AGENDA
ANDERSON COUNTY COUNCIL
SPECIAL CALLED MEETING
February 13, 2019 at 12:00 PM
Historic Courthouse – Council Chambers – Second Floor
Chairman Tommy Dunn, Presiding

1. CALL TO ORDER:

2. INVOCATION AND PLEDGE OF ALLEGIANCE: Mr. Ray Graham

3. CITIZENS COMMENTS: Agenda Matters

4. ORDINANCE- THIRD READING:
   a. 2019-002: An ordinance consenting to the conversion by Anderson County of certain rights of Orian Rugs, Inc. (The “Company”) under that certain lease agreement with Anderson County dated December 1, 1997 to a fee agreement arrangement as provided in Title 12, Chapter 44 of the Code of Laws of South Carolina 1976, as amended (The “Agreement”), and authorizing the execution and delivery of such Fee Agreement between the County and the Company in place of said Lease Agreement; authorizing the reconveyance of the property subject to such lease agreement by the County to the company.
      Mr. Burriss Nelson (allotted 5 minutes)

   b. 2019-003: An ordinance consenting to the conversion by Anderson County of certain rights of Orian Rugs, Inc. (The “Company”) under that certain lease agreement with Anderson County dated December 1, 2003 to a Fee Agreement arrangement as provided in Title 12, Chapter 44 of the Code of Laws of South Carolina 1976, as amended (The “Agreement”), and authorizing the execution and delivery of such fee agreement between the County and the Company in place of said lease agreement; authorizing the reconveyance of the property subject to such lease agreement by the County to the Company.
      Mr. Burriss Nelson (allotted 5 minutes)

5. GRANT REQUEST- SENIOR DINING: Mr. Rusty Burns (allotted 5 minutes)

6. RESOLUTION:
   a. R2019-005: A resolution to approve a Memorandum of Understanding (“MOU”) by and among Project Rocky (also known as Project Smoky) (The “Company”), Anderson County, South Carolina (The “County”), and the Town of Pendleton (The “Town”).
      Mr. Burriss Nelson (allotted 5 minutes)

7. EXECUTIVE SESSION: Regarding Economic Development Project 2019-0120

8. CITIZENS COMMENTS:

9. ADJOURNMENT:

Anyone who requires an auxiliary aid or service for effective communication, or a modification of policies or procedures in order to participate in this program, service or activity please contact the office of the program, service or activity as soon as possible but no later than 24 hours before the scheduled event.

For assistance please contact the Clerk to Council at 864-260-1036.
AN ORDINANCE CONSENTING TO THE CONVERSION BY ANDERSON COUNTY OF CERTAIN RIGHTS OF ORIAN RUGS, INC. (THE "COMPANY") UNDER THAT CERTAIN LEASE AGREEMENT WITH ANDERSON COUNTY DATED DECEMBER 1, 1997 TO A FEE AGREEMENT ARRANGEMENT AS PROVIDED IN TITLE 12, CHAPTER 44 OF THE CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED (THE "AGREEMENT"), AND AUTHORIZING THE EXECUTION AND DELIVERY OF SUCH FEE AGREEMENT BETWEEN THE COUNTY AND THE COMPANY IN PLACE OF SAID LEASE AGREEMENT; AUTHORIZING THE RECONVEYANCE OF THE PROPERTY SUBJECT TO SUCH LEASE AGREEMENT BY THE COUNTY TO THE COMPANY; AND OTHER MATTERS RELATING THERETO.

WHEREAS, Anderson 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 of the Code of Laws of South Carolina 1976, as amended (the "PILOT Act"), to provide for payment of a fee in lieu of taxes pursuant to the Act through which 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 and remain in the State and thus utilize and employ the manpower, agricultural products and natural 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 Title 4, Chapter 12 of the Code of Laws of South Carolina 1976, as amended (the "Lease Act"), the County Council authorized the execution by the County of a Lease Agreement dated as of December 1, 1997, as amended (the "1997 Lease Agreement") with Orian Rugs, Inc., a South Carolina corporation (the "Company") for the purpose of inducing investment by the Company in certain land, improvements, machinery, equipment, furnishings and fixtures with respect to the Company’s facilities in the County for the manufacture of rugs and related products (the "Project"), through the provision of a fee in lieu of tax benefits thereunder; and

WHEREAS, Section 12-44-170 of the PILOT Act provides that, with the County’s consent, an entity with property subject to an existing fee in lieu of property taxes arrangement under the Lease Act may convert property from the prior arrangement to a fee in lieu of tax arrangement under the PILOT Act and, in such case, such property shall then automatically be considered economic development property as defined in Section 12-44-30(7) of the PILOT Act; and

WHEREAS, the Company has caused to be prepared and presented to this meeting the form of the proposed Fee in Lieu of Tax Agreement by and between the County and the Company which includes (1) the continuation of fee payments required of the Company under the 1997 Lease Agreement, as amended, and (2) the appropriate provisions and terms to continue the provisions and limitations of the 1997 Lease Agreement (the "Converted Fee Agreement"); and

WHEREAS, it appears that the instrument above referred to, which is 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
NOW, THEREFORE, BE IT ORDAINED by the County Council of Anderson County, South Carolina, as follows:

Section 1. In accordance with Section 4-12-30(C)(4) of the Lease Act and contemporaneous with the conversion described herein, the County Council hereby finds a substantial public benefit and the County approves the extension of the term of the 1997 Lease Agreement to thirty (30) years for each “Annual Increment” of the Project placed in service under the Lease.

Section 2. The terms of the Converted Fee Agreement presented to this meeting and filed with the Clerk to the County Council are hereby approved and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if the Converted Fee Agreement were set out in this Ordinance in its entirety. The Chairman of County Council and the Clerk to County Council are hereby authorized, empowered and directed to execute, acknowledge and deliver the Converted Fee Agreement in the name and on behalf of the County, and thereupon to cause the Converted Fee Agreement to be delivered to the Company. The Converted Fee Agreement shall be in substantially the form now before this meeting and hereby approved, or with such minor changes therein as shall not materially adversely affect the rights of the County thereunder and as shall be approved by the officials of the County executing the same upon the advise of the County Attorney, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of the Converted Fee Agreement now before this meeting.

Section 3. If the FILOT Act is ever declared unconstitutional or otherwise found invalid by a court of competent jurisdiction, it is the intention of the County Council that pursuant to the terms of the FILOT Act as well as the terms of the Lease Act, the Company shall be afforded, at its expense, the maximum opportunity to convert the Converted Fee Agreement back to a lease agreement pursuant to the Lease Act, pursuant to terms mutually agreeable to the parties, in order to preserve the benefits of the Company’s fee in lieu of tax arrangements with the County.

Section 4. Pursuant to the terms of Section 12-44-170 of the FILOT Act, the County consents to the conversion of property from the 1997 Lease Agreement to the Converted Fee Agreement. In this regard, the Chairman of County Council and the Clerk to County Council, in compliance with the terms of the 1997 Lease Agreement, are hereby authorized, empowered and directed to execute, acknowledge and deliver such documents, including all releases of leasehold interests and all deeds and bills of sale, along with any terminations of existing agreements, as are necessary to reconvey the property comprising the Project, including but not limited to a Deed, Bill of Sale, and Termination of Memorandum of Lease that the Company has caused or will cause to be prepared and presented to the County.

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 each authorized and directed to do any and all things necessary to effect the execution and delivery of the Converted Fee Agreement and the performance of all obligations of the County thereunder.

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 orders, resolutions, ordinances and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed, and this Ordinance shall take effect and be in full force from and
after its passage and approval. [Signature pages follow.]
Passed and approved this 13th day of February, 2019.

(SEAL)

ATTEST:

Rusty Burns
Anderson County Administrator

FOR ANDERSON COUNTY:

Tommy Dunn, Chairman
Anderson County Council

Lacey A. Croegaert, Clerk to Council
Anderson County, South Carolina

APPROVED AS TO FORM:

Leon C. Harmon, County Attorney
Anderson County, South Carolina

First Reading: January 22, 2019
Second Reading: February 5, 2019
Third Reading: February 13, 2019
Public Hearing: February 5, 2019
STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

I, the undersigned Clerk to County Council of Anderson 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 majority approval, by the County Council at its meetings of January 22, 2019, February 5, 2019 and February 13, 2019 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.

____________________________________
Lacey A. Croegaert
Clerk to Anderson County Council

Dated: ______________, 20__
FEE IN LIEU OF TAX AGREEMENT

Between

ANDERSON COUNTY, SOUTH CAROLINA

and

ORIAN RUGS, INC.

Dated as of ________________, 2019
with an effective date as of December 1, 1997
(as a conversion under Title 12, Chapter 44, Code
of Laws of South Carolina 1976, of a
Lease Agreement dated as of December 1, 1997
Between Anderson County and Orian Rugs, Inc.)
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EXHIBIT A – DESCRIPTION OF LAND
As permitted under Section 12-44-55(B), Code of Laws of South Carolina 1976, as amended (the "Code"), the parties have agreed to waive the requirements of Section 12-44-55 of the Code. The following is a summary of the key provisions of this Fee in Lieu of Tax Agreement. This summary is inserted for convenience only and does not constitute a part of this Fee in Lieu of Tax Agreement or a summary compliant with Section 12-44-55 of the Code.

### Company Name: Orian Rugs, Inc.

<table>
<thead>
<tr>
<th><strong>Projected Investment:</strong></th>
<th>$10,000,000</th>
<th><strong>Projected Jobs:</strong></th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Location (street):</strong></td>
<td>2415 N Hwy 81 Anderson, SC 29621</td>
<td><strong>Tax Map No.:</strong></td>
<td>See Exhibit A</td>
</tr>
</tbody>
</table>

#### 1. FILOT

- **Required Investment:** $10,000,000
- **Required Jobs:** N/A
- **Investment Period:** Ended.
- **Assessment Ratio:** 6.0%
- **Term (years):** 30 years
- **Net Present Value:** [207.58 mils] [County to confirm]
- **Adjustable or fixed millage:** Adjustable every five years.

#### 2. MCIP

- **Included in an MCIP:** N/A
- **If yes, Name & Date:**

#### 3. SSRC

- **Total Amount:** N/A
- **No. of Years**
- **Yearly Increments:**

#### 4. Other information
FEE IN LIEU OF TAX AGREEMENT

THIS FEE IN LIEU OF TAX AGREEMENT (the “Fee Agreement”) is made and entered into as of ______________________ by and between ANDERSON COUNTY, SOUTH CAROLINA (the “County”), a body politic and corporate and a political subdivision of the State of South Carolina (the “State”), acting by and through the Anderson County Council (the “County Council”) as the governing body of the County, and Orian Rugs, Inc., a South Carolina corporation (the “Company”), pursuant to Section 12-44-170, Code of Laws of South Carolina 1976, as amended, as a conversion of a Lease Agreement dated as of December 1, 1997 between the parties.

WITNESSETH:

WHEREAS, pursuant to the provisions of Section 4-12-30, Code of Laws of South Carolina 1976, as amended, the County and the Company did previously enter into a Lease Agreement dated as of December 1, 1997, as amended, (the “Lease Agreement”) for purposes of providing a fee in lieu of tax incentive with respect to the Company’s investment in certain land, improvements, fixtures, machinery, equipment and other tangible personal property at the Company’s facilities in the County for the provision of supply chain distribution services; and

WHEREAS, pursuant to Section 12-44-170, Code of Laws of South Carolina 1976, as amended, the Company has notified the County of its desire to convert the Lease Agreement to a fee in lieu of tax agreement, containing substantially similar material provisions as does the Lease Agreement in respect of fee in lieu of tax payments, term of the arrangement and other payment obligations of the Company, to be governed by the provisions of Title 12, Chapter 44, Code of Laws of South Carolina 1976, as amended (the “FILOT Act”); and the County, pursuant to ordinance of the County Council of Anderson County enacted ______________________, has consented to the same; and

WHEREAS, the parties desire to (1) enter into this Fee Agreement in order to provide for the conversion of the Lease Agreement to a fee in lieu of taxes arrangement under the Act, and (2) have this Agreement take effect upon the conveyance by the County to the Company of all portions of the Project currently titled in the name of the County upon payment by the Company of the purchase price therefor as prescribed in Section 10.03 of the Lease Agreement; and

WHEREAS, upon the payment of the purchase price and consummation of the conveyance referred to in the preceding paragraph, this Fee Agreement shall supersede the provisions of the Lease Agreement and, at such time, the Lease Agreement shall be deemed terminated (except for those provisions thereof expressly stated to survive termination); and

WHEREAS, the FILOT Act authorizes the County to (a) induce industries to locate in the State; (b) encourage industries now located in the State to expand their investments and thus make use of and employ manpower, products, and other resources of the State; and (c) enter into a fee agreement with entities meeting the requirements of the FILOT Act, which identifies certain property of such entities as economic development property and provides for the payment of a fee in lieu of tax with respect to such property;

WHEREAS, the Company (as a Sponsor, within the meaning of the FILOT Act) desires to provide for the continuation of the Project (as defined herein) to constitute a manufacturing facility in the County;

WHEREAS, based on information supplied by the Company, the County Council has evaluated the Project based on relevant criteria that include, but are not limited to, the purposes the Project is to accomplish, the anticipated dollar amount and nature of the investment, employment to be created or
maintained, and the anticipated costs and benefits to the County. Pursuant to Section 12-44-40(H)(1) of the FILOT Act, the County finds that: (a) the Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; (b) the Project will give rise to no pecuniary liability of the County or any incorporated municipality therein and to no charge against their general credit or taxing powers; (c) the purposes to be accomplished by the Project are proper governmental and public purposes; and (d) the benefits of the Project are greater than the costs.

WHEREAS, By enactment of an Ordinance on _____________, 2019, the County Council has authorized the County to enter into this Fee Agreement with the Company which classifies the Project as Economic Development Property under the FILOT Act and provides for the payment of fees in lieu of taxes in connection with the Project, all as further described herein.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the respective representations and agreements hereinafter contained, the parties hereto agree as follows:

DEFINITIONS

Section 1.01 Definitions

The terms that this Article defines shall for all purposes of this Fee Agreement have the meanings herein specified, unless the context clearly requires otherwise:

"Administration Expenses" shall mean the reasonable and necessary expenses incurred by the County with respect to this Fee Agreement, including without limitation reasonable attorney fees; provided, however, that no such expense shall be considered an Administration Expense until the County has furnished to the Company a statement in writing indicating the amount of such expense and the reason it has been or will be incurred.

"Affiliate" shall mean any corporation, limited liability company, partnership or other entity which owns all or part of the Company (or with respect to a Sponsor Affiliate, such Sponsor Affiliate) or which is owned in whole or in part by the Company (or with respect to a Sponsor Affiliate, such Sponsor Affiliate) or by any partner, shareholder or owner of the Company (or with respect to a Sponsor Affiliate, such Sponsor Affiliate), as well as any subsidiary, affiliate, individual or entity who bears a relationship to the Company (or with respect to a Sponsor Affiliate, such Sponsor Affiliate), as described in Section 267(b) of the Internal Revenue Code of 1986, as amended.

"Code" shall mean the Code of Laws of South Carolina 1976, as amended.

"Commencement Date" shall mean the last day of the property tax year during which the Project or first Phase thereof was placed in service.

"Company" means Orian Rugs, Inc., and any surviving, resulting, or transferee entity in any merger, consolidation, or transfer of assets, or any other person or entity which may succeed to the rights and duties of the Company.

"Condemnation Event" shall mean any act of taking by a public or quasi-public authority through condemnation, reverse condemnation or eminent domain.
“Contract Minimum Investment Requirement” shall mean, with respect to the Project, investment by the Company and any Sponsor Affiliates of at least Ten Million Dollars ($10,000,000.00) in Economic Development Property subject (non-exempt) to ad valorem taxation (in the absence of this Fee Agreement).

