

# **RICHLAND COUNTY COUNCIL**



## **ECONOMIC DEVELOPMENT COMMITTEE**

Norman Jackson  
District 11

Damon Jeter, Chair  
District 3

L. Gregory Pearce, Jr.  
District 6

**2020 Hampton Street  
November 20, 2007  
5:00 PM**

### **CALL TO ORDER**

### **ADOPTION OF AGENDA**

### **ITEMS FOR ACTION**

- 1. International Truck and Engine Corporation and Siemens Diesel Systems Technology, LLC**
  - a. Assignment and Assumption of Fee Agreement and Inducement Agreement and Millage Rate Agreement [Pages 2 – 7]**
  - b. Ordinance Authorizing Assignment and Assumption of Fee Agreement and Inducement Agreement and Millage Rate Agreement [Pages 8 – 10]**
  
- 2. KIRCO**
  - a. Ordinance to Include KIRCO property in the I-77 Corridor Regional Industrial Park [Pages 11 – 19]**
  - b. Infrastructure Credit Agreement [Pages 20 – 23]**
  
- 3. Project Y**
  - a. FILOT Inducement Resolution [Pages 24 – 26]**
  - b. FILOT Ordinance (Title Only) [Page 27]**

**ITEMS FOR INFORMATION / DISCUSSION: None**

**EXECUTIVE SESSION: Tentative**

**ADJOURN**

STATE OF SOUTH CAROLINA	)	ASSIGNMENT AND ASSUMPTION OF
	)	FEE AGREEMENT AND
	)	INDUCEMENT AGREEMENT AND
	)	MILLAGE RATE AGREEMENT
COUNTY OF RICHLAND	)	
_____	)	

THIS ASSIGNMENT AND ASSUMPTION OF FEE AGREEMENT AND INDUCEMENT AGREEMENT AND MILLAGE RATE AGREEMENT is made as of this \_\_\_\_ day of December, 2007, by and between International Truck and Engine Corporation (“International”), a Delaware corporation, and Siemens Diesel Systems Technology, LLC (“SDST”), a Delaware limited liability company.

WHEREAS, International entered into that certain Fee Agreement (the “Fee Agreement”) with Richland County, South Carolina (the “County”), dated as of October 31, 2006, for the purchase of machinery and equipment to be located at the diesel fuel injector manufacturing facility owned by SDST and located within the County; and

WHEREAS, International also entered into that certain Inducement Agreement and Millage Rate Agreement (the “Inducement Agreement”) with the County dated as of July 28, 2006; and

WHEREAS, International now desires to assign to SDST, and SDST desires to accept, all of International’s right, title, and interest in, to, and under the Fee Agreement and the Inducement Agreement.

NOW THEREFORE, in consideration for five dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, International has, without representation or warranty, except as expressly set forth herein, assigned, contributed, granted, conveyed, transferred and by these presents does hereby assign, grant, contribute, convey, and transfer to SDST, its representatives, successors, and assigns, all of International’s right, title and interest in, to and under the Fee Agreement and the Inducement Agreement (collectively, the “Agreements”).

TO HAVE AND TO HOLD the same unto the SDST, its successors and assigns forever, from and after the date hereof, subject to the terms, covenants and provisions of the Agreements.

No representations and warranties, or indemnification agreements with respect to them, are made in this Assignment, but rather are expressly disclaimed.

SDST hereby accepts the foregoing assignment of the Agreements and agrees to assume, pay and perform all of International’s obligations under the Agreements which arise or relate to the period after the date hereof and agrees to be bound thereby. International warrants to SDST that the Agreements are valid and in full force and effect. The Agreements are not in default, and International knows of no condition, event or act which, with the passage of time, would result in a default under the Agreements.

This Assignment will be binding on and inure to the benefit of the parties herein, their heirs, executors, administrators, successors-in-interest and assigns.

This Assignment may only be amended by a writing signed by both International and SDST with prior approval by the County.

This Assignment shall be governed by and construed in accordance with the laws of the State of South Carolina.

A determination that any provision of this Assignment is unenforceable or invalid shall not affect the enforceability or validity of any other provision and any determination that the application of any provision of this Assignment to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

This Assignment may be executed in two or more counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same instrument.

**(Remainder of page left blank intentionally)**

This Assignment has been executed by International and SDST to be effective as of the date set forth herein above.

INTERNATIONAL TRUCK AND ENGINE CORPORATION

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

Its: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

PROBATE

Personally appeared before me the undersigned witness and made oath that s/he saw the within named \_\_\_\_\_ sign, seal and deliver the foregoing Assignment and Assumption of Fee Agreement and Inducement Agreement and Millage Rate Agreement, and that s/he with the other witness whose signature appears above witnessed the execution thereof.

\_\_\_\_\_

Sworn to and subscribed before me  
this \_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
(Notary Seal)  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_

This Assignment has been executed by International and SDST to be effective as of the date set forth herein above.

