

K. G. "Rusty" Smith, Jr.
District #1

Ken Ard
District #2

Alphonso Bradley
District #3

Mitchell Kirby
District #4

Johnnie D. Rodgers, Jr.
District #5

Russell W. Culberson
District #6

Waymon Mumford
District #7

James T. Schofield
District #8

H. Morris Anderson
District #9

AGENDA
FLORENCE COUNTY COUNCIL
SPECIAL CALLED MEETING
COUNTY COUNCIL CHAMBERS, ROOM 803
180 NORTH IRBY STREET
FLORENCE, SOUTH CAROLINA
THURSDAY, JUNE 26, 2008
9:00 A. M.

-
- I. CALL TO ORDER: K. G. RUSTY SMITH, JR., CHAIRMAN**
- II. INVOCATION: H. MORRIS ANDERSON, SECRETARY/CHAPLAIN**
- III. PLEDGE OF ALLEGIANCE TO THE AMERICAN FLAG:
WAYMON MUMFORD, VICE CHAIRMAN**
- IV. WELCOME: K. G. RUSTY SMITH, JR., CHAIRMAN**
- V. PUBLIC HEARINGS: [1]**

Council will hold public hearings on the following items to receive public comment:

A. ORDINANCE NO. 38-2007/08

An Ordinance To Amend The Agreement For Development Of A Multi-County Industrial And Business Park By And Between Florence County And Williamsburg County, South Carolina, Providing For The Development Of A Jointly Owned And Operated Industrial/Business Park So As To Include Additional Property In Florence County As Part Of The Joint County Industrial Park, And Other Matters Relating Thereto.

B. ORDINANCE NO. 39-2007/08

An Ordinance Authorizing The Execution And Delivery Of A Fee In Lieu Of Tax Agreement By And Between Florence County, South Carolina, And Project JLL, With Respect To Certain Economic Development Property, Whereby Such Property Will Be Subject To Certain Payments In Lieu Of Taxes And Other Matters Related Thereto.

VI. RESOLUTIONS:

RESOLUTION NO. 28-2007/08

[2]

A Resolution Authorizing The Execution And Delivery Of A Memorandum Of Understanding And An Inducement And Millage Rate Agreement By And Among Project JLL And Florence County.

VII. ORDINANCES IN POSITION:

THIRD READING

1. ORDINANCE NO. 38-2007/08

[24]

An Ordinance To Amend The Agreement For Development Of A Multi-County Industrial And Business Park By And Between Florence County And Williamsburg County, South Carolina, Providing For The Development Of A Jointly Owned And Operated Industrial/Business Park So As To Include Additional Property In Florence County As Part Of The Joint County Industrial Park, And Other Matters Relating Thereto.

2. ORDINANCE NO. 39-2007/08

[29]

An Ordinance Authorizing The Execution And Delivery Of A Fee In Lieu Of Tax Agreement By And Between Florence County, South Carolina, And Project JLL, With Respect To Certain Economic Development Property, Whereby Such Property Will Be Subject To Certain Payments In Lieu Of Taxes And Other Matters Related Thereto.

VIII. ADJOURN:

**FLORENCE COUNTY COUNCIL
SPECIAL CALLED MEETING**

June 26, 2008

AGENDA ITEM: Public Hearings

DEPARTMENT: County Council

ISSUE UNDER CONSIDERATION:

Council will hold public hearings to receive public comment with regard to the following:

ORDINANCE NO. 38-2007/08

An Ordinance To Amend The Agreement For Development Of A Multi-County Industrial And Business Park By And Between Florence County And Williamsburg County, South Carolina, Providing For The Development Of A Jointly Owned And Operated Industrial/Business Park So As To Include Additional Property In Florence County As Part Of The Joint County Industrial Park, And Other Matters Relating Thereto.

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**FLORENCE COUNTY COUNCIL
SPECIAL CALLED MEETING
June 26, 2008**

AGENDA ITEM: Resolution No. 28-2007/08

DEPARTMENT: County Council

ISSUE UNDER CONSIDERATION:

(A Resolution Authorizing The Execution And Delivery Of A Memorandum Of Understanding And An Inducement And Millage Rate Agreement By And Among Project JLL And Florence County.)

OPTIONS:

1. *(Recommended)* Approve Resolution No. 28-2007/08.
2. Provide an alternate directive.

ATTACHMENTS:

1. Resolution No. 28-2007/08.
2. Proposed Memorandum of Understanding.
3. Proposed Inducement and Millage Rate Agreement.

Sponsor(s)/Department : County Council
Adopted: : June 26, 2008
Committee Referral : N/A
Committee Consideration Date : N/A
Committee Recommendation : N/A

RESOLUTION NO. 28-2007/08

**COUNCIL-ADMINISTRATOR FORM OF GOVERNMENT FOR FLORENCE
COUNTY**

(A Resolution Authorizing The Execution And Delivery Of A Memorandum Of Understanding And An Inducement And Millage Rate Agreement By And Among Project JLL And Florence County.)

WHEREAS:

1. Florence County, South Carolina (the "County"), acting by and through its County Council (the "County Council") is authorized and empowered under and pursuant to the provisions of Title 4, Chapter 12, Code of Laws of South Carolina 1976, as amended (the "Act"), to accept the conveyance of land, a building or buildings, machinery and equipment and other assets which together constitute a "project" as defined in the Act, and to enter into lease agreements with any industry for such project which requires the industry to make a payment of a fee-in-lieu of taxes ("FILOT"), or, alternatively, the County Council is empowered to enter into a Fee Agreement (the "Simplified FILOT") with respect to a project pursuant to Title 12, Chapter 44 of the Code of Laws of South Carolina 1976, as amended (the "Fee in Lieu of Tax Simplification Act") which requires the industry to make a payment of a fee in lieu of taxes without the conveyance of title to the County, through which powers (whether under the Act or the Fee in Lieu of Tax Simplification Act) the industrial development of the State of South Carolina and the County will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State of South Carolina and the County and thus to utilize and employ the manpower, products, and natural resources of the State of South Carolina to benefit the general public welfare of the County by providing services, employment, and other public benefits not otherwise provided locally; and
2. Project JLL, a Massachusetts corporation whose identity has been disclosed to County Council, and/or its subsidiaries, affiliates, successors, assigns, sponsors, lessors, and others (collectively, the "Company"), desires to invest capital of approximately \$28,000,000 over a five (5) year period for the purpose of establishing a customer service facility in the County, and the Company anticipates that the establishment of the facility will result in the creation of approximately 750 new, full-time jobs during such period, all for the purpose of establishing a customer service facility in Florence County, South Carolina (the "Project"); and

3. The County desires to enter into an incentive and inducement agreement (the "Incentive and Inducement Agreement") with the Company to establish the terms of the FILOT or Simplified FILOT, and to describe such other commitments of the County as are appropriate in connection with the Project.

NOW, THEREFORE, BE IT RESOLVED BY FLORENCE COUNTY COUNCIL DULY ASSEMBLED THAT:

Section 1. The County Council hereby finds that: (i) the Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; (ii) the Project gives rise to no pecuniary liability of the County or a charge against its general credit or taxing power; (iii) the purposes to be accomplished by the Project are proper governmental and public purposes and the inducement of the location of the Project within South Carolina is of paramount importance and the benefits of the Project to the public are greater than the cost (which latter finding has been made using an appropriate cost-benefit analysis); and (iv) it has evaluated the Project considering all relevant and required factors, including, but not limited to, the anticipated dollar amount and nature of the investment to be made and the anticipated costs and benefits to the County, and all other criteria prescribed by law.

Section 2. The Incentive and Inducement Agreement attached hereto as "Exhibit A", which describes the basic terms of the FILOT or Simplified FILOT, and other incentives and commitments, is hereby approved with such changes, not materially inconsistent with the attached agreement or materially adverse to the County, and the County Administrator is hereby authorized and directed to execute the Incentive and Inducement Agreement with the Company.

Section 3. The further details of the FILOT or Simplified FILOT (as elected by the Company in its sole discretion) and other incentives and commitments shall be prescribed by subsequent ordinances of the County to be adopted in accordance with South Carolina law and the rules and procedures of the County.

Section 4. This resolution shall constitute an inducement resolution for this Project within the meaning of the Act and the Fee in Lieu of Tax Simplification Act.

ATTEST:

Connie Y. Haselden, Council Clerk

SIGNED:

K. G. Rusty Smith, Jr., Chairman

COUNCIL VOTE:

OPPOSED:

ABSENT:

CONFIDENTIAL

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the "MOU") is entered into by and among JLL, comprised of a leasing affiliate and a company, including related entities (the "Company" or "Sponsor"), which plans to operate a customer service facility in Florence County (collectively, the "Sponsors" or more than one, the "Sponsor(s)"), and Florence County, South Carolina (the "County"), the Department of Commerce, State of South Carolina ("DOC"), effective June 26, 2008. This MOU is intended to reflect the understanding, commitment, and intent of the parties as to the inducements and arrangements that are the basis for the Sponsors' decision to invest in and/or locate and operate a customer service facility located on real property within the County (the "Site") (collectively, the "Project"), in the absence of which commitments, arrangements, and inducements, the Sponsors would not consider proceeding with the Project. The County and DOC acknowledge the Sponsors' reliance upon such commitments, arrangements, and incentives in proceeding with the Project. Likewise, the Sponsors acknowledge the reliance of the County and DOC on the commitments made by the Sponsors to proceed with the Project, in the absence of which commitments the County and DOC would not consider proceeding with their commitments as detailed below.

I. Florence County Commitments.

A. Easements and Variances. Upon request by Sponsor(s), the county shall use its good faith, best efforts to obtain on behalf of, and without cost to, Sponsors any easements or waivers or variances with respect to any restrictive covenants, zoning laws or regulations affecting the Project site, which Sponsor(s), upon advice of its/their counsel, consultants, designers, or contractors, may deem necessary for the optimal placement of improvements on the Site.

B. Zoning/Land Use. The Site is zoned for the Sponsors' intended present and contemplated future uses that include manufacturing, assembling, consolidating, and distributing, and, as accessory uses, warehouse sales, headquarters and office uses. Without limiting the generality of the foregoing, the County represents that the Site is not subject to County zoning. To the best knowledge of the County, no other zoning, covenants, land use or site development requirements exist that may restrict or delay the Sponsor(s)' development and use of the Site.

C. Permitting. The County, in conjunction with DOC, will assist with the identification and coordination of and will use its good faith, best efforts to cause all State, County, and local construction, zoning, environmental, and other permits, approvals, and consents that may be necessary or desirable in connection with the construction of the Project and the operation thereof by the Company to be issued or obtained on an expedited and timely basis. Based upon the information provided to the County by the Sponsors concerning the Project, the County does not presently foresee any problem with respect to the development, permitting, construction and operation of the Project.

D. Grants.

1. Discretionary Grant. The County shall provide \$250,000 to the Project to be used for any costs associated with site acquisition, construction costs, infrastructure, design and planning costs, equipment costs, or other costs involved in development of the Project. The County represents that the source of the funding for this grant is the County's own funds and that such expenditure has been duly authorized and is permitted and enforceable under South Carolina law. Such grant monies to be paid at the time of presentation of costs, as described above, incurred, or to be incurred, in which case such future costs must be evidenced by binding agreements to the satisfaction of the County, by a Sponsor. Payments may be made in partial amounts so long as the total of all payments made does not exceed the total of the grant. The County agrees that it will not charge against the grant, or seek reimbursement from Sponsor(s), any costs associated with administration of the grant.

