

SOUTH CAROLINA)
)
CLARENDON COUNTY) A RESOLUTION
) (PROJECT SUNSHINE II)

AUTHORIZING AN AMENDMENT TO THE MASTER AGREEMENT GOVERNING THE SUMTER-CLARENDON INDUSTRIAL PARK BY AND BETWEEN CLARENDON COUNTY, SOUTH CAROLINA, AND SUMTER COUNTY, SOUTH CAROLINA, TO EXPAND THE BOUNDARIES OF THE PARK TO INCLUDE REAL PROPERTY; AND OTHER RELATED MATTERS.

WHEREAS, Clarendon County, South Carolina (“Clarendon”), and Sumter County, South Carolina (“Sumter,” with Clarendon, collectively, “Counties”), as authorized under Article VIII, Section 13(D) of the South Carolina Constitution and Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended (“Act”), have jointly developed the Sumter-Clarendon Industrial Park (“Park”);

WHEREAS, the Counties entered an agreement entitled “Master Agreement Governing the Sumter-Clarendon Industrial Park,” dated December 31, 2010 (“Master Agreement”), the provisions of which govern the operation of the Park;

WHEREAS, pursuant to Section 1.01, Clarendon desires to expand the boundaries of the Park to include property located in Clarendon, as more particularly described in the attached Exhibit A, on which [NAME OF ENTITY] is planning to locate its economic development project (“Property”); and

WHEREAS, pursuant to the Master Agreement, the expansion of the Park boundaries to include the Property is complete on adoption of this Resolution by Clarendon’s County Council and delivery of the description of the Property to Sumter.

NOW, THEREFORE, BE IT RESOLVED BY THE CLARENDON COUNTY COUNCIL:

Section 1. Expansion of Park Boundaries. There is authorized an expansion of the Park boundaries to include the Property. The Clarendon County Council Chair, or the Vice Chair in the event the Chair is absent, the Clarendon County Administrator and the Clerk to the Clarendon County Council are authorized to execute whatever documents and take whatever further actions as may be necessary to complete the expansion of the Park boundaries.

Section 2. Savings Clause. If any portion of this Resolution is unenforceable for any reason, then the validity and binding effect of the remainder is unaffected.

Section 3. General Repealer. Any portion of a resolution, the terms of which are in conflict with this Resolution, is, only to the extent of that conflict, repealed.

Section 4. Effectiveness. This Resolution is effective after its adoption by Clarendon County Council.

[ONE SIGNATURE PAGE AND ONE EXHIBIT FOLLOW]
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CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE

DATE: 3/11/21

Beulah B. Roberts

CLERK OF COURT
CLARENDON COUNTY, SC

Beulah Roberts, Clerk-Clarendon S.C.
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EXHIBIT A
DESCRIPTION OF PROPERTY

All that certain piece, parcel or tract of land, lying and being in the County of Clarendon, State of South Carolina, being shown and designated as 16.24 acres on that certain plat entitled, PLAT OF A TRACT OF LAND AND IMPROVEMENTS UPDATED MARCH 12, 1998, FOR CLEGAN PROPERTY, LLC, prepared by Duvalle W. Elliott, R.L.S., dated March 12, 1998, and recorded March 17, 1998, in the ROD Office for Clarendon County, South Carolina, in Book A-33 at Page 7. Said tract having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear. Be all measurements a little more or a little less.

Said premises having Clarendon County RMS #141-00-01-032-00. Said premises also being known as 1665 Joe Rogers Jr. Boulevard, Manning, South Carolina.

RESOLVED: March 8, 2021



(SEAL)
ATTEST:

Norathy M. Levy

Clerk to County Council

CLARENDON COUNTY, SOUTH CAROLINA

[Signature]

Chair, Clarendon County Council

DATE: 3/11/21

CLARENDON COUNTY
ORDINANCE NO. 2021-01

Brenda B. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

**AUTHORIZING THE EXECUTION AND DELIVERY OF AN
INFRASTRUCTURE CREDIT AGREEMENT BY AND BETWEEN
CLARENDON COUNTY, SOUTH CAROLINA, AND [PROJECT
SUNSHINE II]; PROVIDING FOR A SPECIAL SOURCE REVENUE
CREDIT; AND OTHER RELATED MATTERS.**

