

ORDINANCE NO. 435

AN ORDINANCE TO DEVELOP A JOINTLY OWNED AND OPERATED INDUSTRIAL/BUSINESS PARK IN CONJUNCTION WITH KERSHAW COUNTY, PHASE II TARGET CORPORATION, SUCH INDUSTRIAL/BUSINESS PARK TO BE GEOGRAPHICALLY LOCATED IN FAIRFIELD COUNTY AND KERSHAW COUNTY AND ESTABLISHED PURSUANT TO SOUTH CAROLINA CODE OF LAWS OF 1976 §4-1-170, ET SEQUITUR, AS AMENDED; TO PROVIDE FOR A WRITTEN AGREEMENT WITH KERSHAW COUNTY PROVIDING FOR THE EXPENSES OF THE PARK, THE PERCENTAGE OF REVENUE APPLICATION, AND THE DISTRIBUTION OF FEES IN LIEU OF AD VALOREM TAXES TO THE COUNTIES AND RELEVANT TAXING ENTITIES; AND, TO PROVIDE THAT JOBS TAX CREDITS ALLOWED BY LAW BE PROVIDED FOR INDUSTRIES LOCATING IN SAID PARK, AND TO PERMIT A USER FEE IN LIEU OF AD VALOREM TAXATION.

WHEREAS, Kershaw County and Fairfield County (jointly the "Counties") are authorized under Article VIII, Section 13 of the South Carolina Constitution to jointly develop an industrial or business park within the geographical boundaries of one or more of the member counties; and

WHEREAS, Kershaw County and Fairfield County previously entered into an agreement pursuant to an ordinance and duly enacted in Fairfield and Kershaw County dated June 26, 1996 for the development of a joint industrial park and designated certain lands in Kershaw County and Fairfield County; and

WHEREAS, by ordinance dated June 26, 1996 by Kershaw County and by ordinance dated March 11, 1996 by Fairfield County, Kershaw County and Fairfield County added certain properties to the joint industrial park located in Kershaw County; and

WHEREAS, by ordinance dated December ¹⁴~~15~~ 1998, Kershaw County and Fairfield County amended the agreement to add further properties being the DuPont property and further amended the ordinance subject to the allocation of revenues between the two counties; and

WHEREAS, in order to promote the economic welfare of the citizens of the Counties by providing employment and other benefits to the citizens of the Counties, Fairfield County proposes to enter into an agreement with Kershaw County to develop jointly an industrial and business park as provided by Article VIII, Section 13 of the South Carolina Constitution and in accordance with Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended, (the "Act"), Fairfield County and Kershaw County wish to enter into an agreement for the development of a joint industrial park between Kershaw County and Fairfield County, Phase II Target Corporation.

SECTION IV. The administration, development, promotion, and operation of the Park shall be the responsibility of the county in which each premises of the park is located. Provided, that to the extent any Park premises is owned by a private developer, the developer shall be responsible for development expenses as contained in the Agreement.

SECTION V. In order to avoid any conflict of laws or ordinances between the Counties, the respective county ordinances will be the reference for such regulations or laws in connection with the Park premises located within that county. Nothing herein shall be taken to supersede any state or federal law or regulation. Each county is specifically authorized to adopt restrictive covenants and land use requirements for the Park premises located in that county, at that county's sole discretion.

SECTION VI. The Sheriff's Department for the county within which the park premises is located will have initial jurisdiction to make arrests and exercise all authority and power within the boundaries of the Park premises located in that county and fire, sewer, water and EMS service will be provided by the applicable service district or other political unit within whose jurisdiction that park premises are located.

SECTION VII. Should any section of this Ordinance be, for any reason, held void or invalid, it shall not affect the validity of any other section hereof which is not itself void or invalid.

SECTION VIII. The Agreement may not be terminated except by concurrent ordinances of Fairfield County Council and Kershaw County Council. In any event, this Ordinance shall terminate twenty (20) years from the date of its execution by both parties.

SECTION IX. Fairfield County hereby designates the following distribution of the fee-in-lieu of ad valorem taxes which Fairfield County receives pursuant to the Agreement for Park premises which are located in Kershaw County.