2. Training Grant. The County shall provide \$150,000 to Sponsor(s) for use in conjunction with costs associated with training needs (i.e. facility lease, equipment rental). The County represents that the source of the funding for this grant is the County's own funds and that such expenditure has been duly authorized and is permitted and enforceable under South Carolina law. Such grant monies will be made provided at the closing of the Site and disbursed to the seller of the Site. The County agrees that it will not charge against the grant, or seek reimbursement from Sponsor(s), any costs associated with administration of the grant.

3. Temporary Space Grant. The County shall provide up to \$37,500 in subsequent years (Year 1 and Year 2) to offset real property taxes levied on temporary office space.

4. Flags. The County shall provide three (3) flags (United States, JLL and Florence County) to be purchased from a local Florence County flag manufacturer for display outside the new JLL facility.

5. Clawback Provision. If Sponsors, collectively, fail to invest \$28,000,000 as defined under Section 2.2 of the Inducement and Millage Rate Agreement within the investment period as defined by that same Section, then the calculations in Section 2.2(A)(i) of the Inducement and Millage Rate Agreement shall apply to a percentage reduction/refund by Sponsor(s) as to Grants described herein. Section 2.2(A)(ii) shall specifically not apply to this Section III(E) as to either Grant. Sections 2.2(F) and (H) shall apply herein, only as they relate to the investment amount of \$28,000,000.

F. Inducement and Millage Rate Agreement and Fee Agreement. The County agrees to enter into an Inducement and Millage Rate Agreement and a Fee Agreement with Sponsors that will provide for a fee-in-lieu-of-tax agreement, to include but not be limited to an assessment ratio of 6% for at least 20 years, a set millage rate for the same period, an alternative payment method at the discretion of the Sponsor(s), a Multi-County Park Agreement with Williamsburg County or other county as may be designated, and additional Special Source Revenue Credits, all as will be more fully described in the terms and conditions contained within the Inducement and Millage Rate Agreement and the Fee Agreement. The County agrees to enact all ordinances,

resolutions, and other action as may be necessary to effect the Inducement and Millage Rate Agreement and the Fee Agreement.

G. Employee Training. The County, in conjunction with DOC, will assist with the identification and coordination of and will use its good faith, best efforts to assist Sponsor(s) in obtaining training of their employees through ReadySC or other state-supported employee training programs.

H. Assistance. The County will use its good faith, best efforts to assist Sponsor(s) in identifying and obtaining all available land cost reductions, credits, grants or other incentives for use by Sponsor(s) as to the Project.

IV. Department of Commerce Commitments.

Subject to satisfaction of the contingencies in Article VI and the commitment by Sponsors to the Project as set forth in Article VII, DOC makes the following commitments:

A. Job Development Credits. The DOC has used its good faith, best efforts to assist Sponsor(s) in completing and obtaining approval of Sponsor(s)' Application for Qualification for Enterprise Program Incentives from the South Carolina Coordinating Council for Economic Development (the "Coordinating Council") and will use its good faith, best efforts to assist Sponsor(s) with obtaining the Preliminary Revitalization Agreement and the Revitalization Agreement with the Coordinating Council.

B. Set-Aside or Closing Grant. DOC will use its good faith, best efforts to assist Sponsor(s) in obtaining the Coordinating Council of a grant in the amount of \$1,500,000 from the Economic Development Set-Aside or Governor's Closing Fund to benefit the Project. The eligibility for such monies and terms and conditions of the grant shall be provided in a Performance Agreement entered into by the Coordinating Council and Sponsor(s). DOC will use its good faith, best efforts to facilitate timely execution of the Performance Agreement. Said monies shall be payable to the County subject to the terms and conditions of a Grant Award Agreement between the Coordinating Council and the County and the terms and conditions of the Performance Agreement. DOC agrees that it will not charge against the grant, or seek reimbursement from Sponsor(s), any costs associated with administration of the grant.

C. Permitting. DOC, subject to its available resources and in conjunction with the County, will serve as a liaison between the Sponsor(s) and any applicable entity to assist with the identification and coordination of all State, County, and local construction, zoning, environmental, and other permits, approvals, and consents that may be necessary or desirable in connection with the construction of the Project and the operation thereof by Sponsor(s) and, to the extent permitted by law, will use its good faith, best efforts as a liaison between the Sponsor(s) and any applicable entity to cause said permits, approvals, and consents to be issued or obtained on an expedited and timely basis.

D. Employee Training. DOC, subject to its available resources and in conjunction with the County, will assist with the identification and coordination of and, to the extent

permitted by law, will use its good faith, best efforts to assist Sponsor(s) in obtaining training of their employees through ReadySC or other state-supported employee training programs.

E. Assistance. DOC, subject to its available resources, and to the extent permitted by law, will use its good faith, best efforts to assist Sponsor(s) in identifying and obtaining all available land cost reductions, credits, grants or other incentives for use by Sponsor(s) as to the Project, including, but not limited to, any filings or applications for any available tax credits or exemptions, including Job Tax Credits, Investment Tax Credits, and Sales Tax Exemptions, and in coordinating such effort on the part of other State Agencies.

V. **Other Commitments Or Related Agreements.**

A. ReadySC Training. ReadySC (formerly known as the Center for Accelerated Technology Training) will provide training to Sponsor(s)' employees under the terms and conditions of its training programs. This commitment is more fully provided in a letter from ReadySC attached as Exhibit A to this MOU.

B. Fees and Costs. The County and DOC agree to pay their respective legal fees and other administrative costs, including any ongoing administrative costs in connection with the transactions contemplated by this MOU, to include costs involved with execution of all documents necessary for location of the Project or as contemplated herein; except for such legal fees and expenses by the County as may be agreed to between the County and Sponsors as provided in the Inducement and Millage Rate Agreement and/or the Fee Agreement. Unless specifically provided by this MOU, no grants or credits provided for in this MOU shall be reduced by any administrative costs of the granting or administering party. This provision shall not be interpreted to waive any fees or costs statutorily imposed upon Sponsor(s) with regard to the Enterprise Program Incentives or to render ineffective any provision in a Performance Agreement between the Sponsor(s) and the Coordinating Council. If a conflict arises between this provision and a provision in any such Performance Agreement, the provision in the Performance Agreement controls.

VI. **Sponsor(s) Contingencies.**

The Sponsors reserve their final decision as to whether or not to locate the Project at the Site and/or in Florence County and/or the State of South Carolina until it receives satisfactory commitments or assurances regarding the following items:

A. Negotiation of credit facilities and/or other internal or external financing arrangements satisfactory to the Sponsors;

B. Resolution of title, rights-of-ways, permitting, design, usage, and environmental issues relating to the Site in a manner satisfactory to Sponsors;

C. Expedited processing, approval, and permitting from the County and/or State of South Carolina, as applicable, of drawings, plans, applications, and other items for and pertaining to construction of the Project;

D. Approval of the Project, and the various contracts and agreements referred to or contemplated in this MOU, by the managing boards of the Sponsors or related entities, as may be required;

E. Formal approval and passage of all required Resolutions, Ordinances, or other approval documents as may be required or permitted by law, by the County or DOC, or other related state agencies, including but not limited to the Coordinating Council, and the execution of all documents necessary to locate the Project in the County, or as contemplated in this MOU.

VII. Sponsors/Sponsor(s) Commitments.

If commitments and assurances satisfactory to Sponsors (as described and summarized hereinabove) are promptly forthcoming from appropriate entities and authorities, and subject to Article VI above, Sponsors will commit to the Site for development of the Project and will invest a minimum of \$28,000,000, to include investment in property statutorily exempt from property taxes or fee in lieu of taxes, in the Project within an investment period as defined in Title 12, Chapter 44, of the Code of Laws of South Carolina, 1976, as amended, and will create a minimum of 750 new jobs within the same investment period.

The parties hereto agree that there may be more detailed and specific investment amounts and job numbers used in the various agreements or contracts referenced in this MOU that are different from this Section, and which may also contain different periods by which such investments or jobs creation are measured, and that such other investment amounts, job numbers, or time periods/terms shall control as to each such other agreement or contract.

It is anticipated that Sponsor(s) may agree from time to time, as between themselves, to allocate and reallocate certain rights and undertakings of the Sponsor(s) outlined herein to one or the other of the Sponsor(s). For example, in the leasing documents they execute for the Project, Sponsor(s) may allocate the responsibility for funding of the investment described in this Section. In any event, to the extent that Sponsor(s) do agree between themselves to allocate or reallocate rights and undertakings outlined herein, such agreement will be effective for purposes of this MOU. That is to say, no Sponsor will have any rights hereunder that have been allocated or reallocated to another Sponsor by agreement of the Sponsor(s); and no Sponsor will be accountable to the other parties to this MOU for any undertakings herein that have been allocated or reallocated to another Sponsor by agreement of the Sponsor(s).

Further, although Sponsor(s) may lose certain rights and benefits outlined in this MOU if they fail to satisfy their commitments made herein or in the other various agreements or contracts referenced in this MOU, in no event will any such failure result in liability of the Sponsor(s) to any other party to this MOU for damages in excess of the payments (if any) that the Sponsor(s) actually received from such party as provided herein. (This provision, will not, however, be

construed to limit the liability of one Sponsor to another Sponsor for any breach of agreements made between them, including agreements which will govern any lease arrangement.)

VIII. Confidentiality.

All parties to this MOU acknowledge and understand that the Sponsors utilize confidential and proprietary "state of the art" financing arrangements, equipment, processes and techniques and that any disclosure of any information relating to such financing arrangements, equipment, processes, information and techniques would result in substantial harm to one or more Sponsors and thereby could have significant detrimental impact on Sponsor(s). Consequently, to the extent permitted by law, all parties to this MOU agree to keep confidential the nature, description and type of financing, machinery, equipment, processes, and techniques that any such party may observe or be privy to, and further agree not to disclose the nature, description, or any type of such financing, machinery, equipment, processes, or techniques to any other person or entity other than as may be specifically approved in writing by Sponsors, to the greatest extent possible.

IX. Assignment.

To the extent permitted by law, a Sponsor may assign a part or all of its rights, obligations, contingencies, or commitments under this MOU to one or more entities organized or designated by Sponsor to own or operate the Project or any part thereof and the County, the City, PDEC, and DOC hereby agree to not unreasonably withhold consent to such assignment(s) when consent is necessary.

X. Force Majeure.

Should Sponsor(s) be unable to meet its/their commitments hereunder as a result of a "Force Majeure Event" then such Sponsor(s) shall be excused from its/their performance obligations under this MOU for such time as is reasonable and prudent to recover from or remedy the Force Majeure Event. Sponsor(s) shall give reasonable written notice to the other Parties with full details following the occurrence of the cause relied upon. "Force Majeure Event" shall mean (A) any taking of any part of the property comprising the Project by eminent domain, or (B) any damage to the property comprising the Project that is caused by fire or acts of God (such as flood, lightning, earthquake or hurricane), war, strikes and other labor disputes, or riot or similar civil disturbance, but only to the extent such damage or disruption was beyond the control of and not caused in whole or in part by negligence, illegal acts or willful misconduct on the part of Sponsor(s), or (C) such general state-wide or geographically greater, economic downturn or malaise exists, that reasonable manufacturing concerns in the same or similar position as Sponsor(s) are experiencing inability to invest in capital projects or are required to curtail job growth or engage in reduction in force plans in business operations. Notwithstanding this Article, the Sponsors acknowledge that the Performance Agreements for the Economic Development Set-Aside and Governor's Closing Fund grants will require that the Coordinating Council and County acknowledge the Force Majeure Event in writing prior to an amendment of performance obligations. Furthermore, this Article shall not apply to any Revitalization

Agreement between the Sponsor(s) and the Coordinating Council with respect to Enterprise Zone Incentives.

