

**FEE-IN-LIEU OF *AD VALOREM* TAXES AGREEMENT
BETWEEN LEXINGTON COUNTY, SOUTH CAROLINA
AND
GATEWAY 3, LLC**

**DATED AS OF
_____, 2023**

TABLE OF CONTENTS

	PAGE
FEE AGREEMENT.....	1
ARTICLE I RECAPITULATION AND DEFINITIONS	2
SECTION 1.1. Statutorily Required Recapitulation.....	2
SECTION 1.2. Rules of Construction; use of Defined Terms	2
SECTION 1.3. Definitions	2
ARTICLE II LIMITATION OF LIABILITY; INDUCEMENT	4
SECTION 2.1. Limitation of Liability	4
SECTION 2.2. Inducement.....	4
ARTICLE III REPRESENTATIONS, WARRANTIES AND COVENANTS.....	5
SECTION 3.1. Representations and Warranties of the County.....	5
SECTION 3.2. Covenants by the County.....	6
SECTION 3.3. Representations and Warranties of the Company	6
ARTICLE IV COMMENCEMENT AND COMPLETION OF THE PROJECT.....	7
SECTION 4.1. The Project.....	7
SECTION 4.2. Diligent Completion	8
SECTION 4.3. Modifications to Project.....	8
ARTICLE V PAYMENTS-IN-LIEU-OF-TAXES; DISPOSITION OF PAYMENTS-IN- LIEU-OF-TAXES.....	8
SECTION 5.1. Payments-in-Lieu-of-Taxes	8
SECTION 5.2. Disposal of Property; Replacement Property.....	9
SECTION 5.3. Fee Term	10
SECTION 5.4. Minimum Investment.....	10
SECTION 5.5. Multi-County Industrial and Business Park.....	10
ARTICLE VI PROPERTY TAX EXEMPTION AND ABATEMENT	10
SECTION 6.1. Protection of Tax Exempt Status of the Project.....	10
ARTICLE VII EFFECTIVE DATE	11
SECTION 7.1. Effective Date	11
ARTICLE VIII SPECIAL COVENANTS	11
SECTION 8.1. Indemnification Covenants	11
SECTION 8.2. Assignment and Leasing.....	11
SECTION 8.3. Confidentiality	12
SECTION 8.4. Sponsor Affiliates	12
ARTICLE IX EVENT OF DEFAULT AND REMEDIES	12
SECTION 9.1. Events of Default Defined	12
SECTION 9.2. Remedies on Default.....	13
SECTION 9.3. No Additional Waiver Implied by One Waiver.....	13
ARTICLE X OPTION OF THE COMPANY	13
SECTION 11.1. Notices	13
SECTION 11.2. Binding Effect.....	14
SECTION 11.3. Invalidity and Severability.....	14
SECTION 11.4. Payments Due on Saturday, Sunday and Holidays.....	15
SECTION 11.5. Fiscal Year; Property Tax Year	15

SECTION 11.6. Amendments, Changes and Modifications15
SECTION 11.7. Execution of Counterparts15
SECTION 11.8. Law Governing Construction of Agreement15
SECTION 11.9. Filings15
SECTION 11.10. Headings15
SECTION 11.11. Further Assurance15

EXHIBIT A: LEGAL DESCRIPTION OF PROPERTY

EXHIBIT B: JOINDER AGREEMENT TEMPLATE

FEE-IN-LIEU OF AD VALOREM TAXES AGREEMENT

THIS FEE-IN-LIEU OF AD VALOREM TAXES (“Fee Agreement”) is made and entered into as of _____, 2023, by and between **LEXINGTON COUNTY, SOUTH CAROLINA** (the “County”), a body politic and corporate and a political subdivision of the State of South Carolina, acting by and through its County Council (the “County Council”) as governing body of the County, and **GATEWAY 3, LLC** a company formerly known to the County as Project Giraffe, a South Carolina limited liability company along with any Sponsor Affiliates (together “the Company”).

WITNESSETH:

WHEREAS, the County is authorized by Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (the “Act”), to enter into a Fee Agreement with companies meeting the requirements of such Act which identifies certain property of such companies as economic development property to induce such companies to locate in the State and to encourage companies now located in the State to expand their investments and thus make use of and employ manpower and other resources of the State;

WHEREAS, pursuant to the Act, the County finds that (a) it is anticipated that the Project (as defined herein) will benefit the general public welfare of the County by providing services, employment and other public benefits not otherwise adequately provided locally; (b) neither the Project nor any documents or agreements entered into by the County in connection therewith will give rise to any pecuniary liability of the County or incorporated municipality or to any 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;

WHEREAS, pursuant to an Inducement Resolution dated October 25, 2022 (the “Inducement Resolution”) the County committed to enter into a fee agreement with the Company which shall provide for payments of fees-in-lieu of ad valorem taxes and other incentives for a project qualifying under the Act using an assessment ratio of 6%, a fixed millage rate of 350.647 for a term of 20 years; provided the Company invests at least \$15 million in the Project during the Investment Period (as defined herein); and

WHEREAS, pursuant to an Ordinance adopted on _____, 2023 (the “Ordinance”), as an inducement to the Company to develop the Project, the County Council authorized the County to enter into a Fee Agreement subject to the terms and conditions hereof.