Fairfield County 100%

Fairfield County hereby designates that the distribution of the Park Revenues shall be divided among the taxing entities that otherwise would have received ad valorem tax revenues from property prior to such property being placed in the Park (such entities shall be referred to as "Taxing Entities"). Each individual Taxing Entity shall receive a proportional share of the Park Revenues equal to the ratio of the millage levied by each individual Taxing Entity to the total amount of millage levied by all of the Taxing Entities in the year of distribution. To the extent that one or more of the Taxing Entities is a duly constituted school district levying both operating and debt service millage, then the proportion of Park Revenues received by such Taxing Entity should be divided on a pro rata basis in accordance with the millage rates levied for each between operational expenditures and debt service.

NOW, THEREFORE, BE IT ORDAINED BY THE FAIRFIELD COUNTY COUNCIL:

SECTION I. Fairfield County is hereby authorized to execute and deliver a written agreement to jointly develop an industrial and business park (the "Park") with Kershaw County, Phase II Target Corporation. The Park is to be located within the boundaries of Fairfield County and Kershaw County. The form of the joint industrial park agreement (the "Agreement") Phase II Target Corporation is attached hereto and all terms of the Agreement are hereby incorporated herein. The form, terms and provisions of the Agreement presented to this meeting and filed with the Clerk of the Fairfield County Council be and they are hereby approved and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if the Agreement were set out in this Ordinance in its entirety. The Administrator of the County be and he is hereby authorized, empowered and directed to execute, acknowledge and deliver the Agreement in the name and on behalf of the County. The 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 officials of the County executing the same, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of Agreement now before this meeting.

SECTION II. The maximum tax credits allowable by South Carolina Code of Laws of 1976 Section 12-7-1220, as amended, will apply to any business enterprise locating in the Park.

SECTION III. Any business or industrial enterprise locating in the Park shall pay a fee-in-lieu of ad valorem taxes ("Fee Payments") as provided for in the Agreement, Article VIII Section 13 of the South Carolina Constitution and the Act. The Fee Payments shall be paid to the County Treasurer for the county in which the premises is located. That portion of the Fee Payments from the Park located in Kershaw County and allocated pursuant to the Agreement to Fairfield County shall be paid by the Kershaw County Treasurer to the Fairfield County Treasurer within five business days following the end of the calendar quarter of receipt for distribution, in accordance with the Agreement. That portion of the Fee Payments from the Park located in Fairfield County and allocated pursuant to the Agreement to Kershaw County shall be paid by the Fairfield County Treasurer to the Kershaw County Treasurer within five business days following the end of the calendar quarter of receipt for distribution in accordance with the Agreement. Fee Payments shall be made by a business or industrial enterprise on or before the due date for taxes for a particular year. Penalties for late payment will be at the same rate and at the same times as for late tax payment. Any late payment beyond said date will accrue interest at the rate of statutory judgment interest. The Counties, acting by and through the respective county tax collector for the County in which the park premises is located, shall maintain all liens and rights to foreclose upon liens provided for counties in the collection of ad valorem taxes.

SECTION X. This Ordinance shall be effective after third and final reading and publication.

FAIRFIELD COUNTY COUNCIL

By: David L. Ferguson Sr
Its: County Chairman

First Reading: 07-08-02, 07-22-02
Second Reading: 10-28-02
Third Reading: 11-11-02
Public Hearing: 11-11-02

ATTEST:

By: Shirley K. Brown
Its: Clerk to County Council

Appendix A
Property Description

All that certain piece, parcel or tract of land situate, lying and being in the County of Kershaw, State of South Carolina, and being more particularly shown and delineated as Parcel "A" (183.44 acres) and Parcel "B" (0.70 acres) on a plat prepared for Target Corporation by Associated E & S, Inc. dated September 24, 2001, and recorded in the Office of the Clerk of Court for Kershaw County in Plat Book B40 at Page 5.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FAIRFIELD)
)
 COUNTY OF KERSHAW)

) **AGREEMENT FOR DEVELOPMENT OF A JOINT**
) **INDUSTRIAL PARK BETWEEN KERSHAW COUNTY**
) **AND FAIRFIELD COUNTY - PHASE II**
) **TARGET CORPORATION**

THIS AGREEMENT, made and entered into as of the ____ day of the month of May, 2002, by and between Fairfield County, a political subdivision of the State of South Carolina ("Fairfield"); and Kershaw County, a political subdivision of the State of South Carolina ("Kershaw"), is made pursuant to Article VIII, Section 13(D) of the South Carolina Constitution, as amended, and Title 4, Chapter 1, Section 170 of the Code of Laws of South Carolina, 1976, as amended (the "Act").

