

WHEREAS, Mayson Solar LLC, a limited liability company organized and existing under the laws of the State of Delaware and previously identified as Project Mayson, acting for itself or one or more affiliates and/or other project sponsors (collectively, the “Company”), proposes to invest in, or cause others to invest in, the establishment and/or expansion of certain facilities operated or to be operated primarily for the production of solar energy, and ancillary facilities, at one or more locations in the County (the “Project”), and anticipates that, should its plans proceed as expected, it will invest, or caused to be invested, at least \$40,000,000, in the aggregate, in the Project in the County; and

WHEREAS, based on information provided to the County by the Company, the County has determined that the Project will subserve the purposes of the Act and has made certain findings pertaining thereto in accordance with the Act; and

WHEREAS, in accordance with such findings and determinations, and in order to induce the Company to locate the Project in the County, the Council adopted a Resolution on October 12, 2020 (the “Inducement Resolution”), whereby the County agreed to provide the benefits of a negotiated FILOT, a multi-county industrial or business park, and Special Source Credits with respect to the Project; and

WHEREAS, the County and the Company have agreed to specific terms and conditions of such arrangements as set forth herein and in a Fee in Lieu of Tax and Incentive Agreement by and among the County and the Company with respect to the Project (the “Incentive Agreement”), the form of which is presented to this meeting, which Incentive Agreement is to be dated as of _____, 2020, or such other date as the parties thereto may agree; and

WHEREAS, it appears that the Incentive Agreement now before this meeting is in appropriate form and is an appropriate instrument to be executed and delivered by the County for the purposes intended.

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

Section 1. As contemplated by Section 12-44-40(I) of the Negotiated FILOT Act, the findings and determinations set forth in the Inducement Resolution are hereby ratified and confirmed. In the event of any disparity or ambiguity between the terms and provisions of the Inducement Resolution and the terms and provisions of this Ordinance and the Incentive Agreement, the terms and provisions of this Ordinance and the Incentive Agreement shall control. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed thereto in the Incentive Agreement. Additionally, based on information provided to the County by the Company with respect to the Project, the County makes the following findings and determinations:

(a) The Project will constitute a “project” within the meaning of the Negotiated FILOT Act; and

(b) The Project, and the County’s actions herein, will subserve the purposes of the Negotiated FILOT Act; and

(c) The Project is anticipated to benefit the general public welfare of the State and the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; and

(d) The Project gives rise to no pecuniary liability of the County or an incorporated municipality or a charge against the general credit or taxing power of either; and

(e) The purposes to be accomplished by the Project are proper governmental and public purposes; and

(f) The benefits of the Project are greater than the costs.

Section 2.

(a) The County hereby agrees to enter into the Incentive Agreement, which agreement shall be in the form of a fee agreement, pursuant to the Negotiated FILOT Act, whereby the Company will agree to satisfy, or cause to be satisfied, certain investment requirements with respect to the Project within certain prescribed time periods in accordance with the Negotiated FILOT Act and the County will agree to accept certain negotiated FILOT payments with respect to the Project (the "Negotiated FILOT"), as set forth in **Section 2(b)** hereof and in accordance with the terms of the Incentive Agreement.

(b)

(i) The Negotiated FILOT shall be determined using: (1) an assessment ratio of six percent (6%); (2) the lowest millage rate or millage rates allowed with respect to the Project pursuant to Section 12-44-50(A)(1)(d) of the Negotiated FILOT Act as set forth in greater detail in the Incentive Agreement, and which, based on the property comprising the Land as of the original execution and delivery of the Incentive Agreement, the County and the Company believe to be 353.2 mills, and which millage rate or rates shall be fixed in accordance with Section 12-44-50(A)(1)(b)(i) of the Negotiated FILOT Act for the full term of the Negotiated FILOT, all as set forth in greater detail in the Incentive Agreement; (3) the fair market value of the Negotiated FILOT Property, as determined in accordance with Section 12-44-50(A)(1)(c) of the Negotiated FILOT Act; and (4) and such other terms and conditions as are or will be specified in the Incentive Agreement including, without limitation, that the Company, in its sole discretion, may dispose of property and replace property subject to Negotiated FILOT payments to the maximum extent permitted by the Negotiated FILOT Act.

(ii) The Negotiated FILOT shall be calculated as provided in this **Section 2(b)** for all Negotiated FILOT Property placed in service as

part of the Project during the Investment Period. For each annual increment of investment in Negotiated FILOT Property, the annual Negotiated FILOT payments shall be payable for a payment period of thirty (30) years. Accordingly, if such Negotiated FILOT Property is placed in service during more than one year, each year's investment during the Investment Period shall be subject to the Negotiated FILOT for a payment period of thirty (30) years up to an aggregate of thirty-five (35) years or, if the Investment Period is extended as set forth in the Incentive Agreement, up to an aggregate of forty (40) years.

Section 3. The County agrees to designate the Project as part of a Multi-County Park, if not already so designated, and agrees to use its best efforts to maintain the Project, including, but not limited to, the Land, within the boundaries of the Multi-County Park pursuant to the provisions of the Multi-County Park Act and Article VIII, Section 13(D) of the State Constitution on terms, and for a duration, which facilitate the provision by the County, and the receipt by each Credit Eligible Entity, of Special Source Credits, as set forth in **Section 4** hereof and in accordance with the terms of the Incentive Agreement.

Section 4. As an additional incentive to induce the Company to undertake the Project, and as reimbursement for investment in Special Source Improvements, and subject to the requirements of the Special Source Act and the terms and conditions of the Incentive Agreement, the County hereby agrees, that each Credit Eligible Entity shall be entitled to receive, and the County shall provide, Special Source Credits against each FILOT payment, including, but not limited to, each Negotiated FILOT payment, due from each such Credit Eligible Entity with respect to the Project for a period of thirty (30) consecutive tax years, commencing with the tax year for which the initial Negotiated FILOT payment is due with respect to the Project, in an annual amount sufficient to reduce the Negotiated FILOT payment otherwise due such that the net payment due is an amount equal to \$2,100 per MWac based upon the maximum capacity (known as the maximum facility output) for energy injected into the electric grid as established at the time that the Project commences construction, all in accordance with, and as further detailed in, the Incentive Agreement. In accordance with the Special Source Act, the Special Source Credits authorized herein shall not, in the aggregate, exceed the aggregate cost of Special Source Improvements funded from time to time in connection with the Project.

Section 5. The form, provisions, terms, and conditions of the Incentive Agreement presented to this meeting and filed with the Clerk to Council are hereby approved, and all of the provisions, terms, and conditions thereof are hereby incorporated herein by reference as if the Incentive Agreement was set out in this Ordinance in its entirety. The Chairman of the Council is hereby authorized, empowered, and directed to execute the Incentive Agreement in the name and on behalf of the County; the Clerk to Council is hereby authorized, empowered and directed to attest the same; and the Chairman of the Council is further authorized, empowered, and directed to deliver the Incentive Agreement to the Company. The Incentive Agreement is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall not materially adversely affect the rights of the County thereunder and as shall be approved by the official or officials of the County executing the same, upon the advice of

counsel, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of the Incentive Agreement now before this meeting.

Section 6. The Chairman of the Council, the County Director, and the Clerk to Council, for and on behalf of the County, are hereby each authorized, empowered, and directed to do any and all things necessary or proper to effect the performance of all obligations of the County under and pursuant to the Incentive Agreement.

Section 7. The provisions of this Ordinance are hereby declared to be separable and if any section, phrase, or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases, and provisions hereunder.

Section 8. All orders, ordinances, resolutions, and parts thereof in conflict herewith are to the extent of such conflict hereby repealed. This Ordinance shall take effect and be in full force from and after its passage and approval.

[End of Ordinance]

DRAFT

Enacted and approved, in meeting duly assembled, this __ day of _____, 2020.

SALUDA COUNTY, SOUTH CAROLINA

By: _____
Raymond G. Strawbridge, Chairman, County
Council, Saluda County, South Carolina

[SEAL]

Attest:

By: _____
Karen T. Whittle, Clerk to County Council,
Saluda County, South Carolina

First Reading: October 12, 2020
Second Reading: November 9, 2020
Public Hearing: November 9, 2020
Third Reading: _____, 2020

FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

by and between

SALUDA COUNTY, SOUTH CAROLINA

and

MAYSON SOLAR LLC

Dated as of _____, 2020

DRAFT

TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS.....	2
Section 1.01. Definitions.....	2
Section 1.02. References to Agreement.....	7
ARTICLE II REPRESENTATIONS AND WARRANTIES.....	8
Section 2.01. Representations and Warranties by County.....	8
Section 2.02. Representations and Warranties by the Company.....	8
ARTICLE III COVENANTS OF COUNTY	9
Section 3.01. Agreement to Accept Negotiated FILOT Payments.....	9
Section 3.02. Special Source Credits	9
Section 3.03. Multi-County Park Designation.....	10
Section 3.04. Commensurate Benefits.....	10
ARTICLE IV COVENANTS OF THE COMPANY	11
Section 4.01. Investment in Project.....	11
Section 4.02. Failure to Satisfy Minimum Contractual Investment Requirement.....	13
Section 4.03. Payment of Administration Expenses.....	14
Section 4.04. Use of Project for Lawful Activities.....	15
Section 4.05. Maintenance of Existence.....	15
Section 4.06. Records and Reports	16
Section 4.07. Funding for Special Source Improvements.....	17
ARTICLE V FEES IN LIEU OF TAXES.....	17
Section 5.01. Payment of Fees in Lieu of <i>Ad Valorem</i> Taxes	17
Section 5.02. Statutory Lien.....	22
ARTICLE VI THIRD PARTY ARRANGEMENTS	22
Section 6.01. Conveyance of Liens and Interests; Assignment.....	22
Section 6.02. Sponsors and Sponsor Affiliates.....	23
ARTICLE VII TERM; TERMINATION.....	24
Section 7.01. Term.....	24
Section 7.02. Termination.....	24
ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES	25
Section 8.01. Events of Default	25
Section 8.02. Remedies on Event of Default	25
Section 8.03. Defaulted Payments	26

TABLE OF CONTENTS
(continued)

		Page
	Section 8.04. Default by County.....	26
ARTICLE IX	MISCELLANEOUS	26
	Section 9.01. Rights and Remedies Cumulative.....	26
	Section 9.02. Successors and Assigns.....	26
	Section 9.03. Notices; Demands; Requests.....	26
	Section 9.04. Applicable Law	27
	Section 9.05. Entire Understanding	27
	Section 9.06. Severability	28
	Section 9.07. Headings and Table of Contents; References	28
	Section 9.08. Multiple Counterparts	28
	Section 9.09. Amendments	28
	Section 9.10. Waiver.....	28
	Section 9.11. Further Proceedings	28
EXHIBIT A	LAND DESCRIPTION	A-1
EXHIBIT B	FORM OF JOINDER AGREEMENT	B-1

DRAFT

FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT

THIS FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT (this “Agreement”) dated as of _____, 2020, by and between SALUDA COUNTY, SOUTH CAROLINA (the “County”), a body politic and corporate and a political subdivision of the State of South Carolina, and MAYSON SOLAR LLC, a limited liability company organized and existing under the laws of the State of Delaware and previously identified as Project Mayson, acting for itself, one or more affiliates, and/or other project sponsors (the “Company”).

