

AN ORDINANCE AUTHORIZING THE GRANTING  
OF CERTAIN SPECIAL SOURCE CREDITS BY  
CHARLESTON COUNTY, SOUTH CAROLINA TO  
CUMMINS, INC.

WHEREAS, Charleston County (the "County") is authorized by Sections 4-29-68 and 4-1-175 of the Code of Laws of South Carolina, 1976, as amended (the "Code") to provide infrastructure tax credits (the "Infrastructure Credits"), secured by and payable solely from revenues of the County from payments in lieu of taxes pursuant to Article VIII, Section 13 of the South Carolina Constitution and Section 4-12-30 of the Code, for the purpose of defraying a portion of the cost of designing, acquiring, constructing, improving or expanding the infrastructure serving the County in order to enhance the economic development of the County; and

WHEREAS, in accordance with the provisions of an Inducement Resolution approved on August 16, 2011, Cummins, Inc. (the "Company") has determined that it desires to construct a research and development facility, which facility will consist of certain land, buildings and equipment associated with the infrastructure (the "Infrastructure") to be owned, leased or used by the Company and to be located on the real property described in Exhibit A attached hereto (the "Project"); and

WHEREAS, pursuant to the provisions of the fee-in-lieu of tax agreement (the "Fee Agreement") to be entered into between the Company and the County pursuant to Title 12, Chapter 44 of the Code, the Company is obligated (i) to make or cause to be made payments in lieu of taxes ("Fee Payments") with respect to the machinery and equipment portion of the Project (the "Personal Property Project"), (ii) to maintain the Personal Property Project in good repair at its own expense and (iii) to carry all proper insurance with respect thereto; and

WHEREAS, having determined that the Project will provide public benefits incident to conducting industrial operations, and in order to implement the public purposes enumerated in Title 12, Chapter 44 of the Code and in furtherance thereof to assist the Company, its sublessee, assignee or transferee in expanding and maintaining an industrial facility within the State of South Carolina, the County has agreed to assist in financing a portion of the costs of the Infrastructure through the granting of special source revenue credits (the "Special Source Credits") in an amount equal to fifteen percent (15%) of the total Fee Payments expected to be paid by the Company pursuant to the Fee Agreement, provided that the total value of the Special Source Credits may not exceed \$300,000 in the aggregate or \$75,000 in any single year; and

NOW, THEREFORE, BE IT ORDAINED by Charleston County, South Carolina, as follows:

Section 1. In order to promote industry, develop trade and utilize and employ the manpower, agricultural products and natural resources of the State of South Carolina by assisting

the Company to locate an industrial facility in the State of South Carolina, the financing of the Infrastructure by the County through the granting of the Special Source Credits is hereby authorized, ratified and approved.

Section 2. Pursuant to the authority of Title 4, Chapters 1 and 29 of the Code, there is hereby authorized to be provided, and shall be provided, Special Source Credits of the County in the amount of fifteen percent (15%) of the total Fee Payments expected to be made during the duration of the Fee Agreement. The Special Source Credits will be received by the Company during the first four tax years following (1) certification by the Department of Revenue that the Company has invested at least \$18,000,000 in the Personal Property Project and that the Company's most recent annual payroll for the new employees was at least \$2,670,000 or (2) the conclusion of the investment period under the Fee Agreement. If the Company's total investment in the Personal Property Project is at least \$16,000,000, but less than \$18,000,000, and the Company's annual payroll for the new employees is at least \$2,390,000, the amount of the Special Source Credits shall be equal to ten percent (10%) of the expected Fee Payments to be made by the Company. The County's Special Source Credits in each of the second, third and fourth years will be recalculated to equal the net amount due following subtraction of the amount of Special Source Credits received by the Company during the previous year(s).

The County will rely on information obtained annually from SC Department of Revenue to monitor the capital investment assets which have been placed into service in association with the Personal Property Project. In order for the County to ensure that required minimum additional annual payroll is in place, the Company will issue a letter on Company letterhead after approval of the Fee Agreement establishing the employment headcount and annual payroll which is in place at the outset of the Project to serve as a benchmark. The Company will then follow up with an additional letter at the time that it notifies the County of its intention to begin receiving the Special Source Credits as described in the paragraph above. The Company may be asked to supply this information in subsequent years in the event that the annual payroll has increased and the Company seeks the higher percentage of Special Source Credits.

Nothing in this Ordinance shall be construed as an obligation or commitment by the County to expend any of its funds other than the portion of Fee Payments represented by the Special Source Credits derived by the County which shall be reimbursed to the Company, its sublessee, assignee or transferee following the payment of the Fee Payments to the County.

The County has determined that the purposes to be accomplished by the Project are proper governmental and public purposes and that the inducement of the location of the Project within the State of South Carolina is of paramount importance and the benefits of the Project are greater than the cost, and that the Project is anticipated to benefit the general public welfare of the County in that the proposed Project will provide services, employment, and other public benefits not otherwise provided locally; and that the Project will give rise to no pecuniary liability of the County, or a change against its general credit or taxing power.

Section 3. The Chairman of the County Council and the Clerk to the County Council and any other proper officer of the County, be and each of them is hereby authorized and directed to execute and deliver any and all documents and instruments and to do and to cause to

be done any and all acts and things necessary or proper for carrying out the transactions contemplated by this Ordinance.

Section 4. The provisions of this Ordinance are hereby declared to be separable and if any section, phrase or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions hereunder.

Section 5. All orders, resolutions, ordinances and parts thereof in conflict herewith are, to the extent of such conflict herewith are, to the extent of such conflict, hereby repealed and this Ordinance shall take effect and be in full force from and after its passage and approval.

Passed and approved this 6<sup>th</sup> day of December, 2011.

CHARLESTON COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
Chairman of County Council

ATTEST:

By: \_\_\_\_\_  
Clerk to County Council

First Reading: August 16, 2011  
Second Reading: September 13, 2011  
Public Hearing: December 6, 2011  
Third Reading: December 6, 2011

## **EXHIBIT “A”**

### **DESCRIPTION OF LAND**

All that certain piece, parcel or tract of land, lying and being in the City of North Charleston, County of Charleston, State of South Carolina, measuring and containing 96.58 acres, more or less, and being bounded on the north by Wando Woods Subdivision, on the East by the lands of JRC S.C. Office Properties Investors Limited Partnership, lands of Korridor Capital Investments, Inc., and lands of Faber Center, LLC, on the South by the lands of Armada/Hoffler Charleston Associates, and the northern end right-of-way of Leeds Avenue (S-10-475) and on the West by the western end right-of-way of Riverwalk Drive (a private road), the lands of Plantation Isle, LLC and being shown on plat of survey entitled, “ALTA/ACSM Land Title Survey Prepared for Cummins Engine Company” prepared by General Engineering, dated June 2002, revised August 16, 2002 and recorded in the Office of the Register of Deeds for Charleston County, South Carolina in Plat Book EG at Page 3-9, reference to which is hereby made for a metes and bounds description thereof.