WHEREAS, Clarendon County, South Carolina ("County") acting by and through its County Council ("County Council") is authorized and empowered pursuant to the provisions of Sections 4-1-175 and 4-29-68 of the Code of Laws of South Carolina, 1976, as amended ("Act"), to provide special source revenue financing, secured by and payable solely from revenues of the County derived from payments in lieu of taxes pursuant to Article VIII, Section 13 of the South Carolina Constitution, for the purpose of defraying the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the County, for improved or unimproved real estate and personal property including machinery and equipment used in the operation of a manufacturing facility or commercial enterprise to enhance the economic development of the County;

WHEREAS, [Project Sunshine II], a [limited liability company organized and existing under the laws of the State of South Carolina] ("State") and authorized to do business in the State ("Company") intends to invest in the establishment of a commercial facility through the acquisition of land, a building, and improvements thereon ("Land and Building"); the construction of improvements thereon and/or therein; and/or the acquisition of personal property, including, but not limited to, equipment and furniture to be installed on and/or in the Land and Building;

WHEREAS, the Company expects to invest \$5,800,000 and create 75 full-time equivalent jobs over five years ("Project"), all as more fully set forth in the Infrastructure Credit Agreement attached hereto, and provided that approvals of various incentives contemplated for the Project are formalized by the State and/or County;

WHEREAS, the Company has caused to be prepared and presented to this meeting the form of the Infrastructure Credit Agreement by and between the County and the Company ("Infrastructure Credit Agreement"), which provides for a credit against the fee-in-lieu of tax payments ("FILOT Payments") made by the Company equal to 30% of such FILOT Payments for years 1-10;

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

WHEREAS, to induce the Company to locate in the County, the County Council understands that the Business Development Corporation of Clarendon County ("BDCCC") intends to enter into a grant agreement with the Company, to provide for a grant of up to \$70,000 ("Grant Agreement"); and

WHEREAS, the County Council intends this Ordinance to serve as an acknowledgement of the terms of that Grant Agreement:

NOW, THEREFORE, BE IT ORDAINED by the County Council in a meeting duly assembled as follows:

Section 1. To promote industry, develop trade, and utilize and employ the manpower, products, and natural resources of the State by assisting the Company to expand or locate an industrial facility in the State, the Infrastructure Credit Agreement is hereby authorized, ratified, and approved.

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Brenda Roberts, Clerk-Clarendon S.C.

Section 2. The form, terms, and provisions of the Infrastructure Credit Agreement presented to this meeting are hereby approved, and all of the terms, provisions, and conditions thereof are incorporated herein by reference as if the Infrastructure Credit Agreement were set out in this Ordinance in its entirety. The Chairman of the County Council and/or the County Administrator are authorized, empowered, and directed to execute, acknowledge, and deliver the Infrastructure Credit Agreement in the name of and on behalf of the County, and thereupon to cause the Infrastructure Credit Agreement to be delivered to the Company. The Infrastructure Credit Agreement is to be in substantially the form now before this meeting and hereby approved, with such changes therein as shall not be materially adverse to the County and as shall be approved by the officials of the County executing the same, upon the advice of counsel to the County, such official's execution thereof to constitute conclusive evidence of such official's approval of any and all changes or revisions therein from the form of the Infrastructure Credit Agreement now before this meeting.

Section 3. The County Council acknowledges that the BDCCC intends to enter into a Grant Agreement with the Company, the substantially final of which is attached as Exhibit B.

Section 4. The Chairman of the County Council and/or the County Administrator, for and on behalf of the County, are hereby authorized and directed to do any and all things necessary to implement the execution and delivery of the Infrastructure Credit Agreement and the performance of all obligations of the County under and pursuant to the Infrastructure Credit Agreement.

Section 5. The provisions of this Ordinance are hereby declared to be separable, and if any section, phrase, or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases, and provisions hereunder.

Section 6. Any prior ordinance, resolution, or order, the terms of which are in conflict with this Ordinance, are, only to the extent of that conflict, repealed.

Section 7. This Ordinance is effective after its third reading and public hearing.

