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STATE OF SOUTH CAROLINA     )  
   )  
COUNTY OF LANCASTER        )                     **ORDINANCE NO. 2017-1452**

**AN ORDINANCE**

**AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDED AND RESTATED  
FEE AGREEMENT BETWEEN AG-APG EDGEWATER PROPERTY OWNER, L.L.C., AND  
LANCASTER COUNTY, SOUTH CAROLINA.**

Be it ordained by the Council of Lancaster County, South Carolina:

**Section 1.       Findings.**

The Lancaster County Council finds that:

(a)     Lancaster 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 in lieu of tax 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 workforce, 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;

(b)     by ordinance adopted on December 5, 2005, the County previously approved and entered into a fee in lieu of taxes agreement dated as of December 1, 2005 (the "Original Fee Agreement") among the County, Decision One Mortgage Company, LLC, a North Carolina limited liability company, HSBC Technology & Services (USA) Inc., a Delaware corporation, and HSBC Mortgage Services, Inc., a Delaware corporation, as tenants (collectively, "HSBC Entities"), and Edgewater Partners One, LLC, an Indiana limited liability company, as owner of the property located at 3023 HSBC Way, Lancaster County, South Carolina (the "Property");

(c) based on information provided by the current owner of the Property, the HSBC Entities are no longer tenants in the Property and have been released from their obligations under the Original Fee Agreement with the County;

(d) the Property is owned or will be owned by AG-APG Edgewater Property Owner, L.L.C., a Delaware limited liability company ("Owner") which purchased or is purchasing the Property and, in connection therewith, obtained or is obtaining an assignment of the Original Fee Agreement, to which assignment the County consented by Resolution No. 0962-R2017, adopted on June 26, 2017;

(e) Owner is the sole remaining party to the Original Fee Agreement with the County;

(f) the Owner has requested that the County approve an Amended and Restated Fee Agreement (the "Amended Fee Agreement") to reflect the revised ownership structure of the Property and to make certain clarifying amendments to the Original Fee Agreement related to the change in ownership structure; and

(g) it appears that the Amended Fee Agreement, which is attached to this ordinance, is in appropriate form and is an appropriate instrument to be executed and delivered by the County for the purposes intended

## **Section 2.      Approval of Amended Fee Agreement.**

(A) The form, terms, and provisions of the Amended Fee Agreement attached hereto as Exhibit A, are approved, and all of the terms, provisions, and conditions thereof are incorporated herein by reference as if the Amended Fee Agreement was set out in this ordinance in its entirety. The Council Chair and Council Secretary are authorized, empowered, and directed to execute and acknowledge the Amended Fee Agreement in the name of and on behalf of the County, and thereupon to cause the Amended Fee Agreement to be delivered to the Owner. The Amended Fee Agreement is to be in substantially the form as attached to this ordinance 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 officer's execution thereof to constitute conclusive evidence of such officer's approval of any and all changes or revisions therein from the form of the Amended Fee Agreement attached to this ordinance.

(B) If AG-APG EDGEWATER PROPERTY OWNER, L.L.C., is not the owner of the Property on the date this Ordinance is adopted by Council, then the Council Chair and Council Secretary are authorized to substitute in the executed and delivered Amended Fee Agreement IX WR 3023 HSBC Way, L.P. as the owner and party to the Amended Fee Agreement.

## **Section 3.      Authority to Act.**

The Council Chair, Council Secretary, Clerk to Council, County Administrator, County Attorney and all other appropriate officials of the County are authorized and directed to do any and all things necessary to effect the execution and delivery of the Amended Fee Agreement and the performance of all obligations of the County under and pursuant to the Amended Fee Agreement.

## **Section 4.      Severability.**

If any section, subsection or clause of this ordinance is held to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected.

**Section 5.      Controlling Provisions.**

To the extent this ordinance contains provisions that conflict with provisions contained elsewhere in the Lancaster County Code or other County ordinances, resolutions or orders, the provisions contained in this ordinance supersede all other provisions and this ordinance is controlling.

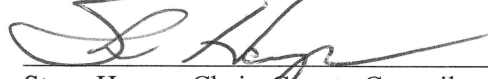
**Section 6.      Effective Date.**

This ordinance takes effect upon Third Reading.


**AND IT IS SO ORDAINED**

Dated this 14<sup>th</sup> day of August, 2017.

LANCASTER COUNTY, SOUTH CAROLINA



Steve Harper, Chair, County Council



Larry Honeycutt, Secretary, County Council

ATTEST:



Sherrie Simpson, Clerk to Council

First Reading:            6-26-2017  
Second Reading:        7-17-2017  
Public Hearing:           7-17-2017  
Third Reading:          8-14-2017

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**Exhibit A to Ordinance No. 2017-1452**

**Amended and Restated Fee Agreement  
Lancaster County, South Carolina and AG-APG Edgewater Property Owner, L.L.C.**

See attached.

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**AMENDED AND RESTATED  
FEE AGREEMENT**

BETWEEN

**LANCASTER COUNTY, SOUTH CAROLINA**

AND

**AG-APG EDGEWATER PROPERTY OWNER, L.L.C.,**  
a Delaware limited liability company

DATED AS OF [\_\_\_\_], 2017

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**AMENDED AND RESTATED  
FEE AGREEMENT**

THIS AMENDED AND RESTATED FEE AGREEMENT (this "Fee Agreement") is made and entered into as of [\_\_\_\_\_], 2017 (the "Effective Date"), by and between LANCASTER COUNTY, SOUTH CAROLINA, a body politic and corporate and a political subdivision of the State of South Carolina, acting by and through its County Council as governing body of the County; and AG-APG EDGEWATER PROPERTY OWNER, L.L.C., a Delaware limited liability company.

