



**NEWBERRY COUNTY COUNCIL  
COUNTY COUNCIL AGENDA**

**September 7, 2022**

**6:00 P.M.**

Call to order:

Todd Johnson, Chairman

Invocation and Pledge of Allegiance:

Mary Arrowood, Councilwoman

**1. Employee Recognition**

a. Shawn Carnes	20 years
b. Casey Rembisz	20 years
c. Kirby Richardson	10 years
d. Brenda McCracken	10 years
e. Donna Lominack	45 years
f. Clayton Babb	25 years
g. Randall Abrams	25 years
h. Ben Chapman	25 years
i. Maggie Mills	15 years
j. Samantha Navarrete	15 years
k. John Cearley	15 years
l. Nicholas Gilmore	5 years
m. Susan Hanvey	5 years
n. Melissa Vanderford	5 years

**2. Public Appearance – Donna Lominack – Auditor**

Jimmy Smith and Sheriff Lee Foster – Public Safety Memorial

**3. Adoption of Consent Agenda**

- a. Newberry County Council Meeting – Minutes August 17, 2022

**4. Additions, Deletions & Adoption of the Agenda**

**5. Proclamation – Hispanic Heritage Month to be presented to Liz Rivera**

**6. Resolution 05-22 of Newberry County Council supporting the South Carolina American Revolution Sestercentennial Commission and creating the Newberry County 250 Committee. – Presented by Bill Davies, SC250 Commission**

7. Resolution 06-22 Resolution authorizing an amendment to that certain fee agreement by and between Newberry County, South Carolina and Trucast, LLC; and other related matters
8. Resolution 07-22 Inducement Resolution committing to negotiate a fee in lieu of tax agreement between Newberry County and Newberry PV1, LLC; identifying the project; and other matters related thereto
9. Ordinance No. 08-21-2022 An Ordinance authorizing the execution and delivery of a fee agreement by and between Newberry County, South Carolina, and Newberry PV1, LLC providing for a payment of a fee in lieu of taxes, providing special source of revenue credits, and authorizing an amendment to the master agreement governing the Greenwood-Newberry Industrial Park to provide for the addition of property and other matters related thereto.

a. First Reading

10. Public Comments

11. Appointments

- a. Airport Commission - Milledge (Mickey) Wilson - Mary Arrowood

12. Executive Session

Code Section §30-4-70 (a) of the Code of Laws of SC, as amended, 1976

- (1) Discussion of employment, appointment, compensation, promotion, demotion, discipline, or release of an employee, a student, or a person regulated by a public body or the appointment of a person to a public body; however, if an adversary hearing involving the employee or client is held, the employee or client has the right to demand the hearing be conducted publicly. Nothing contained in this item shall prevent the public body, in its discretion, from deleting names of the other employees or clients whose records are submitted for use at the hearing.
- (2) Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property, the receipt of legal advice where the legal advice relates to a pending, threatened, or potential claim or other matters covered by the attorney-client privilege, settlement of legal claims, or the position of the public agency in other adversary situations involving the assertion against the agency of a claim.

13. Comments/Request from County Administrator

14. Comments/Request from Council

15. Future Meetings

- a. Finance Committee- September 12, 2022, at 6:00 p.m.
- b. County Council - September 21, 2022, at 6:00 p.m.
- c. Public Safety Committee – September 26, 2022, at 6:00 p.m.

16. Adjournment

# *NEWBERRY COUNTY COUNCIL*

## *MINUTES*

*August 17, 2022*

*The Newberry County Council met on Wednesday, August 17, 2022, at 6:00 p.m. in Council Chambers at the Courthouse Annex, 1309 College Street, Newberry, SC, for a regular scheduled meeting.*

*Notice of the meeting was duly advertised, as required by law.*

*PRESENT:    Todd Johnson, Chair (District 1)*  
*Les Hipp, Vice-Chair (District 5)*  
*Mary Arrowood, Council Member (District 2)*  
*Henry H. Livingston, III, Council Member (District 3)*  
*Robert N. Shealy, Council Member (District 4)*  
*Johnny Mack Scurry, Council Member (District 6)*  
*Travis Reeder, Council Member (District 7)*  
*Christopher Inglese, County Administrator*  
*Karen Brehmer, Deputy County Administrator*  
*Debbie S. Cromer, Finance Director*  
*Crystal Walrop, Purchasing Director*  
*Jacquelyn R. Lawrence, Clerk to Council*

*MEDIA:        Andrew Wigger, Newberry Observer*

*Mr. Johnson called the meeting to order and determined a quorum to be present.*

*Mr. Shealy had the invocation followed by the Pledge of Allegiance.*

### ***1. Additions, Deletions and Adoption of the Agenda***

*Mr. Shealy moved to adopt the agenda as written; seconded by Mrs. Arrowood. With no further discussion, Mr. Johnson called for the vote. The vote was unanimous.*

## **2. Public Appearance:**

### ***Steven Knapp – The Newberry Museum Executive Director***

*Mr. Knapp introduced himself and explained how he came to be in Newberry SC. He went on to explain how the museum works. Prior to the formation of the Newberry Museum, the artifacts and histories of Newberry County were forced to go elsewhere for preservation. The museum now provides a safe place for artifacts and histories to be cared for by a dedicated staff, supported by passionate volunteers. Additionally, the museum researches the stories of Newberry County. An example of one of the greatest stories is of Henry Bluford. Mr. Bluford was one of the first African American police officer killed in the line of duty during a riot on McKibben Street in 1874.*

*Education is a large part of the museum as well. Through the exhibits, programs, and educational outreach the museum provides Newberry County with a resource for historical study and furthering the educational opportunities of Newberry students and life-long learners. Groups of all ages are encouraged to come and learn from the museum.*

*The economic side of the museum is vital to the success of the museum. Through corporate partnerships, building business relationships, and heritage tourism, the Newberry Museum promotes the cultural and economic opportunities of Newberry County.*

*Having the museum provides a repository for our history and artifacts from the County. For local businesses it provides a draw for potential customers. The museum is also a place for local businesses to show off for potential investors and customers. The Newberry Museum demonstrates to the outside world that Newberry County is a place that values history, people, and the future.*

### ***Liz McDonald – Newberry County Assessor***

*Mrs. McDonald explained the new agricultural tax exemption. The exemption applies to certain agricultural buildings and farm structures. The exemption does not require an application. Within the 46 counties, all are interpreting the new law differently. Newberry County is sticking to the fact that the exemption does require that you are a producer. The production must be their primary source of revenue. This would include livestock, poultry, crops, farm equipment, machinery, self-propelled machinery, etc.*

*Regarding how this will affect the County financially, in the spring the numbers were around \$818,000 in assessed value which equated to about \$300,000 in taxes. Half of that amount went to the school taxes and the other half was real*

property taxes that could possibly be lost with this exemption. Staff should be able to lower those numbers now that there is a better understanding of the law and which properties it will exempt. Another note, tenant houses would not qualify for the exemption. Staff is working closely with DOR and other counties to make this transition as smooth as possible. It will be a work in progress for a while. Should a property owner feel that they should qualify for the exemption, they will be asked to complete a form and provide some documentation to the Assessor to show that the request does in fact qualify.

Kinards area has about 28% of that number. It will be affected the most.

Whitmire area will be affected a little less. The surrounding area of the city will be affected some and the areas around the lakes will be affected the least.

Newberry has experienced a tremendous amount of growth this year as far as new construction. Newberry Landing and Stuart Landing are new subdivisions in the County as a whole. This growth should help with some of the loss in revenue.

### ***Raleigh Hickman – Director of Veterans Affairs***

Mr. Hickman is former Army and Navy Serviceman. His roots are from South Carolina. He is married with 5 daughters, 6 granddaughters, and 1 grandson. Newberry County has been very welcoming to him. Veteran Affairs is very important to Mr. Hickman. He stated that the Pact Act has just been passed that entitles 2,000,000 more soldiers with benefits that they deserve. Mr. Hickman is excited to have the opportunity to serve the veterans of Newberry County and to assure that they receive the benefits that they deserve.

### ***3. Resolution to adopt an Employee Recognition and Longevity Salary Adjustment Policy***

Mr. Inglese stated that this Resolution would codify the previous practice that recognized employees for their longevity of service to the County. Should this Resolution be adopted it would be included in the next employee handbook. The Resolution provides for a 1% salary adjustment for every 10-year increment of service. It would also provide for a recognition pin for every 5-year increment of service.

Mr. Hipp asked if this would be an increase from what was being done before?

Mr. Inglese stated that this proposal was exponentially better than what was offered before. Additionally, this would be retroactive to January 1, 2022. Once the Resolution is adopted the employees that have not been recognized would then be brought before Council for recognition.

Council asked if Department Directors had been contacted regarding this matter and has there been any criticism?

*Mr. Inglese stated that some departments had been contacted and the only criticism was that it was not a flat amount being given.*

*Mr. Livingston stated that he would be voting against this Resolution as it could cause too much disparity amongst the employees.*

*Mrs. Arrowood made a motion that the Resolution be changed to reflect the 1% increase with a cap of \$500, seconded by Mr. Reeder. With no further discussion, Mr. Johnson called for the vote. Vote was unanimous.*

**4. Ordinance No. 05-16-2022 – An Ordinance establishing procedures and requirements for entering into development agreements in Newberry County.**

**a. Public Hearing**

*Mr. Johnson declared the public hearing open. With no one present to speak for or against the Ordinance, Mr. Johnson declared the public hearing closed.*

**b. Third and Final Reading**

*Mr. Hipp moved to adopt the third and final reading, seconded by Mr. Shealy. With no further discussion, Mr. Johnson called for the vote. The vote was unanimous.*

**5. Ordinance No. 06-19-2022 - An Ordinance acting on a request to amend the official zoning map established pursuant to Zoning Ordinance No. 12-24-01 as revised and amended by Zoning Ordinance No. 6-11-16 and codified in Chapter 153 of the Newberry County Code of Ordinances, establishes zoning classification and districts so as to rezone one (1) real estate parcel totaling three and eighty-seven hundredths (3.87) acres designated as TMS No. 28-1-1-6, from R2 – Rural to GC – General Commercial.**

**a. Public Hearing**

*Mr. Johnson declared the public hearing open. With no one present to speak for or against the Ordinance, Mr. Johnson declared the public hearing closed.*

**b. Third and Final Reading**

*Mr. Shealy moved to adopt the second reading, seconded by Mr. Hipp. With no further discussion, Mr. Johnson called for the vote. The vote was unanimous.*

**6. Ordinance No. 07-20-2022 - An Ordinance for the purpose of leasing out certain county fairgrounds property.**

**a. Second Reading**

*Mr. Inglese stated the only change from first reading was the packet included the lease agreement. The lease terms stated at first reading remain the same.*

*Mr. Shealy moved to adopt the second reading, seconded by Mr. Reeder. With no further discussion, Mr. Johnson called for the vote. The vote was unanimous.*

**7. Discussion/Approval of RFP for external audit services – Crystal Waldrop**

*Crystal Waldrop, Procurement Director, stated staff had reached out Mauldin & Jenkins per Council's request and they have agreed to reduce their bid by \$5000. The reason they did not reduce further is that they are new to the County, there are some additional GASB requirements regarding leases this year, retaining qualified employees on staff, and what is required of the audit. The County currently has \$41,000 budgeted for the audit.*

*Mr. Inglese stated in the interest of time we should move forward and that the additional cost should be able to be absorbed elsewhere. However, if it is not then a budget ordinance could be presented later in the year.*

*Mr. Hipp moved to accept the proposal for the \$60,000 fee, contingent on a one-year contract, seconded by Mr. Scurry. With no further discussion, Mr. Johnson called for the vote. The vote was unanimous.*