WITNESSETH:

WHEREAS, the County, acting by and through its County Council (the “Council”), is authorized and empowered under and pursuant to the provisions of the Code of Laws of South Carolina 1976, as amended (the “Code”), particularly Title 12, Chapter 44 of the Code (the “Negotiated FILOT Act”) and Title 4, Chapter 1 of the Code (the “Multi-County Park Act” or, as to Section 4-1-175 thereof, the “Special Source Act”, and, together with the Negotiated FILOT Act, the “Act”) and by Article VIII, Section 13(D) of the South Carolina Constitution: (i) to enter into agreements with certain investors to construct, operate, maintain, and improve certain projects through which the economic development of the State of South Carolina (the “State”) will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ the manpower, agricultural products, and natural resources of the State; (ii) to covenant with such investors to accept certain fee in lieu of *ad valorem* tax (“FILOT”) payments, including, but not limited to, negotiated FILOT payments made pursuant to the Negotiated FILOT Act, with respect to a project; (iii) to permit investors to claim special source revenue credits against their FILOT payments (“Special Source Credits”) to reimburse such investors for expenditures in connection with infrastructure serving the County or improved or unimproved real estate and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County (“Special Source Improvements”); and (iv) to create, in conjunction with one or more other counties, a multi-county industrial or business park in order to afford certain enhanced income tax credits to such investors and to facilitate the grant of Special Source Credits; and

WHEREAS, the Company is considering the establishment and/or expansion of a solar energy facility and ancillary facilities at one or more locations in the County (the “Project”), and anticipates that, should its plans proceed as expected, it will invest, or cause to be invested at least, \$40,000,000, in the aggregate, in the Project by the end of the Compliance Period (as defined herein), as set forth in greater detail herein; and

WHEREAS, the County has determined that the Project will subserve the purposes of the Act and has made certain findings pertaining thereto in accordance with the Act; and

WHEREAS, in accordance with such findings and determinations and in order to induce the Company to locate the Project in the County, the Council adopted a Resolution on October 12, 2020 (the “Inducement Resolution”), whereby the County agreed to provide the benefits of a

negotiated FILOT, a multi-county industrial or business park, and Special Source Credits with respect to the Project, the terms of all of which are set forth in greater detail in this Agreement; and

WHEREAS, the County has determined that it is in the best interests of the County to enter into this Agreement with the Company, subject to the terms and conditions set forth herein, and, by Ordinance No. _____ enacted by the Council on _____, 2020, approved the form, terms and conditions of this Agreement and ratified all prior actions taken with respect to the Project.

NOW, THEREFORE, in consideration of the premises, the mutual covenants contained herein, the above recitals which are incorporated herein by reference, the potential investment to be made, or caused to be made, by the Company which contribute to the tax base and the economic welfare of the County, the respective representations and agreements hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the Company agree as follows:

ARTICLE II

DEFINITIONS

Section 9. Definitions. In addition to the words and terms elsewhere defined in this Agreement, the following words and terms as used herein and in the preambles hereto shall have the following meanings unless the context or use indicates another or different meaning or intent.

“*Act*” shall mean, collectively, the Negotiated FILOT Act and the Multi-County Park Act, including, without limitation, the Special Source Act.

“*Administration Expenses*” shall mean the reasonable and necessary expenses incurred by the County in the fulfillment of its obligations under this Agreement and in the implementation of its terms and provisions, including reasonable and necessary attorney’s fees at the hourly rates which are standard for the applicable legal services to the County, but excluding any expenses incurred by the County in defending either challenges to the incentives provided herein by third parties or suits brought by the Company or any other Co-Investor under **Section 8.04** hereof; provided, however, that no such expense shall be considered an Administration Expense unless the Company, or other Co-Investor, required to pay such expense hereunder, shall have first agreed, prior to the County incurring such expense, as to the maximum amount thereof or as to the basis for which such expenses will be incurred, and the County shall have furnished to such Company, or such other Co-Investor, as the case may be, an itemized statement of all such expenses incurred.

“*Affiliate*” shall mean any corporation, limited liability company, partnership or other Person or entity which now or hereafter owns all or part of the Company or any other Co-Investor, as the case may be, or which is now or hereafter owned in whole or in part by the Company or any other Co-Investor, as the case may be, or by any partner, shareholder or owner

of the Company or any other Co-Investor, as the case may be, and shall also include any subsidiary, affiliate or other Person, individual, or entity who now or hereafter bears a relationship to the Company or any other Co-Investor, as the case may be, as described in Section 267(b) of the Internal Revenue Code.

“*Agreement*” shall mean this Fee in Lieu of Tax and Incentive Agreement as originally executed and from time to time supplemented or amended as permitted herein.

“*Code*” shall mean the Code of Laws of South Carolina 1976, as amended, unless the context clearly requires otherwise.

“*Co-Investor*” shall mean the Company, any other Sponsor or Sponsor Affiliate within the meaning of this Agreement and Sections 12-44-30(19) and (20) of the Negotiated FILOT Act, any Affiliate of the Company or of any such other Sponsor or Sponsor Affiliate, any developer in a build-to-suit arrangement or other leasing arrangement with respect to the Project, any lessor of equipment or other personal property comprising a part of the Project, and any financing entity or other third party investing in, or providing funds for, the Project, to the extent allowed by the Act. The Company shall notify the County in writing of the identity of any other Sponsor, Sponsor Affiliate or other Co-Investor and shall, to the extent the Company and any such other Sponsor, Sponsor Affiliate, or other Co-Investor intend to extend the benefits of the Negotiated FILOT to property owned by any such Sponsor, Sponsor Affiliate, or other Co-Investor pursuant to **Section 6.02** hereof, comply with any additional notice requirements, or other applicable provisions, of the Negotiated FILOT Act and this Agreement. As of the date of the original execution and delivery of this Agreement, the Co-Investors are the Company, B & T Holding Company of Aiken, LLC, Clinton R Durst, Ellis Owen and Carol Owen, Mitzi R Durst and John R Durst, and PBW - Green Place, L.L.C.

“*Company*” shall mean Mayson Solar LLC, a limited liability company existing under the laws of the State of Delaware and previously identified as Project Mayson, and any surviving, resulting, or transferee entity in any merger, consolidation or transfer of assets permitted under **Sections 4.05** or **6.01** hereof or any other assignee or transferee hereunder which is designated by the Company and approved by the County.

“*Compliance Period*” shall mean the period commencing with the first day that Negotiated FILOT Property is purchased or acquired, whether before or after the date of this Agreement, and ending on the fifth anniversary of the end of the Property Tax Year in which the initial Negotiated FILOT Property comprising all or a portion of the Project is placed in service, all as specified in Section 12-44-30(13) of the Negotiated FILOT Act. It is presently anticipated, but not required, that the initial Negotiated FILOT Property comprising all or a portion of the Project will be placed in service in the Property Tax Year ending on December 31, 2023, and, in such event, the Compliance Period will end on December 31, 2028.

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

“*Council*” shall mean the governing body of the County and its successors.

“*Credit Eligible Entity*” shall have the meaning specified in **Section 3.02(a)** hereof.

“*Deficiency Payment*” shall have the meaning specified in **Section 5.01(e)** hereof.

“*Department of Revenue*” shall mean the South Carolina Department of Revenue and any successor thereof.

“*Event of Default*” shall mean an Event of Default, as set forth in **Section 8.01** hereof.

“*Existing Property*” shall mean property which will not qualify for the Negotiated FILOT pursuant to Section 12-44-110 of the Negotiated FILOT Act, including, without limitation, property which has been subject to *ad valorem* taxes in the State prior to commencement of the Investment Period and property included in the Project as part of the repair, alteration, or modification of such previously taxed property; provided, however, that Existing Property shall not include: (a) the Land; (b) property acquired or constructed by or on behalf of the Company or any other Sponsor or Sponsor Affiliate during the Investment Period which has not been placed in service in this State prior to the commencement of the Investment Period notwithstanding that *ad valorem* taxes have heretofore been paid with respect to such property, or property which has been placed in service in the State pursuant to an inducement agreement or other preliminary approval by the County, including the Inducement Resolution, prior to execution of this Agreement pursuant to Section 12-44-40(E) of the Negotiated FILOT Act, which property shall qualify as Negotiated FILOT Property; (c) property purchased by or on behalf of the Company or any other Sponsor or Sponsor Affiliate during the Investment Period in a transaction other than between any of the entities specified in Section 267(b) of the Internal Revenue Code, as defined under Chapter 6 of Title 12 of the Code as of the time of the transfer, to the extent that the Company or such other Sponsor or Sponsor Affiliate invests at least an additional \$45,000,000 in the Project, exclusive of the property identified in this subsection (c); or (d) modifications which constitute an expansion of the real property portion of Existing Property.

“*FILOT*” shall mean fee in lieu of *ad valorem* property taxes.

“*FILOT Payment*” or “*FILOT Payments*” shall mean the FILOT payments to be made by the Company or any other Co-Investor with respect to the Project, whether made as Negotiated FILOT Payments pursuant to **Section 5.01** hereof or as FILOT payments made pursuant to the Multi-County Park Act.