**WITNESSETH:**

WHEREAS, the County (as hereinafter defined) is authorized by the Act (as hereinafter defined) to enter into a Fee Agreement with companies meeting the requirements of such Act, which identifies certain property of such companies as economic development property to induce such companies to locate in the State and to encourage companies now located in the State to expand their investments and thus make use of and employ the workforce and other resources of the State;

WHEREAS, as of December 1, 2005, Edgewater Partners One, LLC, an Indiana limited liability company ("EPO"), was in the process of constructing a corporate office facility at that certain real property located at 3023 HSBC Way, Lancaster County, South Carolina, pursuant to an agreement with Decision One Mortgage Company, LLC, a North Carolina limited liability company ("DOM"), HSBC Technology & Services (USA) Inc., a Delaware corporation ("HSBCTS"), and HSBC Mortgage Services, Inc., a Delaware corporation ("HSBCMS"; and together with DOM and HSBCTS, collectively, the "HSBC Entities"), whereby, upon completion, the HSBC Entities would lease such building from EPO and install therein office furniture, equipment and other property in order to operate a corporate headquarters therein for financial services and other related activities;

WHEREAS, pursuant to an Inducement Resolution adopted on June 6, 2005 (the "Inducement Resolution"), the County committed to enter into a fee agreement with HSBCMS under the code name "Project Spartacus", which would provide for payments of fees-in-lieu of taxes for the Project (as hereinafter defined);

WHEREAS, the HSBC Entities were related entities that occupied space in the Project and owned personal property subject to *ad valorem* taxation in the absence of the Original Fee Agreement (as hereinafter defined);

WHEREAS, pursuant to the Act, the County found and still finds that (a) the Project benefits the general public welfare of the County by providing services, employment and other public benefits not otherwise adequately provided locally; (b) neither the Project nor any documents or agreements entered into by the County in connection therewith would give rise to any pecuniary liability of the County or incorporated municipality or to any charge against its general credit or taxing power; (c) the purposes accomplished by the Project are proper governmental and public purposes; and (d) the benefits of the Project are greater than the costs;



WHEREAS, pursuant to an Ordinance adopted on December 5, 2005 (the “Original Ordinance”), as an inducement to the HSBC Entities to develop the Project, the County Council authorized the County to enter into a fee agreement with the HSBC Entities and EPO which identified the property comprising the Project as economic development property under the Act, and accordingly, the County, the HSBC Entities and EPO executed and delivered that certain Fee Agreement, dated as of December 1, 2005 (the “Original Fee Agreement”), regarding the Project;

WHEREAS, prior to the Effective Date, the HSBC Entities, EPO and their successors and/or assigns have fulfilled all of their respective obligations under the Original Fee Agreement, including the minimum investment and job creation obligations, as well as any reimbursement obligations, and, pursuant to the Original Fee Agreement, the Project was first placed in service in 2006;

WHEREAS, prior to the Effective Date, the HSBC Entities’ tenancy at the Project ceased and the HSBC Entities have been released by the County from their respective obligations under the Original Fee Agreement, and accordingly, the HSBC Entities no longer have any rights or obligations under the Original Fee Agreement;

WHEREAS, prior to the Effective Date, through a series of assignments, the rights and obligations of EPO under the Original Fee Agreement were assigned to IX WR 3023 HSBC Way, L.P., a Delaware limited partnership (the “Seller”);

WHEREAS, prior to the Effective Date, the Seller sold the Project to the Company (as hereinafter defined) and in connection therewith the Seller assigned its rights under the Original Fee Agreement to the Company, which assignment has been duly consented to and approved by the County by Resolution No. \_\_\_\_-R2017 adopted on June 26, 2017 pursuant to the terms of the Original Fee Agreement; and

WHEREAS, as authorized by the Act, the County and the Company now desire to amend and restate the Original Fee Agreement so as to remove all references to the HSBC Entities and EPO from the Original Fee Agreement and to make certain clarifying changes to the Original Fee Agreement.

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

## **ARTICLE I**

### **WAIVER OF RECAPITULATION; DEFINITIONS; INCORPORATION OF RECITALS; AMENDMENT AND RESTATEMENT OF ORIGINAL FEE AGREEMENT**

**SECTION 1.1. *Waiver of Statutorily Required Recapitulation.*** Pursuant to Section 12-44-55(B) of the Act, the County, the Company and any other Sponsors waive any and all compliance with any and all of the provisions, items or requirements of Section 12-44-55.

**SECTION 1.2. *Rules of Construction; Use of Defined Terms.*** Unless the context



clearly indicates otherwise, in this Fee Agreement words and terms defined in Section 1.3 hereof are used with the meanings ascribed thereto.

From time to time herein, reference is made to the term taxes or *ad valorem* taxes. All or portions of the Project may be located in a Multi-County Industrial Park and, as such, would be exempt from *ad valorem* taxation under and by virtue of the provisions of Subsection D of Section 13 of Article VIII of the S.C. Constitution (the "MCIP Provision"). With respect to facilities located in a Multi-County Industrial Park, references to taxes or *ad valorem* taxes means the payments-in-lieu-of-taxes provided for in the MCIP Provision.

### **SECTION 1.3. Definitions.**

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

**"Administration Expense"** means the reasonable and necessary out-of-pocket expenses, including attorneys' fees, incurred by the County with respect to the preparation, review, approval and execution of this Fee Agreement.

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

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

**"Commencement Date"** means the last day of the property tax year when Project property was first placed in service, it being acknowledged that the Project was first placed in service in 2006, and therefore the Commencement Date is December 31, 2006.

**"Company"** means AG-APG Edgewater Property Owner, L.L.C., a Delaware limited liability company, and its successors and assigns.

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

**"County Council"** means the governing body of the County.

**"County"** means Lancaster County, South Carolina, and its successors and assigns.

**"DOR"** means the South Carolina Department of Revenue and any successor thereto.

**"Equipment"** means all machinery, apparatus, equipment, fixtures, office facilities, furnishings, computer equipment, and other personal property to the extent such property became

a part of the Project under the Original Fee Agreement or becomes a part of the Project under this Fee Agreement.

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

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

**“Improvements”** shall mean improvements to the Real Property, including all buildings and parking structures, together with any and all additions, accessions, replacements and substitutions thereto or therefor, and all fixtures now or hereafter attached thereto, to the extent such additions, accessions, replacements, and substitutions became part of the Project under the Original Fee Agreement or become part of the Project under this Fee Agreement.

**“Investment Period”** shall mean the period beginning with the first day that Project property was purchased or acquired as contemplated by the Original Fee Agreement, and ending on the last day of the fifth property tax year following the Commencement Date, it being acknowledged that the Investment Period expired on December 31, 2011.

**“MCIP Law”** shall mean the provisions of Article VIII, Section 13, Subsection D of the Constitution of the State of South Carolina 1895, as amended, and Sections 4-1-170, -172 and -175 of the Code of Laws of South Carolina, 1976, as amended.