**8. Executive Session**

*Code Section §30-4-70 (a) of the Code of Laws of SC, as amended, 1976*

- (1) Discussion of employment, appointment, compensation, promotion, demotion, discipline, or release of an employee, a student, or a person regulated by a public body or the appointment of a person to a public body; however, if an adversary hearing involving the employee or client is held, the employee or client has the right to demand the hearing be conducted publicly. Nothing contained in this item shall prevent the public body, in its discretion, from deleting names of the other employees or clients whose records are submitted for use at the hearing.*
- (2) Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property, the receipt of legal advice where the legal advice relates to a pending, threatened, or potential claim or other matters covered by the attorney-client privilege, settlement of legal claims, or the position of the public agency in other adversary situations involving the assertion against the agency of a claim.*



- (3) *Discussion of matters relating to the proposed location, expansion, or the provision of services encouraging location or expansion of industries or other businesses in the area served by the public body.*

*Mr. Shealy moved to go into Executive Session to discuss the matters as set forth above; seconded by Mr. Reeder. There being no further discussion, Mr. Johnson called for the vote. The vote was unanimous.*

### ***EXECUTIVE SESSION***

***6:52 P.M. – 9:24 P.M.***

*Mr. Shealy moved to return to open session; seconded by Mr. Scurry. Mr. Johnson called for the vote. The vote was unanimous.*

*Mr. Hipp made a motion to create a full-time employee in the coroner's office. This position is funded by the State of South Carolina and contingent upon that funding. If The State continues to fund the position, the position will remain. Mr. Johnson noted that two part-time positions would be removed to make room for this position. The funds being provided can only be used for said position. The motion was seconded by Mrs. Arrowood. With no further discussion, Mr. Johnson called for the vote. The vote was unanimous.*

## ***9. Adoption of Consent Agenda***

### ***a. Newberry County Council Meeting – Minutes July 20, 2022***

*Mr. Reeder moved to adopt the consent agenda; seconded by Mr. Shealy. Mr. Johnson called for the vote. The vote was unanimous.*

## ***10. Appointments***

*Mr. Reeder moved to reappoint Vina Abrams to the Central Midlands Council of Government Board, seconded by Mr. Shealy. With no further discussion, Mr. Johnson called for the vote. The vote was unanimous.*

*Mr. Johnson moved to reappoint Tommy Amick to the Airport Commission, seconded by Mr. Reeder. With no further discussion, Mr. Johnson called for the vote. The vote was unanimous.*

## ***11. Public Comments***

*No public comments made.*

## ***12. Comments/Request from County Administrator***

*There will be a fair in Newberry August 25-28, 2022.*

*Paperless paystubs are in the works.*

*Mr. Inglese will be on WKDK August 18, 2022.*

## ***13. Comments/Request from Council Members***

*Mr. Johnson noted that he was able to attend the Economic Development Strategic Task Force meeting, and everything seems to be moving along very well.*

## ***14. Future Meetings***

- a. County Council - September 7, 2022, at 6:00 p.m.*
- b. Finance Committee- September 12, 2022, at 6:00 p.m.*
- c. County Council - September 21, 2022, at 6:00 p.m.*
- d. Public Safety Committee - September 26, 2022, at 6:00 p.m.*

## ***15. Adjournment***

*Mrs. Arrowood moved to adjourn the meeting, seconded by Mr. Shealy. Mr. Johnson called for the vote. Vote was unanimous. The meeting adjourned at 9:32 p.m.*

*Newberry County Council*

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*Todd Johnson, Chairman*

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*Jackie Lawrence, Clerk to Council*

*Minutes approved:*

COUNTY OF NEWBERRY       )  
  )  
STATE OF SOUTH CAROLINA )

**PROCLAMATION  
HISPANIC HERITAGE MONTH**

**WHEREAS**, the County of Newberry encourages and promotes strong and inclusive communities that recognize and celebrate efforts to bring people together for a greater good; and,

**WHEREAS**, we commemorate the strong and visible roots of Hispanic and Latino heritage in the national, regional, and local landscape of the nation; and,

**WHEREAS**, September 15<sup>th</sup> to October 15<sup>th</sup> is National Hispanic Heritage Month and in which many federal agencies, such as the Library of Congress, National Park Service and Smithsonian Institution, join in paying tribute to the generations of Hispanic Americans who have positively influenced and enriched our nation and society; and,

**WHEREAS**, the date September 15<sup>th</sup> is significant because it is the anniversary of independence for the Latin American countries of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua and additionally Mexico and Chile celebrate their independence days on September 16<sup>th</sup> and 18<sup>th</sup> respectively; and,

**WHEREAS**, Newberry has many families representing different Hispanic Cultures and traditions from Puerto Rico, Mexico, Guatemala, Honduras, Nicaragua, El Salvador, Chile, and other South American countries; and,

**WHEREAS**, National Hispanic Heritage Month has been celebrated since 1989; and

**WHEREAS**, the Hispanic community in Newberry makes significant contributions to the cultural, educational, and economic vitality of Newberry.

**NOW, THEREFORE**, I, Newberry County Council, do hereby declare September 15th through October 15, 2022, as National Hispanic Heritage Month in recognition of the great contributions of Hispanic culture in our nation, state, and community.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the Seal of the State of South Carolina,

**DONE** at the Newberry, SC this 7th day of September 2022.

**NEWBERRY COUNTY COUNCIL**

**SEAL**

**BY:** \_\_\_\_\_  
**Todd Johnson, Chairman**

**ATTEST:**

\_\_\_\_\_  
**Jackie Lawrence, Clerk of Council**

**STATE OF SOUTH CAROLINA    )   RESOLUTION NO: 05-22 OF**  
**)   NEWBERRY COUNTY COUNCIL**  
**)   SUPPORTING THE SOUTH CAROLINA**  
**)   AMERICAN REVOLUTION**  
**)   SESTERCENTENNIAL COMMISSION**  
**)   AND CREATING THE NEWBERRY**  
**COUNTY OF NEWBERRY         )   COUNTY 250 COMMITTEE**

**WHEREAS**, South Carolina created the South Carolina American Revolution Sestercentennial Commission (250th Anniversary Commission also known as SC250);

**WHEREAS**, the mission of the SC250 Commission is to commemorate and promote South Carolina's role in the American Revolution by educating, engaging, and inspiring South Carolinians and visitors;

**WHEREAS**, the SC250 Commission is seeking partnerships with counties and municipalities to further its mission;

**WHEREAS**, this partnership will be formed by creating a local committee called the Newberry County 250 Committee.

**WHEREAS**, the Newberry County 250 Committee will focus on important events, people, and places within Newberry County to comemorate and promote Newberry County's role in the American Revolution by educating, engaging, and inspiring South Carolinians and visitors;

**WHEREAS**, local projects (i.e. celebrations, restoration of local historical markers, rebuilding of local historical infrastructure, etc.) will enhance historical tourism opportunities;

**NOW, THEREFORE BE IT RESOLVED THAT NEWBERRY COUNTY COUNCIL:**

1. Hereby recognizes the Newberry County 250 Committee as the official committee.
2. Will partner with the South Carolina American Revolution Sestercentennial Commission (SC250).
3. Will support initiatives by the SC250 Commission and
4. Will support the Newberry County 250 Committee in their local efforts to educate, engage, and inspire South Carolinians and our visitors thereby enhancing historical tourism opportunities in Newberry County.

**AND IT IS SO RESOLVED** this \_\_\_ day of \_\_\_\_\_ 20\_\_.

**NEWBERRY COUNTY COUNCIL**

**(SEAL)**

**BY: \_\_\_\_\_**  
**Todd Johnson, Chairman**

**Attest:**

\_\_\_\_\_  
**Jackie Lawrence, Clerk to Council**

## Newberry County 250 Committee

Background. 2026 will be the 250<sup>th</sup> anniversary of the American Revolution. The Liberty Trail was established to promote heritage tourism by highlighting Revolutionary War historic sites across South Carolina. The designated sites are grouped into four Trail areas I through VI. Newberry County is located in the area covered by Trail IV. The Liberty Trail will operate as a historic driving route similar to the South Carolina Heritage Corridor, with an Ap guiding the way

Within Newberry County at least 14 battle/skirmish sites have been identified. In addition, at least 16 other sites related to British LtCol Banestre Tarleton's movement through Newberry County enroute to the battle of Cowpens are proposed for possible inclusion in the Liberty Trail.

Action Plan. The following are the action steps to accomplish this plan.

- Establish the "Newberry County 250 Committee"
- Research and document the location of each site
- Determine/confirm survey data for each site
- Use QGIS Geodetic Mapping Program to plot confirmed sites on Newberry County map
- Document/develop historical Context Narrative for each Site
- Document/confirm actual routes and overlay onto current Newberry County map
- Develop a "Turn-By-Turn" descriptive narrative
- Create a Site Development Plan for each site
- Finalize content, and design, produce, and install interpretive markers
- Include Newberry County sites on the Liberty Trail AP

Newberry County 250 Committee. Each county will establish an official "250 Committee" to manage grant money and coordinate the efforts of their respective county. The Newberry County 250 Committee set forth in this document will initially consist of the following representatives and organizations:

John Favors:	The Newberry Museum
Liz MacDonald:	Newberry County Chamber of Commerce/ Newberry County Visitor Center
Foster Senn	Mayor, City of Newberry
Chris Prince	Town of Whitmire
Dr. Elwood Jones:	Town of Prosperity
Ernie Shealy:	Newberry County Historical Society
Suzanne Johnson:	Fairfield County Historical Society
Tom Forte	Col. Philemon Waters Chapter, Sons of the American Revolution
Derryll Saterwhite:	Jasper Chapter, Daughters of the American Revolution
Steve Katzburg:	QGIS Geodetic Mapping
Mike Bedenbaugh:	Preservation South Carolina (Advisor and Special Consultant)

Other members may be added to assist this Committee as needed.

Partner Organizations:

Furman Miller:	Palmetto Trail
Sue Eleazor:	Dutch Fork Chapter, South Carolina Genealogical Society
Eddie Killian:	Fairfield County Museum
J.R. Fennel:	Lexington County Museum/Historical Society
Kate Smith:	Union County Museum



**Newberry County  
Administration**

1309 College Street  
P.O. Box 156  
Newberry, SC 29108  
803-321-2100



**Agenda Item Briefing**

**Subject:** Project Motion

**Prepared By:** Rick Farmer

**Title:** Project Motion Extension of Project Period

**Department/Division:** Economic Development

**Date Prepared:** 8/31/2022

**Legal Review:** \_\_\_\_\_

**Date:** Click or tap to enter a date.

**Finance Review:** \_\_\_\_\_

**Date:** Click or tap to enter a date.

**Administrator Review:** \_\_\_\_\_

**Date:** Click or tap to enter a date.

**Requested meeting:** ☐ Committee ☒ County Council

**Meeting Date:** Wednesday, September 7, 2022

**FIDUCIARY:**

Are funds allocated in the department's current fiscal year budget?

☐ Yes

☒ No

If NO, is a budget amendment necessary?

☐ Yes

☒ No

**STAFF'S RECOMMENDED ACTION:** Staff recommends Council consideration of a First Amendment to a 2017 Fee in lieu of tax agreement between Newberry County and Project Motion, an existing industry in Newberry County (Trucast). Additionally, staff requests Council consider passage of a necessary resolution. If approved, these changes in the 2017 deal will allow Trucast to invest another \$5 million in the local plant over the next five years, and still receive the tax benefits of the 2017 agreement on the new investments.

**ADDITIONAL FISCAL/BUDGETARY MATTERS TO CONSIDER:** This action will not cost the county any funds. In fact, this \$5 million investment would increase fee revenues paid by the company to the county. The 2017 deal required the company to invest at least \$3 million in the county, and create 10 net new jobs. Trucast's attorney has certified the company has already met those requirements.

