified as economic development property.

Section 2. The form and terms of the Fee Agreement, as Exhibit B, that is before this meeting is approved and all of the Fee Agreement's terms are incorporated in this Ordinance by reference as if the Fee Agreement was set out in this Ordinance in its entirety.

Section 3.

(a) The County authorizes and approves the expansion of the Park boundaries to include the Project and the Property. Council authorizes the Chairman and the Clerk to the County Council to execute documents and take further actions as may be necessary to complete the expansion of the Park and the inclusion of the Project and the Property in the Park. The expansion of the Park and inclusion of the Property in the Park is complete on the adoption of this Ordinance by the County Council and adoption of a companion ordinance by Sumter County.

(b) The Company may request that a portion of the Project or the Property be removed from the Park. In such case, the County authorizes the removal of such portion of the Project or the Property on receipt of a written request from the Company. No further action by the County is required. The Chairman and the Clerk to the County Council are hereby authorized to execute such documents and take further actions as may be necessary to complete removal of a portion of the Project or the Property from the Park. Any public hearing requirement set forth in the Park Agreement is hereby waived.

Section 4. Pursuant to Section 12-44-130 of the Act, the Company may request the addition of one or more Sponsor Affiliates to the Fee Agreement. Following each request, if the proposed Sponsor Affiliate agrees to be bound by the Fee Agreement, then following approval of the proposed Sponsor

Affiliate by subsequent County Council resolution, the proposed Sponsor Affiliate shall be eligible for the benefits under, and become a party to, the Fee Agreement.

Section 5. The consummation of all transactions contemplated by this Ordinance and the Fee Agreement is approved.

Section 6. The Chairman of the County Council is authorized and directed to execute the (a) Fee Agreement, which has the applicable County protections and clawbacks and which otherwise reflects the terms of this Ordinance with other terms that are typical for these types of transactions in the County, and (b) other agreements reflecting the County's job-development credit, any State-based or any other third-party incentives related to the Project, all subject to the approval of any revisions, which are not materially adverse to the County, by the County Administrator and the County Attorney, and the Clerk of the County Council is authorized and directed to attest the Fee Agreement; and the County Administrator is further authorized and directed to deliver the Agreement to the Company.


Section 7. The County Administrator (and his designated appointees) is authorized and directed, in the name of and on behalf of the County, to take whatever further actions and execute whatever further documents as the County Administrator (and his designated appointees) deems to be reasonably necessary and prudent to effect the intent of this Ordinance.

Section 8. The provisions of this Ordinance are separable. If any part of this Ordinance is, for any reason, unenforceable then the validity of the remainder of this Ordinance is unaffected.

Section 9. Any prior ordinance, resolution or order, the terms of which are in conflict with this Ordinance, is, only to the extent of that conflict, repealed.

Section 10. This Ordinance is effective after its third reading and public hearing.

KERSHAW COUNTY, SOUTH CAROLINA


Kershaw County Council

(SEAL)
ATTEST:


Merri M. Seigler, Clerk
Kershaw County Council

First Reading: March 13, 2012
Second Reading: March 27, 2012
Public Hearing: April 10, 2012
Third Reading: April 10, 2012

EXHIBIT A
PROPERTY DESCRIPTION

Parcel No. 1:

All that certain piece, parcel or tract of land, situate, lying and being located south of Camden, Kershaw County, South Carolina on the southwest side of Black River Road (S-28-12) containing 14.00 acres, more or less, and being more particularly shown as parcel "A" on that plat prepared for Kershaw County by Hussey, Gay, Bell and De Young, Inc., Consulting Engineers, dated February 17, 1999, and recorded in the Office of the Clerk of Court for Kershaw County in Plat Book A-152, at Page 5.

Parcel No. 2:

All that piece, parcel or tract of land, situate, lying and being located near the City of Camden, Kershaw County, South Carolina, containing 6.00 acres, more or less, and bounded as follows: Northwest by property now or formerly of Kershaw County; Northeast by Black River Road (S-28-12); Southeast by property of Mulberry Plantation, Inc.; and, Southwest by a proposed road 75' right of way.

Parcel No. 2 being the same as that shown on a plat prepared by Robert H. Lackey Surveying, Inc. dated October 26, 2005, and recorded in the Office of the Register of Deeds for Kershaw County, South Carolina in Plat Book B163, at Page 6.

