



# Public Comment

## SIGN IN SHEET

March 15, 2016 ~ ~ ~ 6:00 PM

The Public Comment Sessions at this meeting is limited to a total of 40 minutes, 4 minutes per person. Please be advised that citizens not utilizing their full four [4] minutes may not "donate" their remaining time to another speaker.

**PLEASE PRINT**

|    | FULL NAME            | PURPOSE OF COMMENT  |
|----|----------------------|---------------------|
| 1  | <i>Jean Jennings</i> | <i>Sound System</i> |
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Everyone speaking before Council will be required to do so in a civil manner. Council will not tolerate personal attacks on individual council members, county staff or any person or group. Racial slurs will not be permitted. Council's number one priority is to conduct business for the citizens of this county. All citizens who wish to address Council and all Boards and Commission appointed by Council should do so in an appropriate manner.

**“Additional Amendatory Language to be added to referenced sections and where appropriate:**

**Ordinance - Section 5 / Fee Agreement Section 4.13. “The initial conveyance of the Project Site is subject to the County’s right to ensure the Project is (x) completed in a timely manner and (y) transferred to the Company in a form mutually agreeable to the County, the Company, and the developer in a timely manner. If (a) the Project is (i) not completed in a timely manner and (ii) the Project Site is not conveyed to the Company in a timely manner, or (b) the County does not receive payment at an agreed on value for the Project Site, then the County has the right to have the Project Site, with all improvements thereon, vested in the County.”**

March 14, 2016

**Memo concerning "Project Mackinaw"**

**To:** Members of Oconee County Council and Oconee County Citizens

**From:** Richard K. Blackwell, executive director, of the Oconee Economic Alliance

*Re: Overview of Project Mackinaw*

This is intended to be a brief overview of the economic development project code-named: "Project Mackinaw."

Here are the quick details:

- Project Mackinaw, a limited liability company (LLC) taxed as a partnership, will locate an automotive components manufacturing facility in Oconee County, South Carolina.
  - This is a plastic injection molding operation that is establishing their new South Carolina operation to supply BMW. Another side of their business is in tool repairs and design for other plastic injection molding operations for their tools/molds.
  - This company is a family owned and operated company which began in 1998. They have two locations in the US.
- This new operation is locating inside the Oconee Industry and Technology Park (OITP) upon the 300,000 square foot pad side on the right of the entrance road (Innovation Way) off SC Hwy 11.
- The building constructed will be an estimated 90,000 square feet to begin. Their plan is to expand quickly on this "ready site" as the book of business grows. Construction will begin within the next 60 days as they must supply BMW production in 2017.
- Project Mackinaw will invest \$19.5 million in the project, of which it is estimated that \$4.5 million will be in real property (land and building) and \$15 million will be in tangible personal property (machinery and equipment).
- Project Mackinaw will create 89 new jobs over 5 years. Average wage is estimated at \$26.35 per hour.

The Oconee Economic Alliance has been working with this firm since May 2015. The County, with approval, would grant Project Mackinaw a fee-in-lieu of-tax (FILOT) agreement that would last 30 years. It would drop their property tax assessment from 10.5% to 6% and lock their millage for the term of the agreement. The County, with approval, would also bestow upon this project the land at no cost. The State is providing job development credits and a grant towards construction.

This company has selected Upstate South Carolina based architectural firm, engineering firm and contractor to aid in building their operation in Oconee County. What is unique and may seem confusing is the role AgraCel is playing. The firm, AgraCel, is being engaged by the company (Project Mackinaw) to oversee construction of their building and its completion. This evolves, the County providing the land to AgraCel who upon completion of the project will deed the property over to the company at no cost. The company will compensate AgraCel for project management. This arrangement has been done in other areas of the State. The County has put "claw backs" related to the incentives if not met as the incentives both from the County and State are performance based. The County has also put into place "reverter language" that will protect the County if the companies involved do not build as anticipated on the property.

STATE OF SOUTH CAROLINA  
OCONEE COUNTY  
**ORDINANCE 2015-34**

**AUTHORIZING A FEE-IN-LIEU-OF-TAX ARRANGEMENT ON BEHALF OF PROJECT MACKINAW (“COMPANY”) PURSUANT TO A FEE-IN-LIEU-OF-TAX AGREEMENT BETWEEN OCONEE COUNTY, SOUTH CAROLINA (“COUNTY”) AND THE COMPANY; AUTHORIZING THE CONVEYANCE OF CERTAIN REAL PROPERTY; AND OTHER MATTERS RELATING TO THE FOREGOING.**

WHEREAS, Oconee County, South Carolina (“County”), acting by and through its County Council (“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 (“Code”), including, without limitation, Titles 4 and 12, including, particularly, Chapter 44 of Title 12 of the Code (collectively, “Act”), and the case law of the Courts of the State of South Carolina (“State”), to offer and provide certain privileges, benefits, and incentives to prospective industry 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 qualifying industry 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 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 and benefit the general public welfare of the County by providing services, employment, recreation, tourism or other public benefits not otherwise provided locally;

WHEREAS, the County is authorized by Article VIII, Section 13 of the South Carolina Constitution and Section 4-1-170 of the Code (“MCIP Act”), to enter into agreements with one or more counties for the creation and operation of one or more joint-county industrial and business parks and to include within the boundaries of such parks the property of eligible companies;

WHEREAS, pursuant to the MCIP Act, the County intends to form a multi-county industrial park with Pickens County, South Carolina (“Park”) and enter into a multi-county park agreement (“Park Agreement”) with respect to the Project (defined below) which governs the operation of the Park;

WHEREAS, Project Mackinaw, a South Carolina limited liability company, along with any other authorized Sponsors and Sponsor Affiliates of the Company (collectively, “Company”) (all as further specified in the Fee Agreement (as further defined herein), and in the FILOT Act), is considering acquiring by construction or purchase certain improvements, furnishings, fixtures, machinery, apparatus, and equipment, for the purpose of establishing its design and manufacturing operations in the County (collectively, “Project”), which will result in a total investment of an expected Ten Million Dollars (\$10,000,000) in the County, all within the meaning of the FILOT Act, and the creation of an expected seventy (70) new, full-time jobs 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 Company’s first property tax year during which the Project is placed in service (“Investment Period”);

WHEREAS, the County has determined, after due investigation, that the Project would be aided by the availability of the assistance which the County might render through (1) entering into a fee-in-lieu of *ad valorem* taxes agreement (“Fee Agreement”) with the Company with respect to eligible parts of the Project,

under and pursuant to the FILOT Act; (2) a conveyance, lease-purchase, or other similar arrangement, between the County and the Company or a third-party developer, of the real property, as more particularly described on Exhibit B (“Project Site”), as is, at nominal consideration; (3) the ultimate conveyance of the Project Site to the Company or a third-party developer; (4) placing the Project Site into the Park; and (5) the commitment by the County to certain other incentives specified in the Fee Agreement;

WHEREAS, based on the representations of the Company, the County has determined that the foregoing inducements to the Company along with other economic development incentives to be given to the Company by the State will, to a great degree of certainty, result in the acquisition and construction of the Project in the County and has determined to approve such incentives; and

WHEREAS, in furtherance thereof, the County, by Resolution No. 2015-\_\_\_\_\_ adopted by the County Council of the County on November 3, 2015, formally identified the Project as a “project,” as provided in the FILOT Act.

NOW, THEREFORE, BE IT ORDAINED by Oconee County Council, in meeting duly assembled, as follows:

Section 1. The foregoing recitals are all hereby adopted as findings of fact, for purposes of this Ordinance.

Section 2. 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 of the County by providing services, employment, recreation, or 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 incorporated municipality 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 are greater than the costs to the public;

(f) The Fee Agreement will require the Company to make fee-in-lieu of tax payments in accordance with the provisions of the FILOT Act; and

Section 3. The form, terms, and provisions of the Fee Agreement, presented to this meeting as Exhibit A to this Ordinance and filed with the Clerk to County Council, 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. The Chairman of County Council and the Clerk to County Council be and they are hereby 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 legal 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 4.** The County Council hereby authorizes (a) the creation of the Park through the Park Agreement with Pickens County, in which the County and Pickens County will include the Project Site, and (b) the execution of any documents necessary to reflect the location of the Project Site in the multi-county business / industrial park during the entire term of the Fee Agreement.

**Section 5.** Subject to the terms and conditions of the Fee Agreement and, ultimately, the successful construction of the Project on the Project Site by the Company (as evidenced by the issuance by the County of a Certificate of Occupancy to the Company for the Project building(s)), the County is authorized to convey the Project Site, through lease-purchase, direct conveyance, or other similar arrangement, to the Company or a third-party developer for nominal consideration, for the construction of the Project in the County and other good and sufficient consideration, as set forth in the Fee Agreement, first, on a conditional basis, in order to construct the Project, and then in fee simple title, as is. The Chairman of County Council and the County Administrator are hereby authorized and directed to execute all appropriate documents, in form and substance acceptable to them in their sole discretion, and with all necessary safeguard built in to protect the County's interests as to the Project Site until completion of construction of the Project and do all things necessary, upon the advice of legal counsel to the County, to effect such transfer of the Project Site, which is shown in greater specificity on that certain plat of real property dated July 3, 2015, prepared by Lavender, Smith & Associates, Inc., attached hereto as Exhibit B. Reference to Exhibit B is hereby craved for detail as to the specific property authorized to be conveyed by this Ordinance.

**Section 6.** Notwithstanding any other provisions, the County is executing the Fee Agreement as statutory accommodation to assist the Company in achieving the intended benefits and purposes of the FILOT Act, among other things. The County has made no independent legal or factual investigation regarding the particulars of this transaction and it executes in reliance upon representations by the Company that the documents comply with all laws and regulations, particularly those pertinent to industrial development projects in the State.

**Section 7.** The Chairman of County Council and the Clerk to County Council, and any other proper officer of the 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 8.** 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 9.** 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.

*[Remainder Intentionally Left Blank]  
[Signature Page Follows]*

Done in meeting duly assembled: April 5, 2016.

OCONEE COUNTY, SOUTH CAROLINA

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Chairman of County Council  
Oconee County, South Carolina

ATTEST:

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Elizabeth G. Hulse, Clerk to County Council  
Oconee County, South Carolina

Approved as to form:

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David Root, County Attorney

First Reading:           October 20, 2015  
Second Reading:       November 3, 2015  
Third Reading:         April 5, 2016  
Public Hearing:         April 5, 2016

**EXHIBIT A  
FORM OF FEE AGREEMENT**

**[ATTACHED]**

**EXHIBIT B  
PLAT**

**[ATTACHED]**



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

**BETWEEN**

**PROJECT MACKINAW**

**AND**

**OCONEE COUNTY, SOUTH CAROLINA**

**DATED AS OF JANUARY 1, 2016**

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Exhibit A – Description of Property

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

THIS FEE-IN-LIEU OF *AD VALOREM* TAXES AGREEMENT (“Fee Agreement”) is entered into, effective, as of January 1, 2016, between Oconee County, South Carolina (“County”), a body politic and corporate and a political subdivision of the State of South Carolina (“State”), acting through the Oconee County Council (“County Council”) as the governing body of the County, and Project Mackinaw, a South Carolina limited liability company, and, to the extent allowed by law and this Fee Agreement, its affiliates and assigns, Sponsors and Sponsor Affiliates (collectively, “Company” and with County, “Parties,” each, a “Party”).

### **WITNESSETH:**

(a) The County is authorized by Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (“Act”) to enter into a fee agreement with qualifying industries to induce such industries to locate in the State and to encourage industries now located in the State to expand their investments and thus make use of and employ manpower and other resources of the State;

(b) Pursuant to Title 4, Section 1, Code of Laws of South Carolina, 1976, as amended (“MCIP Act”), the County is authorized (a) to develop multi-county industrial parks in partnership with counties having contiguous borders with the County, (b) to include within the boundaries of such parks the property of eligible companies; and (c) to grant credits in order to assist a company located in a multi-county industrial park in paying the cost of designing, acquiring, constructing, improving, or expanding (I) the infrastructure serving the County or the property of a company located within such multi-county industrial parks or (II) improved or unimproved real estate and personal property used in the operation of a manufacturing enterprise located within such multi-county industrial park in order to enhance the economic development of the County;

(b) Pursuant to the Act and based on representations made by the Company to the County, the County, by Ordinance No. [], adopted on April 5, 2016 (“Fee Ordinance”) determined that (a) the Project (as defined below) is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; (b) the Project gives rise to no pecuniary liability of the County or incorporated municipality and to no charge against its general credit or taxing power; (c) the purposes to be accomplished by the Project are proper governmental and public purposes; and (d) the benefits of the Project to the public are greater than the costs to the public;

(c) During the Investment Period (defined below), the Company shall make an investment of approximately \$10,000,000 (“Investment”) and create approximately 70 new, full-time jobs (“Job Requirement”), to create a manufacturing and design facility in Oconee County, on a site as more fully described on the attached Exhibit A (“Project”);

(d) Pursuant to a resolution adopted on November 3, 2015 (“Identifying Resolution”), the County formally identified the Project, as a “project” as provided in the Act; and

(e) Pursuant to the Fee Ordinance, the Act and the MCIP Act, the County Council authorized (a) the execution and delivery of this Fee Agreement with the Company, (b) the inclusion of the Project in a multi-county industrial-business park jointly developed with Pickens County, South Carolina; (c) the conveyance of certain real property and real property rights from the County to the Company; and certain other incentives described in the Fee Ordinance.

NOW, THEREFORE, AND IN CONSIDERATION of the respective representations and agreements hereinafter contained, Parties agree as follows, with the understanding that no obligation of the County described herein shall create a pecuniary liability or charge upon its general credit or taxing powers, but shall be payable solely out of the sources of payment described herein and shall not under any circumstances be deemed to constitute a general obligation of the County:

**ARTICLE I  
DEFINITIONS**

**Section 1.1. Terms.** The terms defined in this Article shall for all purposes of this Fee Agreement have the meaning herein specified, unless the context clearly requires otherwise.

“Chairman” means the Chairman of the County Council of Oconee County, South Carolina.

“Clerk to County Council” means the Clerk to County Council of Oconee County, South Carolina.

“Code” means the South Carolina Code of Laws, 1976, as amended.

“Commencement Date” means the last day of the property tax year during which Economic Development Property (defined below) is first placed in service, not to be later than the last day of the property tax year that is three years from the year in which the Parties entered into this Fee Agreement.

“County” means Oconee County, South Carolina, a body politic and corporate and political subdivision of the State of South Carolina, its successors and assigns, acting through the Oconee County Council as the governing body of the County.

“County Council” means the Oconee County Council, the governing body of the County.

“Diminution of Value,” in respect of any Phase of the Project, means any reduction in the value based on original fair market value as determined in Step 1 of Section 3.1 of this Fee Agreement, of the items which constitute a part of the Phase which may be caused by (i) the Company’s removal of equipment pursuant to Section 3.7 of this Fee Agreement, (ii) a casualty to the Phase of the Project, or any part thereof, described in Section 3.8 of this Fee Agreement, or (iii) a condemnation to the Phase of the Project, or any part thereof, described in Section 3.9 of this Fee Agreement.

“Economic Development Property” means all items of real and tangible personal property comprising the Project which qualify as economic development property under the Act, become subject to the Fee Agreement, and which are identified by the Company in connection with their annual filing of a SCDOR PT-100, PT-300 or comparable forms with the South Carolina Department of Revenue (as such filing may be amended from time to time) for each year within the Investment Period, as that period may be extended. Title to all Economic Development Property shall at all times remain vested in the Company, except as may be necessary to take advantage of the effect of Section 12-44-160.

“Equipment” means all of the machinery, equipment, furniture and fixtures, together with any and all additions, accessions, replacements and substitutions thereto or therefor acquired by the Company during the Investment Period, as that period may be extended, as a part of the Project.

“Event of Default” means any Event of Default specified in Section 3.12 of this Fee Agreement.

“Fee Term” or “Term” means the period from the date of delivery of this Fee Agreement until the last Phase Termination Date unless sooner terminated or extended pursuant to the terms of this Fee Agreement.

“FILOT Payment” means each payment in lieu of taxes which the Company is obligated to pay to the County.

“Improvement” means each improvement, together with any and all additions, accessions, replacements and substitutions thereto or therefor acquired by the Company during the Investment Period, as that period may be extended.

“Investment Period” means the period commencing on the first day Economic Development property is purchased or acquired, which must be no later than the Commencement Date, and ending on the last day of the 5<sup>th</sup> property tax year following the later of the property tax year in which Economic Development property is first placed in service or the property tax year in which this Fee Agreement is executed (such ending date is anticipated to be December 31, 2021); provided a later date may apply in accordance with Section 3.1 of this Fee Agreement, or may otherwise be agreed to, in writing, by the Company and County (if so authorized by the County Council then in office) pursuant to the Act.

“Phase,” in respect to the Project, means the Equipment, Improvements and Real Property, if any, placed in service during each year of the Investment Period.

“Phase Termination Date” means, with respect to each Phase of the Project, the day 30 years after each such Phase of the Project becomes subject to the terms of this Fee Agreement, unless the Phase Termination Date is extended in accordance with this Fee Agreement or as otherwise agreed to, in writing, between the County (if so authorized by the County Council then in office) and the Company in accordance with the Act.

“Project” means the Equipment, Improvements, and Real Property, together with the acquisition, construction, installation, design and engineering thereof, in phases. The Project involves an initial investment of sufficient sums to qualify under the Act.

“Real Property” means real property, together with all and singular the rights, members, hereditaments and appurtenances belonging or in any way incident or appertaining thereto acquired or constructed by the Company; all Improvements now or hereafter situated thereon; and all fixtures now or hereafter attached thereto, but only to the extent such Improvements and fixtures are deemed to become part of the Project under the terms of this Fee Agreement.

“Removed Component” means the following types of components or Phases of the Project or portions thereof, all of which the Company, as the case may be, shall be entitled to remove from the Project with the result that the same shall no longer be subject to the terms of the Fee Agreement: (a) components or Phases of the Project or portions thereof which the Company in its sole discretion, determines to be inadequate, obsolete, worn-out, uneconomic, damaged, unsuitable, undesirable or unnecessary; or (b) components or Phases of the Project or portions thereof which the Company in its sole discretion, elects to remove pursuant to Section 3.6(c) or Section 3.7(b)(iii) of this Fee Agreement.

“Replacement Property” means any property which is placed in service as a replacement for any item of Equipment or any Improvement which is scrapped or sold by the Company and treated as a Removed Component under Section 3.5 hereof regardless of whether such property serves the same function as the property it is replacing and regardless of whether more than one piece of property replaces any item of Equipment or any Improvement.

“Sponsor” shall have the meaning given in the Act.

“Sponsor Affiliate” shall the meaning given in the Act.

Any reference to any agreement or document in this Article I or otherwise in this Fee Agreement shall be deemed to include any and all amendments, supplements, addenda, and modifications to such agreement or document.

## **ARTICLE II REPRESENTATIONS AND WARRANTIES**

**Section 2.1. *Representations of the County.*** The County hereby represents and warrants to the Company:

(a) the County is a body politic and corporate and a political subdivision of the State which acts through the County Council as its governing body and by the provisions of the Act is authorized and empowered to enter into the transactions contemplated by this Fee Agreement and to carry out its obligations hereunder. The County has duly authorized the execution and delivery of this Fee Agreement and any and all other agreements described herein or therein.

(b) the Project constitutes a “project” within the meaning of the Act.

(c) by due corporate action, the County has agreed that, subject to compliance with applicable laws, each item of real and tangible personal property comprising the Project shall be considered Economic Development Property under the Act.

**Section 2.2. *Representations of the Company.*** The Company hereby represents and warrants to the County:

(a) the Company is or will be qualified to do business in the State of South Carolina and has power to enter into this Fee Agreement.

(b) the Company’s execution and delivery of this Fee Agreement and its compliance with the provisions hereof will not result in a default, not waived or cured, under any the Company restriction or any agreement or instrument to which the Company is now a party or by which it is bound.

(c) the Company intends to operate the Project as a “project” within the meaning of the Act as in effect on the date hereof.

(d) in accordance with the Act, the Company, as sponsor, along with any authorized Sponsor or Sponsor Affiliate, intends to make the investment and meet the job creation expectation, each as stated in the preamble of this Fee Agreement, by the end of the Investment Period.

## **ARTICLE III FILOT PAYMENTS**

**Section 3.1. *Negotiated FILOT Payments.*** Pursuant to Section 12-44-50 of the Act, the Company is required to make payments in lieu of ad valorem taxes on all Economic Development Property comprising the Project and placed in service during the Investment Period. The amount of such annual FILOT Payments shall be determined by the following procedure:

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 arm’s length transaction, fair market value is deemed to equal the original income tax basis, otherwise, the Department of Revenue and Taxation 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: Multiply the fair market value by an assessment ratio of 6% to establish the taxable value of each Phase of the Project in the year it is placed in service and in 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, as amended.
- Step 3: Multiply the taxable value for each year by the fixed millage rate, at the Project site, for all taxing entities, on June 30, 2015, which the parties believe to be 215.0 mills, 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, as amended.

The Parties intend and hereby agree to treat the aggregate minimum investment required under the Act for purposes of this Agreement and the FILOT authorized hereby and by the Act, to be \$5,000,000, rather than \$2,500,000, and treat the relationship of the parties under the Act and this Agreement as if the Act required a \$5,000,000 minimum investment in the Project to qualify for application of the Act to the Project. The Parties do *not* intend the \$5,000,000 minimum investment threshold to apply with respect to the Company's right to involve Sponsors or Sponsor Affiliates in meeting the minimum investment threshold: that is, if the total minimum investment in the Project is at least \$5,000,000 (without regard to depreciation or reappraisal), then the distribution of the investment among the Company and any other Sponsor or Sponsor Affiliate is controlled by the language of the Act, notwithstanding the first sentence of this paragraph.

If it is determined by a final order of a court of competent jurisdiction or by agreement of Parties that the minimum payment in lieu of taxes applicable to this transaction is to be calculated differently than described above, then the payment shall be reset at the minimum permitted level so determined (if so authorized by the County Council then in office).

If the Act or the above-described FILOT Payments are declared invalid or unenforceable, in whole or in part, for any reason, by the final order of a court of competent jurisdiction, Parties express their intention that such payments and the Fee Agreement be reformed so as to most closely effectuate the legal, valid, and enforceable intent thereof and so as to afford the Company the benefits to be derived hereunder. 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 by the Company shall be 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 were and had not been Economic Development Property as defined under the Act. In such event, any amount determined to be due and owing to the County from the Company, as the case may be, with respect to a year or years for which payments in lieu of *ad valorem* taxes 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.

If legislation reducing the minimum assessment ratio or millage rate shall be enacted by the State, the County agrees to give good faith consideration to amending any inducement agreement, resolution, ordinance, fee-in-lieu of tax agreement or lease agreement, including this Fee Agreement, in this matter, all as the case may be, to afford the Company the lowest assessment ratio and millage rate permitted by law. Moreover, if taxes on real or personal property shall be abolished in the County or the State, the Company may terminate the Fee Agreement with no penalty to the Company. In any such event, however, any amounts already due and owing under this Fee Agreement will still be due and owing.

Further, if the Company invests a \$5,000,000 minimum investment in the Project within the first five years of the Investment Period, the Company may request an extension of the Investment Period and an extension of the terms of the FILOT Payments and this Fee Agreement from the County. Upon written approval of the County Council the in office, in its sole discretion, (a) the Investment Period may be extended by up to an additional 5 years, such that the total Investment Period could then be as long as 10 years ("Extended Investment Period"), or (b) the terms of the FILOT Payments and this Fee Agreement may be extended by an additional 10 years, to a total of 40 years, or (c) both (a) and (b), all in accordance with the Act, all wherever such Investment Period, and term of this Fee Agreement and the FILOT Payments, respectively, appear in this Fee Agreement.

**Section 3.2. FILOT Payments on Replacement Property.** If the Company elects to replace any Removed Components and to substitute such Removed Components with Replacement Property as a part of the Project, then, pursuant and subject to Section 12-44-60 of the Act, the Company shall make statutory payments in lieu of *ad valorem* taxes with regard to such Replacement Property as follows:

(a) to the extent that the income tax basis of the Replacement Property ("Replacement Value") is less than or equal to the original income tax basis of the Removed Components ("Original Value") the amount of the FILOT Payments to be made by the Company with respect to such Replacement Property shall be calculated in accordance with Section 3.1 hereof; provided, however, in making such calculations, the original cost to be used in Step 1 of Section 3.1 shall be equal to the lesser of (x) the Replacement Value or (y) the Original Value, and the number of annual payments to be made with respect to the Replacement Property shall be equal to 30 (or, if greater, the maximum number of years for which the annual fee payments are available to the Company for each portion of the Project under the Act, as amended) minus the number of annual payments which have been made with respect to the oldest Removed Components disposed of in the same property tax year as the Replacement Property is placed in service; and

(b) to the extent that the Replacement Value exceeds the Original Value of the Removed Components ("Excess Value"), the FILOT Payments to be made by the Company with respect to the Excess Value shall be equal to the payment that would be due if the property were not Economic Development Property.

**Section 3.3. Reductions in Payments of Taxes Upon Removal, Condemnation or Casualty.** In the event of a Diminution in Value of any Phase of the Project, and subject to the terms of Section 3.5, hereof, the FILOT Payment with regard to that Phase of the Project shall be reduced in the same proportion as the amount of such Diminution in Value bears to the original fair market value of that Phase of the Project as determined pursuant to Step 1 of Section 3.1 hereof.

**Section 3.4. Place and Allocation of FILOT Payments.** The Company shall make the above-described FILOT Payments directly to the County in accordance with the Act.

**Section 3.5. Removal of Equipment.** Subject, always and in every event, notwithstanding any other provision of this Fee Agreement, to the requirement to maintain the minimum investment value of \$5,000,000 (without regard to depreciation or reappraisal) as described in Section 3.1 in service in the Project at all times, once that level has been achieved, in order to keep this Agreement in effect, the

Company shall be entitled to remove, in its sole discretion, components of or Phases of the Project from the Project with the result that said components or Phases (“Removed Components”) shall no longer be considered a part of the Project and shall no longer be subject to the terms of this Fee Agreement.

**Section 3.6. *Damage or Destruction of Project.***

(a) *Election to Terminate.* In the event the Project is damaged by fire, explosion, or any other casualty, the Company shall be entitled to terminate this Fee Agreement.

(b) *Election to Rebuild.* In the event the Project is damaged by fire, explosion, or any other casualty, and if the Company does not elect to terminate this Agreement, the Company may in its sole discretion commence to restore the Project with such reductions or enlargements in the scope of the Project, changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Company, subject, always, to the provisions of Section 3.5, hereof. All such restorations and replacements shall be considered substitutions of the destroyed portions of the Project and shall be considered part of the Project for all purposes hereof, including, but not limited to any amounts due by the Company to the County under Section 3.1 hereof.

(c) *Election to Remove.* In the event the Company elects not to terminate this Agreement pursuant to subsection (a) and elects not to rebuild pursuant to subsection (b), the damaged portions of the Project shall be treated as Removed Components, to the extent allowed by law and this Fee Agreement, including, without limitation, Section 3.5, hereof.

**Section 3.7. *Condemnation.***

(a) *Complete Taking.* If at any time during the Fee Term title to or temporary use of the entire Project should become vested in a public or quasi-public authority by virtue of the exercise of a taking by condemnation, inverse condemnation or the right of eminent domain, or by voluntary transfer under threat of such taking, or in the event that title to a portion of the Project shall be taken rendering continued occupancy of the Project commercially infeasible in the judgment of the Company, the Company shall have the option to terminate this Fee Agreement as of the time of vesting of title by sending written notice to the County within a reasonable period of time following such vesting.

(b) *Partial Taking.* In the event of a partial taking of the Project or transfer in lieu thereof, the Company may elect: (i) to terminate this Fee Agreement; (ii) to repair and restore the Project, with such reductions or enlargements in the scope of the Project, changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Company, subject to the provisions of Section 3.5, hereof; or (iii) to treat the portions of the Project so taken as Removed Components.

**Section 3.8. *Maintenance of Existence.*** The Company agrees (i) that it shall not take any action which will materially impair the maintenance of its corporate existence and (ii) that it will maintain its good standing under all applicable provisions of State law. Notwithstanding the foregoing provisions, the Company may at any time engage on an as-needed basis in any corporate restructuring or merger activities, the result of which may be the transfer or assignment of the benefits granted hereunder to a new entity, so long as the Company is the surviving entity in such restructuring or merger, and the resulting entity has a net worth at least as great as the Company at the time of such restructuring or merger.

**Section 3.9. *Confidentiality/Limitation on Access to Project.*** The County acknowledges and understands that the Company utilizes confidential and proprietary “state-of-the-art” manufacturing and design equipment and techniques and that a disclosure of any information relating to such equipment or techniques, including, but not limited to, disclosures of financial or other information concerning the

Company's operations could result in substantial harm to the Company and could thereby have a significant detrimental impact on the Company's employees and also upon the County. Therefore, the County agrees that, except as required by law and pursuant to the County's police powers, neither the County nor any employee, agent or contractor of the County: (i) shall request or be entitled to receive any such confidential or proprietary information; (ii) shall request or be entitled to inspect the Project or any property associated therewith; provided, however, that if an Event of Default shall have occurred and be continuing hereunder, the County shall be entitled to inspect the Project provided they shall comply with the remaining provisions of this Section; or (iii) shall knowingly and intentionally disclose or otherwise divulge any such clearly identified and marked confidential or proprietary information to any other person, firm, governmental body or agency, or any other entity unless specifically required to do so by State law. Prior to disclosing any such clearly identified and marked confidential or proprietary information or allowing inspections of the Project or any property associated therewith, the Company may require the execution of reasonable, individual, confidentiality and non-disclosure agreements by any officers, employees or agents of the County or any supporting or cooperating governmental agencies who would gather, receive or review such information or conduct or review the results of any inspections.

**Section 3.10. *Assignment and Subletting.*** This Fee Agreement may be assigned in whole or in part and the Project may be subleased as a whole or in part by the Company so long as such assignment or sublease is made in compliance with Section 12-44-120 of the Act. The County must consent to such transfers in order for this Agreement to remain in effect, and to the extent any further consent is requested, such consent will not unreasonably be withheld, and the County may grant such consent by adoption of a resolution.

**Section 3.11. *Leased Equipment.*** To the extent that applicable law allows or is revised or construed to allow the benefits of the Act, in the form of FILOT Payments as described in Section 3.1 hereof, to be applicable to personal property to be installed in the buildings and leased to but not purchased by the Company from at least one third party, under any form of lease, and if the County Council then in office so consents in writing or by formal action, then that personal property, at the Company's sole election, will be subject to FILOT Payments to the same extent as the Equipment under this Fee Agreement. In such event, this Fee Agreement shall be interpreted or modified as appropriate to give proper application to this Fee Agreement to the additional personal property without any amendment to this Fee Agreement; therefore, no action by County Council beyond the written consent or formal action would be required. The County Administrator, after consulting with the County Attorney, is authorized to make modifications, if any, as may be appropriate to give effect to this Section.

**Section 3.12. *Events of Default.*** The following shall be "Events of Default" under this Fee Agreement, and the term "Events of Default" shall mean, whenever used with reference to this Fee Agreement, any one or more of the following occurrences:

(a) Failure by the Company to make, upon levy, the FILOT Payments described in Section 3.1 hereof; provided, however, that the Company shall be entitled to all redemption rights granted by applicable statutes; or

(b) Failure by the Company or County, respectively, to perform any of the other material terms, conditions, obligations or covenants of the Company or County, respectively, hereunder, which failure shall continue for a period of ninety (90) days after written notice from the County to the Company or vice versa, as appropriate, specifying such failure and requesting that it be remedied, unless the complaining party shall agree in writing to an extension of such time prior to its expiration.

(c) If the Company ceases operations which means closure of its facility in the County or the cessation of production and shipment of products to customers for a continuous period of twelve (12) months.

**Section 3.13. Remedies on Default.** Whenever any Event of Default shall have occurred and shall be continuing, the County or Company, after having given written notice to the other party of such default and after the expiration of a 30 day cure period, shall have the option to take any one or more of the following remedial actions:

(a) Terminate the Fee Agreement; or

(b) Take whatever action at law or in equity that may appear necessary or desirable to collect the other amounts due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of the other party under this Fee Agreement.

**Section 3.14. Remedies Not Exclusive.** No remedy conferred upon or reserved to the County or Company under this Fee Agreement is intended to be exclusive of any other available remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other lawful remedy now or hereafter existing. No delay or omission to exercise any right or power accruing upon any continuing default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the County or Company to exercise any remedy reserved to it, it shall not be necessary to give notice, other than such notice as may be herein expressly required and such notice required at law or equity which the other party is not competent to waive.

