

**NOTICE OF A PUBLIC HEARING PRIOR TO FINAL ACTION BY THE COUNTY COUNCIL OF LEXINGTON COUNTY TO ENTER INTO AN ORDINANCE.**

Notice is hereby given by the County Council of Lexington County (the “County Council”) that a public hearing for the below-referenced Ordinance will be held in the Dorothy K. Black Council Chambers located on the 2<sup>nd</sup> Floor of the County Administration Building, 212 S. Lake Drive, Lexington, South Carolina, at 6:00 p.m. on September 22, 2015 in conjunction with a regularly scheduled meeting of the County Council. Such Ordinance is titled as follows: **“ORDINANCE NO. 15-08 AUTHORIZING PURSUANT TO CHAPTER 44 OF TITLE 12, SOUTH CAROLINA CODE OF LAWS, 1976, AS AMENDED, THE EXECUTION AND DELIVERY OF A FEE AGREEMENT BETWEEN LEXINGTON COUNTY, SOUTH CAROLINA AND SHAW INDUSTRIES GROUP, INC.; AND MATTERS RELATING THERETO.”**

Subject to the normal rules of County Council regarding appearances, members of the public are invited to attend and make comment concerning the proposed Ordinance.

If special accommodations are needed to participate in the public hearing, contact the Lexington County Council office at (803) 785-8103 or [dburnett@lex-co.com](mailto:dburnett@lex-co.com) at least 48 hours prior to the scheduled meeting date.

By order of the County Council of Lexington County, South Carolina.

**ORDINANCE NO. 15-08**

**ORDINANCE NO. 15-08 AUTHORIZING PURSUANT TO CHAPTER 44 OF TITLE 12, SOUTH CAROLINA CODE OF LAWS, 1976, AS AMENDED, THE EXECUTION AND DELIVERY OF A FEE AGREEMENT BETWEEN LEXINGTON COUNTY, SOUTH CAROLINA AND SHAW INDUSTRIES GROUP, INC.; AND MATTERS RELATING THERETO.**

**WHEREAS**, Lexington County (the “County”), a public body corporate and politic under the laws of the State of South Carolina has, by an Inducement Resolution adopted on July 28, 2015 (the “Resolution”), taken official action to identify the Project (as defined below) for purposes of applicable fee-in-lieu of taxes statutes and otherwise;

**WHEREAS**, the County desires to enter into a fee agreement (the “Fee Agreement”) with Shaw Industries Group, Inc., a Georgia Corporation authorized to transact business in the State of South Carolina (the “Company”), which shall provide for payments of fees-in-lieu of taxes for a project qualifying under the provisions of Title 12, Chapter 44 of the Code of Laws of South Carolina 1976, as amended (the “Act”);

**WHEREAS**, the County and the Company desire to enter into a Fee Agreement concerning the expansion of a manufacturing facility in the County which will consist of the construction, purchase, and/or acquisition of real property and/or certain personal property, including all equipment, furnishings and other personal property required by the Company and any and all activities relating thereto (which properties constitute a project under the Act and are referred to herein as the “Project”). The Project is expected to provide significant economic benefits to the County and surrounding areas. In order to induce the Company to locate the Project in the County, the County has agreed to charge a fee-in-lieu of taxes with respect to the Project and otherwise make available to the Company the benefits intended by the Act;

**WHEREAS**, Lexington County Council (the “County Council”) has caused to be prepared and presented to the County Council the Fee Agreement between the County and the Company, a copy of which is attached hereto as Exhibit A, which the County shall execute and deliver; and

**WHEREAS**, it appears that the documents above referred to are appropriate instruments to be executed and delivered or approved by the County for the purposes intended.

**NOW, THEREFORE, BE IT ORDAINED** by the County Council in meeting duly assembled as follows:

**Section 1.** Pursuant to the Act and particularly Section 12-44-40(I) thereof, the County Council has made and hereby makes the following findings:

(a) The Project constitutes a “project” as said term is referred to and defined in Section 12-44-30 of the Act;

(b) It is anticipated that the Project will benefit the general public welfare of the County by providing services, employment and other public benefits not otherwise adequately provided locally;

(c) The purposes to be accomplished by the Project are proper governmental and public purposes;

(d) It is anticipated that the cost of planning, designing, acquiring, constructing and completing the Project will require expenditures of not less than \$2.5 million;

(e) The benefits of the Project to the public are greater than the costs to the public;

(f) Neither the Project nor any documents or agreements entered into by the County in connection therewith will give rise to any pecuniary liability of the County or incorporated municipality or to any charge against its general credit or taxing power; and

(g) Having evaluated the purposes to be accomplished by the Project as proper governmental and public purposes, the anticipated dollar amount and nature of the investment to be made, and the anticipated costs and benefits to the County, the County has determined that the Project is properly classified as economic development property.

**Section 2.** In order to promote industry, develop trade and utilize the manpower, agricultural products and natural resources of the State, the form, terms and provisions of the Fee Agreement which is attached hereto and shall be executed and filed with the Clerk to County Council and which comply with the terms of the aforementioned Inducement Resolution are hereby approved and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if the Fee Agreement was set out in this Ordinance in its entirety. The Chair of County Council and the Clerk to County Council be and they are hereby authorized, empowered and directed to execute, acknowledge and deliver the Fee Agreement to the Company.

**Section 3.** The Chair of County Council 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 Fee Agreement in a form substantially identical to the terms contemplated herein and the performance of all obligations of the County under and pursuant to the Fee Agreement.

**Section 4.** The consummations of all transactions contemplated by the Fee Agreement are hereby approved.

**Section 5.** This Ordinance shall be construed and interpreted in accordance with the laws of the State of South Carolina.

**Section 6.** The provisions of this Ordinance are hereby declared to be separable and if any section, phrase or provision 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.

**DONE, RATIFIED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2015.

**LEXINGTON COUNTY, SOUTH CAROLINA**

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Johnny W. Jeffcoat  
Chair of Lexington County Council

ATTEST:

By: \_\_\_\_\_  
Diana W. Burnett  
Clerk to Lexington County Council

First Reading: \_\_\_\_\_, 2015  
Second Reading: \_\_\_\_\_, 2015  
Public Hearing: \_\_\_\_\_, 2015  
Third Reading: \_\_\_\_\_, 2015



**Exhibit A**  
**Fee Agreement**

**FEE AGREEMENT**  
**BETWEEN LEXINGTON COUNTY, SOUTH CAROLINA**  
**AND**  
**SHAW INDUSTRIES GROUP, INC.**  
**DATED AS OF**  
**\_\_\_\_\_ , 2015**

**RECAPITULATION OF CONTENTS OF**  
**FEE AGREEMENT PURSUANT TO S.C. CODE § 12-44-55(A)**

The parties have agreed to waive this requirement pursuant to S.C. Code Ann. § 12-44-55(B).

## **FEE AGREEMENT**

**THIS FEE AGREEMENT** (“Fee Agreement”) is made and entered into as of \_\_\_\_\_, 2015, by and between **LEXINGTON COUNTY, SOUTH CAROLINA** (the “County”), a body politic and corporate and a political subdivision of the State of South Carolina, acting by and through its County Council (the “County Council”) as governing body of the County, and **SHAW INDUSTRIES GROUP, INC.**, a Georgia Corporation authorized to transact business in the State of South Carolina (the “Company”).

### **WITNESSETH:**

**WHEREAS**, the County is authorized by Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (the “Act”), to enter into a Fee Agreement with companies meeting the requirements of such Act which identifies certain property of such companies as economic development property to induce such companies to locate in the State and to encourage companies now located in the State to expand their investments and thus make use of and employ manpower and other resources of the State;

**WHEREAS**, pursuant to the Act, the County finds that (a) it is anticipated that the Project (as defined herein) will benefit the general public welfare of the County by providing services, employment and other public benefits not otherwise adequately provided locally; (b) neither the Project nor any documents or agreements entered into by the County in connection therewith will give rise to any pecuniary liability of the County or incorporated municipality or to any charge against its general credit or taxing power; (c) the purposes to be accomplished by the Project are proper governmental and public purposes; and (d) the benefits of the Project to the public are greater than the costs to the public;

**WHEREAS**, pursuant to an Inducement Resolution dated July 28, 2015 (the “Inducement Resolution”) the County committed to enter into a fee agreement with the Company which shall provide for payments of fees-in-lieu of taxes for a project qualifying under the Act using an assessment ratio of 6% and a fixed millage rate for 20 years with respect to each stage of the Project placed in service during the Investment Period; and

**WHEREAS**, pursuant to an Ordinance adopted on \_\_\_\_\_, 2015 (the “Ordinance”), as an inducement to the Company to develop the Project, the County Council authorized the County to enter into a Fee Agreement subject to the terms and conditions hereof.