XI. Understanding.

The Sponsors acknowledge that DOC cannot, by execution of this MOU, create binding commitments on behalf of the various agencies of the State of South Carolina referred to herein and that, therefore, in the event of any inconsistencies between the provisions of this MOU as to DOC or the State of South Carolina and the terms of any application, agreement, letters of commitment, or statutes (collectively, the "Other Terms"), the Other Terms shall prevail.

[signature pages to follow]

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DRAFT

[continuation of signature pages for Memorandum of Understanding]

FLORENCE COUNTY, SOUTH CAROLINA

By: _____
K. G. Rusty Smith, Jr.
Chairman, County Council
Florence County, South Carolina

[other signatures appear on other pages]

DRAFT

[continuation of signature pages for Memorandum of Understanding]

PROJECT JLL

By: _____

[other signatures appear on other pages]

DRAFT

[continuation of signature pages for Memorandum of Understanding]

SOUTH CAROLINA DEPARTMENT OF COMMERCE

By: _____

[other signatures appear on other pages]

DRAFT

[continuation of signature pages for Memorandum of Understanding]

FLORENCE DARLINGTON TECHNICAL COLLEGE

By: _____

[other signatures appear on other pages]

DRAFT

INDUCEMENT AND MILLAGE RATE AGREEMENT

THIS INDUCEMENT AND MILLAGE RATE AGREEMENT (the "Agreement") is made and entered into between Florence County, South Carolina, A BODY POLITIC AND CORPORATE AND A POLITICAL SUBDIVISION OF THE STATE OF SOUTH CAROLINA (the "County") and Project JLL that is more fully described herein.

WITNESSETH

WHEREAS, the County is authorized to make and execute contracts of the type embodied by this Agreement; and

WHEREAS, Project JLL is comprised of a leasing affiliate, which may be acting as a financier and lessor, in the form of a synthetic lease, and as owner of certain property provided for herein, and a company, including related entities, that plans to operate such property as a customer service facility; that these entities have been identified in confidence to certain officials and representatives of the County, and at such time as the laws of the State of South Carolina so require, the components of Project JLL will be publicly identified, to include an addendum to this Agreement, if necessary; throughout and herein, the component entities of Project JLL will be collectively identified as "Sponsors" and one or more will be identified as "Sponsor(s)"; and

WHEREAS, the Sponsors are considering an investment through themselves and/or one or more existing or to-be-formed affiliated or related entities and/or one or more unrelated parties, including third party lessors, on real property located within the County (the "Site") and previously identified to the County; and

WHEREAS, the Sponsors contemplate that the investment will consist of the purchase of the Site and construction and operation of a manufacturing facility thereon (collectively, the "Project"); and

WHEREAS, the Sponsors anticipate that the total investment of the Project will be approximately \$28,000,000, inclusive of property statutorily exempt from property taxes or FILOT payments, over a five year period; and

WHEREAS, the Sponsors anticipate the creation of approximately 750 new full-time jobs over a five year period measured from the commencement of operations at the Project; and

WHEREAS, the County wishes to induce the Sponsors to locate the Project within the County and, as set forth in more detail herein, the County, acting by and through its governing body, desires to present the Sponsors with a competitive incentive package representing such inducement; and

WHEREAS, the County Council has approved the terms of this Agreement by Resolution No. 28-2007/08 adopted on June 26, 2008; and

WHEREAS, in the same Resolution, the County has approved, and authorized the Chairman of County Council to execute a Memorandum of Understanding that sets forth certain inducements and commitments by the County and others, as inducement to Sponsors to locate Project in the County; and

WHEREAS, the County acknowledges that the Sponsors are relying on the commitments set forth herein in making their decision to locate the Project within the County, and the Sponsors acknowledge that the County is relying on the commitments set forth herein in making its decision to offer this inducement.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

**ARTICLE I
MULTI-COUNTY PARK; FEE IN LIEU OF TAXES**

Section 1.1 Multi-County Industrial Park. The County represents that it will take all necessary action to locate the Project within a multi-county industrial park established by the County and contiguous partner county in accordance with Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended, and the County agrees to use its best efforts to cause such contiguous county to take any necessary action to do the same. The County agrees to use its best efforts to ensure the Project remains within the bounds of a multi-county park for at least the longer of a 20-year period or the period of time the fee-in-lieu-of-tax agreement (as described in Section 1.2 below) is in place.

Section 1.2 Fee-in-Lieu of Ad Valorem Taxes.

A. Under the terms prescribed herein, the County, at Sponsors' request, agrees to enter into a fee-in-lieu of ad valorem taxes ("FILOT") incentive (the "Fee Agreement") for a period of twenty (20) years for each component of all or a part of the Project placed in service during the investment period, all as provided for under, and pursuant to, Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (the "Act"). The Fee Agreement will be implemented through an ordinance to be adopted by County Council. The Fee Agreement shall provide for a 6% assessment ratio for all qualifying property and, at the Sponsors' request, the lowest fixed millage rate as may be currently allowed by law determined in accordance with the Act for the duration of the FILOT arrangement. The Fee Agreement shall contain, in substance, the following provisions:

- (i) The termination of the Fee Agreement will coincide with the payment of the final FILOT pursuant thereto;
- (ii) The Sponsor(s) shall make FILOT payments in accordance with and in the amounts established in the Fee Agreement (the County agrees to negotiate in good faith, an alternative payment as allowed per the Act);

(iii) The County and the Sponsors will agree that Sponsor(s), at its/their discretion, may dispose of property and replace property subject to FILOT payments as set forth in the Act.

B. The Sponsor(s) agree, if the Project proceeds, to acquire by construction, lease and/or purchase real and personal property, including, but not limited to, the land, improvements, buildings, office equipment, machinery and furniture constituting the Project, such Project to represent an targeted aggregate investment of at least \$28,000,000 as to Section 2.2 of this Agreement, and a FILOT eligible investment by all Sponsors of at least \$2,500,000, such amount to be calculated taking into consideration all assets of the Project reportable for property tax and fee-in-lieu of tax purposes, and inclusive of property statutorily exempt from property taxes or FILOT payments. In the event Sponsor(s) fail to satisfy the requirements of this Paragraph or any other provisions of this Agreement, the County may, as its sole remedies, terminate certain rights of the Sponsor(s) hereunder and require certain payments, all as described in the next Paragraph and in Section 2.2 below.

C. If the Sponsors fail to meet a total investment level of more than \$5,000,000 (without regard to depreciation) in the time allowed under the Act (i.e. five years) and provided that any Sponsor participating in the Project fails to meet an individual minimum investment level (as defined in the Act) of \$2,500,000 in the time allowed under the Act (i.e., five years), then such Sponsor's FILOT arrangement shall terminate and a Sponsor(s) shall pay the County an additional amount equal (if any) to Sponsors' total savings from the time the first FILOT payment was made to that point (that is, the difference between the fee amount paid by Sponsor(s) and the amount which would have been otherwise due in case of normal property taxes with all applicable exemptions, plus interest in the manner provided in Section 12-54-25 of the Code of Laws of South Carolina, 1976, as amended). In no event shall the FILOT payments terminate with respect to any Sponsor as long as that Sponsor maintains a minimum investment of \$2,500,000.

D. The County agrees that Sponsor(s) may remove at any time during the term of the Fee Agreement property from the Project and dispose of it (as defined in the Act) with the consequence being the reduction of the FILOT payments, and/or replace such property and make the replacement property subject to the FILOT payments, all to the fullest extent allowed in and pursuant to the Act, subject, always, to the absolute requirement, statutory or otherwise, to maintain not less than \$2,500,000 in investment in the Project at all times.

E. The County agrees that Sponsor(s) may terminate the Fee Agreement at any time during the term thereof in their sole discretion, in which case the Project shall become subject to regular property taxes (or a fee equal to such regular property taxes in case the Project is located at the time of such termination in a multi-county industrial park as defined in Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended).

F. It is anticipated that Sponsor(s) may agree from time to time, as between themselves, to allocate and reallocate certain rights and undertakings of the Sponsors described herein to one or the other of the Sponsor(s). For example, in the synthetic leasing documents they execute for the Project, the Sponsor(s) may allocate the responsibility for funding of the

investment described in subsection B above to the lessor. Such documents, however, may also give the lessee the option (and in certain limited circumstances, the obligation) to acquire the lessor's interest in the Project, whereupon the lessee will assume responsibility for funding any remaining investment yet to be made. In any event, to the extent that the Sponsor(s) do agree between themselves to allocate or reallocate rights and undertakings described herein, such agreement will be effective for purposes of this Agreement. That is to say, no Sponsor will have any rights hereunder that have been allocated or reallocated to the another Sponsor by agreement of the Sponsor(s); and no Sponsor will be accountable to the County for any undertakings described herein that have been allocated or reallocated to another Sponsor by agreement of the Sponsor(s).

**ARTICLE II
SPECIAL SOURCE REVENUE CREDITS; CLAWBACK**

Section 2.1 Special Source Revenue Credits. The County agrees that for the first twenty (20) years of any actual FILOT payment, Sponsor(s) are entitled to apply and/or receive a credit of ninety (90%) percent for years one (1) through five (5), seventy-five (75%) percent for years six (6) through ten (10) and fifty (50%) for years eleven (11) and twelve (12) against such FILOT payments (the "Credit"), or in lieu of such Credit, receive a corresponding payment from the County (the "Payment") (collectively, the "SSRC"), pursuant to Section 12-44-70 of the Code of Laws of South Carolina, 1976, as amended. The SSRC may apply to any costs as allowed, or provided for, in Section 4-29-68(A)(2) of the Code of Laws, 1976, as amended (the "Costs"). The Costs may be incurred at any time during the term of the Fee Agreement, and the SSRC may be applied and/or received at any point during the twenty (20) years provided for in this Section 2.1, except that no SSRC may be received from any yearly FILOT payment that exceeds the credits stated above of that year's total FILOT payment. All carryovers of SSRC shall be allowed from year to year throughout the twenty (20) years provided for in this Section 2.1, subject only to the above exception that no SSRC may be received from any yearly FILOT payment that exceeds the credits stated herein of that year's total FILOT payment.

Section 2.2 Clawback Provision.

A(i). If the Sponsors, collectively, fail to invest at least \$28,000,000 in eligible investments under the Act (based on the original income tax basis, without depreciation), within the "investment period" as defined in the Act, to include any extension thereof (the "Investment Period"), then the SSRC as provided in this Article shall be reduced based upon the following calculations:

Step 1:

$$\frac{\text{Actual Investment}}{\$28,000,000} \times 100 = \text{Investment Achievement Percentage}$$

Step 2:

$$100\% - \text{Investment Achievement Percentage} = \text{Credit Reduction Factor}$$

Step 3:

If the Credit Reduction Factor is greater than 0%, then the SSRC provided to Sponsor(s) shall be reduced by the Credit Reduction Factor retroactive to the first period in which Sponsor(s) received any SSRC;

Or,

A(ii). If the Sponsors, collectively, fail to create at least 750 new jobs at the Project within the Investment Period, then the SSRC as provided in this Article shall be reduced based upon the following calculations:

Step 1:

$$\frac{\text{Actual Job Creation}}{750} \times 100 = \text{Job Achievement Percentage}$$

Step 2:

$$100\% - \text{Job Achievement Percentage} = \text{Credit Reduction Factor}$$

Step 3:

If the Credit Reduction Factor is greater than 0%, then the SSRC provided to Sponsor(s) shall be reduced by the Credit Reduction Factor retroactive to the first period in which Sponsor(s) received any SSRC.

