

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDUCEMENT AGREEMENT BY AND BETWEEN GREENVILLE COUNTY, SOUTH CAROLINA AND RETAIL BUSINESS SERVICES LLC, WHEREBY, UNDER CERTAIN CONDITIONS, GREENVILLE COUNTY WILL EXECUTE A FEE IN LIEU OF TAX AGREEMENT WITH RESPECT TO A PROJECT IN THE COUNTY WHEREBY THE PROJECT WOULD BE SUBJECT TO PAYMENT OF CERTAIN FEES IN LIEU OF TAXES, THE EXTENSION OF THE TERMS OF TWO RETAIL BUSINESS SERVICES LLC RELATED FEE-IN-LIEU OF TAX LEASE AGREEMENTS; RATIFYING AN ASSIGNMENT OF A FEE IN LIEU TAX LEASE AGREEMENT TO RETAIL BUSINESS SERVICES LLC OR A RELATED ENTITY, AND PROVIDING FOR RELATED MATTERS.**

**WHEREAS**, Greenville County, 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 (the “*FILOT Act*”), Code of Laws of South Carolina 1976, as amended (the “*Code*”), to enter into agreements with industry, to offer certain privileges, benefits and incentives as inducements for economic development within the County; to acquire, or cause to be acquired, properties as may be defined as “projects” in the Act and to enter agreements with the business or industry to facilitate the construction, operation, maintenance and improvement of such projects; to enter into or allow financing agreements with respect to such projects; and to accept any grants for such projects through which powers the industrial and business development of the State will be promoted, whereby the industry would pay fees-in-lieu-of taxes with respect to qualified projects; through all such powers, the industrial development of the State of South Carolina (the “*State*”) will be promoted and trade developed by inducing manufacturing and commercial enterprises to locate or remain in the State and thus utilize and employ the manpower, products and resources of the State and benefit the general public welfare of the County by providing services, employment, recreation or other public benefits not otherwise provided locally; and

**WHEREAS**, Retail business services LLC (the “*Company*”), or a related entity or entities (“*Related Entity*”), is a lessee of certain personal property (the “**Equipment**”) pursuant to that certain Revised and Restated Lease Agreement originally dated as of December 1, 1998, revised as of December 1, 2000, and revised and restated as of December 1, 2009 (the “**Equipment Lease**”), by and between the Company (or a Related Entity) and the County, which Equipment Lease the Company acquired (or may require) through assignment of certain interests in the Equipment Lease by Ahold Financial Services, LLC, a limited liability company organized and validly existing under the laws of the State of Delaware; American Sales Company, Inc., a corporation organized and validly existing under the laws of the State of Delaware; Giant Food Stores, LLC, a limited liability company organized and validly existing under the laws of the State of Delaware; and The Stop & Shop Supermarket Company LLC, a limited liability company organized and validly existing under the laws of the State of Delaware, to the Company during the first quarter of 2018 (or thereafter) (the “**Assignment**”); and

**WHEREAS**, Company or a related entity is a sub-sublessee of certain real and personal property (the “**Financed Property**”) described in a sub-sublease agreement dated February 12, 2001 between Ahold Information Services, Inc. (“**AIS**”) and Ahold Lease U.S.A., Inc. (“**ALUSA**”), which Financed Property was subleased by ALUSA from R.A. Greenville Brookfield Road LLC (“**RA Greenville**”) pursuant to a sublease agreement dated February 12, 2001, which Financed Property was leased by RA Greenville from the County pursuant to an assignment to RA Greenville on February 12, 2001, of that

portion of the above-referenced Revised and Restated Lease Agreement by AIS to RA Greenville covering the Financed Property (the “**Financed Property Lease**”); and

**WHEREAS**, the Company has requested that the County assist in the acquisition, construction and installation of equipment, furnishings and other personal property to constitute additional investments in its information systems research and development and office facility in the County (collectively, the “**Project**”), which will result in expected investment by the Company in the Project of at least \$10,000,000 in non-exempt investment, by December 31 of the fifth year after the first year which any portion of the Project is first placed in service; and