“*Investment Period*” shall initially mean a period equal to the Compliance Period; provided, however, that, if the Minimum Contractual Investment Requirement is satisfied by the end of the Compliance Period, the Investment Period shall be automatically extended, without further action or proceedings of the County or the Council, by five (5) years beyond the Compliance Period to end on the tenth anniversary of the end of the Property Tax Year in which the initial Negotiated FILOT Property comprising all or a portion of the Project is placed in

service, all in accordance with Section 12-44-30(13) of the Negotiated FILOT Act; provided further that there shall be no extension of the period for meeting the Minimum Statutory Investment Requirement beyond the Compliance Period, all determined as specified in Section 12-44-30(13) of the Negotiated FILOT Act. In the event that the initial Negotiated FILOT Property comprising all or a portion of the Project is, as presently anticipated, placed in service in the Property Tax Year ending on December 31, 2023, and upon any such extension, the Investment Period would end on December 31, 2033.

“*Land*” shall mean the land upon which the Project has been or will be acquired, constructed and equipped, as described on **Exhibit A** attached hereto, as **Exhibit A** may be revised, modified, or supplemented from time to time in accordance with the provisions hereof.

“*Minimum Contractual Investment Requirement*” shall mean investment in the Project, within the period commencing on the first day that Project property comprising all or a portion of the Project is purchased or acquired, whether before or after the date of this Agreement, and ending at the end of Compliance Period, by the Company and all Co-Investors, in the aggregate, of at least \$40,000,000 (without regard to depreciation or other diminution in value).

“*Minimum Statutory Investment Requirement*” shall mean investment in the Project of not less than \$2,500,000 within the Compliance Period, as set forth in by Section 12-44-30(14) of the Negotiated FILOT Act, which investment amount shall be calculated in accordance with, and subject to, Section 12-44-130 of the Negotiated FILOT Act and **Section 6.02** hereof.

“*Multi-County Park*” shall mean the multi-county industrial or business park established pursuant to the Multi-County Park Act and the Multi-County Park Agreement, and any multi-county industrial or business park which now or hereafter includes the Project and which is designated by the County as such pursuant to any agreement, which supersedes or replaces the initial Multi-County Park Agreement.

“*Multi-County Park Act*” shall mean Title 4, Chapter 1 of the Code.

“*Multi-County Park Agreement*” shall mean that certain Agreement for Development of Joint County Industrial and Business Park (Saluda County - Project Mayson) between the County and Edgefield County, South Carolina, dated as of _____, 20__, as supplemented, modified or amended, and, as such agreement may be further supplemented, modified, amended, or replaced from time to time.

“*Negotiated FILOT*” or “*Negotiated FILOT Payments*” shall mean the FILOT payments due pursuant to **Section 5.01** hereof with respect to that portion of the Project consisting of Negotiated FILOT Property qualifying under the Negotiated FILOT Act for the negotiated assessment ratio and millage rate or rates described in **Section 5.01(b)(ii)** hereof.

“*Negotiated FILOT Act*” shall mean Title 12, Chapter 44 of the Code.

“Negotiated FILOT Property” shall mean all property qualifying for the Negotiated FILOT as economic development property within the meaning of Section 12-44-30(6) of the Negotiated FILOT Act, including, without limitation, each item of real and tangible personal property comprising the Project which is placed in service during the Investment Period and which meets the requirements of Sections 12-44-30(6) and 12-44-40(C) of the Negotiated FILOT Act, together with all Replacement Property, but excluding any Non-Qualifying Property and any Released Property.

“Non-Qualifying Property” shall mean that portion of the real and personal property located on the Land, which does not qualify as Negotiated FILOT Property, such Non-Qualifying Property to include: (i) Existing Property; (ii) except as to Replacement Property, property which the Company or any other Sponsor or Sponsor Affiliate places in service after the end of the Investment Period; and (iii) any other property which fails or ceases to qualify for Negotiated FILOT Payments under the Negotiated FILOT Act or under this Agreement, including without limitation property as to which the Company or any other Sponsor or Sponsor Affiliate has terminated the Negotiated FILOT pursuant to **Section 4.01(e)(iii)** hereof.

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

“Project” shall mean: (i) the Land and all buildings, structures, fixtures and other real property improvements now or hereafter constructed on the Land; (ii) all machinery, equipment, furnishings and other personal property now or hereafter acquired by or on behalf of the Company or any other Co-Investors for use on or about the Land; and (iii) any Replacement Property; provided, however, except as to Replacement Property, the term Project shall be deemed to include any such real property improvements and personal property, whether now existing or hereafter constructed, improved, acquired or equipped, only to the extent placed in service within the Investment Period.

“Property Tax Year” shall mean the annual period which is equal to the fiscal year of the Company, or any other Co-Investor, as the case may be, *i.e.*, with respect to the Company, as of the original execution and delivery of this Agreement, the annual period ending on December 31 of each year.

“Released Property” shall include property which was initially Negotiated FILOT Property but which is scrapped, sold, disposed of, or released from this Agreement by the Company or any other Sponsor or Sponsor Affiliate pursuant to **Section 4.01(e)** hereof and Section 12-44-50(B) of the Negotiated FILOT Act, any portion of the Negotiated FILOT Property constituting infrastructure which the Company or any other Sponsor or Sponsor Affiliate dedicates to the public use within the meaning of Section 12-6-3420(C) of the Code, or property which is damaged, destroyed, or taken by process of eminent domain and not restored or replaced.

“Replacement Property” shall mean all property placed in service on the Land in substitution of, or as replacement for, any Negotiated FILOT Property which becomes Released Property, regardless of whether such property serves the same function as the property it replaces and regardless of whether more than one piece of such property replaces a single piece of the Negotiated FILOT Property, to the maximum extent that such property may be included in the calculation of the Negotiated FILOT pursuant to **Section 5.01(d)** hereof and Section 12-44-60 of the Negotiated FILOT Act.

“Special Source Act” shall mean Section 4-1-175 of the Code.

“Special Source Credits” shall mean the special source revenue credits described in **Section 3.02** hereof.

“Special Source Improvements” shall mean to the extent paid for by the Company or any other Sponsor or Sponsor Affiliate, any infrastructure serving the economic development of the County and any improved or unimproved real property, buildings, structural components of buildings, fixtures, or other real property improvements, and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County, all as set forth in the Special Source Act. For purposes of this Agreement, Special Source Improvements shall initially be deemed to include, without limitation, all roadwork, water, sewer, drainage, power and utility facilities serving the Project, as well as the Land, the buildings, fixtures and other real property improvements on the Land, the machinery and equipment and other personal property comprising the Project, and any additions or improvements to any of the foregoing, whether paid for by the Company or any Sponsor or Sponsor Affiliate directly or through lease payments.

“Sponsor” and *“Sponsor Affiliate”* shall mean an entity whose investment with respect to the Project will qualify for the Negotiated FILOT pursuant to **Section 6.02** hereof and Sections 12-44-30(19) or (20) and Section 12-44-130 of the Negotiated FILOT Act if the statutory investment requirements are met and if such entity or individual (other than the Company) executes and delivers to the County and the Department of Revenue a joinder agreement in the form attached hereto as **Exhibit B**. As of the original execution and delivery of the Agreement, the only Sponsor is the Company and the Sponsor Affiliates are B & T Holding Company of Aiken, LLC, Clinton R Durst, Ellis Owen and Carol Owen, Mitzi R Durst and John R Durst, and PBW - Green Place, L.L.C.

“State” shall mean the State of South Carolina.

“Term” shall mean the term of this Agreement, as set forth in **Section 7.01** hereof.

“Transfer Provisions” shall mean the provisions of Section 12-44-120 of the Negotiated FILOT Act.

Section 10. References to Agreement. The words “hereof”, “herein”, “hereunder”, and other words of similar import refer to this Agreement as a whole.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

Section 11. Representations and Warranties by County. The County makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) The County is a body politic and corporate and a political subdivision of the State and is authorized and empowered by the provisions of the Act to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. By proper action by the Council, the County has duly authorized the execution and delivery of this Agreement and has duly approved the Negotiated FILOT, the Special Source Credits, and the inclusion and maintenance of the Project in the Multi-County Park, all as set forth herein, as well as any and all actions reasonably necessary and appropriate to consummate the transactions contemplated hereby.

(b) On the basis of information supplied to it by the Company, the County has determined the Project will subserve the purposes of the Act and has made all other findings of fact required by the Act in connection with the undertaking of the arrangements set forth herein.

(c) This Agreement has been duly authorized, executed and delivered on behalf of the County. The authorization, execution, and delivery of this Agreement and the performance by the County of its obligations hereunder will not, to the best knowledge of the County, conflict with or constitute a breach of, or a default under, any State law, court or administrative regulation, decree, order, provision of the Constitution or laws of the State relating to the establishment of the County or its affairs, or any material agreement, mortgage, lease, or other instrument to which the County is subject or by which it is bound, nor, to the best knowledge of the County, any existing law or the provisions of the Constitution of the State.

(d) To the best knowledge of the County, no actions, suits, proceedings, inquiries, or investigations are pending or threatened against or affecting the County in any court or before any governmental authority or arbitration board or tribunal, any of which to the best knowledge of the County could materially adversely affect this Agreement or which could, in any way, adversely affect the validity or enforceability of this Agreement or the transactions contemplated hereby.

Section 12. Representations and Warranties by the Company. The Company makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) The Company is a limited liability company validly existing and in good standing under the laws of the State of Delaware and is authorized to do business in the

State of South Carolina, has all requisite power to enter into this Agreement and to carry out its obligations hereunder, and by proper action has been duly authorized to execute and deliver this Agreement. As of the original execution and delivery of this Agreement, the Company's fiscal year end is December 31 and the Company will notify the County of any changes in the fiscal year of the Company.

(b) The Company intends to operate the Project, upon completion, as a solar energy facility and ancillary facilities.

(c) The agreements with the County with respect to the Negotiated FILOT, the Special Source Credits, and the Multi-County Park, as set forth herein, were factors in inducing the Company to locate the Project within the County and the State.

(d) To the best knowledge of the Company, no actions, suits, proceedings, inquiries, or investigations are pending or threatened against or affecting the Company in any court or before any governmental authority or arbitration board or tribunal, which would materially adversely affect this Agreement or which would, in any way, adversely affect the validity or enforceability of this Agreement, or the transactions contemplated hereby.

ARTICLE IV

COVENANTS OF COUNTY

Section 13. Agreement to Accept Negotiated FILOT Payments. The County hereby agrees to accept Negotiated FILOT Payments in accordance with the provisions of **Section 5.01** hereof in lieu of *ad valorem* taxes with respect to that portion of the Project consisting of Negotiated FILOT Property until this Agreement expires or is sooner terminated.

Section 14. Special Source Credits.