“County” shall mean Anderson County, South Carolina, a body politic and corporate and a political subdivision of the State, its successors and assigns, acting by and through the County Council as the governing body of the County.

“County Administrator” shall mean the County Administrator, or the person holding any successor office of the County.

“County Assessor” shall mean the County Assessor, or the person holding any successor office of the County.

“County Auditor” shall mean the County Auditor, or the person holding any successor office of the County.

“County Council” shall mean County Council, the governing body of the County.

“County Treasurer” shall mean the County Treasurer, or the person holding any successor office of the County.

“Defaulting Entity” shall have the meaning set forth for such term in Section 6.02(a) hereof.

“Deficiency Amount” shall have the meaning set forth for such term in Section 4.03(a) hereof.

“Department” shall mean the South Carolina Department of Revenue.

“Diminution in Value” in respect of the Project shall mean any reduction in the value, using the original fair market value (without regard to depreciation) as determined in Step 1 of Section 4.01 of this Fee Agreement, of the items which constitute a part of the Project and which are subject to FILOT payments which may be caused by the Company’s or any Sponsor Affiliate’s removal and/or disposal of equipment pursuant to Section 4.04 hereof, or by its election to remove components of the Project as a result of any damage or destruction or any Condemnation Event with respect thereto.

“Economic Development Property” shall mean those items of real and tangible personal property of the Project which are eligible for inclusion as economic development property under the FILOT Act, selected and identified by the Company or any Sponsor Affiliate in its annual filing of a SCDOR PT-300S or comparable form with the Department (as such filing may be amended from time to time) for each year within the Investment Period.

“Equipment” shall mean machinery, equipment, furniture, office equipment, and other tangible personal property, together with any and all additions, accessions, replacements, and substitutions thereto or therefor.

“Event of Default” shall mean any event of default specified in Section 6.01 hereof.

“Exemption Period” shall mean the period beginning on the first day of the property tax year after the property tax year in which an applicable portion of Economic Development Property is placed in
service and ending on the Termination Date. In case there are Phases of the Project, the Exemption Period applies to each year’s investment made during the Investment Period.

“Fee Agreement” shall mean this Fee in Lieu of Tax Agreement.

“FILOT” or “FILOT Payments” shall mean the amount paid or to be paid in lieu of ad valorem property taxes as provided herein.

“FILOT Act” shall mean Title 12, Chapter 44, of the Code, and all future acts successor or supplemental thereto or amendatory thereof.

“FILOT Act Minimum Investment Requirement” shall mean, with respect to the Project, an investment of at least $2,500,000 by the Company, or of at least $5,000,000 by the Company and any Sponsor Affiliates in the aggregate, in Economic Development Property.

“Improvements” shall mean improvements to the Land, including buildings, building additions, roads, sewer lines, and infrastructure, together with any and all additions, fixtures, accessions, replacements, and substitutions thereto or therefor.

“Investment Period” shall mean, and shall be equal to, the Standard Investment Period.

“Land” means the land upon which the Project will be located, as described in Exhibit A attached hereto, as Exhibit A may be supplemented from time to time in accordance with Section 3.01(c) hereof.

“Phase” or “Phases” in respect of the Project shall mean that the components of the Project are placed in service during more than one year during the Investment Period, and the word “Phase” shall therefore refer to the applicable portion of the Project placed in service in a given year during the Investment Period.

“Project” shall mean the Land and all the Equipment and Improvements that the Company determines to be necessary, suitable or useful for the purposes described in Section 2.02(b) hereof, to the extent determined by the Company and any Sponsor Affiliate to be a part of the Project and placed in service during the Investment Period, and any Replacement Property. Notwithstanding anything in this Fee Agreement to the contrary, the Project shall not include property which will not qualify for the FILOT pursuant to Section 12-44-110 of the FILOT Act, including without limitation property which has been subject to ad valorem taxation in the State prior to commencement of the Investment Period; provided, however, the Project may include (a) modifications which constitute an expansion of the real property portion of the Project, (b) property described in Section 12-44-110(3) of the FILOT Act to the extent the Company and any Sponsor Affiliates invest at least an additional $45,000,000 in the Project, exclusive of such described property, and (c) the property allowed pursuant to Section 12-44-110(2) of the FILOT Act.

“Removed Components” shall mean components of the Project or portions thereof which the Company or any Sponsor Affiliate in its sole discretion, elects to remove from the Project pursuant to Section 4.04 hereof or as a result of any Condemnation Event.

“Replacement Property” shall mean any property which is placed in service as a replacement for any item of Equipment or any Improvement previously subject to this Fee Agreement regardless of whether such property serves the same functions as the property it is replacing and regardless of whether more than one piece of property replaces any item of Equipment or any Improvement to the fullest extent that the FILOT Act permits.
“Sponsor Affiliate” shall mean any entity that joined with the Company and that participates in the investment in, or financing of, the Project and which met the requirements under the PILOT Act to be entitled to the benefits of this Fee Agreement with respect to its participation in the Project, all as set forth in Section 5.13 hereof.

“Standard Investment Period” shall mean the period that began with the first day of any purchase or acquisition of Economic Development Property and ended the fifth anniversary thereof.

“State” shall mean the State of South Carolina.

“Termination Date” shall mean, with respect to each Phase of the Project, the end of the last day of the property tax year which is the 29th year following the first property tax year in which such Phase of the Project is placed in service; provided, that the intention of the parties is that the Company will make at least 30 annual PILOT payments under Article IV hereof with respect to each Phase of the Project; and provided further, that if this Fee Agreement is terminated earlier in accordance with the terms hereof, the Termination Date shall mean the date of such termination.

“Transfer Provisions” shall mean the provisions of Section 12-44-120 of the PILOT Act, as amended or supplemented from time to time, concerning, among other things, the necessity of obtaining County consent to certain transfers.

Any reference to any agreement or document in this Article I or otherwise in this Fee Agreement shall include any and all amendments, supplements, addenda, and modifications to such agreement or document.

Section 1.02 Project-Related Investments

The term “investment” or “invest” as used herein shall include not only investments made by the Company and any Sponsor Affiliates, but also to the fullest extent permitted by law, those investments made by or for the benefit of the Company or any Sponsor Affiliate with respect to the Project through federal, state, or local grants, to the extent such investments are subject to ad valorem taxes or PILOT payments by the Company.

[End of Article I]
ARTICLE II

REPRESENTATIONS, WARRANTIES, AND AGREEMENTS

Section 2.01  Representations, Warranties, and Agreements of the County

The County hereby represents, warrants, and agrees as follows:

(a) The County is a body politic and corporate and a political subdivision of the State and acts through the County Council as its governing body. The County has duly authorized the execution and delivery of this Fee Agreement and any and all other agreements described herein or therein and has obtained all consents from third parties and taken all actions necessary or that the law requires to fulfill its obligations hereunder.

(b) Based upon representations by the Company, the Project constitutes a “project” within the meaning of the FILOT Act.

(c) The County has agreed that each item of real and tangible personal property comprising the Project which is eligible to be economic development property under the FILOT Act and that the Company selects shall be considered Economic Development Property and is thereby exempt from ad valorem taxation in the State.

(d) The millage rate set forth in Step 3 of Section 4.01(a) hereof is [207.58] mils.

Section 2.02  Representations, Warranties, and Agreements of the Company

The Company hereby represents, warrants, and agrees as follows:

(a) The Company is organized and in good standing under the laws of the State and is duly authorized to transact business in the State, has power to enter into this Fee Agreement, and has duly authorized the execution and delivery of this Fee Agreement.

(b) The Company intends to operate the Project as a “project” within the meaning of the FILOT Act as in effect on the date hereof. The Company intends to operate the Project for the purpose of manufacturing rugs and related products, and for such other purposes that the FILOT Act permits as the Company may deem appropriate.

(c) The execution and delivery of this Fee Agreement by the County has been instrumental in inducing the Company to locate the Project in the County.

(d) The Company, together with any Sponsor Affiliates, used commercially reasonable efforts to meet, or cause to be met, the Contract Minimum Investment Requirement within the Investment Period.

[End of Article II]
ARTICLE III

COMMENCEMENT AND COMPLETION OF THE PROJECT

Section 3.01 The Project

(a) The Company intends and expects, together with any Sponsor Affiliate, to construct and acquire the Project. The first Phase of the Project was placed in service during the calendar year ending [December 31, 1998].

(b) Pursuant to the FILOT Act and subject to Section 4.03 hereof, the Company and the County hereby agree that the Company and any Sponsor Affiliates shall identify annually those assets which are eligible for FILOT payments under the FILOT Act and which the Company or any Sponsor Affiliate selects for such treatment by listing such assets in its annual PT-300S form (or comparable form) to be filed with the Department (as such may be amended from time to time) and that by listing such assets, such assets shall automatically become Economic Development Property and therefore be exempt from all ad valorem taxation during the Exemption Period. Anything contained in this Fee Agreement to the contrary notwithstanding, the Company and any Sponsor Affiliates shall not be obligated to complete the acquisition of the Project.

(c) The Company may add to the Land such real property, located in the same taxing District in the County as the original Land, as the Company, in its discretion, deems useful or desirable. In such event, the Company, at its expense, shall deliver an appropriately revised Exhibit A to this Fee Agreement, in form reasonably acceptable to the County.

Section 3.02 Diligent Completion

The Company used its reasonable efforts to complete the Project within the Investment Period.

Section 3.03 Filings and Reports

(a) Each year during the term of the Fee Agreement, the Company and any Sponsor Affiliates shall deliver to the County, the County Auditor, the County Assessor, and the County Treasurer a copy of their most recent annual filings with the Department with respect to the Project, not later than thirty (30) days following delivery thereof to the Department.

(b) The Company shall cause a copy of this Fee Agreement, as well as a copy of the completed Form PT-443 of the Department, to be filed with the County Auditor and the County Assessor, the County Administrator and the Department within thirty (30) days after the date of execution and delivery of this Fee Agreement by all parties hereto.

(c) Each of the Company and any Sponsor Affiliates agree to maintain complete books and records accounting for the acquisition, financing, construction, and operation of the Project. Such books and records shall (i) permit ready identification of the various Phases and components thereof; (ii) confirm the dates on which each Phase was placed in service; and (iii) include copies of all filings made by the Company and any such Sponsor Affiliates in accordance with Section 3.03(a) or (b) above with respect to property placed in service as part of the Project.

[End of Article III]
ARTICLE IV
FILOT PAYMENTS

Section 4.01 FILOT Payments

(a) Pursuant to Section 12-44-50 of the FILOT Act, the Company and any Sponsor Affiliates, as applicable, are required to make payments in lieu of ad valorem taxes to the County with respect to the Economic Development Property. Inasmuch as the Company anticipates an initial investment of sums sufficient for the Project to qualify for a fee in lieu of tax arrangement under Section 12-44-50(A)(1) of the FILOT Act, the County and the Company have negotiated the amount of the FILOT Payments in accordance therewith. The Company and any Sponsor Affiliates, as applicable, shall make payments in lieu of ad valorem taxes on all Economic Development Property which comprises the Project and is placed in service, as follows: the Company and any Sponsor Affiliates, as applicable, shall make payments in lieu of ad valorem taxes during the Exemption Period with respect to the Economic Development Property or, if there are Phases of the Economic Development Property, with respect to each Phase of the Economic Development Property, said payments to be made annually and to be due and payable and subject to penalty assessments on the same dates and in the same manner as prescribed by the County for ad valorem taxes. The determination of the amount of such annual FILOT Payments shall be in accordance with the following procedure (subject, in any event, to the procedures required by the FILOT Act):

Step 1: Determine the fair market value of the Economic Development Property (or Phase of the Economic Development Property) placed in service during the Exemption Period using original income tax basis for State income tax purposes for any real property and Improvements without regard to depreciation (provided, the fair market value of real property, as the FILOT Act defines such term, that the Company and any Sponsor Affiliates obtains by construction or purchase in an arms-length transaction is equal to the original income tax basis, and otherwise, the determination of the fair market value is by appraisal) and original income tax basis for State income tax purposes for any personal property less depreciation for each year allowable for property tax purposes, except that no extraordinary obsolescence shall be allowable. The fair market value of the real property for the first year of the Exemption Period remains the fair market value of the real property and Improvements for the life of the Exemption Period. The determination of these values shall take into account all applicable property tax exemptions that State law would allow to the Company and any Sponsor Affiliates if the property were taxable, except those exemptions that Section 12-44-50(A)(2) of the FILOT Act specifically disallows.

Step 2: Apply an assessment ratio of six percent (6%) to the fair market value in Step 1 to establish the taxable value of the Economic Development Property (or each Phase of the Economic Development Property) in the year it is placed in service and in each of the 29 years thereafter or such longer period of years in which the FILOT Act permits the Company and any Sponsor Affiliates to make annual FILOT payments.

Step 3: Use a millage rate of [207.58] mills, which millage rate shall be adjustable every five (5) years during the Exemption Period, against the taxable value to determine the amount of the FILOT Payments due during the Exemption Period on the applicable payment dates.
(b) In the event that a final order of a court of competent jurisdiction from which no further appeal is allowable declares the FILOT Act and/or the herein-described FILOT Payments invalid or unenforceable, in whole or in part, for any reason, the parties express their intentions to reform such payments so as to effectuate most closely the intent thereof (without increasing the amount of incentives being afforded herein) and so as to afford the Company and any Sponsor Affiliates with the benefits to be derived herefrom, the intention of the County being to offer the Company and such Sponsor Affiliates a strong inducement to locate the Project in the County. If the Economic Development Property is deemed to be subject to ad valorem taxation, this Fee Agreement shall terminate, and the Company and any Sponsor Affiliates shall pay the County regular ad valorem taxes from the date of termination, but with appropriate reductions equivalent to all tax exemptions which are afforded to the Company and such Sponsor Affiliates. Any amount determined to be due and owing to the County from the Company and such Sponsor Affiliates, with respect to a year or years for which the Company or such Sponsor Affiliates previously remitted FILOT Payments to the County hereunder, shall (i) take into account all applicable tax exemptions to which the Company or such Sponsor Affiliates would be entitled if the Economic Development Property was not and had not been Economic Development Property under the Act; and (ii) be reduced by the total amount of FILOT Payments the Company or such Sponsor Affiliates had made with respect to the Project pursuant to the terms hereof.

Section 4.02  Reserved.

Section 4.03  Reserved.

Section 4.04  Removal of Equipment

Subject, always, to the other terms and provisions of this Fee Agreement, the Company and any Sponsor Affiliates shall be entitled to remove and dispose of components of the Project from the Project in its sole discretion with the result that said components shall no longer be considered a part of the Project and, to the extent such constitute Economic Development Property, shall no longer be subject to the terms of this Fee Agreement. Economic Development Property is disposed of only when it is scrapped or sold or removed from the Project. If it is removed from the Project, it is subject to ad valorem property taxes to the extent the Property remains in the State and is otherwise subject to ad valorem property taxes.

Section 4.05  FILOT Payments on Replacement Property

If the Company or any Sponsor Affiliate elects to replace any Removed Components and to substitute such Removed Components with Replacement Property as a part of the Economic Development Property, or the Company or any Sponsor Affiliate otherwise utilizes Replacement Property, then, pursuant and subject to the provisions of Section 12-44-60 of the FILOT Act, the Company or such Sponsor Affiliate shall make statutory payments in lieu of ad valorem taxes with regard to such Replacement Property in accordance with the following:

(i) Replacement Property does not have to serve the same function as the Economic Development Property it is replacing. Replacement Property is deemed to replace the oldest Economic Development Property subject to the Fee, whether real or personal, which is disposed of in the same property tax year in which the Replacement Property is placed in service. Replacement Property qualifies as Economic Development Property only to the extent of the original income tax basis of Economic Development Property which is being disposed of in the same property tax year. More than one piece of property can replace a single piece of Economic Development Property. To the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the Economic Development Property which it is
replacing, the excess amount is subject to annual payments calculated as if the exemption for Economic Development Property were not allowable. Replacement Property is entitled to treatment under the Fee Agreement for the period of time remaining during the Exemption Period for the Economic Development Property which it is replacing; and

(ii) The new Replacement Property which qualifies for the PILOT shall be recorded using its income tax basis, and the calculation of the PILOT shall utilize the millage rate and assessment ratio in effect with regard to the original property subject to the PILOT.

