

STATE OF SOUTH CAROLINA  
COUNTY COUNCIL FOR FAIRFIELD COUNTY  
ORDINANCE NO. 576

AUTHORIZING FAIRFIELD COUNTY, SOUTH CAROLINA, TO SELL APPROXIMATELY 12 ACRES OF REAL PROPERTY WITH IMPROVEMENTS, TO BE USED FOR ECONOMIC DEVELOPMENT PROJECTS; TO AUTHORIZE THE EXECUTION AND DELIVERY OF AN AMENDED AND RESTATED INFRASTRUCTURE CREDIT AGREEMENT BETWEEN THE COUNTY AND ELITE ES, LLC; AND OTHER RELATED MATTERS.

WHEREAS, Fairfield County, South Carolina ("County") owns real property with improvements, as more fully described on the attached Exhibit A ("Property");

WHEREAS, according to the Contract of Sale ("Contract"), between the County and Elite ES, LLC ("Company"), the County agreed to sell, and the Company agreed to purchase, the Property as part of an economic incentive package;

WHEREAS, to create new, full-time jobs and promote economic development in the County, the County Council desires to transfer the Property to the Company, subject to the conditions established in the Contract;

WHEREAS, Fairfield County, South Carolina ("Richland"), and Richland County, South Carolina ("Fairfield") (collectively, "Counties"), as authorized under Article VIII, Section 13(D) of the South Carolina Constitution and Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended ("Act"), have jointly developed the I-77 Corridor Regional Industrial Park ("Park");

WHEREAS, in response to requests from companies seeking to invest in either Fairfield or Richland, the Counties have previously expanded the boundaries of the Park to include additional property, which inclusion has afforded the requesting companies additional tax benefits under South Carolina law;

WHEREAS, the Counties have entered into separate agreements to reflect each new phase of expansion of the Park ("Phase Agreements");

WHEREAS, on April 15, 2003, the Counties entered into an agreement entitled "Master Agreement Governing the I-77 Corridor Regional Industrial Park" ("Master Agreement"), the provisions of which replaced all existing Phase Agreements and govern the operation of the Park;

WHEREAS, the Company has requested that the Counties expand the boundaries of the Park to include Property;

WHEREAS, the Counties now desire to expand the boundaries of the Park to include the Property;

WHEREAS, the Company and the County previously entered into an Infrastructure Credit Agreement, dated as of April 28, 2006 ("Credit Agreement"), with regard to the Company's Project (as more fully described in the Credit Agreement); and

WHEREAS, as a result of the Company's promise to expand its operations in the County and relocate its operation to Property, the Company and the County desire to amend and restate the Credit Agreement.



NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL:

**Section 1. Authority to Execute Amended and Restated Credit Agreement and Approval of Terms.** In the name of and on behalf of the County, the Chair of the County Council, and in the event the Chair is unavailable, the Vice-Chair, is authorized and directed to execute the Amended and Restated Infrastructure Credit Agreement, a copy of the substantially final form of which is attached as Exhibit B, along with all other documents reasonably necessary to effect the intent of this Ordinance and the transactions contemplated by this Ordinance (collectively, "Transaction Documents"), each subject to the prior approval by the County Administrator and County Attorney, so as to not be materially adverse to the County, and the Clerk to County Council is authorized and directed to attest the Transaction Documents; and the Chair of the County Council, and in the event the Chair is unavailable, the Vice-Chair, is further authorized and directed to deliver the Transaction Documents, and as reasonably necessary, to provide for recording of the same.

**Section 2. Approval of Transfer.** The County Council: (a) approves the purchase-sale arrangement set forth in the Contract; (b) authorizes the County Administrator, the County Council Chair, and in the Chair's absence, the Vice-Chair, and the Clerk to County Council, as appropriate, to execute and deliver those documents that may be reasonably necessary to consummate the Property's transfer; (c) authorizes the County Administrator to prepare, or have prepared, the form of the transfer documents that are customarily used for similar transactions in this State, with the advice of the County's legal counsel, (the execution of those documents by the County's representatives is conclusive evidence that the transfer documents are approved by the County); (d) authorizes the County Administrator and other members of the County staff to provide information to the Company as is reasonably necessary to consummate the Property's transfer.