SIEMENS DIESEL SYSTEMS TECHNOLOGY,  
LLC

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

Its: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

STATE OF SOUTH CAROLINA     )  
  )  
COUNTY OF RICHLAND         )

PROBATE

Personally appeared before me the undersigned witness and made oath that s/he saw the within named \_\_\_\_\_ sign, seal and deliver the foregoing Assignment and Assumption of Fee Agreement and Inducement Agreement and Millage Rate Agreement, and that s/he with the other witness whose signature appears above witnessed the execution thereof.

Sworn to and subscribed before me  
this \_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_

\_\_\_\_\_(Notary Seal)  
Notary Public for South Carolina  
My Commission Expires:\_\_\_\_\_

## **Approval of Assignment**

For good and valuable consideration, the receipt of which the County acknowledges, the County approves and ratifies the Assignment and Assumption of Fee Agreement and Inducement Agreement and Millage Rate Agreement, date December \_\_\_\_, 2007, and the substitution of International Truck and Engine Corporation (“Assignor”) by Siemens Diesel Systems Technology, LLC (“Assignee”), as a party to the Agreements, as that term is defined in the County’s approving Ordinance, approved December 18, 2007, and based on representations of the, the County affirms, as of the date of its approving Ordinance, to the best of its knowledge, no default exists under the Agreements, and the County is unaware of any condition, event or act which, with the passage of time, would result in any default under the Agreements, including, specifically, any default caused by (a) the assignment and assumption of the Fee Agreement to Assignee; (b) the failure by Assignor to timely file property tax returns and to pay any associated ad valorem or fee-in-lieu of property taxes; (c) any untrue material misrepresentation or warranty made by Assignor in connection with the Fee Agreement, including any statement or certificate delivered in connection with the execution and delivery of the Fee Agreement; (d) any knowing violation or breach of the Fee Agreement by Assignor; (e) the abandonment of the Project by Assignor; and/or (e) the filing of a petition in bankruptcy against Assignor or Assignor’s insolvency; provided, however, that nothing prevents the County from filing, and continuing to pursue payment of, a claim against Assignor in a bankruptcy case for any unpaid ad valorem or fee-in-lieu-of property tax payments.

**(Remainder of page left blank intentionally)**

RICHLAND COUNTY COUNCIL

By: \_\_\_\_\_  
Joseph McEachern, Chair

(SEAL)

Attest this \_\_\_\_\_ day of  
\_\_\_\_\_, 2007.

\_\_\_\_\_  
Michielle R. Cannon-Finch  
Clerk of Council

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

STATE OF SOUTH CAROLINA                    )  
  )  
COUNTY OF RICHLAND                            )

PROBATE

Personally appeared before me the undersigned witness and made oath that s/he saw the within named \_\_\_\_\_ sign, seal and deliver the foregoing Approval of Assignment, and that s/he with the other witness whose signature appears above witnessed the execution thereof.

\_\_\_\_\_

Sworn to and subscribed before me  
this \_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_(Notary Seal)  
Notary Public for South Carolina  
My Commission Expires:\_\_\_\_\_

STATE OF SOUTH CAROLINA  
COUNTY COUNCIL FOR RICHLAND COUNTY  
ORDINANCE NO. \_\_\_\_-07HR

AN ORDINANCE AUTHORIZING THE TRANSFER OF ALL RIGHT, TITLE AND INTEREST IN, AND ALL RIGHTS AND OBLIGATIONS UNDER THE INDUCEMENT AGREEMENT AND MILLAGE RATE AGREEMENT AND THE FEE AGREEMENT BETWEEN RICHLAND COUNTY, SOUTH CAROLINA, AND INTERNATIONAL TRUCK AND ENGINE CORPORATION AUTHORIZING AMONG OTHER MATTERS, THE PAYMENT OF A FEE IN LIEU OF TAX TO RICHLAND COUNTY.

WHEREAS, Richland County, South Carolina (the “County”), acting by and through its County Council (the “County Council”), is empowered by the provisions of the South Carolina Constitution (the “Constitution”), the South Carolina Code of Laws, as amended (the “Code”), and the case law of the courts of the State of South Carolina to offer and provide certain privileges, benefits, and incentives to prospective industries as inducements for economic development within the County; and

WHEREAS, the County is authorized and empowered by the provisions of Title 12, Chapter 44 of the Code (the “Act”) to acquire or cause to be acquired properties constituting a “project” as defined in the Act; and

WHEREAS, the County is empowered by the Act and the Code to enter into agreements with any industry to construct, operate, maintain, and improve such project, to enter into or allow financing agreements for such project, and to accept any grants for such project; and

WHEREAS, through employment of the powers granted by the Act, the County will promote the economic and industrial development of the State of South Carolina (the “State”) and develop its trade by inducing manufacturing and commercial enterprises to locate and remain in the State, where they will use and employ the manpower, agricultural products, and natural resources of the State and, further, will benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise provided locally; and

WHEREAS, the County is authorized by the Act to execute a fee agreement with respect to such project; and