TMS# 299-00-00-072
 299-00-00-083

EXHIBIT B
FORM OF FEE AGREEMENT

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

BETWEEN

[PROJECT BLUE]

AND

KERSHAW COUNTY, SOUTH CAROLINA

EFFECTIVE: DECEMBER 31, 2011

PREPARED BY:

**PARKER POE ADAMS & BERNSTEIN LLP
1201 MAIN STREET, SUITE 1450 (29201)
POST OFFICE BOX 1509
COLUMBIA, SOUTH CAROLINA 29202-1509
(803) 255-8000**

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Exhibit A – Description of Property

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

THIS FEE-IN-LIEU OF *AD VALOREM* TAXES AGREEMENT ("Fee Agreement") is effective December 31, 2011, between Kershaw County, South Carolina ("County"), a body politic and corporate and a political subdivision of the State of South Carolina ("State"), acting through the Kershaw County Council ("County Council") as the governing body of the County, and [Project Blue], a Delaware limited liability company authorized to conduct business in the State, as Sponsor, its affiliates and assigns (collectively, "Company" and with County, "Parties," each, a "Party").

WITNESSETH:

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

(b) Pursuant to the Act, the County finds that (i) the Project (as defined below) 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; (ii) 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; (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;

(c) During the Investment Period (defined below), the Company shall make an investment of no less than \$8,730,000 ("Investment Requirement") and create no less than 25 new, full-time jobs ("Job Requirement"), to expand the Company's existing manufacturing facility in the County, on a site as more fully described on the attached Exhibit A ("Project");

(d) Pursuant to an Ordinance adopted on April 10, 2012 ("Fee Ordinance"), the County Council formally identified the Project as a "project" as defined in the Act and authorized (i) the execution and delivery of this Fee Agreement with the Company and (ii) the inclusion of the Project in a multi-county industrial/business park.

NOW, THEREFORE, AND IN CONSIDERATION of the respective representations and agreements hereinafter contained, Parties 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 County Council of Kershaw County, South Carolina.

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

“Commencement Date” means the earlier of: (a) the last day of the property tax year during which Economic Development Property (defined below) is placed in service and (b) the last day of the property tax year that is three years from the year in which the Parties entered into this Fee Agreement.

“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 through its 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 (a) the Company’s removal of equipment pursuant to Section 3.7 of this Fee Agreement, (b) a casualty to the Phase of the Project, or any part thereof, described in Section 3.8 of this Fee Agreement, or (c) a condemnation to the Phase of the Project, or any part thereof, described in Section 3.9 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 (as such filing may be amended from time to time) for each year within the Investment Period, as that period may be extended. 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 that period may be extended, as a part of the Project.

“Event of Default” means any Event of Default specified in Section 3.14 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 Payment” means each payment in lieu of taxes which the Company is obligated to pay to the County.

“Improvement” means each improvement, together with any and all additions, accessions, replacements and substitutions thereto or therefor acquired by the Company during the Investment Period, as that period may be extended.

“Investment Period” means the period commencing on the first day Economic Development property is purchased or acquired, which must be no later than the Commencement Date, and ending on the last day of the fifth property tax year following the later of the property tax year in which Economic Development property is placed in service or the property tax year in which this Fee Agreement is executed (such ending date is anticipated to be December 31, 2016); provided a later date may apply in accordance with Section 3.1 of this Fee Agreement, or may otherwise be agreed to by the Company and County pursuant to the Act.

“Phase,” 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 20 years after each such Phase of the Project becomes subject to the terms of this Fee Agreement.

“Project” means 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 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 Component” 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 3.7(c) or Section 3.9(b)(iii) 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 3.7 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.

Any reference to any agreement or document in this Article I or otherwise in this Fee Agreement are 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:

(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:

(a) the Company is qualified to do business in the State 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 will not result in a default, not waived or cured, under any the 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.

(d) in accordance with the Act, the Company, as sponsor, shall meet both the Investment Requirement and the Job Requirement by the end of the Investment Period.