**SUMMARY DISCUSSION:** Trucast is an existing industry in Newberry and was the very first tenant in Newberry County Industrial Park. The company has paid taxes and fees and employed Newberry County residents for 26 years. The company is headquartered in the United Kingdom, and the local facility manufactures parts for commercial truck engines. This amendment to the 2017 agreement changes the parameters of the 2017 from a minimum of \$3 million to a minimum of \$8 million, essentially clearing the way for a \$5 million expansion. The amendment does not require the company to add new jobs.

**ADDITIONAL COMMENTS FOR CONSIDERATION:**

**ATTACHMENTS:**

1. First Amendment to Trucast FILOT; and
2. Resolution Approving 2022 Trucast Amendment

STATE OF SOUTH CAROLINA )  
 )  
NEWBERRY COUNTY )

**RESOLUTION NO. 06-22**

**A RESOLUTION AUTHORIZING AN AMENDMENT TO THAT CERTAIN  
FEE AGREEMENT BY AND BETWEEN NEWBERRY COUNTY, SOUTH  
CAROLINA AND TRUCAST, LLC; AND OTHER RELATED MATTERS.**

**WHEREAS**, Newberry County, South Carolina (the "County"), acting by and through its County Council (the "County Council"), adopted Resolution #12-17 (the "Inducement Resolution") which identified a certain economic development project to be located and constructed in the County (the "Project") by Trucast, LLC, a Delaware limited liability company previously identified as "Project Prime" (the "Company"); and

**WHEREAS**, on December 6, 2017, the County adopted and enacted Ordinance No. 11-26-17 (the "Ordinance") authorizing the County to enter into that certain Fee Agreement (the "Fee Agreement") with the Company, providing for an anticipated investment by the Company in the County of at least \$3,000,000 over a period of five (5) years from the last day of the property tax year during which the Project or a portion of the Project has been placed in service ("Commencement Date"); and

**WHEREAS**, the Company has represented to the County that the Company has invested at least \$3,000,000 in the Project and created at least 10 new, full-time jobs since the Commencement Date; and

**WHEREAS**, the Fee Agreement provides for an extension of the Project Period (as defined in the Fee Agreement) by five (5) years upon approval of the County by resolution of the County Council;

**WHEREAS**, the County and the Company wish to enter into an Amendment to the Fee Agreement, the form of which is attached hereto as **Exhibit A** ("Amendment"), which shall increase the required investment in the Project by the Company from \$3,000,000 to \$8,000,000 and extend the Project Period to include the Extension Period (as defined in the Fee Agreement).

**NOW, THEREFORE, BE IT RESOLVED**, by County Council as follows:

**Section 1. *Approval of Amendment to Fee Agreement.***

(a) The form, terms, and provisions of the Amendment presented to this meeting and filed with the Clerk of the County Council (the "Clerk") are approved and all of the terms, provisions, and conditions of the Amendment incorporated by reference. The Chairman of the County Council (the "Chairman") and the Clerk are authorized, empowered, and directed to execute, acknowledge, and deliver the Amendment in the name of the County. The Chairman and



the Clerk are further authorized, empowered, and directed to cause the Amendment to be delivered to the Company.

(b) The Amendment to be executed on behalf of the County shall be in substantially the form now before the County Council and shall include only changes that are not adverse to the County and are approved by the County officials executing the Amendment. The County officials shall consult the County Attorney with respect to any changes to the Amendment. The execution of the Amendment by County officials shall constitute conclusive evidence that they have approved all changes to or revisions of the Amendment now before this meeting.

**Section 2. *Execution of Document.*** The Chairman, the County Administrator, the Clerk, and the County Attorney are each authorized and directed to do all things necessary to effect the execution and delivery of the Amendment and the County's performance of its obligations under the Amendment.

**Section 3. *Severability.*** The provisions of this Resolution are declared to be separable. If any section, phrase, or provision shall be declared by a court of competent jurisdiction to be invalid or unenforceable for any reason, the remaining sections, phrases, and provisions of the Resolution shall remain valid.

**Section 4. *Modification.*** This Resolution shall not be amended, rescinded, or modified except with the prior written consent of the County and the Company.

**Section 5. *Effective Date.*** This Resolution shall take effect immediately upon reading and approval of County Council.

Adopted in meeting duly assembled this 7<sup>th</sup> day of September 2022.

**NEWBERRY COUNTY COUNCIL**

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Todd Johnson, Chairman  
Newberry County, South Carolina

**ATTEST**

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Jackie Lawrence, Clerk to Council  
Newberry County, South Carolina

**EXHIBIT A**

**Form of Amendment**

## **FIRST AMENDMENT TO FEE AGREEMENT**

THIS FIRST AMENDMENT TO FEE AGREEMENT (this "Amendment"), dated as of September 7, 2022, is made and entered into by and between NEWBERRY COUNTY, SOUTH CAROLINA, a public body corporate and a political subdivision of the State of South Carolina (the "County"), and TRUCAST, LLC, a limited liability company organized and existing under the laws of the State of Delaware (the "Company"). All capitalized terms used herein without definition shall have the same meanings herein as such terms are defined in the Fee Agreement (hereinafter defined).

### **RECITALS**

WHEREAS, the County and the Company entered into a Fee Agreement dated as of December 6, 2017 (the "Fee Agreement");

WHEREAS, the Fee Agreement provides for an extension of the Project Period by five (5) years upon approval of the County by resolution of the County Council;

WHEREAS, the Company has represented to the County that the Company has met the Minimum Investment Threshold and the Jobs Creation Commitment, and desires to make additional investment at the Project; and

WHEREAS, at the request of the Company, the County and the Company desire to amend certain provisions of the Fee Agreement to approve the Extension Period, which will extend the Project Period for an additional five (5) years.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

### **ARTICLE I AMENDMENTS**

Section 3.5 of the Fee Agreement is hereby deleted and replaced with the following:

#### **"3.5 Minimum Investment and Jobs Creation Commitment**

Before the Completion Date, the Company will invest at least Three Million Dollars (\$3,000,000) in the Project and by the end of the Extension Period the Company will invest at least Eight Million Dollars (\$8,000,000) in total in the Project ("Minimum Investment Threshold"). The Company will employ at least Ten (10) new, full-time employees at the Project before the Completion Date ("Jobs Creation Commitment")."

### **ARTICLE II MISCELLANEOUS**

Section 2.1. This Amendment shall be effective from the date first above written.

Section 2.2. Except as specifically amended hereby, the Fee Agreement shall continue in full force and effect in accordance with its terms. Reference to this specific Amendment need to be made in the Fee Agreement or any other instrument or document executed in connection therewith, or in any certificate, letter or communication issued or made pursuant to or with respect to the Fee Agreement, any reference in any of such items to the Fee Agreement being sufficient to refer the Fee Agreement as amended hereby. The County and the Company confirm all their respective representations and covenants made under the Fee Agreement as if made on the date of this Amendment.

Section 2.3. This Amendment shall be governed by South Carolina law.

This Amendment may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

[Remainder of Page Intentionally Left Blank]

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their respective duly authorized officers as of the date first above written.

**NEWBERRY COUNTY, SOUTH CAROLINA**

By: \_\_\_\_\_  
Todd Johnson, County Council Chair  
Newberry County, South Carolina

**ATTEST:**

By: \_\_\_\_\_  
Jackie Lawrence, Clerk to County Council  
Newberry County, South Carolina

[Signature Page of the County]

[Signature Page of the Company Follows]

TRUCAST, LLC

By: \_\_\_\_\_

[Signature Page of the Company]

**Newberry County  
Administration**

1309 College Street  
P.O. Box 156  
Newberry, SC 29108  
803-321-2100



**Agenda Item Briefing**

**Subject:** Project Eco

**Prepared By:** Rick Farmer

**Department/Division:** Economic Development

**Legal Review:** \_\_\_\_\_

**Finance Review:** \_\_\_\_\_

**Administrator Review:** \_\_\_\_\_

**Requested meeting:** ☐ Committee ☒ County Council

**Title:** Director

**Date Prepared:** 8/31/2022

**Date:** Click or tap to enter a date.

**Date:** Click or tap to enter a date.

**Date:** Click or tap to enter a date.

**Meeting Date:** Wednesday, September 7, 2022

**FIDUCIARY:**

Are funds allocated in the department's current fiscal year budget?

☐ Yes

☒ No

If NO, is a budget amendment necessary?

☐ Yes

☒ No

**STAFF'S RECOMMENDED ACTION:** Staff requests that Council consider several documents with respect to Project Eco, a \$89 million clean power solar farm planned to be constructed between Silverstreet and Chappells. 1. An Inducement Resolution that identifies the project and allows the County leadership to negotiate a fee-in-lieu-of tax (FILOT) agreement between the Company and the County; 2. A FILOT/MCIP Ordinance that authorizes the County to deliver to the Company a fee agreement, and authorizes adding the property to an existing Multi-County Industrial Park; and 3. The FEE Agreement between the County and the Company.

**ADDITIONAL FISCAL/BUDGETARY MATTERS TO CONSIDER:** The net result of the construction of this project would generate a minimum of \$216,050.00 to the county each year for a period of 30 years. In tax year 2021, the three parcels on which this solar farm would be constructed generated, as agricultural timberland, \$4,961.84 for all taxing entities in Newberry County. The agreements Council is being asked to consider call for a FILOT with an equalized payment structure that remains static over 30 years. The average Special Source Revenue Credit would be 70%, but since it utilizes an equalized payment, the SSRC will start higher than 70% and end far lower than 70%. If the solar farm operates for the entire 30 years of the agreement, it would generate approximately \$6.5 million in new revenue for Newberry County.

**SUMMARY DISCUSSION:** Project Eco is an \$89 million, 74.5 megawatt solar project that would be constructed on three parcels between Silverstreet and Chappells, 109-6, 109-11 and 110-2, totaling about 1,270 ac. The property has already been successfully rezoned from Agricultural to Industrial, the latter of which is a requirement for commercial solar farms in Newberry County. The company has successfully obtained deals from two other communities in South Carolina, in Aiken and Chesterfield counties, and the parameters of the proposed Newberry County deal are virtually identical. Normally we protect the company names during the project development process, but in this case the Company has been very public about who it is and what it plans to do. The Company is named Ecoplexus, and it plans,

constructs and operates solar farms. To date, the company has 750 megawatts in its active solar generation portfolio, with a backlog of another 1,500MW in capacity. The company has another 7,600MW of capacity in development. More information on Ecoplexus can be found at <https://www.ecoplexus.com/>.

**ADDITIONAL COMMENTS FOR CONSIDERATION:**

- ATTACHMENTS:**
1. Inducement Resolution;
  2. FILOT/MCIP Ordinance;
  3. Fee Agreement; and
  4. Project Eco Site Concept



STATE OF SOUTH CAROLINA )  
 ) RESOLUTION NO.: 07-22  
COUNTY OF NEWBERRY )

**INDUCEMENT RESOLUTION COMMITTING TO  
NEGOTIATE A FEE IN LIEU OF TAX AGREEMENT  
BETWEEN NEWBERRY COUNTY AND NEWBERRY PV1,  
LLC; IDENTIFYING THE PROJECT; AND OTHER  
MATTERS RELATED THERETO**

WHEREAS, Newberry County, South Carolina (the "County"), acting by and through its County Council (the "County 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 "Act"), to enter into a fee in lieu of tax agreement (the "Fee Agreement") with respect to a project which requires the industry to make a payment of a fee in lieu of taxes, through which powers the industrial development of the State of South Carolina and the County will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State of South Carolina and the County and thus to utilize and employ the manpower, products, and natural resources of the State of South Carolina to benefit the general public welfare of the County by providing services, employment, and other public benefits not otherwise provided locally; and

WHEREAS, Newberry PV1, LLC, a [] limited liability company on its own or together with one or more of its subsidiaries, affiliates, successors, assigns, sponsors, lessors, and others (collectively, the "Company"), desires to invest capital in the County in order to establish a solar energy facility in the County (the "Project"), provided that approvals of various incentives contemplated for the Project are formalized by the State and/or County; and

WHEREAS, the Project is anticipated to result in an investment of approximately \$89,000,000 in the County; and

WHEREAS, the Company has requested that the County enter into a Fee Agreement, thereby providing for a fee in lieu of tax ("FILOT") and infrastructure and/or special source revenue credits ("SSRCs") with respect to the Project; 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" and "economic development property" as such terms are defined in the Act and that the Project would serve the purposes of the Act.