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

### **ARTICLE I**

#### **RECAPITULATION AND DEFINITIONS**

**SECTION 1.1. Statutorily Required Recapitulation.** Pursuant to Section 12-44-55(B), the County and the Company agree to waive the recapitulation requirements of Section 12-44-55.

If the Company should be required to retroactively comply with the recapitulation requirements of Section 12-44-55, then the County agrees to waive all penalties and fees of the County for the Company's noncompliance.

**SECTION 1.2. *Rules of Construction; Use of Defined Terms.*** Unless the context clearly indicates otherwise, in this Fee Agreement words and terms defined in Section 1.3 hereof are used with the meanings ascribed thereto. The definition of any document shall include any amendments to that document, unless the context clearly indicates otherwise.

From time to time herein, reference is made to the term taxes or *ad valorem* taxes. All or portions of the Project will be located in a Multi-County Industrial and Business Park and are exempt from *ad valorem* taxation under and by virtue of the provisions of Paragraph D of Section 13 of Article VIII of the S.C. Constitution (the "MCIP Provision"). With respect to facilities located in a Multi-County Industrial and Business Park, references to taxes or *ad valorem* taxes mean the payments-in-lieu-of-taxes provided for in the MCIP Provision, and, where this Fee Agreement refers to payments of taxes or Payments-in-Lieu-of-Taxes to County Treasurers, such references shall be construed to mean the payments to the counties participating in such a Multi-County Industrial and Business Park.

**SECTION 1.3. *Definitions.***

**"Act"** means Title 12, Chapter 44, Code of Laws of South Carolina 1976, as the same may be amended from time to time; provided that if any such amendment shall be applicable only at the option of the County or the Company, then such amendment shall only be applicable with the consent or at the request of the Company.

**"Act Minimum Investment Requirement"** shall mean an investment of at least \$2,500,000 by the Company of property eligible as economic development property under the Act, however, that in the event of a reduction of the minimum investment level in Section 12-44-30(14) of any successor section by legislative action, then the Act Minimum Investment Requirement shall equal such reduced amount.

**"Applicable Governmental Body"** means each governmental entity within the State having jurisdiction over or the right to approve or disapprove any or all of the Documents.

**"Chair"** means the Chair of County Council (or the person or persons authorized to perform the duties thereof in the absence of the Chair).

**"Clerk"** means the Clerk of County Council (or the person or persons authorized to perform the duties thereof in the absence of the Clerk).

**"Commencement Date"** means the last day of the property tax year when Project property is first placed in service, except that this date must not be later than the last day of the property tax year which is three years from the year in which the County and the Company have entered into this Agreement.

**"Company"** shall have the meaning set forth in the recitals to this Agreement.

**“County Council”** means the County Council of the County.

**“County”** means **Lexington County, South Carolina**, and its successors and assigns.

**“Documents”** means the Ordinance, this Fee Agreement and the Inducement Resolution.

**“DOR”** means the South Carolina Department of Revenue and any successor thereto.

**“Equipment”** means all machinery, apparatus, equipment, fixtures, office facilities, furnishings and other personal property to the extent such property becomes a part of the Project under this Fee Agreement.

**“Event of Default”** shall mean any Event of Default specified in Section 9.1 of this Fee Agreement.

**“Fee Agreement”** means this Fee Agreement dated as of the date first set forth above, between the County and the Company.

**“Fee Term”** shall mean the duration of this Fee Agreement with respect to each Stage of the Project as specified in Section 5.4 hereof.

**“Improvements”** shall mean all improvements on the Land constituting real property, including buildings, building additions, roads, sewer lines, and infrastructure, together with any and all additions, fixtures, accessions, replacements, and substitutions thereto or therefore used or to be used in the County for the purposes described in Section 4.1 hereof.

**“Inducement Resolution”** shall mean the Resolution of the County Council adopted on July 28, 2015, committing the County to enter into the Fee Agreement.

**“Infrastructure Credits”** shall mean the annual infrastructure credits provided pursuant to Section 12-44-70 of the Act and Section 5.1(f) hereof.

**“Investment Period”** shall mean the period beginning with the first day of any purchase or acquisition of Project Property and ending five years after the Commencement Date, provided that the Company and the County may agree to a later date pursuant to Section 12-44-30(13) of the Act.

**“Land”** means the land owned by the Company in the County, together with all and singular the rights, members, hereditaments, and appurtenances belonging or in any way incident or appertaining thereto and more specifically described in Exhibit A attached hereto.

**“Minimum Investment Requirement”** shall mean an investment of at least \$45,000,000 in property subject to ad valorem taxation (in the absence of this Fee Agreement and/or the Industrial Development Park) by the Company.

**“Minimum Job Requirement”** shall mean the creation of at least 52 new, full time jobs by the Company.

**“Multi-County Industrial and Business Park”** means an industrial and business park established for inclusion of the Project pursuant to the Multi-County Industrial and Business Park Agreement pursuant to Section 4-1-170 of the Code of Laws of South Carolina 1976, as amended, and Article VIII, Section 13, paragraph D of the Constitution of South Carolina.

**“Multi-County Industrial and Business Park Agreement”** shall mean the Multi-County Industrial and Business Park Agreement dated September 11, 1995 and all amendments thereto between the County and Calhoun County.

**“Ordinance”** means the Ordinance adopted by the County on \_\_\_\_\_, 2015, authorizing this Fee Agreement.

**“Payments-in-Lieu-of-Taxes”** means the payments to be made by the Company pursuant to Section 5.1 of this Agreement.

**“Personal Property”** means all machinery, apparatus, equipment, fixtures, office facilities, furnishings, and other personal property, together with additions thereto, replacements thereof, and substitutions therefore, to the extent such property becomes a part of the Project under this Fee Agreement.

**“Project Property”** shall mean all Real Property and Personal Property in the County that the Company determines to be necessary, suitable, or useful for the purposes that Section 4.1 describes, and that is first placed in service in calendar year 2015 or thereafter. The parties agree that Project property shall consist of such property so properly identified by the Company in connection with its annual filing with the DOR of a SCDOR PT-300, or such comparable form, and with such schedules as the DOR may provide in connection with projects subject to the Act (as such filing may be amended or supplemented from time to time) for each year within the Investment Period.

**“Real Property”** shall mean the Land and the Improvements, together with additions thereto, replacements thereof, and substitutions therefore, to the extent such property becomes a part of the Project under this Fee Agreement.

**“Replacement Property”** means any property acquired or constructed after the Investment Period as a replacement for any property theretofore forming a part of the Project and disposed of, or deemed disposed of, as provided in Section 5.2 hereof.

**“Stage”** in respect of the Project shall mean the year within which Project property, if any, is placed in service during each year of the Investment Period.

**“State”** means the State of South Carolina.

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

## ARTICLE II

### LIMITATION OF LIABILITY; INDUCEMENT

**SECTION 2.1 *Limitation of Liability.*** Any obligation which the County may incur for the payment of money as a result of the transactions described in the Documents shall never constitute an indebtedness of the County within the meaning of any State constitutional provision or statutory limitation and shall never create a pecuniary liability of the County or a charge upon its general credit or against its taxing powers but shall be payable solely out of the funds received by it under the Documents.

**SECTION 2.2. *Inducement.*** The County and the Company acknowledge that pursuant to the Act, upon execution of this Fee Agreement, no part of the Project will be subject to ad valorem property taxation in the State, and that this factor, among others, has induced the Company to enter into this Fee Agreement.

## ARTICLE III

### REPRESENTATIONS, WARRANTIES AND COVENANTS

**SECTION 3.1 *Representations and Warranties of the County.*** The County makes the following representations and warranties to the Company and covenants with the Company as follows:

(a) The County is a body politic and corporate and a political subdivision of the State and is authorized and empowered by the Act to execute the Documents to which it is a party and to fulfill its obligations described in the Documents. By proper action, the County Council has duly authorized the execution and delivery of the Documents to which the County is a party and has taken all such action as is necessary to permit the County to enter into and fully perform the transactions required of it under the Documents.

