

A RESOLUTION #17-08

**AUTHORIZING THE ISSUANCE AND SALE OF A NEWBERRY COUNTY, SOUTH CAROLINA, SPECIAL SOURCE REVENUE BOND ANTICIPATION NOTE (MID-CAROLINA COMMERCE PARK, PHASE I PROJECT), SERIES 2008, IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED \$500,000; PROVIDING FOR THE APPLICATION OF THE PROCEEDS OF SAID NOTE; AND OTHER MATTERS RELATING THERETO.**

BE IT RESOLVED BY THE COUNTY COUNCIL OF NEWBERRY COUNTY, SOUTH CAROLINA, AS FOLLOWS:

Section 1. Findings and Determinations. The County Council (the "Council") of Newberry County, South Carolina (the "County"), hereby finds and determines:

(a) The several counties in the State of South Carolina (the "State") are empowered pursuant to Title 4, Chapters 1 and 29, Code of Laws of South Carolina 1976, as amended (collectively, the "Act"), to defray the cost of acquisition and construction of infrastructure serving the counties, including improved or unimproved real estate used or to be used in the operation of a manufacturing or commercial enterprise, in order to enhance the economic development of such counties through the issuance of revenue bonds payable solely from all or a specifically described part of the payments in lieu of taxes received and retained by the counties under certain provisions of the Act, Chapter 12 of Title 4 of the Code of Laws of South Carolina 1976, as amended, and/or Section 13 of Article VIII of the South Carolina Constitution.

(b) Pursuant to Section 4-1-170 of the Act and Article VIII, Section 13 of the South Carolina Constitution, the County has established certain joint county industrial and business parks pursuant to agreements with Fairfield and Lexington Counties, as more fully described in the Ordinance (hereinafter defined).

(c) The County heretofore enacted Ordinance No. 06-22-07 on October 3, 2007 (the "Ordinance"), authorizing the issuance and sale of not to exceed \$1,500,000 Special Source Revenue Bonds (the "Bonds") and a not to exceed \$1,500,000 Special Source Revenue Bond Anticipation Note (Mid-Carolina Commerce Park, Phase I Project), Series 2007 (the "2007 Note"). The Ordinance contains a provision authorizing the 2007 Note to be renewed by a resolution of Council incorporating the terms of the Ordinance (the "Resolution").

(d) Pursuant to the Ordinance, the County has heretofore issued the 2007 Note to finance the costs of designing, acquiring, constructing, improving or expanding infrastructure in the Mid-Carolina Commerce Park (collectively, the "Project"), in order to induce manufacturing and commercial enterprises to locate in the County and thereby increase the County's tax base and have a beneficial effect upon the economy of the County and areas adjacent thereto by providing employment not otherwise provided in the County.

(e) The Council desires to incorporate by reference the provisions of the Ordinance and the renewal of the 2007 Note. All capitalized terms used herein but not defined shall have the meanings given such terms in the Ordinance.

(f) Pending the issuance and sale of the bonds authorized by the Ordinance, it is now in the best interest of the County to provide for the issuance of a single bond anticipation note (the "Note") to be used for the purposes of paying the outstanding principal and interest of the 2007 Note.

(g) The County Administrator has reported to the Council, upon the advice of Bond Counsel, that it would be in the County's best interest to place the Note with the holder of the 2007 Note.

Section 2. Authorization and Details of Note. Pending the issuance of the Bond, there is hereby authorized to be issued the Note. The Note shall be designated as the "Newberry County, South Carolina, Special Source Revenue Bond Anticipation Note (Mid-Carolina Commerce Park, Phase I Project), Series 2008" and shall be dated as of the date of its original issuance and delivery and shall be issued as a single note in the principal amount as determined by the County Administrator; provided that the principal amount may not exceed \$500,000. The Note shall bear interest at the rate shown thereon. Interest on the Note shall be payable at maturity no later than one year from its delivery date.

The Note may be prepayable at the option of the County, in whole, or in part, without penalty, at any time.

The Note shall be issued in substantially the form as set forth in Exhibit A attached hereto, with necessary appropriate variations, omissions and insertions as permitted or required by this Resolution.