WHEREAS, on June 26, 1996, Fairfield County and Kershaw County entered into agreements for the development of a joint industrial park and designated certain lands in Kershaw County and Fairfield County; and

WHEREAS, by ordinance dated June 26, 1996 by Kershaw County and by ordinance dated March 11, 1996 by Fairfield County, Kershaw County and Fairfield County added certain properties to the joint industrial park located in Kershaw County; and

WHEREAS, by ordinance dated December ^{14th}~~15~~, 1998, Kershaw County and Fairfield County amended the agreement to add further properties being the DuPont property and further amended the ordinance subject to the allocation of revenues between the two counties; and

WHEREAS, Kershaw County and Fairfield County wish to enter into an agreement for the designation of property within the existing park as to the property owned by the Target Corporation and wishes to change the allocation of revenue between the two counties as to the Target property; and

WHEREAS, this agreement for the designation of the joint industrial park between Kershaw County and Fairfield County shall be known as Phase II Joint Industrial Park between Kershaw County and Fairfield County.

NOW, THEREFORE, of the premises and mutual covenants herein contained, the sufficiency of which consideration is acknowledged, the parties agree as set forth below:

Section 1. Establishment of a New Phase of the Park. This Agreement provides for the establishment and designation of Phase II Target Corporation of the joint Kershaw County and Fairfield County industrial park which comprises the property described in Appendix A (the "Property"), attached hereto and made a part of this Agreement;

whereon, the Target Corporation is locating its facility in Kershaw County, South Carolina.

Section 2. Sharing of Expenses. Fairfield and Kershaw shall share expenses including, but not limited to, development, operations, maintenance and promotion of the Park, in the following proportions:

If property is in the Kershaw portion of the Park:

A.	Kershaw County	-	100%
B.	Fairfield County	-	0%

Provided, however, in no event shall Fairfield be responsible for sharing any portion of the costs incurred by Kershaw or the development expenses committed to by Kershaw either on behalf of any tenant of the Park located in Kershaw or in conjunction with any State agency or political subdivision prior to the effective date of this Agreement.

If property is in the Fairfield portion of the Park:

A.	Kershaw County	-	0%
B.	Fairfield County	-	100%

Provided, however, in no event shall Kershaw be responsible for sharing any portion of the costs incurred by Fairfield or the development expenses committed to by Fairfield either on behalf of any tenant of the Park located in Fairfield or in conjunction with any State agency or political subdivision prior to the effective date of this Agreement.

Section 3. Basis of Revenue. Under the pertinent provisions of the South Carolina State Constitution and the Act, a fee equivalent to the *ad valorem* taxes normally assessed on the Property will be collected in lieu of *ad valorem* taxes. Such fee may be reduced in the event either Kershaw or Fairfield has entered into a fee-in-lieu of taxes arrangement with the company seeking to have its property included within the Park. In such cases, the amount of the fee revenue generated by property located within the Park shall be governed by the applicable fee agreements.

Section 4. Allocation of Revenues. Kershaw and Fairfield shall receive an allocation of all revenue generated by the Park through payment of fees-in-lieu of *ad valorem* property taxes or from any other source in the following proportions:

If property is in the Kershaw portion of the Park:

A.	Kershaw County	-	98%
B.	Fairfield County	-	2%

If property is in the Fairfield portion of the Park:

A.	Kershaw County	-	2%
B.	Fairfield County	-	98%

Section 5. Revenue Allocation Within Each County. (a) Revenues generated within the Park from sources other than fees paid in lieu of *ad valorem* property taxes shall be distributed directly to Kershaw and Fairfield according to the proportions established in Section 4 herein to be expended in any manner as the County Council of each County deems appropriate.

(b) Revenues generated by property located within Phase II of the Park through the payment of fees-in-lieu of *ad valorem* property taxes ("Park Revenues") shall be distributed to Kershaw and Fairfield, as the case may be, according to the proportions established by Section 4 herein. Park Revenues may be generated by property located within the boundaries of Kershaw County, in which case Kershaw would be the Host County and Fairfield would be the Partner County, or property may be located in Fairfield County, in which case Fairfield would be the Host County and Kershaw would be the Partner County. In the case where either County serves as Host County, Park Revenues shall be distributed to the taxing entities within such Host County as follows:

