

ORDINANCE NO. 14-08
DORCHESTER COUNTY, SOUTH CAROLINA

AN ORDINANCE AUTHORIZING (1) THE EXECUTION AND DELIVERY OF A FEE IN LIEU OF TAX AND INCENTIVE AGREEMENT (THE "INCENTIVE AGREEMENT") BY AND BETWEEN DORCHESTER COUNTY, SOUTH CAROLINA (THE "COUNTY") AND MWV-RIDGEVILLE, LLC, ACTING FOR ITSELF, OR ONE OR MORE AFFILIATES OR OTHER PROJECT SPONSORS, (THE "COMPANY"), IN CONNECTION WITH THE ESTABLISHMENT OF CERTAIN FACILITIES AND/OR THE MAKING OF CERTAIN INVESTMENTS IN THE COUNTY (THE "PROJECT"); (2) THE BENEFITS OF A MULTI-COUNTY INDUSTRIAL OR BUSINESS PARK TO BE MADE AVAILABLE TO THE COMPANY AND THE PROJECT; (3) CERTAIN SPECIAL SOURCE REVENUE CREDITS IN CONNECTION WITH THE PROJECT; AND (4) OTHER MATTERS RELATING THERETO.

WHEREAS, Dorchester 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 through the date hereof (the "Code"), particularly Title 12, Chapter 44 thereof (the "FILOT Act") and Title 4, Chapter 1 of the Code (the "Multi-County Park Act" or, as to Section 4-1-175 thereof, the "Special Source Act") (each of the foregoing Acts collectively referred to herein as the "Act"), in order to promote the economic development of the County and surrounding areas by inducing investors to locate and/or expand industrial and commercial properties within the County, thereby expanding the tax base in the County and creating jobs for its citizens: (i) to enter into agreements, with certain investors to construct, operate, maintain and improve certain industrial and commercial properties 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 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 without limitation, 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 ("Multi-County Park") in order to afford certain enhanced income tax credits to such investors and to facilitate the grant of Special Source Credits; and

WHEREAS, MWV-Ridgeville, LLC, a Delaware limited liability company ("MWV-Ridgeville"), has acquired the Project Site which is presently comprised of certain unimproved real property in the County which, in the aggregate, consists of approximately 1,031 acres, as more particularly described on Exhibit A attached to the Incentive Agreement defined below (the "Project Site"); and

WHEREAS, MWV-Ridgeville presently anticipates that the Project Site will be used primarily for the purpose of locating, constructing, and equipping various types of new facilities, including without limitation, manufacturing, warehouse, and distribution facilities, which facilities, together with the Project Site, will comprise the Project; and

WHEREAS, MWV-Ridgeville presently anticipates that either (i) certain portions of the Project Site will be sold and transferred by MWV-Ridgeville to one or more purchasing transferees, and the construction, equipping, and operating of the facilities thereon will be undertaken, or caused to be undertaken, by such purchasing transferee or transferees (or one or more subsequent purchasing transferees), or (ii) certain real property improvements comprising a portion of such facilities will be constructed on the Project Site by MWV-Ridgeville as spec buildings or under build-to-suit arrangements and then leased or sold and transferred to one or more lessees or transferees, which lessees or transferees (or one or more subsequent lessees or transferees) will equip and operate such facilities; and

WHEREAS, MWV-Ridgeville and the County intend that, in addition to MWV-Ridgeville, each such lessee and transferee, and each other entity investing in the Project will be eligible for certain Negotiated FILOT and Multi-County Park benefits, Special Source Credits, and other benefits to be set forth in a Fee in Lieu of Tax and Incentive Agreement (the "Incentive Agreement"), either (i) as a Company under the Incentive Agreement, by virtue of being transferred and assigned all rights, interests, duties, and obligations in, to, and under the Incentive Agreement with respect to the portion of the Project transferred to such entity or (ii) as an additional Sponsor or Sponsor Affiliate designated by a Company under the Incentive Agreement; and

WHEREAS, based on information provided by MWV-Ridgeville, the County has determined that the Project will subserve the purposes of the Act, that MWV-Ridgeville is a Sponsor, and that the Project constitutes, or will constitute, Economic Development Property, and has made certain findings pertaining to the aforementioned in accordance with the Act; and

WHEREAS, in accordance with such findings and determinations and in order to induce the location of the Project in the County, the Council is enacting this Ordinance, which is also intended to serve as an "inducement resolution" for the purposes of Section 12-44-110(11) of the FILOT Act, pursuant to which the County, amongst other things, is determining to provide to the Project the Negotiated FILOT and Multi-County Park benefits, the Special Source Credits, and other benefits as described herein and in the Incentive Agreement; and

WHEREAS, the County and the Company have agreed to specific terms and conditions of the above-referenced arrangements as set forth herein and in the Incentive Agreement, the form of which is presented to this meeting, which Incentive Agreement is to be dated as of July 7, 2014, or such other date as the parties may agree; and

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

WHEREAS, capitalized terms used and not otherwise defined herein shall have the meanings ascribed thereto in the Incentive Agreement.

