

AN ORDINANCE

APPROVING THE DIVISION OF INTERESTS IN AN ECONOMIC DEVELOPMENT PROJECT IN CHARLESTON COUNTY LEASED FROM THE COUNTY BY WESTVACO CORPORATION AND ITS SUCCESSOR MEADWESTVACO SOUTH CAROLINA, LLC, AS PART OF A FEE IN LIEU OF TAXES ARRANGEMENT INTO SEPARATE INTERESTS AMONG MEADWESTVACO SOUTH CAROLINA LLC, COGEN SOUTH L.L.C. AND KAPSTONE CHARLESTON KRAFT LLC; AUTHORIZING THE ENTRY BY CHARLESTON COUNTY, SOUTH CAROLINA INTO CERTAIN AGREEMENTS, INCLUDING WITHOUT LIMITATION AN AMENDED AND RESTATED LEASE AGREEMENT WITH EACH OF COGEN SOUTH L.L.C. MEADWESTVACO SOUTH CAROLINA LLC, AND KAPSTONE CHARLESTON KRAFT LLC AND APPROVING THE FORMS OF SUCH AGREEMENTS; AUTHORIZING THE ISSUANCE BY CHARLESTON COUNTY, SOUTH CAROLINA OF SUBSTITUTE ECONOMIC DEVELOPMENT REVENUE BONDS RELATING TO SUCH ECONOMIC DEVELOPMENT PROPERTY AND APPROVING THE FORMS OF SUCH BONDS; APPROVING AN ASSIGNMENT AND ASSUMPTION OF AGREEMENTS AND RELEASE FROM AGREEMENTS AMONG CHARLESTON COUNTY, MEADWESTVACO SOUTH CAROLINA LLC, AND KAPSTONE CHARLESTON KRAFT LLC; AUTHORIZING THE TAKING OF CERTAIN OTHER ACTIONS AND EXECUTION OF CERTAIN OTHER DOCUMENTS BY OFFICIALS OF CHARLESTON COUNTY IN CONNECTION THEREWITH; AND OTHER MATTERS RELATED THERETO.

**WHEREAS**, Charleston County (the "County") is authorized by Title 4, Chapter 29, Code of Laws of South Carolina, 1976, as amended ("Chapter 29") to issue its industrial development revenue bonds and by Chapter 29 and Title 4, Chapter 12, Code of Laws of South Carolina, 1976, as amended ("Chapter 12") to acquire and lease industrial facilities for the purpose of encouraging and promoting industrial development and employment, and, pursuant to Chapter 29 and Chapter 12, to agree to the payment of a fee in lieu of property taxes with respect to facilities meeting the requirements of such statutory provisions; and

**WHEREAS**, Westvaco Corporation ("Westvaco"), a predecessor in interest to the Company (as hereinafter defined), Cogen South L.L.C. ("Cogen") and the County heretofore entered into an Inducement Agreement and a Millage Rate Agreement whereby the County agreed to issue its industrial development revenue bonds, acquire certain industrial facilities (the "Project") and lease the Project to Westvaco, all pursuant to Chapter 29 or Chapter 12, as appropriate; and

**WHEREAS**, thereafter, the County and Westvaco entered into a Lease Agreement dated as of October 1, 1998 (the "Westvaco Lease") pursuant to which the County acquired a portion of the Project and leased it to Westvaco (the "Westvaco Assets") and issued to Westvaco its Industrial Development Revenue Bond (Westvaco Corporation Project) Series 1998 (the "Original Bond"); and

**WHEREAS**, the County and Cogen entered into a Lease Agreement dated as of December 1, 1998 (the "Cogen Lease") pursuant to which the County acquired a portion of the Project and leased it to Cogen (the "Cogen Assets"); and

**WHEREAS**, the Westvaco Lease and the Cogen Lease were each amended by Amendments to Lease Agreement each dated as of December 1, 2002, between the County and Westvaco and the County and Cogen, respectively, in order to extend certain periods relating to the time of acquisition of the Project; and

**WHEREAS**, pursuant to a merger, MeadWestvaco Corporation (“MeadWestvaco”) succeeded to the interest of Westvaco in the Original Lease, as amended; and

**WHEREAS**, pursuant to an Assignment and Assumption of Lease Agreement, Inducement Agreement, Millage Rate Agreement, and Bonds dated December 31, 2002, MeadWestvaco assigned to MeadWestvaco South Carolina LLC (the “Company”), and the Company assumed, MeadWestvaco’s interests in the various agreements relating to the Project, including the Inducement Agreement, the Millage Rate Agreement, Bonds, and the Original Lease, as amended (together, the “Incentive Agreements”); and

