

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING A FEE IN LIEU OF TAX AND INFRASTRUCTURE IMPROVEMENT CREDIT ARRANGEMENT PURSUANT TO A FEE-IN-LIEU-OF-TAX AGREEMENT BETWEEN GREENVILLE COUNTY, SOUTH CAROLINA AND [PROJECT DIAMONDBACK]; 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 “FILOT Act”), and the caselaw of the Courts of the State of South Carolina, to offer and provide certain privileges, benefits, and incentives to certain manufacturing and 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 FILOT 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 FILOT Act to execute one or more fee-in-lieu of tax agreements (each, a “Fee Agreement”), as provided for in the FILOT 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 FILOT 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, [Project Diamondback], a [State of Incorporation] corporation (the “Company”), which company was previously identified as the “Project Diamondback” in that certain Inducement Agreement and Millage Rate Agreement (the “Inducement Agreement”) entered into by

and between the Company and the County as of September 15, 2015, intends to acquire by construction and purchase certain buildings, improvements, furnishings, fixtures, machinery, apparatus, and equipment (the "Project") for a manufacturing facility currently located within the County; and

WHEREAS, based on representations by the Company that the Project will represent an otherwise taxable capital investment in the County of not less than One Hundred Million Dollars (\$100,000,000) (excluding the cost of acquiring the existing property previously subject to *ad valorem* taxation), 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 is made in order to enhance the economic development of the County, and, in furtherance thereof, the County desires to assist the Company in locating the Project within the County; and

WHEREAS, pursuant to certain negotiations heretofore undertaken between the County and the Company 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 the Company for qualifying investment in real property and infrastructure pursuant to Section 12-44-70 of the FILOT 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 the Company pursuant to the FILOT Act; and (iv) the Company has agreed to make FILOT Payments (as defined below) with respect to the Project as authorized in the FILOT Act; and

WHEREAS, the County and the Company have 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 the Company (the "Fee Agreement") to be dated as of November 1, 2015 or such other date as the parties may agree, which is to be in substantially the form presented to this meeting and filed with the Clerk to County Council; and

WHEREAS, pursuant to the provisions of the Fee Agreement, the Company will be obligated to make payments-in-lieu of taxes to the County, as required by the FILOT Act; and

WHEREAS, the acquisition and construction of the Project will serve the intended purposes and in all respects conform to the provisions and requirements of the FILOT Act; and

WHEREAS, it appears that the draft 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. As contemplated by the FILOT Act and based on the representations of the Company as recited herein, it is hereby found, determined and declared by the County Council, as

follows:

- (a) The Project will constitute a “project” as said term is referred to and defined in the FILOT Act, and will subserve the purposes and in all respects conform to the provisions and requirements of the FILOT Act;
- (b) It is anticipated that the Project will benefit the general public welfare and serve a public purpose of the County by providing services, employment, recreation and other public benefits not otherwise provided locally;
- (c) Neither the Project, nor any documents or agreements entered into by the County in connection therewith will constitute or give rise to any pecuniary liability of the County or a charge against its general credit or taxing power;
- (d) The purposes to be accomplished by the Project, i.e., economic development, creation or retention of jobs, and addition to the tax base of the County, are proper governmental and public purposes;
- (e) The benefits of the Project to the public will be greater than the costs to the public;
- (f) The Fee Agreement will require the Company to make fee in lieu of tax payments (“FILOT Payments”) in accordance with the provisions of the FILOT Act; and
- (g) The Fee Agreement will require the Company to make certain reimbursements to the County and otherwise lose the benefits provided for therein if the Company should fail to achieve the investment thresholds set forth in the Fee Agreement; and
- (h) The FILOT Payments referred to in item (f) above shall be calculated as specified in Section 5.01 of the Fee Agreement.

Section 2. The form, terms, and provisions of the 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 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 Fee Agreement in the name and on behalf of the County, and thereupon to cause the Fee Agreement to be delivered to the Company. The 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 Fee Agreement now before this meeting.

Section 3. Pursuant to Section 12-44-55(B) of the FILOT Act, the County hereby agrees that no recapitulation information, as set forth in Section 12-44-55(A) of the FILOT Act, is required to be provided by the Company in the Fee Agreement, or in any other documents or agreements in

connection with the fee in lieu of tax arrangement between the Company and the County. The Company shall file a copy of the South Carolina Department of Revenue form PT-443 with the County after the execution of the Fee Agreement by the County and the Company, as required by the FILOT Act.

Section 4. 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 Fee Agreement, and the performance of all obligations of the County under and pursuant to the 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 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. 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 October, 2015.

GREENVILLE COUNTY, SOUTH CAROLINA

BY: _____
Chairman of County Council
Greenville County, South Carolina

BY: _____
County Administrator
Greenville County, South Carolina

ATTEST:

BY: _____
Clerk to County Council
Greenville County, South Carolina

First Reading:	September 15, 2015
Second Reading:	October 6, 2015
Third Reading:	October 20, 2015
Public Hearing:	October 20, 2015