(b) Neither the execution and delivery of the Documents, nor the consummation and performance of the transactions described in the Documents, violate, conflict with or will result in a breach of any of the material terms, conditions or provisions of any agreement, restriction, law, rule, order or regulation to which the County is now a party or by which it is bound.

(c) There is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any judicial or administrative court or agency, public board or body, pending or threatened, against or affecting the County, wherein an unfavorable decision, ruling or finding may or would materially affect the County's obligations hereunder or the consummation of the transactions described in the Documents.

(d) Neither the existence of the County nor the rights of any members of County Council to their offices is being contested and none of the proceedings taken to authorize the execution, delivery and performance of such of the Documents as require execution, delivery and performance by the County has been repealed, revoked, amended or rescinded.

(e) All consents, authorizations and approvals required on the part of the County, State and all other Applicable Governmental Bodies in connection with the execution, delivery and performance by the County of such of the Documents as require execution, delivery and performance by the County have been obtained and remain in full force and effect as of the date hereof or will be obtained.

(f) The Project constitutes a “project” within the meaning of the Act, and the Project is located in a Multi-County Industrial and Business Park and will be so located for the duration of this Fee Agreement.

(g) By due corporate action, the County has agreed that, subject to compliance with applicable laws, each item of property comprising the Project shall be considered economic development property under the Act.

(h) The Documents to which the County is a party are (or, when executed, will be) legal, valid and binding obligations of the County enforceable against the County under present law in accordance with their respective terms, except as such terms may be limited by laws affecting creditors’ rights generally.

**SECTION 3.2. *Covenants by the County.*** The County covenants with the Company as follows:

(a) The County agrees to do all things deemed reasonably necessary as requested by the Company in writing in connection with the Project including but not limited to the execution, delivery and performance of its obligations in the Documents and in accordance with the Act, all for the purposes of promoting industrial development, developing trade, and utilizing and employing the manpower and natural resources of the County and the State. Except as reasonably believed to be required by the County in the performance of its duties under statute or law, the County will take no action with respect to the Project unless authorized or requested to do so by the Company.

(b) Upon receipt of written request from the Company, the County agrees to consider any request the Company may make for an extension of the Investment Period in accordance with and up to the limits permitted under Section 12-44-30(13) of the Act. Such extension may be provided by a resolution of County Council. Upon the granting of any such extension the County agrees to cooperate with the Company by filing with the DOR a copy of such extension within 30 days of the date of execution thereof by the County. Such extension may be provided by a resolution of County Council.

**SECTION 3.3. *Representations and Warranties of the Company.*** The Company makes the following representations and warranties to the County:

(a) The Company is a Georgia corporation authorized to transact business in South Carolina. The Company has full power to execute the Documents to which it is a party and to fulfill its obligations described in the Documents and, by proper entity action, has authorized the execution and delivery of the Documents to which it is a party.

(b) Neither the execution and delivery of this Fee Agreement, nor the consummation and performance of the transactions described in this Fee Agreement violate, conflict with, or will, to its knowledge, result in a material breach of any of the material terms, conditions or provisions of any agreement, restriction, law, rule, order or regulation to which the Company is now a party or by which it is bound.

(c) There is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any judicial or administrative court or agency, public board or body, pending or threatened, against or affecting the Company with respect to which the Company knows that an unfavorable decision, ruling or finding would adversely affect the Company or the consummation of the transactions described in the Documents.

(d) All consents, authorizations and approvals required on the part of the Company in connection with the Documents and the transactions contemplated thereby and the acquisition, construction and installation of the Project have been obtained and remain in full force and effect or will be obtained.

(e) This Fee Agreement shall be (or, when executed, will be) a legal, valid and binding obligation of the Company enforceable against the Company in accordance with the respective terms contained herein, except as such terms may be limited by laws affecting creditors' rights generally.

(f) The cost of the Project is anticipated to be approximately \$45,000,000.

(g) The Company will pay all reasonable costs of the County, including attorneys fees, incurred in connection with the authorization, execution and delivery of this Fee Agreement.

## ARTICLE IV

### COMMENCEMENT AND COMPLETION OF THE PROJECT

**SECTION 4.1. *The Project.*** The Company intends to operate the Project as a “project” within the meaning of the Act as in effect on the date hereof. The Company intends to operate the Project as a carpet fiber manufacturing facility and for such other purposes that the Act permits as the Company may deem appropriate.

Pursuant to the Act, the Company and the County hereby agree that the property comprising the Project shall be economic development property as defined under the Act, so long as such property meets the requirements of the Act.

Notwithstanding any other provision of this Fee Agreement, the Company may place personal property into service at any time under this Fee Agreement.

**SECTION 4.2. *Diligent Completion.*** The Company agrees to use its reasonable efforts to cause the acquisition, construction and installation of the Project to be completed; however, notwithstanding anything contained in this Fee Agreement to the contrary, the Company shall

not be obligated to complete the acquisition of the Project and may terminate this Agreement with respect to all or portion of the Project as set forth in Article X herein.

**SECTION 4.3. *Modifications to Project.*** The Company may make or cause to be made from time to time any additions, modifications or improvements to the Project that it may deem desirable for its business purposes.

**SECTION 4.4. *Filings and Reports.*** Each year during the term of the Fee Agreement, the Company shall deliver to the County, a copy of its most recent annual filings with DOR with respect to the Project, not later than 30 days following delivery thereof to DOR. In addition, the Company shall certify to the County Auditor or County Economic Development Director by April 30 of each year until and including the final year the Company receives an Infrastructure Credit as reflected in Section 5.1(f), the amount of the investment and the number of jobs created and maintained at the Project. Failure to certify to the County shall be deemed a breach of covenant and subject to the provisions of Section 9.1(b). The certifications shall be mailed or otherwise delivered to the County Auditor and County Economic Development Director at the addresses set forth in Section 11.1.

## ARTICLE V

### PAYMENTS-IN-LIEU-OF-TAXES; DISPOSITION OF PAYMENTS-IN-LIEU-OF-TAXES

**SECTION 5.1. *Payments-in-Lieu-of-Taxes.*** The parties acknowledge that under Article I, Section 3 of the South Carolina Constitution and/or the MCIP Provision, the Project is exempt from ad valorem property taxes. However, the Company shall be required to make the Payments-in-Lieu-of-Taxes with respect to the Project as provided in this Section 5.1 or the MCIP Provision. In accordance with the Act, and unless this Fee Agreement is sooner terminated, the Company shall make annual Payments-in-Lieu-of-Taxes with respect to the Project, said payments being due and payable and subject to penalty assessments in the manner prescribed by the Act. Such amounts shall be calculated and payable as follows:

(a) With respect to portions of the Project that are eligible for negotiated Payments-in-Lieu-of-Taxes and listed on the Company's annual PT-300S or comparable filing, the Company has agreed to make annual Payments-in-Lieu-of-Taxes with respect to the Project in an amount equal to the property taxes that would be due with respect to such property, if it were taxable, but using an assessment ratio of 6% and a millage rate of 403.837. Property which previously has been subject to property taxes in South Carolina will not be eligible for negotiated Payments-in-Lieu-of-Taxes except as provided in Section 12-44-110 of the Act.

The fair market value for the property will be calculated as set forth in accordance with Section 12-44-50(A)(1)(c) of the Act:

- (i) for real property (although no real property investment is anticipated at the Project), using the original income tax basis for South Carolina income tax purposes without regard to depreciation; provided, however, if real

property is constructed for the fee or is purchased in an arm's length transaction, fair market value equals the original income tax basis; otherwise, the DOR will determine fair market value by appraisal; and

- (ii) for personal property, using the original income tax basis for South Carolina income tax purposes less depreciation allowable for property tax purposes, except that the Company is not entitled to extraordinary obsolescence.

Upon the mutual agreement of the County and the Company, the real property value shall be determined by appraisal as provided in Section 12-44-50(A)(1)(c) of the Act. The portion of the Land and Improvements to be subject to this Fee Agreement are more specifically identified on Exhibit B attached hereto.

