

SECOND AMENDMENT OF FEE-IN-LIEU OF AD VALOREM TAXES AGREEMENT

This Second Amendment of Fee-in-Lieu of *Ad Valorem* Taxes Agreement (the “Second Amendment”) is made and entered into as of April 19, 2016, by and between Greenville County, South Carolina (“County”), a body politic and corporate and political subdivision of the State of South Carolina, and a company known to the County as Fitesa Simpsonville, Inc., a Delaware corporation authorized to do business in South Carolina (the “Company”).

WHEREAS, all capitalized terms not specifically defined herein shall have the meaning as defined and described in the First Amended Fee Agreement (as that term is defined below), and if not defined therein shall have the meaning 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 meaning as defined in Title 4, Chapters 1 and 29 of the Code (collectively, the “Act”); and

WHEREAS, the County and the Company previously entered into a Fee-in-Lieu of *Ad Valorem* Taxes Agreement dated December 1, 2009 (“Fee Agreement”), a copy of which is attached hereto as Exhibit A; and

WHEREAS, the County and the Company previously entered into a First Amendment of Fee-in-Lieu of *Ad Valorem* Taxes Agreement dated November 5, 2013 (the “First Amendment”), a copy of which is attached hereto as Exhibit B; and

WHEREAS, the Fee Agreement originally provided for, among other things, a fee-in-lieu of *ad valorem* taxes benefit to the Company, as well as a special source revenue credit (“SSRC”) equal to 40% of the fee payments thereunder for a period of thirteen (13) years in connection with an investment of \$100,000,000 in the Project (as defined in the Fee Agreement) by December 31, 2016, which was the end of the Investment Period as defined in the Fee Agreement; and

WHEREAS, the First Amendment amended the Fee Agreement (the Fee Agreement as amended is referred to herein as the “First Amended Fee Agreement”) to provide for (a) an additional investment of \$15,000,000 such that the total investment in the Project was \$115,000,000; (b) an increase of the SSRC to forty-five percent (45%); (c) an extension of the term of the SSRC for an additional five years; and (d) an extension of the Investment Period by three years, such that Investment Period was anticipated to end on December 31, 2019; and

WHEREAS, the Company, as Sponsor, along with one or more existing, or to be formed or acquired subsidiaries, or affiliated or related entities, is planning to expand the Project and increase its investment commitment thereunder by \$62,000,000 to total aggregate amount of \$177,000,000 (“Expansion Project”) by the end of the Investment Period; and

WHEREAS, in connection with the Expansion Project, the Company has requested that the County further amend the Fee Agreement to provide for a forty-five percent (45%) SSRC in connection with the Expansion Project for a period of fifteen (15) years; and

WHEREAS, with respect to the Inducement Agreement and Millage Rate Agreement in connection to the Project dated August 4, 2009 (“Inducement Agreement”), as amended, all of the terms found therein, to the extent that said terms reflect the terms found in the First Amended Fee Agreement, as amended, and in the amendments made under this Second Amendment, shall be construed such that their definitions are consistent with the defined terms of the First Amended Fee Agreement and this Second Amendment; and

WHEREAS, County has approved and authorized the execution of this Second Amendment by an Ordinance of County Council adopted April 19, 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 First Amended Fee Agreement shall be and is hereby amended by striking the seventh and ninth recital thereto and replacing the same with the following recitals:

WHEREAS, based on representations by the Company that the Project will represent a capital investment in the County of not less than One Hundred Seventy-Seven Million Dollars (\$177,000,000.00), which in the aggregate, collectively represents both the Existing Project and the Expansion Project, as those terms are defined herein, and will create not less than fifty (50) new full time equivalent jobs, during the Investment Period, which is anticipated to end on December 31, 2019, in order to enhance the economic development of the County, the County desires to assist the Company in locating the Project within the County; and

WHEREAS, the County, pursuant to an Ordinance adopted November 5, 2013, authorized the amendment of this Agreement and the Inducement Agreement, the terms of which are set forth in that First Amendment dated October 1, 2013 (“First Amendment”); and

WHEREAS, the County, pursuant to an Ordinance adopted April 19, 2016,, authorized the amendment of this Agreement and the Inducement Agreement, the terms of which are set forth in that Second Amendment dated April 19, 2016 (“Second Amendment”); and

2. The First Amended Fee Agreement shall be and is hereby amended by adding the following definitions to Section 1.01:

“*Existing Project*” shall mean that portion of the Project representing the anticipated investment of One Hundred Fifteen Million Dollars (\$115,000,000) as provided for in the Fee Agreement dated December 1, 2009 and the First Amendment dated November 5, 2013.

“*Expansion Project*” shall mean that portion of the Project representing the anticipated investment of Sixty-Two Million Dollars (\$62,000,000), as provided for in the Second Amendment dated April 19, 2016, for which investment is anticipated to begin in 2016.

3. The First Amended Fee Agreement shall be and is hereby amended by striking the definition of “Commencement Date” and “Threshold Date” in Section 1.01 and replacing the same with the following:

“*Commencement Date*” shall mean December 31st of the property tax year during which real or personal property comprising the Project is first placed in service, which the Company believes to be December 31, 2011.