WHEREAS, pursuant to the authority of Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended and Article VIII, Section 13 of the South Carolina Constitution, the County agrees to use its best efforts to ensure that the Project is located in a multi-county industrial and business park established, or to be established, by the County (the "Park") pursuant to a qualifying agreement with one or more contiguous South Carolina counties (the "Park Agreement").

NOW, THEREFORE, BE IT RESOLVED by the County Council as follows:

Section 1. The County hereby agrees to negotiate a fee in lieu of tax agreement with the Company under the Act, which may provide for a fee in lieu of *ad valorem* taxes ("FILOT") for a period of 30 years for each component of the Project placed in service during the investment period (the "FILOT Term") under the Act and calculated using a 6% assessment ratio and a fixed millage rate equal to the lowest millage rate allowable under the Act for a period of 30 years for each component of the Project placed in service during the investment period.

Section 2. The further details of the FILOT and the SSRCs shall be prescribed by subsequent ordinance of the County to be adopted in accordance with South Carolina law and the rules and procedures of the County.

Section 3. The County agrees to use its best efforts to ensure that the Property is already located in or to include the Property in a Park for at least the longer of a 30-year period or the period of time the FILOT arrangement is in place.

Section 4. This resolution shall constitute an inducement resolution for this Project within the meaning of the Act.

Section 5. This resolution shall constitute "preliminary approval" pursuant to Section 12-44-110(2) of the Act by which property may be placed in service prior to the execution of a FILOT agreement but still constitute economic development property under the Act.

Section 6. All orders, resolutions, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed. This resolution shall take effect and be in full force from and after its passage by the County Council.

(Signature Page Follows)

Adopted this 7<sup>th</sup> day of September, 2022.

NEWBERRY COUNTY, SOUTH CAROLINA

Signature: \_\_\_\_\_

Name: Todd Johnson

Title: Council Chairman

(SEAL)

ATTEST:

Signature: \_\_\_\_\_

Name: Jackie Lawrence

Title: Clerk to County Council

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF NEWBERRY )      **ORDINANCE NO. 08-21-2022**

**ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE AGREEMENT BY AND BETWEEN NEWBERRY COUNTY, SOUTH CAROLINA AND NEWBERRY PV1, LLC PROVIDING FOR A PAYMENT OF A FEE IN LIEU OF TAXES, PROVIDING SPECIAL SOURCE REVENUE CREDITS, AND AUTHORIZING AN AMENDMENT TO THE MASTER AGREEMENT GOVERNING THE GREENWOOD-NEWBERRY INDUSTRIAL PARK TO PROVIDE FOR THE ADDITION OF PROPERTY AND OTHER MATTERS RELATED THERETO.**

WHEREAS, Newberry County, South Carolina (the "County") acting by and through its County Council (the "County Council") is authorized and empowered pursuant to the provisions of Title 12, Chapter 44 of the Code of Laws of South Carolina, 1976, as amended (the "Act"), to enter into fee agreements with any industry, with said agreements identifying certain properties of such industries as economic development property, through which powers the industrial development of the State of South Carolina (the "State") and the County will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate, remain, and expand in the State and the County and thus utilize and employ the manpower, products, and natural resources and benefit the general public welfare of the State and County by providing services, employment, or other public benefits not otherwise adequately provided locally; and

WHEREAS, pursuant to Title 4, Section 1 of the Code of Laws of South Carolina, 1976, as amended ("Park Act"), the County and Greenwood County entered into that certain Master Agreement Governing the Greenwood-Newberry Industrial Park, effective December 31, 2012 (as amended, modified, and supplemented, collectively, the "Park Agreement") whereby the County and Greenwood County agreed to develop a joint county industrial or business park eligible to include property located in either the County or Greenwood County ("Park"); and

WHEREAS, Section 1.01(a) of the Park Agreement establishes the procedure or enlargement of the boundaries of the Park to include additional property; and

WHEREAS, Newberry PV1, LLC (the "Company") has committed to investing in the establishment of a solar energy facility through the acquisition of land, a building, and improvements thereon (the "Land and Building"); the construction of improvements thereon and/or therein; and/or the acquisition of personal property, including, but not limited to, machinery, equipment, and furniture to be installed on and/or in the Land and Building, which would constitute a project within the meaning of the Act and which are eligible for inclusion as economic development property, the cost of which is estimated to be approximately \$89,000,000 over five years (the "Project"), all as more fully set forth in the Fee Agreement attached hereto, and provided that approvals of various incentives contemplated for the Project are formalized by the State and/or County; and

WHEREAS, at the request of the Company, the County, having determined that an enlargement of the boundaries of the Park would promote economic development and thus provide additional employment and investment opportunities within said County and Greenwood County, desires to enlarge the boundaries of the Park to include therein certain property, as described in greater detail on the attached **Exhibit A** located in Newberry County; and

WHEREAS, pursuant to an Inducement Resolution dated as of September 7, 2022, the County authorized the negotiation of an agreement providing for fee in lieu of tax payments; and

WHEREAS, the Company has caused to be prepared and presented to this meeting the form of the Fee Agreement by and between the County and the Company (the "Fee Agreement"), which provides for fee in lieu of tax payments utilizing a 6% assessment ratio for a period of 40 years for the Project or each component thereof placed in service during the initial investment period and any investment period extension to which the County and the Company agree and the issuance special source revenue credits as further described therein; and

WHEREAS, it appears that the Fee Agreement, which is now before this meeting, is in appropriate form and is an appropriate instrument to be executed and delivered by the County for the purposes intended.

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

Section 1. In order to promote industry, develop trade, and utilize and employ the manpower, products, and natural resources of the State of South Carolina by assisting the Company to expand or locate an industrial facility in the State of South Carolina, the Fee Agreement is hereby authorized, ratified, and approved.

Section 2. Based solely on information provided by the Company to the County, 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 Act, and the County's actions herein will subserve the purposes and in all respects conform to the provisions and requirements of the Act.
- (b) The Project and the payments in lieu of taxes set forth herein are beneficial to the County, and the County has evaluated the Project based upon all criteria prescribed by law, including the anticipated dollar amount and nature of the investment to be made and the anticipated costs and benefits to the County.
- (c) The Project 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.
- (d) 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.

- (e) 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.
- (f) The inducement of the location or expansion of the Project within the County and State is of paramount importance.
- (g) The benefits of the Project to the public will be greater than the costs.

Section 3. The form, terms, and provisions of the Fee Agreement presented to this meeting are hereby approved, and all of the terms, provisions, and conditions thereof are incorporated herein by reference as if the Fee Agreement were set out in this Ordinance in its entirety. The Chairman of the County Council and/or the County Administrator are authorized, empowered, and directed to execute, acknowledge, and deliver the Fee Agreement in the name of 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, with such changes therein as shall not be materially adverse to the County and as shall be approved by the officials of the County executing the same, upon the advice of Counsel to the County, such official's execution thereof to constitute conclusive evidence of such official's approval of any and all changes or revisions therein from the form of the Fee Agreement now before this meeting.

Section 4. The enlargement of the boundaries of the Park, and the granting of an extended period of time for inclusion of the property as described in **Exhibit A** in the Park, is hereby authorized and approved.

Section 5. The Chairman of the County Council and/or the County Administrator, for and on behalf of the County, are hereby authorized and directed to do any and all things necessary to effect the execution and delivery of the Fee Agreement and the performance of all obligations of the County under and pursuant to the Fee Agreement.

Section 6. 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 7. All orders, resolutions, ordinances, and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed, and this Ordinance shall take effect and be in full force from and after its passage and approval.

(SIGNATURE PAGE TO FOLLOW)

Passed and approved this \_\_\_\_ day of \_\_\_\_\_, 2022.

**NEWBERRY COUNTY,  
SOUTH CAROLINA**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[illegible]

I, the undersigned, Clerk to County Council of Newberry County, South Carolina ("County Council"), DO HEREBY CERTIFY:

That the foregoing constitutes a true, correct, and verbatim copy of an Ordinance adopted by the County Council. The Ordinance was read and received a favorable vote at three public meetings of the County Council on \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_. At least one day passed between first and second reading, and at least seven days passed between second and third readings. A public hearing was held on \_\_\_\_\_, and notice of the public hearing was published in the \_\_\_\_\_ on \_\_\_\_\_. At each meeting, a quorum of County Council was present and remained present throughout the meeting.

Attached hereto are excerpts of the minutes of the meetings of the County Council. The County Council complied with the Freedom of Information Act, Chapter 4, Title 30 of the S.C. Code of Laws, 1976, in connection with said meetings of County Council.

The Ordinance is now in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my Hand and the Seal of Newberry County Council, South Carolina, as of this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Clerk to County Council

**EXHIBIT A**  
**DESCRIPTION OF NEWBERRY PV1, LLC PROPERTY**

All of that property subject to the Deed to Real Estate from TCA International, Inc. to TCA Timberlands, Inc. dated March 4, 1998, and as more fully described below.

**EXHIBIT A TO DEED OF  
TCA INTERNATIONAL, INC.  
TO  
TCA TIMBERLANDS, INC.**

**PARCEL 1:** All that piece, parcel or tract of land, with the improvements and fixtures thereon, situate, lying and being in Tax District No. 2, Newberry County, South Carolina, containing 800 acres, more or less, according to a plat of "Property of the Burton Heirs" by Walton B. Halfacre recorded in Plat Book "I", at pages 133-134, which is incorporated herein by reference. According to the plat the tract is bounded on the north by a road (now known as Highway 48, "Island Ford Road"); on the east by a tract of 564 acres according to the plat designated "M.B.R."; on the south by Little River; and on the west by Little River and property of Schumpert. This is a portion of property conveyed to the grantor by deed of Anna Louise Spigener recorded May 3, 1995 in the office of the Clerk of Court for Newberry County in Deed Book 414, at page 94. TMS 109-6

**PARCEL 2:** All that piece, parcel or tract of land, with all improvements and fixtures thereon, situate, lying and being in Tax District No. 2, Newberry County, South Carolina, containing 320.78 acres according to a survey and plat by Martyn Cavanaugh dated January 1972, recorded in the office of the Clerk of Court for Newberry County in Plat Book "AF", at page 161, on which it is designated as Section "B". According to the plat, which is incorporated herein by reference, the tract is bounded on the north by lands of J. Foster Senn and lands of U. S. Plywood-Champion Papers Inc.; on the east by Section "C" as shown on the plat; on the south by Little River; and on the west by undesignated property, the same being a tract of 800 acres as shown on plat of "Property of Burton Heirs" by Walton B. Halfacre from a survey in the winter of 1943 and 1944, recorded in Plat Book "I", at page 133 and 134; and on the northwest by S. C. Highway 48. This is the same property conveyed to the grantor by deed of The Taylor Foundation recorded February 27, 1997 in Deed Book 454, at page 110. TMS 110-2

**PARCEL 3:** All that piece, parcel or lot of land situate, lying and being in Newberry County, South Carolina, containing one (1) acre, more or less, being partially shown as .67 of an acre on a plat prepared by Thomas B. Abraham, September 19, 1984, said plat being recorded in the office of the Clerk of Court for Newberry County in Plat Book AF-2, at page 174, and being partially shown as .2572 of an acre on a plat prepared by Claude E. Johnson, February 6, 1981, said plat being recorded in the office of the clerk of Court for Newberry County in Plat Book AX, at page 92. This property was conveyed to



FEE AGREEMENT

Between

NEWBERRY COUNTY, SOUTH CAROLINA

and

NEWBERRY PV1, LLC

Dated as of October \_\_, 2022

RECAPITULATION OF CONTENTS OF  
FEE AGREEMENT PURSUANT TO S.C. CODE §12-44-55(A)

The parties have agreed to waive this requirement pursuant to S.C. Code Ann. § 12-44-55(B).