**Section 3. Expansion of Park Boundaries.** The County Council authorizes an expansion of the Park's boundaries to include the Property. The County Council Chair, or the Vice Chair in the event the Chair is absent, the County Administrator and the Clerk to the County Council are authorized to execute documents and take further actions as may be reasonably necessary to complete the expansion of the Park's boundaries. Pursuant to the terms of the Master Agreement, the expansion is complete upon the adoption of this Ordinance by the County Council and a companion ordinance by the Richland County Council.

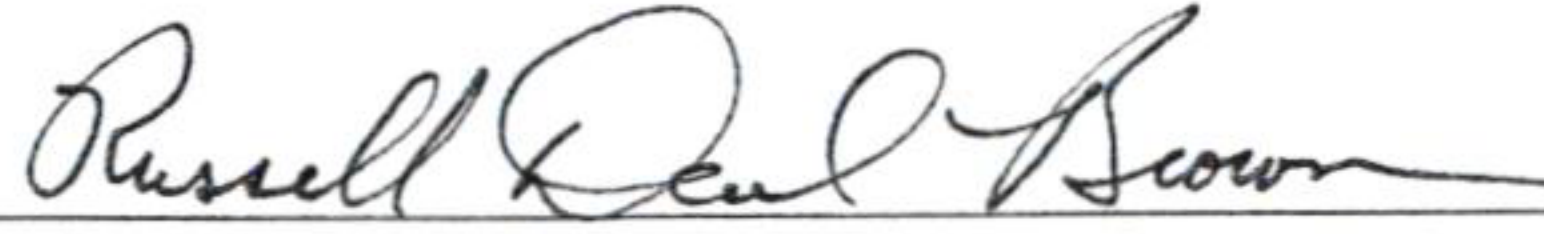
**Section 4. Removal of Property from Park.** The Company may request that a portion of the Property be removed from the Park. In that case, the Counties authorize removal of all, or a portion of, the Property, upon receipt of a written request from the Company. No further action by either the County Council or the Richland County Council is required. The County Council Chair, or the Vice Chair in the event the Chair is absent, the County Administrator and the Clerk to the County Council are authorized to execute documents and take further actions as may be reasonably necessary to complete removal of all, or a portion of, the Property from the Park. The public hearing requirement set forth in Section 1.03 of the Master Agreement is waived.

**Section 5. General Repealer.** Any ordinance, resolution, or other order of County Council, the terms of which are in conflict with this Ordinance, is, only to the extent of that conflict, repealed.