ARTICLE III FILOT PAYMENTS

Section 3.1. Negotiated FILOT Payments. Pursuant to Section 12-44-50 of the Act, the Company is required to make FILOT Payments on all Economic Development Property comprising the Project and placed in service during the Investment Period. The amount of such annual FILOT Payments shall be determined by the following procedure:

- Step 1: Determine the fair market value of the Phase of the Project placed in service in any given year for such year and for the following 19 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 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 the 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: Multiply the fair market value by an assessment ratio of 7% to establish the taxable value of each Phase of the Project in the year it is placed in service and in each of the 19 years thereafter 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: Multiply the taxable value for each year by 0.2951, which is intended to be the lower of the millage rate on June 30, 2011, or the millage rate applicable at the time of execution of this Fee Agreement (which millage rate shall be a fixed rate for the Fee Term), 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.

If the Company invests at least \$10,000,000 at the Project by the end of the Investment Period, then the assessment ratio in Step 2, above, decreases to 6% for the remainder of the Fee Term. The Company

is entitled to the reduced assessment ratio immediately on achievement of at least \$10,000,000 investment at the Project and written notice to the County of achievement of at least \$10,000,000 investment.

If, at the conclusion of the Investment Period, the Company has failed to meet the Investment Requirement or the Job Requirement, then the Company is no longer entitled prospectively to the benefits provided under this Fee Agreement, including those requirements as described under Section 12-44-140(C) of the Act, and shall pay the difference between the FILOT Payments that the Company and the *ad valorem* taxes that would have been due but for this Fee Agreement no more than 30 days after the Investment Period ends to the County.

If it is determined by a final order of a court of competent jurisdiction or by agreement of Parties that the minimum payment in lieu of taxes applicable to this transaction is to be calculated differently than described above, then the payment shall be reformed so as to most closely effectuate the legal, valid, and enforceable intent thereof and so as to afford the Company the benefits to be derived hereunder

If the Act, the above-described FILOT Payments are declared invalid or unenforceable, in whole or in part, for any reason, Parties express their intention that such payments and the Fee Agreement be reformed so as to most closely effectuate the legal, valid, and enforceable intent thereof and so as to afford the Company 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 be 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 were and had not been Economic Development Property as defined 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. [Reserved]

Section 3.3. Multi-County Park Designation. Pursuant to Title 4, Chapter 1 of the Code (“MCIP Act”) the County will place the Project site, as described in Exhibit A, in the multi-county industrial or business park (“Park”) jointly developed with [] County, South Carolina on []. The County will maintain the Project in the Park and provide any additional benefits permitted for projects located within multi-county industrial or business parks as provided in the master agreement governing the Park and the MCIP Act.

Section 3.4. 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 20 (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 3.5. 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 FILOT Payment 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 3.6. Place and Allocation of FILOT Payments. The Company shall make the above-described FILOT Payments directly to the County in accordance with applicable law.

Section 3.7. Removal of Equipment. The Company shall be entitled to remove, in its sole discretion, components of 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.

Section 3.8. 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 Fee 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, to the extent allowed by law.

Section 3.9. 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 3.10. *Maintenance of Existence.* The Company agrees (a) that it shall not take any action which will materially impair the maintenance of its corporate existence and (b) that it will maintain its good standing under all applicable provisions of State law. Notwithstanding the foregoing provisions, the Company may at any time engage on an as-needed basis in any corporate restructuring or merger activities, the result of which may be the transfer or assignment of the benefits granted hereunder to a new entity.

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: (a) shall request or be entitled to receive any such confidential or proprietary information; (b) 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 (c) 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. The County hereby consents to such transfers and to the extent any further consent is requested, the County may grant such consent by adoption of a Resolution.

Section 3.13. *Leased Equipment.* To the extent that applicable law allows or is revised or construed to allow the benefits of the Act, in the form of FILOT Payments as described in Section 3.1 hereof, to be applicable to personal property to be installed in the buildings and leased to but not purchased by the Company from at least one third party, under any form of lease, then that personal property, at the Company’s sole election, is subject to FILOT Payments to the same extent as the Equipment under this Fee Agreement. This Fee Agreement is interpreted or modified as appropriate to give proper application to this Fee Agreement to the additional personal property without any amendment to this Fee Agreement; therefore, no action by County Council is required. The County Administrator, after consulting with the County Attorney, is authorized to make modifications, if any, as may be appropriate to give effect to this Section.