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

ARTICLE I

RECAPITULATION AND DEFINITIONS

SECTION 1.1. *Statutorily Required Recapitulation.* Pursuant to Section 12-44-55(B), the County and the Company agree to waive the recapitulation requirements of Section 12-44-55. If the Company should be required to retroactively comply with the recapitulation requirements of Section 12-44-55, then the County agrees to waive all penalties and fees of the County for the Company's noncompliance.

SECTION 1.2. *Rules of Construction; use of Defined Terms.* Unless the context clearly indicates otherwise, in this Fee Agreement words and terms defined in Section 1.3 hereof are used with the meanings ascribed thereto. The definition of any document shall include any amendments to that document, unless the context clearly indicates otherwise.

From time to time herein, reference is made to the term taxes or *ad valorem* taxes. All or portions of the Project will be located in a Multi-County Industrial Park and are exempt from *ad valorem* taxation under and by virtue of the provisions of Paragraph D of Section 13 of Article VIII of the S.C. Constitution (the "MCIP Provision"). With respect to facilities located in a Multi-County Industrial Park, references to taxes or *ad valorem* taxes means the payments-in-lieu-of-taxes provided for in the MCIP Provision, and, where this Fee Agreement refers to payments of taxes or Payments-in-Lieu-of-Taxes to County Treasurers, such references shall be construed to mean the payments to the counties participating in such a Multi-County Industrial Park.

SECTION 1.3. *Definitions.*

"Act" means Title 12 Chapter 44, Code of Laws of South Carolina 1976, as in effect on the date hereof and, to the extent such amendments are specifically made applicable to this Fee Agreement or the Project, as the same may be amended from time to time; provided that if any such amendment shall be applicable only at the option of the County or the Company, then such amendment shall only be applicable with the consent or at the request of the Company.

"Applicable Governmental Body" means each governmental entity within the State having jurisdiction over or the right to approve or disapprove any or all of the Documents.

"Chair" means the Chair of County Council (or the person or persons authorized to perform the duties thereof in the absence of the Chair).

"Clerk" means the Clerk of County Council (or the person or persons authorized to perform the duties thereof in the absence of the Clerk).

"Commencement Date" means the last day of the property tax year when Project property is first placed in service, except that this date must not be later than the last day of the property tax year which is three years from the year in which the County and the Company have entered into this Agreement.

"Company" means _____ .

“County Council” means the County Council of the County.

“County” means **Lexington County, South Carolina**, and its successors and assigns.

“Documents” means the Ordinance, this Fee Agreement, the Inducement Resolution, and the Multi-County Industrial and Business Park Agreement.

“DOR or the Department” means the South Carolina Department of Revenue and any successor thereto.

“Equipment” means all machinery, apparatus, equipment, fixtures, office facilities, furnishings and other personal property to the extent such property becomes a part of the Project under this Fee Agreement.

“Event of Default” shall mean any Event of Default specified in Section 9.1 of this Fee Agreement.

“Fee Agreement” means this Fee Agreement dated as of _____, 2023, between the County and the Company.

“Fee Term” shall mean the duration of this Fee Agreement with respect to each Stage of the Project as specified in Section 5.3 hereof.

“Inducement Resolution” shall mean the Resolution of the County Council adopted on October 25, 2022, committing the County to enter into the Fee Agreement.

“Investment Period” shall mean the period beginning with the first day that economic development property is purchased or acquired and ending on the last day of the fifth property tax year following the Commencement Date, subject to an extension for such period as provided in Section 3.2(b) hereof.

“Multi-County Industrial and Business Park” means an industrial and business park established by the County pursuant to the Multi-County Industrial and Business Park Agreement pursuant to Section 4-1-170 of the Code of Laws of South Carolina 1976, as amended, and Article VIII, Section 13, paragraph D of the Constitution of South Carolina and in which the Project will be included.

“Multi-County Industrial and Business Park Agreement” shall mean the Multi-County Industrial and Business Park Agreement dated December 11, 1995 and all amendments thereto between the County and Calhoun County.

“Ordinance” means the Ordinance adopted by the County on _____, 2023, authorizing this Fee Agreement.

“Payments-in-Lieu-of-Taxes” means the payments to be made by the Company pursuant to Section 5.1 of this Agreement.

“Project” shall mean the Real Property and Equipment together with the acquisition, construction, installation, design and engineering thereof which is eligible for inclusion as economic development property under the Act and become subject to this Fee Agreement. The parties agree that Project property shall consist of such property so properly identified by the Company in connection with its annual filing with the DOR of a SCDOR PT-300, or such comparable form as may be applicable, and with such schedules as the DOR may provide in connection with projects subject to the Act (as such filing may be amended or supplemented from time to time) for each year within the Investment Period.

“Real Property” means the property attached hereto as Exhibit A and is comprised of the Project Site.

