

In calculating the Achievement Factor, only the Company's investment made or new jobs achieved up to the Jobs Requirement and the Investment Requirement will be counted.

For example, and by way of example only, if the Company achieved a maximum investment of \$16,000,000 during the Investment Period and created 100 new jobs, and if the Company had received \$100,000 in SSRCs, the Repayment Factor would be 14.75% calculated as follows:

Achievement Factor =

$$[(\$16,000,000/\$18,200,000) + (100/121)] \div 2 = 85.25\%$$

$$\text{Repayment Factor} = 100\% - 85.25\% = 14.75\%$$

Thus, in the example, the SSRC would be reduced prospectively by the Repayment Factor for a SSRC of 51.15% for the remaining SSRC Term, and the Company would be required to repay the County Grant, the Property Value and the dollar value of the SSRC already received in the following amounts:

Repayment of County Grant is \$162,250.

Repayment of Property Value is \$100,300.

Repayment of SSRC is \$14,750.

The Negotiated FILOT shall continue, subject to the provisions of the next paragraph.

Any repayment of the RIF Grant shall be governed by a separate agreement under which such grants was provided.

- ii). In the event that the Company acquires the Property and commences construction of the Project but does not achieve at least 50% of the Investment Requirement or the Jobs Requirement during the Investment Period as measured in accordance with subsection (a)(i) above, then, in addition to the pro rata repayment of the SSRC, County Grant and Property Value according to section (a)(i) above, following an in-person meeting between the Chairman of County Council, the County Administrator, the County's Director of Economic Development and the Company's executives, the County may terminate the Negotiated FILOT and the SSRC.

- b) **Maintenance Requirement:** The Company may certify to the County achievement of 100% of the Investment Requirement and the Jobs Requirement prior to the end of the Investment Period. The date of the certification, in form mutually satisfactory to the County and the Company, is the "Certification Date."

From the earlier of the Certification Date or the end of the Investment Period, the Company shall maintain the Jobs Requirement and the Investment Requirement for a period of five (5) years ("Maintenance Period"). During the Maintenance Period, the Jobs Requirement and Investment Requirement shall be measured as of the end of each fiscal year of the Company, which is September 30 ("Maintenance Date"), for a total of no more than 5 fiscal year ends. If on any Maintenance Date, the Company has maintained less than 90% of the Jobs Requirement or the Investment Requirement the Company shall repay within 30 days after the Maintenance Date a pro rata portion of (i) 10% of the dollar value of the SSRC received by the Company during such fiscal year, (ii) 10% of the County Grant received by the Company, and (iii) 10% of the Property Value, according to the formula in subsection (a)(i) above. In no event shall the Company be required to repay more than the amount of the County Grant, the Property Value and the dollar value of the SSRC's received.

- c) Company's Cessation of Operations. Notwithstanding any other provision of this Agreement, the Company acknowledges and agrees that County's obligation to provide the FILOT incentive and the SSRC ends, and the Negotiated FILOT Agreement is terminated, if the Company ceases operations (a "Cessation of Operations"). For purposes of this Agreement, a Cessation of Operations means closure of the Facility and/or the cessation of production and shipment of products to customers for a continuous period of twelve (12) months. The provisions of Article V(a) relating to clawback apply if the Negotiated FILOT Agreement is terminated in accordance with this subsection prior to the end of the Investment Period and before the Company has achieved at least 90% of the Investment Requirement or the Jobs Requirement. The Company agrees that if the Negotiated FILOT Agreement is terminated pursuant to this section, that under no circumstance shall the County be required to refund or pay any monies to the Company.
- d) County's Failure to Perform. In the event County defaults or fails to perform any of its conditions or obligations under of this Agreement, or in the event any of the representations and warranties set forth herein are not true and correct as of the Effective Date and as of the Closing Date, the Company is entitled to pursue any available remedy, including an action in equity for specific performance, or to terminate this Agreement by giving written notice to County. In any such action by Company, Company shall be entitled to recover its reasonable attorneys' fees and court costs. The rights and remedies of Company under this Agreement are cumulative.
- e) Other Company Defaults. In the event of a material default or breach by Company of any of the covenants or conditions or obligations of Company under this Agreement (other than a failure to commence construction within 12 months from the date of conveyance, a failure to complete construction in 18 months from the date of conveyance, a shortfall in the Investment Requirement and the Jobs Requirement, or a Cessation of Operations the exclusive remedies for which are spelled out in Article II(a), V(a), (b) and (c) above), County's remedy shall be to provide written notice of such default to the Company and provide the Company with a right to cure such default. Should the Company not have cured the default within such 30 day period or have instituted

corrective action within the 30 day time period and is diligently pursuing the same until the default is corrected, the County may terminate this Agreement.

- f) County's Repurchase Rights. In the event Closing takes place under this Agreement, nothing herein shall preclude County's enforcement of its payment or any repurchase rights under the Deed and Article II(a) above. In any such action by County, County shall be entitled to recover its reasonable attorneys' fees and court costs. The rights and remedies of County under this Agreement are cumulative

ARTICLE VI. Miscellaneous.

