

AN ORDINANCE

AUTHORIZING AND CONFIRMING A LOAN APPLICATION TO THE BERKELEY CHARLESTON DORCHESTER COUNCIL OF GOVERNMENTS ("COG") FOR A REVOLVING FUND LOAN TO BE UTILIZED FOR ECONOMIC DEVELOPMENT PROJECTS IN CHARLESTON COUNTY; AUTHORIZING THE ISSUANCE OF A NOT EXCEEDING \$362,000 SPECIAL SOURCE REVENUE BOND BY CHARLESTON COUNTY TO EVIDENCE ITS OBLIGATION UNDER THE LOAN FROM COG AND THE OBLIGATION TO REPAY THE COUNTY'S ECONOMIC DEVELOPMENT FUND; THE ENTERING INTO OF CERTAIN AGREEMENTS RELATING TO THE AFORESAID LOAN; AUTHORIZING THE FILING OF A PETITION WITH THE STATE BUDGET AND CONTROL BOARD REQUESTING APPROVAL OF THE SPECIAL SOURCE REVENUE BOND; AND OTHER MATTERS RELATING THERETO.

WHEREAS, Charleston County, South Carolina (the "County"), acting by and through its County Council, is authorised and empowered to promote the economic development of Charleston County by leasing facilities to industries; and

WHEREAS, the Berkeley Charleston Dorchester Council of Governments ("COG") is the administrative agency for the loan of Community Development Block Grant funds in Charleston County for economic development projects by means of loans to local governments; and

WHEREAS, Project Emerald (the "Company") intends to design, develop, acquire, construct, and equip facilities to be located adjacent to the Charleston International Airport in Charleston County to be used for the manufacture of airplane components (the "Project"); and

WHEREAS, the Company has requested the County's assistance in leasing office facilities from the South Carolina Research Authority for the Company's use pending completion of construction of the Project; and

WHEREAS, the County is further authorised by Sections 4-1-175 and 4-29-68 of the Code (the "SSRB Act") to incur indebtedness to pay for the costs of designing, constructing, improving, or expanding the infrastructure serving the County and for improved or unimproved real estate used in the operation of a commercial or manufacturing enterprise; and

WHEREAS, such indebtedness (the "SSRB") is not an indebtedness of the County within the meaning of any State constitutional provision or statutory limitation but is payable solely from a special source that does not include revenues from any tax or license; and

WHEREAS, the SSRB will evidence the County's obligation (i) to repay to COG the loan of CDBG funds; and (ii) to repay the County's Economic Development Fund (the "ED Fund") for funds advanced to make Lease payments (as defined below); the SSRB will be payable solely from certain fee-in-lieu of tax payments received and retained by the County under the Park Agreement described below (the "FILOT Payments"); and

WHEREAS, the County has acquired and improved certain real property in Charleston County for the development of a multi-county industrial park (the "Multi-County Industrial Park") and has entered into an Agreement for the Development of Joint County Industrial Park, dated September 1, 1995, as amended (the "Park Agreement") with Colleton County, South Carolina, pursuant to the provisions of Section 4-1-170 of the Code (the "Multi-County Park Act"); and

WHEREAS, pursuant to the provisions of the Park Agreement, industrial and commercial enterprises located in the Multi-County Industrial Park are obligated to pay or cause to be paid FILOT Payments; and

WHEREAS, the issuance of the SSRB by the County is subject to the approval of the State Budget and Control Board of South Carolina.

NOW, THEREFORE, BE IT ORDAINED by the County Council of Charleston County, South Carolina, in meeting duly assembled, as follows:

Section 1. Findings of Fact. The County Council hereby find and determine that

the facts set forth in the preambles above are true and correct;

(ii) the leasing of the Facilities (as defined below) is anticipated to promote the economic development of Charleston County; and

(iii) the SSRB gives rise to no pecuniary liability of the County or any charge against the County's general credit or taxing power.

Section 2. Authorisation and Confirmation of Application to COG. (a) The County Council hereby authorise an application to COG for a loan of CDBG funds in the amount necessary to fund lease payments and costs of the transaction, as approved by the Chairman (the "Loan"). The loan proceeds shall be used solely to make payments for the lease of office space for the Company with the South Carolina Research Authority (the "Facilities ") for the term from December 2004 through November 2006 (the "Lease") . Any remaining Loan proceeds shall be applied to repay the SSRB.