**“Multi-County Industrial Park”** means an industrial or business park established by two or more counties acting under the provisions of the MCIP Law.

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

**“Person”** shall mean an individual or a corporation, limited liability company, partnership, business trust, estate, joint venture, and any other legal or commercial entity.

**“Project”** shall mean the Real Property and the Equipment and Improvements constructed on the Real Property, together with the acquisition, construction, installation, design and engineering thereof which are eligible for inclusion as economic development property under the Act and became subject to the Original Fee Agreement or become subject to this Fee Agreement.

**“Real Property”** means (a) as of the effective date of the Original Fee Agreement, the land identified on Exhibit A-1 hereto, and (b) as of the Effective Date, the land identified on Exhibit A-2 hereto, it being acknowledged that the land identified on Exhibit A-2 is a portion of the land identified on Exhibit A-1, in each case together with all and singular rights, members, hereditaments and appurtenances belonging or in any way incident or appertaining thereto to the extent such became a part of the Project under the Original Fee Agreement or become a part of the Project under this Fee Agreement; all Improvements now or hereafter situated thereon; and all fixtures now or hereafter attached thereto, to the extent such Improvements and fixtures

became part of the Project under the Original Fee Agreement or become part of the Project under this Fee Agreement.

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

**“Sponsors”** shall mean all entities participating in the investment in the Project whether through ownership, lease, lease-purchases or otherwise and which are or have subsequent to the date hereof become a party to this Fee Agreement, including, but not limited to, sponsor affiliates (as defined in the Act), and all successors and assigns of such entities; provided, however, that, as of the Effective Date, it is acknowledged that there are no Sponsors that are a party to this Fee Agreement; and provided, further, that no Sponsor shall become a party to this Fee Agreement without the Company’s prior written consent, which consent may be granted or withheld in the Company’s sole and absolute discretion.

**“Stage”** in respect of the Project shall mean the year in which Equipment, Improvements and Real Property, if any, were placed in service during each year of the Investment Period.

**“State”** means the State of South Carolina.

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

**SECTION 1.4. *Incorporation of Recitals.*** The foregoing recitals are hereby incorporated into this Fee Agreement as if separately stated herein.

**SECTION 1.5. *Amendment and Restatement of Original Fee Agreement.*** The Original Fee Agreement is hereby amended and restated in its entirety and superseded by this Fee Agreement.

## **ARTICLE II LIMITATION OF LIABILITY; INDUCEMENT**

**SECTION 2.1. *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 charge against its general credit or taxing power; provided, however, that nothing herein shall prevent the Company from enforcing its rights hereunder by suit for *mandamus* or specific performance.

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

## **ARTICLE III**



## **REPRESENTATIONS, WARRANTIES AND COVENANTS**

**SECTION 3.1. *Representations and Warranties of the County.*** The County represents and warrants to the Company as follows:

(a) (i) it is a body politic and corporate and a political subdivision of the State; (ii) it is authorized by the Act to enter into this Fee Agreement; (iii) it has approved this Fee Agreement in accordance with the procedural requirements of the Act and any other applicable state law; and (iv) it has authorized its officials to execute and deliver this Fee Agreement; and

(b) to the best of the County's knowledge, no Event of Default has occurred or currently exists under the Original Fee Agreement or this Fee Agreement, and no matters have occurred that, with the giving of notice and/or the passage of time, would result in an Event of Default under the Original Fee Agreement or this Fee Agreement.

### **SECTION 3.2. *Intentionally Omitted.***

**SECTION 3.3. *Representations, Warranties and Covenants of the Company.*** The Company makes the following representations, warranties to and enters into the following covenants with the County:

(a) The Company is a limited liability company duly organized and validly existing under the laws of the State of Delaware and is qualified to do business in South Carolina. The Company has full corporate power to execute this Fee Agreement and to fulfill its obligations described herein and, by proper corporate action, has authorized the execution and delivery of this Fee Agreement.

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

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

(d) All consents, authorizations and approvals required on the part of the Company in connection with this Fee Agreement and the transactions contemplated hereby and the acquisition of the Project have been obtained and remain in full force and effect or will be obtained unless the failure to have or obtain such consent, authorization or approval does not have a material adverse effect on the Company.

(e) This Fee Agreement is (or, when executed, will be) legal, valid and binding obligations of the Company enforceable against the Company in accordance with its terms, except as such terms may be limited by laws affecting creditors' rights generally.

(f) The execution and delivery of this Fee Agreement by the County has been instrumental in inducing the Company to acquire the Project in the County.

(g) Each year during the term of this Fee Agreement, the Company shall deliver to the County Auditor, County Assessor, and County Treasurer a copy of its and any Sponsors' most recent annual filings made with DOR with respect to the Project, not later than thirty (30) days following delivery thereof to DOR.

## **ARTICLE IV**

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

#### **SECTION 4.1. *The Project.***

(a) Prior to the Effective Date, in accordance with and as required by Section 12-44-40(F) of the Act, the HSBC Entities, counting the investments of the HSBC Entities, and any other Sponsors under the Original Fee Agreement, committed to a Project which meets a minimum taxable investment of at least \$5,000,000.

(b) Prior to the Effective Date, the HSBC Entities acquired, constructed and/or installed certain economic development property which comprises the Project.

(c) Pursuant to the Act, the Company and the County hereby agree that the property comprising the Project shall continue to be economic development property as defined under the Act.

**SECTION 4.2. *Diligent Completion.*** The Company agrees to use reasonable efforts to cause the acquisition of the Project to be completed. Anything contained in this Fee Agreement to the contrary notwithstanding, the Company shall not be obligated to complete the acquisition of the Project and may terminate this Agreement with respect to all or a portion of the Project as set forth in Article X.

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

**SECTION 4.4. *Representations and Covenants.*** No representation of the County is hereby made with regard to the design, capabilities or condition of the Project or compliance by the Project or any Person with laws regulating the construction or acquisition of the Project or environmental matters pertaining to the Project.