**WHEREAS**, the Company has requested that the County (i) enter into a fee in lieu of tax agreement with the Company, thereby providing for certain fee in lieu of tax with respect to the Project; (ii) extend the term of the benefit period of the Equipment Lease by 10 years and the term of the Financed Property Lease until February 12, 2026 (collectively, the “**Extensions**”); and (iii) approve and ratify the Assignment, all as more fully set forth in the Inducement Agreement (as hereinbelow defined) attached hereto and made a part hereof; and

**WHEREAS**, the County has determined on the basis of the information supplied to it by the Company that the Project would be a “project” and “economic development property” as such terms are defined in the FILOT Act and that the Project would serve the purposes of the FILOT Act; and

**WHEREAS**, the County has determined and found, on the basis of representations of the Company, that the Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation or other public benefits not otherwise provided locally; that the Project will give rise to no pecuniary liability of the County or any incorporated municipality or a charge against the general credit or taxing power of either; that the purposes to be accomplished by the Project, *i.e.*, economic development, creation of jobs, and addition to the tax base of the County, are proper governmental and public purposes; that the inducement of the location of the Project within the County and State is of paramount importance; and that the benefits of the Project will be greater than the costs; and the County has agreed to effect the delivery of an Inducement Agreement on the terms and conditions hereinafter set forth; and

**WHEREAS**, the County has also determined that the approval and ratification of the Assignment and approval of the Extensions are anticipated to benefit the County by encouraging the retention of existing capital investments and business operations in the County and by encouraging additional investments and the creation and retention of jobs in the County, thereby enhancing the tax base and creating job opportunities, all of which are proper governmental and public purposes.

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

Section 1. Pursuant to the authority given to County Council by the South Carolina Constitution, the Code and the FILOT Act, and subject to the enactment of required legislative authorizations by the County Council, and for the purpose of providing development incentives for the Project through the payment by the Company of fees in lieu of taxes with respect to the Project pursuant to Section 12-44-40 of the Act, there is hereby authorized to be executed an Inducement Agreement between the County and the Company pertaining to the Project, the form of which is now before the County Council (the “**Inducement Agreement**”) so as to (i) establish that the County and the Company will be parties to a fee in lieu tax agreement (the “**Fee Agreement**”); (ii) approve the Extensions; and (iii) approve and ratify the Assignment.

Section 2. The provisions, terms and conditions of the Fee Agreement shall be prescribed and authorized by subsequent ordinance(s) of the County Council, which, to the extent not prohibited by law, shall be consistent with the terms of this Resolution.

Section 3. All orders, resolutions and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed. This resolution shall take effect and be in full force from and after its passage by the County Council.

Section 4. The authorization of the execution and delivery of the documents related to the Inducement Agreement and Fee Agreement and all other related documents or obligations of the County is subject to the compliance by the County Council with the provisions of the Home Rule Act regarding the procedural requirements for adopting ordinances and resolutions.

Section 5. It is the intention of the County Council that this resolution shall constitute an inducement resolution with respect to the Project, within the meaning of the FILOT Act.

**DONE** in meeting duly assembled this \_\_\_ day of \_\_\_\_\_, 2018.

**GREENVILLE COUNTY, SOUTH CAROLINA**

\_\_\_\_\_  
Chairman of County Council

\_\_\_\_\_  
County Administrator

Attest:

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

## INDUCEMENT AGREEMENT

**THIS INDUCEMENT AGREEMENT** (this “*Agreement*”) made and entered into as of \_\_\_\_\_, 2018, by and between **GREENVILLE COUNTY, SOUTH CAROLINA**, a body politic and corporate and a political subdivision of the State of South Carolina (the “*County*”), and **RETAIL BUSINESS SERVICES LLC**, a Delaware limited liability company (the “*Company*”).

