

**SECOND AMENDMENT**

**TO**

**FEE-IN-LIEU OF *AD VALOREM* TAXES AGREEMENT**

**ORIGINALLY DATED AS OF APRIL 2, 2002;**

**FIRST AMENDED AS OF DECEMBER 1, 2004;**

**BY AND BETWEEN**

**DRIVE AUTOMOTIVE INDUSTRIES OF AMERICA, INC.,**

**MERCEDES-BENZ U.S. INTERNATIONAL, INC.,**

**MGSC001 LLC,**

**AND**

**GREENVILLE COUNTY, SOUTH CAROLINA**

**EFFECTIVE AS OF**

**\_\_\_\_\_, 2023**

## **SECOND AMENDMENT TO FEE-IN-LIEU OF AD VALOREM TAXES AGREEMENT**

THIS SECOND AMENDMENT TO FEE-IN-LIEU OF *AD VALOREM* TAXES AGREEMENT (this “**Second Amendment**”) is made effective as of December 31, 2023, by and between GREENVILLE COUNTY (the “**County**”), a body politic and corporate and a political subdivision of the State of South Carolina, acting by and through its County Council (the “**County Council**”) as governing body of the County, DRIVE AUTOMOTIVE INDUSTRIES OF AMERICA, INC., a Delaware corporation (“**Drive**”), MERCEDES-BENZ U.S. INTERNATIONAL, INC., an Alabama corporation (“**Mercedes**”), and MGSC001 LLC, a Delaware limited liability company (“**MGSC**” and, together with Drive and Mercedes, the “**Company**”), along with any affiliated or related entities and assigns (hereinafter, each of the County, Drive, Mercedes, and MGSC are referred to individually as a “**Party**” and, collectively, as the “**Parties**”).

### **WITNESSETH:**

**WHEREAS**, the County, acting by and through its County Council, and as authorized and empowered under and pursuant to the provisions of Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (the “**Act**”), enacted Ordinance No. 3580 on April 2, 2002, whereby the County entered into that certain Fee-in-lieu of Ad Valorem Taxes and Incentive Agreement dated April 2, 2002 (the “**2002 Fee Agreement**”), between the County, Sponsor, and Granite, as subsequently amended by the County’s enactment of Ordinance No. 3861 on November 30, 2004, which documented the addition of Mercedes Benz U.S. International, Inc. (“**Mercedes**”) as a sponsor affiliate (the “**2004 Amendment**”), and as subsequently amended by the County’s enactment of Resolution No. 1731 on December 3, 2019, which formally reflected the replacement of Granite with MGSC as a sponsor affiliate (the “**2019 Amendment**”); and

**WHEREAS**, the County, acting by and through its County Council, approved the extension of the beneficial term of the 2002 Fee Agreement from 20 years to 30 years by enactment of that certain Resolution No. 1906 on December 6, 2022, (the “**2022 Amendment**” and, together with the 2002 Fee Agreement, the 2004 Amendment, and the 2019 Amendment, the “**Amended 2002 Fee Agreement**”); and

**WHEREAS**, as a result of the 2022 Amendment, the County, Sponsor, Mercedes, and MGSC desire to convert the calculation of the FILOT payments for tax year 2023 and all future years from the net present value calculation method permitted under Section 12-44-50(A)(3) of the Fee in Lieu of Tax Act to the standard calculation method permitted under Section 12-44-50(A)(1) of the Fee in Lieu of Tax Act but desire to make no further changes to the Amended 2002 Fee Agreement (the “**NPV Conversion**”); and

**WHEREAS**, the County has agreed to further amend the Amended 2002 Fee Agreement to reflect the NPV Conversion effective for tax year 2023 and future tax years; and

**WHEREAS**, Section 12-44-30(13) of the Act permits the County, in its sole discretion, to

amend the Fee Agreement as requested by the Company and Section 4.6 of the Fee Agreement permits the Fee Agreement to be amended provided that such amendment is in writing and signed by each of the parties to the Fee Agreement; and

**WHEREAS**, the County Council finds that executing the Second Amendment as requested by the Company is in the best interest of the County and its citizens since it will induce the Company to continue the Project; and

**WHEREAS**, pursuant to an Ordinance adopted on \_\_\_\_\_, 2024, the County Council ratified the County’s execution and delivery of this Second Amendment to the Company.