## **ARTICLE V**

### **PAYMENTS-IN-LIEU-OF-TAXES; DISPOSITION OF PROPERTY; REPLACEMENT PROPERTY; FEE TERM**



**SECTION 5.1. *Payments-in-Lieu-of-Taxes.*** The parties acknowledge that the Project is exempt from *ad valorem* property taxes. However, the Company and any Sponsors shall be required to make Payments-in-Lieu-of-Taxes with respect to the Project as provided in this Section 5.1. In accordance with the Act, and unless this Fee Agreement is sooner terminated, the Company shall make annual Payments-in-Lieu-of-Taxes with respect to the Project (including to the extent applicable, on behalf of any Sponsors), said payments being due in the manner and payable and subject to penalty assessments prescribed by the Act. Such amounts shall be calculated and payable as follows:

(a) The Company has agreed to make annual Payments-in-Lieu-of-Taxes with respect to the Project in an amount equal to the property taxes that would be due with respect to such property, if it were taxable, but using an assessment ratio of 6.0% and a fixed millage rate equal to 262 mills which the parties understand is the millage rate in effect on June 30, 2005. Subject in all events to the provisions of the Act, the fair market value estimate determined by the DOR will be as follows:

- (i) for any real property, if real property is constructed for the fee or is purchased in an arm's length transaction, using the original income tax basis for South Carolina income tax purposes without regard to depreciation; otherwise, the fair market value must be reported at its fair market value for *ad valorem* property taxes as determined by appraisal; and
- (ii) for personal property, using the original tax basis for South Carolina income tax purposes less depreciation as allowed by law.

(b) The Payments-in-Lieu-of-Taxes must be made on the basis that the Project property, if it were otherwise subject to *ad valorem* property taxes, would be allowed all applicable exemptions from those taxes, except for the exemptions allowed under Section 3(g) of Article X of the South Carolina Constitution and Section 12-37-220(B)(32) and (34) of the Code of Laws of South Carolina, as amended.

(c) The Company and any Sponsors shall make Payments-in-Lieu-of-Taxes for each year during the term hereof beginning with respect to the property tax year following the year in which Project property is first placed in service. The Payments-in-Lieu-of-Taxes shall be made to the County Treasurer on the due dates which would otherwise be applicable for *ad valorem* property taxes for the Project, with the first payment being due on the first date following the Commencement Date when, but for the Original Fee Agreement, such taxes would have been paid with respect to the Project.

(d) Any property that was placed in service as part of the Project during the Investment Period shall be included in the calculation of payments pursuant to paragraphs (a) and (b), above, for a period not exceeding 20 years following the year in which such property was placed in service. Replacement Property shall be included (using its income tax basis) in the calculation of

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

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

(a) In any instance where the Company or a Sponsor (to the extent permitted by the Company) in its sole discretion determines that any item or items of property included in the Project have become, in whole or in part, inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company or such Sponsor may remove such item (or such portion thereof as the Company or such Sponsor shall determine) or items and sell, trade in, exchange or otherwise dispose of it or them (as a whole or in part) without any responsibility or accountability to the County therefor. The loss or removal from the Project of any property, or any portion thereof, as a result of fire or other casualty or by virtue of the exercise or threat of the power of condemnation or eminent domain shall be deemed to be a disposal of such property, or portion thereof, pursuant to this Section 5.2. Subject to the provisions of Section 5.1(d), and this Section 5.2 with respect to Replacement Property, the Payments-in-Lieu-of-Taxes required by Article V hereof shall be reduced by the amount thereof applicable to any property included in the Project, or part thereof, disposed of, or deemed disposed of, pursuant to this Section 5.2.

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

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

**ARTICLE VI**  
**PROPERTY TAX EXEMPTION AND ABATEMENT**

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

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

(b) the County, any Sponsors, and the Company have not committed and will not knowingly commit any act which would cause the Project to be subject to *ad valorem* property taxes by the County or political subdivision of the State of South Carolina in which any part of the Project is located.

**SECTION 6.2. *Rescission and Reversion in the Event of Termination.*** In the event it shall be determined by a court of competent jurisdiction that the Project or any portion thereof are subject to State, County, or other local property taxes, then, at the option of the Company, the provisions of Section 11.4 hereof shall apply, either to the Project as a whole or to such portion thereof as the Company may elect.

**ARTICLE VII**  
**EFFECTIVE DATE**

**SECTION 7.1. *Effective Date.*** This Fee Agreement shall become effective as of the date first written above (the Effective Date).

**ARTICLE VIII**  
**SPECIAL COVENANTS**

**SECTION 8.1. *Confidentiality/Limitation on Access to Project.*** (A) The Company agrees that the County and its authorized agents have the right at all reasonable times and upon prior reasonable notice to enter upon and examine and inspect the Project and to have access to and examine and inspect all of the Company's books and records pertaining to the Project. The right of examination and inspection shall be exercised only upon reasonable and necessary terms and conditions prescribed by the Company to protect the Company's confidentiality and proprietary rights. Any such entrance upon and examination and inspection of the Project shall be at the County's expense.

(B) The County acknowledges and understands that the Company may have and maintain at the Project certain confidential and proprietary information, including, but not limited to, trade secrets, financial, sales or other information concerning the Company's operations and processes ("Confidential Information") and that any disclosure of the Confidential Information could result in substantial harm to the Company and could have a significant detrimental impact on the

Company's employees and also upon the County. Except as required by law, including, without limitation, court orders, the County agrees to use its best reasonable efforts to keep confidential, and to cause employees, agents and representatives of the County to keep confidential, the Confidential Information which may be obtained from the Company, their agents or representatives, when the Confidential Information is clearly marked and identified as Confidential Information and known to the County to be Confidential Information. The County shall not knowingly and willfully disclose and shall cause all employees, agents and representatives of the County not to knowingly and willfully disclose the marked and identified Confidential Information to any person or entity other than in accordance with the terms of this Agreement. If a demand is made for the release, under color of law, to a third party of any Confidential Information, the County shall notify the Company and give the Company the opportunity to contest the release.

**SECTION 8.2. *Assignment.*** With the County's consent, which shall not be unreasonably withheld, any or all of the Company's or any Sponsor's interest in the Project and/or this Fee Agreement may be transferred or assigned by the Company or any Sponsor or any assignee to any other entity; provided, however, that such approval is not required in connection with financing related transfers or any other transfers not requiring consent of the County under the Act. No assignment or transfer shall affect or reduce any of the obligations of the Company or any Sponsor hereunder, which shall continue in full force and effect as the obligations of a principal and not of a guarantor or surety, except that the Company or any Sponsor shall be released from its obligations hereunder upon the written consent of, and release by the County, which will not be unreasonably withheld. The Company or any Sponsor shall give the County written notice of any such assignment or transfer and provide the County a copy of any such assignment or transfer. The County further agrees that the County Council can provide any required consent by a resolution of County Council. The County Administrator and the Clerk to County Council are hereby expressly individually and jointly authorized and directed to evidence the County's consent by timely executing such documents as the Company or any Sponsor may reasonably request.