Section 4.06 Reductions in Payment of Taxes Upon Diminution in Value; Investment Maintenance Requirement

In the event of a Diminution in Value of the Economic Development Property, the Payment in Lieu of Taxes with regard to the Economic Development Property shall be reduced in the same proportion as the amount of such Diminution in Value bears to the original fair market value of the Economic Development Property as determined pursuant to Step 1 of Section 4.01(a) hereof; provided, however, that if at any time subsequent to the end of the Investment Period, the total value of the Project remaining in the County based on the original income tax basis thereof (that is, without regard to depreciation), is less than the PILOT Act Minimum Investment Requirement, then beginning with the first payment thereafter due hereunder and continuing until the Termination Date, the Project shall no longer be entitled to the incentive provided in Section 4.01, and the Company and any Sponsor Affiliate shall therefore commence to pay regular ad valorem taxes thereon, calculated as set forth in Section 4.01(b) hereof.

[End of Article IV]
ARTICLE V
PARTICULAR COVENANTS AND AGREEMENTS

Section 5.01 Cessation of Operations

Notwithstanding any other provision of this Fee Agreement, each of the Company and any Sponsor Affiliates acknowledges and agrees that County’s obligation to provide the FILOT incentive ends, and this Fee Agreement is terminated, if the Company ceases operations at the Project. For purposes of this Section, “ceases operations” means closure of the facility or the cessation of production and shipment of products to customers for a continuous period of twelve (12) months. The provisions of Section 4.03 hereof relating to retroactive payments shall apply, if applicable, if this Fee Agreement is terminated in accordance with this Section prior to the end of the Investment Period. Each of the Company and any Sponsor Affiliates agrees that if this Fee Agreement is terminated pursuant to this subsection, that under no circumstance shall the County be required to refund or pay any monies to the Company or any Sponsor Affiliates.

Section 5.02 Rights to Inspect

The Company agrees that the County and its authorized agents shall have the right at all reasonable times and upon prior reasonable notice to enter upon and examine and inspect the Project. The County and its authorized agents shall also be permitted, at all reasonable times and upon prior reasonable notice, to have access to examine and inspect the Company’s South Carolina property tax returns, as filed. The aforesaid rights of examination and inspection shall be exercised only upon such reasonable and necessary terms and conditions as the Company shall prescribe, and shall be subject to the provisions of Section 5.03 hereof.

Section 5.03 Confidentiality

The County acknowledges and understands that the Company and any Sponsor Affiliates may utilize confidential and proprietary processes and materials, services, equipment, trade secrets, and techniques (herein “Confidential Information”). In this regard, the Company and any Sponsor Affiliates may clearly label any Confidential Information delivered to the County “Confidential Information.” The County agrees that, except as required by law, neither the County nor any employee, agent, or contractor of the County shall disclose or otherwise divulge any such clearly labeled Confidential Information to any other person, firm, governmental body or agency, or any other entity unless specifically required to do so by law. Each of the Company and any Sponsor Affiliates acknowledge that the County is subject to the South Carolina Freedom of Information Act, and, as a result, must disclose certain documents and information on request, absent an exemption. In the event that the County is required to disclose any Confidential Information obtained from the Company or any Sponsor Affiliates to any third party, the County agrees to provide the Company and such Sponsor Affiliates with as much advance notice as is reasonably possible of such requirement before making such disclosure, and to cooperate reasonably with any attempts by the Company and such Sponsor Affiliates to obtain judicial or other relief from such disclosure requirement.
Section 5.04 Limitation of County’s Liability

Anything herein to the contrary notwithstanding, any financial obligation the County may incur hereunder, including for the payment of money, shall not be deemed to constitute a pecuniary liability or a debt or general obligation of the County; provided, however, that nothing herein shall prevent the Company from enforcing its rights hereunder by suit for *mandamus* or specific performance.

Section 5.05 Mergers, Reorganizations and Equity Transfers

Each of the Company and any Sponsor Affiliates acknowledges that any mergers, reorganizations or consolidations of the Company and such Sponsor Affiliates may cause the Project to become ineligible for negotiated fees in lieu of taxes under the FILOT Act absent compliance by the Company and such Sponsor Affiliates with the Transfer Provisions; provided that, to the extent provided by Section 12-44-120 of the FILOT Act or any successor provision, any financing arrangements entered into by the Company or any Sponsor Affiliates with respect to the Project and any security interests granted by the Company or any Sponsor Affiliates in connection therewith shall not be construed as a transfer for purposes of the Transfer Provisions. Notwithstanding anything in this Fee Agreement to the contrary, it is not intended in this Fee Agreement that the County shall impose transfer restrictions with respect to the Company, any Sponsor Affiliates or the Project as are any more restrictive than the Transfer Provisions.

Section 5.06 Indemnification Covenants

(a) Notwithstanding any other provisions in this Fee Agreement or in any other agreements with the County, the Company agrees to indemnify, defend and save the County, its County Council members, elected officials, officers, employees, servants and agents (collectively, the “Indemnified Parties”) harmless against and from all claims by or on behalf of any person, firm or corporation arising from the conduct or management of, or from any work or thing done on the Project or the Land by the Company or any Sponsor Affiliate, their members, officers, shareholders, employees, servants, contractors, and agents during the Term, and, the Company further, shall indemnify, defend and save the Indemnified Parties harmless against and from all claims arising during the Term from (i) entering into and performing its obligations under this Fee Agreement, (ii) any condition of the Project, (iii) any breach or default on the part of the Company or any Sponsor Affiliate in the performance of any of its obligations under this Fee Agreement, (iv) any act of negligence of the Company or any Sponsor Affiliate or its agents, contractors, servants, employees or licensees, (v) any act of negligence of any assignee or lessee of the Company or any Sponsor Affiliate, or of any agents, contractors, servants, employees or licensees of any assignee or lessee of the Company or any Sponsor Affiliate, or (vi) any environmental violation, condition, or effect with respect to the Project. The Company shall indemnify, defend and save the County harmless from and against all costs and expenses incurred in or in connection with any such claim arising as aforesaid or in connection with any action or proceeding brought thereon, and upon notice from the County, the Company shall defend it in any such action, prosecution or proceeding with legal counsel acceptable to the County (the approval of which shall not be unreasonably withheld).

(b) Notwithstanding the fact that it is the intention of the parties that the Indemnified Parties shall not incur pecuniary liability by reason of the terms of this Fee Agreement, or the undertakings required of the County hereunder, by reason of the granting of the FILOT, by reason of the execution of this Fee Agreement, by the reason of the performance of any act requested of it by the Company or any Sponsor Affiliate, or by reason of the County’s relationship to the Project or by the operation of the Project by the Company or any Sponsor Affiliate, including all claims, liabilities or losses arising in connection with the violation of any statutes or regulations pertaining to the foregoing, nevertheless, if the County or any of the other Indemnified Parties should incur any such pecuniary liability, then in such event the Company shall indemnify, defend and hold them harmless against all claims by or on behalf of
any person, firm or corporation, arising out of the same, and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon, and upon notice, the Company shall defend them in any such action or proceeding with legal counsel acceptable to the County (the approval of which shall not be unreasonably withheld); provided, however, that such indemnity shall not apply to the extent that any such claim is attributable to (i) the grossly negligent acts or omissions or willful misconduct of the County, its agents, officers or employees, or (ii) any breach of this Fee Agreement by the County.

(c) Notwithstanding anything in this Fee Agreement to the contrary, the above-referenced covenants insofar as they pertain to costs, damages, liabilities or claims by any Indemnified Party resulting from any of the above-described acts of or failure to act by the Company or any Sponsor Affiliate, shall survive any termination of this Fee Agreement.

Section 5.07 Qualification in State

Each of the Company and any Sponsor Affiliates warrant that it is duly qualified to do business in the State, and covenants that it will continue to be so qualified so long as it operates any portion of the Project.

Section 5.08 No Liability of County’s Personnel

All covenants, stipulations, promises, agreements and obligations of the County contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of the County and shall be binding upon any member of the County Council or any elected official, officer, agent, servant or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse shall be had for the payment of any moneys hereunder against any member of the governing body of the County or any elected official, officer, agent, servants or employee of the County and no recourse shall be had against any member of the governing body of the County or any elected official, officer, agent, servant or employee of the County for the performance of any of the covenants and agreements of the County herein contained or for any claims based thereon except solely in their official capacity.

Section 5.09 Assignment, Leases or Transfers

The County agrees that the Company and any Sponsor Affiliates may at any time (a) transfer all or any of their rights and interests under this Fee Agreement or with respect to all or any part of the Project, or (b) enter into any lending, financing, leasing, security, or similar arrangement or succession of such arrangements with any financing or other entity with respect to this Fee Agreement or all or any part of the Project, including without limitation any sale-leaseback, equipment lease, build-to-suit lease, synthetic lease, nordic lease, defeased tax benefit or transfer lease, assignment, sublease or similar arrangement or succession of such arrangements, regardless of the identity of the income tax owner of such portion of the Project, whereby the transferee in any such arrangement leases the portion of the Project in question to the Company or any Sponsor Affiliate or operates such assets for the Company or any Sponsor Affiliate or is leasing the portion of the Project in question from the Company or any Sponsor Affiliate. In order to preserve the FILOT benefit afforded hereunder with respect to any portion of the Project so transferred, leased, financed, or otherwise affected: (i) except in connection with any transfer to an Affiliate of the Company or of any Sponsor Affiliate, or transfers, leases, or financing arrangements pursuant to clause (b) above (as to which such transfers the County hereby consents), the Company and any Sponsor Affiliates, as applicable, shall obtain the prior consent or subsequent ratification of the County which consent or subsequent ratification may be granted by the County in its sole discretion; (ii) except when a financing entity which is the income tax owner of all or part of the Project is the transferee pursuant to clause (b) above and such financing entity assumes in writing the
obligations of the Company or any Sponsor Affiliate, as the case may be, hereunder, or when the County consents in writing, no such transfer shall affect or reduce any of the obligations of the Company and any Sponsor Affiliates hereunder; (iii) to the extent the transferee or financing entity shall become obligated to make FILOT Payments hereunder, the transferee shall assume the then current basis of, as the case may be, the Company or any Sponsor Affiliates (or prior transferee) in the portion of the Project transferred; (iv) the Company or applicable Sponsor Affiliate, transferee or financing entity shall, within sixty (60) days thereof, furnish or cause to be furnished to the County and the Department a true and complete copy of any such transfer agreement; and (v) the Company, the Sponsor Affiliates and the transferee shall comply with all other requirements of the Transfer Provisions.

Subject to County consent when required under this Section, and at the expense of the Company or any Sponsor Affiliate, as the case may be, the County agrees to take such further action or execute such further agreements, documents, and instruments as may be reasonably required to effectuate the assumption by any such transferee of all or part of the rights of the Company or such Sponsor Affiliate under this Fee Agreement and/or any release of the Company or such Sponsor Affiliate pursuant to this Section.

Each of the Company and any Sponsor Affiliates acknowledges that such a transfer of an interest under this Fee Agreement or in the Project may cause all or part of the Project to become ineligible for the FILOT benefit afforded hereunder or result in penalties under the FILOT Act absent compliance by the Company and any Sponsor Affiliates with the Transfer Provisions.

Section 5.10 Administration Expenses

The Company agrees to pay any Administration Expenses to the County when and as they shall become due, but in no event later than the date which is the earlier of any payment date expressly provided for in this Fee Agreement or the date which is forty-five (45) days after receiving written notice from the County, accompanied by such supporting documentation as may be necessary to evidence the County’s or Indemnified Party’s right to receive such payment, specifying the nature of such expense and requesting payment of same.

Section 5.11 Priority Lien Status

The County’s right to receive FILOT payments hereunder shall have a first priority lien status pursuant to Sections 12-44-90(E) and (F) of the FILOT Act and Chapters 4, 49, 51, 53, and 54 of Title 12 of the Code.

Section 5.12 Interest; Penalties

In the event the Company or any Sponsor Affiliate should fail to make any of the payments to the County required under this Fee Agreement, then the item or installment so in default shall continue as an obligation of the Company or such Sponsor Affiliate until the Company or such Sponsor Affiliate shall have fully paid the amount, and the Company and any Sponsor Affiliates agree, as applicable, to pay the same with interest thereon at a rate, unless expressly provided otherwise herein and in the case of FILOT payments, of 5% per annum, compounded monthly, to accrue from the date on which the payment was due and, in the case of FILOT payments, at the rate for non-payment of ad valorem taxes under State law and subject to the penalties the law provides until payment.
Section 5.13  Sponsor Affiliates

The Company may designate from time to time any Sponsor Affiliates pursuant to the provisions of Sections 12-44-30(20) and 12-44-130 of the FILOT Act, which Sponsor Affiliates shall join with the Company and make investments with respect to the Project, or participate in the financing of such investments, and shall agree to be bound by the terms and provisions of this Fee Agreement pursuant to the terms of a written joinder agreement with the County and the Company, in form reasonably acceptable to the County. The Company shall provide the County and the Department with written notice of any Sponsor Affiliate designated pursuant to this Section within ninety (90) days after the end of the calendar year during which any such Sponsor Affiliate has placed in service any portion of the Project, in accordance with Section 12-44-130(B) of the FILOT Act.

[End of Article V]
ARTICLE VI
DEFAULT

Section 6.01  Events of Default

The following shall be "Events of Default" under this Fee Agreement, and the term "Event of Default" shall mean, whenever used with reference to this Fee Agreement, any one or more of the following occurrences:

(a) Failure by the Company or any Sponsor Affiliate to make the FILOT Payments described in Section 4.01 hereof, or any other amounts payable to the County under this Fee Agreement when due, which failure shall not have been cured within thirty (30) days following receipt of written notice thereof from the County; provided, however, that the Company and any Sponsor Affiliates shall be entitled to all redemption rights granted by applicable statutes; or

(b) A representation or warranty made by the Company or any Sponsor Affiliate hereunder which is deemed materially incorrect when deemed made; or

(c) Failure by the Company or any Sponsor Affiliate to perform any of the terms, conditions, obligations, or covenants hereunder (other than those under (a) above), which failure shall continue for a period of thirty (30) days after written notice from the County to the Company and such Sponsor Affiliate specifying such failure and requesting that it be remedied, unless the Company or such Sponsor Affiliate shall have instituted corrective action within such time period and is diligently pursuing such action until the default is corrected, in which case the 30-day period shall be extended to cover such additional period during which the Company or such Sponsor Affiliate is diligently pursuing corrective action; or

(d) Failure by the County to perform any of the terms, conditions, obligations, or covenants hereunder, which failure shall continue for a period of thirty (30) days after written notice from the Company to the County and any Sponsor Affiliates specifying such failure and requesting that it be remedied, unless the County shall have instituted corrective action within such time period and is diligently pursuing such action until the default is corrected, in which case the 30-day period shall be extended to cover such additional period during which the County is diligently pursuing corrective action.

Section 6.02  Remedies Upon Default

(a) Whenever any Event of Default by the Company or any Sponsor Affiliate (the "Defaulting Entity") shall have occurred and shall be continuing, the County may take any one or more of the following remedial actions as to the Defaulting Entity, only:

(i) terminate this Fee Agreement; or

(ii) take whatever action at law or in equity may appear necessary or desirable to collect the amounts due hereunder.