(b) The County Administrator is hereby directed to take all action necessary to apply for and secure the Loan. Any action taken by the County Administrator prior to final reading and approval of this Ordinance is hereby confirmed and ratified.

Section 3. Authorisation of SSRB. (a) Pursuant to the provisions of the SSRB Act, and for the purpose of evidencing the County's obligation (i) to repay the Loan and (ii) to repay the ED Fund for funds advanced to make Lease payments prior to the issuance of the SSRB, there is hereby authorised to be issued, and shall be issued, special source revenue bonds of the County in the aggregate principal amount of not exceeding \$362,000, to be designated "Charleston County, South Carolina, Special Source Revenue Bond, Series 2005." Each SSRB may be designated as a separate series for the purposes described above; provided, however, that the payment and security for the Series B SSRB shall be, in all respects, junior and subordinate to the that of the Series A SSRB.

The SSRB shall be issuable in fully-registered form and shall be payable, when due, in immediately available funds to the registered owner or its assigns upon surrender of the SSRB to the County.

The SSRB shall (i) be in such principal amount not exceeding \$362,000, (ii) mature on such date not later than four (4) years from the date of issue as designated by the County Administrator, and (iii) bear interest at a fixed rate per annum not exceeding 4.0% per annum (which interest shall be payable annually until the maturity of the SSRB) as shall be approved by the County Administrator. Interest on the SSRB shall be payable on the principal amount thereof from their date of issue and delivery (the "Closing Date"). Interest on the SSRB shall be calculated on the basis of a 30-day year consisting of twelve 30-day months.

The SSRB shall be in substantially the form attached hereto as Exhibit A, with necessary or appropriate variations, omissions, insertions, and changes which do not materially adversely affect the County therein as shall be approved by the officials of the County executing the same, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of the SSRB before this meeting.

(e) The Series A SSRB, in the principal amount of the Loan shall be delivered to COG. Proceeds advanced thereunder by COG shall be used to make Lease payments, to pay costs of issuance of the SSRB, and to reimburse the County for any advances to pay lease payments.

(f) The Series B SSRB for the balance of the principal amount authorised hereby shall be delivered to the ED Fund to evidence advances made by the ED Fund to make Lease payments.

Section 4. Petition to State Budget and Control Board. There shall be and is hereby authorised and directed the submission on behalf of the County of a Petition requesting approval by the State Budget and Control Board pursuant to the provisions

of Section 4-29-140 of the Code of the issuance of the SSRB. The County Administrator is hereby authorized and directed to execute the Petition in the name and on behalf of the County and to submit the Petition to the Budget and Control Board. Any submission of the Petition prior to final reading of this ordinance is hereby confirmed and ratified.

Section 5. Medium of Payment. The SSRB shall be payable, both principal and interest, in any coin or currency of the United States of America which is, at the time of payment, legal tender for the payment of public and private debts.

Section 6. Execution of SSRB. The SSRB (i) shall be executed in the name of the County with the manual signature of the Chairman of the County Council, (ii) shall be attested by the manual signature of the Clerk of the County Council and (iii) shall have the seal of the County Council impressed or imprinted thereon. In case the officers whose signature shall appear on the SSRB shall cease to be such officers before the delivery of the SSRB, their signatures shall nevertheless be valid and sufficient for all purposes, the same as if they had remained in office until delivery.

Section 7. Prepayment.

The SSRB is subject to prepayment, in whole or in part, at the option of the County at any time without penalty.

(b) In the event that the SSRB is prepaid in part pursuant to paragraph (a) above, the amount of such prepayment shall be noted on the books of the County and on the SSRB without the need to surrender the SSRB to the County.

Section 8. Mutilated, Lost, or Stolen SSRB. In the event the SSRB is mutilated, lost, stolen, or destroyed, the County may execute a new SSRB of like date, maturity, and denomination as that mutilated, lost, stolen, or destroyed; provided that, in the case of any mutilated SSRB, it shall first be surrendered to the County, and in the case of any lost, stolen, or destroyed SSRB, there shall be first furnished to the County evidence of the loss, theft, or destruction satisfactory to the County, together with indemnity satisfactory to it; provided that, in case of the holder which is the bank or insurance company, the agreement of the bank or insurance company to indemnify shall be sufficient. In the event any SSRB shall have matured, instead of issuing a duplicate SSRB, the County may pay it without surrender thereof. The County may charge the holder of such SSRB with its reasonable fees and expenses in this connection.