## **ARTICLE IX EVENTS OF DEFAULT AND REMEDIES**

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

(a) If the Company or any Sponsor shall fail to make any Payment-in-Lieu-of-Taxes or any other amount required under this Fee Agreement after written notice of such default has been given and such default continues for a period of 60 days; or

(b) If the Company or any Sponsor shall fail to observe or perform any covenant, condition or agreement required herein to be observed or performed by the Company (other than as referred to in Section 9.1(a) hereof), and such failure shall continue for a period of 30 days after written notice of default has been given to the Company by the County; provided if by reason of "*force majeure*" as hereinafter defined the Company or a Sponsor is unable in whole or in part to carry out any such covenant, condition or agreement or if it takes longer than 30 days to cure such default and the Company or a Sponsor is diligently attempting to cure such default,

there shall be no Event of Default during such inability. The term "*force majeure*" as used herein shall mean circumstances not reasonably within the control of the parties, such as, without limitation, acts of God, strikes, lockouts or other industrial disturbances; war; acts of public enemies; mobilization or military conscription on a large scale; order of any kind of the government of the United States or any State, or any civil or military authority other than the County Council; insurrections; riots; landslides; earthquakes; fires; lightning; storms; droughts; floods; requisitions, confiscation, or commandeering of property; fuel restrictions; general shortages of transport, goods, or energy; or

(c) If any material representation or warranty on the part of the Company or the Sponsors made in this Fee Agreement, or in any report, certificate, financial or other statement furnished in connection with this Fee Agreement or the transactions described herein shall have been false or misleading in any material respect; or

(d) if the Company shall file a voluntary petition seeking an order for relief in bankruptcy, or shall be adjudicated insolvent, or shall file any petition or answer or commence a case seeking any reorganization, composition, readjustment, liquidation or similar order for relief or relief for itself under any present or future statute, law or regulation, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of the Company or of the Project, or shall make any general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due; or

(e) if a petition shall be filed or a case shall be commenced against the Company seeking an order for relief in bankruptcy or any reorganization, composition, readjustment, liquidation or similar relief under any present or future statute, law or regulation, and shall remain undismissed or unstayed for an aggregate of one hundred eighty (180) days (whether or not consecutive), or if any trustee, receiver or liquidator of the Company or of all or any substantial part of its properties or of the Project shall be appointed without the consent or acquiescence of the Company and such appointment shall remain unvacated or unstayed for an aggregate of one hundred eighty (180) days (whether or not consecutive).

## **SECTION 9.2. Remedies on Default.**

(a) Whenever any Event of Default shall have happened and be subsisting, the County may take whatever action at law or in equity is available to it, including a termination of this Fee Agreement. Although the parties acknowledge that the Project is exempt from *ad valorem* property taxes, there shall be a lien on the Project for tax purposes for Payments-in-Lieu-of-Taxes as provided in Section 12-44-90 of the Act, and the County and any other taxing entity affected thereby may, without limiting the generality of the foregoing, exercise the remedies provided by general law (Title 12, Chapter 49) and the Act relating to the enforced collection of taxes.

(b) The County's right to receive Payments-in-Lieu-of-Taxes hereunder shall have a first priority lien status pursuant to Section 12-44-90 of the Act and Chapters 4 and 54 of Title 12 of SC Code Ann. (1976), as amended. In the event the Company or any Sponsor should fail to make any of the payments required in this Fee Agreement, the item or installment so in default shall continue as an obligation of the Company or such Sponsor until the amount in default shall



have been fully paid, and the Company or such Sponsor agrees to pay the same with interest thereon to the extent required by law and subject to such penalties as provided by law.

(d) In no event shall this Fee Agreement terminate with respect to the Company or any Sponsor as long as such Sponsor or the Company maintains a minimum investment of \$5,000,000.

**SECTION 9.3. *Default by County and Company Remedies.*** In the event the County fails to observe or perform any covenant, condition or agreement required to be performed or observed by the County under this Fee Agreement, the Company or any Sponsor may bring such actions against the County as are available to it at law or in equity.

**SECTION 9.4. *No Remedy Exclusive.*** No remedy herein conferred upon or reserved to the County, the Company, or any Sponsor is intended to be exclusive of any other available remedy or remedies, but in each and every instance such remedy shall be cumulative and shall be in addition to every other remedy given under this Fee Agreement or now or hereafter existing at law or in equity or by statute. Unless otherwise provided herein, no delay or omission to exercise any right or power shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

**SECTION 9.5. *No Additional Waiver Implied by One Waiver.*** In the event any warranty, covenant or agreement contained in this Fee Agreement should be breached by the Company, a Sponsor, or the County and thereafter waived by the other party to this Fee Agreement, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach.

**SECTION 9.6. *Certain Company Obligations to Survive Termination.*** No termination or expiration of the term of this Fee Agreement shall relieve the Company or the Sponsors of their liability and obligations to make the payments due and payable under this Fee Agreement, all of which shall survive any such termination.

## **ARTICLE X COMPANY OPTION TO TERMINATE**

**SECTION 10.1. *Company Option to Terminate.*** Subject to Section 9.5 hereof, from time to time (including, without limitation, any time during which there may be subsisting an Event of Default), and at any time, upon at least 30 days notice, the Company (but not any Sponsor unless the Company consents) may terminate this Fee Agreement with respect to the entire Project or any portion thereof, provided, however, the Company shall have made payment to the County of all outstanding payments under this Fee Agreement. Upon termination of all or part of this Fee Agreement, the Company will become liable for *ad valorem* property taxes on the Project or such portion thereof.