“Replacement Property” means any property acquired or constructed after the Investment Period as a replacement for any property theretofore forming a part of the Project and disposed of, or deemed disposed of, as provided in Section 5.2 hereof.

“Sponsor” means Gateway 3, LLC.

“Sponsor Affiliate” means 803 Park, LLC as well as any entity that participates in the investment at the Project and, following receipt of any required County approval pursuant to Section 8.4 of this Fee Agreement, joins this Fee Agreement by delivering a Joinder Agreement, the form of which is attached as Exhibit B to this Fee Agreement.

“Stage” in respect of the Project shall mean the year within which Project property, if any, is placed in service during each year of the Investment Period.

“State” means the State of South Carolina.

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

LIMITATION OF LIABILITY; INDUCEMENT

SECTION 2.1 *Limitation of Liability.* Any obligation which the County may incur for the payment of money as a result of the transactions described in the Documents shall never constitute an indebtedness of the County within the meaning of any State constitutional provision or statutory limitation and shall never create a pecuniary liability of the County or a charge upon its general credit or against its taxing powers but shall be payable solely out of the funds received by it under the Documents.

SECTION 2.2. *Inducement.* The County and the Company acknowledge that pursuant to the Act, upon execution of this Fee Agreement, no part of the Project will be subject to ad valorem property taxation in the State, and that this factor, among others, has induced the Company and any Sponsor Affiliates to enter into or be bound by this Fee Agreement.

ARTICLE III

REPRESENTATIONS, WARRANTIES AND COVENANTS

SECTION 3.1 *Representations and Warranties of the County.* The County makes the following representations and warranties to the Company and covenants with the Company as follows:

(a) The County is a body politic and corporate and a political subdivision of the State and is authorized and empowered by the Act to execute the Documents to which it is a party and to fulfill its obligations described in the Documents. By proper action, the County Council has duly authorized the execution and delivery of the Documents to which the County is a party and has taken all such action as is necessary to permit the County to enter into and fully perform the transactions required of it under the Documents.

(b) Neither the execution and delivery of the Documents, nor the consummation and performance of the transactions described in the Documents, violate, conflict with or will result in a breach of any of the material terms, conditions or provisions of any agreement, restriction, law, rule, order or regulation to which the County is now a party or by which it is bound.

(c) There is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any judicial or administrative court or agency, public board or body, pending or threatened, against or affecting the County, wherein an unfavorable decision, ruling or finding may or would materially affect the County's obligations hereunder or the consummation of the transactions described in the Documents.

(d) Neither the existence of the County nor the rights of any members of County Council to their offices is being contested and none of the proceedings taken to authorize the execution, delivery and performance of such of the Documents as require execution, delivery and performance by the County has been repealed, revoked, amended or rescinded.

(e) All consents, authorizations and approvals required on the part of the County, State and all other Applicable Governmental Bodies in connection with the execution, delivery and performance by the County of such of the Documents as require execution, delivery and performance by the County have been obtained and remain in full force and effect as of the date hereof or will be obtained.

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

(g) By due corporate action, the County has agreed that, subject to compliance with applicable laws, each item of property comprising the Project shall be considered economic development property under the Act.

(h) The Documents to which the County is a party are (or, when executed, will be) legal, valid and binding obligations of the County enforceable against the County under present law in accordance with their respective terms, except as such terms may be limited by laws affecting creditors' rights generally.

SECTION 3.2. *Covenants by the County.* The County covenants with the Company as follows:

(a) The County agrees to do all things deemed reasonably necessary as requested by the Company in writing in connection with the Project including but not limited to the execution, delivery and performance of its obligations in the Documents and in accordance with the Act, all for the purposes of promoting industrial development, developing trade, and utilizing and employing the manpower and natural resources of the County and the State. Except as reasonably believed to be required by the County in the performance of its duties under statute or law, the County will take no action with respect to the Project unless authorized or requested to do so by the Company.

(b) Upon receipt of written request from the Company, the County agrees to consider any request the Company may make for an extension of the Investment Period in accordance with and up to the limits permitted under Section 12-44-30(13) of the Act. Such extension may be provided by a resolution of County Council. Upon the granting of any such extension the County agrees to cooperate with the Company by filing with the DOR a copy of such extension within 30 days of the date of execution thereof by the County. Such extension may be provided by a resolution of County Council.

SECTION 3.3. *Representations and Warranties of the Company.* The Company makes the following representations and warranties to the County:

(a) The Company is a South Carolina limited liability company authorized to transact business in South Carolina. The Company has full corporate power to execute the Documents to which it is a party and to fulfill its obligations described in the Documents and, by proper corporate action, has authorized the execution and delivery of the Documents to which it is a party.

(b) Neither the execution and delivery of the Documents to which the Company is a party, nor the consummation and performance of the transactions described in the Documents violate, conflict with, or will, to its knowledge, result in a material breach of any of the material terms, conditions or provisions of any agreement, restriction, law, rule, order or regulation to which the Company is now a party or by which it is bound.

(c) There is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any judicial or administrative court or agency, public board or body, pending or threatened, against or affecting the Company wherein an unfavorable decision, ruling or finding would adversely affect the Company or the consummation of the transactions described in the Documents.