## FEE AGREEMENT

THIS FEE AGREEMENT (the "Fee Agreement") is made and entered into as of October \_\_\_\_\_, 2022 by and between NEWBERRY COUNTY, SOUTH CAROLINA (the "County"), a body politic and corporate and a political subdivision of the State of South Carolina (the "State"), acting by and through the Newberry County Council (the "County Council") as the governing body of the County, and NEWBERRY PV1, LLC, a [] limited liability company (the "Company").

### RECITALS

1. Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (the "Act") authorizes the County (i) to induce industries to locate in the State; (ii) to encourage industries now located in the State to expand their investments and thus make use of and employ manpower, products, and other resources of the State; and (iii) to enter into a fee agreement with entities meeting the requirements of such Act, which identifies certain property of such entities as economic development property.

2. Pursuant to Section 12-44-40(I)(1) of the Act and based solely on information provided to the County by the Company, the County finds that: (a) the Project (as defined herein) 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 any 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 are greater than the costs.

3. The County Council has evaluated the Project based on all relevant criteria that include, but are not limited to, the purposes the Project is to accomplish, the anticipated dollar amount and nature of the investment, and the anticipated costs and benefits to the County.

4. An Ordinance that the County Council adopted contemporaneously with the date of this Fee Agreement (the "Fee Ordinance") authorizes the County and the Company to enter into a Fee Agreement that classifies the Project as Economic Development Property under the Act and provides for the payment of fees in lieu of taxes, all as further described herein.

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

### ARTICLE I

#### DEFINITIONS

Section 1.1 The terms that this section defines shall for all purposes of this Fee Agreement have the meanings herein specified, unless the context clearly requires otherwise:

"Act" shall mean Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended, and all future acts successor or supplemental thereto or amendatory thereof.

“Act Minimum Investment Requirement” shall mean an investment of at least \$2,500,000 by the Company and any Sponsors and Sponsor Affiliates of property within the Investment Period, provided, however, that in the event of a reduction of the minimum investment level in Section 12-44-30(14) or any successor section by legislative action, then the Act Minimum Investment Requirement shall equal such reduced amount.

“Commencement Date” shall mean the last day of the property tax year during which the Project or the first Phase thereof is placed in service, which 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 enter into this Fee Agreement. The Commencement Date is expected to be December 31, 2024.

“Company” shall mean Newberry PV1, LLC, a [] limited liability company and any surviving, resulting, or transferee entity in any merger, consolidation, or transfer of assets; or any other person or entity which may succeed to the rights and duties of the Company.

“Contract Minimum Investment Requirement” shall mean an investment of at least \$89,000,000 by the Company and any Sponsor Affiliates of Economic Development Property within the Investment Period.

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

“County Council” shall mean the Newberry County Council, the governing body of the County.

“Department” or “SCDOR” shall mean the South Carolina Department of Revenue.

“Diminution in Value” in respect of the Project or any Phase of the Project shall mean any reduction in the value using the original fair market value (without regard to depreciation) as determined in Step 1 of Section 4.1(a) of this Fee Agreement, of the items which constitute a part of the Project or such Phase and which are subject to FILOT payments which may be caused by (i) the Company’s removal and/or disposal of equipment pursuant to Section 4.6 of this Fee Agreement; (ii) a casualty to the Project, such Phase of the Project, or any part thereof, described in Section 4.7 of this Fee Agreement; or (iii) a condemnation of the Project, such Phase of the Project, or any part thereof, described in Section 4.8 of this Fee Agreement.

“Economic Development Property” shall mean those items of real and tangible personal property of the Project which are eligible for inclusion as economic development property under the Act, selected and identified by the Company or a Sponsor Affiliate in their annual filing of a SCDOR PT-300S or comparable form with the Department (as such filing may be amended from time to time) for each year within the Investment Period.

“Equipment” shall mean all of the machinery, equipment, furniture, office equipment, and fixtures, together with any and all additions, accessions, replacements, and substitutions thereto or therefor used or to be used in the County by the Company or any Sponsor Affiliate for the purposes described in Section 2.2(b) hereof, provided, however, that repairs, alterations, or modifications to personal property which is not economic development property or property subject to a fee in lieu

of taxes prior to this Fee Agreement, are not eligible to become Economic Development Property, except for modifications which constitute an expansion of existing real property improvements.

“Event of Default” shall mean any event of default specified in Section 5.1 of this Fee Agreement.

“Exemption Period” shall mean the period beginning on the first day of the property tax year after the property tax year in which an applicable piece of Economic Development Property is placed in service and ending on the Termination Date. In case there are Phases of the Project, the Exemption Period applies to each year’s investment made during the Investment Period.

“Fee,” “Fee in Lieu of Taxes,” “FILOT,” or “Payments in Lieu of Taxes” shall mean the amount paid or to be paid in lieu of *ad valorem* property taxes as provided herein.

“Fee Agreement” shall mean this Fee Agreement.

“Fee Term” shall mean the period from the date of this Fee Agreement until the Termination Date.

“Improvements” shall mean all improvements to the Real Property, including buildings, building additions, roads, sewer lines, and infrastructure, together with any and all additions, fixtures, accessions, replacements, and substitutions thereto or therefor used or to be used in the County for the purposes described in Section 2.2(b) hereof; provided, however, that repairs, alterations, or modifications to real property which is not economic development property or property subject to a fee in lieu of taxes prior to this Fee Agreement, are not eligible to become Economic Development Property, except for modifications which constitute an expansion of existing real property improvements and except as otherwise permitted by Section 12-44-110 of the Act.

“Industrial Development Park” shall mean an industrial or business park created pursuant to the MCIP Act.

“Infrastructure” shall mean infrastructure serving the Project, including the Improvements, to the extent that the MCIP Act permits, provided that Infrastructure shall first be deemed to include real property and infrastructure improvements prior to including any personal property, notwithstanding any presumptions to the contrary in the Act or otherwise.

“Infrastructure Credit” shall mean the annual infrastructure credit provided to the Company pursuant to the MCIP Act and Section 4.1(c) hereof, with respect to the Infrastructure.

“Investment Period” shall mean the period beginning with the first day of any purchase or acquisition of Economic Development Property and ending five years after the Commencement Date, provided that the Company and the County may agree to a later date pursuant to Section 12-44-30(13) of the Act. The Investment Period is expected to end on December 31, 2027.

“MCIP Act” shall mean Article VIII, Section 13(D) of the Constitution of the State of South Carolina, Sections 4-1-170, 4-1-172, and 4-1-175 of the Code of Laws of South Carolina, 1976, as amended, and Section 4-29-68 of the Code of Laws of South Carolina, 1976, as amended.

“Phase” or “Phases” in respect of the Project shall mean that the Equipment, Improvements, and/or Real Property of the Project are placed in service during more than one year in the Investment Period, and the word “Phase” shall therefore refer to the applicable portion of the Project placed in service in a given year in the Investment Period.

“Project” shall mean all the Equipment, Improvements, and/or Real Property in the County that the Company or any Sponsor Affiliate determines to be necessary, suitable, or useful for the purposes that Section 2.2(b) describes, and first placed in service in calendar year 2022 or thereafter. The Project shall not include existing buildings and improvements on the Real Property, as of the date of the commencement of the Project by the Company, and any machinery and equipment which have previously been subject to South Carolina *ad valorem* taxation, except as expressly permitted by Section 12-44-110 of the Act.

“Real Property” shall mean real property that the Company or any Sponsor Affiliate uses or will use in the County for the purposes that Section 2.2(b) describes, and initially consisting of the land identified on Exhibit A hereto, together with all and singular the rights, members, hereditaments, and appurtenances belonging or in any way incident or appertaining thereto, and any improvements located thereon, together with such additional real property in the County as may be designed by the County or Sponsor Affiliate by filing a revised Exhibit A with the County.

“Removed Components” shall mean the following types of components or Phases of the Project or portions thereof which are subject to FILOT payments, all of which the Company 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 pursuant to Section 4.6 hereof or otherwise; or (b) components or Phases of the Project or portions thereof which the Company in its sole discretion, elects to be treated as removed pursuant to Section 4.7(c) or Section 4.8(b)(iii) of this Fee Agreement.

“Replacement Property” shall mean any property which is placed in service as a replacement for any item of Equipment, any Improvement, or any Real Property previously subject to this Fee Agreement regardless of whether such property serves the same functions as the property it is replacing and regardless of whether more than one piece of property replaces any item of Equipment, any Improvement, or any Real Property, to the fullest extent that the Act permits.

“Sponsor Affiliate” shall mean an entity that joins with or is an affiliate of, the Company, that participates in the investment in, or financing of, the Project, that meets the requirements under the Act to be entitled to the benefits of this Fee Agreement with respect to its participation in the Project, and that executes and delivers to the County a Joinder Agreement in the form attached hereto as Exhibit B.

“Streamlined FILOT Act” shall mean Title 4, Chapter 12 of the Code of Laws of South Carolina, 1976, as amended.

“Termination Date” shall mean in case the entire Project is placed in service in one year, the end of the last day of the property tax year which is the 29th year following the first property tax year in which the entire Project is placed in service, or in case there are Phases of the Project, the Termination Date shall mean with respect to each Phase of the Project the end of the last day of the property tax year which is the 29th year following the first property tax year in which such Phase of the Project is placed in service, provided, that the intention of the parties is that the Company will make at least 30 annual FILOT payments under Article IV hereof with respect to each Phase of the Project and provided further, that if this Fee Agreement is terminated earlier in accordance with the terms hereof, the Termination Date is the date of such termination.

Section 1.2 Any reference to any agreement or document in this Article I or otherwise in this Fee Agreement shall include any and all amendments, supplements, addenda, and modifications to such agreement or document.

Section 1.3 The term “investment” or “invest” as used herein shall include not only investments made by the Company or a Sponsor Affiliate, but also to the fullest extent permitted by law, those investments made by or for the benefit of the Company in connection with the Project through federal, state, or local grants, to the extent such investments are subject to *ad valorem* taxes or FILOT payments by the Company.

## **ARTICLE II**

### **REPRESENTATIONS, WARRANTIES, AND AGREEMENTS**

Section 2.1 Representations, Warranties, and Agreements of the County. The County hereby represents, warrants, and agrees as follows:

(a) The County is a body politic and corporate and a political subdivision of the State and acts through the County Council as its governing body. The Act authorizes and empowers the County to enter into the transactions that this Fee Agreement contemplates 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 and has obtained all consents from third parties and taken all actions necessary or that the law requires to fulfill its obligations hereunder.

(b) Based solely upon representations by the Company, the Project constitutes a “project” within the meaning of the Act, and the County is a County that the Act authorizes to enter into fee in lieu of tax agreements with companies that satisfy the Act Minimum Investment Requirement within the County.

(c) The County has agreed that each item of real and tangible personal property comprising the Project which is eligible to be economic development property under the Act and that the Company selects shall be considered Economic Development Property and is thereby exempt from *ad valorem* taxation in South Carolina.

(d) The millage rate in Section 4.1 hereof is the lowest millage rate permissible under the Act, which the parties understand to be [233.0] mills, the millage rate in effect with



respect to the location of the proposed Project on **June 30, 2021**, as provided under Section 12-44-50(A)(1)(d) of the Act.