In no event shall the Company or any Sponsor Affiliate be liable to the County or otherwise for monetary damages resulting from the Company's (together with any Sponsor Affiliates) failure to meet the Contract Minimum Investment Requirement, other than as expressly set forth in this Fee Agreement.

In addition to all other remedies provided herein, the failure to make FILOT payments shall give rise to a lien for tax purposes as provided in Section 12-44-90 of the FILOT Act. In this regard, and
notwithstanding anything in this Fee Agreement to the contrary, the County may exercise the remedies
that general law (including Title 12, Chapter 49 of the Code) provides with regard to the enforced
collection of ad valorem taxes to collect any FILOT payments due hereunder.

(b) Whenever any Event of Default by the County shall have occurred or shall be continuing,
the Company and any Sponsor Affiliate may take one or more of the following actions:

(i) bring an action for specific enforcement;

(ii) terminate this Fee Agreement as to the acting party; or

(iii) in case of a materially incorrect representation or warranty, take such action as is
appropriate, including legal action, to recover its damages, to the extent allowed by law.

Section 6.03 Reimbursement of Legal Fees and Expenses and Other Expenses

Upon the occurrence of an Event of Default hereunder by the Company or any Sponsor Affiliate,
should the County be required to employ attorneys or incur other reasonable expenses for the collection
of payments due hereunder or for the enforcement of performance or observance of any obligation or
agreement, the County shall be entitled, within thirty (30) days of demand therefor, to reimbursement
of the reasonable fees of such attorneys and such other reasonable expenses so incurred.

Section 6.04 No Waiver

No failure or delay on the part of any party hereto in exercising any right, power, or remedy
hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right,
power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power,
or remedy hereunder. No waiver of any provision hereof shall be effective unless the same shall be in
writing and signed by the waiving party hereto.

[End of Article VI]
ARTICLE VII
MISCELLANEOUS

Section 7.01 Notices

Any notice, election, demand, request, or other communication to be provided under this Fee Agreement shall be effective when delivered to the party named below or when deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed as follows (or addressed to such other address as any party shall have previously furnished in writing to the other party), except where the terms hereof require receipt rather than sending of any notice, in which case such provision shall control:

If to the Company:

Orian Rugs, Inc.
2415 N. Hwy 91
Anderson, SC 29621
Attn: Robert Merritt, CEO

With a copy to:

Frank T. Davis, III
Haynsworth Sinkler Boyd, P.A.
ONE North Main St., 2nd Floor
Greenville, SC 29601

If to the County:

County Administrator
Anderson County
101 S Main St.
Anderson, SC 29624

With a copy to:

Leon C. Harmon, Esq.
Anderson County Attorney
101 S Main St.
Anderson, SC 29624

Section 7.02 Binding Effect

This Fee Agreement and each document contemplated hereby or related hereto shall be binding upon and inure to the benefit of the Company and any Sponsor Affiliates, the County, and their respective successors and assigns. In the event of the dissolution of the County or the consolidation of any part of the County with any other political subdivision or the transfer of any rights of the County to any other such political subdivision, all of the covenants, stipulations, promises, and agreements of this Fee Agreement shall bind and inure to the benefit of the successors of the County from time to time and any entity, officer, board, commission, agency, or instrumentality to whom or to which any power or duty of the County has been transferred.
Section 7.03  Counterparts

This Fee Agreement may be executed in any number of counterparts, and all of the counterparts taken together shall be deemed to constitute one and the same instrument.

Section 7.04  Governing Law

This Fee Agreement and all documents executed in connection herewith shall be construed in accordance with and governed by the laws of the State.

Section 7.05  Headings

The headings of the articles and sections of this Fee Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Fee Agreement.

Section 7.06  Amendments

The provisions of this Fee Agreement may only be modified or amended in writing by any agreement or agreements entered into between the parties.

Section 7.07  Further Assurance

From time to time, and at the expense of the Company and any Sponsor Affiliates, the County agrees to execute and deliver to the Company and any such Sponsor Affiliates such additional instruments as the Company or such Sponsor Affiliates may reasonably request and as are authorized by law and reasonably within the purposes and scope of the FILOT Act and this Fee Agreement to effectuate the purposes of this Fee Agreement.

Section 7.08  Invalidity; Change in Laws

In the event that the inclusion of property as Economic Development Property or any other issue is unclear under this Fee Agreement, the County hereby expresses its intention that the interpretation of this Fee Agreement shall be in a manner that provides for the broadest inclusion of property under the terms of this Fee Agreement and the maximum incentive permissible under the FILOT Act, to the extent not inconsistent with any of the explicit terms hereof. If any provision of this Fee Agreement is declared illegal, invalid, or unenforceable for any reason, the remaining provisions hereof shall be unimpaired, and such illegal, invalid, or unenforceable provision shall be reformed to effectuate most closely the legal, valid, and enforceable intent thereof and so as to afford the Company and any Sponsor Affiliates with the maximum benefits to be derived herefrom, it being the intention of the County to offer the Company and any Sponsor Affiliates the strongest inducement possible, within the provisions of the FILOT Act, to locate the Project in the County. In case a change in the FILOT Act or South Carolina laws eliminates or reduces any of the restrictions or limitations applicable to the Company and any Sponsor Affiliates and the FILOT incentive, the parties agree that the County will give expedient and full consideration to reformation of this Fee Agreement, and, if the County Council so decides, to provide the Company and any Sponsor Affiliates with the benefits of such change in the FILOT Act or South Carolina laws.

Section 7.09  Termination by Company

The Company is authorized to terminate this Fee Agreement at any time with respect to all or part of the Project upon providing the County with thirty (30) days’ written notice; provided, however, that (i) any monetary obligations existing hereunder and due and owing at the time of termination to a party
hereto (including without limitation any amounts owed with respect to Section 4.03 hereof); and (ii) any provisions which are intended to survive termination shall survive such termination. In the year following such termination, all property shall be subject to ad valorem taxation or such other taxation or fee in lieu of taxation that would apply absent this Agreement. The Company's obligation to make FILOT Payments under this Fee Agreement shall terminate in the year following the year of such termination pursuant to this section.

Section 7.10 Entire Understanding

This Fee Agreement expresses the entire understanding and all agreements of the parties hereto with each other, and neither party hereto has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth in this Fee Agreement or in certificates delivered in connection with the execution and delivery hereof.

Section 7.11 Waiver

Either party may waive compliance by the other party with any term or condition of this Fee Agreement only in a writing signed by the waiving party.

Section 7.12 Business Day

In the event that any action, payment, or notice is, by the terms of this Fee Agreement, required to be taken, made, or given on any day which is a Saturday, Sunday, or legal holiday in the jurisdiction in which the person obligated to act is domiciled, such action, payment, or notice may be taken, made, or given on the following business day with the same effect as if given as required hereby, and no interest shall accrue in the interim.

[End of Article VII]
IN WITNESS WHEREOF, the County, acting by and through the County Council, has caused this Fee Agreement to be executed in its name and behalf by the County Administrator and to be attested by the Clerk of the County Council; and the Company has caused this Fee Agreement to be executed by its duly authorized officer, all as of the day and year first above written.

ANDERSON COUNTY, SOUTH CAROLINA

__________________________
Tommy Dunn, Chairman
Anderson County Council

ATTEST:

__________________________
Lacey A. Croegaert, Clerk to Council
Anderson County, South Carolina

[Signature Page 1 to Fee in Lieu of Tax Agreement]
ORIAN RUGS, INC.

By: Robert Merritt
Its: CEO

[Signature Page 2 to Fee in Lieu of Tax Agreement]
EXHIBIT A

LEGAL DESCRIPTION
[**Subject to Company review**]

Parcel 1:

All that certain lot or tract of land in Hopewell Township, School District Number Five, Anderson County, South Carolina containing 1.48 acres, more or less, and being all of that certain tract of land containing 5.72 acres, more or less, as shown on plat made by John C. Smith, surveyor, dated August, 1957, recorded in the office of the Register of Deeds for Anderson County, South Carolina in Plat Book 43, at page 1, and described thereon as follows:
BEGINNING at the southeast corner of said parcel of land at the point of intersection of a public road with the Anderson-Greenville Highway and running thence along said highway N 16-36 E 426.1 feet to a corner in said Anderson-Greenville Highway; thence S 85-15 W 798.6 feet to an iron pin corner; thence S 22-45 E 466 feet to a corner in road; thence along said road S 87-28 E 397.3 feet to the beginning corner.

LESS AND EXCEPT the following parcels:

(1) Lots 1, 2, 3 and 4 as shown on plat made by Frank D. Thompson, Surveyor, dated August 12, 1960, of record in the office of the Register of Deeds for Anderson County in Plat Book 50, at page 139.

(2) Deed of Ralph J. Chasteen to Carroll G. Ayers and Dorothy B. Ayers dated March 12, 1980 and recorded in the office of the Register of Deeds for Anderson County in Deed Book 19-H, at page 444; and

(3) Deed of Ralph J. Chasteen to South Carolina Department of Transportation dated October 13, 1993 and recorded in the office of the Register of Deeds for Anderson County in Records Book 1809, at page 059.

Parcel 2:

ALL that certain lot of land in Hopewell Township, School District Number Five, Anderson County, South Carolina containing .59 acres, more or less, and being shown as Lot Number 3 on plat made at the request of P. W. Chasteen by Frank D. Thompson, Surveyor, dated August 12, 1960, or record in the office of the Register of Deeds for Anderson County, South Carolina in Plat Book 50, at page 139, and as shown thereon said lot fronts 115 feet on the northwestern side of the centerline of S.C. Highway 81 and extends back therefrom between parallel lines to a depth of 225 feet on its northeastern and southwestern boundary lines and having a width of 115 feet on its rear boundary line. Said lot is bounded on the northeast by Lot Number 2, on the southwest by Lot Number 4, on the northwest by other property of P. W. Chasteen and on the southeast by S.C. Highway 81.
Parcel 3:

ALL the certain lot of land in Hopewell Township, School District Number Five, Anderson County, South Carolina containing .84 acres, more or less, and being shown as Lot Number 4 on plat made at the request of P. W. Chasteen by Frank D. Thompson, Surveyor, dated August 12, 1960, of record in the office of the Register of Deeds for Anderson County, South Carolina in Plat Book 50, at page 139, and as shown thereon said lot fronts 135.1 feet on S.C. Highway 81 and extends back therefrom on its northeastern boundary for a distance of 225 feet and on its southern boundary for a distance of 231.5 feet and having a width of 190 feet along its rear boundary line.

Parcel 4:

ALL of that certain tract of land in Hopewell Township, School District Number Five (5), Anderson County, South Carolina, containing 11.25 acres, more or less, and being shown as Tract F-1 on plat made by Farmer and Simpson Engineers dated November 28, 1995, revised October 25, 1996 and November 1, 1996 or record in the Office of the Register of Deeds for Anderson County, South Carolina, in Plat Slide 736 at pages 8 and 9 and being described thereon as follows: Beginning at an iron pin on the Northwestern side of the right of way for Sam McGee Road (C-10—142), said point being the joint front corners between Lots F-1 and F-2 shown on said plat, thence North 15-12-47 West, 1,450.22 feet to an iron pin, thence North 77-00-34 East 263.87 feet to an iron pin, thence South 19-40-19 East 1,259.00 feet to iron pin, thence South 20-09-04 East 320.25 feet to iron pin on the Northwestern side of the right of way for Sam McGee Road, thence in a Northwesterly directly along the right of way for Sam McGee Road the following courses and distance to-wit: North 83-47-54 West 43.50 feet to iron pin, thence South 02-48-22 West 15.04 feet to iron pin, thence North 84-07-03 West 368.60 feet to the beginning corner.
ORDINANCE NO. 2019-003

AN ORDINANCE CONSENTING TO THE CONVERSION BY ANDERSON COUNTY OF CERTAIN RIGHTS OF ORIAN RUGS, INC. (THE "COMPANY") UNDER THAT CERTAIN LEASE AGREEMENT WITH ANDERSON COUNTY DATED DECEMBER 1, 2003 TO A FEE AGREEMENT ARRANGEMENT AS PROVIDED IN TITLE 12, CHAPTER 44 OF THE CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED (THE "AGREEMENT"), AND AUTHORIZING THE EXECUTION AND DELIVERY OF SUCH FEE AGREEMENT BETWEEN THE COUNTY AND THE COMPANY IN PLACE OF SAID LEASE AGREEMENT; AUTHORIZING THE RECONVEYANCE OF THE PROPERTY SUBJECT TO SUCH LEASE AGREEMENT BY THE COUNTY TO THE COMPANY; AND OTHER MATTERS RELATING THERETO.

WHEREAS, Anderson 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 of the Code of Laws of South Carolina 1976, as amended (the "FILOT Act"), to provide for payment of a fee in lieu of taxes pursuant to the Act through which 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 and remain in the State and thus utilize and employ the manpower, agricultural products and natural 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 Title 4, Chapter 12 of the Code of Laws of South Carolina 1976, as amended (the "Lease Act"), the County Council authorized the execution by the County of a Lease Agreement dated as of December 1, 2003 (the "2003 Lease Agreement") with Orian Rugs, Inc., a South Carolina corporation (the "Company") for the purpose of inducing investment by the Company in certain land, improvements, machinery, equipment, furnishings and fixtures with respect to the Company's facilities in the County for the manufacture of rugs and related products (the "Project"), through the provision of a fee in lieu of tax benefits thereunder; and

WHEREAS, Section 12-44-170 of the FILOT Act provides that, with the County's consent, an entity with property subject to an existing fee in lieu of property taxes arrangement under the Lease Act may convert property from the prior arrangement to a fee in lieu of tax arrangement under the FILOT Act and, in such case, such property shall then automatically be considered economic development property as defined in Section 12-44-30(7) of the FILOT Act; and

WHEREAS, the Company has caused to be prepared and presented to this meeting the form of the proposed Fee in Lieu of Tax Agreement by and between the County and the Company which includes (1) the continuation of fee payments required of the Company under the 2003 Lease Agreement, as amended, and (2) the appropriate provisions and terms to continue the provisions and limitations of the 2003 Lease Agreement (the "Converted Fee Agreement"); and

WHEREAS, it appears that the instrument above referred to, which is 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
NOW, THEREFORE, BE IT ORDAINED by the County Council of Anderson County, South Carolina, as follows:

Section 1. In accordance with Section 4-12-30(C)(4) of the Lease Act and contemporaneous with the conversion described herein, the County Council hereby finds a substantial public benefit and the County approves the extension of the term of the 2003 Lease Agreement to thirty (30) years for each “Annual Increment” of the Project placed in service under the Lease.

Section 2. The terms of the Converted Fee Agreement presented to this meeting and filed with the Clerk to the County Council are hereby approved and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if the Converted Fee Agreement were set out in this Ordinance in its entirety. The Chairman of County Council and the Clerk to County Council are hereby authorized, empowered and directed to execute, acknowledge and deliver the Converted Fee Agreement in the name and on behalf of the County, and thereupon to cause the Converted Fee Agreement to be delivered to the Company. The Converted Fee Agreement shall be in substantially the form now before this meeting and hereby approved, or with such minor changes therein as shall not materially adversely affect the rights of the County thereunder and as shall be approved by the officials of the County executing the same upon the advise of the County Attorney, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of the Converted Fee Agreement now before this meeting.

Section 3. If the FILOT Act is ever declared unconstitutional or otherwise found invalid by a court of competent jurisdiction, it is the intention of the County Council that pursuant to the terms of the FILOT Act as well as the terms of the Lease Act, the Company shall be afforded, at its expense, the maximum opportunity to convert the Converted Fee Agreement back to a lease agreement pursuant to the Lease Act, pursuant to terms mutually agreeable to the parties, in order to preserve the benefits of the Company’s fee in lieu of tax arrangements with the County.

