

(b) Further, pursuant to the Acts, if the Company removes or disposes of Equipment from the Project during the term of this Agreement and has previously claimed an Annual Credit against its Payments-in-Lieu of Taxes based upon such Equipment by providing the written notice of election to do so as set forth in the definition of "Infrastructure Improvements" in Section 1.2 hereof, then the Company is required to continue to make Payments-in-Lieu-of-Taxes on the removed Equipment for the two property tax years following the year in which the Company removes the Equipment from the Project. The amount of the Payments-in-Lieu-of-Taxes due on the removed Equipment under this subsection (b) is equal to the Payment-in-Lieu-of-Taxes due on the Equipment for the property tax year in which the Company removes or disposes of the Equipment. If the Company replaces the Equipment with qualifying replacement property, as defined in the Acts, then the removed Equipment is deemed not to have been removed from the Project.

#### **SECTION 4.2 *Annual Credit.***

(a) Pursuant to and subject to the provisions of this Section, the Company shall be entitled to an Annual Credit in an amount equal to 42.8% of the annual Payments-in-Lieu-of-Taxes to be made by the Company on the Project (the "Annual Credit"). The County is providing the Annual Credit to the Company to offset a portion of the cost of the Company's Infrastructure Improvements. To receive the Annual Credit, the Company shall, within sixty (60) days following receipt of the tax notice specifying the amount of the annual Payments-in-Lieu-of-Taxes with respect to the Project, or at such later time as may be agreed to by the County, submit an "Annual Credit Certification," the form of which is attached hereto as Exhibit B, pursuant to which the Company will (i) state the costs of the Infrastructure Improvements and (ii) calculate the Annual Credit. The parties to this Agreement hereby acknowledge and agree that the purpose of the Annual Credit is to achieve approximately the same level of Payments-in-Lieu-of-Taxes that would have been made by the Company if the applicable assessment ratio were 6%. Accordingly, notwithstanding anything in this Section or this Agreement to the contrary, the application of the Annual Credit shall not result, in any applicable year, in a net Payment-in-Lieu-of-Taxes by the Company that is less than such Payment-in-Lieu-of-Taxes that would have been due and owing if the applicable assessment ratio were 6%. If, notwithstanding the last sentence of Section 4.1(a), in any applicable year one or more of the exemptions referenced in such sentence is applied so as to reduce the Company's Payment-in-Lieu-of-Taxes to a greater extent than the 42.8% Annual Credit, then the amount of the next following Annual Credit(s) shall be reduced to the extent necessary for the County to recapture the amount of such underpayment by the Company.

(b) If, by December 31, 2018, the Company and the Company Affiliate have, in the aggregate, (i) invested less than \$7.5 million but more than \$6.0 million in taxable property at the site of the Project (without regard to whether some or all of the investment is subject to this Agreement or to the Fee Agreement) or (ii) created fewer than 500 Jobs but at least 400 Jobs, then the amount of the Annual Credit shall be prospectively reduced for the remainder of the term of this Agreement from 42.8% to 33%.

(c) If, by December 31, 2018, the Company and the Company Affiliate have, in the aggregate, (i) invested less than \$6.0 million but more than \$5.25 million in taxable property at

the site of the Project (without regard to whether some or all of the investment is subject to this Agreement or to the Fee Agreement) or (ii) created fewer than 400 Jobs but at least 350 Jobs, then the amount of the Annual Credit shall be prospectively reduced for the remainder of the term of this Agreement from 42.8% to 23%.

(d) If, by December 31, 2018, the Company and the Company Affiliate have, in the aggregate, (i) invested less than \$5.25 million in taxable property at the site of the Project (without regard to whether some or all of the investment is subject to this Agreement or to the Fee Agreement) or (ii) created fewer than 350 Jobs, then this Agreement shall terminate, and all Project property shall be subject prospectively and retroactively to ad valorem property taxation as imposed by law.

(e) Notwithstanding anything in this Agreement to the contrary, the Company is entitled to an Annual Credit only to the extent that, as of the date that an Annual Credit is to be applied, the total cost of the Infrastructure Improvements is at least equal to the aggregate amount of any Annual Credit previously provided and the amount of the Annual Credit to be provided for the year in question. Upon request of the County, the Company shall provide documentation to the County reflecting the cost of the Infrastructure Improvements.

