

**SECOND AMENDMENT TO  
FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT**

**by and between**

**GREENVILLE COUNTY, SOUTH CAROLINA**

**and**

**PROJECT CONSTELLATION**

**Dated as of \_\_\_\_\_, 2024**

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**This Second Amendment pertains to that certain Fee in Lieu of Tax and Incentive Agreement between Greenville County, South Carolina Project Constellation, dated as of \_\_\_\_\_, as amended by that certain First Amendment to Fee in Lieu of Tax and Incentive Agreement between Greenville County, South Carolina and Project Constellation, dated as of \_\_\_\_\_.**

**SECOND AMENDMENT TO FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT**

**THIS SECOND AMENDMENT TO FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT** (this “*Second Amendment*”) is made and entered into as of \_\_\_\_\_, 2024 by and between **GREENVILLE COUNTY, SOUTH CAROLINA** (the “*County*”), a body politic and corporate and a political subdivision of the State of South Carolina (the “*State*”), acting by and through the Greenville County Council (the “*County Council*”) as the governing body of the County, and **PROJECT CONSTELLATION**, a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_ (the “*Company*”).

**RECITALS**

1. Title 12, Chapter 44 (the “*FILOT Act*”), Code of Laws of South Carolina, 1976, as amended (the “*Code*”), authorizes the County to (a) induce industries to locate in the State; (b) encourage industries now located in the State to expand their investments and thus make use of and employ manpower, products, and other resources of the State; and (c) enter into a fee agreement with entities meeting the requirements of the FILOT Act, which identifies certain property of such entities as economic development property and provides for the payment of a fee in lieu of tax with respect to such property.

2. The Company and the County are party to that certain Fee in Lieu of Tax and Incentive Agreement dated as of \_\_\_\_\_, \_\_\_\_\_, as amended by that certain First Amendment to Fee in Lieu of Tax and Incentive Agreement dated \_\_\_\_\_, \_\_\_\_\_ (as amended, the “*FILOT Agreement*”), wherein the County agreed to provide certain incentives with respect to the Expansion Project (as defined in the FILOT Agreement) to constitute facilities in the County for manufacturing and related activities.

3. The Company, acting for itself, one or more affiliates, and/or other project sponsors proposes to invest in, or cause investment in, the further expansion of the Expansion Project at one or more locations in the County, (collectively, the “Additional Expansion Project”) and anticipates that, should its plan proceed as expected, it will invest at least \$188,000,000, in the aggregate, in the Additional Expansion Project, and will create approximately thirty (30) new, full-time jobs in the County at the Expansion Project.

4. In consideration of such additional investment in the Expansion Project by the Company, and in accordance with Section 12-44-40(K) of the FILOT Act, the County has determined to approve certain modifications to the FILOT Agreement, all as memorialized, ratified, and detailed more particularly herein.

5. By enactment of an Ordinance on \_\_\_\_\_, \_\_\_\_\_, the County Council has authorized the County to enter into this Second Amendment with the Company, which modifies the FILOT Agreement as referenced above and as set forth in this Second Amendment.

**NOW, THEREFORE, FOR AND IN CONSIDERATION** of the respective representations and agreements hereinafter contained, the parties hereto agree as follows:

Section 1. Definitions. Defined terms utilized herein and not otherwise defined herein shall have the meanings ascribed to them in the FILOT Agreement.

Section 2. Amendment of FILOT Agreement. The FILOT Agreement is hereby amended as follows:

(a) Section 1.01 is hereby amended as follows:

- i. The definition of “Additional Expansion Project” is hereby included and inserted to read as follows:

“*Additional Expansion Project*” shall mean that portion of the Expansion Project placed in service within the portion of the Investment Period comprising the Additional Expansion Project Compliance Period.

- ii. The definition of “Additional Expansion Project Compliance Period” is hereby included and inserted to read as follows:

“*Additional Expansion Project Compliance Period*” shall mean that portion of the Investment Period commencing on January 1, 2024 and ending at the end of the Investment Period, which such end date the County and Company agree and acknowledge to be December 31, 2027.

- iii. The definition of “Additional Expansion Project Investment Requirement” is hereby included and inserted to read as follows:

- iv. “*Additional Expansion Project Investment Requirement*” shall mean investment in the Additional Expansion Project, within the Additional Expansion Project Compliance Period, by the Company and any other Sponsors or Sponsor Affiliates, in the aggregate, of at least \$165,000,000 (without regard to depreciation or other diminution in value).

