

STATE OF SOUTH CAROLINA  
COUNTY COUNCIL FOR GREENVILLE COUNTY  
ORDINANCE #\_\_\_\_\_

AN ORDINANCE AUTHORIZING (1) THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT (THE "INCENTIVE AGREEMENT") BETWEEN GREENVILLE COUNTY, SOUTH CAROLINA (THE "COUNTY") AND A COMPANY KNOWN TO THE COUNTY AS PROJECT GINA, ACTING FOR ITSELF, ONE OR MORE AFFILIATES OR OTHER PROJECT SPONSORS (THE "COMPANY"), WHEREBY THE COUNTY SHALL COVENANT TO ACCEPT CERTAIN NEGOTIATED FEES IN LIEU OF *AD VALOREM* TAXES IN CONNECTION WITH THE POTENTIAL EXPANSION OF CERTAIN MANUFACTURING AND RELATED FACILITIES AT ONE OR MORE LOCATIONS IN THE COUNTY (COLLECTIVELY, THE "EXPANSION PROJECT"); (2) CERTAIN SPECIAL SOURCE REVENUE CREDITS IN CONNECTION WITH THE EXPANSION PROJECT; (3) THE BENEFITS OF A MULTI-COUNTY INDUSTRIAL OR BUSINESS PARK TO BE MADE AVAILABLE TO THE COMPANY AND THE EXPANSION PROJECT; AND (4) OTHER MATTERS RELATING THERETO.

WHEREAS, Greenville County, South Carolina (the "County"), acting by and through its County Council (the "Council"), is authorized and empowered under and pursuant to the provisions of the Code of Laws of South Carolina 1976, as amended (the "Code"), particularly Title 12, Chapter 44 of the Code (the "Negotiated FILOT Act") and Title 4, Chapter 1 of the Code (the "Multi-County Park Act" or, as to Section 4-1-175 thereof, and, by incorporation Section 4-29-68 of the Code, the "Special Source Act") (collectively, the "Act") and by Article VIII, Section 13(D) of the South Carolina Constitution: (i) to enter into agreements with certain investors to construct, operate, maintain, and improve certain projects through which the economic development of the State of South Carolina (the "State") will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate and remain in the State and thus utilize and employ the manpower, agricultural products, and natural resources of the State; (ii) to covenant with such investors to accept certain fee in lieu of *ad valorem* tax ("FILOT") payments, including, without limitation, negotiated FILOT payments made pursuant to the Original FILOT Act or the Negotiated FILOT Act, with respect to a project; (iii) to permit investors to claim special source revenue credits against their FILOT payments ("Special Source Credits") to reimburse such investors for expenditures in connection with infrastructure serving the County and improved or unimproved real estate and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County ("Special Source Improvements"); and (iv) to create, in conjunction with one or more other counties, a multi-county industrial or business park in order to afford certain enhanced income tax credits to such investors and to facilitate the grant of Special Source Credits; and

WHEREAS, [Project Gina], a [\_\_\_\_\_] and existing under the laws of the State of [\_\_\_\_\_] and formerly known to the County and identified as Project Gina, acting for itself, one or more affiliates or other project sponsors (the “Company”) proposes to invest in, or cause others to invest in, the potential expansion of certain manufacturing and related facilities at one or more locations in the County, (collectively, the “Expansion Project”) and anticipates that, should its plans proceed as expected, the Expansion Project is expected to generate substantial investment and/or job creation in the County; and

WHEREAS, based on information provided to the County by the Company, the County has determined that the Expansion Project will subserve the purposes of the Act and has made certain findings pertaining thereto in accordance with the Act; and

WHEREAS, in accordance with such findings and determinations and in order to induce the Company to locate the Expansion Project in the County, the Council adopted a Resolution on November 6, 2012 (the “Inducement Resolution”) authorizing the execution and delivery by the County of an Inducement and Millage Rate Agreement dated as of November 6, 2012 (the “Inducement Agreement”), whereby the County agreed to provide certain negotiated FILOT, multi-county industrial or business park and Special Source Credits benefits with respect to the Expansion Project; and

WHEREAS, the County and the Company have agreed to specific terms and conditions of such arrangements as set forth herein and in a Fee in Lieu of Tax and Incentive Agreement by and between the County and the Company with respect to the Expansion Project (the “Incentive Agreement”) (which reflect certain modifications to the matters contained in the Inducement Resolution and the Inducement Agreement), the form of which Incentive Agreement is presented to this meeting, which Incentive Agreement is to be dated as of [December \_\_,] 2012, or such other date as the parties may agree; and

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

NOW, THEREFORE, BE IT ORDAINED by the Council, as follows:

Section 1. As contemplated by Section 12-44-40(I) of the Negotiated FILOT Act, the findings and determinations set forth in the Inducement Resolution are hereby ratified and confirmed and the terms and conditions of the Inducement Agreement are hereby ratified and approved, except as otherwise specifically modified by this Ordinance and the Incentive Agreement. In the event of any disparity or ambiguity, the terms of this Ordinance and the Incentive Agreement shall control. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed thereto in the Incentive Agreement. Additionally, based on information provided to the County by the Company, the County makes the following findings and determinations:

- (a) The Expansion Project will constitute a “project” within the meaning of the Negotiated FILOT Act; and

(b) The Expansion Project, and the County's actions herein, will subserve the purposes of the Negotiated FILOT Act; and

(c) The Expansion Project is anticipated to benefit the general public welfare of the State and the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; and

(d) The Expansion Project gives rise to no pecuniary liability of the County or incorporated municipality or a charge against its general credit or taxing power; and

(e) The purposes to be accomplished by the Expansion Project are proper governmental and public purposes; and

(f) The benefits of the Expansion Project are greater than the costs; and

(g) The Expansion Project will have a substantial public benefit.

