

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AUTHORIZING THE ADDITION OF SWEET STREET REALTY, LLC AS A SPONSOR TO AN EXISTING FEE IN LIEU OF TAX AND INFRASTRUCTURE IMPROVEMENT CREDIT ARRANGEMENT BETWEEN GREENVILLE COUNTY, SOUTH CAROLINA (THE “COUNTY”) AND SWEET STREET DESSERTS, INC. AND THE AMENDMENT OF THE FEE IN LIEU OF TAX AGREEMENT BETWEEN THE COUNTY AND SWEET STREET DESSERTS, INC. TO ADDRESS THE INCLUSION OF SWEET STREET REALTY, LLC AS A SPONSOR; AND OTHER MATTERS RELATING TO THE FOREGOING.**

**WHEREAS**, Greenville 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 the Code of Laws of the State of South Carolina, 1976, as amended (the “Code”), including, without limitation, Chapter 44 of Title 12 of the Code (the “Act”), and the caselaw of the Courts of the State of South Carolina, to offer and provide certain privileges, benefits, and incentives to commercial enterprises as inducements for economic development within the County; to acquire, or cause to be acquired, properties (which such properties constitute “projects” as defined in the Act) and to enter into agreements with any business to construct, operate, maintain and improve such projects; to enter into or allow financing agreements with respect to such projects; and, to accept any grants for such projects through which powers the industrial and business development of the State of South Carolina will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State of South Carolina and thus utilize and employ the manpower, agricultural products and natural resources of the State and benefit the general public welfare of the County by providing services, employment, recreation, tourism or other public benefits not otherwise provided locally; and

**WHEREAS**, the County is authorized by the Act to execute one or more fee-in-lieu of tax agreements (each, a “fee agreement”), as provided for in the Act, with respect to such projects; and

**WHEREAS**, the County is authorized by Article VIII, Section 13 of the South Carolina Constitution and Sections 4-1-170, 4-1-172 and 4-1-175 of the Code (the “Joint-County Industrial and Business Park Act”), to enter into agreements with one or more contiguous counties (a “Park Agreement”) for the creation and operation of one or more joint-county industrial and business parks (a “Park”); and

**WHEREAS**, the County is authorized by Section 12-44-70 of the Act and Section 4-1-175 of the Joint-County Industrial and Business Park Act to authorize and issue, for the purposes outlined in Section 4-29-68 of the Code, certain credits against revenues received and retained under Article VIII, Section 13 of the South Carolina Constitution with respect to properties and projects located within a Park (“Infrastructure Improvement Credits”); and

**WHEREAS**, the County is authorized by Section 12-44-70 of the Act and Section 4-1-175 of the Joint-County Industrial and Business Park Act to authorize and issue, for the purposes outlined in Section 4-29-68 of the Code, certain credits against revenues received and retained under Article VIII, Section 13 of the South Carolina Constitution with respect to properties and projects located within a Park (“Infrastructure Improvement Credits”); and

**WHEREAS**, under the Act, “sponsor” means one or more entities which sign the fee agreement with the County and makes the minimum investment, each of which makes the minimum investment in the project as required under the Act; except, however, if a project consists of manufacturing, research and development, corporate office or distribution facility, each sponsor is not required to invest the minimum investment if the total investment at the project exceeds \$5,000,000; and

**WHEREAS**, Sweet Street Desserts, Inc., a Pennsylvania business corporation, which company was previously identified as “Project Sugar” in that certain Inducement Agreement and Millage Rate Agreement (the “Inducement Agreement”) entered into by and between Sweet Street Desserts, Inc. and the County as of September 17, 2013, represented to the County that Sweet Street Desserts, Inc. would acquire by construction and purchase certain land, improvements, furnishings, fixtures, machinery, apparati, and equipment for a manufacturing facility to be located within the County (the “Project”); and

**WHEREAS**, based on representations by Sweet Street Desserts, Inc. that the Project represents an otherwise taxable capital investment in the County of not less than Thirty-Eight Million Five Hundred Thousand and No/100ths Dollars (\$38,500,000.00), and will create at least 80 new full-time equivalent jobs, during the period beginning with the first day that real or personal property comprising the Project is purchased or acquired and ending five (5) years after the last day of the property tax year during which any portion of the Project is first placed in service, and that such investment and jobs creation is made in order to enhance the economic development of the County, and, in furtherance thereof, the County agreed to assist Sweet Street Desserts, Inc. in locating the Project within the County; and

