

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AGREEMENT BY AND BETWEEN GREENVILLE COUNTY, SOUTH CAROLINA AND RETAIL BUSINESS SERVICES LLC WITH RESPECT TO CERTAIN ECONOMIC DEVELOPMENT PROPERTY IN THE COUNTY, WHEREBY SUCH PROPERTY WILL BE SUBJECT TO CERTAIN PAYMENTS IN LIEU OF TAXES; THE EXTENSION OF THE TERM 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; AND OTHER MATTERS RELATED THERETO.**

**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*") of the Code of Laws of South Carolina 1976, as amended, to enter into agreements with industry 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,** pursuant to the FILOT Act, and in order to induce investment in the County, the County did previously enter into an Inducement Agreement dated \_\_\_\_\_, 20\_\_ (the "*Inducement Agreement*") with Retail business services LLC, a Delaware limited liability company (the "*Company*"), with respect to the acquisition, construction, and installation of fixtures, machinery, equipment, furnishings and other personal property to constitute an additional investment in the Company's existing information systems research and development and office facility in the County (collectively, the "*Project*"); and

**WHEREAS,** the Company has represented that the Project will involve an investment of approximately \$10,000,000 in the County within the Investment Period (as such term is defined in the hereinafter defined Fee Agreement); 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 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 acquire) through assignment to the Company 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 during the first quarter of 2018 (or

thereafter) (the “**Assignment**”); and

**WHEREAS**, 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 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**, pursuant to the Inducement Agreement, the County has agreed to, among other things, (a) enter into a Fee in Lieu of Tax Agreement with the Company (the “**Fee Agreement**”), whereby the County would provide therein for a payment of a fee-in-lieu-of taxes by the Company with respect to the Project; and (b) 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 (c) approve and ratify the Assignment; and

**WHEREAS**, the County Council has caused to be prepared and presented to this meeting the form of the Fee Agreement which the County proposes to execute and deliver; and

**WHEREAS**, it appears that the documents above referred to, which are now before this meeting, are in appropriate form and are an appropriate instrument to be executed and delivered or approved by the County for the purposes intended;

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

Section 1. Based on information supplied by the Company, it is hereby found, determined and declared by the County Council, as follows:

- (a) The Project will constitute a “project” and “economic development property” as said terms are referred to and defined in the FILOT Act, and the County’s actions herein will subserve the purposes and in all respects conform to the provisions and requirements of the FILOT Act;
- (b) 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;
- (c) 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;
- (d) 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; and
- (e) The benefits of the Project are anticipated to be greater than the costs.

Section 2. The form, terms and provisions of the Fee Agreement presented to this meeting are hereby approved and all of the terms and provisions thereof are hereby incorporated herein by reference as if the Fee Agreement was set out in this Ordinance in its entirety. The Chairman of County Council and/or the County Administrator are hereby authorized, empowered and directed to execute, acknowledge and deliver the Fee Agreement in the name of and on behalf of the County, and the Clerk to County Council is hereby authorized and directed to attest the same, and thereupon to cause the Fee Agreement to be delivered to the

Company and cause a copy of the same to be delivered to the Greenville County Auditor, Assessor and Treasurer. The Fee Agreement is to be in substantially the form now before this meeting and hereby approved, or with such minor changes therein as shall be approved by the County Administrator, upon advice of counsel, his execution thereof to constitute conclusive evidence of his approval of any and all changes or revisions therein from the form of Fee Agreement now before this meeting.

Section 3. The Extensions are hereby approved and, upon request of the Company, the Chairman of County Council and/or the County Administrator, are each hereby separately authorized, empowered and directed to execute, acknowledge and deliver an amendment to the Equipment Lease and an amendment to the Financed Property Lease evidencing such Extensions in a form as such official may approve, upon advice of counsel, in the name and on behalf of the County, such official's execution thereof to constitute conclusive evidence of such approval, and the Clerk to County Council is hereby authorized and directed to attest the same, and thereupon to cause such amendments to be delivered to the Company.

Section 4. The Assignment is hereby ratified and approved and, upon request of the Company, the Chairman of County Council and/or the County Administrator, are each hereby separately authorized, empowered and directed to execute, acknowledge and deliver a document evidencing such approval in a form as such official may approve, upon advice of counsel, in the name and on behalf of the County, such official's execution thereof to constitute conclusive evidence of such approval, and the Clerk to Council is hereby authorized and directed to attest the same, and thereupon cause such document to be delivered to the Company.

Section 5. The Chairman of County Council, the County Administrator and the Clerk to County Council, for and on behalf of the County, are hereby authorized and directed to do any and all things necessary to effect: (i) the execution and delivery of the Fee Agreement and the performance of all obligations of the County thereunder; (ii) the Extensions; and (iii) the Assignment.

Section 6. The provisions of this ordinance are hereby declared to be separable and if any section, phrase or provisions 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 7. All 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 by the County Council.

**ENACTED** in meeting duly assembled this \_\_ day of \_\_\_\_\_, 20\_\_.

**GREENVILLE COUNTY, SOUTH CAROLINA**

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Chairman of County Council

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County Administrator

Attest:

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Clerk to County Council

First Reading: \_\_\_\_\_, 20\_\_  
Second Reading: \_\_\_\_\_, 20\_\_  
Third Reading: \_\_\_\_\_, 20\_\_  
Public Hearing: \_\_\_\_\_, 20\_\_

**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 an ordinance which was given reading, and received unanimous approval, by the County Council at its meetings of \_\_\_\_\_, 20\_\_, \_\_\_\_\_, 20\_\_, and \_\_\_\_\_, 20\_\_, at which meetings a quorum of members of County Council were present and voted, and an original of which ordinance is filed in the permanent records of the County Council.

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Clerk to County Council,  
Greenville County, South Carolina

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