Section 9. Registration and Transfer of SSRB. (a) Any SSRB issued in fully-registered form shall be transferable only upon the books of registry of the County, which shall be kept for that purpose at the office of the County Council as bond registrar, by the registered owner thereof or by his attorney, duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the County as bond registrar, duly executed by the registered owner or his duly authorized attorney. Upon the transfer of any SSRB, the County shall issue, in the name of the

transferee, a new SSRB of the same aggregate principal amount as the unpaid principal amount of the surrendered SSRB.

(b) Any holder of a SSRB in fully-registered form requesting any transfer shall pay any tax or other governmental charge required to be paid with respect thereto. As to any SSRB in fully-registered form, the person in whose name the same shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes and payment of or on account of the principal and interest of any SSRB in fully-registered form shall be made only to or upon the order of the registered holder thereof, or his duly authorized attorney, and the County shall not be affected by any notice to the contrary and payment of principal and interest on the SSRB in this manner shall be valid and effectual to satisfy and discharge the liability upon the SSRB to the extent of the sum or sums so paid.

Section 10. SSRB Constitutes Limited Obligation. The SSRB shall be a limited obligation of the County, the principal and accrued interest on which shall be payable solely out of FILOT Payments received and retained by the County under the Park Agreement after making a deposit of 5% of such FILOT Payments into the ED Fund and after making the payment to Colleton County, South Carolina required under the Park Agreement (the "Net FILOT Revenues"). The pledge of Net FILOT Revenues securing the Series B SSRB is junior and subordinate to the pledge securing the Series A SSRB. The SSRB is not secured by, or in anyway entitled to, a pledge of the full faith, credit, and taxing power of the County. The SSRB shall never constitute an indebtedness of the County within the meaning of any State constitutional provision or statutory limitation but is payable solely from a special source that does not include revenues from any tax or license. The SSRB shall never constitute or give rise to a pecuniary liability of the County or a charge against its general credit or taxing powers. Such limitation shall be plainly stated on the face of the SSRB.

Nothing in this Ordinance shall be construed as an obligation or commitment by the County to expend any of its funds other than the Net FILOT Revenues.

Section 11. Events of Default. The occurrence and continuation of any of the following events is hereby declared an "Event of Default" hereunder:

(a) the failure of the County to pay when due any amount payable under the SSRB and the continuation of such failure for a period of fifteen (15) days after written notice thereof by the COG to the County; (b) the failure of the County to keep, perform, or observe any other obligation, covenant, or agreement contained in the SSRB and the continuation of such failure for a period of thirty (30) days after written notice thereof by the COG to the County, (c) the dissolution, insolvency, or termination of existence of the County; (d) the filing of a petition or other pleading by or with respect to the County seeking relief under any bankruptcy law or other law for the benefit of debtors; (e) the transfer or assignment by any of the County for the benefit of one or more creditors of all or substantially all of its assets; (f) any representation or warranty made by or on behalf of the County in connection with the Loan or in this Bond Ordinance or any other document or agreement governing or securing the Loan (collectively, as any of such documents may now or hereafter be amended, modified, supplemented, and/or

restated, the “Loan Documents”) is determined to have been false, incomplete, or misleading when made; or (g) the occurrence of an Event of Default under any of the other Loan Documents. Any failure of the COG to accelerate the SSRB as provided herein shall not constitute a waiver or other bar of the right to exercise the same in the event of any subsequent occurrence of the same or a different event giving rise to such option.