WHEREAS, in the exercise of the foregoing powers, the County and International Truck and Engine Corporation (“Assignor”), a Delaware corporation, entered into a Fee Agreement dated as of October 31, 2006, and into an Inducement Agreement and Millage Rate Agreement, dated as of July 28, 2006 (collectively, the “Agreements”), providing for certain incentives, including, without limitation, payment of a fee in lieu of taxes, for the purchase of machinery and equipment to be located at the diesel fuel injector manufacturing facility owned by Siemens Diesel Systems Technology, LLC, a limited liability company organized and existing under the laws of the State of Delaware (“Assignee”), and located within the County (the “Project”); and



WHEREAS, certain assets of Assignor and its affiliates, including all its right, title, and interest in, and all its rights, responsibilities and obligations under the Agreements shall now be assigned to Assignee, and Assignee will assume all such rights, responsibilities and obligations (the “Transfer”); and

WHEREAS, Assignor and Assignee have requested the consent of the County to the Transfer; and

WHEREAS, the County has determined that the Project will continue to directly and substantially benefit the general public welfare of Richland County by increasing the ad valorem tax base and by providing services, employment, recreation, or other public benefits not otherwise provided locally; and

WHEREAS, the County has determined, on the basis of the information supplied to it by the companies, that the Project will continue to be a “project” as that term is defined in the Act and that the Project will continue to subserve the purposes of the Act; and

WHEREAS, Section 2(c) of Ordinance No. 093-06HR enacted on October 19, 2006 authorizes County approval for transfers of this nature to be given on behalf of the County by the County officials executing the Fee Agreement after consultations with the County Attorney with respect to such approval.

NOW, THEREFORE, BE IT ORDAINED by the County Council of Richland County, South Carolina, as follows:

Section 1. Approval of Transfer. The County approves the transfer of all assets and liabilities relating to the Project, as that term is defined in the Fee Agreement, including the assignment of all right, title, and interest in, and all rights and obligations under, the Agreements from Assignor to Assignee.

Section 2. Waiver of Default. Based on representations of the Assignor and Assignee, the County affirms, as of the date of this approving Ordinance, to the best of its knowledge, no default exists under the Agreements, and the County is unaware of any condition, event or act which, with the passage of time, would result in any default under the Agreements, including, specifically, any default caused by (a) the assignment and assumption of the Fee Agreement to Assignee; (b) the failure by Assignor to timely file property tax returns and to pay any associated ad valorem or fee-in-lieu of property taxes; (c) any untrue material misrepresentation or warranty made by Assignor in connection with the Fee Agreement, including any statement or certificate delivered in connection with the execution and delivery of the Fee Agreement; (d) any knowing violation or breach of the Fee Agreement by Assignor; (e) the abandonment of the Project by Assignor; and/or (e) the filing of a petition in bankruptcy against Assignor or Assignor’s insolvency; provided, however, that nothing prevents the County from filing, and continuing to pursue payment of, a claim against Assignor in a bankruptcy case for any unpaid ad valorem or fee-in-lieu-of property tax payments.

Section 3. Execution of Documents. The Chairman of the County Council is authorized and directed to execute and deliver to Assignor and to Assignee written evidence of the approval, release, and waiver contained herein after consultation with the County Attorney and after they and the County Attorney have verified the satisfaction of the statements contained in Section 2 hereof. Before the execution and delivery of any documents, said documents shall be approved by the County Attorney as to their form, provided however, that the execution and delivery by the Chairman of the County Council shall constitute conclusive evidence as to the satisfaction of condition and as to the approval by the County Attorney.

Section 4. Severability. The provisions of this Ordinance 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 Ordinance shall remain valid.

Section 5. Repeal of Conflicting Ordinances. All orders, resolutions, and other ordinances in conflict with this Ordinance are repealed to the extent of such conflict.

Section 6. Effective Date. This Ordinance shall take effect upon the date of enactment.

RICHLAND COUNTY COUNCIL

By: \_\_\_\_\_  
Joseph McEachern, Chair

(SEAL)

Attest this \_\_\_\_\_ day of  
\_\_\_\_\_, 2007.

\_\_\_\_\_  
Michielle R. Cannon-Finch  
Clerk of Council

RICHLAND COUNTY ATTORNEY'S OFFICE

\_\_\_\_\_  
Approved As To LEGAL Form Only  
No Opinion Rendered As To Content

First Reading: November 20, 2007 (tentative)  
Second Reading:  
Public Hearing:  
Third Reading:

STATE OF SOUTH CAROLINA  
COUNTY COUNCIL FOR RICHLAND COUNTY  
ORDINANCE NO. \_\_\_\_-07HR

AN ORDINANCE AUTHORIZING (I) AN AMENDMENT TO THE MASTER AGREEMENT GOVERNING THE I-77 CORRIDOR REGIONAL INDUSTRIAL PARK BY AND BETWEEN RICHLAND COUNTY, SOUTH CAROLINA AND FAIRFIELD COUNTY, SOUTH CAROLINA, IN ORDER TO EXPAND THE BOUNDARIES OF THE PARK TO INCLUDE CERTAIN PROPERTY OWNED BY KIRCO CAROLINA PINES, LLC (THE "COMPANY"); (II) THE EXECUTION OF AN INFRASTRUCTURE CREDIT AGREEMENT WITH THE COMPANY; AND (III) OTHER MATTERS RELATED THERETO.