**WITNESSETH:**

### ARTICLE I RECITATION OF FACTS

Section 1.1. As a means of setting forth the matters of mutual inducement which have resulted in the making and entering into of this Agreement, the following statements of fact are herewith recited:

(a) The County, by and through its County Council, is authorized and empowered by the provisions of Title 12, Chapter 44 (the “*FILOT Act*”), Code of Laws of South Carolina 1976, as amended (the “*Code*”), to allow for the payment of certain fees in lieu of *ad valorem* taxes with respect to industrial properties; through all such powers the development of the State of South Carolina (the “*State*”) will be promoted and trade developed by inducing new industries to locate in the State and by encouraging industries now located in the State to expand their investments and thus utilize and employ manpower and other resources of the State and benefit the general public welfare of the County by providing services, employment, recreation or other public benefits not otherwise provided locally.

(b) The Company or a related entity or entities (“*Related Entity*”) is a lessee of certain personal property (the “**Equipment**”) pursuant to that certain Revised and Restated Lease Agreement originally dated as of December 1, 1998, revised as of December 1, 2000, and revised and restated as of December 1, 2009 (the “**Equipment Lease**”), by and between the Company (or such *Related Entity*) and the County, which Equipment Lease the Company acquired through assignment of certain interests in the Equipment Lease by Ahold Financial Services, LLC, a limited liability company organized and validly existing under the laws of the State of Delaware; American Sales Company, Inc., a corporation organized and validly existing under the laws of the State of Delaware; Giant Food Stores, LLC, a limited liability company organized and validly existing under the laws of the State of Delaware; and The Stop & Shop Supermarket Company LLC, a limited liability company organized and validly existing under the laws of the State of Delaware to the Company during the first quarter of 2018 (or thereafter) (the “**Assignment**”); and

(c) The Company or a related entity is a sub-sublessee of certain real and personal property (the “**Financed Property**”) described in a sub-sublease agreement dated February 12, 2001 between Ahold Information Services, Inc. (“**AIS**”) and Ahold Lease U.S.A., Inc. (“**ALUSA**”), which Financed Property was subleased by ALUSA from R.A. Greenville Brookfield Road LLC (“**RA Greenville**”) pursuant to a sublease agreement dated February 12, 2001, which Financed Property was leased by RA Greenville from the County pursuant to an assignment on February 12, 2001, of that portion of the above-referenced Revised and Restated Lease Agreement by AIS to RA Greenville covering the Financed Property (the “**Financed Property Lease**”); and

(d) The Company has requested that the County assist in the acquisition, construction and installation of equipment, furnishings and other personal property to constitute additional investment in its information systems research and development and office facility in the County (collectively, the “**Project**”), which will result in expected investment by the Company in the Project of at least

\$10,000,000 (the “*Investment Target*”) in non-exempt investment, by December 31 of the fifth year after the first year which any portion of the Project is first placed in service (the “*Investment Period*”); and

(e) The Company has requested that the County (i) enter into a fee in lieu of tax agreement with the Company, thereby providing for certain fee in lieu of tax with respect to the Project; (ii) extend the term of the benefit period of the Equipment Lease by 10 years and the term of the Financed Property Lease until February 12, 2026 (collectively, the “**Extensions**”); and (iii) approve and ratify the Assignment; and

(f) The County has determined after due investigation that (i) the Project would be aided by the availability of the assistance which the County might render through applicable provisions of the FILOT Act as economic development incentives, and the inducements offered, will, to a great degree, result in the Project locating in the County. Pursuant to this determination, the Company and the County have agreed to negotiate for payments in lieu of *ad valorem* taxes as authorized by the FILOT Act and ratify and approve the Assignment and approve the Extensions; (ii) the approval and ratification of the Assignment and approval of the Extensions are anticipated to benefit the County by encouraging the retention of existing capital investments and business operations in the County and by encouraging additional investments and the creation and retention of jobs in the County, thereby enhancing the tax base and creating job opportunities, all of which are proper governmental and public purposes.