Section 4. Pursuant to the terms of Section 12-44-170 of the FILOT Act, the County consents to the conversion of property from the 2003 Lease Agreement to the Converted Fee Agreement. In this regard, the Chairman of County Council and the Clerk to County Council, in compliance with the terms of the 2003 Lease Agreement, are hereby authorized, empowered and directed to execute, acknowledge and deliver such documents, including all releases of leasehold interests and all deeds and bills of sale, along with any terminations of existing agreements, as are necessary to reconvey the property comprising the Project, including but not limited to a Deed, Bill of Sale, and Termination of Memorandum of Lease that the Company has caused or will cause to be prepared and presented to the County.

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 each authorized and directed to do any and all things necessary to effect the execution and delivery of the Converted Fee Agreement and the performance of all obligations of the County thereunder.

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 orders, resolutions, ordinances and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed, and this Ordinance shall take effect and be in full force from and
after its passage and approval. [Signature pages follow.]
Passed and approved this 13th day of February, 2019.

(SEAL)

ATTEST:

Rusty Burns  
Anderson County Administrator

Lacey A. Croegaert  
Anderson County Clerk to Council

APPROVED AS TO FORM:

Leon C. Hamon  
Anderson County Attorney

FOR ANDERSON COUNTY:

Tommy Dunn, Chairman  
Anderson County Council

First Reading: January 22, 2019  
Second Reading: February 5, 2019  
Third Reading: February 13, 2019  
Public Hearing: February 5, 2019
STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

I, the undersigned Clerk to County Council of Anderson 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 majority approval, by the County Council at its meetings of January 22, 2019, February 5, 2019 and February 13, 2019 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.

______________________________
Lacey A. Croegaert
Clerk to Anderson County Council

Dated: _____________, 20__
FEE IN LIEU OF TAX AGREEMENT

Between

ANDERSON COUNTY, SOUTH CAROLINA

and

ORIAN RUGS, INC.

Dated as of ____________, 2019
with an effective date as of December 1, 2003
(as a conversion under Title 12, Chapter 44, Code
of Laws of South Carolina 1976, of a
Lease Agreement dated as of December 1, 2003
Between Anderson County and Orian Rugs, Inc.)
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EXHIBIT A – DESCRIPTION OF LAND
As permitted under Section 12-44-55(B), Code of Laws of South Carolina 1976, as amended (the "Code"), the parties have agreed to waive the requirements of Section 12-44-55 of the Code. The following is a summary of the key provisions of this Fee in Lieu of Tax Agreement. This summary is inserted for convenience only and does not constitute a part of this Fee in Lieu of Tax Agreement or a summary compliant with Section 12-44-55 of the Code.

<table>
<thead>
<tr>
<th>Company Name:</th>
<th>Orian Rugs, Inc.</th>
<th>Project Code Name:</th>
<th>Orian Rugs Project Name:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Projected Investment:</strong></td>
<td>$8,000,000</td>
<td><strong>Projected Jobs:</strong></td>
<td>N/A</td>
</tr>
<tr>
<td><strong>Location (street):</strong></td>
<td>2415 N Hwy 81</td>
<td><strong>Tax Map No.:</strong></td>
<td>See Exhibit A</td>
</tr>
<tr>
<td></td>
<td>Anderson, SC 29621</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1. **FILOT**
   - **Required Investment:** $8,000,000
   - **Investment Period:** Ended.
   - **Assessment Ratio:** 6.0%
   - **Millage:** 264.0 mils
   - **Adjustable or fixed millage:** Fixed.
   - **Clawback information:** See Section 4.03
   - **Net Present Value (if yes, discount rate):** N/A
   - **Ordinance No./Date:** [To come]
   - **Term (years):** 30 years

2. **MCIP**
   - **Included in an MCIP:** N/A.
   - **If yes, Name & Date:**

3. **SSRC**
   - **Total Amount:** N/A; complete.
   - **No. of Years**
   - **Yearly Increments:**
   - **Clawback information:**

4. **Other information**

---

**Ordinance 2019-003**
FEE IN LIEU OF TAX AGREEMENT

THIS FEE IN LIEU OF TAX AGREEMENT (the "Fee Agreement") is made and entered into as of __________________ by and between ANDERSON COUNTY, SOUTH CAROLINA (the "County"), a body politic and corporate and a political subdivision of the State of South Carolina (the "State"), acting by and through the Anderson County Council (the "County Council") as the governing body of the County, and Orian Rugs, Inc., a South Carolina corporation (the "Company"), pursuant to Section 12-44-170, Code of Laws of South Carolina 1976, as amended, as a conversion of a Lease Agreement dated as of December 1, 2003 between the parties.

WITNESSETH:

WHEREAS, pursuant to the provisions of Section 4-12-30, Code of Laws of South Carolina 1976, as amended, the County and the Company did previously enter into a Lease Agreement dated as of December 1, 2003 (the "Lease Agreement") for purposes of providing a fee in lieu of tax incentive with respect to the Company's investment in certain land, improvements, fixtures, machinery, equipment and other tangible personal property at the Company's facilities in the County for the provision of supply chain distribution services; and

WHEREAS, pursuant to Section 12-44-170, Code of Laws of South Carolina 1976, as amended, the Company has notified the County of its desire to convert the Lease Agreement to a fee in lieu of tax agreement, containing substantially similar material provisions as does the Lease Agreement in respect of fee in lieu of tax payments, term of the arrangement and other payment obligations of the Company, to be governed by the provisions of Title 12, Chapter 44, Code of Laws of South Carolina 1976, as amended (the "FILOT Act"); and the County, pursuant to ordinance of the County Council of Anderson County enacted ________________, has consented to the same; and

WHEREAS, the parties desire to (1) enter into this Fee Agreement in order to provide for the conversion of the Lease Agreement to a fee in lieu of taxes arrangement under the Act, and (2) have this Agreement take effect upon the conveyance by the County to the Company of all portions of the Project currently titled in the name of the County upon payment by the Company of the purchase price therefor as prescribed in Section 10.03 of the Lease Agreement; and

WHEREAS, upon the payment of the purchase price and consummation of the conveyance referred to in the preceding paragraph, this Fee Agreement shall supersede the provisions of the Lease Agreement and, at such time, the Lease Agreement shall be deemed terminated (except for those provisions thereof expressly stated to survive termination); and

WHEREAS, the FILOT Act authorizes the County to (a) induce industries to locate in the State; (b) encourage industries now located in the State to expand their investments and thus make use of and employ manpower, products, and other resources of the State; and (c) enter into a fee agreement with entities meeting the requirements of the FILOT Act, which identifies certain property of such entities as economic development property and provides for the payment of a fee in lieu of tax with respect to such property;

WHEREAS, the Company (as a Sponsor, within the meaning of the FILOT Act) desires to provide for the continuation of the Project (as defined herein) to constitute a manufacturing facility in the County;

WHEREAS, based on information supplied by the Company, the County Council has evaluated the Project based on relevant criteria that include, but are not limited to, the purposes the Project is to
accomplish, the anticipated dollar amount and nature of the investment, employment to be created or maintained, and the anticipated costs and benefits to the County. Pursuant to Section 12-44-40(H)(1) of the FILOT Act, the County finds that: (a) the Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; (b) the Project will give rise to no pecuniary liability of the County or any incorporated municipality therein and to no charge against their general credit or taxing powers; (c) the purposes to be accomplished by the Project are proper governmental and public purposes; and (d) the benefits of the Project are greater than the costs.

WHEREAS, By enactment of an Ordinance on ____________, 2019, the County Council has authorized the County to enter into this Fee Agreement with the Company which classifies the Project as Economic Development Property under the FILOT Act and provides for the payment of fees in lieu of taxes in connection with the Project, all as further described herein,

NOW, THEREFORE, FOR AND IN CONSIDERATION of the respective representations and agreements hereinafter contained, the parties hereto agree as follows:

DEFINITIONS

Section 1.01 Definitions

The terms that this Article defines shall for all purposes of this Fee Agreement have the meanings herein specified, unless the context clearly requires otherwise:

"Administration Expenses" shall mean the reasonable and necessary expenses incurred by the County with respect to this Fee Agreement, including without limitation reasonable attorney fees; provided, however, that no such expense shall be considered an Administration Expense until the County has furnished to the Company a statement in writing indicating the amount of such expense and the reason it has been or will be incurred.

"Affiliate" shall mean any corporation, limited liability company, partnership or other entity which owns all or part of the Company (or with respect to a Sponsor Affiliate, such Sponsor Affiliate) or which is owned in whole or in part by the Company (or with respect to a Sponsor Affiliate, such Sponsor Affiliate) or by any partner, shareholder or owner of the Company (or with respect to a Sponsor Affiliate, such Sponsor Affiliate), as well as any subsidiary, affiliate, individual or entity who bears a relationship to the Company (or with respect to a Sponsor Affiliate, such Sponsor Affiliate), as described in Section 267(b) of the Internal Revenue Code of 1986, as amended.

"Code" shall mean the Code of Laws of South Carolina 1976, as amended.

"Commencement Date" shall mean the last day of the property tax year during which the Project or first Phase thereof was placed in service.

"Company" means Orian Rugs, Inc., and any surviving, resulting, or transferee entity in any merger, consolidation, or transfer of assets, or any other person or entity which may succeed to the rights and duties of the Company.

"Condemnation Event" shall mean any act of taking by a public or quasi-public authority through condemnation, reverse condemnation or eminent domain.
“Contract Minimum Investment Requirement” shall mean, with respect to the Project, investment by the Company and any Sponsor Affiliates of at least Eight Million Dollars ($8,000,000.00) in Economic Development Property subject (non-exempt) to ad valorem taxation (in the absence of this Fee Agreement).

“County” shall mean Anderson County, South Carolina, a body politic and corporate and a political subdivision of the State, its successors and assigns, acting by and through the County Council as the governing body of the County.

“County Administrator” shall mean the County Administrator, or the person holding any successor office of the County.

“County Assessor” shall mean the County Assessor, or the person holding any successor office of the County.

“County Auditor” shall mean the County Auditor, or the person holding any successor office of the County.

“County Council” shall mean County Council, the governing body of the County.

“County Treasurer” shall mean the County Treasurer, or the person holding any successor office of the County.

“Defaulting Entity” shall have the meaning set forth for such term in Section 6.02(a) hereof.

“Deficiency Amount” shall have the meaning set forth for such term in Section 4.03(a) hereof.

“Department” shall mean the South Carolina Department of Revenue.

“Diminution in Value” in respect of the Project shall mean any reduction in the value, using the original fair market value (without regard to depreciation) as determined in Step 1 of Section 4.01 of this Fee Agreement, of the items which constitute a part of the Project and which are subject to FILOT payments which may be caused by the Company’s or any Sponsor Affiliate’s removal and/or disposal of equipment pursuant to Section 4.04 hereof, or by its election to remove components of the Project as a result of any damage or destruction or any Condemnation Event with respect thereto.

“Economic Development Property” shall mean those items of real and tangible personal property of the Project which are eligible for inclusion as economic development property under the FILOT Act, selected and identified by the Company or any Sponsor Affiliate in its annual filing of a SCDOR PT-300S or comparable form with the Department (as such filing may be amended from time to time) for each year within the Investment Period.

“Equipment” shall mean machinery, equipment, furniture, office equipment, and other tangible personal property, together with any and all additions, accessions, replacements, and substitutions thereto or therefor.

“Event of Default” shall mean any event of default specified in Section 6.01 hereof.
"Exemption Period" shall mean the period beginning on the first day of the property tax year after the property tax year in which an applicable portion of Economic Development Property is placed in service and ending on the Termination Date. In case there are Phases of the Project, the Exemption Period applies to each year's investment made during the Investment Period.

"Fee Agreement" shall mean this Fee in Lieu of Tax Agreement.

"FILOT" or "FILOT Payments" shall mean the amount paid or to be paid in lieu of ad valorem property taxes as provided herein.

"FILOT Act" shall mean Title 12, Chapter 44, of the Code, and all future acts successor or supplemental thereto or amendatory thereof.

"FILOT Act Minimum Investment Requirement" shall mean, with respect to the Project, an investment of at least $2,500,000 by the Company, or of at least $5,000,000 by the Company and any Sponsor Affiliates in the aggregate, in Economic Development Property.

"Improvements" shall mean improvements to the Land, including buildings, building additions, roads, sewer lines, and infrastructure, together with any and all additions, fixtures, accessions, replacements, and substitutions thereto or therefor.

"Investment Period" shall mean, and shall be equal to, the Standard Investment Period.

"Land" means the land upon which the Project will be located, as described in Exhibit A attached hereto, as Exhibit A may be supplemented from time to time in accordance with Section 3.01(c) hereof.

"Phase" or "Phases" in respect of the Project shall mean that the components of the Project are placed in service during more than one year during the Investment Period, and the word "Phase" shall therefore refer to the applicable portion of the Project placed in service in a given year during the Investment Period.

"Project" shall mean the Land and all the Equipment and Improvements that the Company determines to be necessary, suitable or useful for the purposes described in Section 2.02(b) hereof, to the extent determined by the Company and any Sponsor Affiliate to be a part of the Project and placed in service during the Investment Period, and any Replacement Property. Notwithstanding anything in this Fee Agreement to the contrary, the Project shall not include property which will not qualify for the FILOT pursuant to Section 12-44-110 of the FILOT Act, including without limitation property which has been subject to ad valorem taxation in the State prior to commencement of the Investment Period; provided, however, the Project may include (a) modifications which constitute an expansion of the real property portion of the Project, (b) property described in Section 12-44-110(3) of the FILOT Act to the extent the Company and any Sponsor Affiliates invest at least an additional $45,000,000 in the Project, exclusive of such described property, and (c) the property allowed pursuant to Section 12-44-110(2) of the FILOT Act.

"Removed Components" shall mean components of the Project or portions thereof which the Company or any Sponsor Affiliate in its sole discretion, elects to remove from the Project pursuant to Section 4.04 hereof or as a result of any Condomnation Event.

"Replacement Property" shall mean any property which is placed in service as a replacement for any item of Equipment or any Improvement previously subject to this Fee Agreement regardless of
whether such property serves the same functions as the property it is replacing and regardless of whether more than one piece of property replaces any item of Equipment or any Improvement to the fullest extent that the FILOT Act permits.

“Sponsor Affiliate” shall mean any entity that joined with the Company and that participates in the investment in, or financing of, the Project and which met the requirements under the FILOT Act to be entitled to the benefits of this Fee Agreement with respect to its participation in the Project, all as set forth in Section 5.13 hereof.

“Standard Investment Period” shall mean the period that began with the first day of any purchase or acquisition of Economic Development Property and ended the fifth anniversary thereof, unless otherwise extended.

“State” shall mean the State of South Carolina.

“Termination Date” shall mean, with respect to each Phase of the Project, the end of the last day of the property tax year which is the 29th year following the first property tax year in which such Phase of the Project is placed in service; provided, that the intention of the parties is that the Company will make at least 30 annual FILOT payments under Article IV hereof with respect to each Phase of the Project; and provided further, that if this Fee Agreement is terminated earlier in accordance with the terms hereof, the Termination Date shall mean the date of such termination.

“Transfer Provisions” shall mean the provisions of Section 12-44-120 of the FILOT Act, as amended or supplemented from time to time, concerning, among other things, the necessity of obtaining County consent to certain transfers.

Any reference to any agreement or document in this Article I or otherwise in this Fee Agreement shall include any and all amendments, supplements, addenda, and modifications to such agreement or document.

Section 1.02 Project-Related Investments

The term “investment” or “invest” as used herein shall include not only investments made by the Company and any Sponsor Affiliates, but also to the fullest extent permitted by law, those investments made by or for the benefit of the Company or any Sponsor Affiliate with respect to the Project through federal, state, or local grants, to the extent such investments are subject to ad valorem taxes or FILOT payments by the Company.