## **ARTICLE XI MISCELLANEOUS**

**SECTION 11.1. *Leased Equipment.*** The parties hereto agree that, to the extent that applicable law allows the benefits of the Act, in the form of Payments-in-Lieu-of-Taxes to be

made under Section 5.1(a), to be applicable to personal property to be installed in the buildings and leased to but not purchased by the Company from Sponsors under any form of lease, then such personal property shall, at the election of the Company, be subject to Payments-in-Lieu-of-Taxes to the same extent as the Equipment covered by this Fee Agreement, subject, at all times, to the requirements 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 personal 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.

**SECTION 11.2. Notices.** All notices, approvals, consents, requests and other communications hereunder shall be in writing and may be delivered personally, or may be sent by facsimile or certified mail, return receipt requested, to the following addresses, unless the parties are subsequently notified of any change of address in accordance with this Section 11.2:

If to the Company:

AG-APG Edgewater Property Owner, L.L.C.  
c/o Angelo, Gordon & Co., L.P.  
245 Park Avenue, 24<sup>th</sup> Floor  
New York, New York 10167  
Attention: Matthew Jackson  
Facsimile: (212) 867-5436

With a copy to (which shall not constitute notice):

Atlanta Property Group, LLC  
Peachtree 25<sup>th</sup> Building  
1718 Peachtree Street, NW, Suite 100  
Atlanta, Georgia 30309  
Attention: C. Sheppard Dinos  
Facsimile: (404) 442-6111

and:

Duval & Stachenfeld LLP  
555 Madison Avenue, 6<sup>th</sup> Floor  
New York, New York 10022  
Attention: Terri L. Adler, Esq. & File Manager (File No. 2009.2103)  
Facsimile: (212) 883-8883

and:

Haynsworth Sinkler Boyd, P.A.  
1201 Main Street, Suite 2200

Columbia, South Carolina 29201  
Attention: Edward G. Kluiters  
Facsimile: (803) 765-1243

If to the County:

County of Lancaster, South Carolina  
ATTN: Steve Willis, County Administrator  
101 N. Main St. (29720)  
P.O. Box 1809 (29721-1809)  
Lancaster, South Carolina  
Phone: (803) 416-9300  
Email: [swillis@lanastercountysc.net](mailto:swillis@lanastercountysc.net)

With a copy to (which shall not constitute notice):

Mr. Jamie Gilbert  
Economic Development Director, Lancaster County  
P.O. Box 1809  
Lancaster, South Carolina 29721  
Telephone: (803) 286-3633  
Fax: (803) 416-9497  
Email: [jgilbert@lanastercountysc.net](mailto:jgilbert@lanastercountysc.net)

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

**SECTION 11.3. *Binding Effect.*** This Fee Agreement shall inure to the benefit of and shall be binding upon the County and the Company and their respective successors and assigns.

**SECTION 11.4. *Rescission and Severability.*** In the event that the Act or the Payments-in-Lieu-of-Taxes arrangement described in Section 5.1 hereof is determined to be invalid in its entirety, the parties hereby agree that except as the final judicial decision may otherwise require, the Company and the Sponsors shall be entitled to retain any benefits received under or pursuant to this Fee Agreement; otherwise, in the event any provision of this Fee Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, that decision shall not invalidate or render unenforceable any other provision of this Fee Agreement, unless that decision destroys the basis for the transaction, in which event the parties shall in good faith attempt to preserve, to the maximum extent possible, the benefits provided and to be provided to the Company and the Sponsors hereunder by either restructuring or reconstituting this Fee Agreement under any then applicable law, including, but not limited to, Chapter 12 of Title 4, Code of Laws of South Carolina, as amended. In all events shall the Company and all Sponsors be entitled to the provisions of 12-44-160 of the Act.

**SECTION 11.5. *Fiscal Year; Property Tax Year.*** If the Company's fiscal year is a calendar year and if such fiscal year changes in the future so as to cause a change in the



Company's property tax year, the Company shall notify the County in writing and the timing of the requirements set forth in this Fee Agreement shall be revised accordingly.

**SECTION 11.6. *Amendments, Changes and Modifications.*** Except as otherwise provided in this Fee Agreement, this Fee Agreement may not be amended, changed, modified, altered or terminated without the written consent of the County, the Company and any Sponsors who are then a party to this Fee Agreement. To the maximum extent allowed by law, any such County consent may be provided by a resolution of County Council.

**SECTION 11.7. *Execution of Counterparts.*** This Fee Agreement may be executed in several counterparts. Any action may be brought upon any counterpart of this Fee Agreement or any counterpart of any document that is attached to this Fee Agreement as an exhibit.

**SECTION 11.8. *Law Governing Construction of Fee Agreement.*** The laws of the State of South Carolina shall govern the construction of this Fee Agreement.

**SECTION 11.9. *Filings.*** Whenever the County shall be required to file or produce any reports, notices or other documents during the Fee Term, the Company and any Sponsor shall in due time furnish to the County the completed form of such report, notice or other required documents together with a certification by the Company and any Sponsor that such document is accurate. In the event of the failure or refusal of the Company to comply with this provision, the Company agrees to pay the County's attorneys' fees and administrative time in producing and filing such report or documents, such amounts to be paid within 30 days after presentation of a statement therefor by the County. Likewise, in the event of the failure or refusal of any Sponsor to comply with this provision, the applicable Sponsor agrees to pay the County's Attorneys' fees and administrative time in producing and filing such report or documents, such amounts to be paid within 30 days after presentation of a statement therefore by the County.

**SECTION 11.10. *Headings.*** The headings of the articles and sections of this Fee Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Fee Agreement.

**SECTION 11.11. *Further Assurance.*** From time to time the County agrees to execute and deliver to the Company and the Sponsors such additional instruments as the Company or any Sponsor may reasonably request to effectuate the purposes of this Fee Agreement.

**SECTION 11.12. *Administration Expenses.*** (A) The Company agrees to reimburse the County for its Administration Expenses promptly upon written request therefor, but in no event later than thirty (30) days after receiving the written request from the County. The written request shall include a description of the nature of the Administration Expenses.

(B) The Company agrees to reimburse the County for expenses incurred by the County for accountants and similar experts used by the County in the computation, preparation and verification of the annual Payments-in-Lieu-of-Taxes upon written request therefor; *provided, however*, the maximum annual reimbursement pursuant to this subsection is capped at Five Hundred and No/100 dollars (\$500.00). The written request shall include a description of the nature of such expenses.