**SECTION 4.3 *Certain Payment Matters.*** The County hereby agrees that, for so long as the Real Property and/or the Improvements are subject to a lease or sublease from the Company to the Company Affiliate, the Company Affiliate shall have the right to make all Payments-in-Lieu of Taxes on behalf of the Company under this Agreement, and the County shall accept all Payments-in-Lieu-of-Taxes made under this Agreement by the Company Affiliate.

**SECTION 4.4 *Term.*** The term of this Agreement shall be from the effective date of this Agreement until December 31, 2044 unless earlier terminated pursuant to Section 4.2 hereof or Section 8.1 hereof.

**ARTICLE V  
EFFECTIVE DATE**

**SECTION 5.1 *Effective Date.*** This Agreement shall become effective as of the date first written above.

**ARTICLE VI  
SPECIAL COVENANTS**

**SECTION 6.1 *Confidentiality/Limitation on Access to Project.*** The County acknowledges and understands that the Company utilizes confidential and proprietary processes and materials, services, equipment, trade secrets and techniques and that any disclosure of any information relating to such processes and materials, services, equipment, trade secrets or techniques, including but not limited to disclosures of financial, sales or other information concerning the Company's operations could result in substantial harm to the Company and could thereby have a significant detrimental impact on the Company's employees and also upon the County. Therefore, the County agrees that, subject to the provisions of Section

9.9 hereof, except as required by law, and except as operating for other purposes in its sovereign capacity (such as, without limitation, for such routine health and safety purposes as would be applied to any other industrial facility in the County), neither the County nor any employee, agent or contractor of the County: (i) shall request or be entitled to receive any such confidential or proprietary information; (ii) shall request or be entitled to inspect the Project or any property associated therewith; or (iii) notwithstanding the expectation that the County shall not receive any confidential or proprietary information, if the County should nevertheless receive any such information, neither the County nor any employee, agent, or contractor of the County shall knowingly disclose or otherwise divulge any such confidential or proprietary information to any other person, firm, governmental body or agency, or any other entity unless specifically required to do so by State law. Prior to disclosing any confidential or proprietary information or allowing inspections of the Project or any property associated therewith, the Company may require the execution of reasonable, individual, confidentiality and non-disclosure agreements by any officers, employees or agents of the County or any supporting or cooperating governmental agencies who would gather, receive or review such information or conduct or review the results of any inspections. In the event that the County is required to disclose any confidential or proprietary information obtained from the Company to any third party, the County agrees to provide the Company with reasonable advance notice of such requirement before making such disclosure.

#### **SECTION 6.2 *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 based upon those reasons set forth in subsection (b) below. Such indemnification obligation shall survive any termination of this Agreement.

(b) Notwithstanding the fact that it is the intention of the parties that neither the County nor any of its County Council members, officers, agents and employees shall incur any pecuniary liability to any third party (i) by reason of the terms of this Agreement or the undertakings of the County required hereunder, (ii) by reason of the performance of any act in connection with the entering into and performance of the transactions described in the Documents, or (iii) by reason of the condition or operation of the Project, including claims, liabilities or losses arising in connection with the violation of any statutes or regulations, if the County or any of its County Council members, officers, agents or employees should incur any such pecuniary liability, then, in that event the Company shall indemnify and hold harmless the County and its County Council members, officers, agents and employees against all pecuniary claims by or on behalf of any person, firm or corporation, arising out of the same, and all costs and expenses incurred in connection with any such claim. The provisions of this Section shall survive any termination of this Agreement.

(c) 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 gross negligence of the County or any of its individual officers, agents or employees.

**SECTION 6.3 *Assignment and Leasing*** With the County's consent, which shall not be unreasonably withheld, any or all of the Company's interest in the Project and/or this Agreement may be transferred or assigned by the Company or any assignee to any other entity, in accordance with the Acts without terminating this Agreement or the benefits provided under this Agreement; provided, however, that such consent is not required in connection with financing related transfers or any other transfers not requiring the consent of the County under the Acts. The parties hereby acknowledge and agree that the County or an affiliate of the County created to hold title to the Real Property and certain Improvements has leased or will lease the Real Property and certain Improvements to the Company pursuant to a lease agreement and that, subject to the provisions of such lease agreement, the Company intends to sublease the Real Property and certain Improvements to the Company Affiliate. For purposes of this Agreement only, and subject to any contrary provisions in such lease agreement, the County hereby expressly consents to any sublease of the Real Property and certain Improvements by the Company to the Company Affiliate, and further consents to any transfer or assignment by the Company of any or all of its interest in the Project and/or this Agreement to the Company Affiliate. The County agrees that the County Council can provide any consent required under the Acts or this Section either by a resolution of County Council. Except as otherwise required by the Acts or this Agreement, 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 constitute or result in a termination of this Agreement in whole or in part or a basis for changing the fee payments due under Section 12-44-50 of the Code of Laws of South Carolina, 1976, as amended.