[ONE SIGNATURE PAGE AND TWO EXHIBITS FOLLOW]
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EXHIBIT A
FORM OF INFRASTRUCTURE CREDIT AGREEMENT

EXHIBIT B
FORM OF GRANT AGREEMENT

SOUTH CAROLINA)
CLARENDON COUNTY)

I, the undersigned, Clerk to County Council of Clarendon County, South Carolina ("County Council"), DO HEREBY CERTIFY:

That the foregoing constitutes a true, correct, and verbatim copy of an Ordinance adopted by the County Council. The Ordinance was read and received a favorable vote at three public meetings of the County Council on January 11, 2021, February 8, 2021, and March 8, 2021. At least one day passed between first and second reading, and at least seven days passed between second and third readings. A public hearing was held on February 8, 2021, and notice of the public hearing was published in *The Item* on January [], 2021. At each meeting, a quorum of County Council was present and remained present throughout the meeting.

Attached are excerpts of the minutes of the meetings of the County Council.

IN WITNESS WHEREOF, I have hereunto set my Hand and the Seal of Clarendon County, South Carolina, as of March [], 2021.

[SEAL]



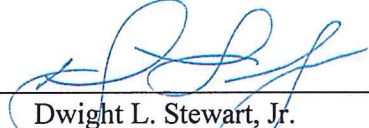
By: *Dorothy M. Levy*
Dorothy M. Levy
Clerk to County Council

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE
DATE 3/11/21
Beulah B. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

Beulah Roberts, Clerk-Clarendon S.C.
2021 MAR 11 PM 4:09

CLARENDON COUNTY, SOUTH CAROLINA



By: 
Dwight L. Stewart, Jr.
Chairman County Council

[SEAL]
Attest:

By: 
Dorothy M. Levy
Clerk to County Council

First Reading: January 11, 2021
Second Reading: February 8, 2021
Public Hearing: February 8, 2021
Third Reading: March 8, 2021

INFRASTRUCTURE CREDIT AGREEMENT

between

CLARENDON COUNTY, SOUTH CAROLINA

and

[PROJECT SUNSHINE II]

Dated as of March 8, 2021

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE

DATE: 3/11/21

Beulah B. Roberts

CLERK OF COURT
CLARENDON COUNTY, SC

2021 MAR 11 PM 4:09
Beulah Roberts, Clerk-Clarendon S.C.

“Act” shall mean, collectively, Title 4, Chapter 29 and Title 4, Chapter 1 of the Code, and all future acts amendatory thereof.

“Administration Expenses” means the expenses the County charges arising out of and relating to in the negotiation, approval and implementation of the terms and provisions of this Agreement, including reasonable attorney’s and consultant’s fees. Administration Expenses does not include any costs, expenses, including attorney’s fees, incurred by the County (i) in defending challenges to the Fee Payments or other incentives provided by this Agreement brought by third parties or the Company or its affiliates and related entities, or (ii) in connection with matters arising at the request of the Company outside of the immediate scope of this Agreement, including amendments to the terms of this Agreement.

“Agreement” shall mean this Agreement, as the same may be amended, modified, or supplemented in accordance with the terms hereof.

“Company” shall mean [Project Sunshine II], its successors and assigns.

“Cost” or “Cost of the Infrastructure” shall mean the cost of acquiring, by construction and purchase, the Infrastructure and shall be deemed to include, whether incurred prior to or after the date of the Agreement: (a) obligations incurred for labor, materials, and other expenses to builders and materialmen in connection with the acquisition, construction, and installation of the Infrastructure; (b) the cost of construction bonds and of insurance of all kinds that may be required or necessary during the course of construction and installation of the Infrastructure, which is not paid by the contractor or contractors or otherwise provided for; (c) the expenses for test borings, surveys, test and pilot operations, estimates, plans and specifications, and preliminary investigations therefor, and for supervising construction, as well as for the performance of all other duties required by or reasonably necessary in connection with the acquisition, construction, and installation of the Infrastructure; and (d) all other costs which shall be required under the terms of any contract for the acquisition, construction, and installation of the Infrastructure.

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

“Event of Default” shall mean, with reference to this Agreement, any of the occurrences described in Section 5.01 hereof.

“Infrastructure” shall mean the Project’s infrastructure, real estate, and all improvements thereon, and personal property including machinery and equipment used in the operation thereof, as are permitted under the Act.

“Minimum Investment Requirement” shall mean an aggregate investment of not less than \$5,800,000.00 in the Project within 5 years from the effective date of this Agreement.