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

Section 1. As contemplated by Section 12-44-40(I) of the FILOT Act, based on information provided to the County by MWV-Ridgeville, the County makes the following findings and determinations:

- (a) The Project will constitute a “project” within the meaning of the FILOT Act; and
- (b) The Project, and the County’s actions herein, will subserve the purposes of the FILOT Act; and
- (c) The 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 Project gives rise to no pecuniary liability of the County or any incorporated municipality or a charge against the general credit or taxing power of the County or any incorporated municipality; and
- (e) The purposes to be accomplished by the Project are proper governmental and public purposes; and
- (f) The benefits of the Project are greater than the costs; and
- (g) The 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 FILOT Act, whereby, under certain conditions, the County will agree to accept certain negotiated fee in lieu of taxes payments with respect to the Project, as set forth in **Section 2(b)** hereof and in accordance with the terms of the Incentive Agreement (the “Negotiated FILOT”).

(b) The Negotiated FILOT shall be calculated using (1) an assessment ratio of 6%; (2) the lowest millage rate or millage rate allowed with respect to the Project pursuant to Section 12-44-50(A)(1)(d) of the FILOT Act as set forth in the Incentive Agreement, and which millage rate shall be fixed in accordance with Section 12-44-50(A)(1)(b)(i) of the FILOT Act for the entire term of the Negotiated FILOT; (3) the fair market value of the Project determined in accordance with the FILOT Act; and (4) and such other terms and conditions as are, or will be, specified in the Incentive Agreement.

Section 3. As an additional incentive to induce the location of the Project in the County and, as reimbursement for investment in Special Source Improvements, the County agrees that each Company and each other Sponsor or Sponsor Affiliate (each a “Credit Eligible Entity”) shall be entitled to receive, and the County shall provide, Special Source Credits against each Negotiated FILOT Payment, or portion thereof, due with respect to each annual increment of investment in the Project as is, or will be, specified in the Incentive Agreement. In no event shall the aggregate amount of the Special Source Credits received by a Credit Eligible Entity exceed the amount heretofore or hereafter expended by such Credit Eligible Entity with respect

to Special Source Improvements in connection with such Credit Eligible Entity's portion of the Project.

Section 4. The County will use its best efforts to insure that the Project, including the Project Site, will be included, if not already included, and will remain, within the boundaries of Multi-County Park 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 on terms which facilitate the Special Source Credits described in **Section 3** hereof and in the Incentive Agreement.

Section 5. 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 their entirety. The Chair of the Council is hereby authorized, empowered, and directed to execute the Incentive Agreement in the name and on behalf of the County; the Clerk to the Council is hereby authorized, empowered and directed to attest the same; and the Chair of the Council is further authorized, empowered, and directed to deliver the same to MWV-Ridgeville. 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 6. The Chair of the Council, the County Administrator and the Clerk to the 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.

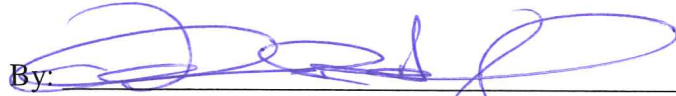
Section 7. The provisions of this Ordinance are hereby declared to be separable and if any section, phase, or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phases, and provisions hereunder.

Section 8. 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 7th day of July, 2014.

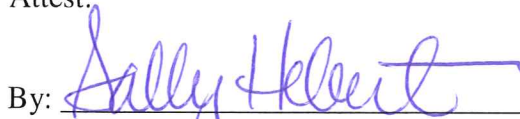
DORCHESTER COUNTY, SOUTH CAROLINA

By: 

William R. Hearn, Jr., Chairman, County Council
Dorchester County, South Carolina

[SEAL]

Attest:

By: 

Sally Hebert, Clerk to County Council
Dorchester County, South Carolina

First Reading: May 5, 2014
Second Reading: May 19, 2014
Public Hearing: June 16, 2014
Third Reading: July 7, 2014