WHEREAS, Richland County, South Carolina ("Richland") and Fairfield County, South Carolina ("Fairfield") (collectively, the "Counties"), as authorized under Article VIII, Section 13(D) of the South Carolina Constitution and Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended (the "MCP Act"), have jointly developed the I-77 Corridor Regional Industrial Park (the "Park"); and

WHEREAS, pursuant to Section 4-1-175 of the Code of Laws of South Carolina, 1976, as amended (the "SSRC Act" and together with the MCP Act, the "Act"), upon inclusion of qualifying industries within the Park, such companies will pay a fee-in-lieu of taxes (pursuant to Article VIII, Section 13(d) of the Constitution of the State of South Carolina), and thereafter certain companies may qualify for certain credits against the fees in lieu of taxes to offset infrastructure investments; and

WHEREAS, in response to requests from companies seeking to invest in either Richland or Fairfield, the Counties have heretofore expanded the boundaries of the Park to include additional property, which inclusion has afforded the requesting companies additional tax benefits under South Carolina law, including without limitation the provision of credits against the fees-in-lieu of taxes paid by Companies located in the Park in order to offset infrastructure investments of qualifying industries; and

WHEREAS, the Counties have entered into separate agreements to reflect each new phase of expansion of the Park ("Phase Agreements"); and

WHEREAS, the Counties entered into an agreement entitled "Master Agreement Governing the I-77 Corridor Regional Industrial Park" dated as of April 15, 2003 and amended December 30, 2005 (as amended from time to time, the "Master Agreement"), the provisions of which replaced all existing Phase Agreements and now govern the operation of the Park (a copy of which is attached hereto as **Exhibit A**; and

WHEREAS, Kirco Carolina Pines, LLC, its corporate affiliates and assigns (collectively referred to as the "Company") is seeking to invest approximately \$100,000,000 in Richland to

acquire certain tracts of land in Richland located in the Carolina Pines Industrial Park (collectively, the “Site”) and build certain commercial facilities at such Site (the “Project”); and

WHEREAS, the Company estimates that the infrastructure costs associated with the Project will approximate \$3.5 million with approximately \$2.4 million of such infrastructure costs being deemed “public use” (the “Public Infrastructure”); and

WHEREAS, the Company has requested that the Counties expand the boundaries of the Park to include the Site, which is more particularly described in the attached **Exhibit B**; and

WHEREAS, the Company has not requested a reduction in assessment ratio, but rather upon its inclusion in the Park it will pay fees-in-lieu of taxes at the normal assessment ratios applicable to the classes of property owned by the Company at the Site; and

WHEREAS, the Company, in lieu of any other property tax related incentives, has asked Richland to grant the Company an infrastructure credit (the “Infrastructure Credit”) under the terms of the Act in the maximum amount of 20% of the annual fees-in-lieu of taxes paid by the Company, one of its affiliates, or a third-party tenant or purchaser of all or part of the Project and received by Richland at the Site (the “Site Payments”) for as many years as necessary (but in any event not to exceed twenty (20) years) until such Infrastructure Credit equals the costs expended by the Company on the Public Infrastructure, which amount, in any case, shall not exceed \$2,400,000; and

WHEREAS, Richland has determined that the utilization of an infrastructure credit as provided for under the Act is a suitable mechanism to provide the Company with an incentive to purchase and develop the Site and required infrastructure in Richland.

WHEREAS, the Counties now desire to expand the boundaries to include the Site, and Richland desires to enter into an infrastructure credit agreement with the Company to provide the Infrastructure Credit to the Company.

NOW, THEREFORE, BE IT ORDAINED BY THE RICHLAND COUNTY COUNCIL AS FOLLOWS:

**Section 1. Expansion of Park Boundaries.** There is hereby authorized an expansion of the Park boundaries to include the Site. The County Council Chair, or the Vice Chair in the event the Chair is absent, the County Administrator and the Clerk to the County Council are hereby authorized to execute such documents and take such further actions as may be necessary to complete the expansion of the Park boundaries. Pursuant to the terms of the Master Agreement, the expansion shall be complete upon the adoption of this Ordinance by the Richland County Council and a companion Ordinance by the Fairfield County Council.

**Section 2. Removal of Property from Park.** The Company may request that a portion of the property at the Site be removed from the Park. In such case, the Counties hereby authorize removal of such portion of the property at the Site upon receipt of a written request from the Company. No further action by either the Richland County Council or the Fairfield County

Council shall be required. The County Council Chair, or the Vice Chair in the event the Chair is absent, the County Administrator and the Clerk to the County Council are hereby authorized to execute such documents and take such further actions as may be necessary to complete removal of a portion of the property at the Site from the Park. The public hearing requirement set forth in Section 1.03 of the Master Agreement is hereby waived.