“Minimum Jobs and Investment Requirement Period” shall mean the period beginning on the date of this Agreement and ending five years thereafter.

“Minimum Jobs Requirement” shall mean the creation of at least 75 new, full-time equivalent jobs. Full time equivalent jobs shall include full time jobs and part time jobs that equal a full-time job.

“Ordinance” shall mean Ordinance No. 2021-[] enacted by the County Council on March 8, 2021, authorizing the execution and delivery of this Agreement.

“Park” shall mean the Sumter-Clarendon Industrial Park established pursuant to the terms of the Park Agreement.

“Park Agreement” shall mean the Master Agreement Governing the Sumter-Clarendon Industrial Park, dated December 31, 2010, between the County and Sumter County, South Carolina, as amended or supplemented.

SECTION 2.02. Representations by the Company. The Company makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) The Company is a corporation duly organized, validly existing, and in good standing, under the laws of the State Carolina, has power to enter into this Agreement, and by proper company action has been duly authorized to execute and deliver this Agreement.

(b) This Agreement has been duly executed and delivered by the Company and constitutes the legal, valid, and binding obligation of the Company, enforceable in accordance with its terms except as enforcement thereof may be limited by bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally. If the Company files for bankruptcy protection during the term of this Agreement, the Company hereby admits for purposes of the bankruptcy protection proceedings that the Company's pre-and post-petition fee in lieu of tax payments are to be accorded the same treatment and priority as property tax payments.

(c) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement, will result in a material breach of any of the terms, conditions, or provisions of any corporate restriction or any agreement or instrument to which the Company is now a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of the Company, other than as may be created or permitted by this Agreement.

(d) The financing of the Infrastructure by the County has been instrumental in inducing the Company to acquire and construct the Project in Clarendon County and in the State.

SECTION 2.03. Statement of Intent. The Company anticipates that within the Minimum Jobs and Investment Requirement Period it will invest the Minimum Investment Requirement and create the Minimum Jobs Requirement.

ARTICLE III SPECIAL SOURCE REVENUE CREDITS

SECTION 3.01. Payment of Costs of Infrastructure. The Company agrees to pay, or cause to be paid, all costs of the Infrastructure as and when due. The Company agrees to complete the acquisition and construction of the Infrastructure pursuant to the plans and specifications approved by the Company. The plans and specifications for the Infrastructure may be modified from time to time as deemed necessary by the Company.

SECTION 3.02. Completion of Infrastructure. The Company shall notify the County of the date on which the Infrastructure is substantially completed and certify that all costs of acquisition and construction of the Infrastructure then or theretofore due and payable have been paid and the amounts which the Company shall retain for payment of Costs of the Infrastructure not yet due or for liabilities which the Company is contesting or which otherwise should be retained.

SECTION 3.03. Special Source Revenue Credits.

(a) Commencing in the year after improvements are first placed in service, the County hereby promises to provide a credit equal to 30% of the Fee Payments in years 1-10 (collectively, "Credits"). THIS AGREEMENT AND THE SPECIAL SOURCE REVENUE CREDITS BECOMING DUE HEREON ARE LIMITED OBLIGATIONS OF THE COUNTY PROVIDED BY THE COUNTY SOLELY FROM THE FEE PAYMENTS DERIVED BY THE COUNTY PURSUANT TO THE PARK AGREEMENT, AND DO NOT AND SHALL NEVER CONSTITUTE AN INDEBTEDNESS OF THE COUNTY WITHIN THE MEANING OF ANY CONSTITUTIONAL PROVISION (OTHER THAN THE PROVISIONS OF ARTICLE X, SECTION 14(10) OF THE SOUTH CAROLINA CONSTITUTION) OR STATUTORY LIMITATION AND DO NOT AND SHALL NEVER CONSTITUTE OR GIVE RISE TO A

then (a) the Company shall automatically (without further action by either Party) receive a negative Special Source Revenue Credit, from year to year (if and as necessary), to such an amount as to offset, in aggregate, the full amount of any exemption received, (b) the Special Source Revenue Credits offered under this Agreement shall be automatically reduced (without further action by either Party), from year to year, to such an amount as to offset, in aggregate, the full amount of any exemption received; or (c) a combination of (a) and (b) so as to ensure the total amount of any reduction in each Fee Payment is limited to no more than 30% of what the Fee Payment would have been absent the exemption.