**Section 3.15. Future Filings.** As permitted under Section 12-44-55 of the Act, the Company and County hereby waive application of any of the recaptulation requirements as set forth in Section 12-44-55, to the extent that and so long as the terms and conditions of this Section are met. Whenever the Company shall be required by any governmental or financial entity to file or produce any reports, notices, returns, or other documents while this Agreement is in effect, the Company or owner of the Project at the time shall promptly furnish to the County through the County Attorney, the Clerk to County Council, and the County Auditor the completed form of such required documents together with a certification by the Company or owner of the Project that such documents are accurate and not in violation of any provisions of law or of the other documents of this transaction, and that the documents meet the legal requirements of such filing or delivery. In the event of the failure or refusal of the Company or owner to comply with this provision, the Company or owner agrees to pay the statement for attorneys' fees and administrative time presented by the County for producing and filing such documents, such statement to be paid within 30 days after presentation by the County, and to promptly pay any fees, penalties, assessments or damages imposed upon the County by reason of its failure to duly file or produce such documents.

**Section 3.16. Fiscal Year; Property Tax Year.** If the Company's fiscal year changes so as to cause a change in the Company's property tax year, then the timing of the requirements of this Fee Agreement are automatically revised accordingly.

**Section 3.17. Indemnification.** (a) The Company shall and agrees to indemnify, defend and save the County, including the members of the governing body of the County, and the employees, officers and agents of the County (herein collectively referred to as the "Indemnified Parties") harmless against and from all claims by or on behalf of any person, firm or Company arising from the conduct or management of, or from any work or thing done on the Project during the term of the Fee Agreement(s) (regardless of when said claim(s) is asserted), and, the Company shall further indemnify, defend and save the Indemnified Parties harmless against and from all claims arising during the term of the Fee Agreement (regardless of when said claim(s) is asserted) from: (i) any condition of the Project, (ii) any breach or default on the part of the Company in the performance of any of its obligations under the Fee Agreement, (iii) any act of the Company or any of its agents, contractors, servants, employees or licensees, related to the Project, (iv) any act of any assignee or sublessee of the Company, or of any agents, contractors, servants, employees or licensees of any assignee or sublessee of the Company, related to the Project, (v)

any environmental violation, condition, or effect of, upon or caused by the Project, (vi) the County's execution of this Fee Agreement, (vii) performance of the County's obligations under this Agreement (viii) the administration of its duties pursuant to this Agreement, or (ix) otherwise by virtue of the County having entered into this Fee Agreement, other than for those claims occasioned by the Indemnified Parties' own willful misconduct or gross negligence or that of any employee or representative of the Indemnified Parties. The Company shall indemnify, defend and save the Indemnified Parties harmless from and against all costs and expenses incurred in or in connection with any such claim arising as aforesaid or in connection with any action or proceeding brought thereon, and upon notice from an Indemnified Party, the Company shall defend it in any such action, prosecution or proceeding with legal counsel reasonably acceptable to the County.

(b) Notwithstanding the fact that it is the intention of the parties that the Indemnified Parties not incur pecuniary liability by reason of the terms of the Fee Agreement, or the undertakings required of the County hereunder, by reason of the execution of the Fee Agreement, by reason of the performance of any act requested of it by the Company, or the operation of the Project by the Company, including all claims, liabilities or losses arising in connection with the violation of any statutes or regulations pertaining to the foregoing, nevertheless, if the Indemnified Parties should incur any such pecuniary liability, then in such event the Company shall indemnify, defend and hold them harmless against all claims by or on behalf of any person, firm or Company, arising out of the same, and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon, , other than for those claims occasioned by the Indemnified Parties' own willful misconduct or gross negligence or that of any employee or representative of the Indemnified Parties, and upon notice, the Company shall defend them in any such action or proceeding with legal counsel reasonably acceptable to the County.

(c) These indemnification covenants shall be considered included in and incorporated by reference in subsequent documents after closing which the County is requested to sign, and any other indemnification covenants in any subsequent documents shall not be construed to reduce or limit the above indemnification covenants.

#### **ARTICLE IV MISCELLANEOUS**

**Section 4.1. Notices.** Any notice, election, demand, request or other communication to be provided under this Fee Agreement shall be effective when delivered to the party named below or when deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed as follows (or addressed to such other address as any party shall have previously furnished in writing to the other party), except where the terms hereof require receipt rather than sending of any notice, in which case such provision shall control:

**AS TO THE COUNTY:**                   Oconee County, South Carolina  
  T. Scott Moulder, County Administrator  
  415 S. Pine Street  
  Walhalla, South Carolina 29691  
  Telephone: 864.638.4245  
  Facsimile: 864.638.4246  
  E-mail: [smoulder@oconeesc.com](mailto:smoulder@oconeesc.com)

**WITH A COPY TO:**                   Oconee County Attorney  
(does not constitute notice)       David A. Root, Esquire  
  415 South Pine Street  
  Walhalla, South Carolina 29691

Telephone: 864.364.5332  
Facsimile: 864.638.4246  
droot@oconeesc.com

AS TO THE COMPANY: Project Mackinaw

WITH A COPY TO: Michael E. Kozlarek, Esquire  
(does not constitute notice) Parker Poe Adams & Bernstein LLP  
1201 Main Street, Suite 1450 (29201)  
Post Office Box 1509  
Columbia, South Carolina 29202-1509  
Telephone: 803.255.8000  
Facsimile: 803.255.8017  
Email: [michaelkozlarek@parkerpoe.com](mailto:michaelkozlarek@parkerpoe.com)

**Section 4.2. *Binding Effect.*** This Fee Agreement shall be binding, in accordance with its terms, upon and inure to the benefit of the Company and the County, and their respective successors and assigns. In the event of the dissolution of the County or the consolidation of any part of the County with any other political subdivision or the transfer of any rights of the County to any other such political subdivision, all of the covenants, stipulations, promises and agreements of this Fee Agreement shall bind and inure to the benefit of the successors of the County from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of the County has been transferred.

**Section 4.3. *Counterparts.*** This Fee Agreement may be executed in any number of counterparts, in original, by facsimile or by other electronic means, and all of the counterparts taken together shall be deemed to constitute one and the same instrument.

**Section 4.4. *Governing Law.*** This Fee Agreement and all documents executed in connection herewith shall be construed in accordance with and governed by the laws of the State.

**Section 4.5. *Headings.*** The headings of the articles and sections of this Fee Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Fee Agreement.

**Section 4.6. *Amendments.*** The provisions of this Fee Agreement may only be modified or amended in writing by an agreement or agreements entered into between Parties.

**Section 4.7. *Further Assurance.*** From time to time the County agrees to execute and deliver to the Company, at the sole expense of the Company, such additional instruments as either may reasonably request to effectuate the purposes of this Fee Agreement.

**Section 4.8. *Severability.*** If any provision of this Fee Agreement is declared illegal, invalid or unenforceable for any reason, the remaining provisions hereof shall be unimpaired, and such illegal, invalid or unenforceable provision shall be reformed so as to most closely effectuate the legal, valid and enforceable intent thereof and so as to afford the Company with the maximum benefits to be derived

herefrom, it being the intention of the County to offer the Company a strong inducement to locate the Project in the County.

**Section 4.9. *Limited Obligation.*** ANY OBLIGATION OF THE COUNTY CREATED BY OR ARISING OUT OF THIS FEE AGREEMENT SHALL BE A LIMITED OBLIGATION OF THE COUNTY, PAYABLE BY THE COUNTY SOLELY FROM THE PROCEEDS DERIVED UNDER THIS FEE AGREEMENT AND SHALL NOT UNDER ANY CIRCUMSTANCES BE DEEMED TO CONSTITUTE A GENERAL OBLIGATION OF THE COUNTY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY LIMITATION.

**Section 4.10. *Force Majeure.*** The Company shall not be responsible for any delays or non-performance caused in whole or in part, directly or indirectly, by strikes, accidents, freight embargoes, fire, floods, inability to obtain materials, conditions arising from government orders or regulations, war or national emergency, acts of God, and any other cause, similar or dissimilar, beyond the Company's reasonable control.

**Section 4.11. *County Expenses.*** The Company shall reimburse the County for reasonable and necessary expenses, including, reasonable and necessary attorneys' fees, related to review and negotiation of the Transaction Documents, excluding those documents and review related to the Real Property Transactions, in an amount not to exceed \$5,000, absent extraordinary circumstances; provided, that the Company is not required to reimburse the County for any: (1) expenses incurred by the County in the ordinary course of its operation, including with respect to tax- and fee-payers; or (2) expenses incurred by the County in defending suits brought by the Company based on a default by the County under the Fee Agreement or related transaction documents. The Company shall reimburse the County no more than 30 days after receiving an invoice from the County, or its agents, in which the amount and the general nature of the expense is provided. The County's legal expenses related to the Real Property Transactions are not anticipated to exceed \$3,500.

**Section 4.12. *Execution Disclaimer.*** Notwithstanding any other provision, the County is executing as statutory accommodation to assist the Company in achieving the intended benefits and purposes of the Act. The County has made no independent legal or factual investigation regarding the particulars of this transaction and it executes in reliance upon representations by the Company that this document complies with all laws and regulations, particularly those pertinent to industrial development projects in South Carolina.

**Section 4.13. *Transfer of Real Property.*** As part of the County's offer of incentives to induce the Company to locate in the County, by separate documents the County shall agree to a lease-purchase or other similar arrangement with the Company regarding the real property described on Exhibit A. The lease-purchase shall provide for the use of the real property described on Exhibit A for the construction of the Project, and then the ultimate transfer of the property to the Company for \$1.00 if certain conditions, as described in lease-purchase, or other similar, documents, are met (the "Real Property Transactions"). The Real Property transactions are hereby approved by County Council, through this Fee Agreement and the Fee Ordinance, without further legislative authorization by County Council required, subject to proper execution and delivery of the documents related to the Real Property Transactions by the Chairman of County Council upon the advice of legal counsel to the County.

IN WITNESS WHEREOF, the County, acting by and through the County Council, has caused this Fee Agreement to be executed in its name and on its behalf by the County Council Chairman and to be attested by the Clerk to County Council, effective as of the day and year first above written.

OCONEE COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
Chairman of County Council  
Oconee County, South Carolina

(SEAL)  
ATTEST:

By: \_\_\_\_\_  
Elizabeth G. Hulse, Clerk to County Council  
Oconee County, South Carolina

IN WITNESS WHEREOF, the Company, acting by and through its duly authorized officer, has caused this Fee Agreement to be executed in its name and on its behalf, effective as of the day and year first above written.

PROJECT MACKINAW

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

**EXHIBIT A**  
**DESCRIPTION OF REAL PROPERTY**

All that certain piece, parcel or lot of land, lying arid being in the Oconee County, State of South Carolina, being [] acres, more or less, and being more fully shown on a survey prepared for [] by [] dated [], 2015 and having the following metes and bounds as shown thereon, a copy of which is attached to this Exhibit A:

STATE OF SOUTH CAROLINA

~~ORDINANCE 2016-~~

COUNTY OF OCONEE

**ORDINANCE 2015-34**

**AUTHORIZING A FEE-IN-LIEU-OF-TAX ARRANGEMENT ON BEHALF OF PROJECT MACKINAW ("COMPANY") PURSUANT TO A FEE-IN-LIEU-OF-TAX AGREEMENT BETWEEN OCONEE COUNTY, SOUTH CAROLINA ("COUNTY") AND THE COMPANY; AUTHORIZING THE CONVEYANCE OF CERTAIN REAL PROPERTY; AND OTHER MATTERS RELATING TO THE FOREGOING.**

WHEREAS, Oconee County, South Carolina ("County"), acting by and through its County Council ("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 ("Code"), including, without limitation, Titles 4 and 12, including, particularly, Chapter 44 of Title 12 of the Code (collectively, "Act") and the case law of the Courts of the State of South Carolina ("State"), to offer and provide certain privileges, benefits, and incentives to prospective industry 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 PILOT Act) and to enter into agreements with qualifying industry 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 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 and benefit the general public welfare of the County by providing services, employment, recreation, tourism or other public benefits not otherwise provided locally;

WHEREAS, the County is authorized by Article VIII, Section 13 of the South Carolina Constitution and Section 4-1-170 of the Code ("MCIP Act"), to enter into agreements with one or more counties for the creation and operation of one or more joint-county industrial and business parks and to include within the boundaries of such parks the property of eligible companies;

WHEREAS, pursuant to the MCIP Act, the County intends to form a multi-county industrial park with Pickens County, South Carolina ("Park") and enter into a multi-county park agreement ("Park Agreement") with respect to the Project (defined below) which governs the operation of the Park;

WHEREAS, Project Mackinaw, a South Carolina limited liability company, along with any other authorized Sponsors and Sponsor Affiliates of the Company (collectively, "Company") (all as further specified in the Fee Agreement (as further defined herein), and in the PILOT Act), is considering acquiring by construction or purchase certain improvements, furnishings, fixtures, machinery, apparatus, and equipment, for the purpose of establishing its design and manufacturing operations in the County (collectively, "Project"), which will result in a total investment of an expected Ten Million Dollars (\$10,000,000) in the County, all within the meaning of the PILOT Act, and the creation of an expected seventy (70) new, full-time jobs 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 Company's first property tax year during which the Project is placed in service ("Investment Period");

WHEREAS, the County has determined, after due investigation, that the Project would be aided by the availability of the assistance which the County might render through (1) entering into a fee-in-lieu-of-ad valorem taxes agreement ("Fee Agreement") with the Company with respect to eligible parts of the Project,

under and pursuant to the FILOT Act; (2) a conveyance, lease purchase, or other similar arrangement, between the County and the Company or a third-party developer, of the real property, as more particularly described on Exhibit B ("Project Site"), as is, at nominal ~~expense to the Company~~ consideration; (3) the ultimate conveyance of the Project Site to the Company ~~upon the successful completion and achievement of certain specified preconditions~~ by a third-party developer; (4) placing the Project Site into the Park; and (5) the commitment by the County to certain other incentives specified in the Fee Agreement;

WHEREAS, based on the representations of the Company, the County has determined that the foregoing inducements to the Company along with other economic development incentives to be given to the Company by the State will, to a great degree of certainty, result in the acquisition and construction of the Project in the County and has determined to approve such incentives; and

WHEREAS, in furtherance thereof, the County, by Resolution No. 2015-\_\_ ~~is~~ adopted by the County Council of the County on November 3, 2015, formally identified the Project as a "project," as provided in the FILOT Act.

NOW, THEREFORE, BE IT ORDAINED by Oconee County Council, in meeting duly assembled, as follows:

Section 1. The foregoing recitals are all hereby adopted as findings of fact, for purposes of this Ordinance.

Section 2. 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 subservise 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 of the County by providing services, employment, recreation, or 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 incorporated municipality 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 are greater than the costs to the public;

(f) The Fee Agreement will require the Company to make fee-in-lieu of tax payments in accordance with the provisions of the FILOT Act; and

Section 3. The form, terms, and provisions of the Fee Agreement, presented to this meeting as Exhibit A to this Ordinance and filed with the Clerk to County Council, 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. The Chairman of County Council and the Clerk to County Council be and they are hereby 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 legal 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 4. The County Council hereby authorizes (a) the creation of the Park through the Park Agreement with Pickens County, in which the County and Pickens County will include the Project Site, and (b) the execution of any documents necessary to reflect the location of the Project Site in the multi-county business / industrial park during the entire term of the Fee Agreement.

Section 5. Subject to the terms and conditions of the Fee Agreement and, ultimately, the successful construction of the Project on the Project Site by the Company (as evidenced by the issuance by the County of a Certificate of Occupancy to the Company for the Project building(s)), the County is authorized to convey the Project Site, through lease-purchase, ~~direct conveyance~~, or other similar arrangement, to the Company ~~or a third-party developer for nominal consideration of~~, for the construction of the Project in the County and other good and sufficient consideration, as set forth in the Fee Agreement, first, on a conditional basis, in order to construct the Project, and then in fee simple title, as is. The Chairman of County Council and the County Administrator are hereby authorized and directed to execute all appropriate documents ~~in form and substance acceptable to them in their sole discretion, and with all necessary safeguard built in to protect the County's interests as to the Project Site until completion of construction of the Project~~ and do all things necessary, upon the advice of legal counsel to the County, to effect such ~~conveyance~~ transfer of the Project Site, which is shown in greater specificity on that certain plat of real property dated ~~July 3, 2015~~, prepared by ~~Lavender, Smith & Associates, Inc.~~, attached hereto as Exhibit B. Reference to Exhibit B is hereby erased for detail as to the specific property authorized to be conveyed by this Ordinance.

Section 6. Notwithstanding any other provisions, the County is executing the Fee Agreement as statutory accommodation to assist the Company in achieving the intended benefits and purposes of the FILOT Act, among other things. The County has made no independent legal or factual investigation regarding the particulars of this transaction and it executes in reliance upon representations by the Company that the documents comply with all laws and regulations, particularly those pertinent to industrial development projects in the State.

Section 7. The Chairman of County Council and the Clerk to County Council, and any other proper officer of the 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 8. 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 9. 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.

*(Resolutions Incorporated: See Draft)  
(Signature Page Follows)*

RED LINE VERSION FOR 3RD READING MARCH 15, 2016

Done in meeting duly assembled: ~~November 17, 2015~~ April 5, 2016

OCONEE COUNTY, SOUTH CAROLINA

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Chairman of County Council  
Oconee County, South Carolina

ATTEST:

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Elizabeth G. Hulse, Clerk to County Council  
Oconee County, South Carolina

Approved as to form: \_\_\_\_\_

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David Root, County Attorney

First Reading:           October 20, 2015  
Second Reading:       November 3, 2015  
Third Reading:         April 5, 2016  
Public Hearing:         April 5, 2016

RED LINE VERSION FOR 3RD READING MARCH 15, 2016

**EXHIBIT A  
FORM OF FEE AGREEMENT**

**[ATTACHED]**

EXHIBIT B  
PLAT

[ATTACHED]

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

BETWEEN

PROJECT MACKINAW

AND

OCONNE COUNTY, SOUTH CAROLINA

DATED AS OF ~~NOVEMBER 17~~ JANUARY 1, ~~2015~~ 2016

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[TO BE UPDATED PRIOR TO EXECUTION]

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Exhibit A – Description of Property

FEE-IN-LIEU OF AD VALOREM TAXES AGREEMENT

THIS FEE-IN-LIEU OF AD VALOREM TAXES AGREEMENT ("Fee Agreement") is entered into, effective, as of ~~November 17~~ January 1, 2015, 2016, between Oconee County, South Carolina ("County"), a body politic and corporate and a political subdivision of the State of South Carolina ("State"), acting through the Oconee County Council ("County Council") as the governing body of the County; and Project Mackinaw, a South Carolina limited liability company, and, to the extent allowed by law and this Fee Agreement, its affiliates and assigns, Sponsors and Sponsor Affiliates (collectively, "Company" and with County, "Parties," each, a "Party").

WITNESSETH:

(a) The County is authorized by Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended ("Act") to enter into a fee agreement with qualifying industries to induce such industries to locate in the State and to encourage industries now located in the State to expand their investments and thus make use of and employ manpower and other resources of the State;

(b) Pursuant to Title 4, Section 1, Code of Laws of South Carolina, 1976, as amended ("MCIP Act"), the County is authorized (a) to develop multi-county industrial parks in partnership with counties having contiguous borders with the County, (b) to include within the boundaries of such parks the property of eligible companies; and (c) to grant credits in order to assist a company located in a multi-county industrial park in paying the cost of designing, acquiring, constructing, improving, or expanding (I) the infrastructure serving the County or the property of a company located within such multi-county industrial parks or (II) improved or unimproved real estate and personal property used in the operation of a manufacturing enterprise located within such multi-county industrial park in order to enhance the economic development of the County;

(c) Pursuant to the Act and based on representations made by the Company to the County, the County, by Ordinance No. [ ], adopted on ~~November 17~~ April 3, 2015, 2016 ("Fee Ordinance") determined that (a) the Project (as defined below) is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally, (b) the Project gives rise to no pecuniary liability of the County or incorporated municipality and to no charge against its general credit or taxing power, (c) the purposes to be accomplished by the Project are proper governmental and public purposes; and (d) the benefits of the Project to the public are greater than the costs to the public;

(e) During the Investment Period (defined below), the Company shall make an investment of approximately \$10,000,000 ("Investment") and create approximately 70 new, full-time jobs ("Job Requirement"), to create a manufacturing and design facility in Oconee County, on a site as more fully described on the attached Exhibit A ("Project");

(f) Pursuant to a resolution adopted on November 3, 2015 ("Identifying Resolution"), the County formally identified the Project, as a "project" as provided in the Act; and

(g) Pursuant to the Fee Ordinance, the Act and the MCIP Act, the County Council authorized (a) the execution and delivery of this Fee Agreement with the Company, (b) the inclusion of the Project in a multi-county industrial-business park jointly developed with Pickens County, South Carolina; (c) the conveyance of certain real property and real property rights from the County to the Company; and certain other incentives described in the Fee Ordinance.

NOW, THEREFORE, AND IN CONSIDERATION of the respective representations and agreements hereinafter contained, Parties agree as follows, with the understanding that no obligation of the County described herein shall create a pecuniary liability or charge upon its general credit or taxing powers, but shall be payable solely out of the sources of payment described herein and shall not under any circumstances be deemed to constitute a general obligation of the County.

#### ARTICLE I DEFINITIONS

**Section 1.1. Terms.** The terms defined in this Article shall for all purposes of this Fee Agreement have the meaning herein specified, unless the context clearly requires otherwise.

"Chairman" means the Chairman of the County Council of Oconee County, South Carolina.

"Clerk to County Council" means the Clerk to County Council of Oconee County, South Carolina.

"Code" means the South Carolina Code of Laws, 1976, as amended.

"Commencement Date" means the last day of the property tax year during which Economic Development Property (defined below) is first placed in service, not to be later than the last day of the property tax year that is three years from the year in which the Parties entered into this Fee Agreement.

"County" means Oconee County, South Carolina, a body politic and corporate and political subdivision of the State of South Carolina, its successors and assigns, acting through the Oconee County Council as the governing body of the County.

"County Council" means the Oconee County Council, the governing body of the County.

"Diminution of Value," in respect of any Phase of the Project, means any reduction in the value based on original fair market value as determined in Step 1 of Section 3.1 of this Fee Agreement, of the items which constitute a part of the Phase which may be caused by (i) the Company's removal of equipment pursuant to Section 3.7 of this Fee Agreement, (ii) a casualty to the Phase of the Project, or any part thereof, described in Section 3.8 of this Fee Agreement, or (iii) a condemnation to the Phase of the Project, or any part thereof, described in Section 3.9 of this Fee Agreement.

"Economic Development Property" means all items of real and tangible personal property comprising the Project which qualify as economic development property under the Act, become subject to the Fee Agreement, and which are identified by the Company in connection with their annual filing of a SCWOR PI-100, PI-300 or comparable forms with the South Carolina Department of Revenue (as such filing may be amended from time to time) for each year within the Investment Period, as that period may be extended. Title to all Economic Development Property shall at all times remain vested in the Company, except as may be necessary to take advantage of the effect of Section 12-44-160.

"Equipment" means all of the machinery, equipment, furniture and fixtures, together with any and all additions, accessions, replacements and substitutions thereto or therefor acquired by the Company during the Investment Period, as that period may be extended, as a part of the Project.

"Event of Default" means any Event of Default specified in Section 3.12 of this Fee Agreement.

## RED LINE VERSION FOR 3RD READING MARCH 15, 2016

"Fee Term" or "Term" means the period from the date of delivery of this Fee Agreement until the last Phase Termination Date unless sooner terminated or extended pursuant to the terms of this Fee Agreement.

"PILOT Payment" means each payment in lieu of taxes which the Company is obligated to pay to the County.

"Improvement" means each improvement, together with any and all additions, accessions, replacements and substitutions thereto or therefor acquired by the Company during the Investment Period, as that period may be extended.

"Investment Period" means the period commencing on the first day Economic Development property is purchased or acquired, which must be no later than the Commencement Date, and ending on the last day of the 5<sup>th</sup> property tax year following the later of the property tax year in which Economic Development property is first placed in service or the property tax year in which this Fee Agreement is executed (such ending date is anticipated to be December 31, ~~2020~~2021); provided a later date may apply in accordance with Section 3.1 of this Fee Agreement, or may otherwise be agreed to, in writing, by the Company and County (if so authorized by the County Council then in office) pursuant to the Act.

"Phase," in respect to the Project, means the Equipment, Improvements and Real Property, if any, placed in service during each year of the Investment Period.

"Phase Termination Date" means, with respect to each Phase of the Project, the day 30 years after each such Phase of the Project becomes subject to the terms of this Fee Agreement, unless the Phase Termination Date is extended in accordance with this Fee Agreement or as otherwise agreed to, in writing, between the County (if so authorized by the County Council then in office) and the Company in accordance with the Act.

"Project" means the Equipment, Improvements, and Real Property, together with the acquisition, construction, installation, design and engineering thereof, in phases. The Project involves an initial investment of sufficient sums to qualify under the Act.

"Real Property" means real property, together with all and singular the rights, members, hereditaments and appurtenances belonging or in any way incident or appertaining thereto acquired or constructed by the Company; all Improvements now or hereafter situated thereon; and all fixtures now or hereafter attached thereto, but only to the extent such Improvements and fixtures are deemed to become part of the Project under the terms of this Fee Agreement.

"Removed Component" means the following types of components or Phases of the Project or portions thereof, all of which the Company, as the case may be, shall be entitled to remove from the Project with the result that the same shall no longer be subject to the terms of the Fee Agreement: (a) components or Phases of the Project or portions thereof which the Company in its sole discretion, determines to be inadequate, obsolete, worn-out, uneconomic, damaged, unsuitable, undesirable or unnecessary; or (b) components or Phases of the Project or portions thereof which the Company in its sole discretion, elects to remove pursuant to Section 3.6(c) or Section 3.7(b)(iii) of this Fee Agreement.

"Replacement Property" means any property which is placed in service as a replacement for any item of Equipment or any Improvement which is scrapped or sold by the Company and treated as a Removed Component under Section 3.5 hereof regardless of whether such property serves the same function as the property it is replacing and regardless of whether more than one piece of property replaces any item of Equipment or any Improvement.

“Sponsor” shall have the meaning given in the Act.

“Sponsor Affiliate” shall the meaning given in the Act.

Any reference to any agreement or document in this Article I or otherwise in this Fee Agreement shall be deemed to include any and all amendments, supplements, addenda, and modifications to such agreement or document.

**ARTICLE II  
REPRESENTATIONS AND WARRANTIES**

**Section 2.1. *Representations of the County.*** The County hereby represents and warrants to the Company:

(a) the County is a body politic and corporate and a political subdivision of the State which acts through the County Council as its governing body and by the provisions of the Act is authorized and empowered to enter into the transactions contemplated by this Fee Agreement and to carry out its obligations hereunder. The County has duly authorized the execution and delivery of this Fee Agreement and any and all other agreements described herein or therein.

(b) the Project constitutes a “project” within the meaning of the Act.

(c) by due corporate action, the County has agreed that, subject to compliance with applicable laws, each item of real and tangible personal property comprising the Project shall be considered Economic Development Property under the Act.

**Section 2.2. *Representations of the Company.*** The Company hereby represents and warrants to the County:

(a) the Company is or will be qualified to do business in the State of South Carolina and has power to enter into this Fee Agreement.

(b) the Company’s execution and delivery of this Fee Agreement and its compliance with the provisions hereof will not result in a default, not waived or cured, under any the Company restriction or any agreement or instrument to which the Company is now a party or by which it is bound.

(c) the Company intends to operate the Project as a “project” within the meaning of the Act as in effect on the date hereof.

(d) in accordance with the Act, the Company, as sponsor, along with any authorized Sponsor or Sponsor Affiliate, intends to make the investment and meet the job creation expectation, each as stated in the preamble of this Fee Agreement, by the end of the Investment Period.

**ARTICLE III  
FILOT PAYMENTS**

**Section 3.1. *Negotiated FILOT Payments.*** Pursuant to Section 12-44-50 of the Act, the Company is required to make payments in lieu of ad valorem taxes on all Economic Development Property comprising the Project and placed in service during the Investment Period. The amount of such annual FILOT Payments shall be determined by the following procedure:

- 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 arm's length transaction, fair market value is deemed to equal the original income tax basis, otherwise, the Department of Revenue and Taxation 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: Multiply the fair market value by an assessment ratio of 6% to establish the taxable value of each Phase of the Project in the year it is placed in service and in 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, as amended.
- Step 3: Multiply the taxable value for each year by the fixed millage rate, at the Project site, for all taxing entities, on June 30, 2015, which the parties believe to be 215.0 mills, to determine the amount of the PILOT 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, as amended.

The Parties intend and hereby agree to treat the aggregate minimum investment required under the Act for purposes of this Agreement and the PILOT authorized hereby and by the Act, to be \$5,000,000, rather than \$2,500,000, and treat the relationship of the parties under the Act and this Agreement, as if the Act required a \$5,000,000 minimum investment in the Project to qualify for application of the Act to the Project. The Parties do not intend the \$5,000,000 minimum investment threshold to apply with respect to the Company's right to involve Sponsors or Sponsor Affiliates in meeting the minimum investment threshold; that is, if the total minimum investment in the Project is at least \$5,000,000 (without regard to depreciation or reappraisal), then the distribution of the investment among the Company and any other Sponsor or Sponsor Affiliate is controlled by the language of the Act, notwithstanding the first sentence of this paragraph.

If it is determined by a final order of a court of competent jurisdiction or by agreement of Parties that the minimum payment in lieu of taxes applicable to this transaction is to be calculated differently than described above, then the payment shall be reset at the minimum permitted level so determined ~~if so~~ authorized by the County Council then in office).

If the ~~Act or~~ Act or the above-described PILOT Payments are declared invalid or unenforceable, in whole or in part, for any reason, by the final order of a court of competent jurisdiction, Parties express their intention that such payments and the Fee Agreement be reformed so as to most closely effectuate the legal, valid, and enforceable intent thereof and so as to afford the Company the benefits to be derived hereunder. 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 by the Company shall be 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 were and had not been Economic Development Property as defined under the Act. In such event, any amount determined to be due and owing to the County from the Company, as the case may be, with respect to a year or years for which payments in lieu of *ad valorem* taxes 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.

If legislation reducing the minimum assessment ratio or millage rate shall be enacted by the State, the County agrees to give good faith consideration to amending any inducement agreement, resolution, ordinance, fee-in-lieu of tax agreement or lease agreement, including this Fee Agreement, in this matter, all as the case may be, to afford the Company the lowest assessment ratio and millage rate permitted by law. Moreover, if taxes on real or personal property shall be abolished in the County or the State, the Company may terminate the Fee Agreement with no penalty to the Company. In any such event, however, any amounts already due and owing under this Fee Agreement will still be due and owing.

Further, if the Company invests ~~the a \$2,500,000-5,000,000~~ minimum investment ~~required by~~ in the ~~the~~ Project within the first five years of the Investment Period, the Company may request an extension of the Investment Period and an extension of the terms of the PILOT Payments and this Fee Agreement from the County. Upon written approval of the County Council ~~the in office, in its sole discretion~~, (a) the Investment Period may be extended by up to an additional 5 years, such that the total Investment Period could then be as long as 10 years ("Extended Investment Period"), or (b) the terms of the PILOT Payments and this Fee Agreement may be extended by an additional 10 years, to a total of 40 years, or (c) both (a) and (b), all in accordance with the Act, all wherever such Investment Period, and term of this Fee Agreement and the PILOT Payments, respectively, appear in this Fee Agreement.

**Section 3.2. PILOT Payments on Replacement Property.** If the Company elects to replace any Removed Components and to substitute such Removed Components with Replacement Property as a part of the Project, then, pursuant and subject to Section 12-44-60 of the Act, the Company shall make statutory payments in lieu of *ad valorem* taxes with regard to such Replacement Property as follows:

(a) to the extent that the income tax basis of the Replacement Property ("Replacement Value") is less than or equal to the original income tax basis of the Removed Components ("Original Value") the amount of the PILOT Payments to be made by the Company with respect to such Replacement Property shall be calculated in accordance with Section 3.1 hereof, provided, however, in making such calculations, the original cost to be used in Step 1 of Section 3.1 shall be equal to the lesser of (x) the Replacement Value or (y) the Original Value, and the number of annual payments to be made with respect to the Replacement Property shall be equal to 30 (or, if greater, the maximum number of years for which the annual fee payments are available to the Company for each portion of the Project under the Act, as amended) minus the number of annual payments which have been made with respect to the oldest Removed Components disposed of in the same property tax year as the Replacement Property is placed in service; and

(b) to the extent that the Replacement Value exceeds the Original Value of the Removed Components ("Excess Value"), the PILOT Payments to be made by the Company with respect to the Excess Value shall be equal to the payment that would be due if the property were not Economic Development Property.