Section 2.

(a) The County hereby agrees to enter into the Incentive Agreement, which agreement shall be in the form of a fee agreement, pursuant to the Negotiated FILOT Act, whereby the Company will agree to satisfy, or cause to be satisfied, certain investment and/or job creation requirements with respect to the Expansion Project within certain prescribed time periods in accordance with the Negotiated FILOT Act and the County will agree to accept certain negotiated fee in lieu of taxes payments with respect to the Expansion Project (the "Expansion Project Negotiated FILOT"), as set forth in **Section 2(b)** hereof and in accordance with the terms of the Incentive Agreement.

(b)

(i) The Expansion Project Negotiated FILOT shall be determined using: (1) an assessment ratio of 4%; provided, that, in the event that the Expansion Project fails to qualify as an Enhanced Investment FILOT Project but nevertheless qualifies as a Standard FILOT Project, an assessment ratio of 6% shall be used; (2) the lowest millage rate or millage rates allowed with respect to the Expansion Project pursuant to Section 12-44-50(A)(1)(d) of the Negotiated FILOT Act, which the parties believe to be [\_\_\_] mills, and which millage rate or millage rates shall be fixed pursuant to Section 12-44-50(A)(1)(b)(i) of the Negotiated FILOT Act for the full term of the Expansion Project Negotiated FILOT; (3) the fair market value of such Negotiated FILOT Property as determined in accordance with Section 12-44-50(A)(1)(c) of the Negotiated FILOT Act; and (4) and such other terms and conditions as are or will be specified in the Incentive Agreement.

(ii) The Expansion Project Negotiated FILOT shall be calculated as provided in this **Section 2(b)** for all Negotiated FILOT Property placed in service as part of the Expansion Project during the

Section 3. As an additional incentive to induce the Company to undertake the Expansion Project, and as reimbursement for investment in Special Source Improvements and subject to the requirements of the Special Source Act, the Council does hereby agree that each Credit Eligible Entity shall be entitled to receive, and the County shall provide, Special Source Credits against the Expansion Project Negotiated FILOT payments due from such Credit Eligible Entity with respect to the Expansion Project, all in accordance with the terms and provisions set forth in the Incentive Agreement. In accordance with the Special Source Act, the Special Source Credits authorized herein shall not, in the aggregate, exceed the aggregate cost of Special Source Improvements funded from time to time in connection with the Expansion Project.

Section 4. The County will use its best efforts to insure that the Expansion Project and the Land will be included, if not already included, and will remain, within the boundaries of a multi-county industrial or business park pursuant to the provisions of the Multi-County Park Act and Article VIII, Section 13(D) of the Constitution of the State on terms which provide for any jobs created during the Investment Period, any additional jobs creation tax credits afforded by the laws of the State for projects located within multi-county industrial or business parks and which facilitate the Special Source Credits described in **Section 3** hereof.

Section 5. As an additional incentive to induce the Company to undertake the Expansion Project, the County will use commercially reasonable efforts to assist the Company and each other Co-Investor in securing and processing grants and other funding for infrastructure and other expenses in connection with the Expansion Project.

Section 6. The form, provisions, terms, and conditions of the Incentive Agreement presented to this meeting and filed with the Clerk to Council are hereby approved, and all of the provisions, terms, and conditions thereof are hereby incorporated herein by reference as if the Incentive Agreement was set out in this Ordinance in its entirety. The Chairman of the Council and the County Administrator are hereby authorized, empowered, and directed to execute the Incentive Agreement in the name and on behalf of the County; the Clerk to Council is hereby authorized, empowered and directed to attest the same; and the Chairman of the Council and the County Administrator are further authorized, empowered, and directed to deliver the Incentive Agreement to the Company. The Incentive Agreement is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall not materially adversely affect the rights of the County thereunder and as shall be approved by the official or officials of the County executing the same, upon the advice of counsel, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of the Incentive Agreement now before this meeting.

Section 7. The Chairman of the Council, the County Administrator, and the Clerk to Council, for and on behalf of the County, are hereby each authorized, empowered, and directed to do any and all things necessary or proper to effect the performance of all obligations of the County under and pursuant to the Incentive Agreement.

Section 8. The provisions of this Ordinance are hereby declared to be separable and if any section, phase, 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, phases, and provisions hereunder.

Section 9. All orders, ordinances, resolutions, and parts thereof in conflict herewith are to the extent of such conflict hereby repealed. This Ordinance shall take effect and be in full force from and after its passage and approval.

[End of Ordinance]

Enacted and approved, in meeting duly assembled, this 4th day of December, 2012.

GREENVILLE COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
Herman G. Kirven, Jr., Chairman, County Council  
Greenville County, South Carolina

By: \_\_\_\_\_  
Joseph Kernell, Administrator  
Greenville County, South Carolina

[SEAL]

Attest:

By: \_\_\_\_\_  
Theresa B. Kizer, Clerk to County Council,  
Greenville County, South Carolina