4. The First Amended Fee Agreement shall be and is hereby deemed to be amended so that the specific references to the Company's investment of One Hundred Fifteen Million Dollars (\$115,000,000) in Sections 2.02(e) and 4.01(a) are hereafter deemed to read One Hundred Seventy-Seven Million Dollars (\$177,000,000).

Section 5.01(f) of the First Amended Fee Agreement shall be and is hereby deemed to be amended as follows:

In the event that the Company has not invested at least One Hundred Fifteen Million and No/100 Dollars (\$115,000,000) in the Project or created at least 50 new, full-time equivalent jobs, all before the Threshold Date, the portions of the Existing Project previously subject to Negotiated FILOT Payments shall revert retroactively to normal *ad valorem* tax treatment for the Existing Project, and the Company shall pay the difference between the fees actually paid (taking into account any Infrastructure Credit 1 enjoyed by the Company) and normal *ad valorem* tax payments which would have been paid, if any (a "Deficiency"), which such Deficiency shall be subject to interest as provided in Section 12-54-25 of the Code. To the extent permitted by applicable law, with respect to personal property, the Deficiency shall be calculated based on the assumption that the Deficiency in the capital investment consists of equipment which is subject to depreciation at the rate of eleven percent (11%) per annum with a salvage value of ten percent (10%) throughout the term of this Agreement. In the event that the Company's investment in the Project based on an income tax basis without regard to depreciation at any time falls below One Hundred Fifteen Million and No/100 (\$115,000,000), the Existing Project shall thereafter be subject to normal *ad valorem* tax treatment.

5. In order to provide an SSRC for the Expansion Project, the First Amended Fee Agreement shall be and is hereby amended by replacing Section 5.02(b) in its entirety, to read as follows:

(b) Pursuant to Section 12-44-70 of the Act, the County authorizes and grants the Company an Infrastructure Credit ("Infrastructure Credit 1") for a period of eighteen (18) years for the Existing Project as follows: Unless the County is otherwise notified by the Company, the Infrastructure Credits hereunder shall be taken against the first eighteen (18) years of Net FILOT Payments paid by the Company hereunder. The Treasurer of the County shall display and subtract the Infrastructure Credit from the FILOT Payment statement sent to the Company for the duration of the Infrastructure Credit. For any Net FILOT Payments due prior to the effective date of the First Amendment, the Infrastructure Credit shall be in an amount of forty percent (40%) of the Company's annual Net FILOT Payments in connection with the Project. With respect to any Net FILOT Payments due after the effective date of the First Amendment, the Infrastructure Credit shall be in an amount of forty-five percent (45%) of the Company's annual Net FILOT Payment in connection with the Project as expanded. To the extent that the Infrastructure Credit due for property tax year 2013 in the amount of 45% is not reflected on County's property tax bill due on January 15, 2014, the County shall pay upon written request by the Company a reconciliation payment for the additional amount of the Infrastructure Credit due for the 2013 property tax year.

Additionally, the County authorizes and grants the Company an Infrastructure Credit ("Infrastructure Credit 2") for the Expansion Project in an amount equal to forty-five percent (45%) of the Company's annual Net FILOT Payment in connection with the Expansion Project with the Project for a period of fifteen

(15) years beginning with the first property tax year in which a Net FILOT Payment becomes due for the Expansion Project (the “Credit Period”).

6. Section 5.02 of the First Amended Fee Agreement shall be and is hereby amended by adding Section 5.02(c), as follows:

In the event that the Company has not invested at least Fifty Million Dollars (\$50,000,000) in the Expansion Project before the Threshold Date, then the Company shall repay the amount of Infrastructure Credit 2 that has been received, such repayment subject to interest as provided in Section 12-54-25 of the Code. In the event that the Company’s investment in the Expansion Project based on an income tax basis without regard to depreciation falls below Fifty Million Dollars (\$50,000,000) at any time during the Credit Period, Infrastructure Credit 2 shall terminate prospectively.

7. Section 11.01 of the First Amended Fee Agreement shall be and is hereby amended by adding the following at the end of the existing Section 11.01:

In the event the Company has not met or maintained its investment or job requirement as required under this Fee Agreement, the County’s sole remedy is provided for in Section 5.01(f) for the Existing Project and Section 5.02(c) for the Expansion Project.

8. Except as described in Sections 1 through 8 of this Second Amendment, the First Amended Fee Agreement shall remain unchanged and in full force.

9. If any term, provision, or any portion of this Second 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 Second Amendment shall not be affected thereby and shall nevertheless remain in full force and effect, and each term and/or provision of this Second 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 Second 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.

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

[signatures on following pages]

IN WITNESS WHEREOF, Greenville County, South Carolina, has executed this Second 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, has executed this Second 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

Joe Kernell
County Administrator

Date

ATTEST:

Theresa B. Kizer
Clerk to County Council

IN WITNESS WHEREOF, Greenville County, South Carolina, has executed this Second 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, has executed this Second 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.

FITESA SIMPSONVILLE, INC.

By: _____

Its: _____

Date: _____

EXHIBIT A
Fee Agreement

EXHIBIT B
First Fee Agreement