[End of Article I]
ARTICLE II

REPRESENTATIONS, WARRANTIES, AND AGREEMENTS

Section 2.01 Representations, Warranties, and Agreements of the County

The County hereby represents, warrants, and agrees as follows:

(a) The County is a body politic and corporate and a political subdivision of the State and acts through the County Council as its governing body. The County has duly authorized the execution and delivery of this Fee Agreement and any and all other agreements described herein or therein and has obtained all consents from third parties and taken all actions necessary or that the law requires to fulfill its obligations hereunder.

(b) Based upon representations by the Company, the Project constitutes a “project” within the meaning of the PILOT Act.

(c) The County has agreed that each item of real and tangible personal property comprising the Project which is eligible to be economic development property under the PILOT Act and that the Company selects shall be considered Economic Development Property and is thereby exempt from ad valorem taxation in the State.

(d) The millage rate set forth in Step 3 of Section 4.01(a) hereof is 264.0 mils.

Section 2.02 Representations, Warranties, and Agreements of the Company

The Company hereby represents, warrants, and agrees as follows:

(a) The Company is organized and in good standing under the laws of the State and is duly authorized to transact business in the State, has power to enter into this Fee Agreement, and has duly authorized the execution and delivery of this Fee Agreement.

(b) The Company intends to operate the Project as a “project” within the meaning of the PILOT Act as in effect on the date hereof. The Company intends to operate the Project for the purpose of manufacturing rugs and related products, and for such other purposes that the PILOT Act permits as the Company may deem appropriate.

(c) The execution and delivery of this Fee Agreement by the County has been instrumental in inducing the Company to locate the Project in the County.

(d) The Company, together with any Sponsor Affiliates, used commercially reasonable efforts to meet, or cause to be met, the Contract Minimum Investment Requirement within the Investment Period.

[End of Article II]
ARTICLE III

COMMENCEMENT AND COMPLETION OF THE PROJECT

Section 3.01 The Project

(a) The Company intends and expects, together with any Sponsor Affiliate, to construct and acquire the Project. The first Phase of the Project was placed in service during the calendar year ending December 31, 2003.

(b) Pursuant to the PILOT Act and subject to Section 4.03 hereof, the Company and the County hereby agree that the Company and any Sponsor Affiliates shall identify annually those assets which are eligible for PILOT payments under the PILOT Act and which the Company or any Sponsor Affiliate selects for such treatment by listing such assets in its annual PT-300S form (or comparable form) to be filed with the Department (as such may be amended from time to time) and that by listing such assets, such assets shall automatically become Economic Development Property and therefore be exempt from all ad valorem taxation during the Exemption Period. Anything contained in this Fee Agreement to the contrary notwithstanding, the Company and any Sponsor Affiliates shall not be obligated to complete the acquisition of the Project.

(c) The Company may add to the Land such real property, located in the same taxing District in the County as the original Land, as the Company, in its discretion, deems useful or desirable. In such event, the Company, at its expense, shall deliver an appropriately revised Exhibit A to this Fee Agreement, in form reasonably acceptable to the County.

Section 3.02 Diligent Completion

The Company used its reasonable efforts to complete the Project within the Investment Period.

Section 3.03 Filings and Reports

(a) Each year during the term of the Fee Agreement, the Company and any Sponsor Affiliates shall deliver to the County, the County Auditor, the County Assessor, and the County Treasurer a copy of their most recent annual filings with the Department with respect to the Project, not later than thirty (30) days following delivery thereof to the Department.

(b) The Company shall cause a copy of this Fee Agreement, as well as a copy of the completed Form PT-443 of the Department, to be filed with the County Auditor and the County Assessor, the County Administrator and the Department within thirty (30) days after the date of execution and delivery of this Fee Agreement by all parties hereto.

(c) Each of the Company and any Sponsor Affiliates agree to maintain complete books and records accounting for the acquisition, financing, construction, and operation of the Project. Such books and records shall (i) permit ready identification of the various Phases and components thereof; (ii) confirm the dates on which each Phase was placed in service; and (iii) include copies of all filings made by the Company and any such Sponsor Affiliates in accordance with Section 3.03(a) or (b) above with respect to property placed in service as part of the Project.

[End of Article III]
ARTICLE IV

FILOT PAYMENTS

Section 4.01 FILOT Payments

(a) Pursuant to Section 12-44-50 of the FILOT Act, the Company and any Sponsor Affiliates, as applicable, are required to make payments in lieu of ad valorem taxes to the County with respect to the Economic Development Property. Inasmuch as the Company anticipates an initial investment of sums sufficient for the Project to qualify for a fee in lieu of tax arrangement under Section 12-44-50(A)(1) of the FILOT Act, the County and the Company have negotiated the amount of the FILOT Payments in accordance therewith. The Company and any Sponsor Affiliates, as applicable, shall make payments in lieu of ad valorem taxes on all Economic Development Property which comprises the Project and is placed in service, as follows: the Company and any Sponsor Affiliates, as applicable, shall make payments in lieu of ad valorem taxes during the Exemption Period with respect to the Economic Development Property or, if there are Phases of the Economic Development Property, with respect to each Phase of the Economic Development Property, said payments to be made annually and to be due and payable and subject to penalty assessments on the same dates and in the same manner as prescribed by the County for ad valorem taxes. The determination of the amount of such annual FILOT Payments shall be in accordance with the following procedure (subject, in any event, to the procedures required by the FILOT Act):

Step 1: Determine the fair market value of the Economic Development Property (or Phase of the Economic Development Property) placed in service during the Exemption Period using original income tax basis for State income tax purposes for any real property and Improvements without regard to depreciation (provided, the fair market value of real property, as the FILOT Act defines such term, that the Company and any Sponsor Affiliates obtains by construction or purchase in an arms-length transaction is equal to the original income tax basis, and otherwise, the determination of the fair market value is by appraisal) and original income tax basis for State income tax purposes for any personal property less depreciation for each year allowable for property tax purposes, except that no extraordinary obsolescence shall be allowable. The fair market value of the real property for the first year of the Exemption Period remains the fair market value of the real property and Improvements for the life of the Exemption Period. The determination of these values shall take into account all applicable property tax exemptions that State law would allow to the Company and any Sponsor Affiliates if the property were taxable, except those exemptions that Section 12-44-50(A)(2) of the FILOT Act specifically disallows.

Step 2: Apply an assessment ratio of six percent (6%) to the fair market value in Step 1 to establish the taxable value of the Economic Development Property (or each Phase of the Economic Development Property) in the year it is placed in service and in each of the 29 years thereafter or such longer period of years in which the FILOT Act permits the Company and any Sponsor Affiliates to make annual FILOT payments.

Step 3: Use a millage rate of 264.0 mills, which millage rate shall be fixed during the Exemption Period, against the taxable value to determine the amount of the FILOT Payments due during the Exemption Period on the applicable payment dates.
In the event that a final order of a court of competent jurisdiction from which no further appeal is allowable declares the FILOT Act and/or the herein-described FILOT Payments invalid or unenforceable, in whole or in part, for any reason, the parties express their intentions to reform such payments so as to effectuate most closely the intent thereof (without increasing the amount of incentives being afforded herein) and so as to afford the Company and any Sponsor Affiliates with the benefits to be derived herefrom, the intention of the County being to offer the Company and such Sponsor Affiliates a strong inducement to locate the Project in the County. If the Economic Development Property is deemed to be subject to ad valorem taxation, this Fee Agreement shall terminate, and the Company and any Sponsor Affiliates shall pay the County regular ad valorem taxes from the date of termination, but with appropriate reductions equivalent to all tax exemptions which are afforded to the Company and such Sponsor Affiliates. Any amount determined to be due and owing to the County from the Company and such Sponsor Affiliates, with respect to a year or years for which the Company or such Sponsor Affiliates previously remitted FILOT Payments to the County hereunder, shall (i) take into account all applicable tax exemptions to which the Company or such Sponsor Affiliates would be entitled if the Economic Development Property was not and had not been Economic Development Property under the Act; and (ii) be reduced by the total amount of FILOT Payments the Company or such Sponsor Affiliates had made with respect to the Project pursuant to the terms hereof.

Section 4.02 Reserved.

Section 4.03 Reserved.

Section 4.04 Removal of Equipment

Subject, always, to the other terms and provisions of this Fee Agreement, the Company and any Sponsor Affiliates shall be entitled to remove and dispose of components of the Project from the Project in its sole discretion with the result that said components shall no longer be considered a part of the Project and, to the extent such constitute Economic Development Property, shall no longer be subject to the terms of this Fee Agreement. Economic Development Property is disposed of only when it is scrapped or sold or removed from the Project. If it is removed from the Project, it is subject to ad valorem property taxes to the extent the Property remains in the State and is otherwise subject to ad valorem property taxes.

Section 4.05 FILOT Payments on Replacement Property

If the Company or any Sponsor Affiliate elects to replace any Removed Components and to substitute such Removed Components with Replacement Property as a part of the Economic Development Property, or the Company or any Sponsor Affiliate otherwise utilizes Replacement Property, then, pursuant and subject to the provisions of Section 12-44-60 of the FILOT Act, the Company or such Sponsor Affiliate shall make statutory payments in lieu of ad valorem taxes with regard to such Replacement Property in accordance with the following:

(i) Replacement Property does not have to serve the same function as the Economic Development Property it is replacing. Replacement Property is deemed to replace the oldest Economic Development Property subject to the Fee, whether real or personal, which is disposed of in the same property tax year in which the Replacement Property is placed in service. Replacement Property qualifies as Economic Development Property only to the extent of the original income tax basis of Economic Development Property which is being disposed of in the same property tax year. More than one piece of property can replace a single piece of Economic Development Property. To the extent that the income tax basis of the Replacement Property...
exceeds the original income tax basis of the Economic Development Property which it is replacing, the excess amount is subject to annual payments calculated as if the exemption for Economic Development Property were not allowable. Replacement Property is entitled to treatment under the Fee Agreement for the period of time remaining during the Exemption Period for the Economic Development Property which it is replacing; and

(ii) The new Replacement Property which qualifies for the FILOT shall be recorded using its income tax basis, and the calculation of the FILOT shall utilize the millage rate and assessment ratio in effect with regard to the original property subject to the FILOT.

Section 4.06 Reductions in Payment of Taxes Upon Diminution in Value; Investment Maintenance Requirement

In the event of a Diminution in Value of the Economic Development Property, the Payment in Lieu of Taxes with regard to the Economic Development Property shall be reduced in the same proportion as the amount of such Diminution in Value bears to the original fair market value of the Economic Development Property as determined pursuant to Step 1 of Section 4.01(a) hereof; provided, however, that if at any time subsequent to the end of the Investment Period, the total value of the Project remaining in the County based on the original income tax basis thereof (that is, without regard to depreciation), is less than the FILOT Act Minimum Investment Requirement, then beginning with the first payment thereafter due hereunder and continuing until the Termination Date, the Project shall no longer be entitled to the incentive provided in Section 4.01, and the Company and any Sponsor Affiliate shall therefore commence to pay regular ad valorem taxes thereon, calculated as set forth in Section 4.01(b) hereof.

[End of Article IV]
ARTICLE V
PARTICULAR COVENANTS AND AGREEMENTS

Section 5.01  Cessation of Operations

Notwithstanding any other provision of this Fee Agreement, each of the Company and any Sponsor Affiliates acknowledges and agrees that County’s obligation to provide the FIT, OT incentive ends, and this Fee Agreement is terminated, if the Company ceases operations at the Project. For purposes of this Section, “ceases operations” means closure of the facility or the cessation of production and shipment of products to customers for a continuous period of twelve (12) months. The provisions of Section 4.03 hereof relating to retroactive payments shall apply, if applicable, if this Fee Agreement is terminated in accordance with this Section prior to the end of the Investment Period. Each of the Company and any Sponsor Affiliates agrees that if this Fee Agreement is terminated pursuant to this subsection, that under no circumstance shall the County be required to refund or pay any monies to the Company or any Sponsor Affiliates.

Section 5.02  Rights to Inspect

The Company agrees that the County and its authorized agents shall have the right at all reasonable times and upon prior reasonable notice to enter upon and examine and inspect the Project. The County and its authorized agents shall also be permitted, at all reasonable times and upon prior reasonable notice, to have access to examine and inspect the Company’s South Carolina property tax returns, as filed. The aforesaid rights of examination and inspection shall be exercised only upon such reasonable and necessary terms and conditions as the Company shall prescribe, and shall be subject to the provisions of Section 5.03 hereof.

Section 5.03  Confidentiality

The County acknowledges and understands that the Company and any Sponsor Affiliates may utilize confidential and proprietary processes and materials, services, equipment, trade secrets, and techniques (herein “Confidential Information”). In this regard, the Company and any Sponsor Affiliates may clearly label any Confidential Information delivered to the County “Confidential Information.” The County agrees that, except as required by law, neither the County nor any employee, agent, or contractor of the County shall disclose or otherwise divulge any such clearly labeled Confidential Information to any other person, firm, governmental body or agency, or any other entity unless specifically required to do so by law. Each of the Company and any Sponsor Affiliates acknowledge that the County is subject to the South Carolina Freedom of Information Act, and, as a result, must disclose certain documents and information on request, absent an exemption. In the event that the County is required to disclose any Confidential Information obtained from the Company or any Sponsor Affiliates to any third party, the County agrees to provide the Company and such Sponsor Affiliates with as much advance notice as is reasonably possible of such requirement before making such disclosure, and to cooperate reasonably with any attempts by the Company and such Sponsor Affiliates to obtain judicial or other relief from such disclosure requirement.

Section 5.04  Limitation of County’s Liability

Anything herein to the contrary notwithstanding, any financial obligation the County may incur hereunder, including for the payment of money, shall not be deemed to constitute a pecuniary liability or
a debt or general obligation of the County; provided, however, that nothing herein shall prevent the Company from enforcing its rights hereunder by suit for mandamus or specific performance.

Section 5.05  Mergers, Reorganizations and Equity Transfers

Each of the Company and any Sponsor Affiliates acknowledges that any mergers, reorganizations or consolidations of the Company and such Sponsor Affiliates may cause the Project to become ineligible for negotiated fees in lieu of taxes under the FILOT Act absent compliance by the Company and such Sponsor Affiliates with the Transfer Provisions; provided that, to the extent provided by Section 12-44-120 of the FILOT Act or any successor provision, any financing arrangements entered into by the Company or any Sponsor Affiliates with respect to the Project and any security interests granted by the Company or any Sponsor Affiliates in connection therewith shall not be construed as a transfer for purposes of the Transfer Provisions. Notwithstanding anything in this Fee Agreement to the contrary, it is not intended in this Fee Agreement that the County shall impose transfer restrictions with respect to the Company, any Sponsor Affiliates or the Project as are any more restrictive than the Transfer Provisions.

Section 5.06  Indemnification Covenants

(a) Notwithstanding any other provisions in this Fee Agreement or in any other agreements with the County, the Company agrees to indemnify, defend and save the County, its County Council members, elected officials, officers, employees, servants and agents (collectively, the "Indemnified Parties") harmless against and from all claims by or on behalf of any person, firm or corporation arising from the conduct or management of, or from any work or thing done on the Project or the Land by the Company or any Sponsor Affiliate, their members, officers, shareholders, employees, servants, contractors, and agents during the Term, and, the Company further, shall indemnify, defend and save the Indemnified Parties harmless against and from all claims arising during the Term from (i) entering into and performing its obligations under this Fee Agreement, (ii) any condition of the Project, (iii) any breach or default on the part of the Company or any Sponsor Affiliate in the performance of any of its obligations under this Fee Agreement, (iv) any act of negligence of the Company or any Sponsor Affiliate or its agents, contractors, servants, employees or licensees, (v) any act of negligence of any assignee or lessee of the Company or any Sponsor Affiliate, or of any agents, contractors, servants, employees or licensees of any assignee or lessee of the Company or any Sponsor Affiliate, or (vi) any environmental violation, condition, or effect with respect to the Project. The Company shall indemnify, defend and save the County harmless from and against all costs and expenses incurred in or in connection with any such claim arising as aforesaid or in connection with any action or proceeding brought thereon, and upon notice from the County, the Company shall defend it in any such action, prosecution or proceeding with legal counsel acceptable to the County (the approval of which shall not be unreasonably withheld).