B. In the event Sponsors fail to achieve both the investment and the job targets, the SSRC would only be reduced by the highest Credit Reduction Factor. Under no circumstances will the SSRC be reduced by both Credit Reduction Factors.

C. If an amount described in Section 2.2(A)(i) or (ii) is due retroactively, such amount shall not be paid by Sponsor(s) but rather will be assessed proportionally against any SSRC in subsequent years that correspond to the number of years for which retroactive assessment is due.

D. Following calculations described in this Section, the ensuing/subsequent SSRC for each year shall only be reduced by the amount of the highest of the Credit Reduction Factors, and Sponsor(s) shall continue to receive SSRC for the remaining years under Section 2.1, except that the percentage of SSRC to the FILOT payment for each such year shall be reduced by the applicable Credit Reduction Factor.

E. Under no circumstances will the application of FILOT payments, and the terms and conditions as to calculations of FILOT payments, including but not limited to, the assessment ratio, fixed millage rate, termination date, alternative payment method (if used), under the Act, or the Multi-County Industrial Park, all as provided in Article I of this Agreement, be modified or changed as a result of any application of this Section 2.2. As long as Sponsors shall maintain the

statutory minimum investment requirement under the Act, Sponsors shall be entitled to all benefits of the FILOT payments and the Act.

F. The parties agree that the measurements of total investment amount and total jobs creation under this Section 2.2(A)(i) and (ii) will occur on December 31 of the year in which the Investment Period ends. If at any time during the Investment Period, the Sponsors reach the total investment of \$28,000,000 than at that point in time, Section 2.2(A)(i) shall no longer apply, regardless of whether the total investment amount thereafter becomes less than \$28,000,000. If at any time during the Investment Period the Sponsors reach the total job creation of 750 than at that point in time, Section 2.2(A)(ii) shall no longer apply, regardless of whether the number of jobs thereafter becomes less than 750.

G. The remedies provided in the clawback provisions of this Section 2.2 of this Agreement shall be the County's sole remedies for failure to reach an investment amount of \$28,000,000 or job creation of 750 jobs.

H. Should Sponsor(s) be unable to meet 100% of its/their Investment Achievement or Job Achievement as set forth in Section 2.2, as a result of a "Force Majeure Event" then the Investment Period, only as applied in this Article, shall be tolled for such time as is reasonable and prudent for the Sponsor(s) to recover from or remedy the results of the Force Majeure Event. Sponsor(s) shall give reasonable written notice to the County with full details following the occurrence of the cause relied upon, to include a reasonable estimate of the remedy or recovery period. The Sponsor(s) will then advise the County in writing when the remedy or recovery is complete. Once the Sponsor(s) has remedied or recovered from the Force Majeure Event, the tolling period shall end and the remaining time within the Investment Period shall begin, and at the conclusion of such Investment Period, the application of the clawback provisions in Section 2.2 of this Article shall be enforced, if applicable. If, during the tolling period or recommenced Investment Period, the Sponsor(s) shall meet the investment amount and/or jobs creation number, then Section 2.2(F) shall immediately apply. "Force Majeure Event" shall mean (A) any taking of any part of the property comprising the Project by eminent domain, or (B) any damage to the property comprising the Project that is caused by fire or acts of God (such as flood, lightning, earthquake or hurricane), war, strikes and other labor disputes, or riot or similar civil disturbance, but only to the extent such damage or disruption was beyond the control of and not caused in whole or in part by negligence, illegal acts or willful misconduct on the part of Sponsor(s), or (C) such general state-wide or geographically greater, economic downturn or malaise exists, that reasonable manufacturing concerns in the same or similar position as Sponsor(s) are experiencing inability to invest in capital projects or are required to curtail job growth or engage in reduction in force plans in business operations.

ARTICLE III MISCELLANEOUS

Section 3.1 Applicable Law. This Agreement has been entered into in the State of South Carolina and shall be governed by, and construed in accordance with the laws of South Carolina, without regard to conflict of law principles.

Section 3.2 Binding Effect of Agreement. To the extent permitted by law, this Agreement represents binding and enforceable commitments between the Sponsor(s) and the County, including its constituent agencies, departments and other entities.

Section 3.3 Severability. In the event and to the extent (and only to the extent) that any provision or any part of a provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable the remainder of that provision or any other provision or part of a provision of this Agreement.

Section 3.4 Inducement Resolution. By Resolution dated June 26, 2008, County Council approved this Agreement and authorized the appropriate County officials to execute this Agreement. To the extent permitted by law, the County shall use its best reasonable efforts to take whatever actions are necessary and appropriate in order to comply with its undertakings in this Agreement.

Section 3.5 Counterparts. This Agreement may be signed in any number or counterparts, each of which shall be an original, with the same effect as if the signatures hereto and thereto were on the same instrument.

Section 3.6 Termination. THE PARTIES UNDERSTAND THAT THE SPONSOR(S) MAY CHOOSE NOT TO PROCEED WITH THE PROJECT AS HEREIN PROVIDED, IN WHICH EVENT THIS AGREEMENT SHALL BECOME VOID UPON NOTICE BY THE SPONSOR(S) TO THE COUNTY AS TO SUCH CHOICE.

Section 3.7 Assignment. Pursuant to, and, only to the extent permitted by and in accordance with the Act, a Sponsor may assign a part or all of its rights or obligations under this Agreement to one or more entities organized or designated by Sponsor to own or operate the Project or any part thereof and the County hereby agrees and consents to such assignment(s). The County also recognizes and agrees that the Project ownership may be split between two or more entities and the County agrees, if requested by Sponsors, to allow such entities also as project Sponsors and/or Sponsor Affiliates in any fee agreement with the Company all subject to the terms, provisions, and requirements of the Act, in all regards. All such entities shall be entitled to the full benefits of this Agreement. No other assignments are authorized without the written approval of the County, which approval will not be unreasonably withheld.

Section 3.8 Cooperation. The County agrees, to the extent permitted by law and at the Sponsors' request and expense, to cooperate with Sponsor(s) in sustaining the enforceability of this Agreement.

Section 3.9 Other Requirements. The County represents that other than as expressly set forth herein, there are no other requirements Sponsors must fulfill in order to obtain the incentives described herein.

Section 3.10 Authorization. The County represents that this Agreement has been properly authorized through the adoption of a resolution which identifies the Project and Sponsors.

Section 3.11 Limitation. All commitments of the County hereunder are subject to all of the provisions of the Act, including, without limitation, the condition that nothing contained in this Agreement shall constitute or give rise to a pecuniary liability of the County or a charge against its general credit or taxing powers.

Section 3.12 Enactments. All commitments of the County and Sponsors hereunder are subject to the condition that the County and Sponsors agree on mutually acceptable terms and conditions of all documents, the execution and delivery of which are contemplated by the provisions hereof, and compliance by the County with the provisions of the South Carolina Home Rule Act, including the enactment by the County Council of an ordinances authorizing the execution and delivery of the Fee Agreement and Multi-County Park Agreement and approving the terms thereof.

FLORENCE COUNTY, SOUTH CAROLINA

By: _____

K. G. Rusty Smith, Jr.
In His Capacity As
Chairperson, County Council of
Florence County, South Carolina

(SEAL)
ATTEST:

Connie Y. Haselden
In Her Capacity As
Clerk to County Council
Florence County, South Carolina

PROJECT JLL

By: _____

**FLORENCE COUNTY COUNCIL
SPECIAL CALLED MEETING**

June 26, 2008

AGENDA ITEM: Third Reading - Ordinance No. 38-2007/08

DEPARTMENT: County Council

ISSUE UNDER CONSIDERATION:

(An Ordinance To Amend The Agreement For Development Of A Multi-County Industrial And Business Park By And Between Florence County And Williamsburg County, South Carolina, Providing For The Development Of A Jointly Owned And Operated Industrial/Business Park So As To Include Additional Property In Florence County As Part Of The Joint County Industrial Park, And Other Matters Relating Thereto.)

OPTIONS:

1. *(Recommended)* Approve Third Reading of Ordinance No. 38-2007/08.
2. Provide an Alternate Directive

ATTACHMENTS:

1. Ordinance No. 38-2007/08.
2. Third Amendment to Agreement for Development for Joint County Industrial Park between Florence and Williamsburg Counties.

Sponsor(s) : County Council
 First Reading : June 5, 2008
 Committee Referral : N/A
 Committee Consideration Date : N/A
 Committee Recommendation : N/A
 Second Reading : June 19, 2008
 Public Hearing : June 26, 2008
 Third Reading : June 26, 2008
 Effective Date : Immediately

I, _____,
 Council Clerk, certify that this
 Ordinance was advertised for
 Public Hearing on _____.

ORDINANCE NO. 38-2007/08

COUNCIL-ADMINISTRATOR FORM OF GOVERNMENT FOR FLORENCE COUNTY

(An Ordinance To Amend The Agreement For Development Of A Multi-County Industrial And Business Park By And Between Florence County And Williamsburg County, South Carolina, Providing For The Development Of A Jointly Owned And Operated Industrial/Business Park So As To Include Additional Property In Florence County As Part Of The Joint County Industrial Park, And Other Matters Relating Thereto.)

WHEREAS:

1. Florence County ("Florence") and Williamsburg County ("Williamsburg"), South Carolina, are authorized under Article VIII, Section 13 of the South Carolina Constitution to jointly develop an industrial or business park within the geographical boundaries of one or more of the member Counties; and
2. In order to promote the economic welfare of the citizens of both Williamsburg and Florence, by providing employment and other benefits to the citizens of Williamsburg and Florence, Williamsburg and Florence agreed to develop jointly an industrial and business park (the "Park") as provided in Article VIII, Section 13 of the South Carolina Constitution and in accordance with Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended (the "Act"); and
3. In furtherance of the above, Williamsburg and Florence executed an Agreement for Development of Joint County Industrial and Business Park dated as of December 1, 1998, as amended (the "Agreement"); and
4. The Agreement, by it's terms, contemplates the expansion of the Park by inclusion of additional parcels within the Park or the reduction of the Park by the exclusion of parcels that are a part of the Park from time to time; and
5. Williamsburg and Florence desire to amend the Agreement to expand the Park and include an additional parcel that has been designated as an industrial site in Florence County.

NOW, THEREFORE, BE IT ORDAINED BY THE FLORENCE COUNTY COUNCIL:

1. The Agreement is hereby amended to expand the Park premises that are located in Florence County to include within the Park the property described in Exhibit A attached hereto.

2. The Chairman of the Florence County Council is hereby authorized to execute and deliver on behalf of Florence County an Amendment to Agreement for Development of Joint County Industrial and Business Park in substantially the form attached hereto as Exhibit B.
3. This Ordinance shall be effective immediately upon adoption.

ATTEST:

SIGNED:

Connie Y. Haselden, Council Clerk

K. G. Rusty Smith, Jr., Chairman

COUNCIL VOTE:
OPPOSED:
ABSENT:

Approved as to Form
James C. Rushton, III, County Attorney

DRAFT

THIRD AMENDMENT TO AGREEMENT FOR DEVELOPMENT
FOR JOINT COUNTY INDUSTRIAL PARK

This Third Amendment to Agreement for Development for Joint Industrial Park dated December 1, 1998, between Florence County, South Carolina ("Florence County") and Williamsburg County, South Carolina ("Williamsburg County"), each a body politic and political subdivisions of the State of South Carolina (collectively the "Counties").