(a) As reimbursement for investment in Special Source Improvements and subject to the requirements of the Special Source Act and **Section 4.02** hereof, the County hereby agrees that the Company and each other Co-Investor (each, a "Credit Eligible Entity") shall be entitled to receive, and the County shall provide, Special Source Credits against each Negotiated FILOT Payment due from each such Credit Eligible Entity with respect to the Project, for a period of thirty (30) consecutive tax years, commencing with the tax year for which the initial Negotiated FILOT payment is due such that the net aggregate payment due is an amount equal to \$2,100 per MWac based upon the maximum capacity (known as the maximum facility output) for energy injected into the electric grid as established at the time that the Project commences construction. In accordance with the Special Source Act, the Special Source Credits authorized herein shall not, in the aggregate, exceed the aggregate cost of Special Source Improvements funded from time to time in connection with the Project by the Company and all other Sponsor and Sponsor Affiliates.

(b) The Special Source Credits to which a Credit Eligible Entity is entitled for each tax year of the period set forth in **Section 3.02(a)** hereof shall be reflected by the County on each bill sent by the County to such Credit Eligible Entity for each Negotiated FILOT Payment due from such Credit Eligible Entity with respect to each such tax year, by reducing the total original Negotiated FILOT Payment amount otherwise due from such Credit Eligible Entity for such tax year by the amount of Special Source Credits to which such Credit Eligible Entity is entitled for such tax year.

(c) THE SPECIAL SOURCE CREDITS AUTHORIZED HEREIN SHALL NOT CONSTITUTE A GENERAL OBLIGATION OF THE COUNTY, BUT SHALL BE A LIMITED OBLIGATION OF THE COUNTY PAYABLE SOLELY FROM THE FILOT PAYMENTS RECEIVED BY THE COUNTY HEREUNDER WITH RESPECT TO THE PROJECT.

Section 15. Multi-County Park Designation. The County agrees to designate the Project, including, but not limited to the Land, as part of a Multi-County Park, if not already so designated, and agrees to use its best efforts to maintain the Project within the boundaries of the Multi-County Park pursuant to the provisions of the Multi-County Park Act and Article VIII, Section 13(D) of the State Constitution on terms, and for a duration, which facilitate the provision by the County, and the receipt by each Credit Eligible Entity, of the Special Source Credits set forth in **Section 3.02** hereof.

Section 16. Commensurate Benefits. The parties hereto acknowledge the intent of this Agreement, in part, is to afford the Company and each other Co-Investor the benefits specified in this Article III in consideration of the Company's decision to locate the Project within the County, and this Agreement has been entered into in reliance upon the enactment of the Act and the County's compliance with the requirements thereof. In the event that a court of competent jurisdiction holds that the Act is, in whole or in part, unconstitutional or this Agreement, the Multi-County Park Agreement, or agreements similar in nature to this Agreement or the Multi-County Park Agreement are invalid or unenforceable in any material respect, or should the Company determine there is a reasonable doubt as to the validity or enforceability of this Agreement or the Multi-County Park Agreement in any material respect, then at the request of the Company, the County agrees to use its best efforts, and to take such other steps as may be necessary, to extend to the Company and each other Co-Investor the intended benefits of this Agreement, including, but not limited to, the Negotiated FILOT and the Special Source Credits and agrees, if requested by the Company, to enter into a lease purchase agreement with the Company and each other Sponsor or Sponsor Affiliate pursuant to Section 12-44-160 of the Negotiated FILOT Act and Title 4, Chapter 29 or Title 4, Chapter 12 of the Code, as applicable. In furtherance of this covenant, the County also agrees that, in the event that, for any reason, the Multi-County Park is declared by a court of competent jurisdiction to be invalid or unenforceable in whole or in part, the Company and the County express their intentions that tax or FILOT payments be reformed so as to best afford the Company and each other Co-Investor benefits commensurate with, but not in excess of, those intended under this Agreement, including, but not limited to, the Special Source Credits, as then permitted by law, including, without limitation,

any benefits afforded under Title 12, Chapter 6, Title 4, Chapter 1 and Title 4, Chapter 29 of the Code, as applicable, to the extent allowed by law. The Company acknowledges, if a court of competent jurisdiction holds all or part of the Negotiated FILOT Act is unconstitutional or otherwise illegal, the Negotiated FILOT Act currently provides that the Company and each other Sponsor or Sponsor Affiliate must transfer their respective portion of the Negotiated FILOT Property to the County within one hundred eighty (180) days following such determination in order for the Negotiated FILOT benefits to continue to apply to such property. In any such lease purchase agreement referenced above, the County, upon the conveyance of title to the Project to the County at the expense of the Company or any other Sponsor or Sponsor Affiliate, as the case may be, agrees to lease the Project to the Company or any such other Sponsor or Sponsor Affiliate, as the case may be. At the end of the term of any such lease purchase agreement, and upon payment of all outstanding obligations incurred under such lease purchase agreement, each of the Company and any such other Sponsor or Sponsor Affiliate shall have the option to purchase its respective portion of the Project from the County for Ten Dollars (\$10.00).

ARTICLE V

COVENANTS OF THE COMPANY

Section 17. Investment in Project.

(a) The Company hereby agrees to use commercially reasonable efforts to acquire, construct, equip, or improve or cause to be acquired, constructed, equipped, or improved, the Project, as the same shall be determined from time to time by the Company in its sole discretion. As required by Section 12-44-30(2) of the Negotiated FILOT Act, at least a portion of the Negotiated FILOT Property comprising the Project shall be placed in service no later than the end of the Property Tax Year which is three years from the year in which this Agreement is entered, *i.e.*, the Property Tax Year ending on December 31, 2024.

(b) Notwithstanding anything herein to the contrary, and to the maximum extent permitted by law, investment in the Project in the County by any and all other permitted Co-Investors shall together with investment in the Project in the County by the Company, count toward all investment requirements, thresholds, and levels set forth in this Agreement, including, without limitation, the Minimum Contractual Investment Requirement and, to the full extent permitted by the Negotiated FILOT Act, the Minimum Statutory Investment Requirement. Aggregate investment shall generally be determined by reference to the property tax returns of the Company and each other Co-Investor filed with respect to the Project, including without limitation, each such entity's SCDOR PT-300 or such comparable forms, as the Department of Revenue may provide in connection with projects under the Act, without regard to depreciation or other diminution in value.

(c) To encourage increased investment in the Project, the County hereby agrees that in the event the Minimum Contractual Investment Requirement is satisfied by

the end of Compliance Period, the Investment Period shall be automatically extended, without further action or proceedings of the County or the Council, by five (5) years beyond the end of the Compliance Period, and the County hereby agrees to such extension. There shall be no extension, however, beyond the Compliance Period of the period for meeting the Minimum Statutory Investment Requirement. In the event that the initial Negotiated FILOT Property comprising all or a portion of the Project is, as the parties hereto presently anticipate, placed in service in the Property Tax Year ending on December 31, 2023, and upon any such extension, the Investment Period would extend through December 31, 2033.

(d) Subject to the provisions of **Sections 4.05 and 6.01** hereof, the Company and each other Co-Investor shall, retain title to, or other property rights in, its respective portion of the Project throughout the Term of this Agreement, and the Company and each other Co-Investor shall have full right to mortgage, lease, or encumber all or any portion of the Project, including, without limitation, in connection with any financing transactions, all without the consent of the County.

(e) The Company and each other Co-Investor shall have the right at any time and from time to time during the Term hereof to undertake any of the following:

(1) The Company and each other Co-Investor may, at its own expense, add to the Project all such real and personal property as the Company, or such other Co-Investor, in its discretion deems useful or desirable, including, without limitation, Negotiated FILOT Property, without any limit as to the amount thereof.

(2) Subject to the provisions of **Section 5.01(f)(i)-(iii)** hereof, in any instance when the Company or any other Co-Investor, in its discretion, determines any property included in the Project, including without limitation, any Negotiated FILOT Property, has become inadequate, obsolete, worn out, unsuitable, undesirable, or unnecessary for operations at the Project, the Company or such other Co-Investor may remove such property from the Project and sell, trade in, exchange, or otherwise dispose of them as a whole or in part without the consent of the County.

(3) The Company and each other Co-Investor may, at any time and in its discretion by written notice to the County, remove any Project property including, but not limited to, Negotiated FILOT Property, real or personal, from the Project or from the provisions of this Agreement including, but not limited to, the Negotiated FILOT arrangement set forth in this Agreement and retain such property for use as part of its operations in the County, whether or not such property remains as part of the Project, and effective as of the date of any such removal, such property will be subject to *ad valorem* taxes, or to FILOT payments pursuant to the Multi-County Park Act, as the case may be; provided, that, any such notice requirement may be,

but shall not be required to be, satisfied by property tax returns filed with respect to the Project and any other such property, including without limitation, such entity's SCDOR PT-300 or such comparable forms, as the Department of Revenue may provide in connection with projects under the Act, and in such event, any such removal reflected by any such return shall be deemed to be effective as of the date of such removal.

(4) If the Company or any other Co-Investor sells, leases, or otherwise disposes of any portion of, or adds to, the Land, or removes any portion of the Land from the Project while retaining such property for use as part of its operations in the County, all as permitted herein, the Company or such Co-Investor shall deliver to the County a revised **Exhibit A** to this Agreement or supplements to **Exhibit A** reflecting any such addition, disposal or removal and such revised or supplemented **Exhibit A** shall, effective as of the date of any such transaction, addition, disposal, or removal, be automatically made a part of this Agreement without further action or proceedings by the County or the Council; provided, that any requirement to provide such schedules or supplements to the County may be satisfied by property tax returns filed with respect to the Project and any other such property, including without limitation, such entity's SCDOR PT-300 or such comparable forms, as the Department of Revenue may provide in connection with projects under the Negotiated FILOT Act, and in such event, any such addition, disposal, or removal reflected by any such return, shall be automatically deemed effective as of the date of any such addition, disposal, or removal.

(5) All Negotiated FILOT Property sold or otherwise disposed of under this Section shall be deemed Released Property for purposes of this Agreement.

Section 18. Failure to Satisfy Minimum Contractual Investment Requirement. If the Minimum Contractual Investment Requirement is not satisfied as of the end of the Compliance Period, each of the following subsections (a) and (b) shall apply:

(a) The Company and each other Sponsor or Sponsor Affiliate shall continue to be eligible for the Negotiated FILOT described in **Section 5.01** hereof so long as the Minimum Statutory Investment Requirement has nevertheless been satisfied by the end of the Compliance Period.