(b) Notwithstanding the fact that it is the intention of the parties that the Indemnified Parties shall not incur pecuniary liability by reason of the terms of this Fee Agreement, or the undertakings required of the County hereunder, by reason of the granting of the FILOT, by reason of the execution of this Fee Agreement, by the reason of the performance of any act requested of it by the Company or any Sponsor Affiliate, or by reason of the County's relationship to the Project or by the operation of the Project by the Company or any Sponsor Affiliate, including all claims, liabilities or losses arising in connection with the violation of any statutes or regulations pertaining to the foregoing, nevertheless, if the County or any of the other Indemnified Parties should incur any such pecuniary liability, then in such event the Company shall indemnify, defend and hold them harmless against all claims by or on behalf of any person, firm or corporation, arising out of the same, and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon, and upon notice, the Company shall defend them in any such action, proceeding with legal counsel acceptable to the County.
(the approval of which shall not be unreasonably withheld); provided, however, that such indemnity shall not apply to the extent that any such claim is attributable to (i) the grossly negligent acts or omissions or willful misconduct of the County, its agents, officers or employees, or (ii) any breach of this Fee Agreement by the County.

(c) Notwithstanding anything in this Fee Agreement to the contrary, the above-referenced covenants insofar as they pertain to costs, damages, liabilities or claims by any Indemnified Party resulting from any of the above-described acts of or failure to act by the Company or any Sponsor Affiliate, shall survive any termination of this Fee Agreement.

Section 5.07 Qualification in State

Each of the Company and any Sponsor Affiliates warrant that it is duly qualified to do business in the State, and covenants that it will continue to be so qualified so long as it operates any portion of the Project.

Section 5.08 No Liability of County’s Personnel

All covenants, stipulations, promises, agreements and obligations of the County contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of the County and shall be binding upon any member of the County Council or any elected official, officer, agent, servant or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse shall be had for the payment of any money hereunder against any member of the governing body of the County or any elected official, officer, agent, servants or employee of the County and no recourse shall be had against any member of the governing body of the County or any elected official, officer, agent, servant or employee of the County for the performance of any of the covenants and agreements of the County herein contained or for any claims based thereon except solely in their official capacity.

Section 5.09 Assignment, Leases or Transfers

The County agrees that the Company and any Sponsor Affiliates may at any time (a) transfer all or any of their rights and interests under this Fee Agreement or with respect to all or any part of the Project, or (b) enter into any lending, financing, leasing, security, or similar arrangement or succession of such arrangements with any financing or other entity with respect to this Fee Agreement or all or any part of the Project, including without limitation any sale-leaseback, equipment lease, build-to-suit lease, synthetic lease, nordic lease, defeased tax benefit or transfer lease, assignment, sublease or similar arrangement or succession of such arrangements, regardless of the identity of the income tax owner of such portion of the Project, whereby the transferee in any such arrangement leases the portion of the Project in question to the Company or any Sponsor Affiliate or operates such assets for the Company or any Sponsor Affiliate. In order to preserve the PILOT benefit afforded hereunder with respect to any portion of the Project so transferred, leased, financed, or otherwise affected: (i) except in connection with any transfer to an Affiliate of the Company or of any Sponsor Affiliate, or transfers, leases, or financing arrangements pursuant to clause (b) above (as to which such transfers the County hereby consents), the Company and any Sponsor Affiliates, as applicable, shall obtain the prior consent or subsequent ratification of the County which consent or subsequent ratification may be granted by the County in its sole discretion; (ii) except when a financing entity which is the income tax owner of all or part of the Project is the transferee pursuant to clause (b) above and such financing entity assumes in writing the obligations of the Company or any Sponsor Affiliate, as the case may be, hereunder, or when the County consents in writing, no such transfer shall affect or reduce any of the obligations of the Company and any
Sponsor Affiliates hereunder; (iii) to the extent the transferee or financing entity shall become obligated to make FILOT Payments hereunder, the transferee shall assume the then current basis of, as the case may be, the Company or any Sponsor Affiliates (or prior transferee) in the portion of the Project transferred; (iv) the Company or applicable Sponsor Affiliate, transferee or financing entity shall, within sixty (60) days thereof, furnish or cause to be furnished to the County and the Department a true and complete copy of any such transfer agreement; and (v) the Company, the Sponsor Affiliates and the transferee shall comply with all other requirements of the Transfer Provisions.

Subject to County consent when required under this Section, and at the expense of the Company or any Sponsor Affiliate, as the case may be, the County agrees to take such further action or execute such further agreements, documents, and instruments as may be reasonably required to effectuate the assumption by any such transferee of all or part of the rights of the Company or such Sponsor Affiliate under this Fee Agreement and/or any release of the Company or such Sponsor Affiliate pursuant to this Section.

Each of the Company and any Sponsor Affiliates acknowledges that such a transfer of an interest under this Fee Agreement or in the Project may cause all or part of the Project to become ineligible for the FILOT benefit afforded hereunder or result in penalties under the FILOT Act absent compliance by the Company and any Sponsor Affiliates with the Transfer Provisions.

Section 5.10 Administration Expenses

The Company agrees to pay any Administration Expenses to the County when and as they shall become due, but in no event later than the date which is the earlier of any payment date expressly provided for in this Fee Agreement or the date which is forty-five (45) days after receiving written notice from the County, accompanied by such supporting documentation as may be necessary to evidence the County’s or Indemnified Party’s right to receive such payment, specifying the nature of such expense and requesting payment of same.

Section 5.11 Priority Lien Status

The County’s right to receive FILOT payments hereunder shall have a first priority lien status pursuant to Sections 12-44-90(E) and (F) of the FILOT Act and Chapters 4, 49, 51, 53, and 54 of Title 12 of the Code.

Section 5.12 Interest; Penalties

In the event the Company or any Sponsor Affiliate should fail to make any of the payments to the County required under this Fee Agreement, then the item or installment so in default shall continue as an obligation of the Company or such Sponsor Affiliate until the Company or such Sponsor Affiliate shall have fully paid the amount, and the Company and any Sponsor Affiliates agree, as applicable, to pay the same with interest thereon at a rate, unless expressly provided otherwise herein and in the case of FILOT payments, of 5% per annum, compounded monthly, to accrue from the date on which the payment was due and, in the case of FILOT payments, at the rate for non-payment of ad valorem taxes under State law and subject to the penalties the law provides until payment.

Section 5.13 Sponsor Affiliates
The Company may designate from time to time any Sponsor Affiliates pursuant to the provisions of Sections 12-44-30(20) and 12-44-130 of the PILOT Act, which Sponsor Affiliates shall join with the Company and make investments with respect to the Project, or participate in the financing of such investments, and shall agree to be bound by the terms and provisions of this Fee Agreement pursuant to the terms of a written joinder agreement with the County and the Company, in form reasonably acceptable to the County. The Company shall provide the County and the Department with written notice of any Sponsor Affiliate designated pursuant to this Section within ninety (90) days after the end of the calendar year during which any such Sponsor Affiliate has placed in service any portion of the Project, in accordance with Section 12-44-130(B) of the PILOT Act.

[End of Article V]
ARTICLE VI
DEFAULT

Section 6.01 Events of Default

The following shall be “Events of Default” under this Fee Agreement, and the term “Event of Default” shall mean, whenever used with reference to this Fee Agreement, any one or more of the following occurrences:

(a) Failure by the Company or any Sponsor Affiliate to make the FILOT Payments described in Section 4.01 hereof, or any other amounts payable to the County under this Fee Agreement when due, which failure shall not have been cured within thirty (30) days following receipt of written notice thereof from the County; provided, however, that the Company and any Sponsor Affiliates shall be entitled to all redemption rights granted by applicable statutes; or

(b) A representation or warranty made by the Company or any Sponsor Affiliate hereunder which is deemed materially incorrect when deemed made; or

(c) Failure by the Company or any Sponsor Affiliate to perform any of the terms, conditions, obligations, or covenants hereunder (other than those under (a) above), which failure shall continue for a period of thirty (30) days after written notice from the County to the Company and such Sponsor Affiliate specifying such failure and requesting that it be remedied, unless the Company or such Sponsor Affiliate shall have instituted corrective action within such time period and is diligently pursuing such action until the default is corrected, in which case the 30-day period shall be extended to cover such additional period during which the Company or such Sponsor Affiliate is diligently pursuing corrective action; or

(d) Failure by the County to perform any of the terms, conditions, obligations, or covenants hereunder, which failure shall continue for a period of thirty (30) days after written notice from the Company to the County and any Sponsor Affiliates specifying such failure and requesting that it be remedied, unless the County shall have instituted corrective action within such time period and is diligently pursuing such action until the default is corrected, in which case the 30-day period shall be extended to cover such additional period during which the County is diligently pursuing corrective action.

Section 6.02 Remedies Upon Default

(a) Whenever any Event of Default by the Company or any Sponsor Affiliate (the “Defaulting Entity”) shall have occurred and shall be continuing, the County may take any one or more of the following remedial actions as to the Defaulting Entity, only:

(i) terminate this Fee Agreement; or

(ii) take whatever action at law or in equity may appear necessary or desirable to collect the amounts due hereunder.

In no event shall the Company or any Sponsor Affiliate be liable to the County or otherwise for monetary damages resulting from the Company’s (together with any Sponsor Affiliates) failure to meet the Contract Minimum Investment Requirement, other than as expressly set forth in this Fee Agreement.
In addition to all other remedies provided herein, the failure to make FILOT payments shall give rise to a lien for tax purposes as provided in Section 12-44-90 of the FILOT Act. In this regard, and notwithstanding anything in this Fee Agreement to the contrary, the County may exercise the remedies that general law (including Title 12, Chapter 49 of the Code) provides with regard to the enforced collection of ad valorem taxes to collect any FILOT payments due hereunder.

(b) Whenever any Event of Default by the County shall have occurred or shall be continuing, the Company and any Sponsor Affiliate may take one or more of the following actions:

(i) bring an action for specific enforcement;

(ii) terminate this Fee Agreement as to the acting party; or

(iii) in case of a materially incorrect representation or warranty, take such action as is appropriate, including legal action, to recover its damages, to the extent allowed by law.

Section 6.03 Reimbursement of Legal Fees and Expenses and Other Expenses

Upon the occurrence of an Event of Default hereunder by the Company or any Sponsor Affiliate, should the County be required to employ attorneys or incur other reasonable expenses for the collection of payments due hereunder or for the enforcement of performance or observance of any obligation or agreement, the County shall be entitled, within thirty (30) days of demand therefor, to reimbursement of the reasonable fees of such attorneys and such other reasonable expenses so incurred.

Section 6.04 No Waiver

No failure or delay on the part of any party hereto in exercising any right, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy hereunder. No waiver of any provision hereof shall be effective unless the same shall be in writing and signed by the waiving party hereto.

[End of Article VI]
ARTICLE VII
MISCELLANEOUS

Section 7.01 Notices

Any notice, election, demand, request, or other communication to be provided under this Fee Agreement shall be effective when delivered to the party named below or when deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed as follows (or addressed to such other address as any party shall have previously furnished in writing to the other party), except where the terms hereof require receipt rather than sending of any notice, in which case such provision shall control:

If to the Company:

Orian Rugs, Inc.
2415 N. Hwy 91
Anderson, SC 29621
Attn: Robert Merritt, CEO

With a copy to:

Frank T. Davis, III
Haynsworth Sinkler Boyd, P.A.
ONE North Main St., 2nd Floor
Greenville, SC 29601

If to the County:

County Administrator
Anderson County
101 S Main St.
Anderson, SC 29624

With a copy to:

Leon C. Harmon, Esq.
Anderson County Attorney
101 S Main St.
Anderson, SC 29624

Section 7.02 Binding Effect

This Fee Agreement and each document contemplated hereby or related hereto shall be binding upon and inure to the benefit of the Company and any Sponsor Affiliates, the County, and their respective successors and assigns. In the event of the dissolution of the County or the consolidation of any part of the County with any other political subdivision or the transfer of any rights of the County to any other such political subdivision, all of the covenants, stipulations, promises, and agreements of this Fee Agreement shall bind and inure to the benefit of the successors of the County from time to time and any
entity, officer, board, commission, agency, or instrumentality to whom or to which any power or duty of the County has been transferred.

Section 7.03 Counterparts

This Fee Agreement may be executed in any number of counterparts, and all of the counterparts taken together shall be deemed to constitute one and the same instrument.

Section 7.04 Governing Law

This Fee Agreement and all documents executed in connection herewith shall be construed in accordance with and governed by the laws of the State.

Section 7.05 Headings

The headings of the articles and sections of this Fee Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Fee Agreement.

Section 7.06 Amendments

The provisions of this Fee Agreement may only be modified or amended in writing by any agreement or agreements entered into between the parties.

Section 7.07 Further Assurance

From time to time, and at the expense of the Company and any Sponsor Affiliates, the County agrees to execute and deliver to the Company and any such Sponsor Affiliates such additional instruments as the Company or such Sponsor Affiliates may reasonably request and as are authorized by law and reasonably within the purposes and scope of the PILOT Act and this Fee Agreement to effectuate the purposes of this Fee Agreement.

Section 7.08 Invalidity; Change in Laws

In the event that the inclusion of property as Economic Development Property or any other issue is unclear under this Fee Agreement, the County hereby expresses its intention that the interpretation of this Fee Agreement shall be in a manner that provides for the broadest inclusion of property under the terms of this Fee Agreement and the maximum incentive permissible under the PILOT Act, to the extent not inconsistent with any of the explicit terms hereof. If any provision of this Fee Agreement is declared illegal, invalid, or unenforceable for any reason, the remaining provisions hereof shall be unimpaired, and such illegal, invalid, or unenforceable provision shall be reformed to effectuate most closely the legal, valid, and enforceable intent thereof and so as to afford the Company and any Sponsor Affiliates with the maximum benefits to be derived herefrom, it being the intention of the County to offer the Company and any Sponsor Affiliates the strongest inducement possible, within the provisions of the PILOT Act and this Fee Agreement to effectuate the purposes of this Fee Agreement.

Section 7.09 Further Assurance

The Company and any Sponsor Affiliates may reasonably request and as are authorized by law and reasonably within the purposes and scope of the PILOT Act and this Fee Agreement to effectuate the purposes of this Fee Agreement.

Section 7.08 Invalidity; Change in Laws

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Section 7.09  Termination by Company

The Company is authorized to terminate this Fee Agreement at any time with respect to all or part of the Project upon providing the County with thirty (30) days’ written notice; provided, however, that (i) any monetary obligations existing hereunder and due and owing at the time of termination to a party hereto (including without limitation any amounts owed with respect to Section 4.03 hereof); and (ii) any provisions which are intended to survive termination shall survive such termination. In the year following such termination, all property shall be subject to ad valorem taxation or such other taxation or fee in lieu of taxation that would apply absent this Agreement. The Company’s obligation to make FILT0T Payments under this Fee Agreement shall terminate in the year following the year of such termination pursuant to this section.

Section 7.10  Entire Understanding

This Fee Agreement expresses the entire understanding and all agreements of the parties hereto with each other, and neither party hereto has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth in this Fee Agreement or in certificates delivered in connection with the execution and delivery hereof.