WITNESSETH:

WHEREAS, under the authorization of the Counties pursuant to Article VIII, Section 13 of the Constitution of the State of South Carolina and Title 4, Chapter 1 of the Code of Laws of the State of South Carolina 1976, as amended (the "Code"), specifically Section 4-1-170 thereof; and, pursuant to that certain Agreement for Development for Joint County Industrial Park (the "Agreement") dated as of December 1, 1998, the Counties agreed to develop a multi-county industrial or business park (the "Park"), a portion of which is located in Florence County as described in Exhibit A to that Agreement (the "Florence Property"), and a portion of which is located in Williamsburg County as described in Exhibit B to that Agreement (the "Williamsburg Property"); and

WHEREAS, an Amendment to Agreement for Development for Joint County Industrial Park (the "First Amendment to Agreement") dated September 28, 2006, amended Exhibit A to the Agreement by adding additional property as described in Exhibit A-1 to the First Amendment to Agreement enlarged the boundaries of the Park; and

WHEREAS, pursuant to Ordinance No. 38-2007/08 adopted by Florence County Council on June 26, 2008, and Ordinance No. _____ adopted by Williamsburg County Council on _____, 2008 (collectively, the "Enabling Ordinances"), the Counties have determined that it is in the best interest of the Counties to enlarge the boundaries of the Park as authorized by Section 3 of the Agreement in order to promote economic development and thus provide additional employment opportunities within said Counties.

NOW, THEREFORE, in consideration of the mutual agreement, representations and benefits contained in this Agreement and for other good and valuable consideration, the adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

Section 1. Exhibit A to the Agreement which describes the boundaries of the Park with regard to the Florence Property, is amended by adding additional property described on Exhibit A-3 attached hereto.

Section 2. The Agreement as to the property set forth in Exhibit _____ attached hereto, may not be terminated by either Party for a period of twenty (20) years following the effective date of this Amendment.

Section 3. Except as expressly amended or modified herein, the remaining terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS THEREOF, the parties hereto, each after due authorization, have executed this Third Amendment to Agreement for Development for Joint County Industrial Park to be effective as of June 26, 2008.

FLORENCE COUNTY, SOUTH CAROLINA

(SEAL)

Chairman, Florence County Council

ATTEST:

By: _____
Clerk to County Council
Florence County, South Carolina

WILLIAMSBURG COUNTY, SOUTH CAROLINA

(SEAL)

Chairman, Williamsburg County Council

ATTEST:

By: _____
Clerk to County Council
Williamsburg County, South Carolina

DRAFT

**FLORENCE COUNTY COUNCIL
SPECIAL CALLED MEETING
June 26, 2008**

AGENDA ITEM: Third Reading - Ordinance No. 39-2007/08

DEPARTMENT: County Council

ISSUE UNDER CONSIDERATION:

(An Ordinance Authorizing The Execution And Delivery Of A Fee In Lieu Of Tax Agreement By And Between Florence County, South Carolina, And Project JLL, With Respect To Certain Economic Development Property, Whereby Such Property Will Be Subject To Certain Payments In Lieu Of Taxes And Other Matters Related Thereto.)

OPTIONS:

1. *(Recommended)* Approve Third Reading of Ordinance No. 39-2007/08.
2. Provide an Alternate Directive

ATTACHMENTS:

1. Ordinance No. 39-2007/08.
2. Fee Agreement between Florence County and Project JLL.

Sponsor(s) : County Council
 First Reading/Introduction : June 5, 2008
 Committee Referral : N/A
 Committee Consideration Date : N/A
 Committee Recommendation : N/A
 Second Reading : June 19, 2008
 Public Hearing : June 26, 2008
 Third Reading : June 26, 2008
 Effective Date : Immediately

I, _____,
 Council Clerk, certify that this
 Ordinance was advertised for
 Public Hearing on _____.

ORDINANCE NO. 39-2007/08

COUNCIL-ADMINISTRATOR FORM OF GOVERNMENT FOR FLORENCE COUNTY

(An Ordinance Authorizing The Execution And Delivery Of A Fee In Lieu Of Tax Agreement By And Between Florence County, South Carolina, And Project JLL, With Respect To Certain Economic Development Property, Whereby Such Property Will Be Subject To Certain Payments In Lieu Of Taxes And Other Matters Related Thereto.)

WHEREAS:

1. Florence County, South Carolina (the "County"), acting by and through its County Council (the "County Council"), is authorized and empowered under and pursuant to the provisions of Title 12, Chapter 44, of the Code of Laws of South Carolina 1976, as amended (the "FILOT Act"), to enter into agreements with any industry or business whereby the industry or business would pay fees-in-lieu of taxes with respect to certain properties which constitute "economic development properties" as defined in the Act; through which powers the industrial development of the State of South Carolina (the "State") will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate or remain in the State and thus utilize and employ the manpower, products and resources of the State and benefit the general public welfare of the County by providing services, employment, recreation or other public benefits not otherwise provided locally; and
2. The County is authorized and empowered to provide special source revenue credits or payments ("Special Source Credits") against fee in lieu of tax payments pursuant to the provisions of Sections 4-1-175 and 4-29-68 of the Code of Laws of South Carolina 1976, as amended (the "the SSRC Act"); and
3. The County is authorized and empowered, pursuant to Title 4, Chapter1, of the Code of Laws of South Carolina 1976, as amended, to include property upon which a project is located in a multi-county park, with the appropriate consents and approvals of a partnering county, and by separate ordinance, the County has taken action to place the Project in a multi-county park in cooperation with Williamsburg County; and
4. Pursuant to the Act, and in order to induce certain investment in the County, the County will adopt a Resolution to be dated as of June 26, 2008, authorizing an inducement and millage rate agreement (the "Inducement Agreement") for the benefit of those companies identified as Project JLL, with respect to the acquisition of certain land, the construction of certain

buildings and improvements thereon, and installation of fixtures, machinery, equipment, and furnishings therein (collectively, the "Project") to constitute a manufacturing facility; and

5. The Project is anticipated to result in a taxable investment of approximately \$20,000,000 and in the creation of approximately 500 new jobs within five years the Project is placed in service, thereby providing significant economic benefits to the County and surrounding areas; and
6. The County has determined on the basis of the information supplied to it by Project JLL that the Project is a "project" as defined in the Act and is eligible to become "economic development property" as that term is defined in the Act and that the Project would serve the purposes of the Act; and
7. Pursuant to the Inducement Agreement, the County has agreed to enter into a fee-in-lieu of tax agreement with Project JLL, whereby the County would provide therein for a payment of fee in lieu of taxes by Project JLL with respect to the Project pursuant to the FILOT Act, and provide Special Source Credits to Project JLL with respect to the Project pursuant to the SSRC Act (collectively, the "Fee Agreement"); and
8. Project JLL has caused to be prepared and presented to this meeting the form of the Fee Agreement which contains the provision for a payment in lieu of taxes and the provision of Special Source Credits which the County proposes to execute and deliver; and
9. It appears that the Fee Agreement, now before this meeting, is in appropriate form and is an appropriate instrument to be approved, executed, and delivered by the County for the purposes intended.

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

Section 1. It is hereby found, determined and declared by the County Council as follows:

- (a) The Project constitutes a "project" as defined in the FILOT Act and will constitute "economic development property" as said term is referred to and defined in the FILOT Act, and the County's actions herein will subserve the purposes and in all respects conform to the provisions and requirements of the FILOT Act;
- (b) The terms and provision of the Inducement Agreement are hereby ratified and approved and incorporated herein and made a part hereof;
- (c) The Project will benefit the general public welfare of the County by providing services, employment, and other public benefits not otherwise provided locally;

- (d) The Project will rise to no pecuniary liability of the county or any incorporated municipality or a charge against the general credit or taxing power of either;
- (e) The inducement of the location of the Project within the County and the State is of paramount importance;
- (f) The purposes to be accomplished by the Project, i.e., economic development, retention of jobs, and addition to the tax base of the County, are proper governmental and public purposes and the benefits of the Project are greater than the costs; and
- (g) Having evaluated the purposes to be accomplished by the Project as proper governmental and public purposes, the anticipated dollar amount and nature of the investment to be made, and the anticipated costs and benefits to the County, the County has determined that the Project is properly classified as economic development property.

Section 2. The forms, terms and provisions of the Fee Agreement presented to this meeting are hereby approved and all of the terms and provisions thereof are hereby incorporated herein by reference as if the Fee Agreement were set out in this Ordinance in its entirety. The Chairman of the County Council is hereby authorized, empowered and directed to execute, acknowledge and deliver the Fee Agreement in the name of and on behalf of the County, and thereupon to cause the Fee Agreement to be delivered to Project JLL and cause a copy of the Fee Agreement to be delivered to the Florence County Auditor and Assessor. The Fee Agreement is to be in substantially the form now before this meeting and hereby approved, or with such minor changes therein as shall be approved by the officials of the County executing the same, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of Fee Agreement now before this meeting.

Section 3. The Chairman of the County Council, the County Administrator, and the Clerk to County Council, for and on behalf of the County, are hereby authorized and directed to do any and all things necessary to effect the execution and delivery of the Fee Agreement and the performance of all obligations of the County under and pursuant to the Fee Agreement.

Section 4. The provision of this Ordinance are hereby declared to be separable and if any section, phrase or provisions 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 5. All 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 by the County Council.

ATTEST:

Connie Y. Haselden, Council Clerk

Approved as to Form and Content
James C. Rushton, III, County Attorney

SIGNED:

K. G. Rusty Smith, Jr., Chairman

COUNCIL VOTE:

OPPOSED:

ABSENT:

DRAFT

FEE AGREEMENT
BETWEEN
FLORENCE COUNTY, SOUTH CAROLINA
AND
PROJECT JLL

DATED
AS OF
JUNE 26, 2008

DRAFT

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FEE AGREEMENT

THIS FEE AGREEMENT (the "Fee Agreement") is made and entered into as of June 26, 2008, by and between FLORENCE COUNTY, SOUTH CAROLINA (the "County"), A BODY POLITIC AND CORPORATE AND A POLITICAL SUBDIVISION OF THE STATE OF SOUTH CAROLINA, acting by and through its County Council (the "County Council") as governing body of the County, and Project JLL ("Sponsors"), a Delaware corporation.

WITNESSETH:

WHEREAS, the County is authorized by Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (the "Act"), to enter into a fee agreement with companies meeting the requirements of such Act, which identifies certain property of such companies as economic development property to induce such companies to locate in the State and to encourage companies now located in the State to expand their investments and thus make use of and employ manpower and other resources of the State;

WHEREAS, the County and JLL desire to enter into this Fee Agreement regarding the Project;

WHEREAS, pursuant to the Act, the County finds that (a) it is anticipated that the Project will benefit the general public welfare of the County by providing services, employment and other public benefits not otherwise adequately provided locally; (b) neither the Project nor any documents or agreements entered into by the County in connection therewith will give rise to any pecuniary liability of the County or incorporated municipality or to any charge against its general credit or taxing power; (c) the purposes to be accomplished by the Project are proper governmental and public purposes; and (d) the benefits of the Project are greater than the costs;

WHEREAS, pursuant to a Resolution authorizing an Inducement and Millage Rate Agreement adopted on June 26, 2008 (the "Resolution"), the County committed to enter into this Fee Agreement with the Sponsors, which shall provide for payment of fees in lieu of taxes for a project qualifying under the Act; and

WHEREAS, pursuant to an Ordinance adopted on June 26, 2008 (the "Ordinance"), as an inducement to the Sponsors to develop the Project, the County Council authorized the County to enter into this Fee Agreement with the Sponsors which identifies the property comprising the Project as Economic Development Property under the Act subject to the terms and conditions hereof;

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

ARTICLE I
WAIVER OF RECAPITULATION; DEFINITIONS

SECTION 1.1. *Waiver of Statutorily Required Recapitulation.* Pursuant to Section 12-44-55(B) of the Act, the County and Sponsors waive any and all compliance with any and all of the provisions, items or requirements of Section 12-44-55.