(b) Each Credit Eligible Entity shall, to the extent required by the below provisions of this **Section 4.02(b)**, reimburse the County for any Special Source Credits previously received, or to be received (upon actual receipt), by such Credit Eligible Entity under **Section 3.02(a)** hereof against each Negotiated FILOT Payment that has been, or will be, due to be paid without penalty with respect to the Project on or before the January 15 immediately following the end of the Compliance Period (collectively, the

“Compliance Period Special Source Credits”), taking into account the highest aggregate amount of investment in the Project (without regard to depreciation or other diminution in value) during the Compliance Period (“Actual Project Investment”), as compared to the Minimum Contractual Investment Requirement:

Formula:

1.
$$\frac{\text{Actual Project Investment}}{\$40,000,000} = \text{Investment Satisfaction Percentage [ISP]}$$
2.
$$100\% - \text{ISP} = \text{Investment Satisfaction Factor [ISF]}$$
3. In the event that determination of the Investment Satisfaction Factor results in a positive percentage figure, the Investment Satisfaction Factor shall be applied to the Compliance Period Special Source Credits received, or to be received (upon actual receipt), by each Credit Eligible Entity as set forth above to determine reimbursement amounts due to the County, if any, from each such Credit Eligible Entity. Any such amounts shall be due to be paid by the owing Credit Eligible Entity on or before the date by which such Credit Eligible Entity is required, under applicable law, to make its Negotiated FILOT Payment due with respect to the Project for the tax year corresponding to the final Property Tax Year of the Compliance Period (*i.e.*, the FILOT Payment due with respect to Project property placed in service as of the end of the final Property Tax Year within the Compliance Period).

(c) Each Credit Eligible Entity shall continue to be eligible for Special Source Credits against each Negotiated FILOT Payment due from such Credit Eligible Entity with respect to the Project for the remaining period set forth in **Section 3.02(a)** hereof; provided, however, in the event that determination of the Investment Satisfaction Factor pursuant to **Section 4.02(b)** hereof results in a positive percentage figure, the Special Source Credits amount otherwise due under **Section 3.02(a)** hereof shall be reduced for the remaining such period by the percentage equal to such Investment Satisfaction Factor.

Section 19. Payment of Administration Expenses. The Company or any other Co-Investor will reimburse, or cause reimbursement of, the County from time to time for the County’s Administration Expenses incurred in the fulfillment of its obligations hereunder, or in the implementation of this Agreement’s terms and provisions, with respect to the Company or such other Co-Investor, respectively, promptly upon written request therefor, but in no event later than ninety (90) 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 Project or the incentives authorized by this Agreement, and, aside from the attorneys’ fees set forth below, the County anticipates no out of pocket expenses in connection with this Agreement and the transactions authorized hereby. The parties hereto understand that the County has incurred, and

will incur, legal fees and other expenses for review of the Inducement Resolution, this Agreement, the Multi-County Park Agreement and all resolutions, ordinances and other documentation related thereto in an amount not to exceed [____] and 00/100 Dollars (\$[____]).

Section 20. Use of Project for Lawful Activities. During the Term of this Agreement, the Company and each other Co-Investor may use the Project as it deems fit for any lawful purpose.

Section 21. Maintenance of Existence. Except in the event the resulting, surviving or transferee entity is the Company or an Affiliate of the Company, as to which such consolidation, merger, or transfer, the County hereby preapproves and consents, unless the County shall provide prior consent or subsequent ratification otherwise, which consent or ratification shall not be unreasonably withheld, conditioned, or delayed, the Company covenants that it will maintain its separate existence and will not dissolve or consolidate with, merge into or transfer, or otherwise dispose of substantially all of its property to any other entity or permit one or more other entities to consolidate with or merge into it or purchase substantially all of its property unless:

(a) the Company shall be the continuing business entity, or the business entity formed by such consolidation or into which the Company is merged or the entity which acquires by conveyance or transfer all or substantially all of the Company's assets shall (i) be an entity organized and existing under the laws of the United States of America or any state thereof or the District of Columbia and qualified to do business in the State; (ii) have a net worth equal to or greater than the net worth of the Company immediately preceding the date of such merger, consolidation or transfer; and (iii) expressly and unconditionally assume, by written agreement supplemental hereto and acceptable to the County as to form and content, in its reasonable discretion, every payment obligation of the Company herein and the performance of every covenant of this Agreement on the part of the Company to be performed or observed; and

(b) immediately after giving effect to such transaction, no Event of Default, and no event, which, after notice or lapse of time or both, would become an Event of Default, shall have happened and be continuing; and

(c) the Company shall have delivered to the County (i) a certificate of a duly authorized officer of the Company, accompanied by financial statements of the surviving company (if other than the Company) showing compliance with the net worth requirements specified in paragraph (a) above and (ii) an opinion of counsel for the Company and/or counsel to the transferee company, each stating that such consolidation, merger, conveyance or transfer and such supplement to this Agreement comply with this Section and that all conditions precedent herein provided for relating to such transaction have been complied with.

Upon any consolidation or merger or any conveyance or transfer of all or substantially all of the Company's assets in accordance with this **Section 4.05**, the successor entity formed by

such consolidation or into which the Company is merged or to which such conveyance or transfer is made, shall succeed to, and be substituted for, and may exercise every right and power of the Company under this Agreement with the same effect as if such successor entity had been named as the Company herein, and thereafter the Company shall be relieved of all obligations and covenants under this Agreement.

If a consolidation, merger or conveyance or transfer is made as permitted by this Section, the provisions of this Section shall continue in full force and effect and no further consolidation, merger or conveyance or transfer shall be made except in compliance with the provisions of this **Section 4.05**.

The Company acknowledges transfers of this Agreement or the Negotiated FILOT Property may cause the Negotiated FILOT Property to become ineligible for a Negotiated FILOT or result in penalties under the Act absent compliance by the Company with the Transfer Provisions.

Section 22. Records and Reports. The Company and each other Co-Investor will maintain, or cause to be maintained, such books and records with respect to its respective portion of the Project as will permit the identification of those portions of the Project it places in service during the Investment Period, the amount of investment with respect thereto, and any computations of Negotiated FILOT Payments made by such entity hereunder, and will comply with all reporting requirements of the State and the County applicable to Negotiated FILOT Property under the Negotiated FILOT Act, including without limitation the reports required by Section 12-44-90 of the Negotiated FILOT Act (collectively, "Filings"); provided, however, that the parties hereto hereby waive in its entirety the requirement under Section 12-44-55 of the Negotiated FILOT Act for a recapitulation of the terms of this Agreement. In addition, the following records shall be provided to the County:

(a) Upon direction of the governing body of the County, a County Official may request and obtain such financial books and records from the Company and any other Sponsor or Sponsor Affiliate that support the Negotiated FILOT returns of the Company or such other Sponsor or Sponsor Affiliate as may be reasonably necessary to verify the calculations of the Negotiated FILOT Payments by the Company or such other Sponsor or Sponsor Affiliate. For purposes of this Agreement, the term "County Official" shall include the Director, Auditor, Assessor, or Treasurer of the County.

(b) Each year during the Term hereof, the Company and each other Sponsor or Sponsor Affiliate shall deliver to the County Auditor, the County Assessor and the County Treasurer a copy of any form or return it files with the Department of Revenue with respect to the Project at the same time as delivery thereof to the Department of Revenue.

(c) The Company shall cause a copy of this Agreement, as well as a copy of the completed Form PT-443 required by the Department of Revenue, to be filed within

thirty (30) days after the date of original execution and delivery hereof with the County Auditor, the County Assessor and the County Treasurer of the County and of each other county which is a party to the Multi-County Park Agreement, and with the Department of Revenue and shall update such Form PT-443 from time to time to the extent that the information therein is no longer accurate.

Notwithstanding any other provision of this Section, the Company and each other Co-Investor may, by clear, written designation, conspicuously marked, designate with respect to any Filings or other documents or information delivered to the County segments thereof that the Company or such other Co-Investor believes contains proprietary, confidential, or trade secret matters. The County shall comply with all reasonable, written requests made by the Company or any such other Co-Investor with respect to maintaining the confidentiality of such designated segments, to the extent allowed by law. Except to the extent required by law, unless the County has provided at least fifteen (15) days advance written notice to the Company or such other Co-Investor of such proposed release, the County shall not knowingly and voluntarily release any Filings, documents, or other information provided to the County by the Company or any other Co-Investor in connection with the Project, whether or not such information has been designated as confidential or proprietary by the Company or any other Co-Investor.

Section 23. Funding for Special Source Improvements The Company and each other Co-Investor shall provide, or cause the provision of, funding for the Special Source Improvements related to its respective portion of the Project.

ARTICLE VI

FEES IN LIEU OF TAXES

Section 24. Payment of Fees in Lieu of *Ad Valorem* Taxes.

(a) In accordance with the Negotiated FILOT Act, the parties hereto hereby agree, during the Term hereof, that there shall be due annually with respect to that portion of the Project constituting Negotiated FILOT Property, whether owned by the Company or by any other Sponsor or Sponsor Affiliate, a Negotiated FILOT Payment calculated as set forth in this Section, at the places, in the manner and subject to the penalty assessments prescribed by the County or the Department of Revenue for *ad valorem* taxes. It is presently anticipated, but not required, that the initial Negotiated FILOT Payment, which shall be due under current Code requirements on the January 15 following the year in which the County adds the initial Negotiated FILOT Property to its tax rolls, will be due on January 15, 2025. If the Company designates any other Sponsor or Sponsor Affiliates as the same shall have been consented to by the County (if such consent is required pursuant to **Section 6.02** hereof), the Company must notify the County in writing at the time of such designation as to whether such additional Sponsor or Sponsor Affiliate shall be primarily liable for the Negotiated FILOT Payments due hereunder with respect to such Sponsor or Sponsor Affiliate's respective portion of the Negotiated FILOT Property. Unless and until such additional notification is received, the

Company shall be primarily liable for all Negotiated FILOT Payments due with respect to such Negotiated FILOT Property.

(b) Subject to adjustment pursuant to the provisions of this **Section 5.01**, the Negotiated FILOT shall be calculated each year in accordance with the following provisions:

(1) For each annual increment of investment in Negotiated FILOT Property, the annual Negotiated FILOT Payments shall initially be payable for a payment period of thirty (30) years. Accordingly, if such Negotiated FILOT Property is placed in service during more than one year, each year's investment during the Investment Period shall be subject to the Negotiated FILOT for a payment period of thirty (30) years up to an aggregate of thirty-five (35) years or, if the Investment Period is extended as set forth in **Section 4.01(c)** hereof, up to an aggregate of forty (40) years.