(d) All consents, authorizations and approvals required on the part of the Company in connection with the Documents and the transactions contemplated thereby and the acquisition, construction and installation of the Project have been obtained and remain in full force and effect or will be obtained.

(e) The Documents to which the Company is a party are (or, when executed, will be) legal, valid and binding obligations of the Company enforceable against the Company in

accordance with their respective terms, except as such terms may be limited by laws affecting creditors' rights generally.

(f) The cost of the Project will exceed the minimum promised investment of not less than \$15 million.

(g) The Company will pay all reasonable costs of the County, including attorney's fees, incurred in connection with the authorization, execution and delivery of this Fee Agreement, not to exceed \$5,000.00.

SECTION 3.4. *Filings and Reports.*

(a) Each year during the term of the Fee Agreement, the Company shall deliver to the County, the County Auditor, the County Assessor, and the County Treasurer, a copy of its most recent annual filings with the Department with respect to the Project, not later than 30 days following delivery thereof to the Department. By December 31 of each year, The Company will furnish to the County of Lexington Department of Economic Development a copy of their most recent quarterly UCE 120 report. Company shall redact the following information from the UCE 120 report: any reference to individual employee's names, street addresses, Social Security Numbers, or payroll. The County of Lexington requests that employees' resident zip codes not be redacted if provided in the report. Given that the UCE 120 report includes all employees who were paid during the reporting quarter, including former employees that are no longer working for Company.

(b) The company shall cause the filing of a copy of this Fee Agreement, as well as a copy of the completed Form PT-443 of the Department, to be filed with the County Auditor and the County Assessor of the County, any partner county, and municipalities if applicable, when the Project is placed in a joint county industrial and business park, and the Department within 30 days after the date of execution and delivery hereof by all parties hereto.

ARTICLE IV

COMMENCEMENT AND COMPLETION OF THE PROJECT

SECTION 4.1. *The Project.* The Company has acquired, constructed and/or installed or made plans for the acquisition, construction and/or installation of certain machinery, equipment, and other personal property which comprise the Project. The Project is anticipated to initially consist of machinery and Equipment used for a distribution facility.

Pursuant to the Act, the Company and the County hereby agree that the property comprising the Project shall be economic development property as defined under the Act, so long as such property meets the requirements of the Act.

Notwithstanding any other provision of this Fee Agreement, the Company may place personal property into service at any time under this Fee Agreement.

SECTION 4.2. *Diligent Completion.* The Company agrees to use its reasonable efforts to cause the acquisition, construction and installation of the Project to be completed.

SECTION 4.3. *Modifications to Project.* The Company may make or cause to be made from time to time any additions, modifications or improvements to the Project that it may deem desirable for its business purposes.

ARTICLE V

PAYMENTS-IN-LIEU-OF-TAXES; DISPOSITION OF PAYMENTS-IN-LIEU-OF-TAXES

SECTION 5.1. *Payments-in-Lieu-of-Taxes.* The parties acknowledge that under Article I, Section 3 of the South Carolina Constitution, the Project is exempt from ad valorem property taxes assuming a Fee Agreement is signed. However, the Company shall be required to make the Payments-in-Lieu-of-Taxes with respect to the Project as provided in this Section 5.1. In accordance with the Act, and unless this Fee Agreement is sooner terminated, the Company shall make annual Payments-in-Lieu-of-Taxes with respect to the Project, said payments being due and payable and subject to penalty assessments in the manner prescribed by the Act. Such amounts shall be calculated and payable as follows:

(a) The Company has agreed to make annual Payments-in-Lieu-of-Taxes with respect to the Project in an amount equal to the property taxes that would be due with respect to such property, if it were taxable, but using an assessment ratio of 6 % and a millage rate of 350.647.

Subject in all events to the provisions of the Act, the fair market value estimate determined by the DOR will be as follows:

- (i) for real property (although no real property investment is anticipated at the Project), using the original income tax basis for South Carolina income tax purposes without regard to depreciation; provided, however, if real property is constructed for the fee or is purchased in an arm's length transaction, fair market value equals the original income tax basis; otherwise, the DOR will determine fair market value by appraisal; and
- (ii) for personal property, using the original income tax basis for South Carolina income tax purposes less depreciation allowable for property tax purposes, except that the Company is not entitled to extraordinary obsolescence.

(b) The Payments-in-Lieu-of-Taxes must be made on the basis that the Project property, if it were otherwise subject to ad valorem property taxes, would be subject to no other tax exemptions, including, but not limited to the exemptions allowed under Section 3(g) of Article X of the South Carolina Constitution and Section 12-37-220(B)(32) and (34) of the Code of Laws of South Carolina, as amended.

(c) The Company shall make Payments-in-Lieu-of-Taxes for each year during the term hereof beginning with the tax year following the year property is first placed in service. The

Payments-in-Lieu-of-Taxes shall be made to the County Treasurer on the due dates which would otherwise be applicable for ad valorem property taxes for the Project, with the first payment being due on the first date following the delivery of this Fee Agreement when, but for this Fee Agreement, such taxes would have been paid with respect to the Project.