(e) The County will not be in default in any of its obligations (contractual or otherwise), including any violation of its statutory debt limit, as a result of entering into and performing under this Fee Agreement and/or as a result of creating an Industrial Development Park encompassing the Project.

(f) The County will take all reasonable action to include the Project in an Industrial Development Park.

Section 2.2 Representations, Warranties, and Agreements of the Company. The Company hereby represents, warrants, and agrees as follows:

(a) The Company is in good standing under the laws of the State of South Carolina, is duly authorized to transact business in the State of South Carolina, has power to enter into this Fee Agreement, and has duly authorized the execution and delivery of this Fee Agreement.

(b) The Company intends to operate the Project as a “project” within the meaning of the Act as in effect on the date hereof. The Company intends to develop, install, or operate the Project, to conduct other legal activities and functions with respect thereto, and for such other purposes that the Act permits as the Company may deem appropriate.

(c) The Company will use commercially reasonable efforts to ensure that its total capital investment will equal or exceed the Contract Minimum Investment Requirement.

### **ARTICLE III**

#### **COMMENCEMENT AND COMPLETION OF THE PROJECT**

Section 3.1 The Project. The Company intends to invest in Equipment, Improvements, and/or Real Property, which together comprise the Project and which are anticipated to create at least the Contract Minimum Investment Requirement in eligible Economic Development Property investment subject to Payments in Lieu of Taxes in the County.

The parties hereto agree that, 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 to be made under Article IV hereof, to be applicable to leased assets including, but not limited to a building and/or personal property to be installed in the buildings and leased to but not purchased by the Company from one or more Sponsor Affiliates under any form of lease, then such property shall, at the election of the Company, be subject to FILOT Payments to the same extent as the Company’s assets covered by this Fee Agreement, subject, at all times, to the requirement of such applicable law. The parties hereto further agree that this Fee Agreement may be interpreted or modified as may be necessary or appropriate in order to give proper application of this Fee Agreement to such tangible property without such construction or modification constituting an amendment to this Fee Agreement, and thus not requiring any additional action by the County Council. The County Administrator after consulting with the County Attorney, shall be and hereby is authorized to make such modifications, if any, as may be necessary or appropriate in connection therewith. Such leased property shall



constitute a part of the Project for all purposes of this Fee Agreement, including removal, replacement, and termination, and such Sponsor Affiliate shall be deemed to be a party to this Fee Agreement.

Pursuant to the Act and subject to Section 4.2 hereof, the Company and the County hereby agree that the Company shall identify annually those assets which are eligible for FILOT payments under the Act and which the Company selects for such treatment by listing such assets on the applicable schedule in its annual PT-300 form (or comparable form) to be filed with the Department (as such may be amended from time to time) and that by listing such assets, such assets shall automatically become Economic Development Property and therefore be exempt from all *ad valorem* taxation during the Exemption Period. Anything contained in this Fee Agreement to the contrary notwithstanding, the Company shall not be obligated to complete the acquisition of the Project. However, if the Company does not meet the Act Minimum Investment Requirement, this Fee Agreement shall be terminated as provided in Section 4.2 hereof.

Section 3.2 Diligent Completion. The Company agrees to use its reasonable efforts to cause the completion of the Project as soon as practicable, but in any event on or prior to the end of the Investment Period.

Section 3.3 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.

(b) The Company shall cause 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 and any partner county, when the Project is placed in an Industrial Development Park, and the Department within 30 days after the date of execution and delivery hereof by all parties hereto.

## ARTICLE IV

### PAYMENTS IN LIEU OF TAXES

Section 4.1 Negotiated Payments.

(a) Pursuant to Section 12-44-50 of the Act, the Company and any Sponsor Affiliates are required to make payments in lieu of *ad valorem* taxes to the County with respect to the Economic Development Property. Inasmuch as the Company and any Sponsor Affiliates anticipate an initial investment of sums sufficient for the Project to qualify for a fee in lieu of tax arrangement under the Act, the parties have negotiated the amount of the FILOT Payments in accordance therewith. The Company and any Sponsor Affiliates shall make FILOT Payments on all Economic Development Property which comprises the Project and is placed in service during the Exemption Period, or, if there are Phases of the Economic Development Property, with respect to each Phase of the Economic Development Property placed in service during the Investment Period, said payments to be made annually and to be due and payable and subject to penalty

assessments on the same dates and in the same manner as prescribed by the County for *ad valorem* taxes. The determination of the amount of such annual FILOT Payments shall be in accordance with the following procedure (subject, in any event, to the procedures that the Act requires):

- Step 1: Determine the fair market value of the Economic Development Property (or Phase of the Economic Development Property) placed in service during the Exemption Period using original income tax basis for State income tax purposes for any Real Property and Improvements without regard to depreciation (provided, the fair market value of real property, as the Act defines such term, that the Company or any Sponsor Affiliate obtains by construction or purchase in an arms length transaction is equal to the original income tax basis, and otherwise, the determination of the fair market value is by appraisal) and original income tax basis for State income tax purposes for any personal property less depreciation for each year allowable for property tax purposes, except that no extraordinary obsolescence shall be allowable. The fair market value of the Real Property for the first year of the Fee Term remains the fair market value of the Real Property for the life of the Fee Term. The determination of these values shall take into account all applicable property tax exemptions that State law would allow to the Company or any Sponsor Affiliate if the property were taxable, except those exemptions that Section 12-44-50(A)(2) of the Act specifically disallows.
- Step 2: Apply an assessment ratio of six percent (6%) to the fair market value in Step 1 to establish the taxable value of the Economic Development Property (or each Phase of the Economic Development Property) in the year it is placed in service and in each of the 39 years thereafter or such longer period of years in which the Act permits the Company or any Sponsor Affiliates to make annual fee payments.
- Step 3: Use a fixed millage rate equal to the lowest millage rate permissible under the Act, which the parties mutually understand to be the millage rate in effect on **June 30, 2021**, which is **233.0** mills, as Section 12-44-50(A)(1)(d) of the Act provides, during the Exemption Period against the taxable value to determine the amount of the Payments in Lieu of Taxes due during the Exemption Period on the payment dates that the County prescribes for such payments or such longer period of years in which the Act permits the Company or any Sponsor Affiliates to make annual fee payments.

(b) The FILOT Payment calculated in Section 4.1(a) above shall be referred to as the “Base FILOT Payment.” Subject to the terms and conditions of this Fee Agreement, the Base FILOT Payment shall be adjusted each year to produce the “Net FILOT Payment” due. The Net FILOT Payment that the Company or any Sponsor Affiliate shall be required to equal \$216,050 during each year of the term of the Fee Agreement. In years in which the Net FILOT Payment is lower than the Base FILOT Payment, an Infrastructure Credit shall be applied to the Base FILOT

Payment and shall equal the difference between the Base FILOT Payment and the Net FILOT Payment for such year. In years in which the Net FILOT Payment is higher than the Base FILOT Payment, the Base FILOT Payment shall be increased to equal the Net FILOT Payment.<sup>1</sup> The FILOT Payments shall be in lieu of all *ad valorem* tax payments and any other charges that would have appeared on the property tax bills otherwise generated by the County in the absence of this Fee Agreement.

The amount of the Net FILOT Payment is based upon the assumption that the Project will generate 74.5 MW of photovoltaic generation. If the power generation of the Project is greater than 74.5 MW, the Net FILOT Payment shall be adjusted by the same proportion. For example, and by way of example only, if the Project generates 81.95 MW of power, the Net FILOT Payment shall be increased by 10%. Power generation shall be measured as of the last day of the prior fiscal year for purposes of determining the Net FILOT Payment for each property tax year. In no event shall the Net FILOT Payment equal less than \$216,050.

(c) In the event that a final order of a court of competent jurisdiction or an agreement of the parties determines that the calculation of the minimum FILOT Payment applicable to this transaction is to be other than by the procedure herein, the payment shall be reset at the minimum permitted level so determined.

Subject to Section 6.8 hereof, in the event that a final order of a court of competent jurisdiction from which no further appeal is allowable declares the Act and/or the herein-described Payments in Lieu of Taxes invalid or unenforceable, in whole or in part, for any reason, the parties express their intentions to reform such payments so as to effectuate most closely the intent hereof and so as to afford the Company with the benefits to be derived herefrom, the intention of the County being to offer the Company a strong inducement to locate the Project in the County. If the Economic Development Property is deemed to be subject to *ad valorem* taxation, this Fee Agreement shall terminate, and the Company shall pay the County regular *ad valorem* taxes from the date of termination, but with appropriate reductions equivalent to all tax exemptions which are afforded to the Company. Any amount determined to be due and owing to the County from the Company, with respect to a year or years for which the Company previously remitted Payments in Lieu of Taxes to the County hereunder, shall (i) take into account all applicable tax exemptions to which the Company would be entitled if the Economic Development Property was not and had not been Economic Development Property under the Act; and (ii) be reduced by the total amount of Payments in Lieu of Taxes the Company had made with respect to the Project pursuant to the terms hereof. Notwithstanding anything contained herein to the contrary, neither the Company nor any successor in title or interest shall be required to pay FILOT payments and *ad valorem* taxes for the same property over the same period in question.

#### Section 4.2 Failure to Achieve Act Minimum Investment Requirement.

(a) In the event that the cost of the Economic Development Property (without regard to depreciation) that the Company acquires does not reach the Act Minimum Investment Requirement by the end of the Investment Period, this Fee Agreement shall terminate as to such

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<sup>1</sup> If it is determined that the Company and County may not simply agree upon a higher payment than the Base FILOT Payment, the assessment ratio for any year in which the Net FILOT Payment is higher than the Base FILOT Payment shall be adjusted to an assessment ratio that causes the Base FILOT Payment to equal the Net FILOT Payment.

entity failing to meet the minimum investment level. In such event, the Company shall pay the County an amount (the "Additional Payment") pursuant to the Act which is equal to the excess, if any, of (i) the total amount of *ad valorem* taxes as 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 items of property comprising the Economic Development Property were not Economic Development Property, but with appropriate reductions equivalent to all tax exemptions and abatements to which the Company would be entitled in such a case, through and including the end of the Investment Period, over (ii) the total amount of FILOT payments the Company has made with respect to the Economic Development Property through and including the end of the Investment Period. Any amounts determined to be owing pursuant to the foregoing sentence shall be subject to the minimum amount of interest that the Act may require.

(b) The remedies stated herein shall be the County's sole remedies for the Company's failure to meet any required investment or job creation level.

Section 4.3 Payments in Lieu of Taxes 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 Economic Development Property, or the Company otherwise utilizes Replacement Property, 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 in accordance with the following:

(i) Replacement Property does not have to serve the same function as the Economic Development Property it is replacing. Replacement Property is deemed to replace the oldest Economic Development Property subject to the Fee, whether real or personal, which is disposed of in the same property tax year in which the Replacement Property is placed in service. Replacement Property qualifies as Economic Development Property only to the extent of the original income tax basis of Economic Development Property which is being disposed of in the same property tax year. More than one piece of property can replace a single piece of Economic Development Property. To the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the Economic Development Property which it is replacing, the excess amount is subject to annual payments calculated as if the exemption for Economic Development Property were not allowable. Replacement Property is entitled to treatment under the Fee Agreement for the period of time remaining during the Exemption Period for the Economic Development Property which it is replacing; and

(ii) The new Replacement Property which qualifies for the Fee shall be recorded using its income tax basis, and the calculation of the Fee shall utilize the millage rate and assessment ratio in effect with regard to the original property subject to the Fee.