(b) The Payments-in-Lieu-of-Taxes must be made on the basis that the Project property, if it were otherwise subject to ad valorem property taxes, would be allowed all applicable exemptions from those taxes, except for the exemptions allowed under Section 3(g) of Article X of the South Carolina Constitution and Section 12-37-220(B)(32) and (34) of the Code of Laws of South Carolina, as amended.

(c) The Company shall make Payments-in-Lieu-of-Taxes for each year during the term hereof beginning with the tax year following the year property is first placed in service. The Payments-in-Lieu-of-Taxes shall be made to the County Treasurer on the due dates which would otherwise be applicable for ad valorem property taxes for the Project.

(d) Any property placed in service as part of the Project during the Investment Period shall be included in the calculation of payments pursuant to paragraphs (a), (b) and (c), above, for a period not exceeding 20 years following the year in which such property was placed in service. Replacement Property shall be included (using its income tax basis) in the calculation of payments pursuant to paragraphs (a), (b) and (c), above, but only up to the original income tax basis of property which is being disposed of in the same property tax year. Replacement Property shall be deemed to replace the oldest property subject to the fee which is disposed of in the same property tax year that the Replacement Property is placed in service. More than one piece of property can replace a single piece of property. Replacement Property does not have to serve the same function as the property it is replacing. To the extent that the income tax basis of the Replacement Property exceeds the original income tax basis of the property which it is replacing, the portion of such property allocable to the excess amount shall be subject to annual payments calculated as if the exemption for economic development property under the Act were not allowed. Replacement Property is entitled to the fee payment pursuant to this Section 5.1 for the period of time remaining on the fee period for the property which it is replacing.

(e) With respect to portions of the Project that are not eligible for negotiated Payments-in-Lieu-of-Taxes, the Company shall remit Payments-in-Lieu-of-Taxes equal to the ad valorem taxes that would be due and owing if such portions of the Project were not located in a Multi-County Industrial and Business Park, all in accordance with the MCIP Provision.

(f) If the Company invests \$45 million during the Investment Period, the Company will qualify for a 10-year, 10% Infrastructure Credit. In such event all qualifying capital expenses of the Company during the Investment Period shall qualify for the 10-year, 10% Infrastructure Credit. The Company shall receive an annual credit in an amount equal to 10% of the FILOT revenues for the Project to offset the aggregate infrastructure costs incurred. The Infrastructure Credit shall begin in the year after the Company reaches the \$45 million investment level and shall be applied as a setoff against the FILOT owed for the then current year.

## **SECTION 5.2. Failure to Achieve Minimum Investment and Job Requirements.**

(a) In the event that the cost of the Project Property (without regard to depreciation) that the Company acquires does not reach the Act Minimum Investment Requirement by the end of the Investment Period, this Fee Agreement shall terminate as to such entity failing to meet the minimum investment level. In such event, the Company shall pay the County an amount (the “Additional Payment”) pursuant to the Act which is equal to the excess, if any, of (i) the total amount of ad valorem taxes as would result from taxes levied on the Project by the County, municipality or municipalities, school district or school districts, and other political units as if the items of property comprising the Project Property were not Project Property, but with appropriate reductions equivalent to all tax exemptions and abatements to which the Company would be entitled in such a case, through and including the end of the Investment Period, over (ii) the total amount of FILOT payments the Company has made with respect to the Project Property through and including the end of the Investment Period. Any amounts determined to be owing pursuant to the foregoing sentence shall be subject to the minimum amount of interest that the Act may require.

(b) The Company shall meet the Minimum Investment Requirement and the Minimum Job Requirement by December 31, 2016. Thereafter, the Company agrees to maintain the Minimum Investment Requirement until December 31, 2025 (the “Investment Maintenance Period”) and the Minimum Job Requirement until December 31, 2020 (the “Job Maintenance Period”).

(i) If the Company fails to meet the Minimum Investment Requirement by December 31, 2016 and maintain the Minimum Investment Requirement (disregarding depreciation and obsolescence) during the Investment Maintenance Period, the Infrastructure Credits provided herein shall terminate and no longer be available to the Company. This remedy shall be prospective only and shall apply beginning in the year the Company fails to reach or maintain the Minimum Investment Requirement as set forth hereinabove. Furthermore, if the Company fails to meet the Minimum Investment Requirement or fails to maintain at least \$35 million in investments during the Investment Maintenance Period, this Fee Agreement shall terminate. If the Company maintains an investment level of at least \$35 million but less than \$45 million during the Investment Maintenance Period, the assessment ratio shall increase to 8%. Hereagain, these remedies are prospective only and shall apply beginning in the year the Company fails to maintain the \$35 million investment level or decreases its investment level to an amount greater than \$35 million but less than \$45 million, as the case may be.

(ii) If the Company has not met the Minimum Job Requirement by December 31, 2016, and maintained the Company's baseline employment of 291 full-time jobs in the County as of the second quarter in 2014 (the "Baseline Employment"), then the Company shall repay a portion of the Infrastructure Credits based on the overall job achievement percentage. Such repayment, if any, is due and payable to the County by April 30, 2017. The overall job achievement percentage and repayment amount, if any, shall be determined as follows:

Repayment Amount = Amount of SSRCs Received x (100% – Overall Job Achievement Percentage)

Overall Job Achievement Percentage = New Full-Time Jobs (not including the Baseline Employment)/Minimum Job Requirement

For example, and by way of example only, if the Company received \$100,000 in SSRC's and only created 40 jobs by December 31, 2016, the Repayment Amount would be calculated as follows:

Overall Job Achievement Percentage =  $40/52=77\%$

Repayment Amount =  $\$100,000 \times (100\%-77\%) = \$23,000$

These calculations and the Repayment Amount shall be included in the certificate delivered to the County Auditor and County Economic Development Director as provided in Section 4.4.

(iii) The Company shall be required to maintain 52 new full-time jobs at the facility during each year of the Job Maintenance Period. The Company shall submit on an annual basis during the Job Maintenance Period the calculations and SSRC Adjustment set forth below which shall be used to calculate any prospective adjustment to the SSRC for the following year ("SSRC Adjustment"). The job maintenance percentage and SSRC Adjustment, if any, shall be determined as follows:

SSRC Adjustment =  $10\% \times (100\% - \text{Job Maintenance Percentage})^1$

Job Maintenance Percentage<sup>1</sup> = New Full-Time Jobs (not including the Baseline Employment)/Minimum Job Requirement

For example, if the Company has created and maintained only 26 new, full-time jobs at the Project as of December 31, 2017 (the end of the first year of the Job Maintenance Period), the SSRC would be adjusted for the following year as follows:

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<sup>1</sup> The Job Maintenance Percentage for the first year of the Job Maintenance Period shall be the Overall Job Achievement Percentage as reported by the Company.

Job Maintenance Percentage =  $26/52=50\%$

SSRC Adjustment =  $10\% \times (100\% - 50\%) = 5\%$ .

The SSRC Adjustment in this example would be 5% and therefore the Company would only receive a 5% SSRC for the year 2018. For each year during the Job Maintenance Period, the Company shall determine the SSRC Adjustment, if any. In no event shall the SSRC exceed 10%. These calculations and the SSRC Adjustment shall be included in the certificates delivered to the County Auditor and County Economic Development Director as provided in Section 4.4.

The Company, in the certificates delivered to the County and Economic Development Director, shall also certify the number of new jobs as of December 31 of each applicable year, which shall be the greater of (i) the annualized average number of jobs, which shall be determined by calculating the average number of jobs as provided on a payroll date each month of the Company's fiscal year (the monthly payroll dates to be chosen at the Company's discretion or (ii) the number of jobs reported by the Company as of December 31.

**SECTION 5.3. *Disposal of Property; Replacement Property.***

(a) In any instance where the Company in its sole discretion determines that any item or items of property included in the Project have become, in whole or in part, inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company may remove such item (or such portion thereof as the Company shall determine) or items and sell, trade in, exchange or otherwise dispose of it or them (as a whole or in part) without any responsibility or accountability to the County therefore. The loss or removal from the Project of any property, or any portion thereof, as a result of fire or other casualty or by virtue of the exercise or threat of the power of condemnation or eminent domain shall be deemed to be a disposal of such property, or portion thereof, pursuant to this Section 5.3. Subject to the provisions of Section 5.1(d), 5.2(b)(i) and this Section 5.3 with respect to Replacement Property, the Payments-in-Lieu-of-Taxes required by Section 5 hereof shall be reduced by the amount thereof applicable to any property included in the Project, or part thereof, disposed of, or deemed disposed of, pursuant to this Section 5.3.