In the event a negative Special Source Revenue Credit results in an additional Fee Payment being due from the Company to the County, then the Company shall make such payment with and as part of the Company's payment of the Fee Payment due for the then-current tax year.

ARTICLE IV
CONDITIONS TO DELIVERY OF AGREEMENT;
TITLE TO INFRASTRUCTURE

SECTION 4.01. Documents to be Provided by County. Prior to or simultaneously with the execution and delivery of this Agreement, the County shall provide to the Company:

(a) A copy of the Ordinance, duly certified by the Clerk of the County Council under its corporate seal to have been duly enacted by the County and to be in full force and effect on the date of such certification; and

(b) Such additional certificates (including appropriate no-litigation certificates and certified copies of ordinances, resolutions, or other proceedings adopted by the County), instruments or other documents as the Company may reasonably request.

SECTION 4.02. Transfers of Project. The County hereby acknowledges that the Company may from time to time and in accordance with applicable law, sell, transfer, lease, convey, or grant the right to occupy and use the Project, in whole or in part, to others; provided however, any assignment of this Agreement shall be subject to the consent of the County, such consent not to be unreasonably withheld. No sale, lease, conveyance, or grant shall relieve the County from the County's obligations to provide Special Source Revenue Credits to the Company, or its assignee of such payments, under this Agreement.

ARTICLE V
EVENTS OF DEFAULT; REMEDIES; NONWAIVER

SECTION 5.01. Events of Default. If the County shall fail duly and punctually to perform any covenant, condition, agreement, or provision contained in this Agreement on the part of the County to be performed, which failure shall continue for a period of 30 days after written notice by the Company specifying the failure and requesting that it be remedied is given to the County by first-class mail, the County shall be in default under this Agreement (an "Event of Default"). Except with respect to any payment due and owing under this Agreement (which is recoverable according to the regular enforcement for *ad valorem* taxes), if the Company shall fail duly and punctually to perform any covenant, condition, agreement, or provision contained in this Agreement on the part of the Company to be performed, which failure shall continue for a period of 30 days after written notice by the County specifying the failure and requesting that it be remedied is given to the Company by first-class mail, the Company shall be in default under this Agreement (likewise an "Event of Default").

SECTION 5.02. Legal Proceedings. Upon the happening and continuance of any Event of Default (except for failure by the Company to invest the Minimum Investment Requirement and create the Minimum Jobs Requirement, which is addressed in Section 3.03), then and in every such case the Company or the County, as the case may be, in its discretion may:

Agreement, when (i) delivered or (ii) sent by facsimile and confirmed by United States first-class registered mail, postage prepaid, addressed as follows:

(a) if to the County: Clarendon County, South Carolina
Attn: Clarendon County Administrator
411 Sunset Drive
Manning, South Carolina 29102-2423

with a copy to: Kozlarek Law LLC
(does not constitute notice) Attn: Michael E. Kozlarek, Esq.
Post Office Box 565
Greenville, South Carolina 29602-0565

(b) if to the Company: [Project Sunshine II]
Attn: []
[]
[]

with a copy to: []
(does not constitute notice) []
[]
[]

The County and the Company may, by notice given under this Section 6.05, designate any further or different addresses to which subsequent notices, certificates, requests, or other communications shall be sent.

SECTION 6.06. Applicable Law. The laws of the State, without regard to any conflict of laws provisions that would require the use of another jurisdiction’s laws, shall govern the construction of this Agreement.

SECTION 6.07. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same instrument.

SECTION 6.08. Amendments. This Agreement may be amended only by written agreement of the parties hereto.

SECTION 6.09. Waiver. Either party may waive compliance by the other party with any term or condition of this Agreement only in a writing signed by the waiving party.

SECTION 6.10. Administration Expenses. The Company will reimburse, or cause reimbursement to, the County for Administration Expenses in the amount of \$5,000. The Company will reimburse the County for its Administration Expenses on receipt of a written request from the County or at the County’s direction, which request shall include a general statement of the amount and nature of the Administration Expense. The Company shall pay the Administration Expense as set forth in the written request no later than 30 days following receipt of the written request from the County. The payment by the Company of the County’s Administration Expenses shall not be construed as prohibiting the County from engaging, at its discretion, the counsel of the County’s choice.