(g) The County has given due consideration to the economic development impact of the Project, and as a preliminary matter, based on representations by the Company, hereby finds and determines that (i) the Project is anticipated to benefit the general public welfare of the County by providing service, employment, recreation or other public benefits not otherwise provided locally, (ii) the Project will give rise to no pecuniary liability of the County or any incorporated municipality or a charge against the general credit or taxing power of either, (iii) the purposes to be accomplished by the Project, i.e., economic development, retention of jobs, and addition to the tax base of the County, are proper governmental and public purposes, (iv) the inducement of the location of the Project within the County and State is of paramount importance and (v) the benefits of the Project will be greater than the costs. The County, therefore, has agreed to effect the issuance and delivery of this Agreement, pursuant to the FILOT Act and a Resolution of the County Council dated \_\_\_\_\_, \_\_\_\_, and on the terms and conditions set forth.

## ARTICLE II UNDERTAKINGS ON THE PART OF THE COUNTY

The County agrees as follows:

Section 2.1. (a) The County, subject to the limits set forth herein, agrees to enter into a Fee in Lieu of Tax Agreement with the Company with respect to the Project (the “*Fee Agreement*”).

(b) The County hereby approves the Extensions; and approves and ratifies the Assignment.

Section 2.2. The Fee Agreement will be executed at such time and upon such mutually acceptable terms as the Company shall request, subject to the provisions of Sections 2.6 and 4.2 herein.

Section 2.3. The terms and provisions of the Fee Agreement shall be substantially in the form generally utilized in connection with the FILOT Act, as to be agreed upon by the County and the Company. The Fee Agreement shall contain, in substance, the following provisions:

(a) The term of the Fee Agreement will be for a period of thirty (30) years, commencing with the first year of the capital investment made under the Fee Agreement.

(b) The Fee Agreement shall provide that, in the performance of the agreements contained therein on the part of the County, such agreement will not give rise to any pecuniary liability of the County and shall not create a charge against the general credit or taxing power of the County, the State or any incorporated municipality.

(c) The Fee Agreement shall contain a provision requiring the Company to make payments in lieu of taxes to the County for a period of thirty (30) years after each year of the capital investment made under the Fee Agreement during the Investment Period. The amounts of such payments shall be determined by using (i) an assessment ratio of 6%; (ii) a fixed millage rate of 315.5 mills (that is, the cumulative millage rate in effect at the site of the Project for all taxing entities as of June 30, 2018); and (iii) the fair market value of the Project property as determined by the South Carolina Department of Revenue in accordance with the FILOT Act. For purposes of computing the amount of such fee, in accordance with the terms of Section 12-44-50(2) of the FILOT Act, the property shall be allowed all applicable property tax exemptions except the exemption allowed under Section 3(g) of Article X of the Constitution of the State of South Carolina and the exemptions allowed pursuant to Sections 12-37-220(B)(32) and (34) of the Code.

(d) The Company may dispose of and replace property subject to fee in lieu of tax payments, as set forth in Section 12-44-60 of the FILOT Act; the fee with respect to such replacement property shall be calculated in accordance with the provisions of said Section 12-44-60.

Section 2.4. The County hereby consents to the planning, design, acquisition, construction and carrying out of the Project to commence prior to the execution and delivery of the Fee Agreement. Contracts for construction and for purchase of machinery, equipment and personal property deemed necessary under the Fee Agreement or that are otherwise permitted under the FILOT Act may be let by the Companies, in their sole discretion.

Section 2.5. Subject to the matters contained herein, the Fee Agreement will be executed at such time and upon such mutually acceptable terms as the parties shall agree.