- v. The definition of “Agreement” is hereby amended to read as follows:

“*Agreement*” shall mean this Fee in Lieu of Tax and Incentive Agreement as originally executed and from time to time supplemented or amended, as permitted herein, including, without limitation, as amended by that certain First Amendment to Fee in Lieu of Tax and Incentive Agreement between the County and the Company dated as of \_\_\_\_\_, \_\_\_\_\_, and as further amended by that certain Second Amendment to Fee in Lieu of Tax and Incentive Agreement between the County and the Company dated as of \_\_\_\_\_, \_\_\_\_\_.

- (b) Section 3.02(a) is hereby amended to add the following proviso to the end of such section:

; provided, however, that, commencing with the Negotiated FILOT Payment due with respect to tax year 2025 (*i.e.*, Negotiated FILOT Payment due for Expansion Project property placed in service as of the end of the Property Tax Year ending on December 31, 2024 to be paid on or about January 15, 2025), such Special Source Credits percentage shall increase to an amount equal to fifty percent (50%) of each such Negotiated FILOT Payment; provided, further, that in the event that the Additional Expansion Project Investment Requirement is not satisfied by the end of the Additional Expansion Project Compliance Period, the applicable Special Source Credits percentage shall automatically revert retroactively and prospectively to forty percent (40%), and in such event, each Credit Eligible Entity shall make, or cause to be made, payment to the County in an amount equal to the difference between the Negotiated FILOT Payments theretofore made by such Credit Eligible Entity with respect to the Expansion Project upon and following application of the increased Special Source Credits percentage (50%), and the Negotiated FILOT Payments which would have been theretofore due from such Credit Eligible Entity with respect to the Expansion Project in the event that the original Special Source Credits percentage

(40%) had applied during such period, which differential payment shall be due to the County from each such Credit Eligible Entity, with respect to its portion of the Expansion Project, within one hundred eighty (180) days from the Negotiated FILOT Payment due date with respect to Expansion Project property placed in service as of the end of final Property Tax Year of the Additional Expansion Project Compliance Period (i.e., Negotiated FILOT Payment due for Expansion Project property placed in service as of the end of the Property Tax Year ending on December 31, 2027 and due to be paid on or about January 15, 2029).

(c) Section 9.03(d) and (e) are hereby amended to read as follows:

(d) if to the Company:

\_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

(e) with a copy (which shall not constitute notice) to:

Maynard Nexsen PC  
Tushar V. Chikhliker, Esq.  
P.O. Box 2426  
1230 Main Street, Suite 700  
Columbia, South Carolina 29201  
Phone: 803-771-8900  
Fax: 803-253-8277

Section 3. Remaining Terms and Provisions. Except as expressly amended hereby, the terms and provisions of the FILOT Agreement shall remain unchanged and in full force and effect.

Section 4. Entire Understanding. The FILOT Agreement, as amended by this Second Amendment, expresses the entire understanding and all agreements of the parties hereto pertaining to the matters set forth herein and therein and neither party hereto has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth in the FILOT Agreement, as amended by this Second Amendment, or in certificates delivered in connection with the execution and delivery hereof.

Section 5. Severability. In the event that any clause or provision of this Second Amendment shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.

Section 6. Multiple Counterparts. This Second Amendment may be executed in multiple counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument. Signature pages may be delivered with original signatures or by photostatic reproduction, telephonic facsimile transmission, email or other electronic transmission or other similar means whereby each original signature has been reproduced (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com), and all reproduced signatures shall be deemed “electronic signatures” and equivalent to an original signature for all purposes.

*[Signature Pages Follow]*

**IN WITNESS WHEREOF**, the County, acting by and through the County Council, has caused this Second Amendment to Fee in Lieu of Tax and Incentive Agreement to be executed in its name and on its behalf by the Chairman of County Council and the County Administrator and to be attested by the Clerk of the County Council; and the Company has caused this Second Amendment to Fee in Lieu of Tax and Incentive Agreement to be executed by its duly authorized officer, all as of the day and year first above written.

**GREENVILLE COUNTY, SOUTH CAROLINA**

(SEAL)

By: \_\_\_\_\_  
Chairman of County Council

By: \_\_\_\_\_  
County Administrator

**ATTEST:**

\_\_\_\_\_  
Clerk to County Council of  
Greenville County, South Carolina

**PROJECT CONSTELLATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_