**Section 6. Effectiveness.** This Ordinance is effective after third reading and a public hearing.

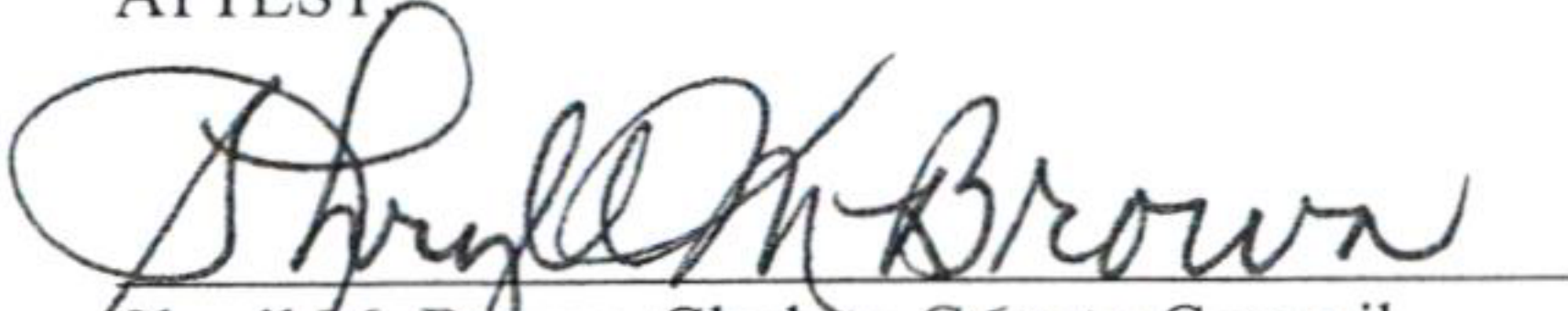


FAIRFIELD COUNTY, SOUTH CAROLINA



Russell David Brown, Chairman of County Council  
Fairfield County, South Carolina

(SEAL)  
ATTEST:



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

READINGS:

First Reading: November 8, 2010  
Second Reading: November 22, 2010  
Public Hearing: December 13, 2010  
Third Reading: December 13, 2010

**EXHIBIT A**  
**PROPERTY DESCRIPTION**

[TO BE DETERMINED PRIOR TO CLOSING]

TMS# 184-00-00-071-000 (portion of)



**EXHIBIT B**  
**AMENDED AND RESTATED INFRASTRUCTURE CREDIT AGREEMENT**



**AMENDED AND RESTATED  
INFRASTRUCTURE CREDIT AGREEMENT**

**BETWEEN**

**ELITE ES, LLC**

**AND**

**FAIRFIELD COUNTY, SOUTH CAROLINA**

**DATED JANUARY 1, 2011**

**PREPARED BY:  
PARKER POE ADAMS & BERNSTEIN LLP  
1201 MAIN STREET, SUITE 1450 (29201)  
POST OFFICE BOX 1509  
COLUMBIA, SOUTH CAROLINA 29202-1509  
(803) 255-8000**

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**AMENDED AND RESTATED  
INFRASTRUCTURE CREDIT AGREEMENT**

THIS AMENDED AND RESTATED INFRASTRUCTURE CREDIT AGREEMENT (“Agreement”), effective January 1, 2011, is between Fairfield County, South Carolina (“County”), a body politic and corporate and a political subdivision of the State of South Carolina (“State”), acting by and through the Fairfield County Council (“County Council”) as the governing body of the County, and Elite ES, LLC, a South Carolina limited liability company, its affiliates and assigns (collectively, “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) The Company previously entered into a fee-in-lieu of taxes agreement (“FILOT”), a copy of which is attached as Exhibit A, with the County under the provisions of Title 12, Chapter 44 of the Code of Laws of South Carolina 1976, as amended (“Code”), and the County included the Company’s initial property in 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 (“Park”).

(d) Prior to the County’s enactment, on April 24, 2006, of Ordinance No. 515, 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), 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, specifically Section 3.01, and to give effect to the letter and spirit of the FILOT and to ensure the Company located its Project in the County, the County determined to use an infrastructure credit, as provided for under the Act, as a suitable mechanism to provide the Company with the level of economic incentive that the Company would have received pursuant to the FILOT; and the County and the Company entered into the Infrastructure Credit Agreement, dated as of April 26, 2008 (“Original Credit Agreement”), a copy of which is attached as Exhibit B.

(g) The Company has agreed to expand its manufacturing facility in the County, relocating to a new facility, as described on the attached Exhibit C (collectively, “Project”).

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 D. 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, and not in conflict with, 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.