**Section 3.3. Reductions in Payments of Taxes Upon Removal, Condemnation or Casualty.** In the event of a Diminution in Value of any Phase of the Project, and subject to the terms of Section 3.5, hereof, the PILOT Payment with regard to that Phase of the Project shall be reduced in the same

proportion as the amount of such Diminution in Value bears to the original fair market value of that Phase of the Project as determined pursuant to Step 1 of Section 3.1 hereof.

**Section 3.4. Place and Allocation of PILOT Payments.** The Company shall make the above-described PILOT Payments directly to the County in accordance with the Act.

**Section 3.5. Removal of Equipment.** Subject, always and in every event, notwithstanding any other provision of this Fee Agreement, to ~~the requirement to maintain the statutory~~ minimum investment value of ~~\$5,000,000~~ (without regard to depreciation ~~or reappraisal~~) ~~as described in Section 3.1~~ in service in the Project at all times; once that level has been achieved, ~~in order to keep this Agreement in effect~~, the Company shall be entitled to remove, in its sole discretion, components of or Phases of the Project from the Project with the result that said components or Phases ("Removed Components") shall no longer be considered a part of the Project and shall no longer be subject to the terms of this Fee Agreement.

**Section 3.6. Damage or Destruction of Project.**

(a) *Election to Terminate.* In the event the Project is damaged by fire, explosion, or any other casualty, the Company shall be entitled to terminate this Fee Agreement.

(b) *Election to Rebuild.* In the event the Project is damaged by fire, explosion, or any other casualty, and if the Company does not elect to terminate this Agreement, the Company may in its sole discretion commence to restore the Project with such reductions or enlargements in the scope of the Project, changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Company, subject, always, to the ~~provisions~~ provisions of Section 3.5, hereof. All such restorations and replacements shall be considered substitutions of the destroyed portions of the Project and shall be considered part of the Project for all purposes hereof, including, but not limited to any amounts due by the Company to the County under Section 3.1 hereof.

(c) *Election to Remove.* In the event the Company elects not to terminate this Agreement pursuant to subsection (a) and elects not to rebuild pursuant to subsection (b), the damaged portions of the Project shall be treated as Removed Components, to the extent allowed by law and this Fee Agreement, including, without limitation, Section 3.5, hereof.

**Section 3.7. Condemnation.**

(a) *Complete Taking.* If at any time during the Fee Term title to or temporary use of the entire Project should become vested in a public or quasi-public authority by virtue of the exercise of a taking by condemnation, inverse condemnation or the right of eminent domain, or by voluntary transfer under threat of such taking, or in the event that title to a portion of the Project shall be taken rendering continued occupancy of the Project commercially infeasible in the judgment of the Company, the Company shall have the option to terminate this Fee Agreement as of the time of vesting of title by sending written notice to the County within a reasonable period of time following such vesting.

(b) *Partial Taking.* In the event of a partial taking of the Project or transfer in lieu thereof, the Company may elect: (i) to terminate this Fee Agreement; (ii) to repair and restore the Project, with such reductions or enlargements in the scope of the Project, changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Company, subject to the provisions of Section 3.5, hereof; or (iii) to treat the portions of the Project so taken as Removed Components.

**Section 3.8. Maintenance of Existence.** The Company agrees (i) that it shall not take any action which will materially impair the maintenance of its corporate existence and (ii) that it will maintain its good standing under all applicable provisions of State law. Notwithstanding the foregoing provisions, the Company may at any time engage on an as-needed basis in any corporate restructuring or merger activities, the result of which may be the transfer or assignment of the benefits granted hereunder to a new entity, so long as the Company is the surviving entity in such restructuring or merger, and the resulting entity has a net worth at least as great as the Company at the time of such restructuring or merger.

**Section 3.9. Confidentiality/Limitation on Access to Project.** The County acknowledges and understands that the Company utilizes confidential and proprietary "state-of-the-art" manufacturing and design equipment and techniques and that a disclosure of any information relating to such equipment or techniques, including, but not limited to, disclosures of financial or other information concerning the Company's operations, could result in substantial harm to the Company and could thereby have a significant detrimental impact on the Company's employees and also upon the County. Therefore, the County agrees that, except as required by law and pursuant to the County's police powers, neither the County nor any employee, agent or contractor of the County: (i) shall request or be entitled to receive any such confidential or proprietary information; (ii) shall request or be entitled to inspect the Project or any property associated therewith; provided, however, that if an Event of Default shall have occurred and be continuing hereunder, the County shall be entitled to inspect the Project provided they shall comply with the remaining provisions of this Section; or (iii) shall knowingly and intentionally disclose or otherwise divulge any such clearly identified and marked confidential or proprietary information to any other person, firm, governmental body or agency, or any other entity unless specifically required to do so by State law. Prior to disclosing any such clearly identified and marked confidential or proprietary information or allowing inspections of the Project or any property associated therewith, the Company may require the execution of reasonable, individual, confidentiality and non-disclosure agreements by any officers, employees or agents of the County or any supporting or cooperating governmental agencies who would gather, receive or review such information or conduct or review the results of any inspections.

**Section 3.10. Assignment and Subletting.** This Fee Agreement may be assigned in whole or in part and the Project may be subleased as a whole or in part by the Company so long as such assignment or sublease is made in compliance with Section 12-44 120 of the Act. The County must consent to such transfers in order for this Agreement to remain in effect, and to the extent any further consent is requested, such consent will not unreasonably be withheld, and the County may grant such consent by adoption of a resolution.

**Section 3.11. Leased Equipment.** To the extent that applicable law allows or is revised or construed to allow the benefits of the Act, in the form of FILOT Payments as described in Section 3.1 hereof, to be applicable to personal property to be installed in the buildings and leased to but not purchased by the Company from at least one third party, under any form of lease, and if the County Council then in office so consents in writing or by formal action, then that personal property, at the Company's sole election, will be subject to FILOT Payments to the same extent as the Equipment under this Fee Agreement. In such event, this Fee Agreement shall be interpreted or modified as appropriate to give proper application to this Fee Agreement to the additional personal property without any amendment to this Fee Agreement; therefore, no action by County Council beyond the written consent or formal action would be required. The County Administrator, after consulting with the County Attorney, is authorized to make modifications, if any, as may be appropriate to give effect to this Section.

**Section 3.12. Events of Default.** The following shall be "Events of Default" under this Fee Agreement, and the term "Events of Default" shall mean, whenever used with reference to this Fee Agreement, any one or more of the following occurrences:

# RED LINE VERSION FOR 3RD READING MARCH 15, 2016

(a) Failure by the Company to make, upon levy, the FILOT Payments described in Section 3.1 hereof; provided, however, that the Company shall be entitled to all redemption rights granted by applicable statutes; or

(b) Failure by the Company or County, respectively, to perform any of the other material terms, conditions, obligations or covenants of the Company or County, respectively, hereunder, which failure shall continue for a period of ninety (90) days after written notice from the County to the Company or vice versa, as appropriate, specifying such failure and requesting that it be remedied, unless the complaining party shall agree in writing to an extension of such time prior to its expiration.

(c) If the Company ceases operations which means closure of its facility in the County or the cessation of production and shipment of products to customers for a continuous period of twelve (12) months.

**Section 3.13. Remedies on Default.** Whenever any Event of Default shall have occurred and shall be continuing, the County or Company, after having given written notice to the other party of such default and after the expiration of a 30 day cure period, shall have the option to take any one or more of the following remedial actions:

(a) Terminate the Fee Agreement; or

(b) Take whatever action at law or in equity that may appear necessary or desirable to collect the other amounts due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of the other party under this Fee Agreement.

**Section 3.14. Remedies Not Exclusive.** No remedy conferred upon or reserved to the County or Company under this Fee Agreement is intended to be exclusive of any other available remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other lawful remedy now or hereafter existing. No delay or omission to exercise any right or power accruing upon any continuing default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the County or Company to exercise any remedy reserved to it, it shall not be necessary to give notice, other than such notice as may be herein expressly required and such notice required at law or equity which the other party is not competent to waive.

**Section 3.15. Future Filings.** As permitted under Section 12-44-55 of the Act, the Company and County hereby waive application of any of the recapitulation requirements as set forth in Section 12-44-55, to the extent that and so long as the terms and conditions of this Section are met. Whenever the Company shall be required by any governmental or financial entity to file or produce any reports, notices, returns, or other documents while this Agreement is in effect, the Company or owner of the Project at the time shall promptly furnish to the County through the County Attorney, the Clerk to County Council, and the County Auditor the completed form of such required documents together with a certification by the Company or owner of the Project that such documents are accurate and not in violation of any provisions of law or of the other documents of this transaction, and that the documents meet the legal requirements of such filing or delivery. In the event of the failure or refusal of the Company or owner to comply with this provision, the Company or owner agrees to pay the statement for attorneys' fees and administrative time presented by the County for producing and filing such documents, such statement to be paid within 30 days after presentation by the County, and to promptly pay any fees, penalties, assessments or damages imposed upon the County by reason of its failure to duly file or produce such documents.

# RED LINE VERSION FOR 3RD READING MARCH 15, 2016

**Section 3.16. Fiscal Year; Property Tax Year.** If the Company's fiscal year changes so as to cause a change in the Company's property tax year, then the timing of the requirements of this Fee Agreement are automatically revised accordingly.

**Section 3.17. Indemnification.** (a) The Company shall and agrees to indemnify, defend and save the County, including the members of the governing body of the County, and the employees, officers and agents of the County (herein collectively referred to as the "Indemnified Parties") harmless against and from all claims by or on behalf of any person, firm or Company arising from the conduct or management of, or from any work or thing done on the Project during the term of the Fee Agreement(s) (regardless of when said claim(s) is asserted), and, the Company shall further indemnify, defend and save the Indemnified Parties harmless against and from all claims arising during the term of the Fee Agreement (regardless of when said claim(s) is asserted) from: (i) any condition of the Project, (ii) any breach or default on the part of the Company in the performance of any of its obligations under the Fee Agreement, (iii) any act of the Company or any of its agents, contractors, servants, employees or licensees, related to the Project, (iv) any act of any assignee or sublessee of the Company, or of any agents, contractors, servants, employees or licensees of any assignee or sublessee of the Company, related to the Project, (v) any environmental violation, condition, or effect of, upon or caused by the Project, (vi) the County's execution of this Fee Agreement, (vii) performance of the County's obligations under this Agreement (viii) the administration of its duties pursuant to this Agreement, or (ix) otherwise by virtue of the County having entered into this Fee Agreement, other than for those claims occasioned by the Indemnified Parties' own willful misconduct or gross negligence or that of any employee or representative of the Indemnified Parties. The Company shall indemnify, defend and save the Indemnified Parties harmless from and against all costs and expenses incurred in or in connection with any such claim arising as aforesaid or in connection with any action or proceeding brought thereon, and upon notice from an Indemnified Party, the Company shall defend it in any such action, prosecution or proceeding with legal counsel reasonably acceptable to the County.

(b) Notwithstanding the fact that it is the intention of the parties that the Indemnified Parties not incur pecuniary liability by reason of the terms of the Fee Agreement, or the undertakings required of the County hereunder, by reason of the execution of the Fee Agreement, by reason of the performance of any act requested of it by the Company, or the operation of the Project by the Company, including all claims, liabilities or losses arising in connection with the violation of any statutes or regulations pertaining to the foregoing, nevertheless, if the Indemnified Parties should incur any such pecuniary liability, then in such event the Company shall indemnify, defend and hold them harmless against all claims by or on behalf of any person, firm or Company, arising out of the same, and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon, , other than for those claims occasioned by the Indemnified Parties' own willful misconduct or gross negligence or that of any employee or representative of the Indemnified Parties, and upon notice, the Company shall defend them in any such action or proceeding with legal counsel reasonably acceptable to the County.

(c) These indemnification covenants shall be considered included in and incorporated by reference in subsequent documents after closing which the County is requested to sign, and any other indemnification covenants in any subsequent documents shall not be construed to reduce or limit the above indemnification covenants.

## ARTICLE IV MISCELLANEOUS

**Section 4.1. Notices.** Any notice, election, demand, request or other communication to be provided under this Fee Agreement shall be effective when delivered to the party named below or when deposited

## RED LINE VERSION FOR 3RD READING MARCH 15, 2016

with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed as follows (or addressed to such other address as any party shall have previously furnished in writing to the other party), except where the terms hereof require receipt rather than sending of any notice, in which case such provision shall control:

AS TO THE COUNTY:           Oconee County, South Carolina  
T. Scott Moulder, County Administrator  
415 S. Pine Street  
Walhalla, South Carolina 29691  
Telephone: 864.638.4245  
Facsimile: 864.638.4246  
E-mail: [smoulder@oconee.com](mailto:smoulder@oconee.com)

WITH A COPY TO:           Oconee County Attorney  
(does not constitute notice) David A. Root, Esquire  
~~(TO BE UPDATED)~~

~~415 South Pine Street  
Walhalla, South Carolina 29691  
Telephone: 864.364.5332  
Facsimile: 864.638.4246  
[droot@oconee.com](mailto:droot@oconee.com)~~

AS TO THE COMPANY:       Project Mackinaw

WITH A COPY TO:           Michael E. Kozlarsk, Esquire  
(does not constitute notice) Parker Poe Adams & Bernstein LLP  
1201 Main Street, Suite 1450 (29201)  
Post Office Box 1509  
Columbia, South Carolina 29202-1509  
Telephone: 803.255.8000  
Facsimile: 803.255.8017  
Email: [michaelkozlaris@parkerpoe.com](mailto:michaelkozlaris@parkerpoe.com)

**Section 4.2: Binding Effect.** This Fee Agreement shall be binding, in accordance with its terms, upon and inure to the benefit of the Company and the County, and their respective successors and assigns. In the event of the dissolution of the County or the consolidation of any part of the County with any other political subdivision or the transfer of any rights of the County to any other such political subdivision, all of the covenants, stipulations, promises and agreements of this Fee Agreement shall bind and inure to the benefit of the successors of the County from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of the County has been transferred.

**Section 4.3. Counterparts.** This Fee Agreement may be executed in any number of counterparts, in original, by facsimile or by other electronic means, and all of the counterparts taken together shall be deemed to constitute one and the same instrument.

**Section 4.4. Governing Law.** This Fee Agreement and all documents executed in connection herewith shall be construed in accordance with and governed by the laws of the State.

**Section 4.5. Headings.** The headings of the articles and sections of this Fee Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Fee Agreement.

**Section 4.6. Amendments.** The provisions of this Fee Agreement may only be modified or amended in writing by an agreement or agreements entered into between Parties.

**Section 4.7. Further Assurance.** From time to time the County agrees to execute and deliver to the Company, at the sole expense of the Company, such additional instruments as either may reasonably request to effectuate the purposes of this Fee Agreement.

**Section 4.8. Severability.** If any provision of this Fee Agreement is declared illegal, invalid or unenforceable for any reason, the remaining provisions hereof shall be unimpaired, and such illegal, invalid or unenforceable provision shall be reformed so as to most closely effectuate the legal, valid and enforceable intent thereof and so as to afford the Company with the maximum benefits to be derived herefrom, it being the intention of the County to offer the Company a strong inducement to locate the Project in the County.

**Section 4.9. Limited Obligation.** ANY OBLIGATION OF THE COUNTY CREATED BY OR ARISING OUT OF THIS FEE AGREEMENT SHALL BE A LIMITED OBLIGATION OF THE COUNTY, PAYABLE BY THE COUNTY SOLELY FROM THE PROCEEDS DERIVED UNDER THIS FEE AGREEMENT AND SHALL NOT UNDER ANY CIRCUMSTANCES BE DEEMED TO CONSTITUTE A GENERAL OBLIGATION OF THE COUNTY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY LIMITATION.

**Section 4.10. Force Majeure.** The Company shall not be responsible for any delays or non-performance caused in whole or in part, directly or indirectly, by strikes, accidents, freight embargoes, fire, floods, inability to obtain materials, conditions arising from government orders or regulations, war or national emergency, acts of God, and any other cause, similar or dissimilar, beyond the Company's reasonable control.

**Section 4.11. County Expenses.** The Company shall reimburse the County for reasonable and necessary expenses, including reasonable and necessary attorneys' fees, related to review and negotiation of the Transaction Documents, excluding those documents and review related to the Real Property Transactions, in an amount not to exceed \$5,000, absent extraordinary circumstances; provided, that the Company is not required to reimburse the County for any: (1) expenses incurred by the County in the ordinary course of its operation, including with respect to tax- and fee-payers; or (2) expenses incurred by the County in defending suits brought by the Company based on a default by the County under the Fee Agreement or related transaction documents. The Company shall reimburse the County no more than 30 days after receiving an invoice from the County, or its agents, in which the amount and the general nature of the expense is provided. The County's legal expenses related to the Real Property Transactions are not anticipated to exceed \$3,500.

**Section 4.12. Execution Disclaimer.** Notwithstanding any other provision, the County is executing as statutory accommodation to assist the Company in achieving the intended benefits and purposes of the

# RED LINE VERSION FOR 3RD READING MARCH 15, 2016

Act. The County has made no independent legal or factual investigation regarding the particulars of this transaction and it executes in reliance upon representations by the Company that this document complies with all laws and regulations, particularly those pertinent to industrial development projects in South Carolina.

**Section 4.13. *Transfer of Real Property.*** As part of the County's offer of incentives to induce the Company to locate in the County, by separate documents the County shall agree to a lease-purchase or other similar arrangement with the Company regarding the real property described on Exhibit A. The lease-purchase shall provide for the use of the real property described on Exhibit A for the construction of the Project, and then the ultimate transfer of the property to the Company for \$1.00 if certain conditions, as described in lease-purchase, or other similar, documents, are met (the "Real Property Transactions"). The Real Property transactions are hereby approved by County Council, through this Fee Agreement and the Fee Ordinance, without further legislative authorization by County Council required, subject to proper execution and delivery of the documents related to the Real Property Transactions by the Chairman of County Council upon the advice of legal counsel to the County.

# RED LINE VERSION FOR 3RD READING MARCH 15, 2016

IN WITNESS WHEREOF, the County, acting by and through the County Council, has caused this Fee Agreement to be executed in its name and on its behalf by the County Council Chairman and to be attested by the Clerk to County Council, effective as of the day and year first above written.

OCONEE COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
Chairman of County Council  
Oconee County, South Carolina

(SEAL)  
ATTEST:

By: \_\_\_\_\_  
Elizabeth G. Hulse, Clerk to County Council  
Oconee County, South Carolina

# RED LINE VERSION FOR 3RD READING MARCH 15, 2016

IN WITNESS WHEREOF, the Company, acting by and through its duly authorized officer, has caused this Fee Agreement to be executed in its name and on its behalf, effective as of the day and year first above written.

PROJECT MACKINAW

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

# RED LINE VERSION FOR 3RD READING MARCH 15, 2016

## **EXHIBIT A DESCRIPTION OF REAL PROPERTY**

All that certain piece, parcel or lot of land, lying and being in the Oconee County, State of South Carolina, being [] acres, more or less, and being more fully shown on a survey prepared for [] by [] dated [], 2015 and having the following metes and bounds as shown thereon, a copy of which is attached to this Exhibit A:

STATE OF SOUTH CAROLINA  
COUNTY OF OCONEE  
**ORDINANCE 2015-34**

**AUTHORIZING A FEE-IN-LIEU-OF-TAX ARRANGEMENT ON BEHALF OF PROJECT MACKINAW ("COMPANY") PURSUANT TO A FEE-IN-LIEU-OF-TAX AGREEMENT BETWEEN OCONEE COUNTY, SOUTH CAROLINA ("COUNTY") AND THE COMPANY; AUTHORIZING THE CONVEYANCE OF CERTAIN REAL PROPERTY; AND OTHER MATTERS RELATING TO THE FOREGOING.**

WHEREAS, Oconee County, South Carolina ("County"), acting by and through its County Council ("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 ("Code"), including, without limitation, Titles 4 and 12, including, particularly, Chapter 44 of Title 12 of the Code (collectively, "Act"), and the case law of the Courts of the State of South Carolina ("State"), to offer and provide certain privileges, benefits, and incentives to prospective industry 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 qualifying industry 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 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 and benefit the general public welfare of the County by providing services, employment, recreation, tourism or other public benefits not otherwise provided locally;

WHEREAS, the County is authorized by Article VIII, Section 13 of the South Carolina Constitution and Section 4-1-170 of the Code ("MCIP Act"), to enter into agreements with one or more counties for the creation and operation of one or more joint-county industrial and business parks and to include within the boundaries of such parks the property of eligible companies;

WHEREAS, pursuant to the MCIP Act, the County intends to form a multi-county industrial park with Pickens County, South Carolina ("Park") and enter into a multi-county park agreement ("Park Agreement") with respect to the Project (defined below) which governs the operation of the Park;

WHEREAS, Project Mackinaw, a South Carolina limited liability company, along with any other authorized Sponsors and Sponsor Affiliates of the Company (collectively, "Company") (all as further specified in the Fee Agreement (as further defined herein), and in the FILOT Act), is considering acquiring by construction or purchase certain improvements, furnishings, fixtures, machinery, apparatus, and equipment, for the purpose of establishing its design and manufacturing operations in the County (collectively, "Project"), which will result in a total investment of an expected Ten Million Dollars (\$10,000,000) in the County, all within the meaning of the FILOT Act, and the creation of an expected seventy (70) new, full-time jobs 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 Company's first property tax year during which the Project is placed in service ("Investment Period");

WHEREAS, the County has determined, after due investigation, that the Project would be aided by the availability of the assistance which the County might render through (1) entering into a fee-in-lieu of *ad valorem* taxes agreement ("Fee Agreement") with the Company with respect to eligible parts of the Project,

under and pursuant to the FILOT Act; (2) a lease-purchase, or other similar arrangement, between the County and the Company, of the real property, as more particularly described on Exhibit B ("Project Site"), as is, at nominal expense to the Company; (3) the conveyance of the Project Site to the Company upon the successful completion and achievement of certain specified preconditions; (4) placing the Project Site into the Park; and (5) the commitment by the County to certain other incentives specified in the Fee Agreement;

WHEREAS, based on the representations of the Company, the County has determined that the foregoing inducements to the Company along with other economic development incentives to be given to the Company by the State will, to a great degree of certainty, result in the acquisition and construction of the Project in the County and has determined to approve such incentives; and

WHEREAS, in furtherance thereof, the County, by Resolution No. 2015-[] adopted by the County Council of the County on November 3, 2015, formally identified the Project as a "project," as provided in the FILOT Act.

NOW, THEREFORE, BE IT ORDAINED by Deonee County Council, in meeting duly assembled, as follows:

Section 1. The foregoing recitals are all hereby adopted as findings of fact, for purposes of this Ordinance.

Section 2. 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 subservise 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 of the County by providing services, employment, recreation, or 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 incorporated municipality 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 are greater than the costs to the public;

(f) The Fee Agreement will require the Company to make fee-in-lieu of tax payments in accordance with the provisions of the FILOT Act; and

Section 3. The form, terms, and provisions of the Fee Agreement, presented to this meeting as Exhibit A to this Ordinance and filed with the Clerk to County Council, 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. The Chairman of County Council and the Clerk to County Council be and they are hereby 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 legal 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 4. The County Council hereby authorizes (a) the creation of the Park through the Park Agreement with Pickens County, in which the County and Pickens County will include the Project Site, and (b) the execution of any documents necessary to reflect the location of the Project Site in the multi-county business / industrial park during the entire term of the Fee Agreement.

Section 5. Subject to the terms and conditions of the Fee Agreement and, ultimately, the successful construction of the Project on the Project Site by the Company (as evidenced by the issuance by the County of a Certificate of Occupancy to the Company for the Project building(s)), the County is authorized to convey the Project Site, through lease-purchase or other similar arrangement to the Company, for the consideration of the construction of the Project in the County and other good and sufficient consideration, as set forth in the Fee Agreement, first, on a conditional basis, in order to construct the Project, and then in fee simple title, as is. The Chairman of County Council and the County Administrator are hereby authorized and directed to execute all appropriate documents and do all things necessary, upon the advice of legal counsel to the County, to effect such conveyance of the Project Site, which is shown in greater specificity on that certain plat of real property dated [ ] prepared by [ ], attached hereto as Exhibit B. Reference to Exhibit B is hereby craved for detail as to the specific property authorized to be conveyed by this Ordinance.

Section 6. Notwithstanding any other provisions, the County is executing the Fee Agreement as statutory accommodation to assist the Company in achieving the intended benefits and purposes of the PILOT Act, among other things. The County has made no independent legal or factual investigation regarding the particulars of this transaction and it executes in reliance upon representations by the Company that the documents comply with all laws and regulations, particularly those pertinent to industrial development projects in the State.

Section 7. The Chairman of County Council and the Clerk to County Council, and any other proper officer of the County, he 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 8. 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 9. 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.

*[Remainder Intentionally Left Blank  
Signature Page Follows]*

Done in meeting duly assembled: November 17, 2015.

OCONEE COUNTY, SOUTH CAROLINA

\_\_\_\_\_  
Chairman of County Council  
Oconee County, South Carolina

ATTEST:

\_\_\_\_\_  
Elizabeth G. Huise, Clerk to County Council  
Oconee County, South Carolina

First Reading:           October 20, 2015  
Second Reading:       November 3, 2015  
Third Reading:  
Public Hearing:

*Document as Presented at the November 3, 2015 Council Meeting*

EXHIBIT A  
FORM OF FEE AGREEMENT

[ATTACHED]

Document as Presented at the November 3, 2015 Council Meeting

EXHIBIT B  
PLAT

[ATTACHED]

Document as Presented at the November 3, 2015 Council Meeting

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FEE-IN-LIEU OF AD VALOREM TAXES AGREEMENT

BETWEEN

PROJECT MACKINAW

AND

OCONEE COUNTY, SOUTH CAROLINA

DATED AS OF NOVEMBER 17, 2015

Document as Presented at the November 18, 2015 Council Meeting

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(TO BE UPDATED PRIOR TO EXECUTION)

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Exhibit A – Description of Property

Document as Presented at the November 3, 2015 Council Meeting

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

THIS FEE-IN-LIEU OF AD VALOREM TAXES AGREEMENT ("Fee Agreement") is entered into, effective, as of November 17, 2015, between Oconee County, South Carolina ("County"), a body politic and corporate and a political subdivision of the State of South Carolina ("State"), acting through the Oconee County Council ("County Council") as the governing body of the County, and Project Mackinaw, a South Carolina limited liability company, and, to the extent allowed by law and this Fee Agreement, its affiliates and assigns, Sponsors and Sponsor Affiliates (collectively, "Company" and with County, "Parties," each, a "Party").

### WITNESSETH:

(a) The County is authorized by Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended ("Act") to enter into a fee agreement with qualifying industries to induce such industries to locate in the State and to encourage industries now located in the State to expand their investments and thus make use of and employ manpower and other resources of the State;

(b) Pursuant to Title 4, Section 1, Code of Laws of South Carolina, 1976, as amended ("MCIP Act"), the County is authorized (a) to develop multi-county industrial parks in partnership with counties having contiguous borders with the County, (b) to include within the boundaries of such parks the property of eligible companies; and (c) to grant credits in order to assist a company located in a multi-county industrial park in paying the cost of designing, acquiring, constructing, improving, or expanding (I) the infrastructure serving the County or the property of a company located within such multi-county industrial parks or (II) improved or unimproved real estate and personal property used in the operation of a manufacturing enterprise located within such multi-county industrial park in order to enhance the economic development of the County;

(b) Pursuant to the Act and based on representations made by the Company to the County, the County, by Ordinance No.], adopted on November 17, 2015 ("Fee Ordinance") determined that (a) the Project (as defined below) is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; (b) the Project gives rise to no pecuniary liability of the County or incorporated municipality and to no charge against its general credit or taxing power; (c) the purposes to be accomplished by the Project are proper governmental and public purposes; and (d) the benefits of the Project to the public are greater than the costs to the public;

(c) During the Investment Period (defined below), the Company shall make an investment of approximately \$10,000,000 ("Investment") and create approximately 70 new, full-time jobs ("Job Requirement") to create a manufacturing and design facility in Oconee County, on a site as more fully described in the attached Exhibit A ("Project");

(d) Pursuant to a resolution adopted on November 3, 2015 ("Identifying Resolution"), the County formally identified the Project, as a "project" as provided in the Act; and

(e) Pursuant to the Fee Ordinance, the Act and the MCIP Act, the County Council authorized (a) the execution and delivery of this Fee Agreement with the Company, (b) the inclusion of the Project in a multi-county industrial-business park jointly developed with Pickens County, South Carolina; (c) the conveyance of certain real property and real property rights from the County to the Company; and certain other incentives described in the Fee Ordinance.

NOW, THEREFORE, AND IN CONSIDERATION of the respective representations and agreements hereinafter contained, Parties agree as follows, with the understanding that no obligation of the County described herein shall create a pecuniary liability or charge upon its general credit or taxing powers, but shall be payable solely out of the sources of payment described herein and shall not under any circumstances be deemed to constitute a general obligation to the County:

## ARTICLE I DEFINITIONS

**Section 1.1. Terms.** The terms defined in this Article shall for all purposes of this Fee Agreement have the meaning herein specified, unless the context clearly requires otherwise.

"Chairman" means the Chairman of the County Council of Oconee County, South Carolina.

"Clerk to County Council" means the Clerk to County Council of Oconee County, South Carolina.

"Code" means the South Carolina Code of Laws, 1976, as amended.

"Commencement Date" means the last day of the property tax year during which Economic Development Property (defined below) is first placed in service, not to be later than the last day of the property tax year that is three years from the year in which the Parties entered into this Fee Agreement.

"County" means Oconee County, South Carolina, a body politic and corporate and political subdivision of the State of South Carolina, its successors and assigns, acting through the Oconee County Council as the governing body of the County.

"County Council" means the Oconee County Council, the governing body of the County.

"Diminution of Value," in respect of any Phase of the Project, means any reduction in the value based on original fair market value as determined in Step 1 of Section 3.1 of this Fee Agreement, of the items which constitute a part of the Phase which may be caused by (i) the Company's removal of equipment pursuant to Section 3.7 of this Fee Agreement, (ii) a casualty to the Phase of the Project, or any part thereof, described in Section 3.8 of this Fee Agreement, or (iii) a condemnation to the Phase of the Project, or any part thereof, described in Section 3.9 of this Fee Agreement.

"Economic Development Property" means all items of real and tangible personal property comprising the Project which qualify as economic development property under the Act, become subject to the Fee Agreement, and which are identified by the Company in connection with their annual filing of a SCDOR PT-100, PT-300 or comparable forms with the South Carolina Department of Revenue (as such filing may be amended from time to time) for each year within the Investment Period, as that period may be extended. Title to all Economic Development Property shall at all times remain vested in the Company, except as may be necessary to take advantage of the effect of Section 12-44-150.

"Equipment" means all of the machinery, equipment, furniture and fixtures, together with any and all additions, accessions, replacements and substitutions thereto or therefor acquired by the Company during the Investment Period, as that period may be extended, as a part of the Project.

"Event of Default" means any Event of Default specified in Section 3.12 of this Fee Agreement.

"Fee Term" or "Term" means the period from the date of delivery of this Fee Agreement until the last Phase Termination Date unless sooner terminated or extended pursuant to the terms of this Fee Agreement.

"FILOT Payment" means each payment in lieu of taxes which the Company is obligated to pay to the County.

"Improvement" means each improvement, together with any and all additions, accessions, replacements and substitutions thereto or therefor acquired by the Company during the Investment Period, as that period may be extended.

"Investment Period" means the period commencing on the first day Economic Development property is purchased or acquired, which must be no later than the Commencement Date, and ending on the last day of the 5<sup>th</sup> property tax year following the later of the property tax year in which Economic Development property is first placed in service or the property tax year in which this Fee Agreement is executed (such ending date is anticipated to be December 31, 2020), provided a later date may apply in accordance with Section 3.1 of this Fee Agreement, or may otherwise be agreed to, in writing, by the Company and County (if so authorized by the County Council then in office) pursuant to the Act.

"Phase," in respect to the Project, means the Equipment, Improvements and Real Property, if any, placed in service during each year of the Investment Period.

"Phase Termination Date" means, with respect to each Phase of the Project, the day 30 years after each such Phase of the Project becomes subject to the terms of this Fee Agreement, unless the Phase Termination Date is extended in accordance with this Fee Agreement or as otherwise agreed to, in writing, between the County (if so authorized by the County Council then in office) and the Company in accordance with the Act.

"Project" means the Equipment, Improvements, and Real Property, together with the acquisition, construction, installation, design and engineering thereof, in phases. The Project involves an initial investment of sufficient sums to qualify under the Act.

"Real Property" means real property, together with all and singular the rights, members, hereditaments and appurtenances belonging or in any way incident or appertaining thereto acquired or constructed by the Company, all Improvements now or hereafter situated thereon, and all fixtures now or hereafter attached thereon, but only to the extent such Improvements and fixtures are deemed to become part of the Project under the terms of this Fee Agreement.