SECTION 6.11. Indemnification Covenants.

(a) Except as provided in paragraph (d) below, the Company shall indemnify and save the County, its employees, elected officials, officers and agents (each, an “Indemnified Party”) harmless against and from all liability or claims arising from the County’s execution of this Agreement, performance of the County’s

IN WITNESS WHEREOF, Clarendon County, South Carolina, has caused this Agreement to be executed by the Chairman of its County Council and its corporate seal to be hereunto affixed and attested by the Clerk of its County Council and [Project Sunshine II] has caused this Agreement to be executed by its authorized officer, all as of the day and year first above written.



CLARENDON COUNTY, SOUTH CAROLINA

By: 
Dwight L. Stewart, Jr.
Chairman County Council

[SEAL]
Attest:

By: 
Dorothy M. Levy
Clerk to County Council

[PROJECT SUNSHINE II]

Signed: _____
Name: _____
Title: _____

DATE 3/11/21

Beverly B. Roberts

GRANT AGREEMENT
CLARENDRON COUNTY, SC

This GRANT AGREEMENT, effective March 8, 2021 (“Agreement”), between the Business Development Corporation of Clarendon County (“BDCCC”) and [Project Sunshine II] (“Company,” with BDCCC, collectively, “Parties,” each, a “Party”).

WITNESSETH:

WHEREAS, the Company has committed to making an investment of not less than \$5,800,000 in taxable property and creating not less than 75 new, full-time equivalent jobs to develop the Project, as more fully defined and described in the Infrastructure Credit Agreement, between Clarendon County, South Carolina, and the Company, dated March 8, 2021 (“Fee Agreement”);

WHEREAS, to assist the Company in developing the Project, the BDCCC has determined to provide a grant in an amount not to exceed \$70,000 to the Project to reimburse the Company for the “Cost” (defined below) associated with the Project (“Grant Funds”):

NOW, THEREFORE, in consideration of \$5.00, the respective representations and covenants contained in this Agreement and other good and valuable consideration the receipt of which each Party acknowledges, the Parties agree:

ARTICLE I
ADDITIONAL DEFINITIONS

Each term defined in this Article has the meaning specified.

“Cost” means the cost, not to exceed \$70,000, of acquiring, by construction or purchase, the Project, including the real property and the infrastructure, and shall be deemed to include, whether incurred prior to or after the date of this Agreement: (a) obligations incurred for labor, materials, and other expenses to contractors, builders, and materialmen in connection with the acquisition, construction, and installation of the Project; (b) the cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of construction of the Project which are not paid by the contractor or contractors or otherwise provided for; (c) the expenses for environmental investigations and remediation, test borings, surveys, test and pilot operations, estimates, plans and specifications and preliminary investigations therefor, and for supervising construction as well as for the performance of all other duties required by or reasonably necessary in connection with the acquisition, construction, and installation of the Project; (d) compensation of legal, accounting, financial, and printing expenses, fees, and all other expenses incurred in connection with the Project; (e) all other costs which the Company shall be required to pay under the terms of any contract or contracts for the acquisition, construction, and installation of the Project, including without limitation, development fees, bank fees, interest expense and professional engineering costs; and (f) any sums required to reimburse the Company for advances made for any of the above items, or for any other work done and costs incurred by the Company which are for the acquisition of land or property of a character subject to the allowance for depreciation provided for under Section 167 of the Internal Revenue Code of 1986, as amended, and included in the Project.

ARTICLE II
DISBURSEMENT OF GRAND FUNDS

SECTION 2.01. Grant Funds Disbursement. Following the Company’s expenditure of Cost, the Company shall provide documentation to the BDCCC with a written request for the disbursement of the Grant Funds to the Company. The Company shall use the Grant Funds to provide for a reimbursement of the Company’s prior expenditure for Cost and for no other purpose.

SECTION 2.02. Certification of Cost. No more than 10 days after the BDCCC’s demand for additional

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Beverly B. Roberts, Clerk - Clarendon County, SC

documentation, the Company shall provide the BDCCC with additional documentation establishing the Company used the Grant Funds for Cost.