(b) The Company may, in its sole discretion, replace, renew or acquire and/or install other property in substitution for, any or all property or portions thereof disposed of, or deemed disposed of, pursuant to Section 5.3(a) hereof. Any such property may, but need not, serve the same function, or be of the same utility or value, as the property being replaced. Absent a written election to the contrary made at the time of filing the first property tax return that would apply to such property, such property shall be treated as Replacement Property.

**SECTION 5.4. *Fee Term.*** The applicable term of this Fee Agreement shall be measured for each Stage beginning from the last day of the property tax year in which the Project is placed in service in that Stage through the last day of the property tax year which is the nineteenth year following such year; provided, that the maximum term of this Fee Agreement shall not be more than 20 years from the end of the last year of the Investment Period. This Fee Agreement shall terminate with respect to the Project or any Stage or part thereof upon the

earlier to occur of (a) payment of the final installment of Payments-in-Lieu-of-Taxes pursuant to Section 5.1 hereof, or (b) exercise by the Company of its option to terminate pursuant to Section 10.1 hereof.

**SECTION 5.5. *Multi-County Industrial and Business Park.*** The County agrees to exercise its best efforts to ensure that the Project is included and remains in a Multi-County Industrial and Business Park for the duration of this Fee Agreement or as long as needed by either party, and to undertake and execute those procedures, instruments, ordinances, resolutions and documents as may be reasonably required to accomplish same.

## **ARTICLE VI**

### **PROPERTY TAX EXEMPTION AND ABATEMENT**

**SECTION 6.1. *Protection of Tax Exempt Status of the Project.*** In order to insure that the Project is not and will not become subject to ad valorem property taxes under the laws of the State of South Carolina or any political subdivision thereof, the County and the Company covenant that:

(a) all right and privileges granted to either party under this Fee Agreement or any other Documents shall be exercised so that if any conflict between this Section and any other provision in any document shall arise, then in that case, this Section shall control;

(b) the County and the Company have not knowingly committed or permitted and will not knowingly commit or permit (as to any act over which either has control) any act which would cause the Project to be subject to ad valorem property taxes by the County or political subdivision of the State of South Carolina in which any part of the Project is located; and

(c) the Company will maintain the identity of the Project as a “project” in accordance with the Act.

## **ARTICLE VII**

### **EFFECTIVE DATE**

**SECTION 7.1. *Effective Date.*** This Fee Agreement shall become effective upon its execution and delivery by the parties hereto unless a later date is specified herein.

## ARTICLE VIII

### SPECIAL COVENANTS

#### **SECTION 8.1. *Indemnification Covenants.***

(a) The Company shall and agrees to hold the County and its County Council members, officers, agents, and employees harmless from all pecuniary liability in connection with the fulfillment of its or their obligations under this Fee Agreement and in the implementation and administration of the terms and provisions of the documents after the date of execution thereof but only in case such liability is incurred as a result of a request by the Company for a modification, assignment, or a termination of the Fee Agreement by the Company, or as a result of a bankruptcy of the Company or a default by the Company under the terms of this Fee Agreement.

(b) Notwithstanding the foregoing, the Company shall not be obligated to indemnify the County or any of its individual members, officers, agents and employees for expenses, claims, losses or damages arising from the intentional or willful misconduct or negligence of the County or any of its individual officers, agents or employees.

**SECTION 8.2. *Assignment and Leasing.*** The County agrees to consent, to the maximum extent allowed by the Act, for financing purposes, to: (a) any sale, transfer, disposition or assignment of the Fee Agreement, whether in whole or in part, by the Company or any transferee or assignee; (b) the transfer or assignment of security or other interests in any or all of the Company's interests in the property subject to the Fee Agreement; or (c) the sublease of any property subject to the Fee Agreement. The County further agrees that, if future County consent is required by the Act, the County Council can provide any such consent by a resolution of County Council. The County Administrator and the Clerk to County Council are hereby expressly individually and jointly authorized and directed to evidence the County's consent by timely executing such documents as the Company may reasonably request. Further, for the financing purposes of this Fee Agreement and as noted in Article 5 herein, a transaction or an event of sale, assignment, leasing, transfer of an interest herein, disposal, or replacement of all or part of the Project shall not be a termination of the Fee Agreement in whole or in part or a basis for changing the fee payments due under Section 12-44-50 of the Act.

## ARTICLE IX

### EVENT OF DEFAULT AND REMEDIES

**SECTION 9.1. *Events of Default Defined.*** The occurrence of any one or more of the following events shall be an "Event of Default" under this Fee Agreement:

(a) If the Company shall fail to make any Payment-in-Lieu-of-Taxes or any other amount required under this Fee Agreement and such failure shall continue for 30 days after receiving written notice of default from the County; or

(b) If the Company or the County shall fail to observe or perform any covenant, condition or agreement required herein to be observed or performed by the Company or the County (other than as referred to in Section 9.1(a) hereof), and such failure shall continue for a period of 30 days after written notice of default has been given to the Company by the County or to the County by the Company; provided if by reason of “force majeure” as hereinafter defined the Company or the County is unable in whole or in part to carry out any such covenant, condition or agreement or if it takes longer than 30 days to cure such default and the Company or the County is diligently attempting to cure such default, there shall be no Event of Default during such inability. The term “force majeure” as used herein shall mean circumstances not reasonably within the control of the parties, such as without limitation, acts of God, strikes, lockouts or other industrial disturbances; war; acts of public enemies; mobilization or military conscription on a large scale; order of any kind of the government of the United States or any State, or any civil or military authority other than the County Council; insurrections; riots; landslides; earthquakes; fires; lightning; storms; droughts; floods; requisitions, confiscation, or commandeering of property; fuel restrictions; general shortages of transport, goods, or energy; or

(c) If any material representation or warranty on the part of the Company or the County made in the Documents, or in any report, certificate, financial or other statement furnished in connection with the Documents or the transactions described in the Documents shall have been false or misleading in any material respect.

**SECTION 9.2. Remedies on Default.** Whenever any Event of Default shall have happened and be subsisting, the Company or the County, as applicable, may take whatever action at law or in equity may appear legally required or necessary or desirable to collect the payments and other amounts then due or to enforce performance and observance of any obligation, agreement or covenant of the non-performing party, under the Documents including the right to terminate this Fee Agreement. Although the parties acknowledge that the Project is exempt from ad valorem property taxes, the County and any other taxing entity affected thereby may, without limiting the generality of the foregoing, exercise the remedies provided by general law (Title 12, Chapter 49 and Title 12, Chapter 51) and the Act relating to the enforced collection of taxes.

**SECTION 9.3. No Additional Waiver Implied by One Waiver.** In the event any warranty, covenant or agreement contained in this Fee Agreement should be breached by the Company or the County and thereafter waived by the other party to this Fee Agreement, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach.

## ARTICLE X

### OPTION OF THE COMPANY

**SECTION 10.1. Option to Terminate.** From time to time (including without limitation any time during which there may be subsisting an Event of Default) and at any time upon at least 30 days notice, the Company may terminate this Fee Agreement with respect to the entire Project. Upon termination of this Fee Agreement, the Company will become liable for payments

in lieu of taxes under the MCIP Provision or ad valorem property taxes on the Project or such portion thereof beginning with the property tax year following such termination.