(d) Any property placed in service as part of the Project during the Investment Period shall be included in the calculation of payments pursuant to paragraphs (a), (b) and (c), above, for a period not exceeding 20 years following the year in which such property was placed in service. Replacement Property shall be included (using its income tax basis) in the calculation of payments pursuant to paragraphs (a), (b) and (c), above, but only up to the original income tax basis of property which is being disposed of in the same property tax year. Replacement Property shall be deemed to replace the oldest property subject to the fee which is disposed of in the same property tax year that the Replacement Property is placed in service. More than one piece of property can replace a single piece of property. Replacement Property does not have to serve the same function as the property it is replacing. To the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the property which it is replacing, the portion of such property allocable to the excess amount shall be subject to annual payments calculated as if the exemption for economic development property under the Act were not allowed. Replacement Property is entitled to the fee payment pursuant to this Section 5.1 for the period of time remaining on the 20-year fee period for the property which it is replacing.

SECTION 5.2. *Disposal of Property; Replacement Property.*

(a) In any instance where the Company in its sole discretion determines that any item or items of property included in the Project have become, in whole or in part, inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company may remove such item (or such portion thereof as the Company shall determine) or items and sell, trade in, exchange or otherwise dispose of it or them (as a whole or in part) without any responsibility or accountability to the County therefor. The loss or removal from the Project of any property, or any portion thereof, as a result of fire or other casualty or by virtue of the exercise or threat of the power of condemnation or eminent domain shall be deemed to be a disposal of such property, or portion thereof, pursuant to this Section 5.2. Subject to the provisions of Section 5.1(d) and this Section 5.2 with respect to Replacement Property, the Payments-in-Lieu-of-Taxes required by Section 5 hereof shall be reduced by the amount thereof applicable to any property included in the Project, or part thereof, disposed of, or deemed disposed of, pursuant to this Section 5.2. In the event that such disposal (without replacement) reduces the Company's gross investment below \$15 million, then the Project shall revert to ad valorem taxation and this agreement shall terminate pursuant to Section 12-44-140 of the Act.

(b) The Company may, in its sole discretion, replace, renew or acquire and/or install other property in substitution for, any or all property or portions thereof disposed of, or deemed disposed of, pursuant to Section 5.2(a) hereof. Any such property may, but need not, serve the same function, or be of the same utility or value, as the property being replaced. Absent a written election to the contrary made at the time of filing the first property tax return that would apply to such property, such property shall be treated as Replacement Property.

SECTION 5.3. *Fee Term.* The applicable term of this Fee Agreement shall be measured for each Stage beginning from the last day of the property tax year in which the Project is placed in service in that Stage through the last day of the property tax year which is the nineteenth year following such year; provided, that the maximum term of this Fee Agreement shall not be more than 20 years from the end of the last year of the Investment Period. This Fee Agreement shall terminate with respect to the Project or any Stage or part thereof upon the earlier to occur of (a) payment of the final installment of Payments-in-Lieu-of-Taxes pursuant to Section 5.1 hereof, or (b) exercise by the Company of its option to terminate pursuant to Section 10.1 hereof.

SECTION 5.4. *Minimum Investment.* If the Company has not invested \$15 million at the Project during the Investment Period, then the Project shall revert retroactively to ad valorem taxation and the Company shall, within 180 days of the end of the Investment Period, make payment to the County of the difference between the Payments-in-Lieu-of-Taxes actually made and the total retroactive amount referred to in this Section minus any statutory abatements that the company, or any of the Sponsor Affiliates, as applicable, would have otherwise been entitled to had the Project not been subject to this Fee Agreement.

SECTION 5.5. *Multi-County Industrial and Business Park.* The County with the appropriate consent of Lexington County Council and Calhoun County Council, agrees to amend the Multi-County Industrial and Business Park Agreement to include the Project in such MultiCounty Industrial and Business Park between the County and the County of Calhoun, pursuant to Section 13 of Article VIII of the South Carolina Constitution and Section 4-1-170, Code of Laws of South Carolina 1976, as amended, and to undertake and execute those procedures, instruments, ordinances, resolutions and documents as may be reasonably required to accomplish same.

ARTICLE VI

PROPERTY TAX EXEMPTION AND ABATEMENT

SECTION 6.1. *Protection of Tax Exempt Status of the Project.* In order to insure that the Project is not and will not become subject to ad valorem property taxes under the laws of the State of South Carolina or any political subdivision thereof, the County and the Company covenant that:

(a) all right and privileges granted to either party under this Fee Agreement or any other Documents shall be exercised so that if any conflict between this Section and any other provision in any document shall arise, then in that case, this Section shall control;

(b) it has not knowingly committed or permitted and will not knowingly commit or permit (as to any act over which either has control) any act which would cause the Project to be subject to ad valorem property taxes by the County or political subdivision of the State of South Carolina in which any part of the Project is located; and

(c) the Company will maintain the identity of the Project as a “project” in accordance with the Act.