(2) The Negotiated FILOT shall be determined using (1) an assessment ratio of 6%; (2) the lowest millage rate or rates allowed with respect to the Project pursuant to Section 12-44-50(A)(1)(d) of the Negotiated FILOT Act, which, based on the property comprising the Land as of the original execution and delivery of this Agreement, the parties hereto believe to be 353.2 mills with respect to all Negotiated FILOT Property comprised of, or located on, such Land, and which millage rate or millage rates shall be fixed in accordance with Section 12-44-50(A)(1)(b)(i) of the Negotiated FILOT Act for the entire term of the Negotiated FILOT; and (3) the fair market value of such Negotiated FILOT Property as determined in accordance with Section 12-44-50(A)(1)(c) of the Negotiated FILOT Act, which, for typical arm's length construction or acquisition, uses the original income tax basis for any real property without regard to depreciation or reassessment and the original income tax basis for any personal property less allowable depreciation (except depreciation due to extraordinary obsolescence); provided, however, that the Company or any other Sponsor or Sponsor Affiliate and the County may agree, only in a writing approved by the Council, at a later date to amend this Agreement as to Negotiated FILOT Property owned by the Company or such other Sponsor or Sponsor Affiliate so as to determine the fair market value of any such real property in accordance with any other method permitted by the Negotiated FILOT Act.

(3) All such calculations shall take into account all deductions for depreciation or other diminution in value allowed by the Code or by the tax laws generally, as well as tax exemptions which would have been applicable if such property were subject to *ad valorem* taxes, except the five-year exemption from County taxes allowed for certain manufacturing, distribution, corporate headquarters and research and development facilities

pursuant to Section 3(g) of Article X of the Constitution of the State and Sections 12-37-220(B)(32) and (34) of the Code; provided, however, the Company or any other Sponsor or Sponsor Affiliate shall not be entitled to extraordinary obsolescence with respect to Negotiated FILOT Property as set forth in Section 12-44-50(A)(1)(c)(ii) of the Negotiated FILOT Act.

(4) For purposes of calculating the Negotiated FILOT, the Negotiated FILOT Property shall not include any Released Property or Non-Qualifying Property.

(c) The Negotiated FILOT Payments are to be recalculated (subject always to the continuing requirements of **Section 5.01(f)** hereof):

(1) to reduce such payments in the event the Company or any other Sponsor or Sponsor Affiliate disposes of any part of the Negotiated FILOT Property within the meaning of Section 12-44-50(B) of the Negotiated FILOT Act and as provided in **Section 4.01(e)(ii)** hereof, by the amount applicable to the Released Property;

(2) to reduce such payments in the event that the Negotiated FILOT Property or any portion thereof is damaged or destroyed, lost or stolen, or the subject of condemnation proceedings or otherwise removed from the Project as a result of circumstances beyond the control of the Company or any other Sponsor or Sponsor Affiliate;

(3) to increase such payments in the event the Company or any other Sponsor or Sponsor Affiliate adds any Negotiated FILOT Property (other than Replacement Property) to the Project; or

(4) to adjust such payments if the Company or any other Sponsor or Sponsor Affiliate elects to convert any portion of the Negotiated FILOT Property from the Negotiated FILOT to *ad valorem* taxes, or to FILOT payments pursuant to the Multi-County Park Act, as the case may be, as permitted by **Section 4.01(e)(iii)**.

(d) Upon installation or placing in service of any Replacement Property for any Released Property, such Replacement Property shall become subject to Negotiated FILOT Payments to the fullest extent allowed by the Negotiated FILOT Act, subject to the following rules:

(1) Such Replacement Property does not have to serve the same function as the Released Property it is replacing. Replacement Property is deemed to replace the oldest property subject to the Negotiated FILOT, whether real or personal, which is disposed of in the same Property Tax Year as the Replacement Property is placed in service. Replacement Property

qualifies for Negotiated FILOT Payments up to the original income tax basis of the Released Property which it is replacing in the same Property Tax Year. More than one piece of property can replace a single piece of property. To the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the Released Property which it is replacing, the excess amount is subject to payments equal to the *ad valorem* taxes, or to the FILOT payments pursuant to the Multi-County Park Act, as the case may be, which would have been paid on such property but for this Agreement. Replacement Property is entitled to the Negotiated FILOT Payments for the remaining portion of the Negotiated FILOT Payment period set forth in **Section 5.01(b)(i)** hereof applicable to the Released Property

(2) The Company or any other Sponsor or Sponsor Affiliate shall maintain, or cause to be maintained, records sufficient to identify all Replacement Property it places in service, and the Negotiated FILOT Payments with respect thereto shall be calculated using the millage rate and assessment ratio provided on the property it is replacing.

(e) In the event that, for any reason, the Negotiated FILOT Act and/or the Negotiated FILOT or any portion thereof is, by a court of competent jurisdiction following allowable appeals, declared invalid or unenforceable in whole or in part, or the portion of the Project consisting of Negotiated FILOT Property is deemed not to be eligible for a Negotiated FILOT pursuant to the Act in whole or in part, the Company and the County express their intentions that such payments be reformed so as to afford the Company and each other Sponsor or Sponsor Affiliate benefits commensurate with those intended under this Agreement as then permitted by law, including without limitation any benefits afforded under Title 4, Chapter 12 and Title 4, Chapter 29 of the Code, as applicable, to the extent allowed by law. Absent the legal authorization to effect such reformation, the Company and the County agree that there shall be due hereunder with respect to the portion of the Negotiated FILOT Property affected by such circumstances *ad valorem* taxes or FILOT payments pursuant to the Multi-County Park Act, as the case may be, and that, to the extent permitted by law, the Company and any other Sponsor or Sponsor Affiliate shall be entitled: (1) to enjoy the five-year exemption from *ad valorem* taxes, or from FILOT payments pursuant to the Multi-County Park Act, as the case may be, provided by Article X, Section 3 of the Constitution of the State, and any other exemption allowed by law; (2) to enjoy all allowable depreciation; and (3) to receive all other tax credits which would be due if the Company and each other Sponsor or Sponsor Affiliate were obligated to pay *ad valorem* taxes, or make FILOT payments pursuant to the Multi-County Park Act, as the case may be, hereunder. To the extent that under such circumstances the Negotiated FILOT Payments hereunder are subject to retroactive adjustment, then there shall be due and payable from the Company and any other Sponsor or Sponsor Affiliate, as the case may be, with respect to such entity's portion of the Negotiated FILOT Property in question, an amount equal to the difference between the Negotiated FILOT Payments theretofore actually paid and the amount which would have

been paid as *ad valorem* taxes, or as FILOT payments pursuant to the Multi-County Park Act, as the case may be, together with interest on such deficiency as provided in Section 12-54-25(D) of the Code (a “Deficiency Payment”).

(f)

(1) In the event that the Minimum Statutory Investment Requirement is not satisfied by the end of the Compliance Period, then all Negotiated FILOT Payments shall revert retroactively to *ad valorem* taxes, or to FILOT payments pursuant to the Multi-County Park Act, as the case may be, calculated as set forth in paragraph (e) above, and a Deficiency Payment from each such owing entity shall be due and payable with respect to Negotiated FILOT Payments theretofore made. In the event that the aggregate investment in the Project by all Sponsors and Sponsor Affiliates does not exceed \$5,000,000 by the end of the Compliance Period and any Sponsor or Sponsor Affiliate does not satisfy the Minimum Statutory Investment Requirement solely through its own direct investment in the Project, then the Negotiated FILOT Payments with respect to that portion of the Project owned by such non-qualifying Sponsor or Sponsor Affiliate shall revert retroactively to *ad valorem* taxes or to FILOT payments pursuant to the Multi-County Park Act, as the case may be, calculated and paid as set forth in paragraph (e) above, and such Sponsor or Sponsor Affiliate shall owe a Deficiency Payment with respect to Negotiated FILOT Payments theretofore made as to such portion of the Project. To the extent necessary to collect a Deficiency Payment under this clause (i) due to failure to satisfy the Minimum Statutory Investment Requirement, Section 12-44-140(D) of the Negotiated FILOT Act provides that any statute of limitations that might apply pursuant to Section 12-54-85 of the Code is suspended.

(2) If the Minimum Contractual Investment Requirement is not satisfied as of the end of the Compliance Period, but the Minimum Statutory Investment Requirement has nevertheless been satisfied by the end of the Compliance Period, the Company and each other Sponsor or Sponsor Affiliate shall continue to be eligible to take advantage of the Negotiated FILOT described in **Section 5.01** hereof, but the County shall have the rights specified in **Section 4.02** hereof with respect to the Special Source Credits.

(3) In the event that the Minimum Statutory Investment Requirement is satisfied by the end of the Compliance Period, but following the Compliance Period, investment in the Project, without regard to depreciation or other diminution in value, falls below the investment level set forth in the Minimum Statutory Investment Requirement, then the Project shall prospectively be subject to *ad valorem* taxes, or to FILOT Payments pursuant to the Multi-County Park Act, as the case may be, calculated as set forth in paragraph (e) above, in accordance with Section 12-44-140(C) of the Negotiated FILOT Act,

commencing with any Negotiated FILOT Payments due with respect to Project property placed in service as of the end of the Property Tax Year in which such deficiency occurs.

(4) In accordance with the provisions of **Sections 4.01(b) and 6.02** hereof, except for Existing Property, the investment in all property utilized by the Company or any other Co-Investor at the Land, whether owned by the Company or any other Co-Investor outright or utilized by the Company or any other Co-Investor pursuant to any financing agreement or any lease or other arrangement with the Company or any other Co-Investor and whether or not subject to this Agreement, shall be counted toward all investment obligations under this Agreement, including, to the extent permitted by law, investment obligations under the Negotiated FILOT Act.

(g) Except as otherwise set forth in this Agreement or as otherwise required by the Act, any amounts due to the County under this **Section 5.01** as a Deficiency Payment or other retroactive payment shall be paid within one hundred eighty (180) days following receipt by the Company or any other Sponsor or Sponsor Affiliate of notice from the County that such a Deficiency Payment or other retroactive payment is due from such entity.