1. Kershaw County: Pursuant to "An Ordinance Distributing the Payment of Fees in Lieu of Ad Valorem Property Taxes Received by Kershaw County for Park Premises Located in Kershaw County from the Joint Kershaw County/Fairfield County Industrial Park and the Joint Kershaw County/Sumter County Industrial and Business Park adopted by Kershaw County Council on March 14, 2000", each individual Taxing Entity shall receive a share of the Park Revenues as provided in the yearly budget ordinance as set forth in the ordinance. As to Kershaw County School District, a duly constituted school district levying both operating and debt service millage, then the proportion of Park Revenues received by such Taxing Entity should be divided on a pro rata basis in accordance with the millage rates levied for operational and debt service and expenditures.
2. Fairfield County: Park Revenues shall be divided among the taxing entities that otherwise would have received *ad valorem* tax revenues from property prior to such property being placed in the Park (such entities shall be referred to as "Taxing Entities"). Each individual Taxing Entity shall receive a proportional share of the Park Revenues equal to the ratio of the millage levied by each individual Taxing Entity to the total amount of millage levied by all of the Taxing Entities in the year of distribution. To the extent that one or more of the Taxing Entities is a duly constituted school district levying both operating and debt

service millage, then the proportion of Park Revenues received by such Taxing Entity should be divided on a pro rata basis in accordance with the millage rates levied for each between operational and debt service expenditures.

In the case where either County serves as the Partner County, thereby received a 2% distribution in accordance with Section 4 hereof, the Partner County will retain the whole amount for use as the County Council of such County deems appropriate.

(c) Any payment by an individual county to the other county of its allocable shares of Park Revenues shall be made not later than 30 days from the end of the calendar quarter in which the County receives such payment from the occupants of the Park, and shall be accompanied by a statement showing the manner in which total payment was calculated and in which each County's share was calculated and shall reflect the companies located in that County's portion of the Park at the time of payment. In the event that the payment made by an occupant of a Park is made under protest or is otherwise in dispute, the County is not obligated to pay to the other County more than the respective County's share of the undisputed portion thereof until 30 days after the final resolution of such protest or dispute.

(d) Either County may unilaterally amend the distribution scheme applicable to such County and set forth in section (b) above. Such amendment must be accomplished by passage of an Ordinance.

Section 6. Jobs Tax Credit Enhancement. Business enterprises locating in the Park shall be entitled to such enhancement of the regular jobs tax credits authorized by Section 12-6-3360 of the Code, or any successive provisions, as may be provided under South Carolina law.

Section 7. Exemption From Ad Valorem Taxation. All properties located within the Park are exempted from *ad valorem* taxation.

Section 8. Assessed Valuation. For the purpose of bonded indebtedness limitation and for the purpose of computing the index of taxpaying ability pursuant to Sec. 59-20-20(3) of the Code, allocation of the assessed value of property within the Park to the counties which are party to this Agreement must be identical to the percentage of total fee-in-lieu of *ad valorem* tax revenues retained and received by each such county in the preceding fiscal year.

Section 9. Governing Law. This Agreement has been entered into in the State of South Carolina and shall be governed by, and construed in accordance with South Carolina law.

Section 10. Binding Effect of Agreement. This Agreement serves as a written instrument, which is binding upon the signatory parties.

Section 11. Severability. In the event and to the extent (and only to the extent) that any provision or any part of a provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable the remainder of that provision or any other provision or part of a provision of this Agreement.

Section 12. Complete Agreement: Amendment. This Agreement constitutes the entire agreement between the parties and supersedes all agreements, representations, warranties, statements, promises and understandings, whether oral or written agreements, statements, promises, or understandings not specifically set forth in this Agreement. Except for the amendment provided for in Section 5(c) above, this Agreement may be amended only upon affirmative vote of both of the respective County Councils of Fairfield and Kershaw.

Section 13. Counterpart Execution. This agreement may be executed in multiple counterparts.

That by this ordinance the Target property is subject to this Agreement and the prior Agreement dated _____ is so amended.

IN WITNESS WHEREOFF, the parties hereto have executed this Agreement the day and the year first above written.

Witnesses:

Thomas Richardson

Thomas Spratt, Jr.

FAIRFIELD COUNTY

By: David L. Ferguson Sr.
Council Chair

Attest: Shirley K. Brown
Clerk

Witnesses:

[Signature]

Jessie Mann

KERSHAW COUNTY

By: [Signature]
Council Chair

Attest: [Signature]
Clerk