Upon the occurrence of an Event of Default hereunder, to the extent permitted by law, the rate of interest on the SSRB shall, at the option of the COG, be increased to the Default Rate. If any installment, or portion thereof, is not paid in a timely fashion, subsequent payments will be applied first to accrued and unpaid interest, then to any fees and charges owed to the COG, and then to the past due balance of principal. At the COG’s option, any accrued and unpaid interest, fees or charges, may, for purposes of computing and accruing interest on a daily basis after the due date of the SSRB or any installment hereof, be deemed to be a part of the principal hereof, and interest shall accrue on a daily compounded basis after such date at the Rate or, if applicable, the Default Rate, until the entire outstanding balance of principal, interest and fees and charges is paid in full. In the event that the County shall fail to make any payment due hereunder within fifteen (15) days after such payment is due, the County shall pay the COG a late fee equal to the greater of one percent (1%) of the overdue payment or Fifty Dollars (\$50). The provisions herein for a late fee and a Default Rate shall not be deemed to extend the time for any payment hereunder or to constitute a “*grace period*” giving the County a right to cure any Event of Default. Failure of the COG at any time to exercise any of the aforesaid options or any other rights of the COG shall not constitute a waiver thereof, nor shall such failure be a bar to the exercise of any of the aforesaid options or rights at a later date. All rights and remedies of the COG shall be cumulative and may be pursued singularly, successively, or together, at the option of the COG.

If by reason of *force majeure* the County Council are unable in whole or in part to carry out their agreements herein contained, the County Council shall not be deemed in default during the continuance of such inability. The term “*force majeure*” as used herein shall mean, without limitation, the following: acts of God; strikes; lockouts or other industrial disturbances; acts of public enemies; orders of any kind of the government of the United States or of the State or any of their departments, agencies, or officials, or any civil or military authority; insurrections, riots; epidemics; landslides; lightning; earthquake; fire; hurricanes; storms; floods; washouts; droughts; arrests; restraint of tunnels, or canals; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the County Council, it being agreed that the settlement of strikes, lockouts, and other industrial disturbances shall be entirely within the discretion of the County Council, and the County Council shall not be required to make settlement of strikes, lockouts, and other industrial disturbances by acceding to the demands of the opposing party or parties when that course is in the judgment of the County Council unfavourable to the County Council.

## Section 12. Remedies and Enforcement of Remedies.

(a) Upon the happening of any Event of Default, the holder of the SSRB may proceed forthwith to protect and enforce its rights under this Ordinance by such suits, actions, or proceedings as the holder shall deem expedient, including but not limited to:

- (1) Requiring the County Council to carry out their duties and obligations under the terms of this Ordinance;
- (2) Suit upon all or any part of the SSRB;
- (3) Civil action to require the County Council to account as if they were the trustees of an express trust for the holder of the SSRB;
- (4) Civil action to enjoin the acts or things which may be unlawful or in violation of the rights of the holder of the SSRB;
- (5) Enforcement of any other right of the holder conferred by law or by this Ordinance.

(b) Regardless of the happening of an Event of Default, the holder of the SSRB may institute and maintain such suits and proceedings as shall be necessary or expedient:

- (1) To prevent any impairment of the security under this Ordinance by any acts which may be unlawful or in violation of this Ordinance; or
- (2) To preserve or protect any interests of the holder, in accordance with law and the provisions of this Ordinance.

(c) No remedy may be exercised by the registered owner of the Series B SSRB without the prior written consent of the registered owner of the Series A SSRB.

Section 13. Remedies Not Exclusive. No remedy by the terms of this Ordinance conferred upon or reserved to the holder is intended to be exclusive of any other remedy, but each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Ordinance or existing at law or in equity or by statute on or after the date hereof.

Section 14. Exemption from State Taxes. Both the principal of and interest on the SSRB shall be exempt from all state, county, municipal, school district, and all other taxes or assessments of the State of South Carolina, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, except inheritance, estate, or transfer taxes.

Section 15. Covenants. The County Council covenant that:

(a) they will faithfully perform at all times any and all covenants, undertakings, stipulations, and provisions contained in the SSRB Act, in this Ordinance, in the SSRB executed and delivered hereunder, and in all proceedings pertaining thereto. The County Council covenant that they are duly authorized under the Constitution and laws of the State of South Carolina to issue the SSRB authorized hereby, to enact this Ordinance, and to pledge the Net FILOT Revenues hereby pledged in the manner and

to the extent herein set forth; that all action on their part for the issuance of the SSRB and the enactment of this Ordinance has been duly taken, and that the SSRB constitutes enforceable obligations of the County according to the import thereof;

(b) that they will permit, so long as the SSRB is outstanding, any holder to inspect all records and accounts with respect to the FILOT Payments and the Park Agreement under reasonable terms and conditions and after reasonable notice has been given.