"Removed Component" means the following types of components or Phases of the Project or portions thereof, all of which the Company, as the case may be, shall be entitled to remove from the Project with the result that the same shall no longer be subject to the terms of the Fee Agreement; (a) components or Phases of the Project or portions thereof which the Company in its sole discretion, determines to be inadequate, obsolete, worn-out, uneconomic, damaged, unsuitable, undesirable or unnecessary; or (b) components or Phases of the Project or portions thereof which the Company in its sole discretion, elects to remove pursuant to Section 3.6(c) or Section 3.7(b)(iii) of this Fee Agreement.

"Replacement Property" means any property which is placed in service as a replacement for any item of Equipment or any Improvement which is scrapped or sold by the Company and treated as a Removed Component under Section 3.5 hereof regardless of whether such property serves the same function as the property it is replacing and regardless of whether more than one piece of property replaces any item of Equipment or any Improvement.

"Sponsor" shall have the meaning given in the Act.

"Sponsor Affiliate" shall have the meaning given in the Act.

Any reference to any agreement or document in this Article I or otherwise in this Fee Agreement shall be deemed to include any and all amendments, supplements, addenda, and modifications to such agreement or document.

## ARTICLE II REPRESENTATIONS AND WARRANTIES

**Section 2.1. Representations of the County.** The County hereby represents and warrants to the Company:

(a) the County is a body politic and corporate and a political subdivision of the State which acts through the County Council as its governing body and by the provisions of the Act is authorized and empowered to enter into the transactions contemplated by this Fee Agreement and to carry out its obligations hereunder. The County has duly authorized the execution and delivery of this Fee Agreement and any and all other agreements described herein or therein.

(b) the Project constitutes a "project" within the meaning of the Act.

(c) by due corporate action, the County has agreed that, subject to compliance with applicable laws, each item of real and tangible personal property comprising the Project shall be considered Economic Development Property under the Act.

**Section 2.2. Representations of the Company.** The Company hereby represents and warrants to the County:

(a) the Company is or will be qualified to do business in the State of South Carolina and has power to enter into this Fee Agreement.

(b) the Company's execution and delivery of this Fee Agreement and its compliance with the provisions hereof will not result in a default, not waived or cured, under any the Company restriction or any agreement or instrument to which the Company is now a party or by which it is bound.

(c) the Company intends to operate the Project as a "project" within the meaning of the Act as in effect on the date hereof.

(d) in accordance with the Act, the Company, as sponsor, along with any authorized Sponsor or Sponsor Affiliate, intends to make the investment and meet the job creation expectation, each as stated in the preamble of this Fee Agreement, by the end of the Investment Period.

## ARTICLE III FILOT PAYMENTS

**Section 3.1. Negotiated FILOT Payments.** Pursuant to Section 12-44-59 of the Act, the Company is required to make payments in lieu of ad valorem taxes on all Economic Development Property comprising the Project and placed in service during the Investment Period. The amount of such annual FILOT Payments shall be determined by the following procedure:

- 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 arm's length transaction, fair market value is deemed to equal the original income tax basis, otherwise, the Department of Revenue and Taxation 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: Multiply the fair market value by an assessment ratio of 6% to establish the taxable value of each Phase of the Project in the year it is placed in service and in 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, as amended.
- Step 3: Multiply the taxable value for each year by the fixed millage rate, at the Project site, for all taxing entities, on June 30, 2015, which the parties believe to be 215.0 mills, 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, as amended.

If it is determined by a final order of a court of competent jurisdiction or by agreement of Parties that the minimum payment in lieu of taxes applicable to this transaction is to be calculated differently than described above, then the payment shall be reset at the minimum permitted level so determined (if so authorized by the County Council then in office).

If the Act or the above-described FILOT Payments are declared invalid or unenforceable, in whole or in part, for any reason, by the final order of a court of competent jurisdiction, Parties express their intention that such payments and the Fee Agreement be reformed so as to most closely effectuate the legal, valid, and enforceable intent thereof and so as to afford the Company the benefits to be derived hereunder. 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 by the Company shall be 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 were and had not been Economic Development Property as defined under the Act. In such event, any amount determined to be due and owing to the County from the Company, as the case may be, with respect to a year or years for which payments in lieu of *ad valorem* taxes 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.

If legislation reducing the minimum assessment ratio or millage rate shall be enacted by the State, the County agrees to give good faith consideration to amending any inducement agreement, resolution, ordinance, fee-in-lieu of tax agreement or lease agreement, including this Fee Agreement, in this matter, all as the case may be, to afford the Company the lowest assessment ratio and millage rate permitted by

law. Moreover, if taxes on real or personal property shall be abolished in the County or the State, the Company may terminate the Fee Agreement with no penalty to the Company. In any such event, however, any amounts already due and owing under this Fee Agreement will still be due and owing.

Further, if the Company invests the \$2,500,000 minimum investment required by the Act within the first five years of the Investment Period, the Company may request an extension of the Investment Period and an extension of the terms of the FILOT Payments and this Fee Agreement from the County. Upon written approval of the County Council, (a) the Investment Period may be extended by up to an additional 5 years, such that the total Investment Period could then be as long as 10 years ("Extended Investment Period"), or (b) the terms of the FILOT Payments and this Fee Agreement may be extended by an additional 10 years, to a total of 40 years, or (c) both (a) and (b), all in accordance with the Act, all wherever such Investment Period, and term of this Fee Agreement and the FILOT Payments, respectively, appear in this Fee Agreement.

**Section 3.2. FILOT Payments on Replacement Property.** If the Company elects to replace any Removed Components and to substitute such Removed Components with Replacement Property as a part of the Project, then, pursuant and subject to Section 12-44-69 of the Act, the Company shall make statutory payments in lieu of *ad valorem* taxes with regard to such Replacement Property as follows:

(a) to the extent that the income tax basis of the Replacement Property ("Replacement Value") is less than or equal to the original income tax basis of the Removed Components ("Original Value") the amount of the FILOT Payments to be made by the Company with respect to such Replacement Property shall be calculated in accordance with Section 3.1 hereof; provided, however, in making such calculations, the original cost to be used in Step 1 of Section 3.1 shall be equal to the lesser of (x) the Replacement Value or (y) the Original Value, and the number of annual payments to be made with respect to the Replacement Property shall be equal to 30 (or, if greater, the maximum number of years for which the annual fee payments are available to the Company for each portion of the Project under the Act, as amended) minus the number of annual payments which have been made with respect to the oldest Removed Components disposed of in the same property tax year as the Replacement Property is placed in service; and

(b) to the extent that the Replacement Value exceeds the Original Value of the Removed Components ("Excess Value"), the FILOT Payments to be made by the Company with respect to the Excess Value shall be equal to the payment that would be due if the property were not Economic Development Property.

**Section 3.3. Reductions in Payments of Taxes Upon Removal, Condemnation or Casualty.** In the event of a Diminution in Value of any Phase of the Project, the FILOT Payment with regard to that Phase of the Project shall be reduced in the same proportion as the amount of such Diminution in Value bears to the original fair market value of that Phase of the Project as determined pursuant to Step 1 of Section 3.1 hereof.

**Section 3.4. Place and Allocation of FILOT Payments.** The Company shall make the above-described FILOT Payments directly to the County in accordance with the Act.

**Section 3.5. Removal of Equipment.** Subject, always and in every event, notwithstanding any other provision of this Fee Agreement, to maintain the statutory minimum investment value (without regard to depreciation) in service in the Project at all times, once that level has been achieved, the Company shall be entitled to remove, in its sole discretion, components of or Phases of the Project from the Project with the result that said components or Phases ("Removed Components") shall no longer be considered a part of the Project and shall no longer be subject to the terms of this Fee Agreement.

**Section 3.6. Damage or Destruction of Project.**

(a) *Election to Terminate.* In the event the Project is damaged by fire, explosion, or any other casualty, the Company shall be entitled to terminate this Fee Agreement.

(b) *Election to Rebuild.* In the event the Project is damaged by fire, explosion, or any other casualty, and if the Company does not elect to terminate this Agreement, the Company may in its sole discretion commence to restore the Project with such reductions or enlargements in the scope of the Project, changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Company, subject, always, to the provisions of Section 3.5, hereof. All such restorations and replacements shall be considered substitutions of the destroyed portions of the Project and shall be considered part of the Project for all purposes hereof, including, but not limited to any amounts due by the Company to the County under Section 3.1 hereof.

(c) *Election to Remove.* In the event the Company elects not to terminate this Agreement pursuant to subsection (a) and elects not to rebuild pursuant to subsection (b), the damaged portions of the Project shall be treated as Removed Components, to the extent allowed by law and this Fee Agreement, including, without limitation, Section 3.5, hereof.

**Section 3.7. Condemnation.**

(a) *Complete Taking.* If at any time during the Fee Term title to or temporary use of the entire Project should become vested in a public or quasi-public authority by virtue of the exercise of a taking by condemnation, inverse condemnation or the right of eminent domain, or by voluntary transfer under threat of such taking, or in the event that title to a portion of the Project shall be taken rendering continued occupancy of the Project commercially infeasible in the judgment of the Company, the Company shall have the option to terminate this Fee Agreement at or the time of vesting of title by sending written notice to the County within a reasonable period of time following such vesting.

(b) *Partial Taking.* In the event of a partial taking of the Project or transfer in lieu thereof, the Company may elect: (i) to terminate this Fee Agreement; (ii) to repair and restore the Project, with such reductions or enlargements in the scope of the Project, changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Company, subject to the provisions of Section 3.5, hereof; or (iii) to treat the portions of the Project so taken as Removed Components.

**Section 3.8. Maintenance of Existence.** The Company agrees (i) that it shall not take any action which will materially impair the maintenance of its corporate existence and (ii) that it will maintain its good standing under all applicable provisions of State law. Notwithstanding the foregoing provisions, the Company may at any time engage on an as-needed basis in any corporate restructuring or merger activities, the result of which may be the transfer or assignment of the benefits granted hereunder to a new entity, so long as the Company is the surviving entity in such restructuring or merger, and the resulting entity has a net worth at least as great as the Company at the time of such restructuring or merger.

**Section 3.9. Confidentiality/Limitation on Access to Project.** The County acknowledges and understands that the Company utilizes confidential and proprietary "state-of-the-art" manufacturing and design equipment and techniques and that a disclosure of any information relating to such equipment or techniques, including, but not limited to, disclosures of financial or other information concerning the Company's operations could result in substantial harm to the Company and could thereby have a significant detrimental impact on the Company's employees and also upon the County. Therefore, the County agrees that, except as required by law and pursuant to the County's police powers, neither the

County nor any employee, agent or contractor of the County: (i) shall request or be entitled to receive any such confidential or proprietary information; (ii) shall request or be entitled to inspect the Project or any property associated therewith; provided, however, that if an Event of Default shall have occurred and be continuing hereunder, the County shall be entitled to inspect the Project provided they shall comply with the remaining provisions of this Section; or (iii) shall knowingly and intentionally disclose or otherwise divulge any such clearly identified and marked confidential or proprietary information to any other person, firm, governmental body or agency, or any other entity unless specifically required to do so by State law. Prior to disclosing any such clearly identified and marked confidential or proprietary information or allowing inspections of the Project or any property associated therewith, the Company may require the execution of reasonable, individual, confidentiality and non-disclosure agreements by any officers, employees or agents of the County or any supporting or cooperating governmental agencies who would gather, receive or review such information or conduct or review the results of any inspections.

**Section 3.10. Assignment and Subletting.** This Fee Agreement may be assigned in whole or in part and the Project may be subleased as a whole or in part by the Company so long as such assignment or sublease is made in compliance with Section 12-44-120 of the Act. The County must consent to such transfers and to the extent any further consent is requested, such consent will not unreasonably be withheld, and the County may grant such consent by adoption of a resolution.

**Section 3.11. Leased Equipment.** To the extent that applicable law allows or is revised or construed to allow the benefits of the Act, in the form of FILOT Payments as described in Section 3.1 hereof, to be applicable to personal property to be installed in the buildings and leased to but not purchased by the Company from at least one third party, under any form of lease, and if the County Council then in office so consents in writing or by formal action, then that personal property, at the Company's sole election, will be subject to FILOT Payments to the same extent as the Equipment under this Fee Agreement. In such event, this Fee Agreement shall be interpreted or modified as appropriate to give proper application to this Fee Agreement to the additional personal property without any amendment to this Fee Agreement; therefore, no action by County Council beyond the written consent or formal action would be required. The County Administrator, after consulting with the County Attorney, is authorized to make modifications, if any, as may be appropriate to give effect to this Section.

**Section 3.12. Events of Default.** The following shall be "Events of Default" under this Fee Agreement, and the term "Events of Default" shall mean, whenever used with reference to this Fee Agreement, any one or more of the following occurrences:

(a) Failure by the Company to make, upon levy, the FILOT Payments described in Section 3.1 hereof; provided, however, that the Company shall be entitled to all redemption rights granted by applicable statutes; or

(b) Failure by the Company or County, respectively, to perform any of the other material terms, conditions, obligations or covenants of the Company or County, respectively, hereunder, which failure shall continue for a period of ninety (90) days after written notice from the County to the Company or vice versa, as appropriate, specifying such failure and requesting that it be remedied, unless the complaining party shall agree in writing to an extension of such time prior to its expiration.

(c) If the Company ceases operations which means closure of its facility in the County or the cessation of production and shipment of products to customers for a continuous period of twelve (12) months.

**Section 3.13. Remedies on Default.** Whenever any Event of Default shall have occurred and shall be continuing, the County or Company, after having given written notice to the other party of such default

and after the expiration of a 30 day cure period, shall have the option to take any one or more of the following remedial actions:

(a) Terminate the Fee Agreement; or

(b) Take whatever action at law or in equity that may appear necessary or desirable to collect the other amounts due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of the other party under this Fee Agreement.

**Section 3.14. Remedies Not Exclusive.** No remedy conferred upon or reserved to the County or Company under this Fee Agreement is intended to be exclusive of any other available remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other lawful remedy now or hereafter existing. No delay or omission to exercise any right or power accruing upon any continuing default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the County or Company to exercise any remedy reserved to it, it shall not be necessary to give notice, other than such notice as may be herein expressly required and such notice required at law or equity which the other party is not competent to waive.

**Section 3.15. Future Filings.** As permitted under Section 12-44-55 of the Act, the Company and County hereby waive application of any of the recapitulation requirements as set forth in Section 12-44-55, to the extent that and so long as the terms and conditions of this Section are met. Whenever the Company shall be required by any governmental or financial entity to file or produce any reports, notices, returns, or other documents while this Agreement is in effect, the Company or owner of the Project at the time shall promptly furnish to the County through the County Attorney, the Clerk to County Council, and the County Auditor the completed form of such required documents together with a certification by the Company or owner of the Project that such documents are accurate and not in violation of any provisions of law or of the other documents of this transaction, and that the documents meet the legal requirements of such filing or delivery. In the event of the failure or refusal of the Company or owner to comply with this provision, the Company or owner agrees to pay the statement for attorneys' fees and administrative time presented by the County for producing and filing such documents, such statement to be paid within 30 days after presentation by the County, and to promptly pay any fees, penalties, assessments or damages imposed upon the County by reason of its failure to duly file or produce such documents.

**Section 3.16. Fiscal Year; Property Tax Year.** If the Company's fiscal year changes so as to cause a change in the Company's property tax year, then the timing of the requirements of this Fee Agreement are automatically revised accordingly.

**Section 3.17. Indemnification.** (a) The Company shall and agrees to indemnify, defend and save the County, including the members of the governing body of the County, and the employees, officers and agents of the County (herein collectively referred to as the "Indemnified Parties") harmless against and from all claims by or on behalf of any person, firm or Company arising from the conduct or management of, or from any work or thing done on the Project during the term of the Fee Agreement(s) (regardless of when said claim(s) is asserted), and, the Company shall further indemnify, defend and save the Indemnified Parties harmless against and from all claims arising during the term of the Fee Agreement (regardless of when said claim(s) is asserted) from: (i) any condition of the Project, (ii) any breach or default on the part of the Company in the performance of any of its obligations under the Fee Agreement, (iii) any act of the Company or any of its agents, contractors, servants, employees or licensees, related to the Project, (iv) any act of any assignee or sublessee of the Company, or of any agents, contractors, servants, employees or licensees of any assignee or sublessee of the Company, related to the Project, (v)

any environmental violation, condition, or effect of, upon or caused by the Project, (vi) the County's execution of this Fee Agreement, (vii) performance of the County's obligations under this Agreement (viii) the administration of its duties pursuant to this Agreement, or (ix) otherwise by virtue of the County having entered into this Fee Agreement, other than for those claims occasioned by the Indemnified Parties' own willful misconduct or gross negligence or that of any employee or representative of the Indemnified Parties. The Company shall indemnify, defend and save the Indemnified Parties harmless from and against all costs and expenses incurred in or in connection with any such claim arising as aforesaid or in connection with any action or proceeding brought thereon, and upon notice from an Indemnified Party, the Company shall defend it in any such action, prosecution or proceeding with legal counsel reasonably acceptable to the County.

(b) Notwithstanding the fact that it is the intention of the parties that the Indemnified Parties not incur pecuniary liability by reason of the terms of the Fee Agreement, or the undertakings required of the County hereunder, by reason of the execution of the Fee Agreement, by reason of the performance of any act requested of it by the Company, or the operation of the Project by the Company, including all claims, liabilities or losses arising in connection with the violation of any statutes or regulations pertaining to the foregoing, nevertheless, if the Indemnified Parties should incur any such pecuniary liability, then in such event the Company shall indemnify, defend and hold them harmless against all claims by or on behalf of any person, firm or Company, arising out of the same, and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon, other than for those claims occasioned by the Indemnified Parties' own willful misconduct or gross negligence or that of any employee or representative of the Indemnified Parties, and upon notice, the Company shall defend them in any such action or proceeding with legal counsel reasonably acceptable to the County.

(c) These indemnification covenants shall be considered included in and incorporated by reference in subsequent documents after closing which the County is requested to sign, and any other indemnification covenants in any subsequent documents shall not be construed to reduce or limit the above indemnification covenants.

#### ARTICLE IV MISCELLANEOUS

**Section 4.1. Notices.** Any notice, election, demand, request or other communication to be provided under this Fee Agreement shall be effective when delivered to the party named below or when deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed as follows (or addressed to such other address as any party shall have previously furnished in writing to the other party), except where the terms hereof require receipt rather than sending of any notice, in which case such provision shall control:

AS TO THE COUNTY:                   Oconee County, South Carolina  
  T. Scott Moulder, County Administrator  
  415 S. Pine Street  
  Wallhalla, South Carolina C 29691  
  Telephone: 864.638.4245  
  Facsimile: 864.638.4246  
  E-mail: [smoulder@occoneesc.com](mailto:smoulder@occoneesc.com)

WITH A COPY TO:                   Oconee County Attorney  
(does not constitute notice)       David A. Root, Esquire  
  [TO BE UPDATED]

AS TO THE COMPANY: Project Mackinaw

WITH A COPY TO:  
(does not constitute notice)

Michael E. Kozlarek, Esquire  
Parker Poe Adams & Bernstein LLP  
1201 Main Street, Suite 1450 (29201)  
Post Office Box 1509  
Columbia, South Carolina 29202-1509  
Telephone: 803.255.8000  
Facsimile: 803.255.8017  
Email: [michaelkozlarek@parkerpoe.com](mailto:michaelkozlarek@parkerpoe.com)

**Section 4.2. Binding Effect.** This Fee Agreement shall be binding, in accordance with its terms, upon and inure to the benefit of the Company and the County, and their respective successors and assigns. In the event of the dissolution of the County or the consolidation of any part of the County with any other political subdivision or the transfer of any rights of the County to any other such political subdivision, all of the covenants, stipulations, promises and agreements of this Fee Agreement shall bind and inure to the benefit of the successors of the County from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of the County has been transferred.

**Section 4.3. Counterparts.** This Fee Agreement may be executed in any number of counterparts, in original, by facsimile or by other electronic means, and all of the counterparts taken together shall be deemed to constitute one and the same instrument.

**Section 4.4. Governing Law.** This Fee Agreement and all documents executed in connection herewith shall be construed in accordance with and governed by the laws of the State.

**Section 4.5. Headings.** The headings of the articles and sections of this Fee Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Fee Agreement.

**Section 4.6. Amendments.** The provisions of this Fee Agreement may only be modified or amended in writing by an agreement or agreements entered into between Parties.

**Section 4.7. Further Assurance.** From time to time the County agrees to execute and deliver to the Company, at the sole expense of the Company, such additional instruments as either may reasonably request to effectuate the purposes of this Fee Agreement.

**Section 4.8. Severability.** If any provision of this Fee Agreement is declared illegal, invalid or unenforceable for any reason, the remaining provisions hereof shall be unimpaired, and such illegal, invalid or unenforceable provision shall be reformed so as to most closely effectuate the legal, valid and enforceable intent thereof and so as to afford the Company with the maximum benefits to be derived herefrom, it being the intention of the County to offer the Company a strong inducement to locate the Project in the County.

**Section 4.9. Limited Obligation.** ANY OBLIGATION OF THE COUNTY CREATED BY OR ARISING OUT OF THIS FEE AGREEMENT SHALL BE A LIMITED OBLIGATION OF THE COUNTY, PAYABLE BY THE COUNTY SOLELY FROM THE PROCEEDS DERIVED UNDER THIS FEE AGREEMENT AND SHALL NOT UNDER ANY CIRCUMSTANCES BE DEEMED TO CONSTITUTE A GENERAL OBLIGATION OF THE COUNTY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY LIMITATION.

**Section 4.10. Force Majeure.** The Company shall not be responsible for any delays or non-performance caused in whole or in part, directly or indirectly, by strikes, accidents, freight embargoes, fire, floods, inability to obtain materials, conditions arising from government orders or regulations, war or national emergency, acts of God, and any other cause, similar or dissimilar, beyond the Company's reasonable control.

**Section 4.11. County Expenses.** The Company shall reimburse the County for reasonable and necessary expenses, including reasonable and necessary attorneys' fees, related to review and negotiation of the Transaction Documents, excluding those documents related to the Real Property Transactions, in an amount not to exceed \$3,000, absent extraordinary circumstances; provided, that the Company is not required to reimburse the County for any: (1) expenses incurred by the County in the ordinary course of its operation, including with respect to tax- and fee-payers; or (2) expenses incurred by the County in defending suits brought by the Company based on a default by the County under the Fee Agreement or related transaction documents. The Company shall reimburse the County no more than 30 days after receiving an invoice from the County, or its agents, in which the amount and the general nature of the expense is provided. The County's legal expenses related to the Real Property Transactions are not anticipated to exceed \$3,500.

**Section 4.12. Execution Disclaimer.** Notwithstanding any other provision, the County is executing as statutory accommodation to assist the Company in achieving the intended benefits and purposes of the Act. The County has made no independent legal or factual investigation regarding the particulars of this transaction and it executes in reliance upon representations by the Company that this document complies with all laws and regulations, particularly those pertinent to industrial development projects in South Carolina.

**Section 4.13. Transfer of Real Property.** As part of the County's offer of incentives to induce the Company to locate in the County, by separate documents the County shall agree to a lease-purchase or other similar arrangement with the Company regarding the real property described on Exhibit A. The lease-purchase shall provide for the use of the real property described on Exhibit A for the construction of the Project, and then the ultimate transfer of the property to the Company for \$1.00 if certain conditions, as described in lease-purchase, or other similar, documents, are met (the "Real Property Transactions"). The Real Property Transactions are hereby approved by County Council, through this Fee Agreement and the Fee Ordinance, without further legislative authorization by County Council required, subject to proper execution and delivery of the documents related to the Real Property Transactions by the Chairman of County Council upon the advice of legal counsel to the County.

IN WITNESS WHEREOF, the County, acting by and through the County Council, has caused this Fee Agreement to be executed in its name and on its behalf by the County Council Chairman and to be attested by the Clerk to County Council, effective as of the day and year first above written.

OCONEE COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
Chairman of County Council  
Oconee County, South Carolina

(SEAL)  
ATTEST:

By: \_\_\_\_\_  
Elizabeth G. Hulse, Clerk to County Council  
Oconee County, South Carolina

Document as Presented at the November 3, 2015 Council Meeting

IN WITNESS WHEREOF, the Company, acting by and through its duly authorized officer, has caused this Fee Agreement to be executed in its name and on its behalf, effective as of the day and year first above written.

PROJECT MACKINAW

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

*Document as Presented at the November 3, 2015 Council Meeting*

**EXHIBIT A**  
**DESCRIPTION OF REAL PROPERTY**

All that certain piece, parcel or lot of land, lying and being in the Oconee County, State of South Carolina, being [] acres, more or less, and being more fully shown on a survey prepared for [] by [] dated [], 2015 and having the following metes and bounds as shown thereon, a copy of which is attached to this Exhibit A:

*Document as Presented at the November 3, 2015 Council Meeting*

**STATE OF SOUTH CAROLINA  
COUNTY OF OCONEE  
ORDINANCE 2016-05**

**AN ORDINANCE AMENDING CHAPTER 32 OF THE OCONEE COUNTY  
CODE OF ORDINANCES IN CERTAIN LIMITED REGARDS AND  
PARTICULARS PERTAINING TO SEXUALLY ORIENTED BUSINESSES,  
ONLY; AND OTHER MATTERS RELATED THERETO.**

**WHEREAS**, Oconee 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 its governing body, the Oconee County Council (the "County Council"), has adopted multiple ordinances for the effective, efficient governance of the County, which, subsequent to adoption, are codified in the Oconee County Code of Ordinances (the "Code of Ordinances"), as amended, from time to time; and

**WHEREAS**, the County, acting by and through the County Council, is authorized by Section 4-9-30(9) and Chapter 29 of Title 6 of the South Carolina Code, 1976, as amended, among other sources, to impose land use restrictions and development standards in the unincorporated areas of the County; and,

**WHEREAS**, Chapter 32 of the Code of Ordinances contains terms, provisions and procedures applicable to performance standards in the County; and

**WHEREAS**, County Council recognizes that there is a need to revise the law of the County to meet the changing needs of the County and that there is a need to amend, specifically, certain sections of Chapter 32 of the Code of Ordinances involving sexually oriented businesses; and

**WHEREAS**, County Council has therefore determined to modify Chapters 32 of the Code of Ordinances, and to affirm and preserve all other provisions of the Code of Ordinances not specifically or by implication amended hereby.

**NOW, THEREFORE**, it is hereby ordained by the Oconee County Council, in meeting duly assembled, that:

1. Article 2 of Chapter 32 of the Code of Ordinances, entitled *Sexually Oriented Businesses*, is hereby revised, rewritten, and amended to read as set forth in Attachment A, which is attached hereto and hereby incorporated by reference as fully as if set forth verbatim herein.

2. County Council hereby declares and establishes its legislative intent that Attachment A, hereto, as may be amended from time to time, amend Article 2 of Chapter 32 of the Code or Ordinances of the land use performance standards of the County, from and after its adoption, states its intent to so adopt Attachment A, and directs that a public hearing thereon be

undertaken by County Council or the Oconee County Planning Commission, in accord with and as required by Section 6-29-760 and by Section 4-9-130, South Carolina Code, 1976, as amended.

3. Should any part or provision of this Ordinance be deemed unconstitutional or unenforceable by any court of competent jurisdiction, such determination shall not affect the rest and remainder of this Ordinance, all of which is hereby deemed separable.

4. All ordinances, orders, resolutions, and actions of County Council inconsistent herewith are, to the extent of such inconsistency only, hereby repealed, revoked, and rescinded. However, nothing contained herein, or in the Attachments hereto, shall cancel, void, or revoke, or shall be interpreted as cancelling, voiding, or revoking, *ex post facto*, in any regard any prior performance standard, zoning or rezoning acts, actions, or decisions of the County or County Council based thereon, which were valid and legal at the time in effect and undertaken pursuant thereto, in any regard.

6. All other terms, provisions, and parts of the Code of Ordinances, and specifically, but without exception, the remainder of Article 2 of Chapter 32, not amended hereby, directly or by implication, shall remain in full force and effect.

7. This Ordinance shall take effect and be in full force and effect from and after third reading and enactment by County Council, and will apply to all land use and zoning processes initiated after first (1<sup>st</sup>) reading hereof. All processes actually initiated by submitting a properly and legally completed petition to the County, at a minimum, prior to first (1<sup>st</sup>) reading of this ordinance and the establishment of the pending ordinance doctrine thereby, shall be completed under the zoning and performance standard rules and regulations of Chapters 32 of the Code of Ordinances, as in effect prior to final adoption of this ordinance.

**ORDAINED** in meeting, duly assembled, this \_\_\_\_ day of \_\_\_\_\_, 2016.

**ATTEST:**

\_\_\_\_\_  
Elizabeth Hulse,

Clerk to Oconee County Council

\_\_\_\_\_  
Paul Cain

Chairman, Oconee County Council

First Reading: March 1, 2016  
Second Reading: March 15, 2016  
Public Hearing:  
Third Reading:

ATTACHMENT A  
To Ordinance 2016-05

**ARTICLE II. SEXUALLY ORIENTED BUSINESSES <sup>(2)</sup>**

Sec. 32-41. Purpose and Intent of Article.

Sec. 32-42. Findings of Fact.

Sec. 32-43. Enforcement of Article Provisions.

Sec. 32-44. Definitions.

Sec. 32-45. Permitting Requirements for The Establishment Of Sexually Oriented Businesses Within The Unincorporated Areas of The County.

Sec. 32-46. Enumeration of Permit Requirements.

Sec. 32-47. Issuance of Permit.

Sec. 32-48. Administration and Display of Permits.

Sec. 32-49. Inspection.

Sec. 32-50. Expiration and Renewal of Permit.

Sec. 32-51. Suspension of a Permit.

Sec. 32-52. Revocation of a Permit.

Sec. 32-53. Reissuance of a Permit.

Sec. 32-54. Appeals of Designation as A Sexually Oriented Business; Denial of Permit; Suspension or Revocation of Permit.

Sec. 32-55. Transfer of a Permit.

Sec. 32-56. Permit Requirements of Businesses Operating at the Time This Article is Adopted.

Sec. 32-57. Location of Sexually Oriented Businesses.

Sec. 32-58. Sexually Oriented Businesses, Designated as a Nonconforming Use.

Secs. 32-59—32-90. Reserved.

**Sec. 32-41. Purpose and Intent of Article.**

It is the purpose of this article to regulate sexually oriented businesses in order to promote the health, safety, and general welfare of the citizens of the County, and to establish reasonable and uniform regulations to prevent the deleterious locating and concentration of sexually oriented businesses within the County. The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative material, including sexually oriented material. Similarly, it is not the intent or effect of this article to restrict or deny access by adults to sexually oriented materials or expressions that are protected by the First Amendment to the Constitution of the United States of America, or to deny access by the distributor and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent or effect of this article to condone or legitimize any act which is otherwise prohibited and punishable by law.

(Ord. No. 1999-14, § 2.1, 4-4-2000)

### **Sec. 32-42. Findings of Fact.**

- (a) There exists potential for the establishment of sexually oriented businesses in the County, and it is in the interest of the public health, safety, and welfare, of the citizens of the County to provide for minimum standards and regulations for sexually oriented businesses, as well as for the health, safety, and general welfare of the owners, operators, employees, and patrons of such businesses.
- (b) Sexually oriented businesses generate secondary effects which are detrimental to the public health, safety, and welfare. Additionally, sexually oriented businesses are frequently used for unlawful sexual activities, including public sexual indecency, prostitution, and sexual encounters of a casual nature. Such businesses are of particular concern to the community when they are located in close proximity to each other, or close to residences, schools, churches, parks, or playgrounds.
- (c) The concern over sexually transmitted diseases is an additional legitimate concern for the county, which demands reasonable regulation of sexually oriented businesses in order to protect the health and well being of citizens.
- (d) Live entertainment at sexually oriented businesses sometimes involves a considerable amount of bodily contact between patrons and seminude or nude employees and dancers, including physical contact such as hugging, kissing, and sexual fondling of employees or patrons. Many sexually oriented businesses have "couch" or "straddle" dancing, in which employees do such things as sit in a patron's lap, place their sexual organs against a patron while physical contact is maintained, or gyrate in a manner so as to simulate sexual intercourse. Such activity can be defined as obscene and illegal in accordance with S.C. Code 1976, § 16-15-10 et seq. Such behavior can also lead to prostitution and the spread of sexually transmitted diseases. The Planning Commission and County Council of the County recognizes that the prevention of these and similar activities that pose a threat to the health, safety, and general welfare of the citizens of the county is clearly within the police powers of the county. Further, the planning commission and County Council of the County believes that prohibiting contact between performers and patrons at sexually oriented business establishments is a reasonable and effective means of addressing these legitimate governmental interests. Also, the planning commission and County Council of the County recognize that regulating the location of sexually oriented businesses is an additional reasonable and effective means of addressing secondary effects associated with these activities.
- (e) The establishment of a permit process is a legitimate and reasonable means of accountability to ensure that operators of sexually oriented businesses comply with reasonable regulations to facilitate the enforcement of legitimate distancing requirements, and to ensure that operators do not allow their establishments to be used as places of illegal activities or solicitation.
- (f) The location of sexually oriented businesses close to residential areas, schools, churches, parks, or playgrounds leads to the decline in the general welfare of the area, leads to conditions that give rise to crime, and places children in a position such that they are endangered by secondary effects of these activities.
- (g) It is not the intent of this article to suppress speech activities protected by the First Amendment of the Constitution of the United states of America or to place any permissible burden on any constitutionally protected expression or expressive conduct by the enactment of this article. Rather, it is the intent of the county to enact a content neutral regulation that addresses the threats to the public health, safety, and general welfare that are produced by sexually oriented businesses.