The principal and interest on the Note shall be payable to the Registered Owner thereof or its assigns by check or draft (via first class mail) or wire transfer of collected funds to such person at his address last appearing on the records of the County Treasurer. Payment of principal and interest on the Note shall be payable in any lawful money of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

The Note shall be executed on behalf of the County by the manual or facsimile signature of the Chairman or Vice-Chairman of the Council and its corporate seal shall be impressed, imprinted, engraved or otherwise affixed or reproduced thereunto and attested to by the manual or facsimile signature of the Clerk to Council. If any of the officers who shall have signed or sealed the Note shall cease to be such officer of the County before the Note so signed and sealed shall have been actually delivered by the County, the Note nevertheless may be issued and delivered with the same force and effect as though the person or persons who signed or sealed the Note had not ceased to be such officer or officers of the County; and also the Note may be signed and sealed on behalf of the County by those persons who, at the actual date of the execution of the Note, shall be the proper officers of the County, although at the date of the Note any such person shall not have been such officer of the County.

Pending the issuance of the Bond, the Council may determine it to be in the best interest of the County to refund or renew the outstanding Note. Therefore, the Council hereby authorizes the Note to be refunded or renewed and such authorization to be effected by a resolution of Council incorporating the terms of this Resolution.

The Treasurer shall maintain on behalf of the County, as Note Registrar, a register to record the names and addresses of the last known Registered Owners of the Note known as the Note Register. Upon surrender of the Note for transfer thereof by the Registered Owner, in person or by his attorney duly authorized in writing, together with a written instrument of transfer in form satisfactory to the Note Registrar, including the address to which payment of the Note is to be directed and at which presentment is to be made, duly executed by the Registered Owner or his attorney duly authorized in writing, and upon payment by such Registered Owner of a sum sufficient to cover any governmental tax or charge required

to be paid, the Note shall be reissued at the same interest rate to the transferee with a notation as to the principal amount outstanding as of the date of such transfer.

The County may deem and treat the Registered Owner of the Note as the absolute owner of such Note for the purpose of receiving any payment on the Note and for all other purposes of this Resolution, whether such Note shall be overdue or not, and the County shall not be affected by any notice to the contrary. Payment of, or on account of, the principal and interest on the Note shall be made to such Registered Owner or upon his written order. All such payments shall be valid and effectual to satisfy and discharge the liability upon the Note to the extent of the sum or sums so paid.

Notwithstanding anything herein to the contrary, absent the prior written consent of the County to appropriate modifications of the Note and this Resolution, the Note may be assigned or transferred by the Purchaser or any subsequent Registered Owner only in whole but not in part.

The Note shall be a limited obligation of the County, the principal and interest on which shall be secured by, and payable by the County solely out of, the proceeds of the Bond and the Pledged Revenues. THE NOTE AND THE INTEREST THEREON DO NOT AND SHALL NEVER CONSTITUTE AN INDEBTEDNESS OF THE COUNTY WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL PROVISION OR STATUTORY LIMITATION AND DO NOT AND SHALL NEVER CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE COUNTY, OTHER THAN THE PLEDGED REVENUES, OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWERS.

No breach by the County of this Resolution or of any provision or condition hereof or in the Note or of any agreement contained herein or in the Note shall result in the imposition of any pecuniary liability upon the County, other than from the proceeds of the Bond and the Pledged Revenues or any charge upon its general credit or against its taxing power. The liability of the County under this Resolution and the Note or any provision or condition hereof or thereof or of any agreement herein or in the Note contained or of any warranty herein or in the Note included or for any breach or default by the County of any of the foregoing shall be limited solely and exclusively to the applicable property pledged herein. The County shall not be required to execute or perform any of its duties, obligations, powers or covenants hereunder or under the Note except to the extent of the issuance of the Bond and the Pledged Revenues pledged thereto and available therefor.

The proceeds of the Note shall be used to pay at maturity the principal and interest on the 2007 Note.

Both the principal of and interest on the Note shall be exempt, in accordance with the provisions of Section 12-2-50 of the South Carolina Code, from all State, county, municipal, school district, and all other taxes or assessments, except estate or other transfer taxes, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise.

### Section 3. Pledge and Security Interest.

The Note shall be payable from the proceeds of the Bond and shall be secured by a pledge of and lien upon all of the County's right, title and interest in the Pledged Revenues. Such pledge and lien shall be on a parity with the 2006 Bond. Said pledge, lien and security interest shall at no time be impaired directly or indirectly by the County, and, subject to the provisions of the Ordinance, the County's right, title and interest in the Pledged Revenues shall not otherwise be pledged and, except as expressly provided herein, no person shall have any rights with respect thereto.

Section 4. Delegation of Authority. The Council hereby delegates to the Administrator, the authority to negotiate the sale to and terms of the note with Branch Banking and Trust Company, the current holder of the 2007 Note provided the interest rate on the Note shall not exceed 6%. The Administrator shall submit a written report to the Council setting forth the results of the negotiated sale of the Note.

Section 5. Incorporation of Ordinance No. 6-22-07. Council hereby incorporates all of the terms and provisions of Ordinance No. 6-22-07 as if the same were repeated herein and made and part hereof.