Section 16. Execution of Closing Documents and Certificates. The Chairman, the Clerk, and the County Administrator are fully authorized and empowered to take any further action and to execute and deliver such closing documents as may be necessary and proper in order to complete the borrowing herein authorized and the action of the officers or any one or more of them in executing and delivering any documents, in the form as he or they shall approve, is hereby fully authorized.

Section 17. Vice Chairman may act in Chairman's Absence; Acting Clerk may act in Clerk's Absence. In the absence of the Chairman, the Vice Chairman of the County Council is fully authorized to exercise all powers vested in the Chairman under this Ordinance. In the absence of the Clerk, the acting or assistant Clerk is fully authorized to exercise all powers and take all actions vested in the Clerk under this Ordinance.

Section 18. Benefits of Ordinance Limited to County and Holder of SSRB. With the exception of rights or benefits herein expressly conferred, nothing expressed or mentioned in or to be implied from this Ordinance or the SSRB is intended or should be construed to confer upon or give to any person other than the County and the holder of the SSRB, any legal or equitable right, remedy, or claim under or by reason of or in respect to this Ordinance or any covenant, condition, stipulation, promise, agreement, or provision herein contained. This Ordinance and all of the covenants, conditions, stipulations, promises, agreements, and provisions hereof are intended to be and shall be for and inure to the sole and exclusive benefit of the County and the holder from time to time of the SSRB as herein and therein provided.

Section 19. Ordinance Binding Upon Successors or Assigns of County. All the terms, provisions, conditions, covenants, warranties, and agreements contained in this Ordinance shall be binding upon the successors and assigns of the County and shall inure to the benefit of the holder of the SSRB.

Section 20. No Personal Liability. No recourse shall be had for the enforcement of any obligation, covenant, promise, or agreement of the County contained in this Ordinance or the SSRB, against any member of the County Council, any officer or employee, as such, in his or her individual capacity, past, present, or future.

Section 21. Effect of Saturdays, Sundays, and Legal Holidays. Whenever this Ordinance requires any actions to be taken on a Saturday, Sunday, or legal holiday or bank holiday in the State of South Carolina, the action shall be taken on the first business day occurring thereafter. Whenever in this Ordinance the time within which



any action is required to be taken or within which any right will lapse or expire shall terminate on a Saturday, Sunday, or legal holiday or bank holiday in the State of South Carolina, the time shall continue to run until midnight on the next succeeding business day.

Section 22. Amending and Supplementing of Ordinance With Consent of Holder of SSRB. With the consent of the holder of the SSRB, the County Council from time to time and at any time may enact an ordinance amendatory hereof or supplemental hereto for the purpose of adding any provisions to, or changing in any manner or eliminating any of the provisions of, this Ordinance, or modifying or amending the rights or obligations of the County under this Ordinance, or modifying or amending in any manner the rights of the holder of the SSRB then outstanding.

Section 23. Continuing Disclosure Undertaking. Pursuant to Section 11-1-85 of the Code ("Section 11-1-85"), the County Council covenant to file with a central repository for availability in the secondary bond market when requested:

- (a) An annual independent audit, within thirty days of the County Council's receipt of the audit; and
- (b) Event specific information within thirty days of an event adversely affecting more than five percent of the aggregate of Net FILOT Revenues of the County.

The only remedy for failure by the County Council to comply with the covenant in this Section 23 shall be an action for specific performance of this covenant. The County Council specifically reserve the right to amend this covenant to reflect any change in Section 11-1-85, without the consent of the holder of the SSRB.

Section 24. Law and Place of Enforcement of Ordinance. This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina and all suits and actions arising out of this Ordinance shall be instituted in a court of competent jurisdiction in said State.

Section 25. Effect of Section Headings and Table of Contents. The headings of titles of the several Sections hereof, and any Table of Contents appended hereto or to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation, or effect of this Ordinance.

Section 26. Partial Invalidity. If any section, paragraph, clause, or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance.

Section 27. Repeal of Inconsistent Ordinances and Resolutions. All resolutions, ordinances, or parts thereof inconsistent herewith shall be, and the same are hereby, repealed to the extent of the inconsistencies.

Section 28. Codification. This Ordinance shall be forthwith codified in the Charleston County Code of Ordinances in the manner required by law.

CHARLESTON COUNTY COUNCIL