(Ord. No. 1999-14, § 2.2, 4-4-2000)

### **Sec. 32-43. Enforcement of Article Provisions.**

- (a) *Penalty; injunction.* A person who is found by a court of law to have operated or have caused to be operated a sexually oriented business without a permit or in any other manner that is in violation of this article is subject to suit for injunctive relief as well as prosecution for criminal violations. Such violations shall be punishable in accordance with section 1-7. Each day a person operates or causes

to be operated a sexually oriented business in a manner that is in violation of this article shall constitute a separate offense.

- (b) *Article regulations in addition to other valid law.* The regulations included in this article are in addition to any other valid laws or regulations of the United States of America, the state or the county. Nothing in this article is intended to or shall be interpreted as invalidating any other laws or regulations. Any penalties imposed by a court of law for the violation of this article shall not interfere with any separate criminal prosecution or penalty levied for any other criminal act.
- (c) *Seeking of relief not limited.* Nothing in this article is intended to or shall be interpreted as limiting the rights of the county, any citizen, or any entity from seeking any relief from any cause for action as proscribed by state law.

(Ord. No. 1999-14, § 2.25, 4-4-2000)

## **Sec. 32-44. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Adult arcade* means any place to which the public is permitted or invited wherein coin-operated, slug-operated or electronically, or mechanically-controlled still or motion picture machines, projectors or other image-producing devices are maintained to show images to one or more persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."

*Adult bookstore, adult retail store or adult video store* means a commercial establishment which excludes any person by virtue of age from all or part of the premises generally held open to the public where products or equipment distinguished or characterized by a predominant emphasis or simulation of "specified sexual activities" or "specified anatomical areas" are sold, rented, or displayed therein, or which has as one of its principal business purposes, the sale or rental for any form, for consideration, one or more of the following:

- (1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, videocassettes or video reproductions, slides, or other visual representations which depict or describe "specified sexual activities" or "specified anatomical areas."
- (2) Instruments, devices, paraphernalia or clothing which are designed for use in connection with "specified sexual activities," excluding condoms and other birth control and disease prevention products. A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of materials depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as an adult bookstore or adult video store so long as one of its principal business purposes is the offering for sale or rental the specified materials which describe "specified sexual activities or "specified anatomical areas."
- (3) Adult bookstore, adult retail store, or adult video store does not mean any establishment which displays, rents or sells sexually-explicit materials in an enclosed room equal to less than ten percent of the business' total square footage, and which prohibits anyone under 18 years of age from entering the room.
- (4) Principal business purpose, as used in this section, means that more than 25 percent of the "stock in trade" of the business is devoted to the display, rent, or sale of items, products, or equipment distinguished or characterized by a predominant emphasis on, or simulation of, "specified sexual activities" or "specified anatomical areas."
- (5) Stock in trade for purposes of this subsection shall mean the greater of:
  - a. The retail dollar value of all items, products or equipment readily available for purpose, rental, viewing or use by patrons of the establishment, excluding material located in any storeroom or other portion of the premises not regularly open to patrons; or

b. The total volume of shelf space and display area.

*Adult cabaret* means a nightclub, bar, restaurant or similar commercial eating or drinking establishment, which regularly features:

- (1) Persons who appear in a state of nudity.
- (2) Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."
- (3) Films, motion pictures, videocassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified anatomical areas."

*Adult car wash* means a car wash where some or all of the employees are seminude or nude and/or where "specified sexual activities" or "specified anatomical areas" are exhibited.

*Adult motel* means a hotel, motel or similar commercial establishment which:

- (1) Offers accommodations to the public for any form of consideration; provides patrons with closed circuit television transmissions, films, motion pictures, videocassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas," and which may have a sign visible from the public right-of-way which advertises the availability of this type of photographic reproductions;
- (2) Routinely offers a sleeping room for rent for a period of time that is less than eight hours;
- (3) Routinely allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than eight hours; or
- (4) Evidence that a sleeping room in hotel, motel, or a similar commercial establishment has been rented and vacated two or more times in a period of time that is less than eight hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this section.

*Adult motion picture theater* means a commercial motion picture theater, one of whose primary business purpose is, for any form of consideration, to regularly show films, motion pictures, videocassettes, slides or similar photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

*Adult theater* means a commercial theater, concert hall, auditorium, or similar commercial establishment, one of whose primary business purpose is to regularly feature persons who appear in a state of nudity or which features live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

*Board* means the Board of Zoning Appeals.

*Certificate of nonconformity* means a certificate issued by the Community Development Department to any sexually oriented business which is operating at the time of the enactment of this chapter, and is not in compliance with one of more of its provisions.

*Dancer* means an employee of a sexually oriented business that entertains patrons through expressive forms of dance and/or movement.

*Designated county employee* means the Community Development Director or other employee of the county who is designated by the County Administrator for the administration of this article.

*Employee* means an individual working and performing services for any sexually oriented business, including any independent contractor who provides services on behalf of any sexually oriented business to the patrons of such business.

*Established or establishment* means any of the following:

- (1) The opening or commencement of any sexually oriented business as a new business.

- (2) The conversion of an existing building or not a sexually oriented business, to a sexually oriented business.
- (3) The addition of any sexually oriented business to any other existing sexually oriented business.
- (4) The relocation of any sexually oriented business.

*Health club* means a health club where some or all of the employees are nude or seminude, or in which "specified sexual activities" occur or "specified anatomical areas" are exhibited.

*Licensee* means a person in whose name a sexually oriented business regulatory license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a sexually oriented business regulatory license.

*Live entertainment* means a person who appears nude, seminude, or a performance which is characterized by the exposure of "specified anatomical areas" or "specified sexual activities."

*Nude model studio* means any place where a person appears in a state of nudity or displays "specified anatomical areas" and is observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any other form of consideration.

*Nude, nudity, or state of nudity* means:

- (1) The appearance of a bare human buttock, anus, male genitals, female genitals, or the areola or nipple of the female breast; or
- (2) A state of dress which fails to cover a human buttock, anus, male genitals, female genitals, pubic region, or areola or nipple of the female breast.

*Operate or cause to be operated* means to cause to function or to put or keep in operation.

*Operator* means any person on the premises of a sexually oriented business who is authorized to exercise overall operational control of the business, or who causes to function or who puts or keeps in operation the business. A person may be found to be operating or causing to operate a sexually oriented business whether or not the person is an owner, part owner, or licensee of the business.

*Patron* means any persons who pays a sexually oriented business any form of consideration for services provided to him by the sexually oriented business.

*Person* means an individual, proprietorship, partnership, corporation, association, or other legal entity.

*Seminude or seminudity* means a state of dress in which clothing covers no more than the genitals of a man, or the pubic region and areola of the breasts of a woman.

*Sexually oriented business* means an adult arcade, adult bookstore, adult retail store or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, nude model studio, or any other business such as a car wash or a health club, which offers for consideration, materials, or services characterized as depicting "specified sexual activities" or "specified anatomical areas," or whose employees perform services in a state of nudity or seminudity.

*Sexually oriented business permit* means a special annual operating permit necessary for a sexually oriented business to do business in the unincorporated portions of the county. Such license is in addition to any other regional, state, or county permits. The sexually oriented business regulatory permit also requires the registration of each employee and each employee hired during the operation period authorized by the sexually oriented business regulatory permit.

*Specified anatomical areas* means the male or female genitals including the vulva or more intimate parts of the female genitals, or bare human buttocks, anus, or the areola or nipple of the female breast.

*Specified sexual activities* means any of the following:

- (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breast.

- (2) Sex acts, normal or perverted, actual or simulated including intercourse, oral copulation, or sodomy.
- (3) Masturbation, actual or simulated.
- (4) Excretory functions as a part of or in conjunction with any of the activities set forth in subsections (1)—(3) of this section.

*Substantial enlargement of a sexually oriented business* means the increase in floor areas occupied by the business by more than ten percent as the floor areas exist on the date the original certificate of compliance was obtained.

*Transfer of ownership or control of a sexually oriented business* means any of the following:

- (1) The sale, lease or sublease of the business.
- (2) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means.
- (3) The establishment of a trust, gift, or other similar legal device which transfer the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

*Viewing room* means the room, booth, or area where a patron of a sexually oriented business would ordinarily be positioned while watching a film, videocassette, video reproduction, or live production.

(Ord. No. 1999-14, § 2.29, 4-4-2000)

**Cross reference**— Definitions generally, § 1-2.

### **Sec. 32-45. Permitting Requirements for the Establishment of Sexually Oriented Businesses within the Unincorporated Areas of the County.**

- (a) *Purpose and intent.* It is the purpose and intent of this section to establish a permit requirement for sexually oriented businesses that will ensure that these businesses are operated in a manner that is in full compliance with all applicable laws of the United States of America, the state, and the County. The purpose is also to ensure that these businesses are operated in a manner that minimizes adverse impacts on the community and that does not pose a threat to the public health, safety, and general welfare. Further, the purpose is to provide the County with a reasonable and legitimate mechanism for enforcing applicable laws.
- (b) *Enabling authority.* This section is adopted by the county council in accordance with S.C. Code 1976, § 4-9-30, as an application of the police powers for the purpose of promoting the public health, safety, and welfare.

(Ord. No. 1999-14, § 2.5, 4-4-2000)

### **Sec. 32-46. Enumeration of Permit Requirements.**

- (a) Every person or entity engaged or intending to engage in a sexually oriented business, as defined in this article, is required to obtain a sexually oriented business permit (referred to in this article as a permit) from the county before initiating operation of the business. Any person or entity engaging in such business shall have a valid permit in effect at any time in which the business is in operation.
- (b) Applications for a permit shall be made to the Community Development Director.
- (c) Any person or entity engaged or intending to engage in a sexually oriented business is required to obtain and hold a valid permit during any period of time in which the business is in operation.

- (d) An application for a permit shall be made to the Community Development Director on a form provided by the county. If an entity wishing to operate a sexually oriented business is an individual, that individual must sign the permit application. If the entity wishing to operate a sexually oriented business is other than an individual, each individual who has at least ten percent ownership in the business must sign the permit application. If a corporation is listed as the owner of a sexually oriented business, then each individual having at least ten percent ownership interest in the corporation must sign the permit application. Permit applications may be submitted during normal business hours of the county government offices. Permit applications are a matter of public record, and may be viewed by any person during normal business hours of the county government offices.
- (e) Any applicant for a permit shall be required to provide proof of identification and proof of age.
- (f) If one person or entity owns or operates more than one sexually oriented business in the county, that person or entity must obtain and hold a separate permit for each sexually oriented business in operation.
- (g) Any application for a permit must be accompanied by a sketch or diagram showing the configuration of the property and premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.
- (h) The fact that a person or entity possesses other types of state or county permits or licenses does not exempt the individual or entity from the permit requirements of this article.
- (i) The county council shall have the authority to establish reasonable fees for permits and permit applications. Such fees shall be appropriate to cover costs associated with the administration of this article and for the policing of sexually oriented business establishments. Such fees shall be established by resolution by the county council and may be changed by subsequent resolution.

(Ord. No. 1999-14, § 2.6, 4-4-2000)

### **Sec. 32-47. Issuance of permit.**

The Community Development Director shall approve the issuance of a sexually oriented business permit within 30 days after receiving an application, unless he finds one or more of the conditions listed as follows to be present:

- (1) The proposed business is in violation of any portion of this article, including, the section concerning location requirements of sexually oriented businesses.
- (2) The proposed business is in violation of any article or regulation of the county, any article or regulation of any administrative department, bureau, or governmental entity of the state, or any law or regulation of the United States of America.
- (3) The applicant is under 18 years of age.
- (4) The applicant has failed to provide information that is reasonably necessary and required on the permit application form for the issuance of a permit, or has falsely answered a question or request for information, as is required on the application form.
- (5) The premises to be used for the sexually oriented business is found to be unsafe by the county fire marshal, the county building official, or an appropriate official of the state department of health and environmental control (DHEC).
- (6) To apply if the applicant is an individual, the applicant, or the spouse of the applicant is found to be overdue in payment to the county of taxes, fees, fines, or penalties assessed against the individual, or imposed upon the individual in relation to a sexually oriented business. If the applicant is more than one individual or is a corporation, it is found that any person having at least ten percent ownership in the sexually oriented business, any person having at least ten percent ownership interest in a corporation owning the sexually oriented business, or the

spouse of any person having ten percent ownership in the sexually oriented business or corporation owning the sexually oriented business is overdue in payment to the county of taxes, fees, fines, or penalties assessed against the individual, or imposed upon the individual in relation to a sexually oriented business.

- (7) The permit fee or permit application fee required by this article and adopted by resolution of the county council has not been paid.

(Ord. No. 1999-14, § 2.7, 4-4-2000)

#### **Sec. 32-48. Administration and display of permits.**

- (a) The permit shall be printed on a form developed by the county. The Community Development Director shall maintain a copy of all permits issued, and shall maintain a record of permit issuances, to include the name of the business, the name of the owner, the date of permit issuance, and the date of permit expiration.
- (b) Permits and permit records are a matter of public record, and may be reviewed by any person during normal business hours of the county government offices, except that records or information pertaining to an ongoing investigation of illegal otherwise noncompliant activity of a sexually oriented business, owner or operator of a sexually oriented business, or employee of a sexually oriented business, may be shielded from public review in accordance with state law.
- (c) The permit, if granted, shall state on its face the name of the person to whom the permit is issued, the date of issuance, expiration date, and the address of the sexually oriented business. The permit shall be posted at a conspicuous place at or near the entrance of the sexually oriented business so that it may easily be read at any time.

(Ord. No. 1999-14, § 2.8, 4-4-2000)

#### **Sec. 32-49. Inspection.**

- (a) An applicant or permit holder shall permit representatives of the County Sheriff's Department, the State Department of Health and Environmental Control, local fire department, the County Administrator's office, the county attorney's office, or the county building official's office to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law, at any time the building is occupied and open for business.
- (b) All employees, while on duty at a sexually oriented business, must have a valid driver's license or other government issued official identification with picture in their possession and must present that identification to an inspecting official, as identified in subsection (a) of this section, upon demand.
- (c) The permit holder (or agent or employee of the permit holder) commits a misdemeanor if it is found by the appropriate court of law that such lawful inspection of the premises is denied for any reason. Such refusal is also grounds for the suspension or revocation of the permit.

(Ord. No. 1999-14, § 2.9, 4-4-2000)

#### **Sec. 32-50. Expiration and renewal of permit.**

All sexually oriented business permits shall be valid for a period of 12 months. Applications for renewal shall be made Community Development Director. An application for renewal shall be made not more than 45 days before the expiration of a valid permit, nor less than 30 days before the expiration of a valid permit. If an application for permit renewal is not made during this time period, the permit will lapse and an application for a new period shall be required to continue operation of the sexually oriented business. If there is a period in which the existing permit expires before a new permit is issued, the sexually oriented business shall not operate during such period.

(Ord. No. 1999-14, § 2.10, 4-4-2000)

### **Sec. 32-51. Suspension of a permit.**

The Community Development Director shall suspend a sexually oriented business permit for a period not to exceed 30 days, if it is determined that a permit holder or employee of a permit holder commits one or more of the acts listed as follows:

- (1) Has violated a portion of this article or any other applicable ordinance or regulation of the county, the state, any departments, bureaus, or agencies of the state, or the United States of America.
- (2) Has refused to allow the inspection of a sexually oriented business, as authorized by this article.
- (3) Has failed to provide identification, as specified in section 32-49(b).
- (4) Has failed to register any employee, as specified in this article, or has misrepresented the number of employees of the sexually oriented business.
- (5) Has allowed any person under 18 years of age to access the premises.

(Ord. No. 1999-14, § 2.11, 4-4-2000)

### **Sec. 32-52. Revocation of a permit.**

The Community Development Director shall revoke a sexually oriented business permit if a cause for suspension as specified in section 32-51 has occurred at least one time during the preceding 12 months. In addition, Community Development Director shall revoke a sexually oriented business permit if it is determined that any of the acts listed as follows have occurred:

- (1) The permit holder or an agent of the permit holder has provided false, incomplete, or misleading information in the material submitted during the application process.
- (2) The permit holder, or an agent or employee of the permit holder operated the sexually oriented business during a period of time in which no valid permit was in existence or the permit was suspended.
- (3) Any act of obscenity as specified in S.C. Code 1976, § 16-15-305 et seq., has taken place on the premises.

(Ord. No. 1999-14, § 2.13, 4-4-2000)

### **Sec. 32-53. Reissuance of a Permit.**

If a permit for a sexually oriented business has been revoked, no new permit for that business shall be issued for a period of 12 months from the date of revocation. This prohibition shall cover any business in the same location, any business owned by the owner of the business for which the permit has been revoked, any business owned by any person having at least ten percent ownership of the business for which the permit was revoked, or any business owned by a corporation of which at least ten percent ownership interest is held by a person with at least ten percent ownership interest in a corporation that owned the business for which the permit was revoked. Such prohibition shall also apply to the spouse of any person meeting the criteria listed above. Any permit holder who has had two permits revoked within a period of 36 months, shall be prohibited from being issued a permit for a period of five years. This regulation shall apply to any individual who shall have at least ten percent interest in the ownership of a subject business or who shall have at least ten percent ownership in a corporation which owned a subject business. This prohibition shall also apply to the spouse of any person meeting the criteria listed above.

(Ord. No. 1999-14, § 2.14, 4-4-2000)

**Sec. 32-54. Appeals of designation as a sexually oriented business; denial of permit; suspension or revocation of permit.**

- (a) Any aggrieved person or entity may appeal the Community Development Director's designation of a business as a sexually oriented business, the denial of a permit, or the suspension or revocation of a permit to the board (as established in article I of this chapter). Such appeal must be submitted on a form developed by the county and maintained by the Community Development Director. Any appeal must be submitted by certified or registered mail to the County Administrator or designated employee within ten business days after notification has been received by the applicant, person, or entity of the decision that is detrimental to the applicant, person, or entity.
- (b) Reasonable fees may be established by the county council to cover the costs of administering the appeals process. Fees shall be established by resolution by the county council and may be adjusted by subsequent resolution.
- (c) Before making a determination on an appeal, the board shall conduct a public hearing on the matter. Upon submission of an application for appeal, the chair of the board shall establish the date, time, and location for the public hearing, which shall be within 30 days of the submission of the application for appeal.
- (d) Notification of the public hearing must be published in a newspaper of general circulation in the county at least 15 days prior to the public hearing. Notice of the public hearing must also be displayed in the office of the the Community Development Director. Further, the applicant for the appeal shall be provided notification of the location, date, and time of the public hearing by registered mail with return receipt, or by hand delivery of an agent of the county who is authorized to deliver legal warrants.
- (e) Any person shall have the right to testify at the public hearing. Any person shall have the right to representation by legal counsel. Any person who does testify shall be required to state their legal name and address. The chair of the board may require the presentation of a valid driver's license or other official government issued identification with picture to establish the identity of any person wishing to testify.
- (f) As the appeals process is a quasijudicial function, no member of the board shall accept any evidence pertaining to the issue outside of the hearing context, except that the county employee designated for the administration of this article may prefile a report to the board. Such report, if prefiled shall be distributed to Board of Zoning Appeals members at least seven days prior to the hearing. Such report shall also be provided to the applicant for appeal either by certified mail with return receipt or by an agent of the county who is authorized to serve legal warrants. In either case, such report shall be provided to the applicant at least three days prior to the public hearing. Such report shall also be available for public review at the office of the county employee designated for the administration of this article during normal business hours of the county government. In addition, the applicant for appeal may also provide a prefiled report to the board. Such report shall be filed with the employee who is designated to administer this article and must be filed at least seven days prior to the public hearing. Such report shall be distributed to members of the board in an expeditious manner. Further, such report shall be available for public review at the office of the county employee designated for the administration of this article during normal business hours of the county government. If the applicant refuses to sign a certified mail receipt of public hearing notice or of receipt of a prefiled report, or if the applicant cannot reasonably be located at the address provided on the application, the designated county official shall make notice of such event, and it shall not cause the public hearing to be delayed. If any member of the board has reason to believe that he or she has a conflict of interest in voting on the appeal, or if any member has inadvertently received information, evidence, correspondence or testimony regarding the appeal outside of the hearing context, that member shall report the potential conflict, information, evidence, correspondence, or testimony to the county employee designated for the administration of this article. That official shall inform the county attorney of such information. The county attorney shall then provide advice as to whether the board member should participate in the deliberations, participate in the deliberations but make public notification for the record of the information received, or abstain from deliberations.

- (g) The decision of the Board of Zoning Appeals shall be made solely on findings of fact and shall be based on state law or ordinances of the county. Official action may be taken only if a quorum (as specified in article I of this chapter) is established. Decisions shall be made by a majority vote of board members present and shall be rendered in a written form within five business days of the public hearing, and shall be available for public review at the office of the county employee who is designated to administer this article, the county council shall have no authority to alter a decision of the county Board of Zoning Appeals. Any decision of the Board may be appealed to circuit court within ten days after the decision is rendered and made available for public review.
- (h) If a decision by the designated administrative officer to suspend or revoke a permit is appealed, such decision is stayed from the time the appeal is filed until the board of appeals renders its decision. If the Board of Zoning Appeals upholds the order of the administrative officer, then the period of suspension or revocation shall commence upon the date that the decision of the board is rendered.

(Ord. No. 1999-14, § 2.15, 4-4-2000)

### **Sec. 32-55. Transfer of a Permit.**

A permit holder shall not transfer a permit to another sexually oriented business, nor shall a permit holder operate a sexually oriented business under the authority of a sexually oriented business at any location other than the address designated in the permit. Should a sexually oriented permit change ownership, the permit may not be transferred. A new permit may be applied for in accordance with the application procedure included within this article by the new owner.

(Ord. No. 1999-14, § 2.16, 4-4-2000)

### **Sec. 32-56. Permit Requirements of Businesses Operating at the Time this Article is Adopted.**

- (a) Any sexually oriented business that is in operation at the time the ordinance from which this article is enacted shall be permitted to remain in operation without a permit for a period not to exceed 120 days.
- (b) If the owner of the sexually oriented business desires to operate the business for a period exceeding 120 days, the owner shall obtain a permit in the manner proscribed in section 32-46. In order to ensure that no lapse of time is incurred, a permit application must be submitted within 90 days of the enactment of this article.
- (c) Any existing sexually oriented business that is nonconforming to the locational requirements as stated in section 32-57(e), may nonetheless be issued a permit in accordance with the nonconforming use provision of this article.
- (d) To provide notification of permit requirements and application procedures, once this article is enacted, the county shall provide advertisement in a newspaper of general circulation in the county. Such advertisement shall be published at least three times at a minimum interval of 14 days. Such advertisement shall include notification of permit requirements, information concerning how a permit application may be obtained, a telephone number and address for obtaining additional information, notification that an existing sexually oriented business may remain in operation without a permit until the designated date that is 120 days subsequent to the enactment of the ordinance from which this article is derived.

(Ord. No. 1999-14, § 2.17, 4-4-2000)

### **Sec. 32-57. Location of Sexually Oriented Businesses.**

- (a) *Purpose and intent.* It is the purpose and intent of this section to provide for the location of sexually oriented businesses in a manner that promotes the public health, safety, and welfare of the county,

that minimizes secondary impacts associated with these businesses, and that allows for the reasonable establishment of these businesses in accordance with rights as established in the Constitution of the United States of America.

- (b) *Enabling authority.* This section is adopted by the county council, upon recommendation from the county planning commission, in conformance with S.C. Code 1976, § 6-29-310 et seq.
- (c) *Consistency with comprehensive plan.* This section is adopted by the county council, upon recommendation from the county planning commission, in conformance with the land use element of the county comprehensive plan. Specifically, this article is adopted to accomplish short range goal #4, as identified in the comprehensive plan.
- (d) *Applicability.* This section shall apply to the location of any sexually oriented business that is established within the unincorporated area of the county.
- (e) *Locational requirements.* No sexually oriented business shall be established, located, or operated on a parcel that is within 1,000 feet of any building or structure utilized for any of the activities listed in this section. Further, no permit shall be granted for a sexually oriented business that is proposed for establishment on a parcel that is within 1,000 feet of any building or structure utilized for any of the activities identified as follows:
  - (1) A church, synagogue, mosque, other place of worship, or facility used for the formal congregation of persons engaged in religious worship activities.
  - (2) A public or private school or nursery school (structure shall include buildings and fenced in play areas).
  - (3) A residence or structure built for residency.
  - (4) A public park, public recreation area, or private recreation area (structure shall include the entire parcel on which the facility is located), or any other sexually oriented business.
  - (5) For the purposes of this section, measurement shall be made in a straight line without regard to intervening structures or objects. Measurement shall be from the nearest portion of the parcel that is proposed for the location of the sexually oriented business to the closest point of any structure identified in this section. No more than one sexually oriented business shall be permitted on any parcel.

(Ord. No. 1999-14, §§ 2.18—2.23, 4-4-2000)

### **Sec. 32-58. Sexually Oriented Businesses, Designated as a Nonconforming Use.**

- (a) *Generally.* Any sexually oriented business operating on the date that the ordinance from which this article is derived that is found to not be in conformance with the locational requirements, as specified in section 32-57(e) shall be designated as a nonconforming use. Such business shall be permitted to remain in operation without a permit during the 120-day period, as specified in section 32-56 and shall be eligible to be issued a permit. Upon issuance of the permit, the Community Development Director, shall make a notation on the permit that the use is designated as nonconforming.
- (b) *Supplemental regulations applied to sexually oriented businesses that are designated as a nonconforming use.*
  - (1) No nonconforming use shall be increased, enlarged, extended, or altered.
  - (2) Any sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use due to the subsequent location of any of the activities listed in section 32-57(e) within 1,000 feet of the parcel upon which the sexually oriented business is located. If the permit for the sexually oriented business shall lapse or be revoked, or if the business shall cease operation for a period of at least 60 consecutive days, then the business shall be deemed as having been terminated. In such case, no new permit shall be issued for any business that is not in compliance with section 32-57(e).

- (3) The nonconforming status of any sexually oriented business shall be terminated if the business ceases operation for a period of at least 60 consecutive days, if the business's permit is revoked in accordance with section 32-52, or if the building in which the business is housed suffers damage to an extent in which the cost of repair would exceed 50 percent of the value of the building before it was damaged.
- (4) Upon the termination of the nonconforming status of the sexually oriented business, the permit shall be permanently revoked. However, unless the revocation is in part or in whole based on one or more of the violations included in section 32-52, the owner shall be eligible to apply for a new permit to reestablish the business or establish a new business without waiting the one year period, as specified in section 32-53
- (c) *Issuance of permits.* A designated nonconforming use may be issued no more than three annual permits. Upon the termination of the third permit, the nonconforming use must terminate or relocate to a conforming site.

(Ord. No. 1999-14, § 2.24, 4-4-2000)

**Secs. 32-59—32-90. Reserved.**

STATE OF SOUTH CAROLINA  
COUNTY OF OCONEE  
**ORDINANCE 2016-06**

**AN ORDINANCE AMENDING CHAPTER 32 OF THE OCONEE COUNTY  
CODE OF ORDINANCES IN CERTAIN LIMITED REGARDS AND  
PARTICULARS PERTAINING TO GROUP HOME DEVELOPMES, ONLY;  
AND OTHER MATTERS RELATED THERETO.**

**WHEREAS**, Oconee 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 its governing body, the Oconee County Council (the "County Council"), has adopted multiple ordinances for the effective, efficient governance of the County, which, subsequent to adoption, are codified in the Oconee County Code of Ordinances (the "Code of Ordinances"), as amended, from time to time; and

**WHEREAS**, the County, acting by and through the County Council, is authorized by Section 4-9-30(9) and Chapter 29 of Title 6 of the South Carolina Code, 1976, as amended, among other sources, to impose land use restrictions and development standards in the unincorporated areas of the County; and,

**WHEREAS**, Chapter 32 of the Code of Ordinances contains terms, provisions and procedures applicable to performance standards in the County; and

**WHEREAS**, County Council recognizes that there is a need to revise the law of the County to meet the changing needs of the County and that there is a need to amend, specifically, certain sections of Chapter 32 of the Code of Ordinances involving group home developments; and

**WHEREAS**, County Council has therefore determined to modify Chapters 32 of the Code of Ordinances, and to affirm and preserve all other provisions of the Code of Ordinances not specifically or by implication amended hereby.

**NOW, THEREFORE**, it is hereby ordained by the Oconee County Council, in meeting duly assembled, that:

1. Article 5 of Chapter 32 of the Code of Ordinances, entitled *Group Home Developments*, is hereby revised, rewritten, and amended to read as set forth in Attachment A, which is attached hereto and hereby incorporated by reference as fully as if set forth verbatim herein.
2. County Council hereby declares and establishes its legislative intent that Attachment A, hereto, as may be amended from time to time, amend Article 5 of Chapter 32 of the Code or Ordinances of the land use performance standards of the County, from and after its adoption, states its intent to so adopt Attachment A, and directs that a public hearing thereon be

undertaken by County Council or the Oconee County Planning Commission, in accord with and as required by Section 6-29-760 and by Section 4-9-130, South Carolina Code, 1976, as amended.

3. Should any part or provision of this Ordinance be deemed unconstitutional or unenforceable by any court of competent jurisdiction, such determination shall not affect the rest and remainder of this Ordinance, all of which is hereby deemed separable.

4. All ordinances, orders, resolutions, and actions of County Council inconsistent herewith are, to the extent of such inconsistency only, hereby repealed, revoked, and rescinded. However, nothing contained herein, or in the Attachments hereto, shall cancel, void, or revoke, or shall be interpreted as cancelling, voiding, or revoking, *ex post facto*, in any regard any prior performance standard, zoning or rezoning acts, actions, or decisions of the County or County Council based thereon, which were valid and legal at the time in effect and undertaken pursuant thereto, in any regard.

6. All other terms, provisions, and parts of the Code of Ordinances, and specifically, but without exception, the remainder of Article 5 of Chapter 32, not amended hereby, directly or by implication, shall remain in full force and effect.

7. This Ordinance shall take effect and be in full force and effect from and after third reading and enactment by County Council, and will apply to all land use and zoning processes initiated after first (1<sup>st</sup>) reading hereof. All processes actually initiated by submitting a properly and legally completed petition to the County, at a minimum, prior to first (1<sup>st</sup>) reading of this ordinance and the establishment of the pending ordinance doctrine thereby, shall be completed under the zoning and performance standard rules and regulations of Chapters 32 of the Code of Ordinances, as in effect prior to final adoption of this ordinance.

**ORDAINED** in meeting, duly assembled, this \_\_\_\_ day of \_\_\_\_\_, 2016.

**ATTEST:**

\_\_\_\_\_  
Elizabeth Hulse,

Clerk to Oconee County Council

\_\_\_\_\_  
Paul Cain

Chairman, Oconee County Council

First Reading:        March 1, 2016  
Second Reading:     March 15, 2016  
Public Hearing:  
Third Reading:

ATTACHMENT A  
To Ordinance 2016-06

**ARTICLE V. - GROUP RESIDENTIAL DEVELOPMENTS <sup>151</sup>**

Sec. 32-171. - Authority of Article Provisions.

Sec. 32-172. - Purpose of Article.

Sec. 32-173. - Definitions.

Sec. 32-174. - Group Residential Facilities Permitted Only by Special Exception.

Sec. 32-175. - Review of Application by Community Development Director.

Sec. 32-176. - Public Hearing and Approval by the Board.

Sec. 32-177. - Appeals.

Sec. 32-178. - Application Requirements.

Sec. 32-179. - Sketch Plan and Preliminary Development Plans.

Sec. 32-180. - Board Criteria for Granting a Special Exception.

Sec. 32-181. - Distance Requirements.

Sec. 32-182. - Building Permits and Certificate of Occupancy.

Sec. 32-183—32-210. - Reserved.

**Sec. 32-171. - Authority of Article Provisions.**

The regulations of this article are enacted pursuant to S.C. Code 1976, § 6-29-310 et seq.

(Ord. No. 1999-14, § 5.1, 4-4-2000)

**Sec. 32-172. - Purpose of Article.**

The regulations of this article are intended to lessen the adverse impact of large-scale group residential development on neighboring residential areas and to ensure the health, safety and general welfare of residents and citizens of the county.