Section 6. Tax Covenants of the County. The County covenants that no use of the proceeds of the sale of the Note shall be made which, if such use had been reasonably expected on the date of issue of the Note would have caused the Note to be "arbitrage bonds," as defined in Section 148 of the United States Internal Revenue Code of 1986, as amended, and to that end the County shall comply with the applicable regulations of the Treasury Department previously promulgated under Section 103 of the Internal Revenue Code of 1954, as amended, and any regulations promulgated under the Code so long as the Note is outstanding.

The County covenants that, in accordance with the provisions of the Code, the Note is designated as a "qualified tax-exempt obligation" as defined in Section 265 of the Code. The County and all subordinate entities thereof do not anticipate issuing more than \$10,000,000 in tax-exempt bonds or other tax-exempt obligations in 2008 other than private activity bonds except for qualified 501(c)(3) bonds.

Section 7. Execution of Documents. The Council hereby authorizes the Chairman of Council, the Clerk to Council, the County Administrator and the County Attorney to execute such documents and instruments as necessary to effect the issuance of the Note.

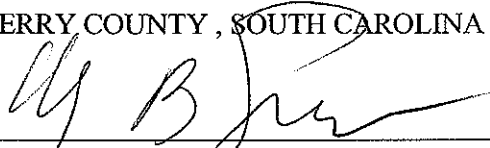
Section 8. General Repealer. All orders, resolutions, ordinances and parts thereof, procedural or otherwise, in conflict herewith or the proceedings authorizing the issuance of the Note is, to the extent of such conflict, are hereby repealed, and this Resolution shall take effect and be in full force from and after its passage and approval.

Section 9. Severability. If any one or more of the covenants or agreements provided in this Resolution on the part of the County or any fiduciary to be performed should be contrary to law, then such covenant or covenants or agreement or agreements shall be deemed severable from the remaining covenants and agreements, and shall in no way affect the validity of the other provisions of this Resolution.

Section 10. Effective Date. This Resolution shall become effective this date.

Duly adopted this 15<sup>th</sup> day of October, 2008.

NEWBERRY COUNTY, SOUTH CAROLINA

  
Chairman, County Council

(SEAL)  
ATTEST:

  
Clerk to Council

EXHIBIT A

FORM OF NOTE

UNITED STATES OF AMERICA  
STATE OF SOUTH CAROLINA  
NEWBERRY COUNTY  
SPECIAL SOURCE REVENUE BOND ANTICIPATION NOTE, SERIES 2008

\$ \_\_\_\_\_

FOR VALUE RECEIVED, Newberry County, South Carolina (the "County"), hereby promises to pay to Branch Banking and Trust Company in Charlotte, North Carolina (the "Note"), its successor and assigns, the principal sum of \_\_\_\_\_ (\$ \_\_\_\_\_) as having been paid to the County by the Banking. Interest shall accrue from October 31, 2008, at the rate of \_\_\_\_\_% per annum until payment in full. Interest shall be computed on a 30-day month, 360-day year basis. Both the principal of and interest on this Note are payable on October 30, 2009, upon presentation and surrender of this Note at the principal office of the Bank. The principal of and interest on this Note are payable in any coin or currency of the United States of America which is, at the time of payment, legal tender for public and private debts.

The County shall have the option to prepay this Note in full or in part at any time prior to its maturity without penalty.

If principal or interest is not paid on or before its due date, such unpaid installment shall bear interest from its due date until fully paid at the rate hereunder.

Interest on this Note is payable by check or draft or wire transfer of collected funds of the United States of America, which at the respective times of payment is legal tender for the payment of public and private debts. The final installment of the principal of and interest on this Note shall be paid upon presentation and surrender hereof to the County, at the office of the County Treasurer or at such other address designated by such Note Register pursuant to the terms of the Ordinance and the Resolution (hereinafter defined). All other installments of principal and interest hereon shall be paid by check or draft (via first class mail) or wire transfer of collected funds to the Registered Owner at his address last appearing on the Note Register (hereinafter defined).

This Note is issued by the County for the purpose of paying at maturity the principal and interest on the County's 2007 Note, as defined in the Resolution and paying costs of issuance hereof. This Note is authorized to be issued and is issued under, pursuant to and in full compliance with the Constitution and statutes of the State of South Carolina, including particularly Section 4-1-175 and Section 11-17-10 *et seq.*, Code of Laws of South Carolina 1976, as amended. This Note is also authorized to be issued and is issued under and pursuant to Ordinance No. 06-22-07 of the Council of Newberry County duly enacted on October 3, 2007 (the "Ordinance") and a Resolution of the Council of Newberry County duly adopted on October 15, 2008.