**WHEREAS**, pursuant to certain negotiations heretofore undertaken between the County and Sweet Street Desserts, Inc. with respect to the Project as reflected in the Inducement Agreement (i) the County agreed to use its best efforts to enter into or amend a joint county industrial and business park agreement with one or more other contiguous counties to locate the Project in a Park established pursuant to the Joint-County Industrial and Business Park Act; (ii) the County agreed to provide certain Infrastructure Improvement Credits to Sweet Street Desserts, Inc. for qualifying investment in real property and infrastructure pursuant to Section 12-44-70 of the Act and Section 4-1-175 of the Joint-County Industrial and Business Park Act for the purposes outlined in Section 4-29-68 of the Code, (iii) the County agreed to enter into a FILOT arrangement with Sweet Street Desserts, Inc. pursuant to the Act; and (iv) Sweet Street Desserts, Inc. agreed to make FILOT Payments (as defined below) with respect to the Project as authorized in the Act; and

**WHEREAS**, the County and Sweet Street Desserts, Inc. agreed to the specific terms and conditions of such FILOT and Infrastructure Improvement Credit arrangement as set forth in that

certain Fee in Lieu of Tax Agreement between the County and Sweet Street Desserts, Inc. (the “Fee Agreement”) dated as of December 20, 2013; and

**WHEREAS**, Sweet Street Desserts, Inc. desires to transfer a portion of the Project to Sweet Street Realty, LLC and that Sweet Street Realty, LLC be a “sponsor” as defined under the Act and a party to the Fee Agreement; and

**WHEREAS**, based on the representations of Sweet Street Desserts, Inc. that Sweet Street Desserts, Inc. is a manufacturer and has already invested in excess of \$5,000,000 in the Project, Sweet Street Realty, LLC will not be required to make a separate minimum investment in the Project; and

**WHEREAS**, it appears that the draft Amended and Restated Fee in Lieu of Tax Agreement (the “Amended Fee Agreement”) now before this meeting is in appropriate form and is an appropriate instrument to be executed and delivered by the County for the purposes intended;

**NOW, THEREFORE, BE IT ORDAINED** by Greenville County, South Carolina, as follows:

**Section 1.** The form, terms, and provisions of the Amended Fee Agreement presented to this meeting and filed with the Clerk to County Council be and they are hereby approved, and all of the terms, provisions, and conditions thereof are hereby incorporated herein by reference as if the Amended Fee Agreement were set out in this Ordinance in its entirety. Chairman of County Council, the Administrator of the County and the Clerk to County Council be and hereby are authorized, empowered, and directed to execute, acknowledge, and deliver the Amended Fee Agreement in the name and on behalf of the County, and thereupon to cause the Amended Fee Agreement to be delivered to the Company. The Amended Fee Agreement is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall not materially adversely affect the rights of the County thereunder and as shall be approved by the officials of the County executing the same, upon the advice of counsel to the County, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of Amended Fee Agreement now before this meeting.

**Section 2.** Pursuant to Section 12-44-55(B) of the Act, the County hereby agrees that no recapitulation information, as set forth in Section 12-44-55(A) of the Act, is required to be provided by the Company in the Amended Fee Agreement, or in any other documents or agreements in connection with the fee in lieu of tax arrangement between the County, Sweet Street Desserts, Inc. and Sweet Street Realty, LLC. Sweet Street Desserts, Inc. and Sweet Street Realty, LLC shall file a copy of the amended South Carolina Department of Revenue form PT-443 with the County after the execution of the Amended Fee Agreement by the County, Sweet Street Desserts, Inc. and Sweet Street Realty, LLC, as required by the Act.

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

County Council, and any other proper officer of County, be and each of them is hereby authorized and directed to execute and deliver any and all documents and instruments and to do and to cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated by this Ordinance.

**Section 4.** 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 5.** All orders, resolutions, ordinances, and parts thereof in conflict herewith are, to the extent of such conflict only, hereby repealed and this Ordinance shall take effect and be in full force from and after its passage and approval.

WITNESS our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**GREENVILLE COUNTY, SOUTH CAROLINA**

BY: \_\_\_\_\_  
Bob Taylor, Chairman of County Council  
Greenville County, South Carolina

BY: \_\_\_\_\_  
Joseph M. Kernell, County Administrator  
Greenville County, South Carolina

ATTEST:

BY: \_\_\_\_\_  
Theresa B. Kizer, Clerk to County Council  
Greenville County, South Carolina

First Reading: \_\_\_\_\_, 2015  
Second Reading: \_\_\_\_\_, 2015  
Third Reading: \_\_\_\_\_, 2015  
Public Hearing: \_\_\_\_\_, 2015