ARTICLE VII

EFFECTIVE DATE

SECTION 7.1. *Effective Date.* This Fee Agreement shall become effective upon its execution and delivery by the parties hereto unless a later date is specified herein.

ARTICLE VIII

SPECIAL COVENANTS

SECTION 8.1. *Indemnification Covenants*

(a) The Company shall and agrees to hold the County and its County Council members, officers, agents and employees harmless from all pecuniary liability in connection with those reasons set forth in (i) or (ii) of Section 8.1(b) and to reimburse them for all reasonable expenses to which any of them might be subject due to the approval and entering into of the documents or the fulfillment of their obligations under this Fee Agreement in the implementation of its terms and provisions.

(b) Notwithstanding the fact that it is the intention of the parties that neither the County nor any of its members, officers, agents and employees shall incur any pecuniary liability to any third-party (i) by reason of the terms of this Fee Agreement or the undertakings of the County required hereunder, or (ii) by reason of the performance of any act in connection with the entering into and performance of the transactions described in the Documents, if the County or any of its members, officers, agents or employees should incur any such pecuniary liability, then, in that event the Company shall indemnify and hold harmless the County and its members, officers, agents and employees against all pecuniary 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, and upon notice from the County, the Company at its own expense shall defend the County and its officers, agents and employees in any such action or proceeding.

(c) Notwithstanding the foregoing, (i) the Company shall not be obligated to indemnify the County or any of its individual members, officers, agents and employees for expenses, claims, losses or damages arising from the intentional or willful misconduct or negligence of the County or any of its individual officers, agents or employees; and (ii) the Company’s total liability under this section shall in no event exceed \$250,000.

SECTION 8.2. *Assignment and Leasing.* The County agrees to consent, as allowed by the Act, for financing purposes, to: (a) any sale, transfer, disposition or assignment of the Fee Agreement, whether in whole or in part, by the Company or any transferee or assignee; (b) the transfer or assignment of security or other interests in any or all of the Company’s interests in the

property subject to the Fee Agreement; or (c) the sublease of any property subject to the Fee Agreement. The County further agrees that, if future County consent is required by the Act, the County Council can provide any such consent by a resolution of County Council. The County Administrator and the Clerk to County Council are hereby expressly individually and jointly authorized and directed to evidence the County's consent by timely executing such documents as the Company may reasonably request. Further, for the purposes of this Fee Agreement and as noted in Article 5 herein, a transaction or an event of sale, assignment, leasing, transfer of an interest herein, disposal, or replacement of all or part of the Project shall not be a termination of the Fee Agreement in whole or in part or a basis for changing the fee payments due under Section 12-44-50 of the Act.

SECTION 8.3. Confidentiality The Company will not provide any confidential information to the County and the County acknowledges and understands that the Company will redact any confidential and proprietary information from any information provided to or requested by the County.

SECTION 8.4. Sponsor Affiliates. The Company may designate Sponsor Affiliates from time to time, including at the time of execution of this Fee Agreement, pursuant to and subject to the provisions of Section 12-44-130 of the Act. To designate a Sponsor Affiliate, the Company must deliver written notice to the County identifying the Sponsor Affiliate and, to the extent required by the Act, requesting the County's approval of the Sponsor Affiliate. Except with respect to a Sponsor Affiliate designated at the time of execution of this Fee Agreement, which may be approved in the County Council ordinance authorizing the execution and delivery of this Fee Agreement, approval of the Sponsor Affiliate may be given by resolution of County Council; provided, however, that the County hereby expressly consents to any future designation by the Company as a Sponsor Affiliate (i) Affiliates, provided, however, the Company notifies the County and the Department within ninety (90) days following the end of the calendar year during which the Project or a Stage of it was placed into service; and (ii) any third party that the Company may elect to involve in the construction or financing of the Project, provided, however, the Company notifies the County and the Department within ninety (90) days following the end of the 14 calendar year during which the Project or a Stage thereof was placed into service. The Sponsor Affiliate's joining in the investment at the Project will be effective on delivery of a Joinder Agreement, in substantially the same form as what is attached as Exhibit B, executed by the Sponsor Affiliate to the County. Sponsor Affiliate Properties is hereby approved as a Sponsor Affiliate. 803 Park, LLC is deemed to be a Sponsor Affiliate.

ARTICLE IX

EVENT OF DEFAULT AND REMEDIES

SECTION 9.1. Events of Default Defined. The occurrence of any one or more of the following events shall be an "Event of Default" under this Fee Agreement:

(a) If the Company shall fail to make any Payment-in-Lieu-of-Taxes or any other amount required under this Fee Agreement and such failure shall continue for 30 days after receiving written notice of default from the County; or