SECTION 1.2. *Rules of Construction; Use of Defined Terms.* Unless the context clearly indicates otherwise, in this Fee Agreement words and terms defined in Section 1.3 hereof are used with the meanings ascribed thereto. The definition of any document shall include any amendments to that document, unless the context clearly indicates otherwise.

From time to time herein, reference is made to the term taxes or *ad valorem* taxes. All or portions of the Project may be located in a Multi-County Industrial Park and, as such, would be exempt from *ad valorem* taxation under and by virtue of the provisions of Paragraph D of Section 13 of Article VIII of the S.C. Constitution (the "MCIP Provision"). With respect to facilities located in a Multi-County Industrial Park, references to taxes or *ad valorem* taxes means the payments-in-lieu-of-taxes provided for in the MCIP Provision.

SECTION 1.3. *Definitions.*

"Act" means Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as in effect on the date hereof and, to the extent such amendments are specifically made applicable to this Fee Agreement or the Project, as the same may be amended from time to time; provided that if any such amendment shall be applicable only at the option of the County or Sponsor(s), then such amendment shall only be applicable with the prior written consent of both the County and Sponsor(s).

"Alternative Payment Method" means the schedule of Payments-in-Lieu-of-Taxes based on an alternative payment method as provided in Section 12-44-50(A)(3) of the Act, and described in Section 5.1(e) herein.

"Applicable Governmental Body" means each governmental entity within the State having jurisdiction over or the right to approve or disapprove any or all of the Documents.

"Chair" means the Chair of County Council (or the person or persons authorized to perform the duties thereof in the absence of the Chair).

"Clerk" means the Clerk of County Council (or the person or persons authorized to perform the duties thereof in the absence of the Clerk).

"Commencement Date" means the last day of the property tax year when Project property is first placed in service, except that this date must not be later than the last day of the property tax year which is three years from the year in which the County and Sponsors have entered into this Fee Agreement.

“County Administrator” means the County Administrator of the County (or person or persons authorized to perform the duties thereof in the absence of the County Administrator).

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

“County” means Florence County, South Carolina, and its successors and assigns.

“Documents” means the Ordinance, this Fee Agreement, the Inducement Agreement, and the Resolution.

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

“Economic Development Property” shall be as defined in Section 12-44-30(6) of the Act.

“Equipment” means all machinery, apparatus, equipment, fixtures, office facilities, furnishings and other personal property to the extent such property becomes a part of the Project under this Fee Agreement.

“Event of Default” means any Event of Default specified in Section 9.1 of this Fee Agreement.

“Fee Agreement” means this Fee Agreement dated June 26, 2008, between the County and the Sponsors.

“Fee Term” means the duration of this Fee Agreement with respect to each Stage of the Project as specified in Section 5.3 hereof.

“Project JLL” means Company, and its parents, subsidiaries, or related entities, collectively a Party and Sponsor to this Fee Agreement.

“Improvements” means improvements to the Real Property together with any and all additions, accessions, replacements and substitutions thereto or therefore, and all fixtures now or hereafter attached thereto, to the extent such additions, accessions, replacements, and substitutions become part of the Project under this Fee Agreement.

“Inducement Agreement” means the Inducement and Millage Rate Agreement between the County and the Sponsors effective June 26, 2008.

“Investment Period” means the period beginning with the first day that Project property is purchased or acquired, and ending on the last day of the fifth property tax year following the Commencement Date, subject to an extension of such period as provided in Section 3.2 hereof.

“MCIP Provision” means the provisions of Article VIII, Section 13, Paragraph D of the Constitution of the State of South Carolina, as amended, and Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended.

“Multi-County Industrial Park” means an industrial or business park established by two or more counties acting under the provisions of the MCIP Provision.

“Ordinance” means the Ordinance adopted by the County on June 26, 2008, authorizing this Fee Agreement.

“Parties” means all signatories to this Agreement.

“Payments-in-Lieu-of-Taxes” means the payments to be made by Sponsors pursuant to Section 5.1 of this Fee Agreement.

“Project” means the Real Property and the Equipment and Improvements located on the Real Property, together with the acquisition, construction, installation, design, and engineering thereof which are eligible for inclusion as Economic Development Property under the Act and become subject to this Fee Agreement. The parties agree that Project shall consist of such property so identified by any Sponsor(s) in connection with its/their annual filing with DOR of an SCDOR PT-300, or such comparable form, and with such schedules as DOR may provide in connection with projects subject to the Act (as such filing may be amended or supplemented from time to time) for each year within the Investment Period.

“Real Property” means the land identified on Exhibit A hereto, together with all and singular rights, members, hereditaments and appurtenances belonging or in any way incident or appertaining thereto to the extent such become a part of the Project under this Fee Agreement; all Improvements now or hereafter situated thereon; and all fixtures now or hereafter attached thereto, to the extent such Improvements and fixtures become part of the Project under this Fee Agreement.

“Replacement Property” means any property acquired or constructed after the Investment Period as a replacement for any property theretofore forming a part of the Project and disposed of, or deemed disposed of, as provided in Section 5.2 hereof.

“Resolution” means the Resolution of the County Council authorizing the Inducement Agreement adopted on June 26, 2008.

“Sponsors” means Project JLL and all entities participating in the investment in the Project whether through ownership, lease, lease-purchase or otherwise and which are or have subsequent to the date hereof become a party to this Fee Agreement, including, but not limited to, sponsor affiliates (as defined in the Act), and all successors and assigns of such entities. Any entity that shall participate as a Sponsor, must execute this Fee Agreement or an amendment thereto pursuant to the Act.

“Sponsor(s)” means one or more Sponsors.

“Stage” in respect of the Project means the year in which Equipment, Improvements and Real Property, if any, are placed in service during each year of the Investment Period.

“State” means the State of South Carolina.

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

ARTICLE II LIMITATION OF LIABILITY; INDUCEMENT

SECTION 2.1. *Limitation of Liability.* Anything herein to the contrary notwithstanding, any financial obligation the County may incur hereunder, including but not limited to any obligation for the payment of money, shall not be deemed to constitute a pecuniary liability or a charge against its general credit or taxing power; provided, however, that nothing herein shall prevent Sponsor(s) from enforcing its/their rights hereunder by suit for *mandamus* or specific performance.

SECTION 2.2. *Inducement.* The County and Sponsors acknowledge that pursuant to the Act, no part of the Project will be subject to *ad valorem* property taxation in the State, and that this factor, among others, has induced Sponsors to enter into this Fee Agreement.

ARTICLE III REPRESENTATIONS, WARRANTIES, AND COVENANTS

SECTION 3.1. *Representations and Warranties of the County.* The County makes the following representations and warranties to Sponsors.

(a) The County is a body politic and corporate and a political subdivision of the State and is authorized and empowered by the Act to execute the Documents to which it is a party and to fulfill its obligations described in the Documents. By proper action, the County Council has duly authorized the execution and delivery of the Documents to which the County is a party and has taken all such action as is necessary on its part to permit the County to enter into and fully perform the transactions required of it under the Documents.

(b) Neither the execution and delivery of the Documents, nor the consummation and performance of the transactions described in the Documents, violate, conflict with or will, to its knowledge, result in a material breach of any of the material terms, conditions or provisions of any agreement, restriction, statute, law, rule, order, or regulation to which the County is now a party or by which it is bound.

(c) To the best of the County’s knowledge, there is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any judicial or administrative court or agency, public board or body, pending or threatened, against the County, wherein an unfavorable decision, ruling or finding may or would materially adversely affect the County or the consummation of the transactions described in the Documents.

(d) To the best of the County's knowledge, neither the existence of the County nor the rights of any members of County Council to their offices, is being contested and none of the proceedings taken to authorize the execution, delivery, and performance of such of the Documents as require execution, delivery, and performance by the County have been repealed, revoked, amended, or rescinded.

(e) All consents, authorizations, and approvals required on the part of the County, in connection with the execution, delivery, and performance by the County of such of the Documents as require execution, delivery, and performance by the County, have been obtained and remain in full force and effect as of the date hereof or will be obtained.

(f) The County has determined that 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 Project. Based upon representations made by Sponsor(s) to the County, the Project constitutes a "project" within the meaning of the Act.

(g) By due corporate action, the County has agreed that, subject to compliance with applicable laws, each item of real and tangible personal property comprising the Project shall be considered Economic Development Property.

No representation of the County is hereby made with regard to compliance by the Project with laws regulating (i) environmental matters pertaining to the Project, (ii) the offer or sale of any securities, or (iii) the marketability of title to any property, including the Real Property, Improvements, or Equipment.

SECTION 3.2. *Covenants by the County.* Upon receipt of written request from Sponsor(s), the County agrees to consider a request Sponsor(s) may make for an extension of the Investment Period in accordance with and up to the limits permitted under Section 12-44-30(13) of the Act, and upon granting of any such extension (if any), cooperate with Sponsor(s) in the filing with the DOR a copy of such extension within the time period required under the Act. Such extension may be provided by a resolution of County Council.

SECTION 3.3. *Representation, Warranties and Covenants of the Sponsors.* Sponsors make the following representations and warranties, and enters into the following covenants with the County:

(a) JLL is a corporation duly organized and validly existing under the laws of the State of Delaware. The Sponsors have full corporate power to execute the Documents to which they are a party and to fulfill their obligations described in the Documents and, by proper corporate action, have authorized the execution and delivery of the Documents to which they are a party.

(b) To the best of Sponsors' knowledge, neither the execution and delivery of the Documents to which Sponsors are a party, nor the consummation and performance of the transactions described in the Documents violate, conflict with, or will, to their knowledge, result in a material breach of any of the material terms, conditions, or provisions of any agreement,

restriction, statute, law, rule, order, or regulation to which Sponsors are now a party or by which they are bound.

(c) To the best of Sponsors' knowledge, there is no action, suit, proceeding, inquiry, or investigation at law or in equity before or by any judicial or administrative court or agency, public board or body, pending or threatened, against or affecting Sponsors wherein an unfavorable decision, ruling, or finding would materially adversely affect the Sponsors or the consummation of the transactions described in the Documents.

(d) The Documents to which the Sponsors are a party are (or, when executed, will be) legal, valid and binding obligations of the Sponsors enforceable against the Sponsors in accordance with their respective terms, except as such terms may be limited by laws affecting creditors' rights generally.

(e) In accordance with and as required by Section 12-44-40(F) of the Act, the Sponsors commit to the Project with a minimum investment of at least Two Million Five Hundred Thousand Dollars (\$2,500,000).

(f) The execution and delivery of this Fee Agreement by the County has been instrumental in inducing Sponsors to acquire and construct the Project in the County.

(g) Each year during the term of the Fee Agreement, Sponsor(s) shall deliver to the County Auditor, the County Assessor, and the County Treasurer a copy of the most recent annual filings made with DOR with respect to the Project, not later than thirty (30) days following delivery thereof to DOR. In addition, Sponsor(s) shall report during the Investment Period, at the same time they file the most recent filings with DOR, the number of new jobs created and maintained at the Project to the County.

ARTICLE IV

COMMENCEMENT AND COMPLETION OF THE PROJECT; MODIFICATIONS

SECTION 4.1. *The Project.*

(a) The Sponsors have acquired, constructed, and/or installed or made plans for the acquisition, construction, and/or installation of certain Economic Development Property which comprises the Project.

(b) Pursuant to the Act, the Sponsors and the County hereby agree that the property comprising the Project shall be Economic Development Property as defined under the Act.