Section 3.14. *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, 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.

Section 3.15. 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 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 3.16. 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 3.17. Future Filings. 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. Whenever the Company shall be required by any governmental or financial entity to file or produce any reports, notices, returns, or other documents while this Agreement is in effect, the Company or owner of the Project at the time shall promptly furnish to the County through the County Attorney the completed form of such required documents together with a certification by the Company or owner of the Project that such documents are accurate and not in violation of any provisions of law or of the other documents of this transaction, and that the documents meet the legal requirements of such filing or delivery. In the event of the failure or refusal of the Company or owner to comply with this provision, the Company or owner agrees to pay the statement for reasonable attorneys' fees and administrative time presented by the County for producing and filing such documents, such statement to be paid within 30 days after presentation by the County, and to promptly pay any fees, penalties, assessments or damages imposed upon the County by reason of its failure to duly file or produce such documents.

Section 3.18. Fiscal Year; Property Tax Year. If the Company's fiscal year changes so as to cause a change in the Company's property tax year, then the timing of the requirements of this Fee Agreement are automatically revised accordingly.

Section 3.19. Indemnification.

(a) Except as provided in Section 3.19(c) hereof, 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 or relating to the County's execution or delivery of this Fee Agreement and any other documents reasonably necessary to effect the FILOT Payment, the transactions contemplated by this Fee Agreement, and any related procedural documents and amendment entered into with respect to the Project (collectively, "Transaction Documents") or performance of the County's obligations under the Transaction Documents, or the administration of its duties pursuant to the Transaction Documents, or otherwise by virtue of the County having entered into the Transaction Documents. If such a claim is made against any Indemnified Party, then subject to the provisions of Section 3.19(c) through Section 3.19(g) hereof, the Company shall defend the Indemnified Party in any action or proceeding.

(b) Except as provided in Section 3.19(c) hereof, subject to the provisions of Section 3.19(c) through Section 3.19(g) hereof, and without limiting the foregoing, the Company shall indemnify and save each Indemnified Party harmless against and from all claims, whenever made, by or on behalf of any person arising from the existence, use, manufacture, storage, generation, management, or disposal of or arrangement for the disposal of any Hazardous Materials (as defined in Section 3.19(f) hereof) on or from the Project, except for those claims which have been asserted as a result of any pre-existing conditions of the Project property, including without limitation environmental conditions, caused by the County's prior use of the Project property, and that the County did not use, manufacture, store, generate, manage, or dispose of or arrange for the disposal of any Hazardous Materials at the Project, or any part of it, or any real property on which the Project is to be located. The County represents that at no time prior to the execution of the Transaction Documents did the County ever use, manufacture, store, generate, manage, or dispose of or arrange for the disposal of any Hazardous Materials at the Project, or any part of it, or any real property on which the Project is to be located.

(c) Notwithstanding anything herein to the contrary, the Company is not required to indemnify any Indemnified Party against any claim or liability (i) occasioned by the acts or omissions of that Indemnified Party, which are unrelated to the County's execution of the Transaction Documents, the performance of the County's obligations under the Transaction Documents, or the administration of the County's duties under the Transaction Documents, or otherwise by virtue of the County having entered into the Transaction Documents; (ii) resulting from that Indemnified Party's own negligence, bad faith, fraud, deceit, or willful misconduct; or (iii) arising from the County's customary performance and administration of its obligations and duties in connection with its operation of the County's governmental functions outside of the County's execution of the Transaction Documents, the County's performance of its obligations under the Transaction Documents, or the County's administration of its duties under the Transaction Documents.

(d) An Indemnified Party may not avail itself of the indemnification provided in Section 3.19 hereof 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.

(e) Following the notice required by Section 3.19(d) hereof, the Company shall resist or defend against any such claim or demand, action or proceeding, at its expense, using counsel of its choice. To the extent permitted by law, the Indemnified Party shall, in such an action or proceeding, assist the Company in asserting all lawful defenses, including, without limitation, sovereign immunity. Nothing herein shall be construed as a waiver or diminishment of any sovereign immunity available to any Indemnified Party under the laws of the State. The Company is entitled to manage and control the defense of or respond 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, which consent shall not be unreasonably

withheld. In the event that such consent is unreasonably withheld and such action results in additional expense or cost to the Company, that Indemnified Party shall be liable for such additional expense or cost. To the extent any Indemnified Party desires to use separate counsel for any reason, other than an unwaivable conflict of interest, as determined under the South Carolina Rules of Professional Conduct, that Indemnified Party is responsible for its independent legal fees.