(Ord. No. 1999-14, § 5.2, 4-4-2000)

**Sec. 32-173. - Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

**Board** means the Board of Zoning Appeals (BZA), as defined in section 32-5.

**Exempted residential facility** means recreational summer camps, day facilities, and religious retreat facilities, any of which do not provide for long-term stays of 30 days or more. Hospitals, nursing homes, and accredited college/accredited university housing are exempted from the requirements of this article.

**Group residential facility** means a public, private, or not-for-profit facility which may provide licensed or unlicensed counseling services, schooling, and care, and which houses ten or more persons not related by blood or adoption in a residential or dormitory environment for a period of 30 days or more per year. Residential treatment centers (RTC's) are included in this definition.

### **Sec. 32-174. - Group Residential Facilities Permitted Only by Special Exception.**

Persons desiring to build or expand a group residential facility as defined by this article shall make an application through the Community Development Director, or designee, to the board providing information required by this article. Development or expansion of a group residential facility may commence only with the approval of the board as a special exception after a public hearing in accordance with section 32-5.

(Ord. No. 1999-14, § 5.4, 4-4-2000)

### **Sec. 32-175. - Review of Application by Community Development Director, or Designee.**

All applications for development or expansion of residential group facilities must be submitted to the county Community Development Director, or designee for review. Applications must be complete and shall include all of the materials and information required by this article (application requirements and sketch plan and preliminary development plans) and must meet all applicable requirements and/or conditions in this article before an application will be processed. Incomplete applications will be returned to the applicant. The Community Development Director, or designee shall refer completed applications to the board for final review and approval as a special exception. The Community Development Director, or designee shall act upon applications within 30 days of receipt, returning them for cause, or forwarding them to the board for further action.

(Ord. No. 1999-14, § 5.5, 4-4-2000)

### **Sec. 32-176. - Public Hearing and Approval by the Board.**

The board shall conduct a public hearing and shall review applications for compliance with the provisions of this article, in particular with section 32-180, board criteria for granting a special exception and general criteria for special exceptions in article I of this chapter. Development or expansion may proceed only as approved by the board. Any changes in development or expansion plans as approved by the board shall require a new application.

(Ord. No. 1999-14, § 5.6, 4-4-2000)

### **Sec. 32-177. - Appeals.**

Whenever there is an alleged error by the community development director, or designee in an order, requirement, decision, or determination, an applicant may request a hearing before the board in accordance with the provisions of section 32-5. Appeals of the decisions of the board may be made to the county circuit court in accordance with the provisions of section 32-5. Appeal hearings shall be advertised and reasonable fees may be charged in accordance with article I of this chapter.

(Ord. No. 1999-14, § 5.7, 4-4-2000)

### **Sec. 32-178. - Application Requirements.**

Applications for development or expansion of group residential facilities must include the following:

- (1) A complete description of the name and purpose of the proposed facility;
- (2) A complete list of the names, addresses, and phone numbers of board members, owners and investors, as applicable;
- (3) A copy of a license or application for a license to the state department of social services to operate a group facility;
- (4) State tax identification number or tax exemption certification; and
- (5) Two copies of a preliminary development plans and a sketch plan displaying the physical and relative layout of the facility as outlined by section 32-179

(Ord. No. 1999-14, § 5.8, 4-4-2000)

### **Sec. 32-179. - Sketch Plan and Preliminary Development Plans.**

A sketch and development plan will be required for all proposed group residential developments. The sketch plan shall be drawn at an approximate scale of not less than a scale of 200 feet to one inch and shall include a vicinity map at a scale of not less than two miles to one inch showing the relationship of the proposed development to the surrounding areas. The Community Development Director, or designee may waive some of the following sketch plan elements on applications for minor modifications and additions to existing facilities; otherwise, all sketch plan submittals shall include the following in sketch and narrative form:

- (1) An accounting of total acreage in the tract and any proposed subdivision of parcels;
- (2) Arrangement, shape, dimensions, and area of proposed development;
- (3) Location of existing property lines, easements, road rights-of-way, buildings, or other public ways adjoining the tract to be developed;
- (4) Alignment, right-of-way width, and clarification of proposed roads;
- (5) Topography by contour at intervals of not more than ten feet (as from USGS quad sheets);
- (6) Map scale, north arrow, and date;
- (7) Name/address/telephone number of legal owner or agent and the professional (surveyor or engineer) who will undertake detailed layout and improvements design;
- (8) Location of watercourses and land subject to flooding based on a 100-year frequency flood;
- (9) The existing and proposed uses of land throughout the development;
- (10) Proposed method of water supply and wastewater treatment and other utility services;
- (11) The proposed name of the development;
- (12) The owner/developer shall submit a sketch plan of this entire tract even though the subdivider's present plans call for the actual development of only a part of the property.

(Ord. No. 1999-14, § 5.9, 4-4-2000)

### **Sec. 32-180. - Board Criteria for Granting a Special Exception.**

The board criteria for granting a special exception shall be as follows:

- (1) Traffic flow from the facility shall not present a danger to local residents, motorists and pedestrians.

- (2) Noise, lighting, and activities carried out on the premises of the facility shall not present a nuisance to local residents.
- (3) The residents of the facility shall not present any potential danger to local residents.
- (4) The residents of the facility shall reside in a safe and healthy environment.
- (5) The proposed development is in compliance with the other provisions of this chapter.

(Ord. No. 1999-14, § 5.10, 4-4-2000)

### **Sec. 32-181. - Distance Requirements.**

A group residential facility shall not be located within 1,000 feet of the nearest residence.

(Ord. No. 1999-14, § 5.11, 4-4-2000)

### **Sec. 32-182. - Building Permits and Certificate of Occupancy.**

Building permits and certificate of occupancy shall not be issued until or unless authorized by the Community Development Director, or designee and the proposed development is in compliance with the requirements of this article and the standard building codes as adopted by the county.

(Ord. No. 1999-14, § 5.12, 4-4-2000)

### **Secs. 32-183—32-210. - Reserved.**

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FOOTNOTE(S):

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**State Law reference—** Government entities subject to zoning ordinances; exceptions, S.C. Code 1976, § 6-29-770.

STATE OF SOUTH CAROLINA  
COUNTY OF OCONEE  
**ORDINANCE 2016-07**

**AN ORDINANCE AMENDING CHAPTER 32 OF THE OCONEE COUNTY CODE OF ORDINANCES IN CERTAIN LIMITED REGARDS AND PARTICULARS PERTAINING TO TATTOOING FACILITIES, ONLY; AND OTHER MATTERS RELATED THERETO.**

**WHEREAS**, Oconee 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 its governing body, the Oconee County Council (the "County Council"), has adopted multiple ordinances for the effective, efficient governance of the County, which, subsequent to adoption, are codified in the Oconee County Code of Ordinances (the "Code of Ordinances"), as amended, from time to time; and

**WHEREAS**, the County, acting by and through the County Council, is authorized by Section 4-9-30(9) and Chapter 29 of Title 6 of the South Carolina Code, 1976, as amended, among other sources, to impose land use restrictions and development standards in the unincorporated areas of the County; and,

**WHEREAS**, Chapter 32 of the Code of Ordinances contains terms, provisions and procedures applicable to performance standards in the County; and

**WHEREAS**, County Council recognizes that there is a need to revise the law of the County to meet the changing needs of the County and that there is a need to amend, specifically, certain sections of Chapter 32 of the Code of Ordinances involving tattooing facilities located within the unincorporated areas of Oconee County; and

**WHEREAS**, County Council has therefore determined to modify Chapters 32 of the Code of Ordinances, and to affirm and preserve all other provisions of the Code of Ordinances not specifically or by implication amended hereby.

**NOW, THEREFORE**, it is hereby ordained by the Oconee County Council, in meeting duly assembled, that:

1. Article 7 of Chapter 32 of the Code of Ordinances, entitled *Tattooing Facilities Located within the Unincorporated Areas of Oconee County*, is hereby revised, rewritten, and amended to read as set forth in Attachment A, which is attached hereto and hereby incorporated by reference as fully as if set forth verbatim herein.

2. County Council hereby declares and establishes its legislative intent that Attachment A, hereto, as may be amended from time to time, amend Article 7 of Chapter 32 of the Code or Ordinances of the land use performance standards of the County, from and after its adoption, states its intent to so adopt Attachment A, and directs that a public hearing thereon be undertaken by County Council or the Oconee County Planning Commission, in accord with and

as required by Section 6-29-760 and by Section 4-9-130, South Carolina Code, 1976, as amended.

3. Should any part or provision of this Ordinance be deemed unconstitutional or unenforceable by any court of competent jurisdiction, such determination shall not affect the rest and remainder of this Ordinance, all of which is hereby deemed separable.

4. All ordinances, orders, resolutions, and actions of County Council inconsistent herewith are, to the extent of such inconsistency only, hereby repealed, revoked, and rescinded. However, nothing contained herein, or in the Attachments hereto, shall cancel, void, or revoke, or shall be interpreted as cancelling, voiding, or revoking, *ex post facto*, in any regard any prior performance standard, zoning or rezoning acts, actions, or decisions of the County or County Council based thereon, which were valid and legal at the time in effect and undertaken pursuant thereto, in any regard.

6. All other terms, provisions, and parts of the Code of Ordinances, and specifically, but without exception, the remainder of Article 7 of Chapter 32, not amended hereby, directly or by implication, shall remain in full force and effect.

7. This Ordinance shall take effect and be in full force and effect from and after third reading and enactment by County Council, and will apply to all land use and zoning processes initiated after first (1<sup>st</sup>) reading hereof. All processes actually initiated by submitting a properly and legally completed petition to the County, at a minimum, prior to first (1<sup>st</sup>) reading of this ordinance and the establishment of the pending ordinance doctrine thereby, shall be completed under the zoning and performance standard rules and regulations of Chapters 32 of the Code of Ordinances, as in effect prior to final adoption of this ordinance.

**ORDAINED** in meeting, duly assembled, this \_\_\_\_ day of \_\_\_\_\_, 2016.

**ATTEST:**

\_\_\_\_\_  
Elizabeth Hulse,

Clerk to Oconee County Council

\_\_\_\_\_  
Paul Cain

Chairman, Oconee County Council

First Reading: March 1, 2016

Second Reading: March 15, 2016

Public Hearing:

Third Reading:

ATTACHMENT A  
To Ordinance 2016-07

**ARTICLE VII. TATTOOING FACILITIES WITHIN THE UNINCORPORATED AREAS OF  
OCONEE COUNTY**

Sec. 32-415. Purpose and Intent.

Sec. 32-416. Jurisdiction.

Sec. 32-417. Enabling Authority.

Sec. 32-418. Finding of Fact.

Sec. 32-419. Definitions.

Sec. 32-420. Location Requirements.

Sec. 32-421. Request for a Letter of Compliance.

Sec. 32-422. Issuance of Letter of Compliance.

Sec. 32-423. Noncompliance.

Sec. 32-424—32-514. Reserved.

**Sec. 32-415. Purpose and Intent.**

It is the purpose of this article to regulate tattooing facilities in order to promote the health, safety, and general welfare of the citizens of Oconee County, and to establish reasonable and uniform regulations to prevent the deleterious locating and concentration of tattooing businesses within the county.

It is the intent of this article to establish standards for tattooing facilities that will insure that these businesses are operated in a manner that is in full compliance with all applicable laws of the United States of America, the State of South Carolina, and Oconee County; and to provide Oconee County with a reasonable and legitimate mechanism for enforcing applicable laws.

(Ord. No. 2006-30, § 7.1, 2-20-2007)

**Sec. 32-416. Jurisdiction.**

This section shall apply to any tattooing facility that is established within the unincorporated area of Oconee County.

(Ord. No. 2006-30, § 7.2.1, 2-20-2007)

**Sec. 32-417. Enabling Authority.**

This article is adopted by the County Council in accordance with S.C. Code, 1976, Title XLIV, Chapter 34, as an application of the police powers for the purpose of promoting the public health, safety, and welfare.

(Ord. No. 2006-30, § 7.2.2, 2-20-2007)

**Sec. 32-418. Finding of Fact.**

(a) There exists potential for the establishment of tattooing facilities in the County, and it is in the interest of the public health, safety, and welfare, of the citizens of the County to provide for minimum

standards and regulations for tattooing facilities, as well as for the health, safety, and general welfare of the owners, operators, employees, and patrons of such businesses.

- (b) The State of South Carolina has indicated or implied concern for the secondary effects of tattooing facilities through the provisions in State Law Title XLIV, Chapter 34 Section 110, by requiring a distance separation of 1,000 feet from churches, schools, and playgrounds.
- (c) The peak volume of business for tattooing facilities tends to occur when many families desire quiet, making such facilities incompatible with residential areas.
- (d) It is not the intent of this article to suppress speech activities protected by the First Amendment of the Constitution of the United States of America or to place any permissible burden on any constitutionally protected expression or expressive conduct by the enactment of this article. Rather, it is the intent of the County to enact a content neutral regulation that addresses the secondary effects of tattooing facilities by enacting location requirements to such facilities.

(Ord. No. 2006-30, § 7.2.3(7.4.1—7.4.4), 2-20-2007)

### **Sec. 32-419. Definitions.**

**Arterial Road** means a major road that serves as an avenue for circulation into, out of, or around the county; typical number of average daily traffic (ADT) exceeds 5,000.

**Church** means an establishment, other than a private dwelling, where religious services are usually conducted.

**Collector Road** means a road that has the primary purpose of gathering traffic from intersecting local roads and handling movements to the nearest arterial road; a secondary function is to provide direct access to abutting properties. Typical number of average daily traffic (ADT) exceeds 800.

**Existing Commercial Area** means any area in which three or more separate businesses, fronting the same road, are located adjacent to each other, not separated by any occupied single family residence.

**Playground** means a place, other than grounds at a private dwelling that is provided by the public or members of a community for recreation.

**Residential Parcel** mean a parcel utilized primarily for single family residency or a parcel upon which a residential home is within 1,000 feet of a tattooing facility.

**School** means an establishment, other than a private dwelling, where the usual processes of education are usually conducted.

**Shopping Center** means a commercial establishment consisting of multiple spaces, leased or owned, for individual businesses.

**Site Plan** means the development plan for a tattooing facility on which is shown the existing and proposed conditions of the lot, including landscaping, walkways, means of ingress and egress, structures and buildings, signs and lighting, buffers and screening (if applicable), surrounding development; surrounding parcels, and any other information that may be reasonably required in order that an informed decision can be made as to whether or not the requirements of this article have been satisfied.

**Tattoo Artist** means a person who practices body tattooing and who meets all state and county requirements.

**Tattoo Facility** means any room, space, location, area, structure, or business, or any part of these places, where tattooing is practiced or where the business of tattooing is conducted.

**Tattoo Or Tattooing** means to indelibly mark or color the skin by subcutaneous introduction of nontoxic dyes or pigments.

### **Sec. 32-420. Location Requirements.**

- (a) Tattooing facilities shall not be located within 1,000 feet of a church, school, or playground. This distance shall be the shortest route of ordinary pedestrian or vehicular travel along the public thoroughfare from the nearest point of the grounds in use as part of the church, school, or playground.
- (b) In the event a parcel on which a tattooing facility is proposed to be located adjoins a residential parcel (as defined by this article), the owner of the tattooing facility shall install a fence and any necessary additional screening sufficient to prevent light, sound, and other secondary effects from negatively impacting existing residences. All plans for such fencing and/or screening shall be approved by the planning director prior to installation.
- (c) Tattooing facilities may be located in any shopping center in the County that is not located within 1,000 feet of a church, school, or playground.
- (d) Tattooing facilities shall be located no further than ¼ mile (1,320) feet from existing commercial areas (as defined by this article).
- (e) Tattooing facilities shall locate only on arterial or collector roads, and shall be accessed directly from the road upon which the facility is located. No tattooing facility shall be located on a local road.

(Ord. No. 2006-30, § 7.6(7.6.1—7.6.5), 2-20-2007)

### **Sec. 32-421. Request for a Letter of Compliance.**

- (a) The owner shall request in writing that the Community Development Director, or designee, review the location of the tattooing facility and issue a Letter of Compliance.
- (b) Appropriate fees, as established by resolution of the County Council, shall be paid at the time of request for a Letter of Compliance.
- (c) The owner shall submit the following items to the Community Development Director, or designee, at the time a formal request for a Letter of Compliance is made:
  - (1) A site plan showing the location of the tattooing facility, including surrounding parcels;
  - (2) A copy of a survey (stamped by a surveyor licensed by the State of South Carolina) showing that the location of the proposed tattooing facility is not less than 1,000 feet from church, playground, or school;
  - (3) The road name and classification (specifying the ADT's) on which the tattooing facility will be located;
  - (4) Proof that the tattooing facility is to be located in or within ¼ mile of an established commercial area (as defined by this article), or within an existing shopping center;
  - (5) Plans for any necessary fencing or screening, as defined in this article.

(Ord. No. 2006-30, § 7.7(7.7.1—7.7.3), 2-20-2007)

### **Sec. 32-422. Issuance of Letter of Compliance.**

- (a) The Community Development Director, or designee, shall issue a Letter of Compliance when all requirements of this article have been met.
- (b) The Letter of Compliance shall not be issued, or may be revoked, if one or more of the following conditions are found to be present at any time:
  - (1) The proposed tattooing facility is in violation of any portion of this article, including the section concerning location requirements;

- (2) The proposed tattooing facility is in violation of any other county ordinance or regulation, any ordinance or regulation enforced by an administrative department, bureau, or governmental entity of the State of South Carolina, or any law or regulation of the United States of America;
  - (3) The applicant is under 18 years of age;
  - (4) The applicant has failed to provide information that is reasonably necessary and required for compliance with this article or has falsely answered a question or request for information;
  - (5) The premises to be used for the operations of the proposed tattooing facility is found to be unsafe by the rural fire chief of the County, the building official of the County, or an appropriate official of South Carolina Department of Health and Environmental Control;
  - (6) The applicant and/or the spouse of the applicant is found to be overdue in payment to the County of taxes, fees, fines, or penalties assessed against the individual, or imposed upon the individual in relation to the tattooing business;
  - (7) The applicant is more than one individual or is a corporation and it is found that any person having at least ten percent ownership in the tattooing business, any person having at least ten percent ownership interest in a corporation owning the tattooing business, or the spouse of any person having ten percent ownership in the tattooing business is overdue in payment to the County of taxes, fees, fines, or penalties assessed against the individual, or imposed upon the individual in relation to said business;
  - (8) Appropriate fees are unpaid.
- (c) A Letter of Compliance shall expire six months from the date that the letter was issued; however, one six month extension may be granted provided:
- (1) Request for an extension is submitted no less than ten working days prior to the expiration date of letter;
  - (2) The applicant can prove that all pertinent circumstances surrounding the proposed tattooing facility have not changed since application was made;
  - (3) The applicant provides sufficient documentation supporting the request for an extension, specifically detailing all actions to date in pursuit of the establishment of the tattooing facility.
- (Ord. No. 2006-30, § 7.8(7.8.1—7.8.3), 2-20-2007)

### **Sec. 32-423. Noncompliance.**

Any existing tattooing facility, having been duly issued a Letter of Compliance and subsequently found to be in violation of this article or any other County enforced regulation, shall be subject to any appropriate penalties and/or remediation, to include any additional fees as deemed appropriate by County Council. Notice of all noncompliance shall be forwarded to DHEC and other appropriate authorities.

(Ord. No. 2006-30, § 7.9(7.9.1), 2-20-2007)

### **Sec.. 32-424—32-514. Reserved.**

STATE OF SOUTH CAROLINA  
OCONEE COUNTY  
**ORDINANCE 2016-12**

AN ORDINANCE TO AUTHORIZE THE CONVEYANCE  
OF EASEMENT RIGHTS FOR THE PURPOSE OF UTILITY  
CONSTRUCTION AT THE OCONEE INDUSTRY &  
TECHNOLOGY PARK; AND OTHER MATTERS  
RELATED THERETO

WHEREAS, Oconee County, a body politic and corporate and a political subdivision of the State of South Carolina (the "County"), is the owner of approximately 397.16 acres, known as the Oconee Industry and Technology Park ("County Property"); and

WHEREAS, Blue Ridge Electric Cooperative, Inc. ("Blue Ridge Electric") wishes to acquire from the County, and the County wishes to grant to Blue Ridge Electric, certain easement rights for, generally and without limitation, the construction, maintenance, alteration and replacement of one or more electric lines, for overhead or underground electric transmission, distribution and communication lines over, across, under and through certain portions of the County Property (collectively, the "Easements"); and

WHEREAS, the form, terms and provisions of the Electric Line Right-of-Way Easement (the "Easement Agreement") now before the Oconee County Council ("County Council"), copies of which are attached hereto as "**Exhibit A**," are acceptable to the County Council for the purpose of giving effect to the Easement rights; and

WHEREAS, Section 4-9-30(2) of the Code of Laws of South Carolina, 1976, as amended, (the "Code") authorizes the County to transfer or otherwise dispose of interests in real property:

NOW, THEREFORE, be it ordained by Council, in meeting duly assembled, that:

1. Council hereby approves the Easements, subject to and in conformity with the provisions of the Easement Agreement.
2. The Administrator of the County ("Administrator") shall be, and hereby is, authorized to execute and deliver the Easement Agreement on behalf of the County in substantially the form as attached hereto as **Exhibit A**, or with such changes as are not materially adverse to the County and as the Administrator shall approve, upon the advice of legal counsel, such Administrator's approval to be deemed given by his execution of the Easement Agreement.
3. The Administrator shall be, and hereby is, authorized to execute and deliver any and all other documents or instruments on behalf of the County related to the Easements in a form and substance acceptable to the Administrator, on advice of legal counsel to the County.
4. Should any portion of this Ordinance be deemed unconstitutional or otherwise unenforceable by any court of competent jurisdiction, such determination shall not affect the remaining terms and provisions of this ordinance, all of which are hereby deemed separable.

5. All orders, resolutions, and enactments of the County Council inconsistent herewith are, to the extent of such inconsistency only, hereby repealed, revoked, and rescinded.

6. This ordinance shall take effect and be in full force and effect from and after third reading and enactment by the County Council.

ORDAINED in meeting, duly assembled, this \_\_\_\_ of \_\_\_\_\_, 2016.

OCONEE COUNTY, SOUTH CAROLINA

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Paul A. Cain, Chairman, County Council  
Oconee County, South Carolina

ATTEST:

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Elizabeth G. Hulse, Clerk to County Council  
Oconee County, South Carolina

First Reading:                      March 1, 2016 [title only]  
Second Reading:                    March 15, 2016  
Public Hearing:  
Third & Final Reading:

**Exhibit A**  
**(Easement Agreement)**

S/O # \_\_\_\_\_  
ACCT # \_\_\_\_\_  
JOB # \_\_\_\_\_  
DATE \_\_\_\_\_

**ELECTRIC LINE RIGHT-OF-WAY EASEMENT**

STATE OF SOUTH CAROLINA    )                    Map No. Near 331-29-009  
COUNTY OF OCONEE            )                    Tax Map 221-00-01-001

KNOW ALL MEN BY THESE PRESENTS, that Oconee County and its successors and assigns (hereinafter referred to as "Grantor") for good and valuable consideration from Blue Ridge Electric Cooperative, Inc., whose principal office is located in Pickens, South Carolina (hereinafter referred to as the "Cooperative"), the receipt of which is hereby acknowledged, does hereby grant unto the Cooperative, its successors, lessees and assigns, the perpetual right, privilege, and easement, without covenants or warranties of any kind, and subject to the terms set forth, and the privileges specifically retained and reserved, herein by Grantor:

1. To go upon the tract of land of the Grantor, containing 397.17 acres, more or less, at the Oconee Industry and Technology Park, Oconee Business Parkway / Little Country Lane, being As generally depicted on "Exhibit A," attached hereto and incorporated herein by reference (the "Property").
2. To construct, reconstruct, locate, relocate, operate, maintain and repair in, upon, over, under and through said land, within the easement strip such structures, underground wires, and other necessary fixtures, apparatuses and appliances, electrical distribution lines or systems, and any support structures and anchors that must be located outside of the easement strip, for the purpose of distributing electricity by one or more circuits and of carrying wires of the Cooperative or any lessee thereof. The referenced easement strip is shown "Exhibit B" attached hereto and incorporated herein and shall be referred to hereinafter as the "Easement Premises."

The Easement Premises are further defined to include: twenty feet on each side of the centerline of any overhead primary facilities, eight feet on each side of where only underground facilities are installed, and five feet on each side where only overhead service facilities are necessary;

3. To enter upon said land at any time for the purposes of inspecting said lines and facilities and making necessary repairs and alterations thereof.
4. Subject to the approval of Grantor, which approval will not be unreasonably withheld, to make such changes, alterations and substitutions in said lines,

facilities or structures from time to time as the Cooperative deems advisable or expedient.

5. To keep and maintain, as the Cooperative deems necessary, the Easement Premises clear of all structures, trees, stumps, roots, shrubbery and undergrowth along said lines, facilities or structures for a space of up to the right-of-way widths listed in Item 2.
6. To trim or remove and to keep trimmed or removed dead, diseased, weak or leaning trees or limbs outside of the Easement Premises which, in the opinion of the Cooperative, might interfere with or fall upon the electric or communication facilities within the Easement Premises.
7. To implement the following provisions:  

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The foregoing grant of easement shall, at all times, be subject to the following terms and conditions:

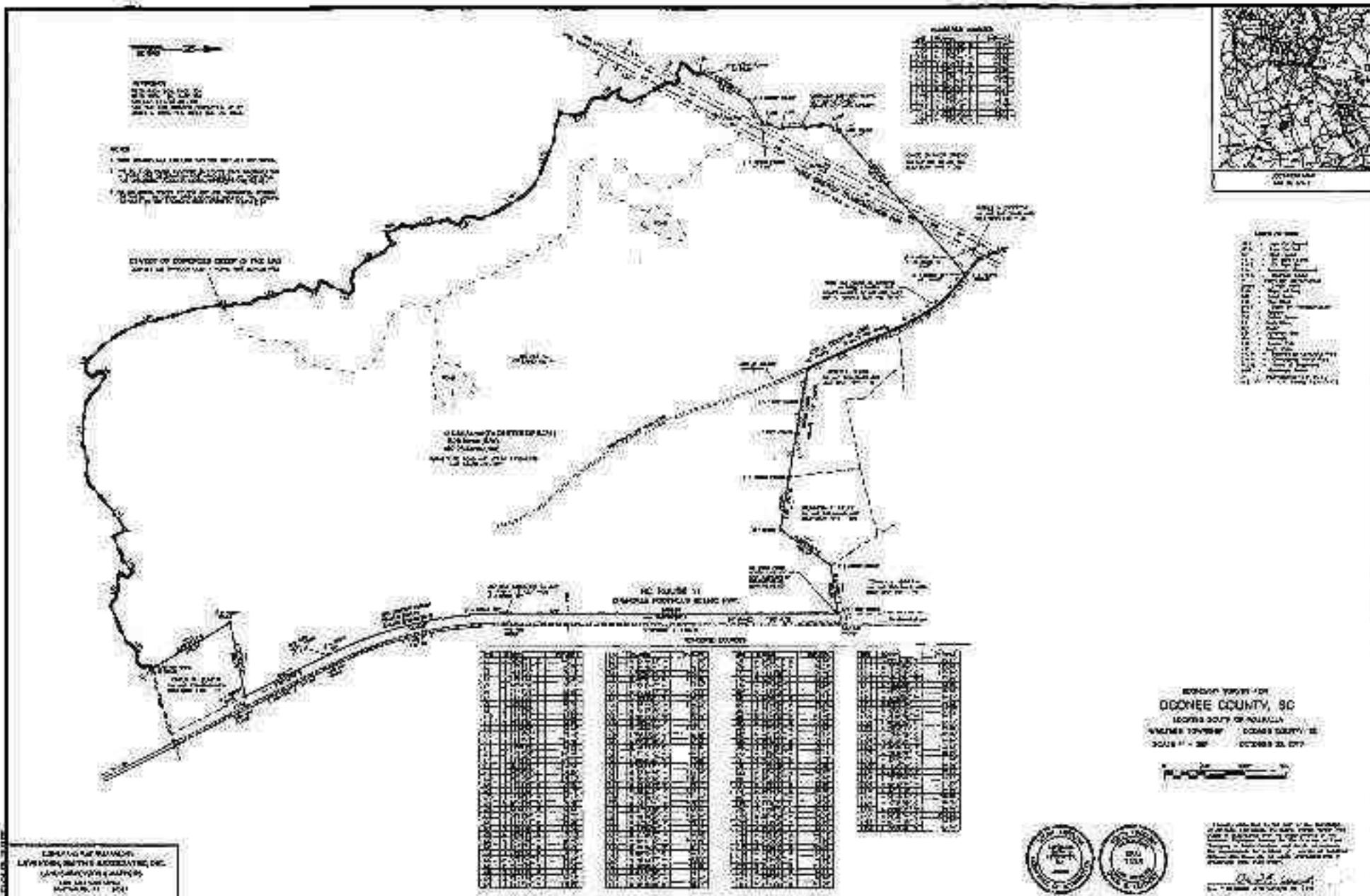
1. The easement shall not be exercised by the Cooperative in a manner so as to prevent or unreasonably interfere with the use and enjoyment of the Property or any portion of the Property by Grantor, its employees, servants, agents, and invitees.
2. The items to be constructed, installed, operated, etc. on the Easement Premises shall be constructed, installed, and operated in a safe manner, consistent with all applicable laws, industry standards, manufacturers' requirements, and the like.
3. Any damage to the Property caused by the Cooperative's activities on the Property, shall be replaced or repaired by the Cooperative to the satisfaction of the Grantor.
4. The Cooperative shall not place, keep, store, or permit to be placed, kept or stored on the Property any equipment or materials except during the times as Cooperative's employees or agents are physically present and conducting activities permitted under this Agreement.
5. The easement granted hereby shall be perpetual except that it shall automatically terminate without the necessity of any action by Grantor, should the Cooperative, or any of its successors or assigns violate the terms and conditions of this instrument or cease to operate or otherwise entirely abandon the Easement Premises and/or any items located thereon for a period of one (1) year or more. The Cooperative shall give written notice to Grantor of its intent to cease operations and/or abandon the Easement Premises, and the referenced one (1) year period shall run from the date of receipt of such notice by the Grantor.

6. Any rights to the Easement Premises not specifically granted to the Cooperative herein, are reserved to the Grantor, its successors or assigns.
7. The Grantor agrees that all lines, facilities, structures and related apparatuses and appliances installed on or in the above described land by the Cooperative or its representative(s) shall be and remain the property of the Cooperative, removable or replaceable at its option; and that the Grantor will not construct any structure within said Easement Premises. The Grantor agrees that no wells shall be dug on said Easement Premises, that no septic tank, absorption pits, or underground storage tanks shall be placed on the Easement Premises, that no building or other structures shall be erected thereon; and that said Easement Premises shall not be used for burial grounds.
8. The Cooperative agrees that in locating or relocating and installing its structures and anchors, it will endeavor to take advantage of roadways, streets, ditches, hedgerows, etc., so as to cause the least interference to the Grantor's said land; and that if, in the construction of said lines, facilities or structures, any injury is necessarily done to crops, fences, bridges or roads, it will repair or replace such fences, bridges or roads, and will pay the Grantor for injury to such crops.
9. Cooperative shall indemnify, defend, and hold the Grantor, its representatives, agents, employees, successors, and assigns, harmless from any and all costs, liabilities, damages, losses, claims, actions or proceedings of any nature, including, without limitation, for injury to any persons (including death) or property which may be claimed to have arisen directly from or out of (i) any damage, accident, injury, or other similar occurrences in or on the Property, including the Easement Premises, due to Cooperative's negligence or misconduct; or (ii) the use, maintenance, or repair of the Easement Premises by Cooperative, its guests, invitees, agents, or contractors. It is expressly understood and agreed that, notwithstanding anything in this Agreement to the contrary, the liability of Grantor hereunder, to the extent any exists, shall be limited solely and exclusively to the interest of Grantor in and to the Property, and neither Grantor, nor any of its representatives, successors, employees, affiliates or agents, shall have any personal liability for any claim arising hereunder. Cooperative hereby expressly waives and releases Grantor and such representatives, successors, employees, affiliates, and agents from any and all personal liability.

TO HAVE AND TO HOLD the aforesaid rights, privileges and easement unto the Cooperative, its successors and assigns, forever.