*[ONE SIGNATURE PAGE FOLLOWS]  
[REMAINDER OF PAGE INTENTIONALLY BLANK]*



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

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

(SEAL)  
ATTEST:

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

ELITE ES, LLC, BY ITS MANAGER –  
ELITE ELECTRONIC SYSTEMS, LTD.:

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Jonathan Balfour, Director



**EXHIBIT A**

**FEE-IN-LIEN OF AD VALOREM TAXES AGREEMENT  
DATED AS OF MARCH 27, 2006**



**EXHIBIT B**

**INFRASTRUCTURE CREDIT AGREEMENT  
DATED AS OF APRIL 28, 2006**



## EXHIBIT C

### PROPERTY DESCRIPTION

All that certain piece, parcel or lot of land, together with any improvements located thereon, situate, lying and being on the northeastern side of Cook Road (66' R/W), in the County of Fairfield, in the State of South Carolina, being shown and designated as LOT 8, containing 11.44 ACRES, more or less, on a Plat of Boundary Survey for Elite SSAS Pension Scheme, by J. Chris Knight, R.L.S, dated November 24, 2010 and recorded February \_\_\_\_\_, 2011 in the Office of the Clerk of Court of Fairfield County, South Carolina in Plat Book \_\_\_\_\_ at page \_\_\_\_\_; and having the boundaries and measurements as shown on said plat; reference being craved thereto as often as is necessary for a more complete and accurate legal description.

This being a portion of the same property conveyed to Fairfield County by deed of Evelyn Lyles, MD, Evelyn Lyles, Conservator for Rebekah Macfie, Evelyn Lyles, Conservator for Amanda Macfie, Francis L. Haselden, Francis L. Haselden, Conservator for Evelyn Haselden, Francis L. Haselden, Conservator for Virginia Haseldeon, Joseph S. Lyles, Joseph S. Lyles, Conservator for Jenna F. Lyles, Joseph S. Lyles, Conservator for Joseph Kitt H. Lyles, Rachel Rion Oullette, Rachel Rion Oullette, Conservator for Danna Lempeis, and Joseph S. Lyles, Power of Attorney for South Carolina Forest Watch, dated June 21, 1999, and recorded July 16, 1999, in Deed Book PV at page 234.

TMS No.: 184-00-00-071 (a portion of)



**EXHIBIT D**

**CERTIFICATE OF INFRASTRUCTURE IMPROVEMENT CREDITS**

Reference is made to the Amended and Restated Infrastructure Credit Agreement, dated January 1, 2011 ("Agreement"), between Fairfield County, South Carolina ("County"), and Elite ES, LLC, ("Company"). Each capitalized term not defined in this Certificate has the meaning ascribed in the Agreement.

In accordance with the terms of the Agreement, the undersigned authorized agent of the Company certifies to the County as follows:

1 The Company is entitled to claim an Infrastructure Improvement Credit (each, a "Credit") against each annual Tax Payment, for a portion of each Tax Payment, as set forth in Section 1 of the Agreement, with respect to the Project, not exceeding an amount for which a credit is permitted under the Act.

2. The invoice for Tax Payments for tax year \_\_\_\_\_ provided by the County Auditor specifies the Tax Payment due with respect to the Project on January 15, \_\_\_\_\_, to be \$\_\_\_\_\_.

3. The Company is entitled to a Credit for this tax year, calculated as follows:

Original Cost Basis of Property \_\_\_\_\_ x .06 assessment ratio = \_\_\_\_\_ (Assessed Value)

Assessed value x 348.2 (millage rate) = \_\_\_\_\_ (Estimated FILOT Payment)

Tax Payment – Projected FILOT Payment = \_\_\_\_\_ (Credit)

4. The amount payable from the County to the Company on January 15, 20\_\_\_\_, as a Credit, is \$

5. The Credit specified in this Certificate for the current Property Tax Year, together with the amount of all Credits previously claimed pursuant to the Agreement, do not, in the aggregate, exceed the total cost of all infrastructure improvements funded by the Company and all investors, for which a Credit is permitted under the Act.

IN WITNESS WHEREOF, I have executed this Certificate as of [].

ELITE ES, LLC, BY ITS MANAGER –  
ELITE ELECTRONIC SYSTEMS, LTD.:

\_\_\_\_\_  
Jonathan Balfour, Director