(c) Notwithstanding any other provision of this Fee Agreement, Sponsor(s) may place Real Property, Improvements, and/or Equipment into service at any time during the Investment Period under this Fee Agreement.

SECTION 4.2. *Diligent Completion.* Sponsors agree to use their reasonable efforts to cause the acquisition, construction, and installation of the Project to be completed. Anything

contained in this Fee Agreement to the contrary notwithstanding, Sponsor(s) shall not be obligated to complete the acquisition of the Project and may terminate this Agreement with respect to all or a portion of the Project as set forth in Article X, subject, however, to the clawback and reimbursement provisions of the Inducement Agreement.

SECTION 4.3. *Modifications to Project.* Sponsor(s) may make or cause to be made from time to time any additions, modifications or improvements to the Project that they may deem desirable for business purposes.

SECTION 4.4. *Representations and Covenants.* No representation of the County is hereby made with regard to the design, capabilities, or condition of the Project or compliance by the Project with laws regulating the construction or acquisition of the Project or environmental matters pertaining to the Project.

**ARTICLE V
PAYMENTS-IN-LIEU OF TAXES; DISPOSITION OF
PROPERTY; REPLACEMENT PROPERTY; FEE TERM**

SECTION 5.1. *Payments-in-Lieu of Taxes.* The Parties acknowledge that under the South Carolina Constitution and pursuant to the Act, the Project is exempt from *ad valorem* property taxes. However, the Sponsor(s) shall be required to make Payments-in-Lieu-of-Taxes with respect to the Project as provided in this Section 5.1. In accordance with the Act, and unless this Fee Agreement is sooner terminated, Sponsor(s) shall make annual Payments-in-Lieu-of-Taxes with respect to the Project (including, to the extent applicable, on behalf of any other Sponsors), said payments being due in the manner and payable and subject to penalty assessments prescribed by the Act. Such amounts shall be calculated and payable as follows:

(a) Sponsor(s) have agreed to make annual Payments-in-Lieu of Taxes with respect to the Project in an amount equal to the property taxes that would be due with respect to such Project, if it were taxable, but using an assessment ratio of 6.0% and a fixed millage rate equal to the legally levied cumulative property tax millage rate applicable on June 30 of the year preceding the calendar year in which this Fee Agreement is executed (which the parties understand to be 251.3 mills in effect on June 30, 2007). Subject in all events to the provisions of the Act, the fair market value estimate will be as follows:

- (i) for any real property, if real property is constructed for the fee or is purchased in an arm's length transaction, using the original income tax basis for South Carolina income tax purposes without regard to depreciation; otherwise, the fair market value must be reported at its fair market value for ad valorem property taxes as determined by appraisal; and

(ii) for personal property, using the original tax basis for South Carolina income tax purposes less depreciation allowable for property tax purposes, except that Sponsor(s) are not entitled to extraordinary obsolescence.

(b) The Payments-in-Lieu-of-Taxes must be made on the basis that the Project, if it were otherwise subject to *ad valorem* property taxes, would be allowed all applicable exemptions from those taxes, except for the exemptions allowed under Section 3(g) of Article X of the South Carolina Constitution and Section 12-37-220(B)(32) and (34) of the Code of Laws of South Carolina, as amended.

(c) Sponsor(s) shall make Payments-in-Lieu of Taxes for each year during the term hereof beginning with respect to the property tax year following the year in which Project is first placed in service. The Payments-in-Lieu of Taxes shall be made to the County Treasurer on the due dates which would otherwise be applicable for *ad valorem* property taxes for the Project, with the first payment being due on the first date following the delivery of this Fee Agreement when, but for this Fee Agreement, such taxes would have been paid with respect to the Project.

(d) Any property placed in service as part of the Project during the Investment Period shall be included in the calculation of payments pursuant to paragraphs (a) and (b), above, for a period not exceeding 20 years following the year in which such property was placed in service. Replacement Property shall be included (using its income tax basis) in the calculation of payments pursuant to paragraphs (a), (b) and (c), above, but only up to the original income tax basis of property which is being disposed of in the same property tax year. Replacement Property shall be deemed to replace the oldest property subject to this Fee Agreement which is disposed of in the same tax year that the Replacement Property is placed in service. More than one piece of Replacement Property can replace a single piece of Economic Development Property. Replacement Property does not have to serve the same function as the property it is replacing. To the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the property which it is replacing, the portion of such property allocable to the excess amount shall be subject to annual payments calculated as if the exemption for Economic Development Property under the Act were not allowed. Replacement Property is entitled to the fee payment pursuant to this Section 5.1 for the period of time remaining on the 20-year fee period for the property which it is replacing.

(e) Alternative Payment Method. The County and Sponsors agree that at such time as the total investment of Economic Development Property equals or exceeds Forty-Five Million Dollars (\$45,000,000) the Payments-in-Lieu-of-Taxes will be calculated according to an alternative payment method as provided in the Act. Said Alternative Payment Method shall yield a net present value equal to the net present value of the payments calculated pursuant to paragraphs (a) - (d) above using a discount rate as defined in Section 12-44-50(A)(3) of the Act. If, during the term of Payments-in-Lieu of Taxes, property included in the Payments-in-

Lieu-of-Taxes is disposed of, as provided in Section 5.2 of this Fee Agreement, the future schedule of payments will be recalculated to determine the amount of the remaining equal payments, taking into account the payments already made on the disposed property, such that the remaining schedule of payments, when combined with the net present value of total of payments already made, are equal to the net present value of the total payments otherwise due pursuant to paragraphs (a) - (d) above. Should additional Economic Development Property be invested during the Investment Period, the resulting Payments-in-Lieu of Taxes on such qualifying property shall be calculated in the same manner as herein described.

SECTION 5.2. *Disposal of Property; Replacement Property.*

(a) In any instance where Sponsor(s) in its/their sole discretion determines that any item or items of property included in the Project have become, in whole or in part, inadequate, obsolete, worn out, unsuitable, undesirable, or unnecessary, Sponsor(s) may remove such item (or such portion thereof as Sponsor(s) shall determine) or items and sell, trade in, exchange or otherwise dispose of it or them (as a whole or in part) without any responsibility or accountability to the County therefore. The loss or removal from the Project of any property, or any portion thereof, as a result of fire or other casualty, or by virtue of the exercise or threat of the power of condemnation or eminent domain, shall be deemed to be a disposal of such property, or portion thereof, pursuant to this Section 5.2. Subject to the provisions of Section 9.2(c), Section 5.1(d), and this Section 5.2 with respect to Replacement Property, the Payments-in-Lieu-of-Taxes required by Section 5 hereof shall be reduced by the amount thereof applicable to any property included in the Project, or part thereof, disposed of, or deemed disposed of, pursuant to this Section 5.2, subject, however, at all times to the provision of Section 9.2(c) regarding the maintenance of the minimum investment required by the Act.

(b) Sponsor(s) may, in its/their sole discretion, replace, renew or acquire and/or install other property in substitution for, any or all property or portions thereof disposed of, or deemed disposed of, pursuant to Section 5.2(a) hereof. Any such property may, but need not, serve the same function, or be of the same utility or value, as the property being replaced. Absent a written election to the contrary made at the time of filing the first property tax return that would apply to such property, such property shall be treated as Replacement Property.

SECTION 5.3. *Fee Term.* With respect to each Stage of the Project, the applicable term of this Fee Agreement shall be from the first day of the property tax year after the property tax year in which such Stage is placed in service through the last day of the property tax year which is the nineteenth year following the first property tax year in which such Stage is placed in service; provided, that the maximum term of this Fee Agreement shall not be more than 20 years from the end of the last year of the Investment Period or such longer period of time as shall be legally required or permitted under the Act. This Fee Agreement shall terminate with respect to the Project or any Stage or part thereof upon the earlier to occur of (a) payment of the final installment of Payments-in-Lieu-of-Taxes pursuant to Section 5.1

hereof, or (b) exercise by Sponsor(s) of its/their option to terminate pursuant to Section 10.1 hereof.

**ARTICLE VI
PROPERTY TAX EXEMPTION AND ABATEMENT**

SECTION 6.1. *Protection of Tax Exempt Status of the Project.* In order to insure that the Project is not and will not become subject to *ad valorem* property taxes under the laws of the State of South Carolina or any political subdivision thereof, the County and the Sponsors covenant that:

(a) all rights and privileges granted to any Party under this Fee Agreement or any other Documents shall be exercised so that if any conflict between this Section and any other provision in any document shall arise, then in that case, this Section shall control; and

(b) the County and the Sponsors have not committed and will not knowingly commit any act which would cause the Project to be subject to *ad valorem* property taxes by the County or political subdivision of the State of South Carolina in which any part of the Project is located.

SECTION 6.2. *Rescission and Reversion in the Event of Termination.* In the event it shall be determined by a court of competent jurisdiction that the Project or any portion thereof is subject to State, County, or other local property taxes, then, at the option of the Sponsors, the provisions of Section 11.4 hereof shall apply, either to the Project as a whole or to such portion thereof as the Sponsor(s) may elect.

**ARTICLE VII
EFFECTIVE DATE**

SECTION 7.1. *Effective Date.* This Fee Agreement shall become effective as of the date first written above.

**ARTICLE VIII
SPECIAL COVENANTS**

SECTION 8.1. *Confidentiality/Limitation on Access to Project.* The County acknowledges and understands that the Sponsors utilize confidential and proprietary processes and materials, services, equipment, trade secrets, and techniques, and that any disclosure of any information relating to such processes and materials, services, equipment, trade secrets, or techniques, including, but not limited to, disclosures of financial, sales, or other confidential information concerning the Sponsors' operations, would result in substantial harm to the Sponsors and could thereby have a significant detrimental impact on the Sponsors' employees and also upon the County. Therefore, the County agrees that, except as required by law, neither the County nor any employee, agent, or contractor of the County: (i) shall request or

be entitled to receive any such confidential or proprietary information; or (ii) shall disclose or otherwise divulge any such confidential or proprietary information to any other person, firm, governmental body or agency, or any other entity unless specifically required to do so by State law; provided, however, that the County shall have no less rights concerning information relating to the Project and the Sponsors than concerning any other property or property taxpayer in the County, and, provided further, that the confidentiality of such confidential or proprietary information is clearly disclosed to the County in writing. Prior to disclosing any confidential or proprietary information or allowing inspections of the Project or any property associated therewith, subject to the requirements of law, the Sponsor(s) may require the execution of reasonable, individual, confidentiality and non-disclosure agreements by any officers, employees, or agents of the County or any supporting or cooperating governmental agencies who would gather, receive, or review such information or conduct or review the results of any inspections. In the event that the County is required to disclose any confidential or proprietary information obtained from the Sponsors to any third party, the County agrees to provide the Sponsors with maximum possible advance notice of such requirement before making such disclosure, and to reasonably cooperate with any attempts by the Sponsors to obtain judicial or other relief from such disclosure requirement.

SECTION 8.2. *Assignment.* With the County's written consent, which shall not be unreasonably withheld, any or all of Sponsor(s)' interest in the Project and/or this Fee Agreement may be transferred or assigned by Sponsor or any assignee to any other entity; provided, however, that such approval is not required in connection with financing related transfers, transfers to affiliates and/or subsidiaries of Sponsor(s), or any other transfers not requiring consent of the County under the Act. No assignment, transfer, or sublease shall affect or reduce any of the obligations of Sponsor(s) hereunder, which shall continue in full force and effect as the obligations of a principal and not of a guarantor or surety, except that Sponsor(s) shall be released from its/their obligations hereunder upon the written consent of, and release by the County, which shall not be unreasonably withheld. Sponsor(s) shall give the County prior written notice of any such proposed assignment, transfer, or sublease and provide the County a copy of any such sublease, assignment, or transfer. The County further agrees that the County Council can provide any required consent by a resolution of County Council. The County Administrator and the Clerk to County Council are hereby expressly individually and jointly authorized and directed to evidence the County's consent by timely executing such documents as Sponsor(s) may reasonably request.