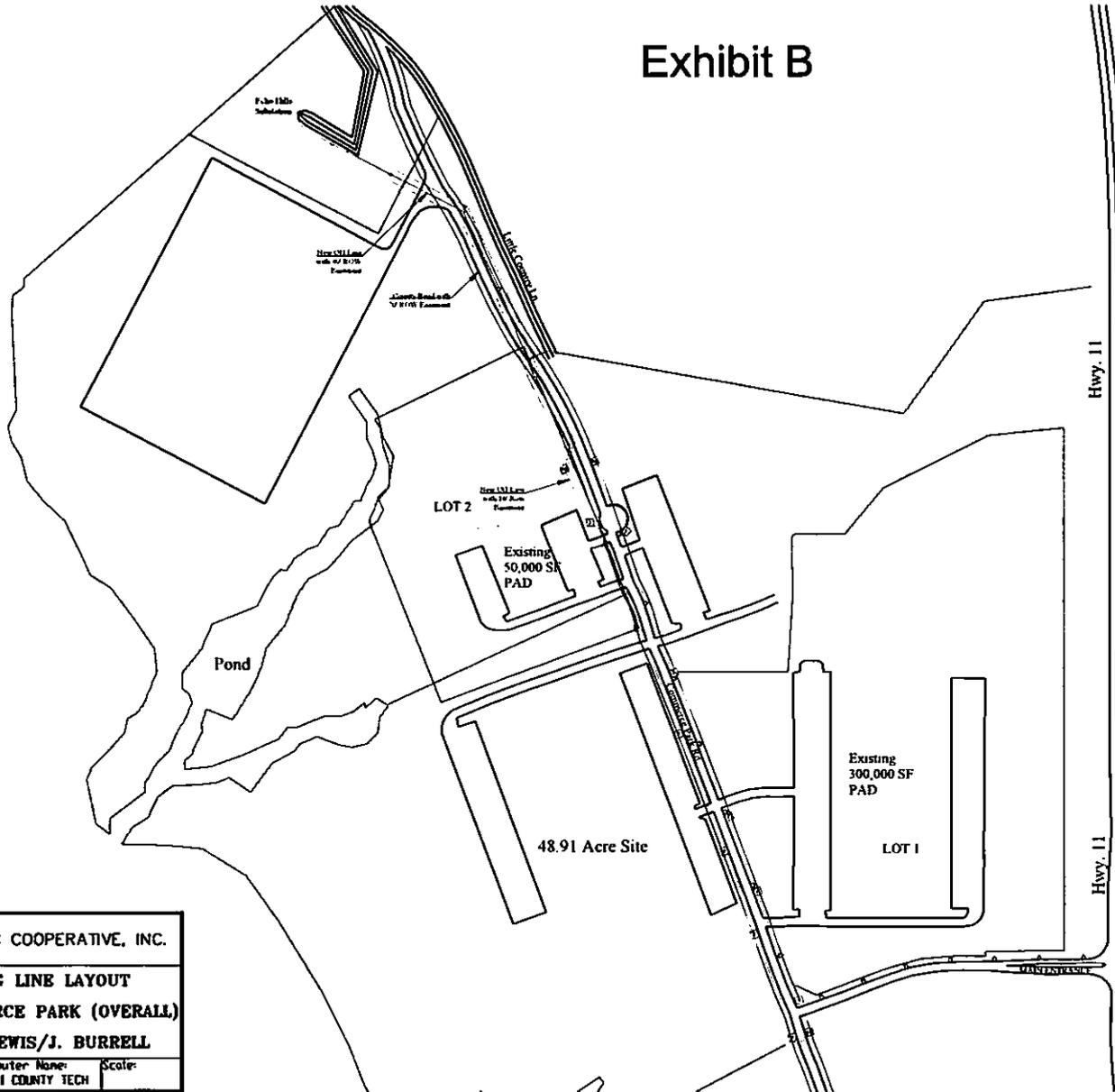


Exhibit A

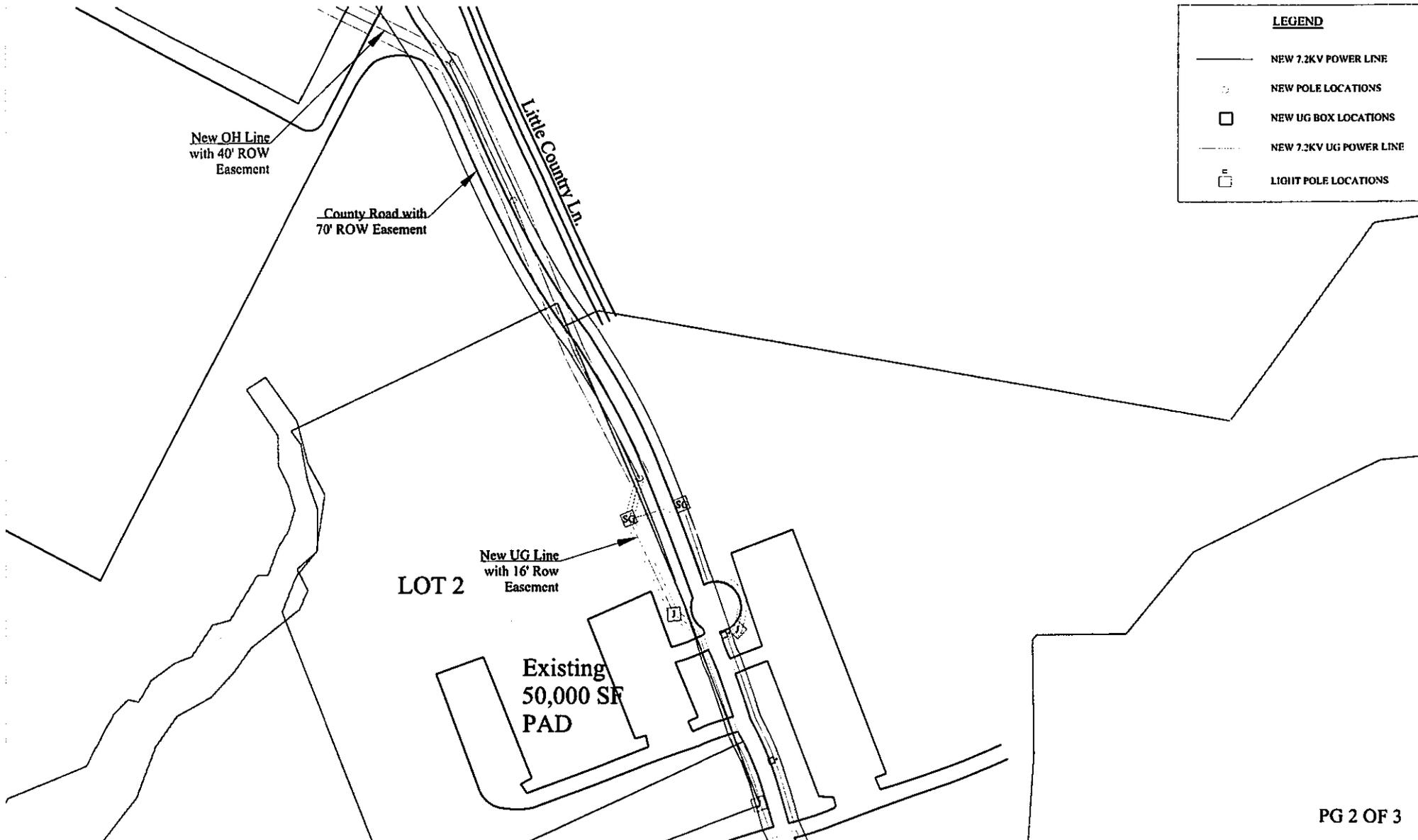


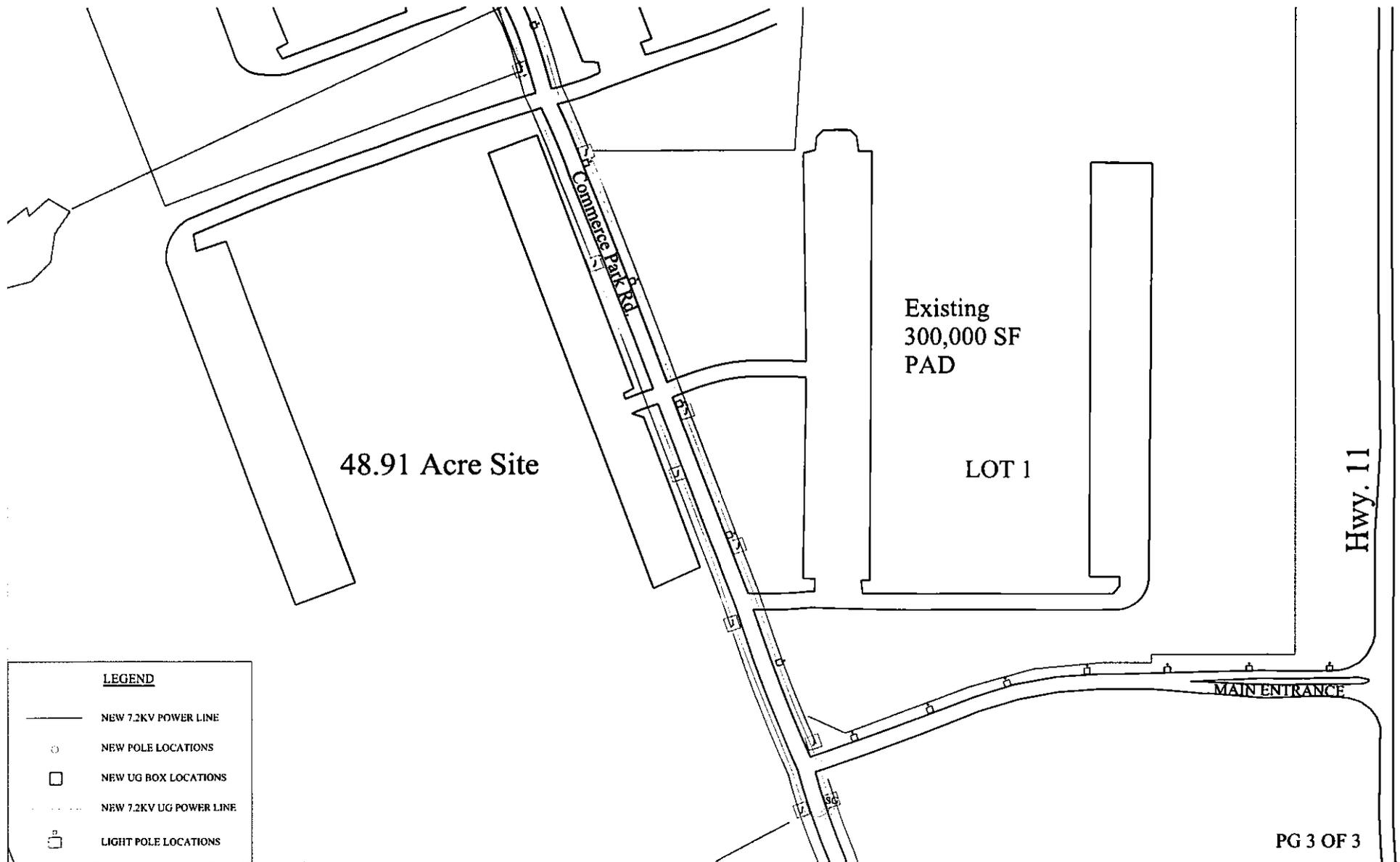
| LEGEND  |                         |
|---|-------------------------|
|  | NEW 7.2KV POWER LINE    |
|  | NEW POLE LOCATIONS      |
|  | NEW UG BOX LOCATIONS    |
|  | NEW 7.2KV UG POWER LINE |
|  | LIGHT POLE LOCATIONS    |

# Exhibit B



|   |                                       |                 |        |  |
|---|---------------------------------------|-----------------|--------|--|
|  <p>P.O. Box 877<br/>Fletcher, N.C. 28731</p> | BLUE RIDGE ELECTRIC COOPERATIVE, INC. |                 |        |  |
|   | PROPOSED OH/UG LINE LAYOUT            |                 |        |  |
|   | ECHO HILLS COMMERCE PARK (OVERALL)    |                 |        |  |
|   | STAKED BY: K. LEWIS/J. BURRELL        |                 |        |  |
| Drawn By:   | Date:                                 | Computer Name:  | Scale: |  |
| RDH   | 02-10-16                              | TRI COUNTY TECH |        |  |





**LEGEND**

- NEW 7.2KV POWER LINE
- NEW POLE LOCATIONS
- NEW UG BOX LOCATIONS
- - - NEW 7.2KV UG POWER LINE
- P LIGHT POLE LOCATIONS

STATE OF SOUTH CAROLINA  
OCONEE COUNTY  
**ORDINANCE 2016-13**

AN ORDINANCE GRANTING CERTAIN EASEMENT RIGHTS TO BLUE RIDGE ELECTRIC COOPERATIVE NEAR THE OCONEE REGIONAL AIRPORT FOR THE PURPOSE OF RELOCATING EXISTING ABOVE-GROUND ELECTRICAL LINES TO UNDERGROUND LINES; AND OTHER MATTERS RELATED THERETO

WHEREAS, Oconee County, a body politic and corporate and a political subdivision of the State of South Carolina (the "County"), is the owner of three parcels of land situate in Oconee County and designated by TMS numbers 256-00-04-002, 256-00-01-015, and 256-00-01-006, as shown on the accompanying diagram attached hereto as "Exhibit A" and incorporated herein by reference ("County Property"); and

WHEREAS, Blue Ridge Electric Cooperative, Inc. ("Blue Ridge Electric") wishes to acquire from the County, and the County wishes to grant to Blue Ridge Electric, certain easement rights for, generally and without limitation, the construction, maintenance, alteration and replacement of one or more electric lines, for overhead or underground electric transmission, distribution and communication lines over, across, under and through certain portions of the County Property (collectively, the "Easements"); and

WHEREAS, the form, terms and provisions of the Electric Line Right-of-Way Easements (the "Easement Agreements") now before the Oconee County Council ("County Council"), copies of which are attached hereto as "Exhibit B," are acceptable to the County Council for the purpose of giving effect to the Easement rights; and

WHEREAS, Section 4-9-30(2) of the Code of Laws of South Carolina, 1976, as amended, (the "Code") authorizes the County to transfer or otherwise dispose of interests in real property:

NOW, THEREFORE, be it ordained by Council, in meeting duly assembled, that:

1. Council hereby approves the Easements, subject to and in conformity with the provisions of the Easement Agreements.
2. The Administrator of the County ("Administrator") shall be, and hereby is, authorized to execute and deliver the Easement Agreements on behalf of the County in substantially the form as attached hereto as Exhibit B, or with such changes as are not materially adverse to the County and as the Administrator shall approve, upon the advice of legal counsel, such Administrator's approval to be deemed given by his execution of the Easement Agreements.
3. The Administrator shall be, and hereby is, authorized to execute and deliver any and all other documents or instruments on behalf of the County related to the Easements in a form and substance acceptable to the Administrator, on advice of legal counsel to the County.

4. Should any portion of this Ordinance be deemed unconstitutional or otherwise unenforceable by any court of competent jurisdiction, such determination shall not affect the remaining terms and provisions of this ordinance, all of which are hereby deemed separable.

5. All orders, resolutions, and enactments of the County Council inconsistent herewith are, to the extent of such inconsistency only, hereby repealed, revoked, and rescinded.

6. This ordinance shall take effect and be in full force and effect from and after third reading and enactment by the County Council.

**ORDAINED** in meeting, duly assembled, this \_\_\_\_ of \_\_\_\_\_, 2016.

OCONEE COUNTY, SOUTH CAROLINA

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Paul A. Cain, Chairman, County Council  
Oconee County, South Carolina

ATTEST:

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Elizabeth G. Hulse, Clerk to County Council  
Oconee County, South Carolina

First Reading:                      March 1, 2016 [title only]  
Second Reading:  
Public Hearing:  
Third & Final Reading:

**Exhibit A**  
**(County Property)**

**Exhibit B**  
**(Easement Agreement)**



facilities or structures from time to time as the Cooperative deems advisable or expedient.

5. To keep and maintain, as the Cooperative deems necessary, the Easement Premises clear of all structures, trees, stumps, roots, shrubbery and undergrowth along said lines, facilities or structures for a space of up to the right-of-way widths listed in Item 2.
6. To trim or remove and to keep trimmed or removed dead, diseased, weak or leaning trees or limbs outside of the Easement Premises which, in the opinion of the Cooperative, might interfere with or fall upon the electric or communication facilities within the Easement Premises.
7. To implement the following provisions:  

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The foregoing grant of easement shall, at all times, be subject to the following terms and conditions:

1. The easement shall not be exercised by the Cooperative in a manner so as to prevent or unreasonably interfere with the use and enjoyment of the Property or any portion of the Property by Grantor, its employees, servants, agents, and invitees.
2. The items to be constructed, installed, operated, etc. on the Easement Premises shall be constructed, installed, and operated in a safe manner, consistent with all applicable laws, industry standards, manufacturers' requirements, and the like.
3. Any damage to the Property caused by the Cooperative's activities on the Property, shall be replaced or repaired by the Cooperative to the satisfaction of the Grantor.
4. The Cooperative shall not place, keep, store, or permit to be placed, kept or stored on the Property any equipment or materials except during the times as Cooperative's employees or agents are physically present and conducting activities permitted under this Agreement.
5. The easement granted hereby shall be perpetual except that it shall automatically terminate without the necessity of any action by Grantor, should the Cooperative, or any of its successors or assigns violate the terms and conditions of this instrument or cease to operate or otherwise entirely abandon the Easement Premises and/or any items located thereon for a period of one (1) year or more. The Cooperative shall give written notice to Grantor of its intent to cease operations and/or abandon the Easement Premises, and the referenced one (1) year period shall run from the date of receipt of such notice by the Grantor.

6. Any rights to the Easement Premises not specifically granted to the Cooperative herein, are reserved to the Grantor, its successors or assigns.
7. The Grantor agrees that all lines, facilities, structures and related apparatuses and appliances installed on or in the above described land by the Cooperative or its representative(s) shall be and remain the property of the Cooperative, removable or replaceable at its option; and that the Grantor will not construct any structure within said Easement Premises. The Grantor agrees that no wells shall be dug on said Easement Premises, that no septic tank, absorption pits, or underground storage tanks shall be placed on the Easement Premises, that no building or other structures shall be erected thereon; and that said Easement Premises shall not be used for burial grounds.
8. The Cooperative agrees that in locating or relocating and installing its structures and anchors, it will endeavor to take advantage of roadways, streets, ditches, hedgerows, etc., so as to cause the least interference to the Grantor's said land; and that if, in the construction of said lines, facilities or structures, any injury is necessarily done to crops, fences, bridges or roads, it will repair or replace such fences, bridges or roads, and will pay the Grantor for injury to such crops.
9. Cooperative shall indemnify, defend, and hold the Grantor, its representatives, agents, employees, successors, and assigns, harmless from any and all costs, liabilities, damages, losses, claims, actions or proceedings of any nature, including, without limitation, for injury to any persons (including death) or property which may be claimed to have arisen directly from or out of (i) any damage, accident, injury, or other similar occurrences in or on the Property, including the Easement Premises, due to Cooperative's negligence or misconduct; or (ii) the use, maintenance, or repair of the Easement Premises by Cooperative, its guests, invitees, agents, or contractors. It is expressly understood and agreed that, notwithstanding anything in this Agreement to the contrary, the liability of Grantor hereunder, to the extent any exists, shall be limited solely and exclusively to the interest of Grantor in and to the Property, and neither Grantor, nor any of its representatives, successors, employees, affiliates or agents, shall have any personal liability for any claim arising hereunder. Cooperative hereby expressly waives and releases Grantor and such representatives, successors, employees, affiliates, and agents from any and all personal liability.

**TO HAVE AND TO HOLD** the aforesaid rights, privileges and easement unto the Cooperative, its successors and assigns, forever.





**Legend**

- Existing 7.2kV Overhead Power Line
- - - Proposed 7.2kV Underground Power Line
- Proposed 7.2kV Overhead Power Line
- \* \* \* \* \* Retire 7.2kV Overhead Power Line
- Existing Power Pole
- Proposed Power Pole
- Retire Power Pole
- Proposed Pad Mounted Junction Box

Exhibit A

WM L. Belotte  
Ann D. Belotte  
258-00-01-026

Gregory K. Bellows  
258-00-01-036

Oconee County  
258-00-01-015

Tracy S. Hamilton  
Shannon S. Hamilton  
258-00-01-006

Oconee County  
258-00-04-002

Oconee County  
258-00-01-008

Oconee County  
258-00-01-006

Shiloh Pk (S&W) 371  
SCDOT Pk 33 From Ol.  
Project # 32-275, Street 11

Existing Power Line

Hickory Tree Ct.

Underground Conduits

Narrow Crown Rd.

Arlene Rd.

Proposed Line

3-Underground Conduits

Property Line



5. To keep and maintain, as the Cooperative deems necessary, the Easement Premises clear of all structures, trees, stumps, roots, shrubbery and undergrowth along said lines, facilities or structures for a space of up to the right-of-way widths listed in Item 2.
6. To trim or remove and to keep trimmed or removed dead, diseased, weak or leaning trees or limbs outside of the Easement Premises which, in the opinion of the Cooperative, might interfere with or fall upon the electric or communication facilities within the Easement Premises.
7. To implement the following provisions:  

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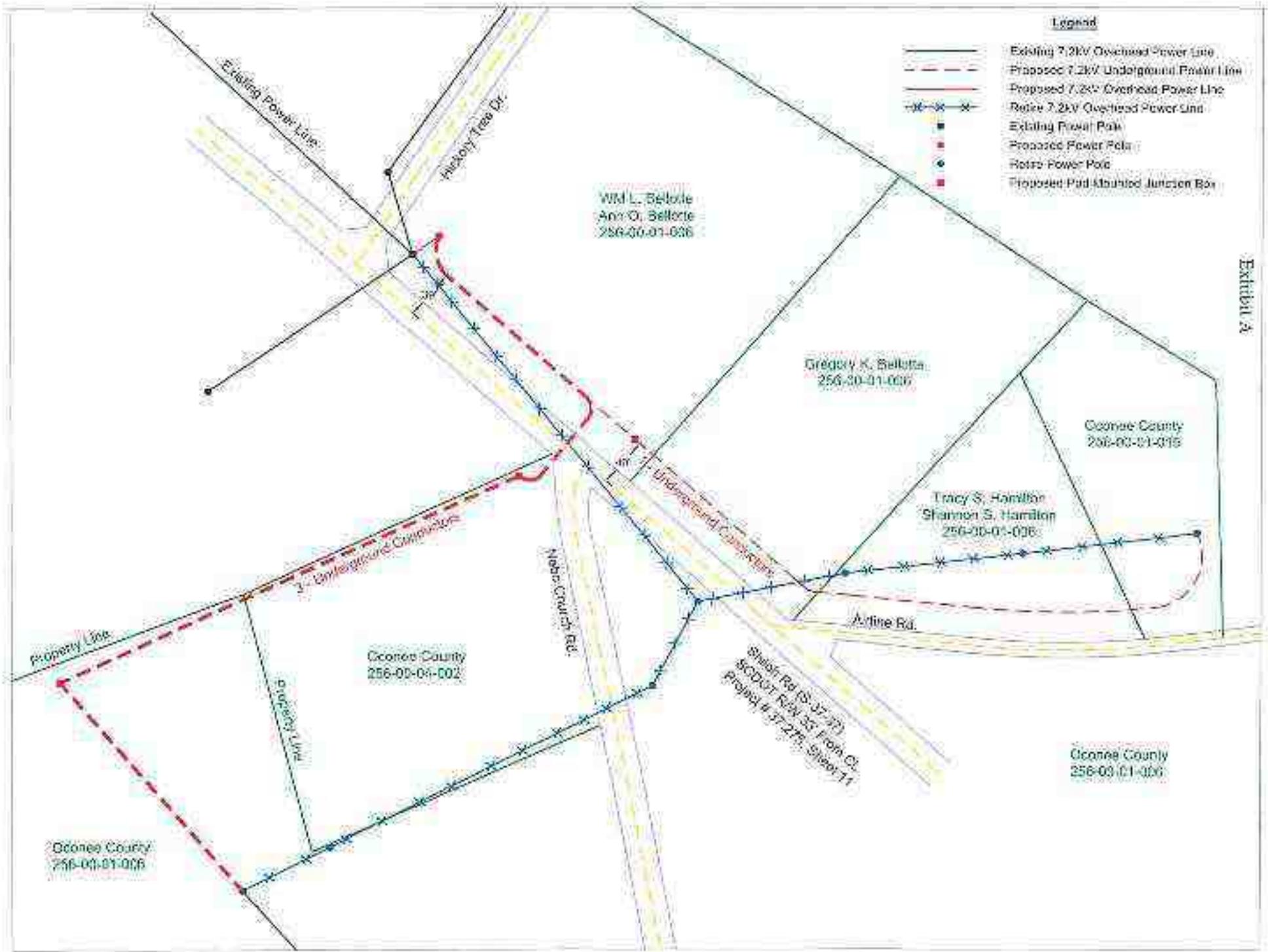
The foregoing grant of easement shall, at all times, be subject to the following terms and conditions:

1. The easement shall not be exercised by the Cooperative in a manner so as to prevent or unreasonably interfere with the use and enjoyment of the Property or any portion of the Property by Grantor, its employees, servants, agents, and invitees.
2. The items to be constructed, installed, operated, etc. on the Easement Premises shall be constructed, installed, and operated in a safe manner, consistent with all applicable laws, industry standards, manufacturers' requirements, and the like.
3. Any damage to the Property caused by the Cooperative's activities on the Property, shall be replaced or repaired by the Cooperative to the satisfaction of the Grantor.
4. The Cooperative shall not place, keep, store, or permit to be placed, kept or stored on the Property any equipment or materials except during the times as Cooperative's employees or agents are physically present and conducting activities permitted under this Agreement.
5. The easement granted hereby shall be perpetual except that it shall automatically terminate without the necessity of any action by Grantor, should the Cooperative, or any of its successors or assigns violate the terms and conditions of this instrument or cease to operate or otherwise entirely abandon the Easement Premises and/or any items located thereon for a period of one (1) year or more. The Cooperative shall give written notice to Grantor of its intent to cease operations and/or abandon the Easement Premises, and the referenced one (1) year period shall run from the date of receipt of such notice by the Grantor.
6. Any rights to the Easement Premises not specifically granted to the Cooperative herein, are reserved to the Grantor, its successors or assigns.

7. The Grantor agrees that all lines, facilities, structures and related apparatuses and appliances installed on or in the above described land by the Cooperative or its representative(s) shall be and remain the property of the Cooperative, removable or replaceable at its option; and that the Grantor will not construct any structure within said Easement Premises. The Grantor agrees that no wells shall be dug on said Easement Premises, that no septic tank, absorption pits, or underground storage tanks shall be placed on the Easement Premises, that no building or other structures shall be erected thereon; and that said Easement Premises shall not be used for burial grounds.
8. The Cooperative agrees that in locating or relocating and installing its structures and anchors, it will endeavor to take advantage of roadways, streets, ditches, hedgerows, etc., so as to cause the least interference to the Grantor's said land; and that if, in the construction of said lines, facilities or structures, any injury is necessarily done to crops, fences, bridges or roads, it will repair or replace such fences, bridges or roads, and will pay the Grantor for injury to such crops.
9. Cooperative shall indemnify, defend, and hold the Grantor, its representatives, agents, employees, successors, and assigns, harmless from any and all costs, liabilities, damages, losses, claims, actions or proceedings of any nature, including, without limitation, for injury to any persons (including death) or property which may be claimed to have arisen directly from or out of (i) any damage, accident, injury, or other similar occurrences in or on the Property, including the Easement Premises, due to Cooperative's negligence or misconduct; or (ii) the use, maintenance, or repair of the Easement Premises by Cooperative, its guests, invitees, agents, or contractors. It is expressly understood and agreed that, notwithstanding anything in this Agreement to the contrary, the liability of Grantor hereunder, to the extent any exists, shall be limited solely and exclusively to the interest of Grantor in and to the Property, and neither Grantor, nor any of its representatives, successors, employees, affiliates or agents, shall have any personal liability for any claim arising hereunder. Cooperative hereby expressly waives and releases Grantor and such representatives, successors, employees, affiliates, and agents from any and all personal liability.

**TO HAVE AND TO HOLD** the aforesaid rights, privileges and easement unto the Cooperative, its successors and assigns, forever.





**Legend**

- Existing 7.2kV Overhead Power Line
- - - Proposed 7.2kV Underground Power Line
- Proposed 7.2kV Overhead Power Line
- x-x-x- Retire 7.2kV Overhead Power Line
- Existing Power Pole
- Proposed Power Pole
- Retire Power Pole
- Proposed Pad Mounted Junction Box

Exhibit A

S/O # \_\_\_\_\_  
ACCT # \_\_\_\_\_  
JOB # \_\_\_\_\_  
DATE \_\_\_\_\_

**ELECTRIC LINE RIGHT-OF-WAY EASEMENT**

STATE OF SOUTH CAROLINA    )                    Map No. Near 359-08-025  
COUNTY OF OCONEE            )                    Tax Map 256-00-01-006

KNOW ALL MEN BY THESE PRESENTS, that Oconee County and its successors and assigns (hereinafter referred to as "Grantor") for good and valuable consideration from Blue Ridge Electric Cooperative, Inc., whose principal office is located in Pickens, South Carolina (hereinafter referred to as the "Cooperative"), the receipt of which is hereby acknowledged, does hereby grant unto the Cooperative, its successors, lessees and assigns, the perpetual right, privilege, and easement, without covenants or warranties of any kind, and subject to the terms set forth, and the privileges specifically retained and reserved, herein by Grantor:

1. To go upon the tract of land of the Grantor, containing 254.81 acres, more or less, adjacent to Shiloh Road, Nebo Church Road, Airline Road, situated about Three miles in the South East direction from the town of Seneca, and being bounded by lands of Fred P & Beatrice T Hamilton, Belinda H Ross, Norfolk Southern Railroad, and Shiloh Road Oconee County, South Carolina as depicted on "Exhibit A," attached hereto and incorporated herein by reference (the "Property").
2. To construct, reconstruct, locate, relocate, operate, maintain and repair in, upon, over, under and through said land, within the easement strip such structures, underground wires, and other necessary fixtures, apparatuses and appliances, electrical distribution lines or systems, and any support structures and anchors that must be located outside of the easement strip, for the purpose of distributing electricity by one or more circuits and of carrying wires of the Cooperative or any lessee thereof. The referenced easement strip is also identified on "Exhibit A" and shall be referred to hereinafter as the "Easement Premises."

The Easement Premises are further defined as: eight feet on each side of where the underground facilities are installed, all as depicted on Exhibit A.

3. To enter upon said land at any time for the purposes of inspecting said lines and facilities and making necessary repairs and alterations thereof.
4. Subject to the approval of Grantor, which approval will not be unreasonably withheld, to make such changes, alterations and substitutions in said lines,

facilities or structures from time to time as the Cooperative deems advisable or expedient.

5. To keep and maintain, as the Cooperative deems necessary, the Easement Premises clear of all structures, trees, stumps, roots, shrubbery and undergrowth along said lines, facilities or structures for a space of up to the right-of-way widths listed in Item 2.
6. To trim or remove and to keep trimmed or removed dead, diseased, weak or leaning trees or limbs outside of the Easement Premises which, in the opinion of the Cooperative, might interfere with or fall upon the electric or communication facilities within the Easement Premises.
7. To implement the following provisions:  

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The foregoing grant of easement shall, at all times, be subject to the following terms and conditions:

1. The easement shall not be exercised by the Cooperative in a manner so as to prevent or unreasonably interfere with the use and enjoyment of the Property or any portion of the Property by Grantor, its employees, servants, agents, and invitees.
2. The items to be constructed, installed, operated, etc. on the Easement Premises shall be constructed, installed, and operated in a safe manner, consistent with all applicable laws, industry standards, manufacturers' requirements, and the like.
3. Any damage to the Property caused by the Cooperative's activities on the Property, shall be replaced or repaired by the Cooperative to the satisfaction of the Grantor.
4. The Cooperative shall not place, keep, store, or permit to be placed, kept or stored on the Property any equipment or materials except during the times as Cooperative's employees or agents are physically present and conducting activities permitted under this Agreement.
5. The easement granted hereby shall be perpetual except that it shall automatically terminate without the necessity of any action by Grantor, should the Cooperative, or any of its successors or assigns violate the terms and conditions of this instrument or cease to operate or otherwise entirely abandon the Easement Premises and/or any items located thereon for a period of one (1) year or more. The Cooperative shall give written notice to Grantor of its intent to cease operations and/or abandon the Easement Premises, and the referenced one (1) year period shall run from the date of receipt of such notice by the Grantor.