(b) If the Company or the County shall fail to observe or perform any covenant, condition or agreement required herein to be observed or performed by the Company or the County (other than as referred to in Section 9.1(a) hereof), and such failure shall continue for a period of 30 days after written notice of default has been given to the Company by the County or to the County by the Company; provided if by reason of “force majeure” as hereinafter defined the Company or the County is unable in whole or in part to carry out any such covenant, condition or agreement or if it takes longer than 30 days to cure such default and the Company or the County is diligently attempting to cure such default, there shall be no Event of Default during such inability. The term “force majeure” as used herein shall mean circumstances not reasonably within the control of the parties, such as without limitation, acts of God, strikes, lockouts or other industrial disturbances; war; acts of public enemies; mobilization or military conscription on a large scale; order of any kind of the government of the United States or any State, or any civil or military authority other than the County Council; insurrections; riots; landslides; earthquakes; fires; lightning; storms; droughts; floods; requisitions, confiscation, or commandeering of property; fuel restrictions; general shortages of transport, goods, or energy; or

(c) If any material representation or warranty on the part of the Company or the County made in the Documents, or in any report, certificate, financial or other statement furnished in connection with the Documents or the transactions described in the Documents shall have been false or misleading in any material respect.

(d) If the Company ceases operation for a period of 6 consecutive months.

SECTION 9.2. Remedies on Default. Whenever any Event of Default shall have happened and be subsisting the County may take whatever action at law or in equity may appear legally required or necessary or desirable to collect the payments and other amounts then due or to enforce performance and observance of any obligation, agreement or covenant of the Company, under the Documents, including the right to terminate this Fee Agreement. Although the parties acknowledge that the Project is exempt from ad valorem property taxes, the County and any other taxing entity affected thereby may, without limiting the generality of the foregoing, exercise the remedies provided by general law (Title 12, Chapter 49 and Title 12, Chapter 51) and the Act relating to the enforced collection of taxes.

SECTION 9.3. No Additional Waiver Implied by One Waiver. In the event any warranty, covenant or agreement contained in this Fee Agreement should be breached by the Company or the County and thereafter waived by the other party to this Fee Agreement, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach.

ARTICLE X

MISCELLANEOUS

SECTION 10.1. Notices. All notices, approvals, consents, requests and other communications hereunder shall be in writing and may be delivered personally, or may be sent by facsimile or certified mail, return receipt requested, to the following addresses, unless the parties are subsequently notified of any change of address in accordance with this Section 11.1:

If to the Company: (name) _____
(title) _____
(address) _____

Facsimile: _____

With A Copy To: (attorney) _____
(Firm) _____
(address) _____

Facsimile: _____

If to the County: Lexington County Council, South Carolina
212 South Lake Drive
Lexington, SC 29072
Attention: Clerk to Council
Facsimile: 803-785-8101

With A Copy To: Jeffrey M. Anderson
Davis Frawley, LLC
140 E. Main Street
P.O. Box 489
Lexington, SC 29071-0489
Facsimile: 803-359-7478

Any notice shall be deemed to have been received as follows: (1) by personal delivery, upon receipt; (2) by facsimile, 24 hours after confirmed transmission or dispatch; and (3) by certified mail, 3 business days after delivery to the U.S. Postal authorities by the party serving notice.

SECTION 10.2. *Binding Effect.* This Fee Agreement shall inure to the benefit of and shall be binding upon the County and the Company and their respective successors and assigns.

SECTION 10.3. *Invalidity and Severability.* In the event that the Act or the Payments-in-Lieu-of-Taxes arrangement described in Section 5.1 hereof is determined to be invalid in its entirety, the parties hereby agree that except as the final judicial decision may otherwise require, the Company shall be entitled to retain any benefits received under or pursuant to this Fee Agreement; otherwise, in the event any provision of this Fee Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, that decision shall not invalidate or render unenforceable any other provision of this Fee Agreement, unless that decision destroys the basis for the transaction, in which event the parties shall in good faith attempt to preserve, to the maximum extent possible, the benefits provided and to be provided to the Company hereunder by either restructuring or reconstituting this Fee Agreement under any then applicable law, including but not limited to Chapter 20 of Title 4 and Chapter 12 of Title 4, Code of Laws of South Carolina, as amended.

SECTION 10.4. *Payments Due on Saturday, Sunday and Holidays.* Whenever any payment to be made hereunder shall be stated to be due on a Saturday, a Sunday or a holiday, such payment shall be made on the next business day.

SECTION 10.5. *Fiscal Year; Property Tax Year.* If the Company's fiscal year changes in the future so as to cause a change in the Company's property tax year, the timing of the requirements set forth in this Fee Agreement shall be revised accordingly.

SECTION 10.6. *Amendments, Changes and Modifications.* Except as otherwise provided in this Fee Agreement, this Fee Agreement may not be amended, changed, modified, altered or terminated without the written consent of the County and the Company. To the maximum extent allowed by law, any such County consent may be provided by a resolution of County Council. This Agreement is the entire agreement between the parties concerning the subject matter of this Agreement.

SECTION 10.7. *Execution of Counterparts.* This Fee Agreement may be executed in several counterparts, only one of which shall be an original for Uniform Commercial Code perfection purposes; provided, however, that any action may be brought upon any counterpart of this Fee Agreement or any counterpart of any document that is attached to this Fee Agreement as an exhibit.

SECTION 10.8. *Law Governing Construction of Agreement.* The laws of the State of South Carolina shall govern the construction of this Fee Agreement.