- a) Due Authorization. In addition to the other warranties and representations set forth herein, each party makes the following representation and warranties to the other: the execution, delivery and performance of this Agreement and the closing documents by such party and the execution, delivery and performance by each individual and/or entity signing this Agreement on behalf of such party shall have been duly authorized and approved by all requisite action on the part of such party. All representations and warranties of the parties set forth in this Agreement are true and correct as of the Effective Date and will be true and correct as of the Closing.
- b) Notices. Any notice to be provided under this Agreement shall be effective when delivered to the party named below or when deposited in Federal Express (or any other reputable national "next day" delivery service) 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:

BOMAG Americas, Inc.
2000 Kentville Road
Kewanee, Illinois 61443
Telephone: 309-852-6219
Fax: 309-852-5769

WITH COPIES TO:

Haynsworth Sinkler Boyd, P.A.
Attn: Edward G. Kluiters
P.O. Box 11889
Columbia, SC 29211
Telephone: 803-779-3080
Fax: 803-765-1243

IF TO COUNTY:

Fairfield County, SC
Attn: County Administrator
350 Columbia Road
P.O. Drawer 60
Winnsboro, SC 29180
Telephone: 803-712-6502
Fax: 803-635-5969

WITH COPIES TO:

Parker Poe Adams & Bernstein LLP
Attn: Michael E. Kozlarek
1201 Main Street, Suite 1450
Columbia, SC 29201
Telephone: 803.255.8000
Fax: 803.255.8017

- c) Binding Effect. This Agreement and each document contemplated hereby or related hereto shall be binding upon and inure to the benefit of the parties hereto and to their respective successors and assigns.
- d) Counterparts. This 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.
- e) Governing Law. This Agreement and all documents executed in connection herewith shall be construed in accordance with and governed by the laws of the State of South Carolina.
- f) Severability. In case any one or more of the provisions contained in this Agreement should be deemed invalid, illegal, or unenforceable in any respect for any reason whatsoever, the validity, legality, or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- g) Headings. The headings of the articles and sections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part of this Agreement.
- h) Amendments. The provisions of this Agreement may only be modified or amended in a writing executed by all parties.
- i) Force Majeure. The parties agree that a force majeure, including but not limited to war or national emergency, natural disasters, and other acts of God, beyond the Company's reasonable control could have a direct or indirect effect on the Company's ability to complete the Project as contemplated herein. In that event, the parties agree to negotiate

amendments to applicable incentive agreements if required to make fair and reasonable adjustments to the Company's performance obligations therein.

- j) **Entire Understanding.** This Agreement expresses the entire understanding and all agreements of the parties hereto with each other, and no party hereto has made or shall be bound by any agreement or any representation to another party which is not expressly set forth in this Agreement or in certificates delivered in connection with the execution and delivery hereof. In the case of any conflict or discrepancy between this Agreement and the exhibits and attachments hereto, including Exhibits A, B, and C, the terms of this Agreement shall govern. To the extent this Agreement contains provisions relating to the Fee Agreement, the SSRCs and MCBP ordinances and agreements that are inconsistent or in conflict with provisions in this Agreement, the provisions contained in the Negotiated FILOT Agreement, the SSRCs and MCBP ordinances and agreements control and supersede the provisions of this Agreement.
- k) **Waiver.** A party may waive compliance by the other party with any term or condition of this Agreement applicable to the party only in a writing signed by the affected waiving party.
- l) **Assignment.** This Agreement shall not be assigned by County. Subject to the consent of the County, such consent not to be unreasonably withheld, the Company may assign its rights, interests, and obligations under this Agreement to any designee or nominee of the Company, provided, however, that such consent is not required if the designee or nominee is a related party or in case of a sale of the Company or its assets to a third party who continues the business substantially as it is then conducted by the Company. For purposes of this Article VI(1), a "related party" includes any entity or person that bears a relationship to the Company as described in Section 267 of the Internal Revenue Code.
- m) **FOIA.** The governmental agencies acknowledge that this Agreement is a preliminary incentive agreement that does not become final until such time as all required consents and subsequent approvals have been obtained. If the Company at the time of execution of this Agreement must still obtain approval of all or some of the incentives listed in Article III(a)(vii), including Job Development Credits and any grants, the Company will not make a final decision to locate the Project in South Carolina until such approvals have been obtained. If, pursuant to the South Carolina Freedom of Information Act (FOIA), a request is received by the County for a copy of, or to inspect, this Agreement or any document related to the Project, the entity agrees to immediately inform the Company and allow the Company a reasonable period of time to take action to address the FOIA request prior to response by the entity.
- n) **Confidential Information.** The County acknowledges and understands that the Company may have and maintain at the Project certain confidential and proprietary information, including, but not limited to, trade secrets, financial, sales or other information concerning the Company's operations and processes ("Confidential Information") and that any disclosure of the Confidential Information could result in substantial harm to the Company and could have a significant detrimental impact on the Company's employees. Except as required by law, including, without limitation, court orders, the County agrees

to use its best reasonable efforts to keep confidential, and to cause employees, agents and representatives of the County to keep confidential, the Confidential Information which may be obtained from the Company, its agents or representatives, when the Confidential Information is clearly marked and identified as Confidential Information and known to the County to be Confidential Information. The County shall not knowingly and willfully disclose and shall cause all employees, agents and representatives of the County not to knowingly and willfully disclose the marked and identified Confidential Information to any person or entity other than in accordance with the terms of this Agreement. If a demand is made for the release, under color of law, to a third party of any Confidential Information, the County shall notify the Company and give the Company the opportunity to contest the release.

SIGNATURES BEGIN ON NEXT PAGE.

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