Section 7.11  Waiver

Either party may waive compliance by the other party with any term or condition of this Fee Agreement only in a writing signed by the waiving party.

Section 7.12  Business Day

In the event that any action, payment, or notice is, by the terms of this Fee Agreement, required to be taken, made, or given on any day which is a Saturday, Sunday, or legal holiday in the jurisdiction in which the person obligated to act is domiciled, such action, payment, or notice may be taken, made, or given on the following business day with the same effect as if given as required hereby, and no interest shall accrue in the interim.

[End of Article VII]
IN WITNESS WHEREOF, the County, acting by and through the County Council, has caused this Fee Agreement to be executed in its name and behalf by the County Administrator and to be attested by the Clerk of the County Council; and the Company has caused this Fee Agreement to be executed by its duly authorized officer, all as of the day and year first above written.

ANDERSON COUNTY, SOUTH CAROLINA

________________________
Tommy Dunn, Chairman
Anderson County Council

ATTEST:

________________________
Lacey A. Croegaert
Anderson County Clerk to Council

[Signature Page 1 to Fee in Lieu of Tax Agreement]
ORIAN RUGS, INC.

By: Robert Merritt
Its: CEO

[Signature Page 2 to Fee in Lieu of Tax Agreement]
EXHIBIT A

LEGAL DESCRIPTION
[**Subject to Company review**]

All of Grantor's right, title and interest, if any, in and to (a) the land and all buildings, improvements and structures thereon shown as the "Expansion Area" on that particular "Orian Rugs – Building Expansion Landscape and Overall Vicinity Plan" prepared by Dunn and Associates Engineering, Inc. and dated March 1, 2004, a copy of which is attached hereto as Item A; (b) all building equipment and personal property used in the operation and maintenance of the Expansion Area, whether or not affixed to this area, including without limitation, fixtures, machinery, apparatus, fittings, elevators, tools, air conditioning systems and equipment; and (c) all additions, alterations, restorations, repairs and replacements or any of the foregoing within the Expansion Area.

Being:

(1) all of the property acquired by the Grantor herein by deed of Anderson County, South Carolina dated December 20, 2005, and recorded in Deed Book 7129 at Page 304, (Part of Tax Map # 146-00-09-007-000); and

(2) a portion of the property acquired by the Grantor herein by deed of Anderson County, South Carolina dated March 24, 1982 and recorded in Deed Book 19T and Page 243 [Part of Tax Map # 146-00-09-003-000].
EXECUTIVE SUMMARY: The County PRT Division requests permission to submit a general proposal to ACOG to provide Group Dining services for qualified senior citizens. Submitting the proposal would not commit us to participating in this service program and would not commit us to a particular course of action with regard to providing the service.

The Group Dining services would be funded through money provided for this specific purpose by the Appalachian Council of Government- Area Agency for Aging (ACOG-AAA) and by managed by the county Senior Citizen Program.

Senior Solutions at one time provided these Group Dining services at several locations in the county; however, they now only offer the service at their Cinema Center location. We understand Senior Solutions is currently serving only 20 qualifying seniors per service day.

We have received several complaints about the lack of Group Dining services in other areas of the county (Williamston, Belton, Honea Path, Iva, South Anderson)

Funding provided by this program can be used to cover costs of meals, necessary staffing, facility rental, supplies, and all other aspects of providing the group dining service.

The full scope of service we can offer will be defined by the amount of funding made available by ACOG-AAA, which we will not know unless and until we submit the proposal referenced above and are invited by ACOG-AAA to participate in applicant interviews.

Based on the limited information we have right now, we are reasonably certain that the money made available to us would allow us at a minimum to provide 100 seniors with 2 meals each week (200 meals per week total), spread across five locations in the county.

We would work with the community and County Council on finalizing the details of the Group Dining program if we are invited by ACOG-AAA to possibly be a service provider.

We will NOT enter into any formal agreement with ACOG-AAA or any other entity until a full program plan and scope has been approved by the County Council. The formal program scope would address details related to meal sites, frequency of meals, and County support funding (if any).
RESOLUTION NO. R2019-005

A RESOLUTION TO APPROVE A MEMORANDUM OF UNDERSTANDING (“MOU”) BY AND AMONG PROJECT ROCKY (ALSO KNOWN AS PROJECT SMOKY) (THE “COMPANY”), ANDERSON COUNTY, SOUTH CAROLINA (THE “COUNTY”), AND THE TOWN OF PENDLETON (THE “TOWN”); AND OTHER MATTERS RELATED THERETO.

WHEREAS, the Company contemplates the establishment of a manufacturing facility (the “Project,” often identified as “Project Rocky” or “Project Smoky” in other documents) in the County together with one or more affiliated entities; and

WHEREAS, the Company anticipates that the Project will result in an investment of approximately Forty Million Dollars ($40,000,000) and the creation of approximately seventy eight (78) new, full-time jobs in the County on or before the end of the fifth (5th) calendar year following the year the project is placed into service (the “Investment Period”); and

WHEREAS, based on the information the Company has provided, the Town and the County have provisionally committed to provide certain offsets of fees and other incentives as an inducement for the Company to locate the Project in, and agree to be annexed into, the city limits of the Town; and

WHEREAS, the Public Parties acknowledge that the Company is relying on the provisional commitments set forth herein in evaluating the Company’s decision to locate the Project within the County and Town, and the Company acknowledges that the Public Parties are relying on the representations of the Company set forth herein in making their decisions to offer the inducements described herein; and

WHEREAS, the purpose of the MOU is to set forth the various provisional commitments of the parties hereto to induce the Company to locate the Project in the County; and

WHEREAS, the terms set forth in the MOU are summary in nature and will be treated in greater detail in the final agreements relating to the Project, which will require the approval of the governing bodies of the Public Parties;

NOW, THEREFORE, be it resolved by Anderson County Council in meeting duly assembled that:

1. The Anderson County Council approves the Memorandum of Understanding (“MOU”) by and among Project Rocky (also known as Project Smoky) (the “Company”), Anderson County, South Carolina, and the Town of Pendleton in the form attached hereto as Exhibit A and further authorizes the County Administrator or to sign the MOU on behalf of Anderson County.
2. All orders and resolutions in conflict herewith are, to the extent of such conflict only, repealed and rescinded.

3. Should any part or portion of this resolution be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such finding shall not affect the remainder of hereof, all of which is hereby deemed separable.

4. This resolution shall take effect and be in force immediately upon enactment. Resolved in meeting duly assembled this 13th day of February, 2019.

ATTEST:

Rusty Burns
Anderson County Administrator

FOR ANDERSON COUNTY

Tommy Dunn, Chairman
Anderson County Council

Lacey A. Croegaert
Clerk to Council

APPROVED AS TO FORM:

Leon C. Harmon
County Attorney
MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this “MOU”) is hereby dated as of the ______ day of _______, 20__, by and among Project Rocky (the “Company”), Anderson County, South Carolina (the “County”), the Town of Pendleton (the “Town”), (the County and the Town shall be collectively referred to herein as the “Public Parties”).

WITNESSETH:

WHEREAS, the Company contemplates the establishment of a manufacturing facility (the “Project,” often identified as “Project Rocky” or “Project Smoky” in other documents, including some of the Exhibits to this MOU) in the County together with one or more affiliated entities; and

WHEREAS, the Company anticipates that the Project will result in an investment of approximately Forty Million Dollars ($40,000,000) and the creation of approximately seventy eight (78) new, full-time jobs in the County on or before the end of the fifth (5th) calendar year following the year the project is placed into service (the “Investment Period”); and

WHEREAS, based on the information the Company has provided, the Town and the County have provisionally committed to provide certain offsets of fees and other incentives as an inducement for the Company to locate the Project in, and agree to be annexed into, the city limits of the Town; and

WHEREAS, the Public Parties acknowledge that the Company is relying on the provisional commitments set forth herein in evaluating the Company’s decision to locate the Project within the County and Town, and the Company acknowledges that the Public Parties are relying on the representations of the Company set forth herein in making their decisions to offer the inducements described herein; and

WHEREAS, the purpose of this MOU is to set forth the various provisional commitments of the parties hereto to induce the Company to locate the Project in the County; and

WHEREAS, the terms set forth in this MOU are summary in nature and will be treated in greater detail in the final agreements relating to the Project, which will require the approval of the governing bodies of the Public Parties;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein and for other valuable consideration, the receipt, adequacy, and sufficiency of which is hereby acknowledged, the parties hereto enter into this MOU as follows:
ARTICLE 1
PUBLIC PARTIES COMMITMENTS

1.1 Business License Fee. In the normal course of business and as set forth in Town’s ordinances and statutes, the Town places a fee on business entities operating within the boundaries of the City Limits. The Town agrees to apply a business license fee based on the Company’s NAICS code; the Town will apply the new Business License Fee calculations based on the Project site operating expenses occurring at the Town location only.

The Company’s NAICS Code is 325998 (Manufacturing – Misc. Chemical Products). The Company’s projected operating expenses in the first 2-5 years is anticipated to be between Three Million ($3,000,000) and Six Million Dollars ($6,000,000). It is anticipated that through negotiated agreement the fee will be net zero, either through a rebate program or other neutralizing offset or other reasonable and acceptable exchange. For example: Town of Pendleton Business LIC Fee calculation for three million ($3,000,000) of operating expense would generate a fee of Two Thousand Two Hundred Seventy-Four and $2,274.30) and for six million ($6,000,000) a fee of Three Thousand Eight Hundred Ninety-Four and $3,894.30). One hundred percent (100%) of the Business License Fee would be rebated as a Site Beautification Grant that will be used at the Company’s discretion to offset the cost of lawn maintenance and landscaping.

1.2 Water. In the normal operation of manufacturing the Company anticipates using approximately twenty thousand (20,000) gallons of water per day for the 2019 manufacturing year, thirty thousand (30,000) gallons of water per day for the 2020 manufacturing year, forty thousand (40,000) gallons per day for manufacturing years 2021, 2022, and sixty thousand (60,000) gallons of water per day in 2023 and continuing.

The Town agrees to allow the water consumption as indicated with increasing consumption allowed as needed so as to facilitate the continued growth and production of the Company’s project in the Town. The Town agrees to hold the water rate to a charge based upon the negotiated agreement between Sandy Springs and the Town of Pendleton, that rate being the Sandy Springs wholesale rate plus ten percent (10%) to Pendleton subject to any fluctuation of the wholesale rate to Pendleton. For example: under current costs the rate would be approximately three dollars ($3.00) per one thousand (1,000) gallons. The Town has a pass-through rate from Sandy Springs Water District and no additional charges will be incurred in the billing from the Town to Ortec.

1.3 Sewer. The Company is required by statute to treat any waste water discharge generated in the manufacturing process, the standards of which shall be based solely on those established by the EPA for indirect discharge. It is agreed the Company and Town will enter into a “take-or-pay” (“TOP”) agreement by which (1) the Company will pay each month at the agreed-upon rate for its actual discharge determined on metered basis, provided however, that if the Company’s annual discharge for any calendar year during the term of the agreement is less than one half (½) of its projected annual sewer usage for such year (the “TOP amount”), the Company shall, within 60 days of the receipt of a statement from the Town certifying the total discharge for such year, pay to the Town the difference between the actual total annual usage and the TOP amount.; (2) the parties agree to a “locked-in” sewer rate of $6.82 per one thousand (1,000) gallons of sewer discharge for a period of five (5) years, with a “not to exceed” percentage increase of two percent (2%) increase in two (2) year intervals.
thereafter; (3) Sewer effluent will be metered (not calculated based on water consumption). As an example, if the Company estimates it would generate approximately seven million three hundred thousand (7,300,000) gallons of waste water annually for a given year, the Company would commit to a minimum of three million six hundred fifty thousand (3,650,000) gallons for that year. If the Company’s actual total annual discharge for such calendar year were three million (3,000,000) gallons, upon receipt of the certification referenced above from the Town, the Company would pay within 60 days an amount equal to the $6.82 per on thousand (1000) gallons for the 650,000 gallon difference between the actual usage for such year and that year’s TOP amount. The Town will assess capacity fees impact fees based on the committee of the Company to the TOP payment method based on an annual consumption and will not impose other means fees or charges in lieu of such capacity fees. The TOP amount will be adjusted annually from sewer estimates given by Company to Town by December 1st prior to each calendar year during the term of the TOP agreement. The Company agrees to keep in place and to pay all costs and expenses related to pre-treatment program requirements as established by the EPA for indirect discharge, and any standards established by SC DHEC and the Town of Pendleton which are based thereon and assumes responsibility for non-compliance.

1.4 Property Tax. The Parties agree to amend the existing fee-in-lieu-of-taxes and infrastructure credit agreement ("FILOT") Ordinance #2016-046 to (1) add the Town as a party, (2) add and lock the tax millage of the Town; and increase the special source revenue credit ("SSRC") by the amount necessary to offset the additional amount otherwise payable as a result of adding the Town and its millage to the FILOT, it being the Parties’ intent that the total amount payable by the Company under the FILOT shall never be greater than the amount which would have been payable under the FILOT to Anderson County had the Company not been annexed into the Town.

1.5 County Ordinance No. 2016-046 Amendments. The tax incentives described above will be incorporated into amendments to Anderson County Ordinance No. 2016-046 and in an Ordinance to be passed by the Town of Pendleton.

ARTICLE 2
PROJECT ROCKY COMMITMENTS

2.1 Capital Investment. Project Rocky consists of the Company creating additional capital investment of approximately forty million dollars ($40,000,000.00) over the next five (5) years.

2.2 Job Creation. In addition to the capital investment contained in paragraph 2.1, the Company will create seventy eight (78) new full time jobs with an average pay of Twenty-Three and 41/100 Dollars ($23.04) per hour by the end of the fifth (5th) year following the year the project is placed into service.

ARTICLE 3
MISCELLANEOUS PROVISIONS

3.1 Assignment of Rights. The rights and obligations under this MOU are not assignable by the Company or the Public Parties provided however that the Company may assign its rights hereunder to any affiliate of the Company, and may further assign its rights hereunder with the consent of the public parties, such consent not to be unreasonably withheld.

3.2 Governance. This MOU shall be governed and construed under the laws of the State of South Carolina, without giving effect to the principles of the conflicts of laws thereof.
3.3 **Amendment or Modification.** This MOU may be amended or modified only by written agreement of the Company and the Public Parties.

3.4 **Binding Effect.** In the event that any term or provision of this MOU shall be declared invalid or unenforceable by a Court of Competent jurisdiction, the balance of this MOU shall be considered severable and shall remain binding and enforceable. In the event that any intended economic benefit to the Company set out in this Agreement is not implemented by a Public Party, or, having been implemented is thereafter thwarted because of any change in State or municipal law or determination of invalidity, the Parties agree that the SSRC shall be increased so as to provide, as closely as possible, such economic benefit intended to the Company,

3.5 **Dispute Resolution.** In the event a dispute arises under this MOU, the parties shall engage in non-binding mediation before any party files a lawsuit. Any suit must be filed and maintained in the state or federal courts located in Anderson County, South Carolina as a non-jury matter, and all parties hereby WAIVE their right to a jury trial.

3.6 **Continuity of Effect.** This MOU shall remain in effect until the Public Parties implement by Ordinance the provisions contained herein, provided however that Sections 3.4 and 3.5 shall survive the termination of this Agreement and remain in full force and effect until all economic benefits intended to be provided to the Company have been realized. Nothing in this MOU shall obligate the Public Parties to pass an Ordinance in any particular form or with any particular provisions.

ENTERED into this 13th day of February, 2019.
FOR THE COMPANY:

____________________________________
By:_________________________________
Its:_________________________________

FOR ANDERSON COUNTY:

____________________________________
By: Rusty Burns________________________
Its: County Administrator_______________

FOR TOWN OF PENDLETON, SC

____________________________________
By:_________________________________
Its:_________________________________