**Section 3. Authorization of the Infrastructure Credit.** There is hereby authorized the execution of an Infrastructure Credit Agreement (the “Agreement”), a form of which is attached hereto as **Exhibit C**. The form, terms, and provisions of the Agreement are hereby approved, with any minor revisions as are not materially adverse to Richland and approved by the Richland County Attorney, and all of the terms, provisions, and conditions thereof are hereby incorporated herein by reference as if the Agreement was set forth herein in its entirety. The County Council Chair, or the Vice Chair in the event the Chair is absent, the Richland County Administrator and the Clerk to the Richland County Council are hereby authorized to execute such documents and take such further actions as may be necessary to document the granting of the Infrastructure Credit to the Company.

**Section 4. Savings Clause.** If any portion of this Ordinance shall be deemed unlawful, unconstitutional or otherwise invalid, the validity and binding effect of the remaining portions shall not be affected thereby.

**Section 5. General Repealer.** Any prior Ordinance, the terms of which are in conflict herewith, is, only to the extent of such conflict, hereby repealed.

**Section 6. Effectiveness.** This Ordinance shall be effective after third and final reading.

[END OF ORDINANCE, SIGNATURE PAGE(S) TO FOLLOW]

RICHLAND COUNTY, SOUTH CAROLINA

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Joseph McEachern., Chairman of County Council  
Richland County, South Carolina

(SEAL)

ATTEST:

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Michielle Cannon-Finch, Clerk to County Council  
Richland County, South Carolina

RICHLAND COUNTY ATTORNEY'S OFFICE

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Approved As To LEGAL Form Only  
No Opinion Rendered As To Content

First Reading: November 20, 2007 (tentative)  
Second Reading: December 4, 2007 (tentative)  
Third Reading: December 18, 2007 (tentative)

**EXHIBIT A**  
**MASTER AGREEMENT**

**EXHIBIT B**

**LEGAL DESCRIPTION OF PROPERTY**

All that certain piece, parcel or tract of land situate in Richland County, South Carolina bounded and described as follows:

TMS number:

DERIVATION:



**EXHIBIT C**

**INFRASTRUCTURE CREDIT AGREEMENT**

**Exhibit B: LEGAL Description – KIRCO Carolina Pines –SPVEF Industrial Park**

All That certain piece, remnant, parcel, tract, lot and portion of land lying, being, and situate in the county of Richland, state of South Carolina containing 125.22 Acres located just northeast of Interstate highway 77, south of Jenkins Brothers Road, West of Farrow Road, north of the Bose plant, north and east of the CK Belk distribution center, and east of Carolina Pines Drive. The same being more particularly described as follows: Beginning at an Iron Pin #5 Rebar Found (IPF5) with observed SC North American Datum (NAD) 1983 Grid Coordinates of North 849,832.85, East 2,012,912.58 on the western margin of the Right of Way of SC Highway 555 (Farrow Road), at the northeastern corner of the H.G. Moore, Jr. property, southeast of a power pole and located S69°36'34"W - 59.00' from an IPF-3/4" pinchpipe, the Point of Beginning (POB); thence bearing S 69-37-20 W along a meandering fence on the northern boundary of Moore a distance of 1064.10 feet to a point a in GUM Tree which is witnessed by an IPF5 at N2°42'35"E-0.77' from the corner, thence turning and running with the eastern boundary line of PCO Carolina Pines, LP N20-22-05W a distance of 845.04 feet to an IPF5 on the southern boundary of CK/Belk Holdings and the northeastern corner of PCO Carolina Pines LP, thence turning and running with the southern boundary of CK/Belk Holdings bearing N69-37-27E - 101.77 feet to an IPF5, thence continuing with the CK/Belk property N69-37-27E - 430.05 feet to an IPF5, the southeastern corner of the CK/Belk property, thence turning and running with the eastern boundary of the CK/Belk property, N20-22-53W - 1189.57 feet to an IPF5, thence turning with the boundary of CK/Belk property S81-27-32W a distance of 439.32 feet to an IPF5 in a 10"hole, the common boundary with CK/Belk Holdings and Congaree Land Trust, thence running with the boundary of the Congaree Land Trust - Wetland A and upland Buffer in the following courses and distances, with Iron Pins (#5 Rebar) Set at all corners unless otherwise noted:

- [1] N20-22-31W for 190.47 feet;
- [2] S80-37-02E for 40.28 feet;
- [3] N06-34-17E for 101.58 feet;
- [4] N53-29-38E for 3.78 feet;
- [5] N42-02-26E for 55.94 feet;
- [6] N18-23-59E for 7.80 feet;
- [7] N82-39-32E for 30.21 feet;
- [8] N09-08-13W for 75.04 feet;
- [9] N01-12-21W for 39.44 feet;
- [10] N05-17-29W for 33.12 feet;
- [11] N65-01-16W for 37.45 ft;
- [12] N07-40-50W for 66.74 ft (8" Birch);
- [13] N05-11-36W for 49.63 feet (10" Pine Tree);
- [14] N88-34-11W for 10.62 feet;
- [15] S05-45-37E for 54.66 feet;
- [16] S07-07-30E for 63.51 feet;
- [17] S84-37-16W for 44.65 feet;
- [18] S80-33-10W for 75.00 feet;
- [19] S03-43-46E for 33.69 feet;
- [20] S09-1-59E for 21.93 feet;
- S04-42-31E for 3.94 feet to point in pond;
- [21] S06-31-16W for 4.57 feet;
- [22] S76-33-45W for 12.59 feet;
- [23] S73-12-10W for 142.48 feet;
- [24] N83-26-56W for 74.12 feet;
- [25] S85-28-04W for 29.48 feet;
- [26] N84-07-5W for 23.31 feet;
- [27] N70-51-12W for 28.32 feet;
- [28] S87-09-33W for 25.92 feet;
- [29] N74-58-34W for 53.45 feet;
- [30] S89-40-56W for 35.52 feet;
- [31] N64-27-51W for 37.00 feet;
- [32] N85-00-23W for 71.87 feet;
- [33] S66-07-53W for 58.65 feet;