The Ordinance and Resolution contain provisions defining terms, including the properties comprising the Projects; sets forth the revenues pledged for the payment of the principal of and interest on this Note; sets forth the nature, extent and manner of enforcement of the security of this Note and of such pledge, and the relative rights and remedies of the Registered Owner thereof with respect thereto; sets forth the terms and conditions upon which this Note is issued and sets forth the rights, duties and obligations of the County thereunder. Reference is hereby made to the Ordinance and Resolution for all of the provisions of which any Registered Owner of this Note by the acceptance hereof thereby assents. The provisions of the Act, the Ordinance and the Resolution shall be a contract with the Registered Owner of this Note.

This Note and the interest thereon are special obligations of the County payable from the proceeds of the Bond, and secured equally and ratably by a pledge of and lien upon, the Pledged Revenues (as such term is defined in the Ordinance) derived by the County under the Ordinance which are pledged to the payment thereof. **THIS NOTE, INCLUDING INTEREST THEREON, IS PAYABLE FROM THE PROCEEDS OF THE BONDS AND THE PLEDGED REVENUES HERETOFORE MENTIONED AND THE COUNTY IS UNDER NO OBLIGATION TO PAY THE SAME EXCEPT FROM SUCH SOURCES. THIS BOND SHALL NOT CONSTITUTE A DEBT OF THE COUNTY, NOR A CHARGE, LIEN OR ENCUMBRANCE, LEGAL OR EQUITABLE, UPON ANY PROPERTY OF THE COUNTY, OR ON ANY INCOME, RECEIPTS OR REVENUES THEREOF, OTHER THAN THE AFORESAID PLEDGED REVENUES PLEDGED THERETO. NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THIS Note OR THE INTEREST THEREON AGAINST THE GENERAL FUND OF THE COUNTY AND NEITHER THE CREDIT NOR THE TAXING POWER OF THE COUNTY SHALL BE DEEMED TO BE PLEDGED THERETO. THE FULL FAITH, CREDIT AND TAXING POWERS OF THE COUNTY ARE NOT PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THIS NOTE.**

This Note is transferable, as provided in the Ordinance and Resolution, only upon the books of the County kept for that purpose at the principal office of the Registrar (as defined in the Ordinance) by the Registered Owner in person or by his duly authorized attorney upon surrender of this Note together with a written instrument of transfer satisfactory to the Note Registrar duly executed by the Registered Owner or his duly authorized attorney. Thereupon a new fully registered Note shall be issued to the transferee in exchange therefore as provided in the Ordinance and Resolution. The County and the Note registrar may deem and treat the person in whose name this Note is registered as the absolute owner hereof for the purpose of receiving payment of or on account of the principal or redemption, premium, if any, hereof and interest due hereon and for all other purposes.

If any payment of principal of or interest on this Note falls due on a day which is not a Saturday or Sunday or legal holiday or a day on which banking institutions in the State of South Carolina are authorized or required by law to close (a "Business Day"), then such due date shall be extended to the next succeeding Business Day, and interest shall be payable in respect of such extension.

Under the laws of the State of South Carolina, the principal of, premium, if any and interest on this Note are exempt from any and all State, county, municipal and other taxation under the laws of the State of South Carolina except estate and transfer taxes and certain franchise fees.

Any Registered Owner of this Note shall have the right to institute any suit, action or proceeding for the enforcement of the Ordinance or this Note as provided in the Ordinance. In certain events, on the conditions, in the manner and with the effect set forth in the Ordinance and Resolution, the outstanding principal balance of this Note may be declared due and payable before the stated maturity thereof, together with interest accrued hereon.

It is hereby certified, recited and declared that all acts, conditions and things required by the Constitution and statutes of the State to exist, to happen and to be performed precedent to and in the issuance of the Note, do exist, have happened, and have been performed in due time, form and manner as required by law; that this Note does not exceed any constitutional or statutory limitation of indebtedness; and that provision has been made for the payment of the principal of and interest on this Note, as provided in the Ordinance and Resolution.

IN WITNESS WHEREOF, Newberry County, South Carolina, has caused this Note to be executed in its name by the manual signature of the Chairman of the Council and attested by the manual signature of its Clerk to Council under the seal of the County impressed, imprinted or reproduced hereon, all as of the \_\_\_\_ day of \_\_\_\_\_, 2008.

NEWBERRY COUNTY , SOUTH CAROLINA

(SEAL)

\_\_\_\_\_  
Chairman, County Council

ATTEST:

\_\_\_\_\_  
Clerk to Council