

STATE OF SOUTH CAROLINA
COUNTY COUNCIL FOR GREENVILLE COUNTY
ORDINANCE #_____

AN ORDINANCE AUTHORIZING (1) THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT (THE "INCENTIVE AGREEMENT") BETWEEN GREENVILLE COUNTY, SOUTH CAROLINA (THE "COUNTY") AND A COMPANY KNOWN TO THE COUNTY AS PROJECT GUARDIAN, ACTING FOR ITSELF, ONE OR MORE AFFILIATES OR OTHER PROJECT SPONSORS (THE "COMPANY"), WHEREBY THE COUNTY SHALL COVENANT TO ACCEPT CERTAIN NEGOTIATED FEES IN LIEU OF *AD VALOREM* TAXES IN CONNECTION WITH THE EXPANSION OF CERTAIN FACILITIES IN THE COUNTY (COLLECTIVELY, THE "EXPANSION PROJECT"); (2) THE BENEFITS OF A MULTI-COUNTY INDUSTRIAL OR BUSINESS PARK TO BE MADE AVAILABLE TO THE COMPANY AND THE EXPANSION PROJECT; AND (3) OTHER MATTERS RELATING THERETO.

WHEREAS, Greenville County, South Carolina (the "County"), acting by and through its County Council (the "Council"), is authorized and empowered under and pursuant to the provisions of the Code of Laws of South Carolina 1976, as amended (the "Code"), and particularly Title 12, Chapter 44 of the Code (the "Negotiated FILOT Act") and Title 4, Chapter 1 of the Code (the "Multi-County Park Act") (collectively, the "Act") and by Article VIII, Section 13(D) of the South Carolina Constitution: (i) to enter into agreements with certain investors to construct, operate, maintain, and improve certain projects through which the economic development of the State of South Carolina (the "State") will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ the manpower, agricultural products, and natural resources of the State; (ii) to covenant with such investors to accept certain fee in lieu of *ad valorem* tax ("FILOT") payments, including, without limitation, negotiated FILOT payments made pursuant to the Negotiated FILOT Act, with respect to a project; and (iii) to create, in conjunction with one or more other counties, a multi-county industrial or business park in order to afford certain enhanced income tax credits to such investors; and

WHEREAS, **[Project Guardian]**, a [_____] and existing under the laws of the State of [_____] and formerly known to the County and identified as Project Guardian, acting for itself, one or more affiliates or other project sponsors (the "Company") proposes to invest in, or cause others to invest in, the expansion of certain manufacturing and related facilities in the County, (collectively, the "Expansion Project") and anticipates that, should its plans proceed as expected, the Expansion Project is expected to generate substantial investment in the County of not less than \$16,000,000 within the Investment Period (as hereinafter defined); and

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

WHEREAS, in accordance with such findings and determinations and in order to induce the Company to locate the Expansion Project in the County, the Council adopted a Resolution on November 20, 2012 (the "Inducement Resolution"), whereby the County agreed to provide certain negotiated FILOT and multi-county industrial or business park benefits with respect to the Expansion Project; and

WHEREAS, the County and the Company have agreed to specific terms and conditions of such arrangements as set forth herein and in a Fee in Lieu of Tax and Incentive Agreement by and between the County and the Company with respect to the Expansion Project (the "Incentive Agreement"), the form of which is presented to this meeting, which Incentive Agreement is to be dated as of [**December** __,] 2012, or such other date as the parties may agree; and

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

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

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

- (a) The Expansion Project will constitute a "project" within the meaning of the Negotiated FILOT Act; and
- (b) The Expansion Project, and the County's actions herein, will subserve the purposes of the Negotiated FILOT Act; and
- (c) The Expansion Project is anticipated to benefit the general public welfare of the State and the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; and
- (d) The Expansion Project gives rise to no pecuniary liability of the County or incorporated municipality or a charge against its general credit or taxing power; and
- (e) The purposes to be accomplished by the Expansion Project are proper governmental and public purposes; and
- (f) The benefits of the Expansion Project are greater than the costs.

Section 2.

(a) The County hereby agrees to enter into the Incentive Agreement, which agreement shall be in the form of a fee agreement, pursuant to the Negotiated FILOT Act,

(b)

(i) The Expansion Project Negotiated FILOT shall be determined using: (1) an assessment ratio of 6%; (2) the millage rate in effect as to the location of the Expansion Project as of June 30, 2012, and which millage rate shall be fixed pursuant to Section 12-44-50(A)(1)(b)(i) of the Negotiated FILOT Act for the full term of the Expansion Project Negotiated FILOT; (3) the fair market value of such Negotiated FILOT Property as determined in accordance with Section 12-44-50(A)(1)(c) of the Negotiated FILOT Act; and (4) and such other terms and conditions as are or will be specified in the Incentive Agreement.

(ii) The Expansion Project Negotiated FILOT shall be calculated as provided in this **Section 2(b)** for all Negotiated FILOT Property placed in service as part of the Expansion Project during the period commencing with the first day that economic development property (as defined in the Negotiated FILOT Act) is purchased or acquired, whether before or after this Ordinance, and ending on the fifth anniversary of the end of the property tax year in which the initial economic development property comprising all or a portion of the Expansion Project is placed in service (the "Investment Period"). For each annual increment of investment in Negotiated FILOT Property, the annual Expansion Project Negotiated FILOT payments shall be payable for a payment period of twenty (20) years. Accordingly, if such Negotiated FILOT Property is placed in service during more than one year, each year's investment during the Investment Period shall be subject to the Expansion Project Negotiated FILOT for a payment period of twenty (20) years.

Section 3. The County will use its best efforts to insure that the Expansion Project and the Land will be included, if not already included, and will remain, within the boundaries of a multi-county industrial or business park pursuant to the provisions of the Multi-County Park Act and Article VIII, Section 13(D) of the Constitution of the State on terms which provide for any jobs created during the Investment Period, any additional jobs creation tax credits afforded by the laws of the State for projects located within multi-county industrial or business parks.

Section 4. The form, provisions, terms, and conditions of the Incentive Agreement presented to this meeting and filed with the Clerk to Council are hereby approved, and all of the provisions, terms, and conditions thereof are hereby incorporated herein by reference as if the Incentive Agreement was set out in this Ordinance in its entirety. The Chairman of the Council and the County Administrator are hereby authorized, empowered, and directed to execute the

Section 5. The Chairman of the Council, the County Administrator, and the Clerk to Council, for and on behalf of the County, are hereby each authorized, empowered, and directed to do any and all things necessary or proper to effect the performance of all obligations of the County under and pursuant to the Incentive Agreement.

Section 6. The provisions of this Ordinance are hereby declared to be separable and if any section, phase, 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, phases, and provisions hereunder.

Section 7. All orders, ordinances, resolutions, and parts thereof in conflict herewith are to the extent of such conflict hereby repealed. This Ordinance shall take effect and be in full force from and after its passage and approval.

[End of Ordinance]

Enacted and approved, in meeting duly assembled, this [____] day of December, 2012.

GREENVILLE COUNTY, SOUTH CAROLINA

By: _____
Herman G. Kirven, Jr., Chairman, County Council
Greenville County, South Carolina

By: _____
Joseph Kernell, Administrator
Greenville County, South Carolina

[SEAL]

Attest:

By: _____
Theresa B. Kizer, Clerk to County Council,
Greenville County, South Carolina

First Reading: _____, 2012
Second Reading: _____, 2012
Public Hearing: _____, 2012
Third Reading: _____, 2012