**ARTICLE VII  
EVENTS OF DEFAULT AND REMEDIES**

**SECTION 7.1 *Events of Default Defined.*** The occurrence of any one or more of the following events shall be an "Event of Default" under this Agreement:

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

(b) If the Company shall fail to observe or perform any covenant, condition, or agreement required herein to be observed or performed by the Company (other than as referred to in subsection (a) above), 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; provided if by reason of "*force majeure*" as hereinafter defined the Company 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 is diligently attempting to cure such default during such period, 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 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 7.2 Remedies on Default.** Whenever any Event of Default shall have happened and be subsisting, the County may terminate this Agreement and/or take whatever action at law or in equity may appear legally required or necessary or desirable to collect any payments then due. As set forth in Section 8.1 hereof, the Company may terminate this Agreement at any time upon providing 30 days' notice to the County, without regard to any Event of Default. 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 the Acts relating to the enforced collection of taxes, and shall have a first priority lien status as provided in the Acts and Chapters 4 and 54 of Title 12, Code of Laws of South Carolina 1976, as amended.

**SECTION 7.3 No Remedy Exclusive.** No remedy herein conferred upon or reserved to the County or Company is intended to be exclusive of any other available remedy or remedies, but in each and every instance such remedy shall be cumulative and shall be in addition to every other remedy given under the Documents or now or hereafter existing at law or in equity or by statute. Unless otherwise provided herein or in the other Documents, no delay or omission to exercise any right or power shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

**SECTION 7.4 No Additional Waiver Implied by One Waiver.** In the event any warranty, covenant or agreement contained in this Agreement should be breached by the Company or the County and thereafter waived by the other party to this Agreement, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach.

**SECTION 7.5 Default by County.** Upon the default of the County in the performance of any of its obligations hereunder, the Company may take whatever action at law or in equity as may appear necessary or desirable to enforce its rights under this Agreement, including without limitation a suit for mandamus or specific performance.

## **ARTICLE VIII COMPANY OPTION TO TERMINATE**

**SECTION 8.1 Company 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 Agreement with respect to the entire Project or any portion thereof; provided, for so long as the Real Property and/or the Improvements are subject to a lease or sublease from the Company to the Company

Affiliate, that the Company shall not exercise such termination without the prior written approval of the Company Affiliate, which may be withheld in the Company Affiliate's sole discretion, unless an event of default has occurred and is continuing under the lease agreement or sublease agreement, as the case may be, between the Company and the Company Affiliate with respect to the Project (in which case the Company may terminate this Agreement in its sole discretion). Upon termination of all or part of this Agreement, the Company will become liable, prospectively but not retroactively (except as set forth in subsections (a) and (d) of Section 4.2), for ad valorem property taxes on the Project or such portion thereof as is so terminated from inclusion in the Project, as well as for any amounts already due and owing under this Agreement, which latter amounts, if any, shall be paid to the County with the next installment of Payments-in-Lieu-of-Taxes pursuant to Section 4.1, or, if the termination is of the entire Project, then within 120 days of termination.

## **ARTICLE IX MISCELLANEOUS**

**SECTION 9.1 Notices.** All notices, approvals, consents, requests and other communications hereunder shall be in writing and may be delivered personally, or may be sent by 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:

If to the Company:

Element Real Estate Holdings, LLC  
c/o Element Television Company, LLC  
10909 Valley View Road  
Eden Prairie, MN 55344  
Attention: Michael L. O'Shaughnessy

With a copy to:

Nelson Mullins Riley & Scarborough LLP  
1320 Main Street  
17th Floor  
Columbia, SC 29201  
Attention: George B. Wolfe, Esq.

If to the County:

Fairfield County  
350 Columbia Road  
Winnsboro, South Carolina 29180  
Attention: County Administrator

With a copy to:

Parker Poe Adams & Bernstein LLP