**NOW, THEREFORE, FOR AND IN CONSIDERATION** of the respective representations and agreements herein contained and other value, the parties hereto agree to amend the Amended 2002 Fee Agreement as follows:

Section 3.1 is deleted in its entirety and replaced with the following:

[begin amending language]

**Section 3.1. *Negotiated Payments.***

(a) The Company shall make FILOT Payments on all Economic Development Property comprising the Project and placed in service, as follows: the Company elects to make annual FILOT Payments with respect to each Phase of the Project placed in service on or before each December 31 through December 31, 2009, pursuant to Section 12-44-50(A)(1) of the Act, said payments to be made annually and to be due and payable and subject to penalty assessments on the same dates and in the same manner as prescribed by the County for *ad valorem* taxes. The parties agree that the equal annual stream of FILOT Payments to be paid under Section 12-44-50(A)(3) of the Act for the first 20 years for each Phase (the “NPV Years”) must produce a net present value amount that is the same as if the FILOT Payments for the first 20 years for each Phase were calculated in accordance with Section 12-44-50(A)(1) of the Act. The discount rate for the calculation of net present value in all cases for the first 20 years for each Phase is provided in Exhibit A. In addition, the parties agree that the FILOT Payments for the 10 years succeeding the NPV Years for each Phase (the “Non-NPV Years”) shall be calculated in accordance with Section 12-44-50(A)(1) of the Act.

(b) The amount of such annual FILOT Payments shall be determined by the following procedure (subject, in any event, to the required procedures under the Act and to Section 3.4 hereof):

- Step 1: Determine the fair market value of the Phase of the Project placed in service in any given year for such year and for the following 29 years using original income tax basis for State income tax purposes for any real property (provided, if real property is constructed for the fee or is purchased in an arms length transaction, fair market value is deemed to equal the original income tax basis, otherwise, the Department will determine fair market value by

appraisal) and original income tax basis for State income tax purposes less depreciation for each year allowable to the Company, for any personal property as determined in accordance with Title 12 of the Code, as amended and in effect on December 31 of the year in which each Phase becomes subject to the Fee Agreement, except that no extraordinary obsolescence shall be allowable but taking into account all applicable property tax exemptions which would be allowed to the Company, under State law, if the property were taxable, except those exemptions specifically disallowed under Section 12-44-50(A)(2) of the Act, as amended and in effect on December 31 of the year in which each Phase becomes subject to the Fee Agreement.

- Step 2: Apply an assessment ratio of 6% to the fair market value as determined for each year in Step 1 to establish the taxable value of each Phase of the Project in the year it is placed in service and each of the 29 years thereafter or such longer period of years that the annual fee payment is permitted to be made by the Company, under the Act.
- Step 3: Use a millage rate of 250.3 (which millage rate shall be a fixed rate for the term of this Fee Agreement) to determine the amount of the FILOT Payments which would be due in each year of the Fee Term on the payment dates prescribed by the County for such payments or such longer period of years that the annual fee payment is permitted to be made by the Company, under the Act.
- Step 4: Subtract the Infrastructure Credit amount provided for in Section 3.3; such credit to be taken against the full amount yielded from applying Steps 1-3.”

(c) In the event that it is determined by a final order of a court of competent jurisdiction or by agreement of the parties that the minimum payment in lieu of taxes applicable to this transaction is to be calculated differently than described above, the payment shall be reset prospectively at the minimum permitted level so determined.

(d) In the event that the Act or the above-described FILOT Payments are declared invalid or unenforceable, in whole or in part, for any reason, the parties express their intentions that such payments and this Fee Agreement be reformed so as to most closely effectuate the legal, valid, and enforceable intent thereof and so as to afford the Company with the benefits to be derived hereunder, it being the intention of the County to offer the Company a strong inducement to locate the Project in the County. If the Project is deemed to be subject to *ad valorem* taxation, the payment in lieu of *ad valorem* taxes to be paid to the County shall become equal to the amount which would result from taxes levied on the Project by the County, municipality or municipalities, school district or school districts, and other political units as if the Project was and had not been Economic Development Property under the Act. In such event, any amount determined to be due and owing to the County on the Project with respect to a year or years for which FILOT Payments have been previously remitted by the Company to the County hereunder, shall be reduced by the total amount of payments in lieu of *ad valorem* taxes made by the Company with respect to the

Project pursuant to the terms hereof, and further reduced by any abatements provided by law.

[end amending language]

Except as modified by this Second Amendment, the Company and the County hereby acknowledge and agree that the Amended 2002 Fee Agreement remains in full force and effect.

[Signatures appear on following pages]

IN WITNESS WHEREOF, the County, acting by and through the County Council, has caused this Second Amendment to be executed in its name and on its behalf by the Chairman of the County Council and to be attested by the Clerk to County Council as of the date shown below.

\_\_\_\_\_  
DATE

**GREENVILLE COUNTY, SOUTH CAROLINA**

\_\_\_\_\_  
**Dan Tripp, Chairman  
Greenville County Council**

\_\_\_\_\_  
**Joseph Kernell  
Greenville County Administrator**

(SEAL)

**ATTEST:**

\_\_\_\_\_  
**Regina McCaskill, Clerk to Council  
Greenville County Council**

IN WITNESS WHEREOF, by and through its authorized officials, the Company has caused this Second Amendment to Fee Agreement to be executed by its duly authorized officer, all as of the day first above written.

DRIVE AUTOMOTIVE INDUSTRIES OF AMERICA, INC.

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

MERCEDES-BENZ U.S INTERNATIONAL, INC.

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

MGSC001 LLC

BY: \_\_\_\_\_

ITS: \_\_\_\_\_