ARTICLE IX EVENTS OF DEFAULT AND REMEDIES

SECTION 9.1. *Events of Default Defined.* The occurrence of any one or more of the following events shall be an "Event of Default" on behalf of a Sponsor under this Fee Agreement:

(a) If Sponsor(s) shall fail to make any Payments-in-Lieu-of-Taxes or any other amount required under this Fee Agreement after written notice of such default has been given and such default continues for a period of 60 days; or

(b) If Sponsor(s) shall fail to observe or perform any covenant, condition, or agreement required herein to be observed or performed by Sponsor(s) (other than as referred to in Section 9.1(a) hereof), and such failure shall continue for a period of 60 days after written notice of default has been given to Sponsor(s) by the County; provided if by reason of "force majeure," as hereinafter defined, Sponsor(s) is unable in whole or in part to carry out any such covenant, condition or agreement or if it takes longer than 60 days to cure such default and Sponsor(s) is diligently attempting to cure such default, there shall be no Event of Default during such inability. The term "force majeure" as used herein shall mean circumstances not reasonably within the control of the parties, such as acts, without limitation, of God, strikes, lockouts or other industrial disturbances; war; acts of public enemies; mobilization or military conscription on a large scale; order of any kind of the government of the United States or any State, or any civil or military authority other than the County Council; insurrections; riots; landslides; earthquakes; fires; lightning; storms; droughts; floods; requisitions, confiscation, or commandeering of property; fuel restrictions; general shortages of transport, goods, or energy; or

(c) If Sponsor(s) shall file a voluntary petition seeking an order for relief in bankruptcy, or shall be adjudicated insolvent, or shall file any petition or answer or commence a case seeking any reorganization, composition, readjustment, liquidation or similar order for relief or relief for itself/themselves under any present or future statute, law or regulation, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of the Sponsor(s) or of the Project, or shall make any general assignment for the benefit of creditors, or shall admit in writing to their inability to pay their debts generally as they become due; or

(d) If a petition shall be filed or a case shall be commenced against Sponsor(s) seeking an order for relief in bankruptcy or any reorganization, composition, readjustment, liquidation or similar relief under any present or future statute, law, or regulation, and shall remain undismissed or unstayed for an aggregate of one hundred eighty (180) days (whether or not consecutive), or if any trustee, receiver, or liquidator of Sponsor(s) or of all or any substantial part of its/their properties or of the Project shall be appointed without the consent or acquiescence of Sponsor(s) and such appointment shall remain unvacated or unstayed for an aggregate of one hundred eighty (180) days (whether or not consecutive).

SECTION 9.2. Remedies on Default by Sponsor(s); Failure to Maintain Minimum Investment Required by the Act.

(a) Whenever any Event of Default shall have happened and be subsisting, the County may terminate this Fee Agreement. Although the Parties acknowledge that the Project is exempt from *ad valorem* property taxes, there shall be a lien on the Project for tax purposes as provided in Section 12-44-90 of the Act, and the County and any other taxing entity affected

thereby may, without limiting the generality of the foregoing, exercise the remedies provided by general law (Title 12, Chapter 49) and the Act relating to the enforced collection of taxes.

(b) The County's right to receive Payments-in-Lieu-of-Taxes hereunder shall have a first priority lien status pursuant to Section 12-44-90 of the Act and Chapters 4 and 54 of Title 12 of S.C. Code Ann. (1976), as amended. In the event Sponsor(s) should fail to make any of the payments required in this Fee Agreement, the item or installment so in default shall continue as an obligation of that Sponsor(s) until the amount in default shall have been fully paid, and, in the case of the Payments-in-Lieu of Taxes, subject to the penalties provided by law until paid.

(c) In the event Sponsor(s) fail to reach or maintain the minimum investment required by the Act Two Million Five Hundred Thousand Dollars (\$2,500,000), this Fee Agreement shall terminate and Sponsor(s) shall pay the County all amounts due pursuant to the Act as a result of such failure, if any. If the Sponsors fail to meet a total minimum investment level of Five Million Dollars (\$5,000,000) (without regard to depreciation) in the time period allowed under the Act (five years), or fail to maintain such \$5,000,000 investment after such five year period, and provided that at such time any Sponsor participating in the Project does not individually have an investment level of \$2,500,000, then such Sponsor's Payments-in-Lieu-of-Taxes arrangement shall terminate and that Sponsor (but not any other Sponsor) shall pay the County an additional amount equal (if any) to that Sponsor's total savings from the time the first Payments-in-Lieu-of-Taxes was made to that point (that is, the difference between the fee amount paid by that Sponsor and the amount which would have been otherwise due in case of normal property taxes with all applicable exemptions). In no event shall the Payments-in-Lieu-of-Taxes terminate with respect to any Sponsor as long as such Sponsor maintains a minimum investment of \$2,500,000 (without regard to depreciation).

(d) Sponsors acknowledge that they have projected certain investment levels and job creation requirements in connection with the Project as more particularly described in the Inducement Agreement. A failure to reach such commitments shall entitle the County to the remedy provided in the Inducement Agreement, which shall be the County's sole and exclusive remedy for Sponsor(s)' failure to reach such commitments. Therefore, a failure to reach such investment levels and job creation levels shall not in itself give the County the right to terminate this Fee Agreement.

SECTION 9.3. *Default by County and Sponsor(s)' Remedies.* In the event the County fails to observe or perform any covenant, condition, or agreement required to be performed or observed by the County under the Documents and this Fee Agreement, Sponsor(s) may bring such actions against the County as are available to it/them at law or in equity.

SECTION 9.4. *No Remedy Exclusive.* Except as expressly otherwise provided herein, no remedy herein conferred upon or reserved to the County or Sponsors is intended to be exclusive of any other available remedy or remedies, but in each and every instance such remedy shall be cumulative and shall be in addition to every other remedy given under the

Documents or now or hereafter existing at law or in equity or by statute. Unless otherwise provided herein or in the other Documents, no delay or omission to exercise any right or power shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

SECTION 9.5. *No Additional Waiver Implied by One Waiver.* In the event any warranty, covenant, or agreement contained in this Fee Agreement should be breached by Sponsor(s) or the County and thereafter waived by the other Party/Parties to this Fee Agreement, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach.

SECTION 9.6. *Certain Sponsor(s) Obligations to Survive Termination.* No termination or expiration of the term of this Agreement shall relieve Sponsor(s) of their liability and obligations to make the payments due and payable under this Fee Agreement, all of which shall survive any such termination.

**ARTICLE X
SPONSOR(S) OPTION TO TERMINATE**

SECTION 10.1. *Sponsor(s) Option to Terminate.* From time to time (including, without limitation, any time during which there may be subsisting an Event of Default), and at any time upon at least 30 days notice, Sponsor(s) may terminate this Fee Agreement with respect to the entire Project or any portion thereof. Upon termination of all or part of this Fee Agreement, Sponsor(s) will become liable for *ad valorem* property taxes on the Project or such portion thereof, prospectively only.

**ARTICLE XI
MISCELLANEOUS**

SECTION 11.1. *Leased Equipment.* The Parties hereto agree that, to the extent that applicable law allows or is revised or construed to allow the benefits of the Act, in the form of Payments-in-Lieu-of-Taxes to be made under Section 5.1(a), to be applicable to personal property to be installed in the buildings and leased to but not purchased by a Sponsor from any other Sponsor(s) under any form of lease, then such personal property shall, at the election of that Sponsor, be subject to Payments-in-Lieu-of-Taxes to the same extent as the Equipment covered by this Fee Agreement, subject, at all times, to the requirements of such applicable law. The Parties hereto further agree that this Fee Agreement may be interpreted or modified as may be necessary or appropriate in order to give proper application of this Fee Agreement to such tangible personal property without such construction or modification constituting an amendment to this Fee Agreement, and thus not requiring any additional action by the County Council. The County Administrator, after consulting with the County Attorney, shall be and hereby is authorized to make such modifications, if any, as may be necessary or appropriate in connection therewith.

SECTION 11.2. Notices. All notices, approvals, consents, requests and other communications hereunder shall be in writing and may be delivered personally, or may be sent by facsimile or certified mail, return receipt requested, to the following addresses, unless the parties are subsequently notified of any change of address in accordance with this Section 11.2:

If to Sponsors:

With a copy to:

If to the County:

Florence County, South Carolina
180 North Irby Street
Florence, South Carolina 29501
Attention: County Administrator
Facsimile: (843) 665-3035

Any notice shall be deemed to have been received as follows: (1) by personal delivery, upon receipt; (2) by facsimile, 24 hours after confirmed transmission or dispatch; and (3) by certified mail, 3 business days after delivery to the U.S. Postal authorities by the party serving notice.

SECTION 11.3. Binding Effect. This Fee Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns.

SECTION 11.4. Rescission and Severability. In the event that the Act or the Payments-in-Lieu-of-Taxes arrangement described in Section 5.1 hereof is determined to be invalid in its entirety, the Parties hereby agree that except as the final judicial decision may otherwise require, Sponsor(s) shall be entitled to retain any benefits received under or pursuant to this Fee Agreement; otherwise, in the event any provision of this Fee Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, that decision shall not invalidate or render unenforceable any other provision of this Fee Agreement, unless that decision destroys the basis for the transaction, in which event the Parties shall in good faith attempt to preserve, to the maximum extent possible, the benefits provided and to be provided to Sponsor(s) hereunder by either restructuring or reconstituting this Fee Agreement under any

then applicable law, including, but not limited to, Chapter 20 of Title 4 and Chapter 12 of Title 4, Code of Laws of South Carolina, as amended.

SECTION 11.5. *Fiscal Year; Property Tax Year.* If Sponsor's fiscal year changes in the future so as to cause a change in that Sponsor's property tax year, the Sponsor shall notify the County in writing, and the timing of the requirements set forth in this Fee Agreement shall be revised accordingly.

SECTION 11.6. *Amendments, Changes, and Modifications.* Except as otherwise provided in this Fee Agreement, this Fee Agreement may not be amended, changed, modified, altered, or terminated without the written consent of the County and the Sponsors. To the maximum extent allowed by law, any such County consent may be provided by a resolution of County Council.

SECTION 11.7. *Execution of Counterparts.* This Fee Agreement may be executed in several counterparts. Any action may be brought upon any counterpart of this Fee Agreement or any counterpart of any document that is attached to this Fee Agreement as an exhibit.

SECTION 11.8. *Law Governing Construction of Fee Agreement.* The laws of the State of South Carolina shall govern the construction of this Fee Agreement.

SECTION 11.9. *Headings.* The headings of the articles and sections of this Fee Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Fee Agreement.

SECTION 11.10. *Further Assurance.* From time to time, the County agrees to execute and deliver to Sponsor(s) such additional instruments as Sponsor(s) may reasonably request to effectuate the purposes of this Fee Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, FLORENCE COUNTY, SOUTH CAROLINA, and PROJECT JLL, pursuant to due authority, have duly executed this Fee Agreement, all as of the date first above written.

FLORENCE COUNTY, SOUTH CAROLINA

K. G. "Rusty" Smith, Jr.
Chair, Florence County Council

ATTEST:

Clerk to County Council

[Other Signature Pages Appear on Other Pages]

DRAFT

Project JLL

By: _____

Name: _____

Title: _____

[Other Signature Pages Appear on Other Pages]

DRAFT