Section 4.4 Reductions in Payments of Taxes Upon Removal, Condemnation, or Casualty. In the event of a Diminution in Value of the Economic Development Property or any

Phase of the Economic Development Property, the Payment in Lieu of Taxes with regard to the Economic Development Property or that Phase of the Economic Development Property shall be reduced in the same proportion as the amount of such Diminution in Value bears to the original fair market value of the Economic Development Property or that Phase of the Economic Development Property as determined pursuant to Step 1 of Section 4.1(a) hereof; *provided, however*, that if at any time subsequent to the end of the Investment Period, the total value of the Project based on the original income tax basis of the Equipment, Real Property, and Improvements contained therein, without deduction for depreciation, is less than the Act Minimum Investment Requirement, beginning with the first payment thereafter due hereunder and continuing until the end of the Fee Term, the Company shall no longer be entitled to the incentive provided in Section 4.1, and the Company shall therefore commence to pay regular *ad valorem* taxes on the Economic Development Property part of the Project. However, the Company will not be required to make any retroactive payments.

Section 4.5 Place of Payments in Lieu of Taxes. The Company shall make the above-described Payments in Lieu of Taxes directly to the County in accordance with applicable law.

Section 4.6 Removal of Economic Development Property. Subject, always, to the other terms and provisions hereof, the Company shall be entitled to remove and dispose of components or Phases of the Project from the Project in its sole discretion with the result that said components or Phases shall no longer be considered a part of the Project and, to the extent such constitute Economic Development Property, shall no longer be subject to the terms of this Fee Agreement to the fullest extent allowed by the Act, as amended. Economic Development Property is disposed of only when it is scrapped or sold or it is removed from the Project. If it is removed from the Project, it is subject to *ad valorem* property taxes to the extent the Property remains in the State and is otherwise subject to *ad valorem* property taxes.

Section 4.7 Damage or Destruction of Economic Development Property.

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

(b) Election to Rebuild. In the event the Economic Development Property is damaged by fire, explosion, or any other casualty, and if the Company does not elect to terminate this Fee Agreement, the Company may commence to restore the Economic Development Property with such reductions or enlargements in the scope of the Economic Development Property, changes, alterations, and modifications (including the substitution and addition of other property) as may be desired by the Company. All such restorations and replacements shall be considered, to the fullest extent permitted by law and this Fee Agreement, substitutions of the destroyed portions of the Economic Development Property and shall be considered part of the Economic Development Property for all purposes hereof, including, but not limited to, any amounts due by the Company to the County under Section 4.1 hereof.

(c) Election to Remove. In the event the Company elects not to terminate this Fee Agreement pursuant to subsection (a) and elects not to rebuild pursuant to subsection (b), the damaged portions of the Economic Development Property shall be treated as Removed Components.



#### Section 4.8    Condemnation.

(a) Complete Taking. If at any time during the Fee Term title to or temporary use of the Economic Development Property 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; by voluntary transfer under threat of such taking; or by a taking of title to a portion of the Economic Development Property which renders continued use or occupancy of the Economic Development Property commercially unfeasible in the judgment of the Company, the Company shall have the option to terminate this Fee Agreement 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; or (iii) to treat the portions of the Project so taken as Removed Components.

(c) The Company shall only be required to make FILOT payments as to all or any part of the tax year in which the taking occurs to the extent property subject to *ad valorem* taxes would otherwise have been subject to such taxes under the same circumstances for the period in question.

Section 4.9    Confidentiality/Limitation on Access to Project. The County acknowledges and understands that the Company utilizes confidential and proprietary processes and materials, services, equipment, trade secrets, and techniques (herein “Confidential Information”) and that any disclosure of Confidential Information concerning the Company’s operations may 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. The Company acknowledges that the County is subject to the Freedom of Information Act, and, as a result, must disclose certain documents and information on request absent an exemption. For these reasons, the Company shall clearly label all Confidential Information it delivers to the County “Confidential Information.” Therefore, the County agrees that, except as required by law, neither the County nor any employee, agent, or contractor of the County shall (i) request or be entitled to receive any such Confidential Information, or (ii) disclose or otherwise divulge any such Confidential Information to any other person, firm, governmental body or agency, or any other entity unless specifically required to do so by law; provided, however, that the County shall have no less rights concerning information relating to the Project and the Company than concerning any other property or property taxpayer in the County, and, provided further, that the confidentiality of such confidential or proprietary information is clearly disclosed to the County in writing as previously described. Prior to disclosing any Confidential Information, subject to the requirements of law, 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. In the event that the County is required to disclose any Confidential Information obtained from the Company to any third party, the County agrees to provide the Company with as much advance notice as possible of such requirement before making such disclosure, and to cooperate reasonably with any attempts by the Company to obtain judicial or other relief from such disclosure requirement.

Section 4.10 Assignment. If Section 12-44-120 of the Act or any successor provision requires consent to an assignment, the Company may assign this Fee Agreement in whole or in part with the prior written consent of the County or a subsequent written ratification by the County, which consent or ratification the County will not unreasonably withhold. The Company agrees to notify the County and the Department of the identity of such transferee within 60 days of the transfer. In case of a transfer, the transferee assumes the transferor's basis in the Project for purposes of calculating the Fee. No approval is required for transfers to Sponsor Affiliates or other financing related transfers, as defined in the Act.

Section 4.11 No Double Payment; Future Changes in Legislation.

(a) Notwithstanding anything contained herein to the contrary, and except as expressly required by law, neither the Company nor any Sponsor Affiliate shall ever be required to make a Payment in Lieu of Taxes in addition to a regular property tax payment in the same year over the same piece of property, nor shall the Company or any Sponsor Affiliate be required to make a Payment in Lieu of Taxes on property in cases where, absent this Fee Agreement, property taxes would otherwise not be due on such property.

In case there is any legislation enacted which provides for more favorable treatment for property to qualify as, or for the calculation of the fee related to, Economic Development Property under Sections 4.4, 4.6, 4.7, 4.8, or the calculation of the Investment Period, the County agrees to give expedient and full consideration to such legislation, with a view to allow for such more favorable treatment or calculation.

Section 4.12 Administration Expenses. The Company agrees to pay the reasonable and necessary expenses that the County incurs with respect to the execution and administration of this Fee Agreement, including without limitation reasonable and actual attorneys' fees (the "Administration Expenses"); provided, however, that no such expense shall be an Administration Expense until the County has furnished to the Company a statement in writing indicating the amount of such expense and the reason for its incurrence. As used in this section, "Administration Expenses" shall include the reasonable and necessary out-of-pocket expenses, including attorneys' fees, incurred by the County with respect to: (i) this Fee Agreement; (ii) all other documents related to this Fee Agreement and any related documents; and (iii) the fulfillment of its obligations under this Fee Agreement and any related documents and the implementation and administration of the terms and provisions of the documents after the date of execution thereof, but only as a result of a request by the Company for a modification, assignment, or a termination of such documents by the Company, or as a result of a bankruptcy of the Company or a default by the Company under the terms of such documents. The Company acknowledges that Administration Expenses incurred in connection with the execution and delivery of this Fee Agreement shall equal \$10,000 and shall be due and payable upon execution of this Fee Agreement.

Section 4.13 Execution of Lease. The parties acknowledge that the intent of this Fee Agreement is to afford the Company the benefits of the FILOT Payments in consideration of the Company's decision to locate the Project within the County and that this Fee Agreement has been entered into in reliance upon the validity and enforceability of the Act. In the event that a court of competent jurisdiction holds that the Act is unconstitutional or that this Fee Agreement or agreements similar in nature to this Fee Agreement are invalid or unenforceable in any material

respect, or should the parties determine that there is a reasonable doubt as to the validity or enforceability of this Fee Agreement in any material respect, then the County, upon the provision by the Company of evidence acceptable to the County that the Project is free from environmental contamination and the conveyance of title to the Project to the County at the expense of the Company, agrees to lease the Project to the Company pursuant to the Streamlined FILOT Act and, to the extent permitted under the law in effect at such time, use its best efforts to ensure that the Company receives the benefits of the FILOT arrangement as contemplated by this Fee Agreement.

Section 4.14 Waiver of Benefits of Future Legislation. The Company and any Sponsor Affiliates agree to waive the benefits of any future legislative enactment that reduces property taxes available to solar farm property. If the Company or any Sponsor Affiliate claims any such benefits in addition to the benefits provided in this Fee Agreement, such action shall constitute an early termination of this Fee Agreement by the Company or the Sponsor Affiliate, as applicable.

## **ARTICLE V**

### **DEFAULT**

Section 5.1 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 the Payments in Lieu of Taxes described in Section 4.1 hereof, which failure shall not have been cured within 30 days following receipt of written notice thereof from the County; *provided, however*, that the Company shall be entitled to all redemption rights granted by applicable statutes; or

(b) A representation or warranty made by the Company which is deemed materially incorrect when deemed made; or

(c) Failure by the Company to perform any of the terms, conditions, obligations, or covenants hereunder (other than those under (a) above), which failure shall continue for a period of 30 days after written notice from the County to the Company specifying such failure and requesting that it be remedied, unless the Company shall have instituted corrective action within such time period and is diligently pursuing such action until the default is corrected, in which case the 30-day period shall be extended to cover such additional period during which the Company is diligently pursuing corrective action; or

(d) A representation or warranty made by the County which is deemed materially incorrect when deemed made; or

(e) Failure by the County to perform any of the terms, conditions, obligations, or covenants hereunder, which failure shall continue for a period of 30 days after written notice from the Company to the County specifying such failure and requesting that it be remedied, unless the County shall have instituted corrective action within such time period and is diligently pursuing such action until the default is corrected, in which case the 30-day period shall be extended to cover such additional period during which the County is diligently pursuing corrective action.



Section 5.2 Remedies on Default.

(a) Whenever any Event of Default by the Company shall have occurred and shall be continuing, the County may take any one or more of the following remedial actions:

- (i) terminate the Fee Agreement, upon 60 days' notice to the Company and any Sponsor Affiliate; or
- (ii) take whatever action at law or in equity may appear necessary or desirable to collect the amounts due hereunder. In no event shall the Company be liable to the County or otherwise for monetary damages resulting from the Company's failure to meet the Act Minimum Investment Requirement, other than as expressly set forth herein.

(b) Whenever any Event of Default by the County shall have occurred or shall be continuing, the Company may take one or more of the following actions:

- (i) bring an action for specific enforcement;
- (ii) terminate the Fee Agreement;
- (iii) withhold so much of the payment as is in dispute with the County until such dispute is fully and finally resolved; or
- (iv) in case of a materially incorrect representation or warranty, take such action as is appropriate, including legal action, to recover its damages, to the extent allowed by law.

Section 5.3 Reimbursement of Legal Fees and Expenses and Other Expenses. Upon the occurrence of an Event of Default hereunder, should a party be required to employ attorneys or incur other reasonable expenses for the collection of payments due hereunder or for the enforcement of performance or observance of any obligation or agreement, the successful party shall be entitled, within 30 days of demand therefor, to reimbursement of the reasonable fees of such attorneys and such other reasonable expenses so incurred.

**ARTICLE VI**

**MISCELLANEOUS**

Section 6.1 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:

**IF TO THE COMPANY:**

Newberry PV1, LLC  
600 Park Offices, Suite 285  
Durham, NC 27709

**WITH A COPY TO:**

Haynsworth Sinkler Boyd, P.A.  
Attn: William R. Johnson  
P.O. Box 11889  
Columbia, SC 29211

**IF TO THE COUNTY:**

Newberry County, South Carolina  
Attn: County Administrator  
1309 College Street  
P.O. Box 156  
Newberry, SC 29108

**WITH COPIES TO:**

Parker Poe Adams & Bernstein LLP  
Attn: Ray E. Jones  
1221 Main Street, Suite 1100  
Columbia, SC 29201

Section 6.2 Binding Effect. This Fee Agreement and each document contemplated hereby or related hereto shall be binding upon and inure to the benefit of the Company, 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 6.3 Counterparts. This Fee Agreement may be executed in any number of counterparts, and all of the counterparts taken together shall be deemed to constitute one and the same instrument.

