

## FIRST AMENDMENT OF FEE IN LIEU OF TAX AGREEMENT

This First Amendment of Fee in Lieu of Tax Agreement (the “First Amendment”) is made and entered into as of \_\_\_\_\_, 2016, by and among Greenville County, South Carolina (“County”), a body politic and corporate and political subdivision of the State of South Carolina, and Solar Atmospheres Southeast, Inc., a South Carolina corporation, Greenville Technical Associates, LLC, a South Carolina limited liability company, and one or more sponsor affiliates (together, the “Company”).

WHEREAS, all capitalized terms not specifically defined herein shall have the meaning as defined and described in the Fee Agreement (as that term is defined below), and if not defined therein shall have the meanings as defined in Title 12, Chapter 44 of the Code of Laws of South Carolina 1976, as amended (the “Code”), and if not defined therein shall have the meanings as defined in Title 4, Chapters 1 and 29 of the Code; and

WHEREAS, the County and the Company previously entered into a Fee in Lieu of Tax Agreement dated as of November 1, 2014 (the “Fee Agreement”), a copy of which is attached hereto as Exhibit A; and

WHEREAS, the Fee Agreement originally provided for, among other things, a fee-in-lieu of *ad valorem* taxes benefit to the Company in connection with an investment of not less than \$10,000,000 in the Project (as defined in the Fee Agreement) by the end of the Project Period as defined in the Fee Agreement; and

WHEREAS, the Company, as Sponsor, along with one or more existing, or to be formed or acquired subsidiaries, or affiliated or related entities including any Sponsor Affiliate (as such term is defined in the Fee Agreement), is planning to expand the Project and increase its investment commitment thereunder by \$5,000,000 (the “Expansion Project”) to a total aggregate amount of \$15,000,000 by the end of the Project Period; and

WHEREAS, in connection with the Expansion Project, the Company has requested that the County amend the Fee Agreement to (i) reduce the assessment ratio under the Fee Agreement from 6.5% to 6%, (ii) to extend the Term, under and defined in the Fee Agreement, by ten (10) years, and (iii) to extend the Project Period under and defined in the Fee Agreement, by three (3) years; and

WHEREAS, County has approved and authorized the execution of this First Amendment by an Ordinance of County Council adopted \_\_\_\_\_, 2016.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the County and the Company agree as follows:

1. The Fee Agreement shall be and is hereby amended by striking “\$10,000,000” in the second (2<sup>nd</sup>) recital and replacing with “\$15,000,000”.
2. The Fee Agreement shall be and is hereby amended by adding the following new recital after the fourth (4<sup>th</sup>) recital:

WHEREAS, the County, pursuant to an Ordinance adopted \_\_\_\_\_, 2016, authorized the amendment of this Agreement, the terms of which are set forth in that First Amendment dated \_\_\_\_\_, 2016; and

3. The Fee Agreement shall be and is hereby amended such that any references to a minimum investment by the Company of \$10,000,000 shall read \$15,000,000, including but not limited to such reference in the definition of “Minimum Investment” under Section 1.01 of the Fee Agreement.

4. The Fee Agreement shall be and is hereby amended such that the Project Period of the Fee Agreement be extended by three (3) years, including but not limited to such reference in the definition of “Project Period” in Section 1.01 of the Fee Agreement, which is hereby amended to read as follows:

“**Project Period**” shall mean the period beginning with the first day of any purchase or acquisition of Economic Development Property and ending eight (8) years after the Commencement Date.

5. The Fee Agreement shall be and is hereby amended such that the Term of the Fee Agreement be extended by ten (10) years, including but not limited to such reference in Section 4.01 of the Fee Agreement, which is hereby amended to read as follows:

Section 4.01 Term.

Subject to the terms and provisions herein contained, with respect to each Project Increment, this Agreement shall be and remain in full force and effect for a term commencing on the date hereof, and ending at midnight on December 31 of the year which is the twenty-ninth (29<sup>th</sup>) year following the first year in which each Project Increment is placed in service, unless sooner terminated as herein permitted; provided that, if at the expiration of the Term payment of all FILOT Payments under Section 5.02 hereof relating to the operation of the Project during the Term have not been made, the Term shall expire on such later date as such payments shall have been made in full or so provided for; provided, further, that such extension of the Term shall not increase the number of FILOT payments for which the Company qualifies under Section 5.02 hereof.

6. The Fee Agreement shall be and is hereby amended such that any references to an assessment ratio of six and one-half percent (6.5%) shall read six-percent (6%), including but not limited to such reference in Section 5.02(b) of the Fee Agreement.

7. Except as described in Sections 1 through 6 of this First Amendment, the Fee Agreement shall remain unchanged and in full force.

8. If any term, provision, or any portion of this First Amendment shall, to any extent and for any reason, be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this First Amendment shall not be affected thereby and shall nevertheless remain in full force and effect, and each term and/or provision of this First Amendment shall be valid and enforceable to the fullest extent permitted by the law. To the extent that any benefits for the Company provided under this First Amendment are held invalid or unenforceable, the County, to the extent permitted by the law, shall take whatever action required and permitted under the law

to provide the Company with incentives that would afford the Company the same or substantially similar value of those benefits found invalid or unenforceable.

9. Counterparts. The parties may execute this First Amendment in counterparts, each of which is an original and all of which, together, constitutes one and the same First Amendment.

*[signatures on following pages]*

IN WITNESS WHEREOF, Greenville County, South Carolina, has executed this First Amendment by causing its name to be hereunto subscribed by the Chairman of the County Council for the County and its County Administrator and attested by the Clerk to the County Council, and the Company, as Sponsor, and the Sponsor Affiliate have each executed this First Amendment by causing its corporate name to be hereunto subscribed by its authorized representatives, all being done as of the day and year first written above.

GREENVILLE COUNTY, SOUTH CAROLINA

\_\_\_\_\_  
Bob Taylor  
County Council Chairman

\_\_\_\_\_  
Date

\_\_\_\_\_  
Joseph M. Kernell  
County Administrator

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Theresa B. Kizer  
Clerk to County Council

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Solar Atmospheres Southeast, Inc.

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

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

Date: \_\_\_\_\_

Greenville Technical Associates, LLC

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

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

Date: \_\_\_\_\_

**EXHIBIT A**  
**Fee Agreement**