

(d) it appears that the First Amendment, which is attached to this ordinance, is in appropriate form and is an appropriate instrument to be approved, executed and delivered by the County for the purposes intended.

Section 2. Statutory Findings.

Council makes the following additional findings:

(a) the Project will continue to constitute a “project” as said term is referred to and defined in Section 12-44-30(16) of the Act, and the First Amendment will promote the purposes enumerated in the Act, and in all respects conform to the provisions and requirements of the Act;

(b) the Project will continue to benefit the general public welfare of the County by providing or maintaining services, employment, recreation, and other public benefits not otherwise provided locally;

(c) neither the Project, the First Amendment, nor any documents or agreements entered into by the County in connection therewith will constitute or give rise to any pecuniary liability of the County or an incorporated municipality or a charge against its general credit or taxing power;

(d) the purposes to be accomplished by the Project and the First Amendment are proper governmental and public purposes; and

(e) the inducement of the expansion of the Project within the County and State is of paramount importance, and the benefits of the Project to the public will be greater than the costs.

Section 3. Approval and Execution of First Amendment.

The form, terms, and provisions of the First Amendment, attached hereto as Exhibit A, are approved, and all of the terms, provisions, and conditions thereof are incorporated herein by reference as if the First Amendment was set out in this ordinance in its entirety. The Council Chair and Council Secretary are authorized, empowered, and directed to execute and acknowledge the First Amendment in the name of and on behalf of the County, and thereupon to cause the First Amendment to be delivered to Rico. The First Amendment is to be in substantially the form as attached to this ordinance and hereby approved, with such changes therein as shall not be materially adverse to the County and as shall be approved by the officials of the County executing the same, upon the advice of counsel to the County, such officer’s execution thereof to constitute conclusive evidence of such officer’s approval of any and all changes or revisions therein from the form of the First Amendment attached to this ordinance.

Section 4. Authority to Act.

The Council Chair, Council Secretary, Clerk to Council, County Administrator, County Attorney and all other appropriate officials of the County are authorized and directed to do any and all things necessary to effect the execution and delivery of the Amendments and the performance of all obligations of the County under and pursuant to the First Amendment.

Section 5. Severability.

If any section, subsection or clause of this ordinance is held to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected.

Section 6. Controlling Provisions.

To the extent this ordinance contains provisions that conflict with provisions contained elsewhere in the Lancaster County Code or other County ordinances, resolutions or orders, the provisions contained in this ordinance supersede all other provisions and this ordinance is controlling.

Section 7. Effective Date.

This ordinance is effective upon Third Reading.

AND IT IS SO ORDAINED

Dated this 22nd day of May, 2017

LANCASTER COUNTY, SOUTH CAROLINA


Steve Harper, Chair, County Council


Larry Honeycutt, Secretary, County Council

ATTEST:


Sherrie Simpson, Clerk to Council

First Reading: April 24, 2017
Second Reading: May 8, 2017
Public Hearing: May 22, 2017
Third Reading: May 22, 2017

Exhibit A to Ordinance No. 2017-1440

**First Amendment to Fee Agreement
Among
Lancaster County and Rico Industries, Inc., and Rico SC Realty, LLC**

See attached.

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**FIRST AMENDMENT TO THE FEE AGREEMENT
AMONG
LANCASTER COUNTY, SOUTH CAROLINA, RICO INDUSTRIES, INC.,
AND RICO SC REALTY, LLC**

This FIRST AMENDMENT TO THE FEE AGREEMENT among LANCASTER COUNTY, SOUTH CAROLINA, RICO INDUSTRIES, INC., AND RICO SC REALTY, LLC (the "First Amendment"), is made as of this ___ day of _____, 2017, by and among RICO INDUSTRIES, INC. ("RI"), RICO SC REALTY, LLC ("RLLC"), and LANCASTER COUNTY, SOUTH CAROLINA (the "County").