## ARTICLE XI

### MISCELLANEOUS

**SECTION 11.1. Notices.** All notices, approvals, consents, requests and other communications hereunder shall be in writing and may be delivered personally, or may be sent by facsimile or certified mail, return receipt requested, to the following addresses, unless the parties are subsequently notified of any change of address in accordance with this Section 11.1:

If to the Company: Shaw Industries Group, Inc.  
Attn: Chief Counsel  
616 E. Walnut Avenue  
Dalton, GA 30722

With A Copy To: Shaw Industries Group, Inc.  
Attn: Director of Real Estate  
616 E. Walnut Avenue  
Dalton, GA 30722

With A Copy To: Gary W. Morris  
Haynsworth Sinkler Boyd, P.A.  
1201 Main Street, Suite 2200  
Columbia, SC 29201  
Facsimile: 803-765-1243

If to the County: Lexington County Council, South Carolina  
212 South Lake Drive  
Lexington, SC 29072  
Attention: Clerk to Council  
Facsimile: 803-785-8101

With A Copy To: Jeffrey M. Anderson  
Davis Frawley, LLC  
140 E. Main Street  
P.O. Box 489  
Lexington, SC 29071-0489  
Facsimile: 803-359-7478

Any notice shall be deemed to have been received as follows: (1) by personal delivery, upon receipt; (2) by facsimile, 24 hours after confirmed transmission or dispatch; and (3) by certified mail, 3 business days after delivery to the U.S. Postal authorities by the party serving notice.

For purposes of the DOR filings and certifications required in Section 4.4, such documents should be sent to the following addresses:

Lexington County Auditor  
212 S. Lake Drive  
Lexington, SC 29072

Lexington County Economic Development Director  
212 S. Lake Drive  
Lexington, SC 29072

**SECTION 11.2. *Binding Effect.*** This Fee Agreement shall inure to the benefit of and shall be binding upon the County and the Company and their respective successors and assigns.

**SECTION 11.3. *Invalidity and Severability.*** In the event that the Act or the Payments-in-Lieu-of-Taxes arrangement described in Section 5.1 hereof is determined to be invalid in its entirety, the parties hereby agree that except as the final judicial decision may otherwise require, the Company shall be entitled to retain any benefits received under or pursuant to this Fee Agreement; otherwise, in the event any provision of this Fee Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, that decision shall not invalidate or render unenforceable any other provision of this Fee Agreement, unless that decision destroys the basis for the transaction, in which event the parties shall in good faith attempt to preserve, to the maximum extent possible, the benefits provided and to be provided to the Company hereunder by either restructuring or reconstituting this Fee Agreement under any then applicable law, including but not limited to Chapter 29 of Title 4 and Chapter 12 of Title 4, Code of Laws of South Carolina, as amended.

To the extent necessary to effectuate the intentions set forth in the preceding paragraph, the County agrees that in case the incentives described herein are found to be invalid or otherwise does not provide the Company with the economic benefit it is intended to receive from the County as an inducement to locate in the County, the savings lost as a result of such invalidity will be considered as infrastructure credits in accordance with any then applicable law, including but not limited to Chapter 29 of Title 4 and Chapter 12 of Title 4, Code of Laws of South Carolina, as amended, and the County will provide such infrastructure credits against all Payments-in-Lieu-of-Taxes under this Fee Agreement and/or payments-in-lieu-of-taxes under the MCIP Provision made or to be made by the Company equal to the amount that the Company would have saved if the incentives described herein had been valid, to the maximum extent permitted by law. However, the total amount of all infrastructure credits on an aggregate basis may not in any case exceed the Company's investment in infrastructure, as defined by such applicable law.

**SECTION 11.4. *Payments Due on Saturday, Sunday and Holidays.*** Whenever any payment to be made hereunder shall be stated to be due on a Saturday, a Sunday or a federal or state holiday, such payment shall be made on the next business day.

**SECTION 11.5. *Fiscal Year; Property Tax Year.*** If the Company's fiscal year changes in the future so as to cause a change in the Company's property tax year, the timing of the requirements set forth in this Fee Agreement shall be revised accordingly.

**SECTION 11.6. *Amendments, Changes and Modifications.*** Except as otherwise provided in this Fee Agreement, this Fee Agreement may not be amended, changed, modified, altered or terminated without the written consent of the County and the Company. To the maximum extent allowed by law, any such County consent may be provided by a resolution of County Council.

**SECTION 11.7. *Execution of Counterparts.*** This Fee Agreement may be executed in several counterparts, only one of which shall be an original for Uniform Commercial Code perfection purposes; provided, however, that any action may be brought upon any counterpart of this Fee Agreement or any counterpart of any document that is attached to this Fee Agreement as an exhibit.

**SECTION 11.8. *Law Governing Construction of Agreement.*** The laws of the State of South Carolina shall govern the construction of this Fee Agreement.

**SECTION 11.9. *Filings.*** Whenever the County shall be required to file or produce any reports, notices or other documents during the Fee Term, the Company shall in due time furnish to the County the completed form of such report, notice or other required documents together with a certification by the Company that such document is accurate.

**SECTION 11.10. *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 11.11. *Further Assurance.*** From time to time the County agrees to execute and deliver to the Company such additional instruments as the Company may reasonably request to effectuate the purposes of this Fee Agreement.

(Signature Page Follows)

**IN WITNESS WHEREOF, LEXINGTON COUNTY, SOUTH CAROLINA, and the COMPANY**, each pursuant to due authority, have duly executed this Fee Agreement, all as of the date first above written.

**LEXINGTON COUNTY, SOUTH CAROLINA**

\_\_\_\_\_  
Johnny W. Jeffcoat  
Chair of Lexington County Council

**ATTEST:**

\_\_\_\_\_  
Diana W. Burnett  
Clerk, Lexington County Council

**SHAW INDUSTRIES GROUP, INC.**

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

### Exhibit "A"

All that certain piece, parcel or tract of land, with improvements thereon, lying and being in the County of Lexington, State of South Carolina, containing 450.27 acres referenced as Parcel 1, also 2.20 acres referenced as Parcel 2, also 1.35 acres referenced as Parcel 3 and also .40 acres referenced as Parcel 4, as shown on plat by J. Donald Rawls, Jr., SCPLS No. 13517 of Cox and Dinkins, Inc. prepared for Honeywell International, Inc. and containing a total of 10 sheets, dated December 18, 2003, and recorded in the Office of the Registrar of Deeds for Lexington County in Plat Book 8945, at page(s) 43, 44, 45, 46, 47, 48, 49, 50, 51 and 52 on January 5, 2004, also shown on plat by Cox and Dinkins, Inc. prepared for Honeywell Nylon LLC and containing a total of 10 sheets, dated September 9, 2005 and last revised September 23, 2005 and being more particularly described by reference to said plat as follows:

#### LAND DESCRIPTION - PARCEL 1

Beginning at Intersection of the Southern Right-of-Way of St. Andrews Road (S-32-36) and the Western Right-of-Way of C.N. AND L. Railroad at a 1/2" Rebar (o), this being the POINT OF BEGINNING 1 (P.O.B. 1); thence turning and running S 45°04'33" E along the Western Right-of-Way of C.N. AND L. Railroad for a distance of 1107.45 feet to a 5/8" Rebar w/ cap (o); thence turning and running along Property of Now or Formerly South Carolina Electric & Gas Co. for the following bearings and distances: S 20°20'18" W for a distance of 52.08 feet to a 1/2" Rebar (o); thence turning and running S 26°41'49" W for a distance of 147.62 feet to a 5/8" Rebar (o); thence turning and running S 02°31'57" W for a distance of 152.89 feet to a 2" Pipe (o); thence turning and running S 35°17'49" E for a distance of 124.83 feet to a 2" Pipe (o); thence turning and running S 00°41'20" E for a distance of 129.37 feet to a 2" Pipe (o); thence turning and running S 27°52'02" W for a distance of 107.44 feet to a 2" Pipe (o); thence turning and running S 08°00'11" E for a distance of 118.31 feet to a 2" Pipe (o); thence turning and running S 44°31'80" E for a distance of 117.22 feet to a 2" Pipe (o); thence turning and running S 16°50'28" E for a distance of 139.85 feet to a 2" Pipe (o); thence turning and running S 09°09'23" W for a distance of 160.24 feet to a 2" Pipe (o); thence turning and running S 04°25'47" E for a distance of 128.23 feet to a 2" Pipe (o); thence turning and running S 05°14'21" W for a distance of 137.66 feet to a 2-1/2" Pipe (o); thence turning and running S 05°34'18" W for a distance of 129.73 feet to a 5/8" Rebar w/ cap (o); thence turning and running S 08°28'11" E for a distance of 97.82 feet to a 5/8" Rebar w/ cap (o); thence turning and running S 22°09'17" E for a distance of 97.23 feet to a 5/8" Rebar w/ cap (o); thence turning and running S 14°02'10" E for a distance of 165.70 feet to a 1-1/2" Pinch top (o); thence turning and running S 00°51'25" W for a distance of 198.81 feet to a 1-1/2" Pinch top (o); thence turning and running along Property of Now or Formerly Pinaglan Subdivision for the following bearings and distances: S 32°44'13" E for a distance of 103.16 feet to a 2-1/2" Pipe (o); thence turning and running S 38°44'49" E for a distance of 146.26 feet to a 2" Pipe (o); thence turning and running S 28°02'05" E for a distance of 198.12 feet to a 1-1/4" Pipe (o); thence turning and running S 45°31'21" E for a distance of 160.83 feet to a 1-1/4" Pinch top (o); thence turning and running S 21°52'53" E for a distance of 179.03 feet to a 5/8" Rebar with cap (o); thence turning and running S 16°52'02" E for a distance of 189.55 feet to a 3" Pipe (o); thence turning and running along Property of Now or Formerly Pinaglan Subdivision and Property of Now or Formerly Immo-Chapin Recreation Commission for the following bearings and distances: S 03°08'40" W for a distance of 173.17 feet to a 2-1/2" Pipe (o); thence turning and running along the Property of Now or Formerly Immo-Chapin Recreation Commission, S 60°48'08" E for a distance of 348.45 feet to a 2-1/2" Pipe (o); thence turning and running along the Property of Now or Formerly Immo-Chapin Recreation Commission, S 60°31'08" E for a distance of 242.55 feet to a 2-1/2" Pipe (o); thence turning and running along the Property of Now or Formerly Immo-Chapin