SECTION 101-9. *Filings.* Whenever the County shall be required to file or produce any reports, notices or other documents during the Fee Term, the Company shall in due time furnish to the County the completed form of such report, notice or other required documents together with a certification by the Company that such document is accurate.

SECTION 10.10. *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 10.11. *Further Assurance.* From time to time the County agrees to execute and deliver to the Company such additional instruments as the Company may reasonably request to effectuate the purposes of this Fee Agreement.

IN WITNESS WHEREOF, LEXINGTON COUNTY, SOUTH CAROLINA, pursuant to due authority, have duly executed this Fee Agreement, all as of the date first above written.

LEXINGTON COUNTY, SOUTH CAROLINA

Scott Whetstone
Chair of Lexington County Council

ATTEST:

Brittany Shumpert
Clerk, Lexington County Council

IN WITNESS WHEREOF, the **COMPANY** and the **SPONSOR AFFILIATE** below, each pursuant to due authority, have duly executed this Fee Agreement, all as of the date first above written.

GATEWAY 3, LLC

By: _____

Its: _____

The undersigned, by signing below, is hereby added as a Sponsor Affiliate under the Fee Agreement effective as of the date first written above.

803 PARK, LLC

By: _____

Its: _____

EXHIBIT A
Property Description

All or a portion of that parcel of real property, with improvements thereon, located in Lexington County, South Carolina, consisting of approximately 72.4 acres, identified by tax number 006797-01-020 and found in Book 20988 at page 5935 at the Register of Deeds for Lexington County.

EXHIBIT B
Form of Joinder Agreement

JOINDER AGREEMENT

Reference is hereby made to the Fee-in-Lieu of Ad Valorem Taxes Agreement, effective [], 2023 (“Fee Agreement”), between Lexington County, South Carolina (“County”), PROJECT GIRAFFE (“Company”).

1. Joinder to Fee Agreement. [], a [state] [corporation/limited liability company/limited partnership] authorized to conduct business in the State, hereby

(a) joins as a party to, and agrees to be bound by and subject to all of the terms and conditions of, the Fee Agreement as if it were the Company;

(b) shall receive the benefits as provided under the Fee Agreement with respect to any Project property placed in service by the Sponsor Affiliate as if it were the Company and such property was economic development property;

(c) acknowledges and agrees that (i) according to the Fee Agreement, the undersigned has been designated as a Sponsor Affiliate by the Company for purposes of the Project; (ii) the undersigned qualifies or will qualify as a Sponsor Affiliate under the Fee Agreement and Section 12-44-30(20) and Section 12-44-130 of the Act; and (iii) agrees that electronic signatures, whether digital or encrypted, of the parties to this Joinder Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means any electronic sound, symbol, or process attached to or logistically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email signatures.

2. Capitalized Terms. Each capitalized term used, but not defined, in this Joinder Agreement has the meaning of that term set forth in the Fee Agreement.

3. Representations of the Sponsor Affiliate. The Sponsor Affiliate represents and warrants to the County as follows:

(a) The Sponsor Affiliate is in good standing under the laws of the state of its organization, is duly authorized to transact business in the State (or will obtain such authority prior to commencing business in the State), has power to enter into this Joinder Agreement, and has duly authorized the execution and delivery of this Joinder Agreement.

(b) The Sponsor Affiliate’s execution and delivery of this Joinder Agreement, and its compliance with the provisions of this Joinder Agreement, do not result in a default, not waived, or cured, under any agreement or instrument to which the Sponsor Affiliate is now a party or by which it is bound.

(c) The execution and delivery of this Joinder Agreement and the availability of the FILOT and other incentives provided by this Joinder Agreement has been instrumental in inducing the Sponsor Affiliate to join with the Company in the Project in the County.

4. Request of Sponsor Affiliate. The Sponsor Affiliate hereby requests and consents to its addition, as “sponsor affiliate” to the Fee Agreement.

5. Request of Company. The Company hereby requests and consents to the addition of as “sponsor affiliate” to the Fee Agreement.

6. Governing Law. This Joinder Agreement is governed by and construed according to the laws, without regard to principles of choice of law, of the State.

7. Notice. Notices under Section 10.1 of the Fee Agreement shall be sent to the Sponsor Affiliate at: []

IN WITNESS WHEREOF, the Company requests and consents to the County’s consenting to the addition of the above-named entity as a Sponsor Affiliate under the Fee Agreement effective as of the date set forth below.

Date:

PROJECT GIRAFFE

By:

Its:

IN WITNESS WHEREOF, the undersigned has executed this Joinder Agreement to be effective as of the date set forth above.

[NAME OF SPONSOR AFFILIATE]

By:

Its:

IN WITNESS WHEREOF, at the Company’s and the Sponsor Affiliate’s request, the County acknowledges it has consented to the addition of the above-named entity as a Sponsor Affiliate under the Fee Agreement effective as of the date set forth above.

LEXINGTON COUNTY, SOUTH CAROLINA

Scott Whetstone
Chair of Lexington County Council

ATTEST:

Brittany Shumpert
Clerk, Lexington County Council