RECITALS

WHEREAS, RI and RLLC (collectively, the "Company") and the County, acting by and through its County Council (the "County Council"), previously entered into a fee in lieu of tax agreement dated as of March 1, 2011 (the "Fee Agreement") pursuant to Title 12, Chapter 44 of the Code of Laws of South Carolina 1976, as amended (the "Act"), in order to provide for the payment of a fee in lieu of taxes with respect to the Company's proposed manufacturing facilities in the County (the "Project"); and

WHEREAS, the Company is contemplating an additional investment of at least \$350,000 (the "Additional Investment") in the Project, as the Fee Agreement defines that term, which is anticipated to result in the creation of at least 15 new full-time jobs (the "Additional Jobs"), all over a five (5) year period; and

WHEREAS, the Company applied to the County prior to the expiration of the Investment Period (as defined in the Fee Agreement) for a five (5) year extension of the Investment Period in order to include the Additional Investment in the Fee Agreement; and

WHEREAS, the Company has invested significant capital and has created valuable jobs meeting the minimum investment and minimum job requirements pursuant to Section 4.2(b) of the Fee Agreement that have provided significant benefits to the County; and

WHEREAS, by passage of Ordinance No. 2017-____, the County Council approved this First Amendment.

FIRST AMENDMENT

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County and the Company hereby agree as follows:

1. The definition of "Investment Period," as contained in Section 1.1 of the Fee Agreement, is amended to read:

“Investment Period’ shall mean the period beginning with the first day of any purchase or acquisition of Economic Development Property and ending ten years after the Commencement Date, provided that the Company and County may agree to a later date if authorized by the Act.”

2. Section 4.2(b) of the Fee Agreement is amended to read:

“If the Company does not invest at least \$4,350,000 in the Project (excluding the value of real property contributed by the County to the Company) or create at least 45 new full-time jobs (calculated by reference to the Company’s FORM SC SCH. TC4 “NEW JOBS CREDIT” line 3 “monthly average of full time employees”) (collectively, “New Jobs”), including jobs transferred from outside of the County, in connection with the Project by the end of the Investment Period, then the Company shall pay to the County a pro-rata portion of the Infrastructure Credits received pursuant to Section 4.1(c) during years five through ten of the Investment Period (2017–2021) based on the average of the following proportions: (i) the proportion the investment level achieved (excluding the value of real property contributed by the County to the Company) is to \$4,350,000, not to exceed 100%; and (ii) the proportion the number of New Jobs is to 45, not to exceed 100%. The amount due pursuant to this subsection (b) shall be collected and enforced in accordance with Section 12-44-90 of the Act. The Company agrees that if this Fee Agreement is terminated pursuant to this subsection, under no circumstance shall the County be required to refund or pay any monies to the Company.

For purposes of calculating New Jobs under this Agreement, the County and the Company agree that the Company’s base employment is 91 full-time jobs as of calendar year 2010 (“Base Employment”) and any New Jobs are only those New Jobs created in excess of such Base Employment in subsequent years.”

3. Section 4.2(c) of the Fee Agreement is amended to read:

“After expiration of the Investment Period, the Company agrees that if in any year the Company fails to maintain an investment of at least \$4,350,000 (excluding the value of real property contributed by the County to the Company) in the Project and fails to maintain at least 45 New Jobs, including jobs transferred from outside of the County, in connection with the Project, then the annual Payment in Lieu of Taxes due for the Economic Development Property for the following year shall be calculated, notwithstanding the provisions of Section 4.1(a), using the then current millage rate and the assessment ratios that would be applicable to the Economic Development Property if it were subject to *ad valorem* taxation. The Fee Agreement shall, however, not terminate, unless the Company fails to maintain these requirements for three consecutive years, in which case this Fee Agreement is terminated on a prospective basis and no repayment obligation to the County shall arise if the Fee Agreement is terminated pursuant to this subsection (c).”

4. Except as amended hereby, the Fee Agreement shall otherwise remain in full force and effect.

IN WITNESS WHEREOF, **LANCASTER COUNTY, SOUTH CAROLINA, RICO INDUSTRIES, INC., AND RICO SC REALTY, LLC** each pursuant to due authority, have duly executed this First Amendment to the Fee Agreement, all as of the date first above written.

LANCASTER COUNTY, SOUTH CAROLINA

Steve Harper, Chair, County Council

Larry Honeycutt, Secretary, County Council

ATTEST:

Sherrie Simpson, Clerk to Council

RICO INDUSTRIES, INC.

By: _____
Its: _____

RICO SC REALTY, LLC

By: _____
Its: _____