A

Recreation Commission and the Property of Now or Formerly South Carolina Electric & Gas Co., S 14°43'01" E for a distance of 1218.38 feet to a 5/8" Rebar w/ cap (o); thence turning and running along the Property of Now or Formerly South Carolina Electric & Gas Co. S 14°00'35" E for a distance of 288.03 feet to a 2" Pipe (o); thence turning and running along the Property of Now or Formerly South Carolina Electric & Gas Co., S 14°00'35" E for a distance of 18.00 feet to a 1/2" Rebar (o); thence turning and running along the High Water Mark of the Saluda River (A Navigable Waterway) for the following bearings and distances: N 77°24'44" W for a distance of 58.38 feet to a 1/2" Rebar (o); thence turning and running N74°11'48" W for a distance of 321.42 feet to a 1/2" Rebar (o); thence turning and running N 72°34'00" W for a distance of 88.05 feet to a 1/2" Rebar (o); thence turning and running N 69°59'00" W for a distance of 237.43 feet to a 1/2" Rebar (o); thence turning and running N34°02'42" W for a distance of 24.58 feet to a 1/2" Rebar (o); thence turning and running N 76°28'18" W for a distance of 71.73 feet to a 1/2" Rebar (o); thence turning and running N 68°15'52" W for a distance of 216.69 feet to a 1/2" Rebar (o) thence turning and running N 66°44'01" W for a distance of 167.18 feet to a 1/2" Rebar (o); thence turning and running N 71°10'07" W for a distance of 241.37 feet to a 1/2" Rebar (o); thence turning and running N 71°32'20" W for a distance of 285.71 feet to a 1/2" Rebar (o); thence turning and running N 72°48'55" W for a distance of 120.29 feet to a 1/2" Rebar (o); thence turning and running N 67°14'18" W for a distance of 78.78 feet to a 1/2" Rebar (o); thence turning and running N 71°22'01" W for a distance of 162.45 feet to a 1/2" Rebar (o); thence turning and running N 65°40'10" W for a distance of 194.23 feet to a 1/2" Rebar (o); thence turning and running N 67°02'30" W for a distance of 163.48 feet to a 1/2" Rebar (o); thence turning and running N 60°47'54" W for a distance of 358.88 feet to a 1/2" Rebar (o); thence turning and running N58°28'04" W for a distance of 221.63 feet to a 1/2" Rebar (o); thence turning and running N 55°32'11" W for a distance of 137.22 feet to a 1/2" Rebar (o); thence turning and running N 53°08'42" W for a distance of 313.82 feet to a 1/2" Rebar (o); thence turning and running N58°48'50" W for a distance of 40.45 feet to a 1/2" Rebar (o); thence turning and running N 55°57'29" W for a distance of 62.69 feet to a 1/2" Rebar (o); thence turning and running N 55°39'30" W for a distance of 168.67 feet to a 1/2" Rebar (o); thence turning and running N 51°53'12" W for a distance of 167.35 feet to a 1/2" Rebar (o); thence turning and running N 45°32'43" W for a distance of 210.49 feet to a 1/2" Rebar (o); thence turning and running N 38°33'45" W for a distance of 280.72 feet to a 1/2" Rebar (o); thence turning and running N 39°04'54" W for a distance of 220.95 feet to a 1/2" Rebar (o); thence turning and running N 38°02'35" W for a distance of 149.37 feet to a 1/2" Rebar (o); thence turning and running N 40°36'35" W for a distance of 132.44 feet to a 1/2" Rebar (o); thence turning and running N 37°09'39" W for a distance of 157.35 feet to a 1/2" Rebar (o); thence turning and running N 37°13'03" W for a distance of 235.64 feet to a 1/2" Rebar (o); thence turning and running N 39°52'45" W for a distance of 107.34 feet to a 1/2" Rebar (o); thence turning and running N 37°52'55" W for a distance of 134.75 feet to a 1/2" Rebar (o); thence turning and running N 34°06'20" W for a distance of 198.23 feet to a 1/2" Rebar (o); thence turning and running N 35°18'28" W for a distance of 227.01 feet to a 1/2" Rebar (o); thence turning and running N 40°01'45" W for a distance of 161.01 feet to a 1/2" Rebar (o); thence turning and running N 42°46'50" W for a distance of 137.81 feet to a 1/2" Rebar (o); thence turning and running N 36°38'41" W for a distance of 181.86 feet to a 1/2" Rebar (o); thence turning and running N 29°33'03" W for a distance of 121.16 feet to a 1/2" Rebar (o); thence turning and running N 43°09'11" W for a distance of 211.39 feet to a 1/2" Rebar (o); thence turning and running N 57°54'25" W for a distance of 50.71 feet to a 1/2" Rebar (o); thence turning and running along the Property of Now or Formerly Imco Chapin Recreation Commission, for the following bearings and distances: N 19°57'03" E for a distance of 637.67 feet to a Conc. mon. (o); thence turning and running N 22°05'55" E for a distance of 332.10 feet to a Conc. mon (o); thence turning and running N 73°15'47" W for a distance of 571.84 feet to a Conc. mon. (o); thence turning and running N 14°22'37" E for a distance of 708.48 feet to a Conc. mon. (o); thence turning and running along the property now or formerly BC Components, Inc. N 13°24'25" E for a distance of

636.33 feet to a 1/2" Rebar (o); thence turning and running along the Property of Now or Formerly Irmo Fire District, S 76°29'13" E for a distance of 47.54 feet to a 1/2" Rebar (o); thence turning and running along the Property of Now or Formerly Irmo Fire District, N 37°14'28" E for a distance of 643.48 feet to a 1/2" Rebar (o); thence turning and running along the Property of Now or Formerly Irmo Fire District and the Property of Now or Formerly HR Developers, LLC, in a curved line of length 271.65' feet (curve of radius 593.30 feet, chord bearing of N 44°46'08" E, chord distance of 269.28 feet) to a 1/2" Rebar (o); thence turning and running along the Property of Now or Formerly HR Developers, LLC in a curved line of length 208.88' feet (curve of radius 1519.40 feet, chord bearing of N 65°32'59" E, chord distance of 208.70 feet) to a 1/2" Rebar (o); thence turning and running along the Property of Now or Formerly HR Developers, LLC, in a curved line of length 187.98' feet (curve of radius 347.20 feet, chord bearing of N 59°17'07" E, chord distance of 166.35 feet) to a 1/2" Rebar (o); thence turning and running along the Property of Now or Formerly HR Developers, LLC, N 47°22'43" E for a distance of 60.31 feet to an "X" on conc. (o); thence turning and running along the Southern Right-of-Way of St. Andrews Road (S-32-38), S 42°37'38" E for a distance of 60.02 feet to a "X" on conc (o); thence turning and running along the Southern Right-of-Way of St. Andrews Road (S-32-36) S 42°41'28"E for a distance of 2088.67 feet to a 5/8" Rebar w/ cap (o) thence turning and running along the Southern Right of Way of St. Andrews Road (S-32-38) in a curved line of length 298.73' feet (curve of radius 812.95 feet, chord bearing of S 58°32'33" E, chord distance of 293.84 feet) to a 5/8" Rebar w/ cap (o); thence turning and running along the Southern Right-of-Way of St. Andrews Road (S-32-36) in a curved line of length 184.94' feet (curve of radius 605.95 feet, chord bearing of S 78°21'20" E, chord distance of 184.22 feet) to a 1/2" Rebar (o); thence turning and running along the Southern Right-of-Way of St. Andrews Road (S-32-36), S 88°08'00" E for a distance of 19.08 feet to a 1/2" Rebar (o), the POINT OF BEGINNING 1 (P.O.B.1).