Section 25. Statutory Lien. The parties hereto acknowledge the County's right to receive Negotiated FILOT Payments hereunder and that the County is entitled to and shall have a statutory lien with respect to the Project pursuant to Section 12-44-90(E) of the Negotiated FILOT Act and Title 12, Chapter 54 of the Code relating to the collection and enforcement of *ad valorem* property taxes.

ARTICLE VII

THIRD PARTY ARRANGEMENTS

Section 26. Conveyance of Liens and Interests; Assignment. The County agrees that the Company and each other Co-Investor may at any time (a) transfer all or any of its rights and interests hereunder or with respect to all or any part of the Project to any Person; or (b) enter into any lending, financing, leasing, security, or similar arrangement or succession of such arrangements with any financing entity or other Person with respect to this Agreement or all or any part of the Project, including without limitation any sale-leaseback, equipment lease, build-to-suit lease, synthetic lease, nordic lease, defeased tax benefit or transfer lease, assignment, sublease or similar arrangement or succession of such arrangements, regardless of the identity of the income tax owner of such portion of the Project, whereby the transferee in any such arrangement leases the portion of the Project in question to the Company or any other Co-Investor or operates such assets for the Company or any other Co-Investor or is leasing all or a portion of the Project in question from the Company or any other Co-Investor. In the event of any such transfer, lease, financing, or other transaction described above, the rights and interests of the Company or such other Co-Investor under this Agreement, including, without limitation,

the benefits of the Negotiated FILOT and the Special Source Credits, with respect to any Project property so transferred, leased, financed, or otherwise affected shall be so transferred and preserved, automatically, without actions of the County or the Council, subject to the following provisions: (i) except in connection with any transfer to any other Co-Investor or an Affiliate of the Company or any other Co-Investor, or transfers, leases, or financing arrangements pursuant to clause (b) above, as to all of which transfers and other transactions the County hereby preapproves and consents, the Company shall obtain the prior consent or subsequent ratification of the County, which consent or subsequent ratification of the County shall not be unreasonably conditioned, withheld, or delayed; (ii) except when a financing entity which is the income tax owner of all or part of the Project property is the transferee pursuant to clause (b) above and such financing entity assumes in writing the obligations of the Company or any such other Co-Investor hereunder, or when the County consents in writing or when the transfer relates to Released Property pursuant to **Section 4.01(e)** hereof, no such transfer shall affect or reduce any of the obligations of the Company or any such other Co-Investor hereunder; (iii) to the extent the transferee or financing entity shall become obligated to make Negotiated FILOT payments hereunder, the transferee shall assume the then current basis of the Company or any such other Co-Investor (or prior transferee) in the Negotiated FILOT Property transferred; (iv) the Company or any such other Co-Investor, transferee or financing entity shall, within sixty (60) days thereof, furnish or cause to be furnished to the County and the Department of Revenue notice of any such transfer agreement; and (v) the Company or any such other Co-Investor and the transferee shall comply with all other requirements of the Transfer Provisions in order to preserve the benefits of the Negotiated FILOT.

Subject to County consent when required under this **Section 6.01**, and at the expense of the Company or any such other Co-Investor, the County agrees to take such further action and execute such further agreements, documents, and instruments as may be reasonably required to effectuate the assumption by any such transferee of all or part of the rights of the Company or any other Co-Investor under this Agreement and/or any release of the Company or any other Co-Investor pursuant to this **Section 6.01**.

The County acknowledges that, notwithstanding any of the terms of this **Section 6.01** or this Agreement, it has no right of consent or subsequent ratification to a change in the direct or indirect ownership of the Company.

The Company acknowledges that any transfer of an interest under this Agreement or in the Negotiated FILOT Property may cause all or part of the Negotiated FILOT Property to become ineligible for a Negotiated FILOT or result in penalties under the Negotiated FILOT Act absent compliance by the Company or any such Co-Investor with the Transfer Provisions.

Section 27. Sponsors and Sponsor Affiliates. The Company may designate from time to time other Sponsors or Sponsor Affiliates pursuant to the provisions of Sections 12-44-30(19) or (20), respectively, and Section 12-44-130 of the Negotiated FILOT Act, which Sponsors or Sponsor Affiliates shall be Persons who join with the Company and make investments with respect to the Project, or who participate in the financing of such investments, who agree to be

bound by the terms and provisions of this Agreement and who shall be Affiliates of the Company or other Persons described in **Section 6.01(b)** hereof, provided, such entity or individual must deliver to the County and the Department of Revenue a joinder agreement in the form attached hereto as **Exhibit B**. All other Sponsors or Sponsor Affiliates who otherwise meet the requirements of Section 12-44-30 (19) or (20) and Section 12-44-130 of the Negotiated FILOT Act must be approved by Resolution of the Council. To the extent that a Co-Investor invests an amount equal to the Minimum Statutory Investment Requirement at the Project by the end of the Compliance Period, all investment by such Sponsor or Sponsor Affiliate shall qualify for the Negotiated FILOT payable under **Section 5.01** hereof (subject to all other terms and conditions set forth herein as to the Minimum Contractual Investment Requirement) in accordance with Section 12-44-30(19) of the Negotiated FILOT Act. To the extent that the aggregate investment in the Project by the end of the Compliance Period by the Company, all Sponsors and Sponsor Affiliates and, to the extent provided by law, other Co-Investors, exceeds \$5,000,000 as provided in Section 12-44-30(19) of the Negotiated FILOT Act, all investment by such Sponsors and Sponsor Affiliates during the Investment Period shall qualify for the Negotiated FILOT pursuant to **Section 5.01** of this Agreement (subject to the other conditions set forth therein) regardless of whether each such entity invested amounts equal to the Minimum Statutory Investment Requirement by the end of the Compliance Period. The Company shall provide the County and the Department of Revenue with written notice of any Sponsor or Sponsor Affiliate designated pursuant to this **Section 6.02** within ninety (90) days after the end of the calendar year during which any such Sponsor or Sponsor Affiliate has placed in service Negotiated FILOT Property to be used in connection with the Project, all in accordance with Section 12-44-130(B) of the Negotiated FILOT Act, provided that delivery of the joinder agreement as described above shall satisfy such notice requirement.

ARTICLE VIII

TERM; TERMINATION

Section 28. Term. Unless sooner terminated pursuant to the terms and provisions herein contained, this Agreement shall be and remain in full force and effect for a term commencing on the date on which the Company executes this Agreement, and ending at midnight on the later of (i) the day the last Negotiated FILOT Payment is made hereunder; or (ii) the day that all Special Source Credits due from the County hereunder have been fully provided by the County.

Section 29. Termination. In addition to the termination rights of the County under **Section 8.02(a)** hereof, the County and the Company may jointly agree to terminate this Agreement at any time, or the Company, may, at its option, unilaterally terminate this Agreement at any time, with respect to all, or any portion, of the Project in which event the Project, or such portion of the Project, shall be subject to *ad valorem* taxes, or to FILOT payments under the Multi-County Park Act, as the case may be, from the date of termination. Notwithstanding the termination of this Agreement, the County shall have the same rights to receive payment for any retroactive *ad valorem* taxes, Deficiency Payments, interest or penalties, and the same

enforcement rights with respect to such obligations as it would have with respect to *ad valorem* taxes, and the County's rights arising under **Section 5.01** prior to the time of such termination shall survive any such termination.

ARTICLE IX

EVENTS OF DEFAULT AND REMEDIES

Section 30. Events of Default. Any one or more of the following events (herein called an "Event of Default", or collectively "Events of Default") shall constitute an Event of Default by the Company or any other Co-Investor (the "Defaulting Entity") but only with respect to such Defaulting Entity's rights, duties, and obligations contained herein:

(a) if default shall be made in the due and punctual payment of any Negotiated FILOT Payments, which default shall not have been cured within sixty (60) days following receipt of written notice of such default from the County; or

(b) if default shall be made in the due performance of or compliance with any of the terms hereof, other than those referred to in the foregoing paragraph (a), and such default shall continue for ninety (90) days after the County shall have given the Defaulting Entity written notice of such default; provided, the County may, in its discretion, grant the Defaulting Entity a longer period of time as necessary to cure such default if the Defaulting Entity proceeds with due diligence to cure such default; provided however, that no Event of Default shall exist under this Agreement during any period when there is pending, before any judicial or administrative tribunal having jurisdiction, any proceeding in which the Defaulting Entity has contested the occurrence of such default.

Notwithstanding anything herein to the contrary, failure to meet any investment requirements, thresholds, or levels set forth in this Agreement shall not be deemed to be an Event of Default under this Agreement, but may terminate certain benefits hereunder or obligate the Company or other Co-Investors, as the case may be, to make certain additional payments to the County, all as set forth in **Sections 4.02** and **5.01(f)** hereof.

Section 31. Remedies on Event of Default. Upon the occurrence of any Event of Default, the following remedies may be exercised by the County only as to the Defaulting Entity:

(a) the County may terminate this Agreement by delivery of written notice to the Defaulting Entity not less than sixty (60) days prior to the termination date specified therein; or

(b) the County may have access to and inspect, examine, and make copies of the books and records of the Defaulting Entity pertaining to the construction, acquisition, or maintenance of the Project or calculation of the Negotiated FILOT as provided in **Section 4.06** hereof; or

(c) the County may take whatever action at law or in equity as may appear necessary or desirable to collect the amount then due or enforce the County's rights hereunder, it being the express intent of the parties hereto that the County, without limitation, shall have the same remedies available by law to collect Negotiated FILOT Payments as if they were delinquent *ad valorem* tax payments, including execution upon the lien referred to in **Section 5.02** hereof.

Section 32. Defaulted Payments. In the event the Company or any other Co-Investor should fail to make any of the payments required to be made by such entity under this Agreement, the item or installment so in default shall continue as an obligation of such entity until the amount in default shall have been fully paid. If any such default relates to its obligations to make Negotiated FILOT Payments hereunder, such entity shall pay the same with interest thereon at the rate per annum provided by the Code for late payment of *ad valorem* taxes together with any penalties provided by the Code for late payment of *ad valorem* taxes, all as provided in Section 12-44-90 of the Negotiated FILOT Act.

Section 33. Default by County. Upon the default of the County in the performance of any of its obligations hereunder, the Company and any other Co-Investor may take whatever action at law or in equity as may appear necessary or desirable to enforce its rights under this Agreement, including without limitation a suit for *mandamus* or specific performance.