[34] S49-08-12W for a distance of 28.57 feet (6" Pine Tree);

[35] S89-31-43W for 37.77 feet;

[36] S80-48-00W for 53.68 feet;

[37] S64-16-25W for 63.86 feet;

[38] S55-12-37W for 67.87 feet;

[39] S57-08-05W for 33.09 feet;

[40] S72-59-15W for 33.42 feet;

[41] S74-13-36W for 54.60 feet;

[42] S69-27-58W for 30.21 feet;

[43] N83-10-16W for 10.35 feet;

[44] N79-14-12W for 44.60 feet;

[45] N66-14-05W for 12.34 feet;

[46] N01-56-42W for 17.96 feet;

[47] N43-09-58W for 60.73 feet;

[48] N70-27-40W for 68.79 feet;

[49] S82-14-37W for 49.08 feet;

[50] S52-50-51W for 73.63 feet;

[51] S23-50-22W for 28.13 feet;

[52] S38-38-46W for 43.35 feet;

[53] N72-09-45W for 23.31 feet;

[54] S47-40-06W for 98.06 feet;

[55] S47-40-06W for 102.55 feet;

[56] S12-17-19W for 33.31 feet;

[57] S24-44-53W for 28.57 feet;

[58] S32-52-35W for 23.20 feet;

[59] S33-3-18W for 26.34 feet;

[60] S40-43-21W for 40.83 feet;

[61] S40-40-28 W for a distance of 14.89 feet to an IPS#5 Rebar on the Eastern Right of way of Carolina Pines Drive located N 04-20-34 E - 11.39' from an IPF5 on the Right of way of Carolina Pines Drive, thence turning and running with Eastern Right of Way as described on plat of W.K. Dickson dated February 8, 2000 which is unrecorded, yet performed for Sony Corporation bearing N 04-20-34 E - 1205.15 feet to an IPF5 on the southwestern corner of Patterson Logistics Services, Inc., thence turning and leaving the right of way along the southern boundary of Patterson N 76-06-25 E - 992.68 feet to an IPF5 at the southeastern corner of Patterson and southwestern corner of Jenkins Brothers Road, L.P, thence through a railway easement and along the southern boundary of Jenkins Brothers Road, LP bearing N 76-06-25 E a distance of 314.04 feet to an IPF5 located on the southeastern corner of Jenkins Brothers Road LP at its intersection with the southwestern corner of Richland County property within the railway easement, thence continuing along the southern boundary of Richland County Property and leaving the railway easement and along the southern edge of the 50.00' railway easement bearing N 76-06-25 E a distance of 1470.11 feet to an IPF5 on the southeastern corner of the Richland County property and the western right of way of SC Highway 555 - Farrow Road, thence with the western right of way of SC Highway 555 bearing S 05-47-53 E a distance of 1118.53 feet to an IPF5; continuing with the western right of way of SC Highway 555 along a curve to the LEFT, having a radius of 13618.67 feet, a delta angle of 3.67, and whose long chord bears S07-37-50 E a distance of 872.63 feet and an arc length of 872.78'; thence continuing along the western right of way of SC Highway 555 bearing S09-28-33E a distance of 1532.92 feet to an IPF5, the POINT OF BEGINNING.

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**INFRASTRUCTURE CREDIT AGREEMENT**

**BETWEEN**

**KIRCO CAROLINA PINES, LLC**

**AND**

**RICHLAND COUNTY, SOUTH CAROLINA**

**DATED AS OF DECEMBER 1, 2007**

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## INFRASTRUCTURE CREDIT AGREEMENT

THIS INFRASTRUCTURE CREDIT AGREEMENT (this “Agreement”) is made and entered into as of December 1, 2007, by and between RICHLAND 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 Richland County Council (the “County Council”) as the governing body of the County, and KIRCO CAROLINA PINES, LLC (collectively, the “Company”).

### WITNESSETH:

(a) The County is authorized by Title 4, Chapter 1, Section 170 and Title 4, Chapter 1, Section 175 and Title 4, Chapter 29, Section 68 of the Code of Laws of South Carolina, 1976, as amended (collectively, the “Act”) to (i) create multi-county industrial parks in partnership with contiguous counties; (ii) include the property of eligible companies within such parks as an inducement to locate within the County, which inclusion under the terms of Section 13 of Article VIII of the Constitution of the State of South Carolina makes such property exempt from *ad valorem* property taxes, therefore changing the character of the annual receipts from such properties from *ad valorem* property taxes to fees-in-lieu of *ad valorem* property taxes; and (iii) grant an annual credit against such fee-in-lieu of tax receipts (an “Infrastructure Credit”) in order to assist a company in paying the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the company or for improved or unimproved real estate used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County.