SECTION 2.03. Repayment of Grant Funds. If the Company does not meet either the Investment Commitment or the Job Commitment by the end of the Investment Period (all as defined and described in the Fee Agreement), then the Company shall repay a pro rata amount of any Grant Funds received according to this Agreement calculated as follows:

Aggregate Grant Funds received *

$[(1-(\text{Actual Investment}/\text{Investment Requirement})) + (1-(\text{Actual Jobs}/\text{Job Requirement}))] / 2$

= Repayment Amount

For example, if the Company has received \$70,000 in Grant Funds according to this Agreement, but does not meet the Investment Commitment or the Job Commitment by the end of the Investment Period, but instead only makes an investment of \$4,350,000 and creates 60 jobs by the end of the Investment Period, then the Company would be required to repay to the BDCC approximately \$15,750.00, calculated as follows:

$\$70,000 * [(1-(4,350,000 / 5,800,000)) + (1-(60 / 75))] / 2 = \$15,750.00$

Any payment made under this Section 2.03, shall be due no more than 30 days after the date after which *ad valorem* taxes become delinquent and shall be treated as a FILOT Payment under the Fee Agreement and shall be subject to statutory interest if not paid when due as if the Grant Funds were taxes due pursuant to Section 12-54-25, Code of Law of South Carolina 1976, as amended. Further, if the Company fails to meet at least 50% of the Investment Commitment and 50% of the Job Commitment by the end of the Investment Period, then the Company shall repay 100% of the Grant Funds received to the BDCCC.

ARTICLE III REMEDIES

SECTION 3.01. Remedies. If a Party fails to perform under this Agreement, then the other Party may take whatever action at law or in equity that the non-defaulting Party deems appropriate, necessary, or desirable to enforce performance and observance of this Agreement.

SECTION 3.02. Nonwaiver. No delay or omission to exercise any right or power accruing upon any continuing default hereunder shall impair any such right or power or is a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

ARTICLE IV MISCELLANEOUS

SECTION 4.1. Notices. Any notice, election, demand, request or other communication to be provided under this Agreement is effective when delivered to the party named below or when deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed as follows (or addressed to such other address as any party shall have previously furnished in writing to the other party), except where the terms hereof require receipt rather than sending of any notice, in which case such provision shall control:

AS TO THE COMPANY:

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE
DATE 3/11/21

Beulah B. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

WITH COPY TO:
(does not constitute notice)

AS TO THE BDCCC: Business Development Corporation of
Clarendon County
Attn: Executive Director
411 Sunset Boulevard
Manning, South Carolina 29102

WITH COPIES TO: Michael E. Kozlarek, Esq.
(does not constitute notice) Kozlarek Law LLC
Post Office Box 565
Greenville, South Carolina 29602

Clarendon County, South Carolina
Attn: County Administrator
411 Sunset Boulevard
Manning, South Carolina 29102

SECTION 4.2. Binding Effect. This Agreement is binding on and inures to the Parties' benefit, and to their respective successors and assigns.

SECTION 4.3. Counterparts. This Agreement may be executed in any number of counterparts, in original, by facsimile or by other electronic means, and all of the counterparts taken together are deemed to constitute one and the same instrument.

SECTION 4.4. Governing Law. This Agreement and all documents executed in connection herewith are construed in accordance with and governed by the law of the State of South Carolina without regard to any conflict of law provision that would suggest the use of another jurisdiction's law.

SECTION 4.5. Amendments. The provisions of this Agreement may be modified or amended only in writing by an agreement or agreements entered into between Parties.

SECTION 4.6. Further Assurance. From time to time each Party agrees to execute and deliver to the other Party additional instruments as either Party may reasonably request to effectuate the purposes of this Agreement.

SECTION 4.7. Severability. If any provision of this Agreement is declared illegal, invalid or unenforceable for any reason, the remaining provisions hereof shall be unimpaired, and such illegal, invalid or unenforceable provision shall be reformed so as to most closely effectuate the legal, valid and enforceable intent thereof and so as to afford the Company with the same benefit to be derived herefrom.

IN WITNESS OF THIS AGREEMENT, the BDCCC has caused this Agreement to be executed in its name; and the Company has caused this Agreement to be executed by its duly authorized officer, all as of the day and year first above written.

**BUSINESS DEVELOPMENT CORPORATION OF
CLARENDON COUNTY**

Signature: _____

Name: _____

Title: _____

[PROJECT SUNSHINE II]

Signature: _____

Name: _____

Title: _____