*[Signatures Appear on the Following Pages]*



IN WITNESS WHEREOF, LANCASTER COUNTY, SOUTH CAROLINA, and AG-APG EDGEWATER PROPERTY OWNER, L.L.C., pursuant to due authority, have duly executed this Amended and Restated Fee Agreement, all as of the date first above written.

**LANCASTER COUNTY, SOUTH CAROLINA**

\_\_\_\_\_  
Steve Harper, Chair, County Council

\_\_\_\_\_  
Larry Honeycutt, Secretary, County Council

ATTEST:

\_\_\_\_\_  
Sherrie Simpson, Clerk to Council

*[Company Signatures Continue on the Following Page]*

COMPANY:

**AG-APG EDGEWATER PROPERTY OWNER,  
L.L.C.**

By: AG-APG Sunbelt Parent, L.L.C., its sole member

By: AG Real Estate Manager, Inc., its manager

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

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

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

## EXHIBIT A-1

### ORIGINAL DESCRIPTION OF LAND

#### DECISION ONE TRACT

All of that parcel of land, lying and being situate in the Township of Indian Land, County of Lancaster, State of South Carolina, being a portion of the property of Hans L. Lengers VII, LLC, as described in the Office of Registrar of Deeds for the County of Lancaster in Deed Book T-12 at Page 294 (Plat #3242), containing 13.295 acres, more or less, being shown on a map by ForeSite Engineering and Surveying for Lauth Property Group, dated March 15, 2005, revised on June 8, 2005, titled ALTA/ACSM Land Title Survey of a Portion of Property of Hans L. Lengers VII, LLC, being more fully described as:

**Commencing** at a found South Carolina Department of Highways and Transportation Department (SCDOT) monument (no identification) in the median of US Highway 521 (public right of way of 182 feet); thence from said monument South 52°02'55" West for a distance of 1,108.70 feet, to a set iron pin on the northerly line of property of Billy Howard Revocable Declaration of Trust, Et.Al., as described in Deed Book 63 at page 164 (also shown on Plat #9659), and the **POINT OF BEGINNING**; thence with said line and the northerly line of property of Jerry A. Pressley and Robbie C. Pressley, as described in Deed Book C-6 at Page 5996 (also shown on Plat #2852) South 40°09'34" West for a distance of 750.71 feet to a set iron pin; thence leaving said line and through the lands of the grantor North 85°01'58" West for a distance of 565.88 feet to a set iron pin; thence along a line within Edgewater Lake North 04°58'02" East for a distance of 721.11 feet to a point in the lake; thence South 85°01'58" East for a distance of 150.00 feet to a set iron pin near the lake bank; thence South 85°01'58" East for a distance of 699.83 feet to an intersection with the northwesterly line of Parcel 1, as shown in Plat 2004-647; thence with said line South 28°04'02" East for a distance of 6.13 feet to a set iron pin; thence continuing with said line South 49°50'54" East for a distance of 177.85 feet to the **POINT OF BEGINNING**.

## EXHIBIT A-2

### CURRENT DESCRIPTION OF LAND

#### Fee Parcel:

BEING A PORTION OF THAT PARCEL OF LAND, LYING AND BEING SITUATED IN THE TOWNSHIP OF INDIAN LAND, COUNTY OF LANCASTER, STATE OF SOUTH CAROLINA, BEING A PORTION OF THE PROPERTY OF HANS L. LENGERS VIII, LLC, AS DESCRIBED IN THE OFFICE OF THE REGISTER OF DEEDS FOR THE COUNTY OF LANCASTER IN DEED BOOK T-12, AT PAGE 294 (PLAT #3243), BEING SHOWN ON A MAP BY FORESITE ENGINEERING AND SURVEYING DATED JUNE-JULY, 2006, LAST REVISED AUGUST 24, 2006, TITLED A.L.TA./A.C.S.M. LAND TITLE SURVEY OF TRACT 2, 13.004 ACRES OF LAND OF EDGEWATER CORPORATE CENTER SUBDIVISION BEING ALL OF THE PROPERTY OF EDGEWATER PARTNERS ONES, LLC LOCATED IN INDIAN LAND TOWNSHIP, COUNTY OF LANCASTER, STATE OF SOUTH CAROLINA, BEING MORE FULLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND SOUTH CAROLINA DEPARTMENT OF HIGHWAYS AND TRANSPORTATION DEPARTMENT (SCDOT) MONUMENT (NO IDENTIFICATION) IN THE MEDIAN OF US HIGHWAY 521 (PUBLIC RIGHT OF WAY OF 182 FEET); THENCE FROM SAID MONUMENT SOUTH 52°02'55" WEST FOR A DISTANCE OF 1,108.70 FEET, TO A SET IRON PIN ON THE NORTHERLY LINE OF PROPERTY OF BILLY HOWARD REVOCABLE DECLARATION OF TRUST, ET.AL., AS DESCRIBED IN DEED BOOK 63, AT PAGE 164 (ALSO SHOWN ON PLAT #9659), AND THE POINT OF BEGINNING; THENCE WITH SAID LINE AND THE NORTHERLY LINE OF PROPERTY OF CRISIS HILL, INC. AS DESCRIBED IN DEED BOOK O, AT PAGE C-01 SOUTH 40°09'34" WEST FOR A DISTANCE OF 750.70 FEET TO A SET IRON PIN; THENCE LEAVING SAID LINE AND THROUGH THE LANDS OF EDGEWATER PARTNERS ONE, LLC THE FOLLOWING SEVEN COURSES AND DISTANCES: (1) NORTH 85°01'58" WEST FOR A DISTANCE OF 443.28 FEET TO A SET IRON PIN; (2) NORTH 09°34'29" EAST FOR A DISTANCE OF 100.31 FEET TO A SET IRON PIN; (3) NORTH 85°01'58" WEST FOR A DISTANCE OF 130.62 FEET TO A POINT IN EDGEWATER LAKE; (4) THENCE ALONG A LINE WITHIN EDGEWATER LAKE NORTH 04°58'02" EAST FOR A DISTANCE OF 621.13 FEET TO A POINT IN SAID LAKE; (5) THENCE SOUTH 85°01'58" EAST AND PASSING OVER AN EXISTING IRON PIN ON THE BANK OF THE LAKE AT A DISTANCE OF 150.00 FEET, AND CONTINUING FOR A TOTAL DISTANCE OF 849.83 FEET TO A SET IRON PIN IN THE LINE OF TRACT 5 AS SHOWN IN PLAT BOOK 2006, PAGE 29 AND 30 IN THE LANCASTER COUNTY OFFICE OF THE REGISTER OF DEEDS; (6) THENCE WITH SAID LINE OF TRACT 5 SOUTH 28°04'02" EAST FOR A DISTANCE OF 6.13 FEET TO A SET IRON PIN; (7) THENCE CONTINUING WITH SAID LINE SOUTH 49°50'54" EAST A DISTANCE OF 177.85 FEET TO THE POINT OF BEGINNING (THE "LAND").