Section 2.6. Notwithstanding anything in this Agreement to the contrary, the authorization by the County of the Fee Agreement is subject to compliance by the County with the provisions of the Home Rule Act regarding the enactment of ordinances and shall not constitute a general obligation or indebtedness of the County nor a pledge of the full faith and credit or the taxing power of the County. Further, the County will perform such other acts and adopt such other proceedings, consistent with this Agreement, as may be required to faithfully implement this Agreement and will assist, in good faith and with all reasonable diligence, with such usual and customary governmental functions as will assist the successful completion of the Project by the Company. The County has made no independent legal or factual investigation regarding the particulars of this Agreement or the transaction contemplated hereunder and, further, executes this Agreement in reliance upon the representations by the Company that the Agreement and related documents comply with all laws and regulations, particularly those pertinent to industrial development projects in the State.

Section 2.7. Should the Company (together with any Company affiliate) fail to invest at least \$10,000,000 in connection with the Project, by the end of the Investment Period, the Company shall be liable for the difference between the amount of payments in lieu of taxes actually paid pursuant to the Fee Agreement and the amount of *ad valorem* taxes which would have been due and payable with respect to

the Project had the Fee Agreement not been entered into, with interest at the rate payable for late payment of taxes. Any amounts determined to be owing pursuant to the foregoing sentence shall be payable to the County on or before the one hundred twentieth (120<sup>th</sup>) day following the last day of the Investment Period.

### **ARTICLE III UNDERTAKINGS ON THE PART OF THE COMPANY**

Section 3.1. Except with respect to the Fee Agreement, the County will have no obligation to assist the Company in finding any source of financing for all or any portion of the property constituting the Project and the Company may endeavor to finance the Project to the extent required to finance the cost of the acquisition and installation of the Project.

Section 3.2. If the Project proceeds as contemplated:

(a) The Company agrees to enter into the Fee Agreement, under the terms of which it will obligate themselves to make the payments required by the FILOT Act including, but not limited to, payments in lieu of taxes at rates calculated in accordance with Section 2.3(d) hereof;

(b) With respect to the Project, the Company agrees to reimburse the County for all out-of-pocket costs, including reasonable attorney's fees of the County actually incurred, and other out-of-pocket expenditures to third parties to which to which the County might be reasonably put with regard to executing and entering into this Agreement and the Fee Agreement;

(c) The Company agrees to hold the County harmless from all pecuniary liability including, without limitation, environmental liability, and to reimburse the County for all expenses to which the County might be put in the fulfillment of its obligations under this Agreement and in the negotiation and implementation of its terms and provisions, including reasonable legal expenses and fees;

(d) The Company agrees to apply for, and use commercially reasonable efforts to obtain, all permits, licenses, authorizations and approvals required by all governmental authorities in connection with the construction and implementation of the Project;

(e) The Company agrees to indemnify, defend and hold the County and the individual members, officers, agents and employees thereof harmless against any claim or loss or damage to property or any injury or death of any person or persons occurring in connection with the planning, design, acquisition, construction, leasing, carrying out or operation of the Project, including without limitation any environmental liability. The defense obligation shall be supplied with legal counsel reasonably acceptable to the County. The Company agrees also agrees to reimburse or otherwise pay, on behalf of the County, any and all expenses not hereinbefore mentioned incurred by the County in connection with the Project, including the review and execution of the Resolution and this Agreement; and

(f) The Company agrees to use commercially reasonable efforts to meet, or cause to be met, the Investment Target during the Investment Period.

**ARTICLE IV  
GENERAL PROVISIONS**

Section 4.1. All commitments of the County under Article II hereof are subject to all of the provisions of the FILOT Act, including, without limitation, the condition that nothing contained in this Agreement shall constitute or give rise to a pecuniary liability of the County or any incorporated municipality or a charge against the general credit or taxing powers of either.

THIS AGREEMENT IS A LIMITED OBLIGATION OF THE COUNTY PROVIDED BY THE COUNTY SOLELY FROM THE NET FEE PAYMENTS RECEIVED AND RETAINED BY THE COUNTY, AND DOES NOT AND SHALL NEVER CONSTITUTE AN INDEBTEDNESS OF THE COUNTY WITHIN THE MEANING OF ANY CONSTITUTIONAL PROVISION (OTHER THAN THE PROVISIONS OF ARTICLE X, SECTION 14(10) OF THE SOUTH CAROLINA CONSTITUTION) OR STATUTORY LIMITATION, AND DOES NOT AND SHALL NEVER CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE COUNTY OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWER.