(f) For purposes of Section 3.19 hereof, Hazardous Materials means: (i) "hazardous substances" as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq., (ii) "hazardous wastes," as defined by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq., (iii) radioactive material including, without limitation, any source, special nuclear or by-product material, as defined by the Atomic Energy Act, 42 U.S.C. § 2011, et seq.; (iv) asbestos, in any form; (v) polychlorinated biphenyls; and (vi) any other material, substance or waste to which liability or standards of conduct may be imposed under any Environmental Laws, which is defined as all federal, state and local statutes (including the South Carolina Pollution Control Act, § 48-1-10 et seq.), codes, regulations, rules, ordinances, orders, standards, permits, licenses, policies and requirements relating to the protection, preservation, remediation or conservation of the environment, all as amended or reauthorized.

(g) The indemnity covenants specified in Section 3.19(a) hereof will remain in effect only until the completion or termination of the Transaction Documents and the incentives as contemplated by the Transaction Documents, including any extensions thereto, plus a period equal to the statute of limitations applicable to any such claims. The indemnity covenants specified in Section 3.19(b) through Section 3.19(f) hereof shall survive the completion or termination of the Transaction Documents and the incentives as contemplated by the Transaction Documents, including any extensions thereto.

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
County Administrator
515 Walnut Street
Camden, South Carolina 29020
Telephone: 803.425.1501
Facsimile: 803.425.1546

WITH A COPY TO:
(does not constitute notice)

Kershaw County Attorney
Ken Dubose, Esquire
515 Walnut Street
Camden, South Carolina 29020
Telephone: 803.432.1992
Facsimile: 803.425.1546

WITH A COPY TO:
(does not constitute notice)

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
Email: michaelkozlarek@parkerpoe.com

AS TO THE COMPANY:

WITH A COPY TO:
(does not constitute notice)

Section 4.2. *Binding Effect.* This Fee Agreement shall be 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, in original, by facsimile or by other electronic means, 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 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. ANY OBLIGATION OF THE COUNTY CREATED BY OR ARISING OUT OF THIS FEE AGREEMENT SHALL BE A LIMITED OBLIGATION OF THE COUNTY, PAYABLE BY THE COUNTY SOLELY FROM THE PROCEEDS DERIVED UNDER THIS FEE AGREEMENT AND SHALL NOT UNDER ANY CIRCUMSTANCES BE DEEMED TO CONSTITUTE A GENERAL OBLIGATION OF THE COUNTY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY LIMITATION.

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


Section 4.11. County Expenses. The Company shall reimburse the County for reasonable and necessary expenses, including, reasonable and necessary attorneys' fees, related to review and negotiation of the Transaction Documents, in an amount not to exceed \$10,000; provided, that the Company is not required to reimburse the County for any: (a) expenses incurred by the County in the ordinary course of its operation, including with respect to tax- and fee-payers; or (b) expenses incurred by the County in defending suits brought by the Company based on a default by the County under the Transaction Documents. The Company shall reimburse the County no more than 30 days after receiving an invoice from the County, or its agents, in which the amount and the general nature of the expense is provided.

Section 4.12. 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]
[REMAINDER OF PAGE INTENTIONALLY BLANK]*

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 County Council Chairman and to be attested by the Clerk to County Council, effective as of the day and year first above written.

KERSHAW COUNTY, SOUTH CAROLINA

By: 
Kershaw County Council
Kershaw County, South Carolina

(SEAL)
ATTEST:

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

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

ACCURIDE EMI, LLC

By: Donald J. Krumpke
Name: Donald J. Krumpke
Title: Accuride Camden - Director
of Operations

EXHIBIT A

DESCRIPTION OF PROPERTY

All that certain lot, tract, or parcel of land situate, lying and being in Kershaw County, South Carolina, [], containing [] acres more or less, being more particularly described as follows:

Beginning [] the point of beginning.