Section 6.4 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 of South Carolina.

Section 6.5 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 6.6 Amendments. The provisions of this Fee Agreement may only be modified or amended in writing by any agreement or agreements entered into between the parties.

Section 6.7 Further Assurance. From time to time, and at the expense of the Company, to the extent any expense is incurred, the County agrees to execute and deliver to the Company such additional instruments as the Company may reasonably request and as are authorized by law and reasonably within the purposes and scope of the Act and Fee Agreement to effectuate the purposes of this Fee Agreement.

Section 6.8 Invalidity; Change in Laws. In the event that the inclusion of property as Economic Development Property or any other issue is unclear under this Fee Agreement, the County hereby expresses its intention that the interpretation of this Fee Agreement shall be in a manner that provides for the broadest inclusion of property under the terms of this Fee Agreement and the maximum incentive permissible under the Act, to the extent not inconsistent with any of the explicit terms hereof. 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 to effectuate most closely 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 the strongest inducement possible, within the provisions of the Act, to locate the Project in the County. In case a change in the Act or South Carolina laws eliminates or reduces any of the restrictions or limitations applicable to the Company and the Fee incentive, the parties agree that the County will give expedient and full consideration to reformation of this Fee Agreement, with a view toward providing the Company with the benefits of such change in the Act or South Carolina laws.

The County agrees that in case the FILOT incentive described herein is found to be invalid or otherwise does not provide the Company with the economic benefit it is intended to receive from the County as an inducement to locate in the County, the savings lost as a result of such invalidity will be considered a special source revenue credit or infrastructure improvement credit to the Company (in addition to the Infrastructure Credit explicitly provided for above) to the maximum extent permitted by law, and the County will provide a special source revenue credit or infrastructure improvement credit against all FILOT payments or fee payments made or to be made by the Company equal to the amount that the Company would have saved if the FILOT had been valid, to the maximum extent permitted by law.

Section 6.9 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, fires, floods, inability to obtain materials, conditions arising from governmental orders or regulations, war or national emergency, acts of God, and any other cause, similar or dissimilar, beyond the Company's reasonable control.

Section 6.10 Termination by Company. The Company is authorized to terminate this Fee Agreement at any time with respect to all or part of the Project upon providing the County with written notice of termination, and such termination shall be effective as of the date determined by the Company; *provided, however*, that (i) any monetary obligations existing hereunder and due and owing at the time of termination to a party hereto; and (ii) any provisions which are intended to survive termination, shall survive such termination. In the year following the effective date of

termination, all property shall be subject to ad valorem taxation or such other taxation or fee in lieu of taxation that would apply absent this Fee Agreement. The Company's obligation to make fee in lieu of tax payments under this Fee Agreement shall terminate in the year following the effective date of such termination pursuant to this section.

Section 6.11 Entire Understanding. This Fee Agreement expresses the entire understanding and all agreements of the parties hereto with each other with respect to its subject matter, and neither party hereto has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth in this Fee Agreement or in certificates delivered in connection with the execution and delivery hereof.

Section 6.12 Waiver. Either party may waive compliance by the other party with any term or condition of this Fee Agreement only in a writing signed by the waiving party.

Section 6.13 Business Day. In the event that any action, payment, or notice is, by the terms of this Fee Agreement, required to be taken, made, or given on any day which is a Saturday, Sunday, or legal holiday in the jurisdiction in which the person obligated to act is domiciled, such action, payment, or notice may be taken, made, or given on the following business day with the same effect as if given as required hereby, and no interest shall accrue in the interim.

Section 6.14 Limitation of Liability. Anything herein to the contrary notwithstanding, any financial obligation the County may incur hereunder, including for the payment of money, shall not be deemed to constitute a pecuniary liability or a debt or general obligation of the County; provided, however, that nothing herein shall prevent the Company from enforcing its rights hereunder by suit for *mandamus* or specific performance.

## ARTICLE VII

### INDEMNIFICATION, INDIVIDUAL LIABILITY

#### Section 7.1 Indemnification Covenants.

(a) Except as provided in paragraph (d) below, the Company shall indemnify and save the County, its employees, elected officials, officers and agents (each, an "***Indemnified Party***") harmless against and from all liability or claims arising from the County's execution of this Fee Agreement, performance of the County's obligations under this Fee Agreement or the administration of its duties pursuant to this Fee Agreement, or otherwise by virtue of the County having entered into this Fee Agreement.

(b) The County is entitled to use counsel of its choice and the Company shall reimburse the County for all of its costs, including attorneys' fees, incurred in connection with the response to or defense against such liability or claims as described in paragraph (a), above. The County shall provide a statement of the costs incurred in the response or defense, and the Company shall pay the County within 30 days of receipt of the statement. The Company may request reasonable documentation evidencing the costs shown on the statement. However, the County is not required to provide any such documentation which may be privileged or confidential to evidence the costs.

(c) The County may request the Company to resist or defend against any claim on behalf of an Indemnified Party. On such request, the Company shall resist or defend against such claim on behalf of the Indemnified Party, at the Company's expense. The Company is entitled to use counsel of its choice, manage and control the defense of or response to such claim for the Indemnified Party; provided the Company is not entitled to settle any such claim without the consent of that Indemnified Party.

(d) Notwithstanding anything in this Section or this Fee Agreement to the contrary, the Company is not required to indemnify any Indemnified Party against or reimburse any Indemnified Party for costs arising from any claim or liability (i) occasioned by the acts of that Indemnified Party, which are unrelated to the execution of this Fee Agreement, performance of the County's obligations under this Fee Agreement, or the administration of its duties under this Fee Agreement, or otherwise by virtue of the County having entered into this Fee Agreement; or (ii) resulting from that Indemnified Party's own negligence, bad faith, fraud, deceit, or willful misconduct.

(e) An Indemnified Party may not avail itself of the indemnification or reimbursement of costs provided in this Section unless it provides the Company with prompt notice, reasonable under the circumstances, of the existence or threat of any claim or liability, including, without limitation, copies of any citations, orders, fines, charges, remediation requests, or other claims or threats of claims, in order to afford the Company notice, reasonable under the circumstances, within which to defend or otherwise respond to a claim.

(f) The obligations under this Section 8.3 shall survive termination of this Fee Agreement.

**Section 8.4. *No Liability of County Personnel.*** All covenants, stipulations, promises, agreements and obligations of the County contained in this Fee Agreement are binding on members of the County Council or any elected official, officer, agent, servant or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse for the payment of any moneys under this Fee Agreement may be had against any member of County Council or any elected or appointed official, officer, agent, servant or employee of the County and no recourse for the payment of any moneys or performance of any of the covenants and agreements under this Fee Agreement or for any claims based on this Fee Agreement may be had against any member of County Council or any elected or appointed official, officer, agent, servant or employee of the County except solely in their official capacity.

(Signature Page Follows)

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

**NEWBERRY COUNTY,  
SOUTH CAROLINA**

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Clerk to County Council

**NEWBERRY PV1, LLC**

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT A  
LEGAL DESCRIPTION

All of that property subject to the Deed to Real Estate from TCA International, Inc. to TCA Timberlands, Inc. dated March 4, 1998, and as more fully described below.

EXHIBIT A TO DEED OF  
TCA INTERNATIONAL, INC.  
TO  
TCA TIMBERLANDS, INC.

**PARCEL 1:** All that piece, parcel or tract of land, with the improvements and fixtures thereon, situate, lying and being in Tax District No. 2, Newberry County, South Carolina, containing 800 acres, more or less, according to a plat of "Property of the Burton Heirs" by Walton B. Halfacre recorded in Plat Book "I", at pages 133-134, which is incorporated herein by reference. According to the plat the tract is bounded on the north by a road (now known as Highway 48, "Island Ford Road"); on the east by a tract of 564 acres according to the plat designated "M.B.R."; on the south by Little River; and on the west by Little River and property of Schumpert. This is a portion of property conveyed to the grantor by deed of Anna Louise Spigener recorded May 3, 1995 in the office of the Clerk of Court for Newberry County in Deed Book 414, at page 94. TMS 109-6

**PARCEL 2:** All that piece, parcel or tract of land, with all improvements and fixtures thereon, situate, lying and being in Tax District No. 2, Newberry County, South Carolina, containing 320.78 acres according to a survey and plat by Martyn Cavanaugh dated January 1972, recorded in the office of the Clerk of Court for Newberry County in Plat Book "AP", at page 161, on which it is designated as Section "B". According to the plat, which is incorporated herein by reference, the tract is bounded on the north by lands of J. Foster Senn and lands of U. S. Plywood-Champion Papers Inc.; on the east by Section "C" as shown on the plat; on the south by Little River; and on the west by undesignated property, the same being a tract of 800 acres as shown on plat of "Property of Burton Heirs" by Walton B. Halfacre from a survey in the winter of 1943 and 1944, recorded in Plat Book "I", at pages 133 and 134; and on the northwest by S. C. Highway 48. This is the same property conveyed to the grantor by deed of The Taylor Foundation recorded February 27, 1997 in Deed Book 454, at page 110. TMS 110-2

**PARCEL 3:** All that piece, parcel or lot of land situate, lying and being in Newberry County, South Carolina, containing one (1) acre, more or less, being partially shown as .67 of an acre on a plat prepared by Thomas B. Abraham, September 19, 1984, said plat being recorded in the office of the Clerk of Court for Newberry County in Plat Book AP-2, at page 174, and being partially shown as .2572 of an acre on a plat prepared by Claude E. Johnson, February 6, 1981, said plat being recorded in the office of the clerk of Court for Newberry County in Plat Book AX, at page 92. This property was conveyed to





**EXHIBIT B**  
**JOINDER AGREEMENT**

Reference is hereby made to (i) that certain Fee Agreement effective \_\_\_\_\_, 2022 ("Fee Agreement"), between Newberry County, South Carolina (the "County") and Newberry PV1, LLC (the "Company").

**1. Joinder to Fee Agreement.**

The undersigned 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 except the following: \_\_\_\_\_; (b) acknowledges and agrees that (i) in accordance the Fee Agreement, the undersigned has been designated as a Sponsor Affiliate by the Company for purposes of the Project and such designation has been consented to by the County in accordance with the Act (as defined in the Fee Agreement); (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) the undersigned shall have all of the rights and obligations of a Sponsor Affiliate as set forth in the Fee Agreement.

The Sponsor Affiliate acknowledges that all references in the Fee Agreement to rights and obligations of the Company in the Fee Agreement apply to the Sponsor Affiliate with respect to its investment in the Project.

The Company (a) agrees to be responsible for all repayment obligations that arise pursuant to the Fee Agreement, unless otherwise agreed to through a separate agreement in writing by and between the Company and the Sponsor Affiliate (including any lease agreements that have been or will be assigned to the Company in connection with the Project); and (b) agrees to indemnify the Sponsor Affiliate against all claims brought against it arising from the Fee Agreement, provided that such repayment obligation is not an obligation of the Sponsor Affiliate under a separate agreement in writing as set forth above or the claim is not a result of Sponsor Affiliate's own negligence, bad faith, fraud, deceit, or willful misconduct.

**2. Capitalized Terms.**

All capitalized terms used but not defined in this Joinder Agreement shall have the meanings set forth in the Fee Agreement.

**3. Governing Law.**

This Joinder Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina, without regard to principles of choice of law.

**4. Notice.**

Notices under Section 6.1 of the Fee Agreement shall be sent to:

[ ]

IN WITNESS WHEREOF, the undersigned has executed this Joinder Agreement to be effective as of the date set forth below, and the Company hereby agrees to the terms set forth herein

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Sponsor Affiliate

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

COMPANY:

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_