(b) Pursuant to an agreement entitled “Master Agreement Governing the I-77 Corridor Regional Industrial Park” dated as of April 15, 2003 and amended December 30, 2005 (as amended from time to time, the “Master Agreement”), the County and Fairfield County, South Carolina created a multi-county industrial park pursuant to the terms of the Act. The County has committed to take sufficient steps to amend such park to include the Company’s property.

(c) The Company is seeking to invest approximately \$100,000,000 in the County to acquire certain tracts of land in located in the Carolina Pines Industrial Park (collectively, the “Site”) and build certain commercial facilities at such Site (the “Project”), and estimates that the infrastructure costs associated with the Project will approximate \$3.5 million with approximately \$2.4 million of such infrastructure costs being deemed “public use” (the “Public Infrastructure”).

(d) The County has determined to induce the Company’s investment through the granting of an Infrastructure Credit in the annual amount not to exceed 20% of the annual fees-in-lieu of taxes paid by the Company, one of its affiliates, or a third-party tenant or purchaser of all or part of the Project and received by the County at the Site (the “Site Payments”) for as many years as necessary (but in any event not to exceed twenty (20) years) until such Infrastructure Credit equals the costs expended by the Company on the Public Infrastructure, which amount, in any case, shall not exceed \$2,400,000.

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

**Section 1. *Infrastructure Credit.*** The County hereby grants the Company an Infrastructure Credit in the amount not to exceed 20% of the Site Payments for as many years as necessary (but in any event not to exceed twenty (20) years) until such Infrastructure Credit equals the costs expended by the Company on the Public Infrastructure, which amount, in any case, shall not exceed \$2,400,000. Upon the County's written request, the Company shall provide the County Auditor with documentation, such as invoices, purchase orders, contractor statements or agreements, or other similar documentation, that supports the Company's request for reimbursement of the Public Infrastructure expenditures. Upon its review of the foregoing documentation (when and if such documentation is requested), the County Auditor is hereby directed to apply the credit amount to reduce the annual fee-in-lieu of tax liability at the Site. The Infrastructure Credit amount shall be shown on the bill sent by the County to the Company or other applicable taxpayer at the Site. The Company shall be required to use the Infrastructure Credit to pay for or reimburse itself for eligible Public Infrastructure expenditures, which shall include the cost of designing, acquiring, constructing, improving, or expanding the Public Infrastructure.

**Section 2. *Binding Effect.*** This Agreement shall be binding, in accordance with its terms, upon and inure to the benefit of the Company and the County, and their respective successors and assigns. In the event of the dissolution of the County or the consolidation of any part of the County with any other political subdivision or the transfer of any rights of the County to any other such political subdivision, all of the covenants, stipulations, promises and agreements of this Agreement shall bind and inure to the benefit of the Company and 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 3. *Counterparts.*** This 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 4. *Governing Law.*** This Agreement and all documents executed in connection herewith shall be construed in accordance with and governed by the laws of the State. To the extent of any conflict between the provisions of this Agreement and the Act, the Act controls.

**Section 5. *Amendments.*** The provisions of this Agreement may only be modified or amended in writing by an agreement or agreements entered into between the parties.

**Section 6. *Further Assurance.*** From time to time the County agrees to execute and deliver to the Company such additional instruments as either may reasonably request to effectuate the purposes of this Agreement.

**Section 7. Severability.** If any provision of this Agreement is declared illegal, invalid or unenforceable for any reason, the remaining provisions hereof shall be unimpaired and such illegal, invalid or unenforceable provision shall be reformed so as to most closely effectuate the legal, valid and enforceable intent thereof and so as to afford the Company with the maximum benefits to be derived herefrom, it being the intention of the County to offer the Company the strongest inducement possible to locate the Project in the County.

**Section 8. Limited Obligation.** ANY OBLIGATION OF THE COUNTY CREATED BY OR ARISING OUT OF THIS AGREEMENT SHALL BE A LIMITED OBLIGATION OF THE COUNTY, PAYABLE BY THE COUNTY SOLELY FROM THE PROCEEDS DERIVED UNDER THIS AGREEMENT AND SHALL NOT UNDER ANY CIRCUMSTANCES BE DEEMED TO CONSTITUTE A GENERAL OBLIGATION OF THE COUNTY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY LIMITATION.

**Section 9. Execution Disclaimer.** Notwithstanding any other provisions, the County is executing as statutory accommodation to assist the Company in achieving the intended benefits and purposes of the Act. The County has made no independent legal or factual investigation regarding the particulars of this transaction and it executes in reliance upon representations by the Company that this document complies with all laws and regulations, particularly those pertinent to industrial development projects in South Carolina.