Section 4.2. All commitments of the County and the Company hereunder with respect to the Fee Agreement are subject to the condition that the County and the Company agree on mutually acceptable terms and conditions of all documents, the execution and delivery of which are contemplated by the provisions hereof, and the adoption by the County Council of an ordinance authorizing the execution and delivery of the Fee Agreement and such documents and approving the terms thereof. If the parties enter into the Agreement, each party shall perform such further acts and adopt such further proceedings as may be required to faithfully implement its undertakings pursuant to such agreement.

Section 4.3. If for any reason this Agreement (as opposed to the Fee in Lieu of Tax Agreement, which is contemplated to be negotiated, signed and delivered subsequent to the execution and delivery of this Agreement) is not executed and delivered by the Companies on or before December 31, 2019, the provisions of this Agreement may be cancelled by the County by delivery of written notice of cancellation signed by the County Administrator and delivered to the Company; thereafter neither party shall have any further rights against the other and no third parties shall have any rights against either party except that the Company shall pay the out-of-pocket expenses to third parties of officers, agents and employees of the County and counsel for the County incurred in connection with the authorization and approval of the Fee Agreement.

Section 4.4. The parties understand that the Company may choose not to proceed with the Project, in which event this Agreement shall be cancelled and, subject to parties' obligations described in Section 4.3 hereof, neither party shall have any further rights against the other, and no third party shall have any rights against either party.

Section 4.5. To the maximum extent allowable under the FILOT Act, the Company may, with the prior consent of the County (which shall not be unreasonably withheld), assign (including, without limitation, absolute, collateral, and other assignments) all or part of their rights and/or obligations under this Agreement to one or more other entities, in connection with the Fee Agreement, without adversely affecting the benefits to the Company or its assignees pursuant hereto or pursuant to the FILOT Act; provided, however, that the Company may make any such assignment to an affiliate of the Company without obtaining the consent of the County, to the extent permitted by law.

Section 4.6. This Agreement may not be modified or amended except by a writing signed by or on behalf of all parties by their duly authorized officers and approved by appropriate legal process. No

amendment, modification, or termination of this Agreement, and no waiver of any provisions or consent required hereunder shall be valid unless consented to in writing by all parties.

Section 4.7. Nothing in this Agreement or any attachments hereto is intended to create, and no provision hereof should be so construed or interpreted as to create any third party beneficiary rights in any form whatsoever nor any form of partnership or other legal entity relationship between the County and the Company.

Section 4.8. This Agreement constitutes the entire agreement between the parties regarding the matters set forth herein. This Agreement shall be interpreted by the laws of the State.

**IN WITNESS WHEREOF**, the parties hereto, each after due authorization, have executed this Inducement Agreement on the respective dates indicated below, as of the date first above written.

**GREENVILLE COUNTY, SOUTH CAROLINA**

\_\_\_\_\_  
Chairman of County Council

\_\_\_\_\_  
County Administrator

Attest:

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

[SIGNATURE PAGE 1 OF INDUCEMENT AGREEMENT]

**RETAIL BUSINESS SERVICES LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[SIGNATURE PAGE 2 OF INDUCEMENT AGREEMENT]

**STATE OF SOUTH CAROLINA**

**COUNTY OF GREENVILLE**

I, the undersigned Clerk to County Council of Greenville County, South Carolina, do hereby certify that attached hereto is a true, accurate and complete copy of a resolution which was adopted by the County Council at its meeting of \_\_\_\_\_, 20\_\_, at which meeting a quorum of members of the County Council were present and voted, and an original of which resolution is filed in the permanent records of the County Council.

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Clerk to Greenville County Council

Dated: \_\_\_\_\_, 20\_\_