ARTICLE X

MISCELLANEOUS

Section 34. Rights and Remedies Cumulative. Each right, power, and remedy of the County or of the Company or any other Co-Investor provided for in this Agreement shall be cumulative and concurrent and shall be in addition to every other right, power, or remedy provided for in this Agreement or now or hereafter existing at law or in equity, in any jurisdiction where such rights, powers, and remedies are sought to be enforced; and the exercise by the County or by the Company or any other Co-Investor of any one or more of the rights, powers, or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the County or by the Company or any other Co-Investor of any or all such other rights, powers, or remedies.

Section 35. Successors and Assigns. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, any Co-Investor hereof, and their respective successors and assigns as permitted hereunder; provided, however, that notwithstanding anything herein to the contrary, the County may not assign any or all of its rights, duties, and obligations in, to, and under this Agreement without the written consent of the Company, which consent may be provided by the Company in its sole discretion.

Section 36. Notices; Demands; Requests. All notices, demands, and requests to be given or made hereunder to or by the County or the Company shall be in writing and shall be

deemed to be properly given or made if sent by United States first class mail, postage prepaid, or via reputable courier service, to the following persons and addresses or to such other persons and places as may be designated in writing by such party.

(a) As to the County:

Saluda County
Attn: Saluda Director
400 West Highland Street
Saluda, South Carolina 29138

(b) with a copy (which shall not constitute notice) to:

Christian G. Spradley
Moore Taylor Law Firm, P.A.
110 S. Main Street
Saluda, South Carolina 29138

(c) As to the Company:

Mayson Solar LLC
c/o Community Energy Solar, LLC
Attn: Controller
Three Radnor Corporate Center, Suite 300
100 Matsonford Road
Radnor, Pennsylvania 19087

(d) with a copy (which shall not constitute notice) to:

Tushar V. Chikhliker, Esq.
Nexsen Pruet, LLC
1230 Main Street, Suite 700 (29201)
P.O. Drawer 2426
Columbia, South Carolina 29202

Section 37. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State. To the extent of any conflict between the provisions of this Agreement and the Act, the Act controls.

Section 38. Entire Understanding. This Agreement expresses the entire understanding and all agreements of the parties hereto with each other and supersedes all prior and contemporaneous discussions of the parties hereto, whether oral or written, and neither party

hereto has made or shall be bound by any agreement or any warranty or representation to the other party which is not expressly set forth in this Agreement or in certificates delivered in connection with the execution and delivery hereof. Unless as otherwise expressly set forth herein, this Agreement will not confer any rights or remedies upon any Person other than the parties hereto and their respective successors and assigns as permitted hereunder.

Section 39. Severability. In the event that any clause or provision of this Agreement shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.

Section 40. Headings and Table of Contents; References. The headings of the Agreement and any Table of Contents annexed hereto are for convenience of reference only and shall not define or limit the provisions hereof or affect the meaning or interpretation hereof. All references in this Agreement to particular articles or Sections or paragraphs of this Agreement are references to the designated articles or Sections or paragraphs of this Agreement.

Section 41. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument.

Section 42. Amendments. Subject to the limitations set forth in Section 12-44-40(K)(2) of the Negotiated FILOT Act, this Agreement may be amended, or the rights and interest of the parties hereunder surrendered, only by a writing signed by both parties hereto.

Section 43. Waiver. Either party hereto may waive compliance by the other party with any term or condition of this Agreement only in a writing signed by the waiving party.

Section 44. Further Proceedings. The parties hereto intend any action to be taken hereinafter by the County pursuant to the express provisions of this Agreement may be undertaken by the Chairman of the Council without necessity of further proceedings. To the extent additional proceedings are required by law, however, the County agrees to undertake all such steps as may be reasonably required or appropriate to effectuate the intent of this Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto, each after due authorization, have executed this Fee in Lieu of Tax and Incentive Agreement to be effective as of the date first written above.

SALUDA COUNTY, SOUTH CAROLINA

By: _____
Raymond G. Strawbridge, Chairman, County
Council, Saluda County, South Carolina

[SEAL]

ATTEST:

By: _____
Karen T. Whittle, Clerk to County Council
Saluda County, South Carolina

DRAFT

MAYSON SOLAR LLC

By: Community Energy Solar, LLC,
its Managing Member

By: _____

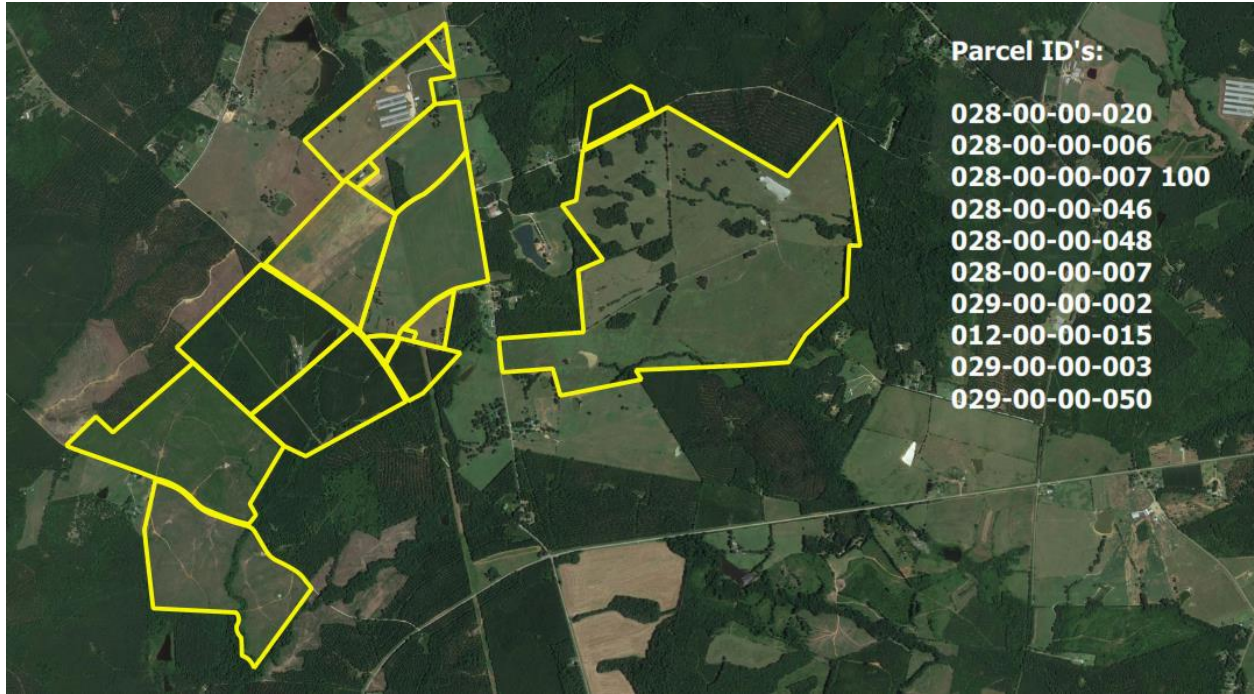
Name: _____

Its: _____

DRAFT

EXHIBIT A

LAND DESCRIPTION



DRAFT

EXHIBIT B

JOINDER AGREEMENT

Reference is hereby made to that certain Fee in Lieu of Tax and Incentive Agreement, dated as of _____, 2020 (“Fee Agreement”), by and between Saluda County, South Carolina (“County”) and Mayson Solar LLC (“Sponsor”).

1. Joinder to Fee Agreement.

_____, an individual, or _____ organized and existing under the laws of the State of _____ (the “Company”), hereby: (a) joins as a party to, and agrees to be bound by and subject to all of the terms and conditions of, the Fee Agreement with respect to its portion of the Project, as a Sponsor Affiliate thereunder; and (b) acknowledges and agrees that (i) in accordance with the Fee Agreement, the Company has been designated as a Sponsor Affiliate by the Sponsor for purposes of the Project and such designation has been previously consented to by the County in the Fee Agreement in accordance with the Negotiated FILOT Act, (ii) the Company qualifies or will qualify as a Sponsor Affiliate under the Fee Agreement and Sections 12-44-30(20) and 12-44-130 of the Negotiated FILOT Act upon the execution and delivery to the County and the Department of Revenue of this Joinder Agreement, and (iii) the Company shall have all of the rights and obligations of a Sponsor Affiliate as set forth in the Fee Agreement with respect to its portion of the Project.

2. Capitalized Terms.

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

3. Representations.

The Company, as a Sponsor Affiliate under the Fee Agreement, represents and warrants to the County as follows:

(a) The Company is a _____ validly existing and in good standing under the laws of the State of _____ and is, or will be prior to operation of the Project, authorized to do business in the State of South Carolina, has all requisite power to enter into this Joinder Agreement and to carry out its obligations hereunder and under the Fee Agreement, and by proper action has been duly authorized to execute and deliver this Joinder Agreement. The Company’s fiscal year end is _____ and the undersigned will notify the County of any changes in the fiscal year of the Company.

(b) The Company intends that its respective portion of the Project be operated as a solar energy facility and ancillary facilities.

(c) The agreements with the County with respect to the negotiated FILOT, the Special Source Credits, and the Multi-County Park were factors in inducing the Company to join with the Sponsor to locate the Project within the County and the State.

(d) To the best knowledge of the Company, no actions, suits, proceedings, inquiries or investigations are pending or threatened against or affecting the Company in any court or before any governmental authority or arbitration board or tribunal, which would materially adversely affect this Joinder Agreement or which would, in any way, adversely affect the validity or enforceability of this Joinder Agreement, or the transactions contemplated hereby.

4. Governing Law.

This Joinder Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina, without regard to any principles of choice of law that would refer the governance of this Joinder Agreement to the laws of any other jurisdiction.

5. Notice.

Notices under Section 9.03 of the Fee Agreement with respect to the Company shall be sent to:

[]

6. Multiple Counterparts.

This Agreement may be executed in multiple counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

[Signature Page Follows]

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

Date

Name of Entity

By: _____

Name: _____

Its: _____

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

MAYSON SOLAR LLC

By: Community Energy Solar, LLC,

its Managing Member

By: _____

Name: _____

Its: _____

IN WITNESS WHEREOF, the County acknowledges it has consented to the addition of the above-named entity as a Sponsor Affiliate under the Fee Agreement effective as of the date set forth above.

SALUDA COUNTY, SOUTH CAROLINA

By: _____

Name: _____

Its: _____

DRAFT