6. Any rights to the Easement Premises not specifically granted to the Cooperative herein, are reserved to the Grantor, its successors or assigns.
7. The Grantor agrees that all lines, facilities, structures and related apparatuses and appliances installed on or in the above described land by the Cooperative or its representative(s) shall be and remain the property of the Cooperative, removable or replaceable at its option; and that the Grantor will not construct any structure within said Easement Premises. The Grantor agrees that no wells shall be dug on said Easement Premises, that no septic tank, absorption pits, or underground storage tanks shall be placed on the Easement Premises, that no building or other structures shall be erected thereon; and that said Easement Premises shall not be used for burial grounds.
8. The Cooperative agrees that in locating or relocating and installing its structures and anchors, it will endeavor to take advantage of roadways, streets, ditches, hedgerows, etc., so as to cause the least interference to the Grantor's said land; and that if, in the construction of said lines, facilities or structures, any injury is necessarily done to crops, fences, bridges or roads, it will repair or replace such fences, bridges or roads, and will pay the Grantor for injury to such crops.
9. Cooperative shall indemnify, defend, and hold the Grantor, its representatives, agents, employees, successors, and assigns, harmless from any and all costs, liabilities, damages, losses, claims, actions or proceedings of any nature, including, without limitation, for injury to any persons (including death) or property which may be claimed to have arisen directly from or out of (i) any damage, accident, injury, or other similar occurrences in or on the Property, including the Easement Premises, due to Cooperative's negligence or misconduct; or (ii) the use, maintenance, or repair of the Easement Premises by Cooperative, its guests, invitees, agents, or contractors. It is expressly understood and agreed that, notwithstanding anything in this Agreement to the contrary, the liability of Grantor hereunder, to the extent any exists, shall be limited solely and exclusively to the interest of Grantor in and to the Property, and neither Grantor, nor any of its representatives, successors, employees, affiliates or agents, shall have any personal liability for any claim arising hereunder. Cooperative hereby expressly waives and releases Grantor and such representatives, successors, employees, affiliates, and agents from any and all personal liability.

**TO HAVE AND TO HOLD** the aforesaid rights, privileges and easement unto the Cooperative, its successors and assigns, forever.

The Grantor covenants that he is the owner of the above described lands.

IN WITNESS WHEREOF, Grantor has set his hand(s) and seal(s) this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Signed sealed and delivered in the presence of:

\_\_\_\_\_

\_\_\_\_\_  
Grantor

\_\_\_\_\_

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF \_\_\_\_\_ )

PROBATE

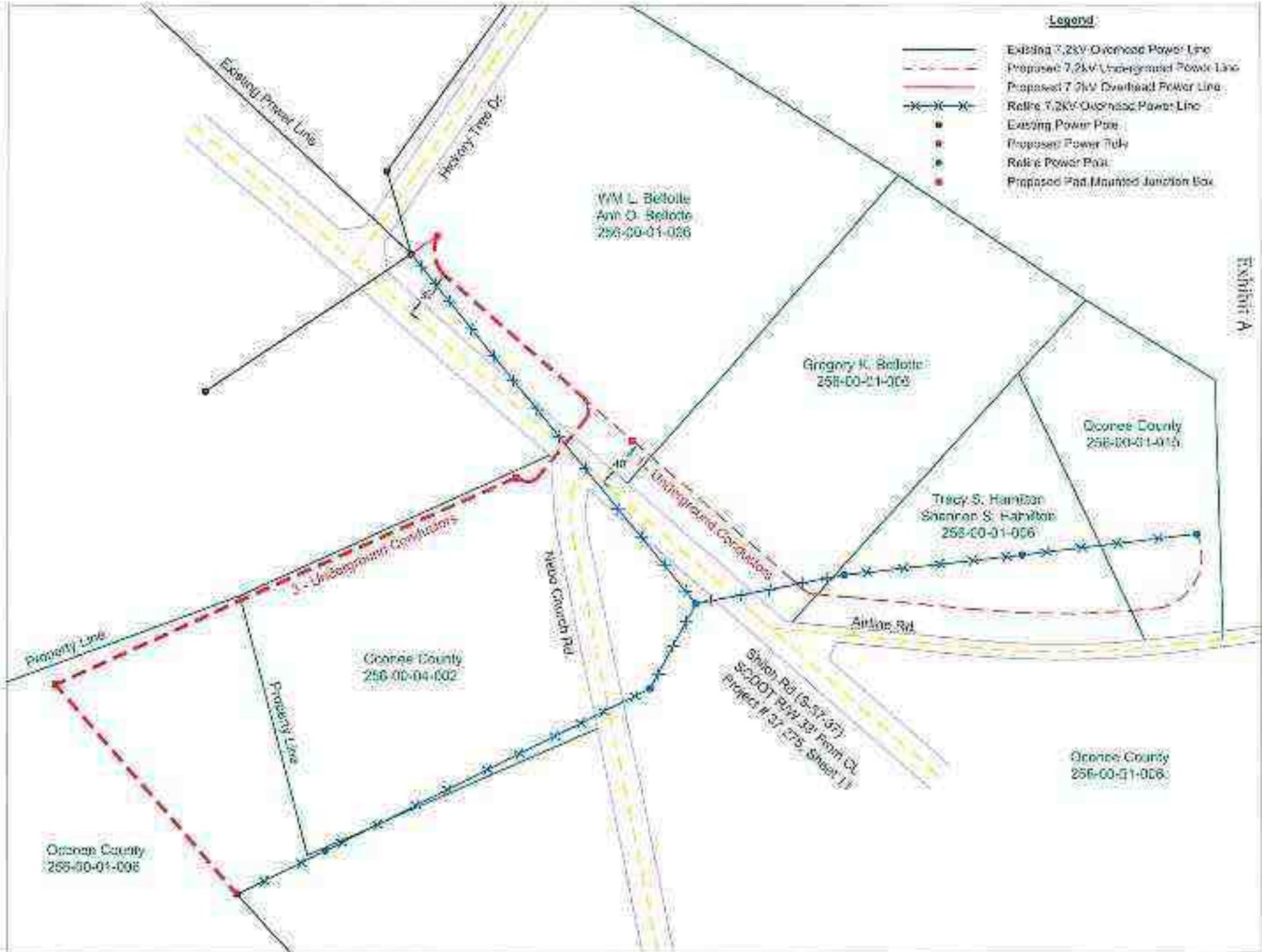
PERSONALLY appeared before me \_\_\_\_\_ and  
made oath that (s)he was present and saw the within named \_\_\_\_\_

SIGN, SEAL AND as \_\_\_\_\_ ACT AND DEED deliver  
the within written deed for the uses and purposes therein mentioned, and that (s)he with  
\_\_\_\_\_ witnessed the execution thereof.

SWORN TO AND SUBSCRIBED )  
before me this \_\_\_\_\_ day of )  
\_\_\_\_\_ of, 20\_\_\_\_. )

\_\_\_\_\_  
Witness

\_\_\_\_\_  
(L.S.)  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_



**Legend**

- Existing 7.2kV Overhead Power Line
- Proposed 7.2kV Underground Power Line
- Proposed 7.2kV Overhead Power Line
- Refined 7.2kV Overhead Power Line
- Existing Power Pole
- Proposed Power Pole
- Refined Power Pole
- Proposed Pad Mounted Junction Box

Exhibit A

W.M. L. Belloite  
Ann D. Belloite  
256-00-01-026

Gregory K. Belloite  
256-00-21-003

Doonee County  
256-00-01-010

Tracy S. Hamilton  
Siannan S. Hamilton  
256-00-01-006

Doonee County  
256-00-04-002

Ocean County  
256-00-01-006

Doonee County  
256-00-01-006

Sheet Pk (6-27-57)  
SCDOT Plan 28 from CL  
Project # of 275 Sheet 11

3 - Unobscured Contributions

Underground Conditions

Existing Power Line

Hickory Tree Dr.

Priority Line

Proposed Line

New Church Rd.

Airline Rd.

**AGENDA ITEM SUMMARY  
OCONEE COUNTY, SC**

**COUNCIL MEETING DATE:** March 15, 2016  
**COUNCIL MEETING TIME:** 6:00 PM

**ITEM TITLE [Brief Statement]:**

**First Reading of Ordinance 2016-10 [in title only]** "AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AGREEMENT BETWEEN OCONEE COUNTY, SOUTH CAROLINA AND PROJECT SWITCH; AND OTHER MATTERS RELATING THERETO INCLUDING, WITHOUT LIMITATION, PAYMENT OF A FEE IN LIEU OF TAXES; THE PLACEMENT OF THE PROJECT IN A JOINT COUNTY INDUSTRIAL AND BUSINESS PARK; AND RELATED MATTERS"

**First & Final Reading of Resolution R2016-04** "A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDUCEMENT AGREEMENT BY AND BETWEEN OCONEE COUNTY, SOUTH CAROLINA AND PROJECT SWITCH; WHEREBY, UNDER CERTAIN CONDITIONS, OCONEE COUNTY WILL PLACE THE PROJECT INTO A JOINT COUNTY INDUSTRIAL AND BUSINESS PARK AND ESTABLISH A FEE-IN-LIEU-OF-TAXES AGREEMENT"

**BACKGROUND DESCRIPTION:**

The Oconee Economic Alliance, as the economic development entity for the County, has worked with this company's leadership to secure this new capital investment and new job creation opportunity that will benefit our community. Project Switch is an existing manufacturer in Oconee that will expand their operations and hire additional personnel to support this growth. This ordinance and resolution puts into place an agreed upon fee-in-lieu-of-tax (FILOT) agreement between Oconee County and Project Switch. This ordinance and resolution also grants the designation of a multi-county industrial park (MCIP) for the subject property related to Project Switch.

**SPECIAL CONSIDERATIONS OR CONCERNS [only if applicable]:**

N/A

**FINANCIAL IMPACT [Brief Statement]:**

Check Here if Item Previously approved in the Budget. No additional information required.

Approved by: Finance

**COMPLETE THIS PORTION FOR ALL GRANT REQUESTS:**

Are Matching Funds Available: Yes / **No**

If yes, who is matching and how much:

Approved by: Grants

**ATTACHMENTS**

N/A

**STAFF RECOMMENDATION [Brief Statement]:**

It is the staff's recommendation that Council to the following:

- [1] approve Ordinance 2016-10 on first reading in title only; and,
- [2] approve Resolution R2016-04 on first and final reading.

**Submitted or Prepared By:**



\_\_\_\_\_  
Department Head

**Approved for Submittal to Council:**



T. Scott Moulder, County Administrator

*Council has directed that they receive their agenda packages a week prior to each Council meeting, therefore, Agenda Items Summaries must be submitted to the Administrator for his review/approval no later than 12 days prior to each Council meeting. It is the Department Head / Elected Officials responsibility to ensure that all approvals are obtained prior to submission to the Administrator for inclusion on an agenda.*

*A calendar with due dates marked may be obtained from the Clerk to Council.*

**AGENDA ITEM SUMMARY  
OCONEE COUNTY, SC**

COUNCIL MEETING DATE: March 15, 2010  
COUNCIL MEETING TIME: 6:00 PM

**ITEM TITLE [Brief Statement]:**

**First Reading (in title only) of Ordinance 2016-14** "AN ORDINANCE TO AMEND OCONEE COUNTY ORDINANCE 2015-01, THE BUDGET ORDINANCE FOR OCONEE COUNTY FOR THE FISCAL YEAR BEGINNING JULY 1<sup>ST</sup>, 2015 AND ENDING JUNE 30<sup>TH</sup>, 2016, IN CERTAIN LIMITED REGARDS AND PARTICULARS, RELATED TO THE ROCK QUARRY BUDGET, ONLY; AND OTHER MATTERS RELATED THERETO"

**BACKGROUND DESCRIPTION:**

- 1) Provide for an increase in the amount of \$1,000,000 in the Customer Sales Revenue.
- 2) Provide for an increase in the amount of \$500,000 in Equipment, Capital Expense, for the emergency purchase to replace the #44 Crusher.
- 3) Provide for an increase in the amount of \$500,000 in the Change in Net Assets.

**SPECIAL CONSIDERATIONS OR CONCERNS [only if applicable]:**

Amendment to Ordinance 2015-01 with Ordinance 2016-14, this is necessary to comply with the State of South Carolina budgetary laws and regulations.

**FINANCIAL IMPACT [Brief Statement]:**

Check Here if Item Previously approved in the Budget. No additional information required.

Approved by : Finance

**COMPLETE THIS PORTION FOR ALL GRANT REQUESTS:**

Are Matching Funds Available: Yes / No

If yes, who is matching and how much:

Approved by : Grants

**ATTACHMENTS**

Rock Quarry Fund -- as revised in Summary Form.

**STAFF RECOMMENDATION [Brief Statement]:**

It is staff's recommendation that Council approve Ordinance 2016-14 on first reading in title only.

Submitted or Prepared By:

Approved for Submittal to Council:

Department Head/Elected Official

  
T. Scott Moulder, County Administrator

*Council has directed that they receive their agenda packages a week prior to each Council meeting, therefore, Agenda Items Summaries must be submitted to the Administrator for his review/approval no later than 12 days prior to each Council meeting. It is the Department Head / Elected Officials responsibility to ensure that all approvals are obtained prior to submission to the Administrator for inclusion on an agenda.*

*A calendar with due dates marked may be obtained from the Clerk to Council.*

STATE OF SOUTH CAROLINA  
OCONEE COUNTY  
**RESOLUTION R2016-04**

AN INDUCEMENT RESOLUTION BY OCONEE COUNTY, SOUTH CAROLINA RELATING TO THE COUNTY'S EXECUTION AND DELIVERY OF A FEE AGREEMENT, THE FEES IN LIEU OF TAXES THEREUNDER PURSUANT TO TITLE 12, CHAPTER 44, CODE OF LAWS OF SOUTH CAROLINA, 1976, AS AMENDED, AND THE PLACEMENT OF CERTAIN PROPERTY IN A MULTI-COUNTY INDUSTRIAL PARK, ALL AS TO PROJECT SWITCH; AND OTHER MATTERS RELATED THERETO

WHEREAS, Oconee 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 Title 12, Chapter 44 Code of Laws of South Carolina, 1976, as amended (the "FILOT Statute"), to enter into agreements with any industry whereby the industry would pay fees-in-lieu-of taxes with respect to qualified projects; through which powers the development of the State of South Carolina (the "State") will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate or remain in the State and thus utilize and employ the manpower, products and resources of the State and benefit the general public welfare of the County by providing services, employment, recreation or other public benefits not otherwise provided locally;

WHEREAS, the County is recruiting an investment in the County by Project Switch (the "Company"), in the form of an expansion of its facility for the purpose of producing electrical, hydraulic and pneumatic components in the County (the "Project");

WHEREAS, the Council, in order to induce the Company to locate the Project in the County, has committed to the Company that the Council will take certain actions and provide certain incentives, including entering into fee-in-lieu of taxes ("FILOT") agreement and, upon the agreement of an adjoining county, the establishment of the site of the project as a multi-county industrial/business, which incentives provide certain benefits to the Company, if the Company locates the Project in the County;

WHEREAS, it is anticipated that the Project will represent an investment of not less than \$2.5 million in the County (without regard to whether some or all of the investment is included in a FILOT arrangement);

WHEREAS, the County has determined and found after considering all relevant factors and criteria as prescribed by law (with assistance, to the extent needed, from the South Carolina Department of Revenue and/or Board of Economic Advisors) that the Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation or other public benefits not otherwise provided locally; that the Project gives rise to no pecuniary liability of the County or any incorporated municipality or a charge against the general credit or taxing power of either; that the purposes to be accomplished by the Project, i.e., economic development, creation of jobs, and addition to the tax base of the County, are proper governmental and public purposes; that the inducement of the location or expansion of the Project within the County and State is of paramount importance; and that the benefits of the Project will be greater than the costs; and

WHEREAS, the County has determined on the basis of the information supplied to it by the Company that the Project would be a "project" as that term is defined in the FILOT Statute and that the Project would serve the purposes of the FILOT Statute.

NOW, THEREFORE, BE IT RESOLVED by the Oconee County Council that, if the Company locates the Project in the County and creates the investment and jobs indicated above:

1. The Council, upon request by the Company, hereby agrees to enter into one or more agreements under the FILOT Statute that will provide the Company with the benefits allowed pursuant to a FILOT agreement for thirty years for each component of the Project placed in service during the standard "Investment Period" (as that term is defined in the FILOT Statute), with the calculation of the fee thereunder on the basis of a fixed assessment ratio of 6%, and a fixed millage rate of the applicable millage rate at the Project site as of June 30, 2015, which the parties hereto believe to be 215 mils.
2. The Council agrees, upon the agreement of Pickens County, South Carolina, to place the site of the Project in a Multi-County Industrial Park with Pickens County.
3. The Council agrees to provide the Company with the most favorable provisions allowable under the FILOT Statute with respect to the disposal and replacement of property.
4. To the extent permitted by the FILOT Statute, the Council agrees to waive the recapitulation requirements set forth in the FILOT Statute, to the extent that and so long as the Company provides the County with copies of all filings and reports which the Company is required to make under the FILOT Statute.
5. The Council agrees to enter into and execute the appropriate agreements and other documents to implement the provisions of this Resolution and such other provisions as the Company may request consistent with this Resolution and such applicable statutes.

APPROVED AND ADOPTED IN A MEETING THIS 15th DAY OF March, 2016.

By: \_\_\_\_\_  
Paul Cain, Chairman of County Council  
Oconee County, South Carolina

ATTEST:

By: \_\_\_\_\_  
Elizabeth G. Hulse, Clerk to County Council  
Oconee County, South Carolina

AGENDA ITEM SUMMARY  
OCONEE COUNTY, SC

COUNCIL MEETING DATE: March 15, 2016  
COUNCIL MEETING TIME: 6:00 PM

**ITEM TITLE OR DESCRIPTION:**

Local ATAX Grants / Spring 2016 Cycle / \$60,000

**BACKGROUND OR HISTORY:**

A portion of Local ATAX revenues received by Oconee County are made available for ATAX grants through Ordinance 2011-12. ATAX grants are to be tourism related grants that meet the ATAX guidelines specified by local and State mandates. Grants are recommended by the PRT Commission based on tourism impact of the project and approved by County Council. All external ATAX grant recipients are required to turn in intermediate reports every 60 days to the progress of the grant and a final report upon completion of the grant.

These reports are placed in the grant folder, which is kept active by the PRT staff until the grant is considered complete. Internal projects through Oconee PRT are also funneled through local ATAX for eligible projects.

**SPECIAL CONSIDERATIONS OR CONCERNS:**

**COMPLETE THIS PORTION FOR ALL PROCUREMENT REQUESTS**

Does this request follow Procurement Ordinance #2001-15 guidelines? No [review #2001-15 on Procurement's website]

If no, explain briefly: NO-ATAX grants

**FINANCIAL IMPACT:**

Beginning Local ATAX balance \$201,089

If all grants/projects approved/new balance will be: \$141,089

**COMPLETE THIS PORTION FOR ALL GRANT REQUESTS:**

Are Matching Funds Available: Yes

If yes, who is matching and how much: Varies by grant!

**ATTACHMENTS**

Spreadsheet approved by PRT Commission on 2/25/16.

**STAFF RECOMMENDATION:**

Approval of ATAX grant recommendations per the attached spreadsheet.

**Reviewed By/ Initials:**

\_\_\_\_\_ County Attorney      \_\_\_\_\_ Finance      \_\_\_\_\_ Grants      \_\_\_\_\_ Procurement

**Submitted or Prepared By:**

Phil Shirley, PRT Director  
Department Head/Elected Official

**Approved for Submittal to Council:**

  
Scott Moulder, County Administrator

*Council has directed that they receive their agenda packages a week prior to each Council meeting, therefore, Agenda Items Summaries must be submitted to the Administrator for his review/approval no later than 12 days prior to each Council meeting. It is the Department Head/ Elected Officials responsibility to ensure that all approvals are obtained prior to submission to the Administrator for inclusion on an agenda.*

*A calendar with due dates marked may be obtained from the Clerk to Council.*





**NOTES**  
**PLANNING & ECONOMIC DEVELOPMENT**  
**COMMITTEE MEETING**  
March 8, 2016

**Economic Development:**

Mr. Blackwell addressed the Committee utilizing a PowerPoint presentation *(copy filed with these minutes)* discussing the following topics:

- o Reflecting on 2015
- o Development Updates:
  - o Oconee Industry & Technology Park [OITP]
  - o I-Tech South
  - o BorgWarner
  - o Casto
- o Awards & Recognition
  - o SC Top Micropolitan
  - o OC 22<sup>nd</sup> Top Performing Micropolitan
  - o Global Trade Magazine's – Leading EDC's
- o OEA Activities Update
  - o 2016 Activity Update

**Planning / Community Development Update**

Mr. Stephens addressed the Committee utilizing a PowerPoint presentation *(copy filed with these minutes)* and discussed the following topics:

- o Building Permits
- o Planning & Zoning
- o Comprehensive Plan
- o Community Development
- o Strategic Planning
  - o Keowee-Toxaway Project Relicensing
  - o Air Quality
  - o Flood Maps

**Oconee Joint Regional Sewer Authority [OJRSA]**

Mr. Dexter opened discussion regarding ongoing negotiations with the OJRSA and efforts to move forward with a new agreement. Mr. Moulder noted that discussions with the OJRSA attorney, Larry Brandt, are ongoing and productive.

The Committee took no action regarding this matter.

**Meeting Schedule**

Mr. Dexter led discussions regarding the June 14, 2016 meeting, noting that either the time needs to be moved or the date be moved. Discussion followed.

**The Committee agreed the June 14, 2016 meeting to June 28, 2016 at 6:00 p.m.**



## NOTES TRANSPORTATION COMMITTEE MEETING

March 8, 2016

### COMMITTEE MEMBERS

Mr. Joel Thrift, District IV, Chairman

Ms. Edda Cammick, District I

Mr. Wayne McCall, District II

#### **Citizen Request to Close Hetrick Road**

Mr. Kelly and Mr. Moulder along with Mr. Derrick Addis & Mr. Rex Rice, Realty Link, addressed the Committee related to Mr. Addis's request to close a portion of Hetrick Road. Lengthy discussion followed.

**MOTION TO AFFIRM COMMITTEES APPROVAL**, to direct staff to conduct an investigation and develop resolution for County Council to consider consenting to the judicial abandonment and closure of Hetrick Street at the April 5, 2016, County Council Meeting.

#### **Staff Update re: Resolution R2016-01 "A RESOLUTION AUTHORIZING THE ESTABLISHMENT OF A PROCEDURE FOR LIMITED EMERGENCY ROAD IMPROVEMENTS AND MAINTENANCE, AND OTHER MATTERS RELATING THERETO"**

Mr. Kelly & Mr. Moulder addressed the Committee utilizing a PowerPoint presentation [copy filed with these minutes] regarding "Minimum Maintenance Road Standards. Lengthy discussion followed including requests for better definitions of some of the terminology, etc.

**MOTION TO AFFIRM COMMITTEES APPROVAL** to direct staff to prepare a Resolution or Ordinance for action at the April 5, 2016 regular Council meeting as discussed at this meeting.

#### **Citizen Request regarding Vickery Road**

Mr. Kelly and Mr. Moulder along with Mr. Matt Wilson, LK Acquisitions, addressed the Committee related to issues with a proposed subdivision off Vickery Road. Lengthy discussion followed with various opinions offered regarding road location options.

Mr. Thrift suggested that Mr. Moulder, Mr. Kelly, Mr. Wilson and a representative from SCDOT meet to work out a final solution to this matter and to report back results of those negotiations.

#### **Road Paving Bid**

Mr. Kelly and Mr. Moulder updated the Committee regarding the results of a recent bid put out that received only one response that far exceeded the budget for the project.

Mr. Moulder asked that the Committee recommend to full Council that the funds allocated in FY2015-2016 be rolled over to FY2016-2017 and that it be reflected in the budget presented to Council for approval. The Committee concurred.

#### **Staff Activity Report / Update**

##### **Department Activity Update:**

Mr. Kelly provided the Committee with a written report [copy filed with these minutes] outlining the department activity and special project.

##### **Meetings:**

April 12, 2016 – cancelled

July 12, 2016 - 5:30 p.m. directly following the Law Enforcement Committee

# OCONEE COUNTY BOARD / COMMISSION / COMMITTEE CANDIDATE LISTING

|                      | DX | AT LARGE | Respoint Request | AERONAUTICS | PUBLIC SAFETY | REGULATORY | PLANNING | DESTINATION OCONEE | EDUCATION | TOURISM & REC. | Questionnaire Received Date |
|----------------------|----|----------|------------------|-------------|---------------|------------|----------|--------------------|-----------|----------------|-----------------------------|
| Corey, James         | 1  |          |                  |             |               |            | X        |                    |           |                | April 2015                  |
| Corley, Glenn        | 1  |          |                  |             |               |            | OCCB     |                    |           |                | March 2015                  |
| Elliott, Kathy       | 1  | Yes      |                  |             |               |            |          |                    |           | X              | March 2015                  |
| Evans, Kevin         | 1  |          |                  |             |               |            |          |                    |           |                | November 2015               |
| Greene, Darlene      | 1  |          |                  |             |               | X          | X        | X                  |           | X              | October 2015                |
| Heller, Andy         | 1  |          |                  |             |               | X          | X        | X                  |           | X              | July 2015                   |
| Houston, Joanne      | 1  |          |                  |             |               | X          | X        | X                  |           | X              | November 2015               |
| Lyle, David          | 1  | Yes      |                  |             |               |            |          | X                  |           |                | November 2015               |
| Washburn, Catherine  | 1  |          |                  |             |               |            | X        |                    |           |                | December 2015               |
| Marcengill, Richard  | 2  | Yes      |                  |             |               | X          | X        |                    |           |                | January 2015                |
| Wise, Rebecca        | 2  |          |                  |             |               |            |          | X                  |           |                | November 2015               |
| Shadwick, Al         | 3  |          |                  |             |               |            |          | X                  |           |                | November 2015               |
| VanArk, Sherria      | 3  |          |                  |             |               |            |          | X                  |           |                | August 2015                 |
| Coburn, William      | 4  | Yes      |                  |             |               |            | OCCB     |                    |           |                | April 2015                  |
| Dean, Barbara        | 4  |          |                  |             |               |            |          | X                  |           |                | November 2015               |
| Morrison, Chanda     | 4  | Yes      |                  |             |               |            |          | X                  |           |                | November 2015               |
| Nicholson, Brad      | 4  |          |                  |             |               |            |          | X                  |           |                | December 2015               |
| Pearson, Frankie *** | 4  |          |                  |             | X             |            | X        |                    |           | X              | January 2016                |
| Moss, Jennifer **    | 5  | Yes      |                  |             |               |            |          | X                  |           |                | December 2015               |
| Ramey, Donald        | 5  | Yes      |                  |             |               |            | X        | X                  |           | X              | December 2015               |

Questionnaires are maintained on file for one year then removed from consideration unless updated by candidate.

\*\*\* Mr. Pearson currently serves on the Capital Project Advisory Committee and but wishes to be considered for the Planning Commission open seat. If not appointed to Planning Commission wishes reappointment to CPAC.

| Area of Interest<br>(please check one or more) | Board/Commission Applicable to Interests             |
|--|--|
| Aeronautics                                    | Aeronautics Commission                               |
| Public Safety, Health & Welfare                | Anderson-Oconee Behavior Health Services Commission  |
| Regulatory                                     | Building Codes Appeal Board                          |
|  | Parks, Recreation & tourism Commission               |
|  | Board of Zoning Appeals                              |
| Planning Activities                            | Appalachian Council of Government Board of Directors |
|  | Board of Zoning Appeals                              |
|  | Capital Projects Advisory Committee                  |
|  | Conservation Bank Board (OCCB)                       |



# Boards & Commissions

| Boards & Commissions  | State / OC Code Reference | Reps (DX-At Large)              | Co-Terminus | Term Limits | 4 Year Term | Meeting Date to Appoint | Edda Cammick   | Wayne McCall        | Paul Cain         | Joe Thrift                                       | Reig Dexter   |                   |                     |
|---|---------------------------|---------------------------------|-------------|-------------|-------------|-------------------------|--|---------------------|-------------------|--|---|-------------------|---------------------|
|   |                           |                                 |             |             |             |                         | 2015-2018  | 2013-2016           | 2015-2018         | 2013-2016  | 2013-2016   | 2015-2018         | 2013-2016           |
|   |                           |                                 |             |             |             |                         | District I   | District II         | District III      | District IV                                      | District V  | At Large          | At Large            |
| Aeronautics Commission  | 2-262                     | 5 - 2                           | YES         | 2X          | YES         | Jan - March             | Randy Renz [2]   | David Bryant [1]    | Edward Perry [2]  | Don Schmeidt [2]                                 | Ronald Chiles [1]   | A. Brightwell [1] | Michael Gray [3]    |
| Arts & Historical Commission  | 2-321                     | 5 - 2                           | YES         | 2X          | YES         | Jan - March             | Bette Borenian [1]   | Meredith LaCour [1] | Mariam Noorai [1] | Barbara Waters [2]                               | H. Richardson [2]   | Shawn Johnson [1] | Jean Dobson [2]     |
| Board of Zoning Appeals   | 38-6-1                    | 5 - 2                           | YES         | 2X          | YES         | Jan - March             | Allen Medford [2]  | Sammy Lee [2]       | Bill Gilster [1]  | Marty McKee [2]                                  | John Menzies [1]  | Berry Nichols [2] | Paul Reckert [2]    |
| Building Codes Appeal Board   |                           | 5 - 0                           | YES         | 2X          | YES         | Jan - March             | George Smith [1]   | Matt Rochester [1]  | Bob DuBose [2]    | Mike Willimon [2]                                | Harry Tollison [2]  |                   |                     |
| Conservation Bank Board   | 2-381                     | Appointed by Category Preferred |             | 2X          | YES         | Jan - March             | Shea Airey [2]   | <b>OPEN</b>         | Jennifer Moss [1] | Marvin Prater [2]                                | Frank Ables [1]   | Richard Cain [2]  | Bill Smith [1]      |
| Destination Ocoee Action Committee                                    | n/a                       | 5 - 2                           | n/a         | n/a         | n/a         | n/a                     | David Washburn   | Luther Lyle         | Jennifer Barnhart | Katie Smith                                      | Bob Hill  | Robert Moore      | Hal Weich           |
| PRT Commission (members up for reappointment, due to initial stagger) | 6-4-25<br>2-381           | Appointed by Industry           |             | 2X          | YES         | Jan - March             | Brian Greer [2], Rosemary Bailes [2], JoAnne Blake [2]   |                     |                   | Becky Wise [2], Rick Lacey [2], Mike Wallace [2] |   |                   | D Pollock [1]       |
| Scenic Highway Committee  | 26-151                    | 0 - 2                           | YES         | 2X          | YES         | Jan - March             |  |                     |                   |  |   | Scott Lusk [1]    | Staley Powell [1]   |
| Library Board   | 4-9-35 / 18-1             | 0 - 9                           | YES         | 2X          | YES         | Jan - March             | Daniel Day [2], L. Martin [1], B Hetherington [1], H McPheters [1], A Champion [1], K Holleran [1]   |                     |                   |  | William Caster [2], Maria Jacobson [1], Marie McMahon [1] |                   |                     |
| Planning Commission   | 6-29-310<br>32-4          | 5 - 2                           | YES         | N/A         | YES         | Jan - March             | Brad Kisker  | C. W. Richards      | David Owensby     | <b>OPEN</b>                                      | Ryan Honea  | Gwen McPhail      | Mike Johnson        |
| Behavioral Health Services Commission                                 | 2-291                     | 0 - 7                           | YES         | 2X          | 3 yr        | N/A                     | Steve Jenkins [1], Harold Alley [1], Louie Holleman [1], Wanda Long [1], Priscilla Taylor [1], Joan Black [1], Jere DuBois [1] BHS contacts Council w/ recommendations when seats open |                     |                   |  |   |                   |                     |
| Capital Project Advisory Committee                                    | 2-391                     | CC, PC, 2 @ Lg.                 | NO          | 3X          | 1 yr        | January                 | Council Representative Wayne McCall/Paul Cain in McCall absence, Planning Commission G McPhail [1]   |                     |                   |  |   | Randy Abbott [1]  | Frankie Pearson [1] |
| Ocoee Business Education Partnership                                  | N/A                       | N/A                             | NO          | N/A         | NO          | January                 | Council Representative Appointed Annually  |                     |                   |  |   |                   |                     |
| Ocoee Economic Alliance   | N/A                       | N/A                             | NO          | N/A         | NO          | January                 | Council Representative Appointed Annually  |                     |                   |  |   |                   |                     |
| Ten At The Top (TATT)   |                           |                                 |             | NO          | NO          | January                 | Council Representative Appointed Annually  |                     |                   |  |   |                   |                     |
| ACOG BOD  |                           |                                 |             | N/A         | NO          | January                 | Council Rep: CC CHAIR or designee (yearly); 2 yr terms<br>Citizen Rep: Bob Winchester, Minority Rep: Bernie Cunningham   |                     |                   |  |   |                   |                     |
| Worklink Board  |                           |                                 |             |             |             | N/A                     | Worklink contacts Council w/ recommendations when seats open (Current: B. Debbins)   |                     |                   |  |   |                   |                     |

[#] - denotes term. [2] denotes a member who has served one term and less than one half of an additional term making them eligible for one additional appointment.  
 [SHADING] = reappointment requested - questionnaire on file. [Red shading] = Denotes individual who DOES NOT WISH TO BE REAPPOINTED.  
 Bold Italic TEXT denotes member ineligible for reappointment - having served or will complete serving max # of terms at the end of their current term