

INFRASTRUCTURE CREDIT AGREEMENT

BETWEEN

ELITE ES, LLC

AND

FAIRFIELD COUNTY, SOUTH CAROLINA

DATED AS OF APRIL 28, 2006

**PREPARED BY:
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INFRASTRUCTURE CREDIT AGREEMENT

THIS INFRASTRUCTURE CREDIT AGREEMENT (this "Agreement") is made and entered into as of April 28, 2006, by and between Fairfield County, South Carolina (the "County"), a body politic and corporate and a political subdivision of the State of South Carolina (the "State"), acting by and through the Fairfield County Council (the "County Council") as the governing body of the County, and Elite ES, LLC, a South Carolina limited liability company, its affiliates and assigns (collectively, the "Company").

WITNESSETH:

(a) The County is authorized by Title 4, Chapter 1 and Title 4, Chapter 29, Section 68 of the Code of Laws of South Carolina, 1976, as amended (collectively, the "Act") to (i) create multi-county industrial parks in partnership with contiguous counties; (ii) include the property of eligible companies within such parks as an inducement to locate within the County; and (iii) grant an annual credit (an "Infrastructure Credit") against payments to be made to the County by the Company to assist a company in paying the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the company or for improved or unimproved real estate used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County.

(b) (c) The Company has agreed to establish a manufacturing facility within the County (the "Project"). The Company's total investment in the Project is estimated to be approximately \$1,500,000 (the "Project Commitment").

(c) The Company has previously entered into a fee-in-lieu of taxes agreement ("FILOT") with the County under the provisions of Section 4-12-30 of the Code of Laws of South Carolina 1976, as amended (the "Code"), and the County has also included the Company's property within the I-77 Corridor Regional Industrial Park created between the County and Richland County by Master Agreement, dated as of April 15, 2003, as amended (the "Park").

(d) Prior to the County's enactment, on April 24, 2006, of an Ordinance and execution of the FILOT, the County and Company were informed the County had an average unemployment rate of at least twice the State average during each of the previous 24 months, and as a result, in accordance with Sections 4-12-30(B)(3) and 12-44-30(14) of the Code, Fairfield was permitted to enter into a FILOT with the Company so long as the Company's investment was not to be less than \$1,000,000 over a 5-year period.

(e) Because the County did not experience an average unemployment rate at least twice the State average during the previous 24 months (calendar years 2004 and 2005), as a result, the threshold for the County to offer the Company a FILOT was increased by the South Carolina Department of Revenue to \$5,000,000.

(f) As contemplated in the FILOT, the County has determined to induce the Company's continued investment through the granting of an Infrastructure Credit as described herein.

(g) In accordance with Section 3.01 of the FILOT, and so as to give effect to the letter and spirit of the FILOT, the County has determined the utilization of an infrastructure credit, as provided for under the Act, is a suitable mechanism to provide the Company with that level of economic incentive the Company would have received pursuant to the FILOT and to ensure the Company locates its Project in the County.

NOW, THEREFORE, AND IN CONSIDERATION of the respective representations and agreements herein contained, the Parties agree as follows, with the understanding no obligation of the County herein

described creates a pecuniary liability or charge on the County's general credit or taxing powers, but is payable solely out of the sources of payment herein described and is not under any circumstances deemed to constitute a general obligation to the County.

ARTICLE I DEFINITIONS

Section 1. *Infrastructure Credit.* The County hereby grants the Company an Infrastructure Credit in an amount necessary each year to offset the difference between the payments the Company would have been remitting to the County in accordance with the FILOT, and the *ad valorem* property taxes then due and owing from the Company to the County. Such credit shall be extended to the Company for the same number of years as the Company would have been eligible to receive benefits pursuant to the FILOT. The County Auditor is hereby directed to apply the credit amount to reduce the Company's annual tax liability as set forth each year by a filing the Company is to make when remitting its tax payment, substantially in the form of Exhibit A. The Infrastructure Credit shall be granted starting with the 2006 Property Tax Year. The Company shall be required to use the Infrastructure Credit to pay for or reimburse itself for eligible expenditures, which shall include the cost of designing, acquiring, constructing, improving, or expanding the infrastructure serving the Company's property and for improved or unimproved real estate

Section 2. *FILOT.* Only to the extent such terms are applicable to an Infrastructure Credit, the terms of the FILOT are incorporated herein by reference.

Section 3. *Binding Effect.* This Agreement is binding, in accordance with its terms, upon and inures to the benefit of the Company and the County, and their respective successors and assigns. In the event of the dissolution of the County or the consolidation of any part of the County with any other political subdivision or the transfer of any rights of the County to any other such political subdivision, all of the covenants, stipulations, promises and agreements of this Agreement shall bind and inure to the benefit of the successors of the County from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of the County has been transferred.

Section 4. *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.

Section 5. *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. The terms of the FILOT are incorporated herein by reference. To the extent of any conflict between the provisions of this Agreement and the FILOT, the provision providing the Company with the greatest benefit controls. To the extent of any conflict between the provisions of this Agreement and the Act, the Act controls.

Section 6. *Amendments.* The provisions of this Agreement may only be modified or amended in writing by an agreement or agreements entered into between the parties.

Section 7. *Further Assurance.* From time to time the County agrees to execute and deliver to the Company such additional instruments as either may reasonably request to effectuate the purposes of this Agreement.

Section 8. *Severability.* If any provision of this Agreement is declared illegal, invalid or unenforceable for any reason, the remaining provisions hereof shall be unimpaired and such illegal, invalid or unenforceable provision shall be reformed so as to most closely effectuate the legal, valid and enforceable intent thereof and so as to afford the Company with the maximum benefits to be derived

herefrom, it being the intention of the County to offer the Company the strongest inducement possible to locate the Project in the County.

Section 9. *Limited Obligation.* THE PROJECT SHALL GIVE RISE TO NO PECUNIARY LIABILITY OF THE COUNTY OR ANY INCORPORATED MUNICIPALITY NOR TO ANY CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWER.

Section 10. *Force Majeure.* Company shall not be responsible for any delays or non-performance caused in whole or in part, directly or indirectly, by strikes, accidents, freight embargoes, fire, floods, inability to obtain materials, conditions arising from government orders or regulations, war or national emergency, acts of God, and any other cause, similar or dissimilar, beyond Company's reasonable control.

Section 11. *Execution Disclaimer.* Notwithstanding any other provision, the County is executing as statutory accommodation to assist the Company in achieving the intended benefits and purposes of the Act. The County has made no independent legal or factual investigation regarding the particulars of this transaction and it executes in reliance upon representations by the Company that this document complies with all laws and regulations, particularly those pertinent to industrial development projects in South Carolina.

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

FAIRFIELD COUNTY, SOUTH CAROLINA

By: David L. Ferguson
David L. Ferguson, Chairman of County Council
Fairfield County, South Carolina

[SEAL]

Attest:

By: Shryll M. Brown
Shryll M. Brown, Clerk to County Council
Fairfield County, South Carolina