**WHEREAS**, the Westvaco Assets comprise both facilities for the manufacture of Kraft paper (the “Mill Facilities”) and facilities related to chemical production (the “Chemical Facilities”); and

**WHEREAS**, MeadWestvaco and the Company have agreed with KapStone Charleston Kraft LLC (“KapStone”) that they would convey to KapStone their interests in, among other things, the Mill Facilities, including their interests under the Incentive Agreements, as amended, as related to the Mill Facilities, and KapStone will purchase all membership units in Cogen; and

**WHEREAS**, in order to facilitate such conveyance and purchase and to more certainly define the relative rights and obligations of the various parties, MeadWestvaco and KapStone have requested that the County enter into: (1) two separate restatements of the Westvaco Lease, as amended, including additional amendments thereto, pursuant to which the County would lease the Mill Facilities to KapStone and the Chemical Facilities to the Company; (2) a separate restatement of the Cogen Lease to memorialize the division of the Project; (3) an Assignment and Assumption of Agreements and Bonds and Release from Agreements with regard to various interests of MeadWestvaco, the Company, and KapStone with respect to the Project as divided, (4) a Termination of Escrow Agreements relating to the reconveyance of various facilities on behalf of the County; and (5) all such other documents as may be required to effect the division of the Project as the Project is contemplated in the Incentive Agreements in furtherance to the conveyance and purchase described above.

**NOW, THEREFORE**, be it Ordained by Charleston County Council (“Council”), in meeting duly assembled, as follows:

**Section 1. Approval of Division of Project.** Council hereby approves the division of the Project into separate interests among the Company, Cogen, and KapStone, each such interest, as well as the title to and ad valorem tax treatment thereof, to be governed by the applicable Agreements (as hereinafter defined).

**Section 2. Forms of Agreements; Authorization.** The following agreements (the “Agreements”) are approved in substantially the forms as attached hereto as the exhibits designated below, and the County Administrator of the County (the “Administrator”) is authorized to execute and deliver such Agreements and Bonds with such changes as he, with advice of counsel, shall deem necessary or appropriate to effect or facilitate the division of the Project, conveyance, and purchase described above, the execution by such Administrator of any such changes, not inconsistent with the provisions of the Ordinance, to the forms attached hereto to serve as conclusive evidence of the approval of such changes:

(a) Amended and Restated Lease Agreement between the County and the Company, attached hereto as “Exhibit A”;

(b) Amended and Restated Lease Agreement between the County and Cogen, attached hereto as "Exhibit B";

(c) Amended and Restated Lease Agreement between the County and KapStone, attached hereto as "Exhibit C";

(d) Assignment and Assumption of Agreements and Bonds and Release from Agreements among the County, the Company, and KapStone, attached hereto as "Exhibit D;" and

(e) Termination of Escrow Agreements among the County, the Company, Cogen, and US Bank, NA, as Escrow Agent, attached hereto as "Exhibit E."

**Section 3. Substitute Bonds.** Upon delivery of the Assignment and Assumption of Agreements and Bonds and Release from Agreements among the County, the Company, and KapStone and the delivery to the County for cancellation of the original Bond, the County shall, pursuant to Section 2.05 of the Bond Ordinance adopted by Council on October 20, 1998, relating to the original Bond, issue and deliver two separate substitute Industrial Development Revenue Bonds to each of the Company and KapStone, respectively, to represent the investment in the Mill Facilities and the Chemical Facilities, respectively.

**Section 4. Further Documents and Actions.** The County hereby authorizes its Administrator to execute, deliver, and file in the name of and on behalf of the County any one or more other documents, and to do or cause to be done any and all acts or things in the name of and on behalf of the County, as the Administrator may deem necessary or desirable to carry out fully the purposes and intent of this Ordinance.

**Section 5. Reconveyance of Assets.** The Administrator or other appropriate official of the County is also hereby authorized to execute and deliver the Quitclaim Deed and Bill of Sale, in the form attached to each of the leases referenced in Section 2(a) through (c) hereof as "Exhibit F" with such changes as he, with advice of counsel, shall deem necessary or appropriate to comply with the terms of such lease and carry out the purposes of this Ordinance, upon the expiration or early termination of each such lease, or to remove property from each such lease as allowed thereunder, without further action by Council, in order to effect the reconveyance of the assets subject to each lease to the lessees thereunder.

**Section 6 Time Effective.** This ordinance shall become effective upon approval by Council on third reading.