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

RICHLAND COUNTY, SOUTH CAROLINA

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

ATTEST:

\_\_\_\_\_  
Clerk to County Council  
Richland County, South Carolina

KIRCO CAROLINA PINES, LLC

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

STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF RICHLAND        )

**A RESOLUTION OF THE  
RICHLAND COUNTY COUNCIL**

**A RESOLUTION IDENTIFYING A PROJECT TO SATISFY THE REQUIREMENTS OF TITLE 12, CHAPTER 44 OF THE CODE OF LAWS OF SOUTH CAROLINA, AS AMENDED, SO AS TO ALLOW INVESTMENT EXPENDITURES INCURRED BY A COMPANY KNOWN AS PROJECT Y TO QUALIFY FOR A FEE IN LIEU OF TAX ARRANGEMENT WITH RICHLAND COUNTY, SOUTH CAROLINA; AND COMMITTING TO ENTER INTO SUCH NECESSARY AGREEMENTS WITH PROJECT Y TO EFFECTUATE THE INTENT OF THIS RESOLUTION; AND OTHER MATTERS RELATED THERETO.**

**WHEREAS**, Richland County, South Carolina, a political subdivision of the State of 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”) (i) to enter into agreements with qualifying industry to encourage investment and projects constituting economic development property by which the industrial development of the State of South Carolina (the “State”) will be promoted by inducing new and existing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ manpower and other resources of the State; and (ii) to covenant with such industry to accept certain payments in lieu of *ad valorem* taxes (“FILOT Payments”) with respect to such investment; and

**WHEREAS**, a corporation known as Project Y organized under the laws of Delaware and qualified to conduct business in the State of South Carolina (the “Company”), is considering the establishment of a new qualifying facility in Richland County, South Carolina (the “Project”), provided that it enters into a fee-in-lieu of tax agreement with the County with respect to the Project; and

**WHEREAS**, in connection with the Project, the Company has requested that the County enter into a fee-in-lieu of tax agreement to establish the binding commitments of (i) the Company to make qualifying investments required under the Act and (ii) the County to provide fee-in-lieu of tax incentives, as set forth more fully in such fee-in-lieu of tax agreement; and

**WHEREAS**, the Company has informed the County that it intends to make taxable investments in Richland County toward the Project of at least \$600,000,000 within the period allowed under the Act; and

**WHEREAS**, the County intends by this Resolution to express its commitment to negotiate in good faith and enter into a fee-in-lieu of tax agreement with the Company under the Act so that the Company may proceed to qualify the Project for benefits under the Act; and



**WHEREAS**, in accordance with the Act, the County has determined that (i) the Project will benefit the public welfare of the County by providing services, employment, recreation or other public benefits not otherwise adequately provided locally; (ii) the Project gives rise to no pecuniary liability on the part of the County or incorporated municipality and to no charge against the general credit or taxing power of either the County or any incorporated municipality; (iii) the purposes to be accomplished by the Project are proper governmental and public purposes; and (iv) the benefits of the Project to the public are greater than the costs to the public.

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

**Section 1.** It is the intention of the County Council that this Resolution shall constitute an official action on the part of the County Council relating to identifying and inducing the Project under the Act. It is furthermore the intention of the County Council that this Resolution shall constitute an “inducement resolution” under the Act.

**Section 2.** The County shall, pursuant to the Act, (i) negotiate in good faith a fee-in-lieu of tax arrangement with the Company, the terms of which shall be set forth in a fee-in-lieu of tax agreement (a “Fee Agreement”), and shall be mutually agreeable to the County and the Company and (ii) enter into a Fee Agreement with the Company, both of which shall be subject to the future approval by one or more Ordinances of the County Council.

**Section 3.** The County Council and its duly elected officers shall take any and all further action as may become necessary to effectuate the action herewith taken and the Fee Agreement herein authorized.

**Section 4.** All undertakings of the County contemplated hereunder and authorized hereby shall be limited by Section 12-44-40(I)(2) of the Act, to the effect that the County shall incur no pecuniary liability and no charge against its general credit or taxing powers as a result of such undertakings.

**Section 5.** All orders, resolutions and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed. This Resolution shall take effect immediately.

Done in meeting duly assembled this 20<sup>th</sup> day of November 2007.

**RICHLAND COUNTY, SOUTH CAROLINA**

\_\_\_\_\_  
Joseph McEachern, Chairman of County Council  
Richland County, South Carolina

(SEAL)  
ATTEST:

\_\_\_\_\_  
Michielle Cannon-Finch, Clerk to County Council  
Richland County, South Carolina

RICHLAND COUNTY ATTORNEY'S OFFICE

\_\_\_\_\_  
Approved As To LEGAL Form Only  
No Opinion Rendered As To Content

**STATE OF SOUTH CAROLINA  
COUNTY COUNCIL FOR RICHLAND COUNTY  
ORDINANCE NO. \_\_\_\_-07HR**

**AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY  
OF A FEE AGREEMENT BETWEEN RICHLAND COUNTY AND A  
COMPANY KNOWN AS PROJECT Y AND OTHER MATTERS  
RELATING THERETO INCLUDING, WITHOUT LIMITATION,  
PAYMENT OF A FEE-IN-LIEU OF TAXES**