#### LAND DESCRIPTION – PARCEL 2

Beginning at intersection of the Southern Right-of-Way of St. Andrews Road (S-32-36) and the Eastern Right-of-Way of C.N. AND L. Railroad at a 1/2" Rebar (o), this being the POINT OF BEGINNING 2 (P.O.B. 2); thence turning and running along the Southern Right-of-Way of St. Andrews Road (S-32-36) in a curved line of length 200.59 feet (curve of radius 1876.86 feet, chord bearing of S 79°45'36" E, chord distance of 200.50 feet) to a 5/8" Rebar w/ cap (o); thence turning and running along the Southern Right-of-Way of St. Andrews Road (S-32-36) in a curved line of length 229.28 feet (curve of radius 1889.86 feet, chord bearing of S 71°43'25" E, chord distance of 229.14 feet) to a 5/8" Rebar w/ cap (o); thence turning and running along the Southern Right-of-Way of St. Andrews Road (S-32-36), S 68°10'49" E for a distance of 164.60 feet to a 1/2" Rebar (o); thence turning and running along the Property of Now or Formerly Michael J. Mungo & M. J. Mungo Co. Inc., S 21°49'58" W for a distance of 301.80 feet to a 3" Pipe (o); thence turning and running along the Eastern Right-of-Way of C.N. AND L. Railroad, N 45°04'43" W for a distance of 630.51 feet to a 1/2" Rebar (o), the POINT OF BEGINNING 2 (P.O.B. 2).

#### LAND DESCRIPTION – PARCEL 3

Beginning at intersection of the Northern Right-of-Way of St. Andrews Road (S-32-36) and the Western Right-of-Way of C.N. AND L. Railroad at a 5/8" Rebar w/ cap (o), this being the POINT OF BEGINNING 3 (P.O.B. 3); thence turning and running along the Northern Right-of-Way of St. Andrews Road (S-32-36) in a curved line of length 330.74 feet (curve of radius 532.66 feet, chord bearing of N 60°27'51" W, chord distance of 325.46 feet) to a 5/8" Rebar w/ cap (o); thence turning and running along the Northern Right-of-Way of St. Andrews Road (S-32-36), N 42°41'38" W for a distance of 516.82 feet to a 5/8" Rebar w/ cap (o); thence turning and running along the Property of Now or Formerly R.J.M. Co., Inc. of Columbia, N 25°43'35" E for a

distance of 69.46 feet to a 5/8" Rebar w/ cap (o); thence turning and running along the Western Right-of-Way of C.N. AND L. Railroad S 44°45'13" E for a distance of 115.63 feet to a 5/8" Rebar w/ cap (o); thence turning and running along the Western Right-of-Way of C.N. AND L. Railroad, S 45°04'17" E for a distance of 737.37 feet to a 5/8" Rebar w/ cap (o), the POINT OF BEGINNING 3 (P.O.B. 3).

**LAND DESCRIPTION – PARCEL 4**

Beginning at Intersection of the Northern Right-of-Way of St. Andrews Road (S-32-36) and the Western Right-of-Way of C.N. AND L. Railroad at a 5/8" Rebar w/ cap (o); thence turning and running along the Northern Right-of-Way of St. Andrews Road (S-32-36) in a curved line of length 330.74 feet (curve of radius 532.66 feet, chord bearing of N 60°27'51" W, chord distance of 325.46 feet) to a 5/8" Rebar w/ cap (o); thence turning and running along the Northern Right-of-Way of St. Andrews Road (S-32-36), N 42°41'36" W for a distance of 516.82 feet to a 5/8" Rebar w/ cap (o); thence turning and running along the Northern Right-of-Way of St. Andrews Road (S-32-36), N 42°40'07" W for a distance of 255.65 feet to a 5/8" Rebar w/ cap (o), this being the POINT OF BEGINNING 4 (P.O.B. 4); thence turning and running along the Northern Right-of-Way of St. Andrews Road (S-32-36), N 42°41'30" W for a distance of 647.12 feet to a 5/8" Rebar w/ cap (o); thence turning and running along the Property of Now or Formerly Kenneth M. Shuler, S 46°57'24" E for a distance of 33.16 feet to a 2" Pipe (o); thence turning and running along the Property of Now or Formerly Kenneth M. Shuler, S 46°55'00" E for a distance of 388.11 feet to a 3" Pipe (o); thence turning and running along the Property of Now or Formerly R.J.M. Co., Inc. of Columbia, S 28°58'29" E for a distance of 227.77 feet to a 5/8" Rebar w/ cap (o), the POINT OF BEGINNING 4 (P.O.B. 4).

**LESS AND EXCEPT** All improvements thereon, situate, lying and being in the State of South Carolina, County of Lexington, being shown and designated as ZIP IV C & D Building on a plat prepared for AlliedSignal Corporation-Fibers Division by Survey & Mapping Services, Inc., dated June 12, 1997, and recorded in the Office of Lexington County ROD in Record Book 4255, Page 281.

Also being shown and designated as ZIP IV C & D Building on a plat prepared for Honeywell Nylon LLC by Cox and Dinkins, Inc., dated September 8, 2005, last revised September 23, 2005 and being more particularly described by reference to said plat as follows: Beginning at the northwestern part of the property where a certain 60 foot SCE&G Gasoline Right of Way delineated as a gasoline right of way crosses St. Andrews Road.; then proceeding approximately 276 feet South of St. Andrews Road where the ZIP IV C & D Building is designated. The western portion of the building is located within the 60 foot SCE & G Right of Way and the eastern side of the building is bordered by the Party Wall Easements, all as more specifically designated in the above referenced survey.

Together with a leasehold estate in the building and improvements shown as the "New Zip IV C&D Building" on a plat dated June 12, 1997 by Survey & Mapping Services of South Carolina, Inc. recorded in book 4255 at Page 281 and being more particularly shown on Sheet 9 of a plat by J. Donald Rawls, Jr. SCPLS No. 13517 of Cox and Dinkins, Inc. prepared for Honeywell Nylon LLC by Cox and Dinkins, Inc., dated September 9, 2005, last revised September 23, 2005.

Said building and improvements having been leased by Lexington County, south Carolina, to Allied signal, Inc. by Lease Agreement, a memorandum of Lease Agreement dated July 22, 1997 recorded in Book 4255 at Page 263, thereby assigned by that certain Assignment of Certain Interests of Honeywell International Inc. in Pilot Lease Agreement, Inducement Agreement and Millage Rate Agreement and Memorandum of Lease Agreement to Honeywell

Nylon Inc. dated January 1, 2004 and recorded on January 5, 2004 in Book 8945 at Page 60 and thereby amended by that certain Amendment to Memorandum of Lease Agreement dated January 1, 2004 and recorded on January 5, 2004 in Book 8945 at page 69 in the Office of the Lexington County Register of Deeds and thereby amended by that certain Second Amendment to Memorandum of Lease Agreement and consent, dated June 30, 2004 in Book 9542, Page 247 in the Office of the Lexington County Register of Deeds and thereby amended by that "Amendment to, and Assignment of certain interests of Honeywell Nylon LLC in, the FILOT Lease Agreement, Inducement Agreement and Millage Rate Agreement, and Memorandum of Lease Agreement, dated October 29, 2005 and recorded October 31, 2005 in Book 10585, Page 207 in the Office of Lexington County Register of Deeds.