LESS AND EXCEPT:



THAT CERTAIN PORTION OF THE PROPERTY DESCRIBED ABOVE IDENTIFIED AS "LENGERS WAY, 50' R/W TO BE DEDICATED HEREON/TRACT 2 R/W TO BE DEDICATED" ON THAT CERTAIN PLAT ENTITLED "EDGEWATER CORPORATE CENTER SUBDIVISION OF A PORTION OF THE PROPERTY OF HANS L. LENGERS VIII, LLC, AS DESCRIBED IN DEED BOOK T-12, AT PAGE 294 AND ALL OF THE PROPERTY OF EDGEWATER PARTNERS ONE, LLC, A DESCRIBED IN DEED BOOK 289, AT PAGE 95, LOCATED IN INDIAN LAND TOWNSHIP, COUNTY OF LANCASTER, STATE OF SOUTH CAROLINA", PREPARED BY FORESITE ENGINEERING AND SURVEYING DATED MAY 27, 2005, LAST REVISED SEPTEMBER 23, 2005, AND RECORDED IN PLAT BOOK 2006, AT PAGES 29 AND 30, IN THE OFFICE OF THE REGISTER OF DEEDS FOR THE COUNTY OF LANCASTER, SOUTH CAROLINA.

Per the ALTA/NSPS Land Title Survey made by Burton Engineering Associates, dated May 4, 2017; Job No. 017.673.001, the Fee Parcel is further described as:

Tract 2A Portion North of Lengers Way Legal Description:

Being all that certain tract of land consisting of approximately 11.229 acres located in Indian Land Township, Lancaster County near the intersection of Lengers Way and Possum Hollow Road and being more particularly described as follows:

Commencing from a set mag nail a common corner to Carolina Surgery Center, LLC as recorded in Lancaster County, South Carolina Register of Deeds in Deed Book 386 Page 129 and shown on Plat Book 2006 Page 834 and in the northern right of way of Lengers Way 50' right of way as shown on Plat Book 2006 Page 631, said mag nail being the Point of Beginning, thence with the northern right of way of Lengers Way the following 7 common lines, 1) S40°09'34"W 418.64' to a found mag nail passing a set mag nail at 15.00' and a set mag nail at 45.00', 2) a curve to the right with a radius of 226.76', a length of 80.27' and a chord bearing and distance of S50°45'58"W 79.85' to a found mag nail, 3) S61°02'46"W 280.83' to a found mag nail, 4) a curve to the right with a radius of 222.08', a length of 131.35' and a chord bearing and distance of S77°59'24"W 129.44' to a found mag nail, 5) N85°01'58"W 175.68' to a set mag nail, 6) N09°34'29"E 50.15' to a point in the pond, 7) N85°01'58"W 130.66' to a point in the pond a common corner to RMB Edgewater, LLC as recorded in Deed Book 757 Page 244 and shown on Plat Book 2012 Page 55, thence with 2 common lines, 1) N04°58'02"E 621.13' to a point in the pond, 2) S85°01'58"E 94.53' to a common corner of The Blake at Edgewater, LLC as recorded in Deed Book 999 Page 269 and shown on Plat Book 2016 Page 722, thence with the common line S85°01'58"E 595.08' to a found nail a common corner to Carolina Surgery Center, LLC passing a found disturbed #5 rebar at 55.64', thence with following 3 common lines of Carolina Surgery Center, LLC, 1) S85°01'58"E 160.22' to a found rebar with cap, 2) S28°04'02"E 6.13' to a found rebar with cap, 3) S49°50'54"E 127.85' to the Point of Beginning. Containing 11.229 acres.

Tract 2B Portion South of Lengers Way Legal Description:



Being all that certain tract of land consisting of approximately 0.498 acre located in Indian Land Township, Lancaster County near the intersection of Lengers Way and Possum Hollow Road and being more particularly described as follows:

Commencing from a set mag nail a common corner to Carolina Surgery Center, LLC as recorded in Lancaster County, South Carolina Register of Deeds in Deed Book 386 Page 129 and shown on Plat Book 2006 Page 834 and in the northern right of way of Lengers Way 50' right of way as shown on Plat Book 2006 Page 631, thence  $S49^{\circ}50'54''E$  50.00' to a found a rebar with cap in the southern right of way of Lengers Way, thence  $S40^{\circ}09'34''W$  418.63' to a set #4 rebar in the southern right of way of Lengers Way and being in the common line of C&M Properties of SC, LLC as recorded in Deed Book 899 Page 164 and shown on Plat Book 2014 Page 200, said rebar being the Point of Beginning, thence with the common line of C&M Properties of SC, LLC  $S40^{\circ}09'34''W$  3.16' to a found #4 rebar a common corner to Crisis Hill, Inc. as recorded in Deed Book 296 Page 264 and shown on Plat Book 97 Page 19 and Plat 2852, thence with the common line  $S40^{\circ}09'34''W$  328.92' to a found #4 rebar a common corner to North Regional III, LLC as recorded in Deed Book 931 Page 281 and shown on Plat Book 2009 Page 461 (Tract 3), thence with the common line  $N85^{\circ}01'58''W$  263.75' to a found #4 rebar in the southern right of way of Lengers Way, thence with the southern right of way 3 common lines, 1) a curve to the left with a radius of 272.08', a length of 161.13' and a chord bearing and distance of  $N78^{\circ}00'42''E$  158.78' to a found #4 rebar, 2)  $N61^{\circ}02'46''E$  280.89' to a found #4 rebar, 3) a curve to the left with a radius of 276.72', a length of 98.45' and a chord bearing and distance of  $N50^{\circ}43'41''E$  97.93' to the Point of Beginning. Containing 0.498 acre.