

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING AND DIRECTING THE ISSUANCE OF A SERIES OF INDUSTRIAL DEVELOPMENT REVENUE BONDS FOR THE PURPOSE OF PROVIDING FINANCING FOR INDUSTRIAL FACILITIES; AUTHORIZING AND APPROVING (1) A SUPPLEMENTAL TRUST INDENTURE SECURING THE BONDS, (2) A SUPPLEMENTAL LEASE AGREEMENT BETWEEN THE CITY OF JONESBORO, ARKANSAS AND UNILEVER MANUFACTURING (US), INC. (AS SUCCESSOR TO AND ASSIGNEE OF ALBERTO-CULVER USA, INC.), AS LESSEE, (3) PRIVATE PLACEMENT MEMORANDUM, AND (4) A PRIVATE PLACEMENT AGREEMENT; AND AUTHORIZING AND PRESCRIBING OTHER MATTERS PERTAINING THERETO.

WHEREAS, the City of Jonesboro, Arkansas (the "City"), is authorized by Arkansas Code Annotated Sections 14-164-201, *et seq.* (1998 Repl., Supp. 2011) (the "Act") to issue revenue bonds and to expend the proceeds thereof to finance the acquisition, construction, and equipping of lands, buildings or facilities, which can be used in securing or developing industry; and

WHEREAS, Alberto-Culver USA, Inc. ("Alberto-Culver") previously proposed that the City provide it with permanent financing through the issuance of its City of Jonesboro, Arkansas Industrial Development Revenue Bonds in one or more series not to exceed Ninety-One Million and No/100 Dollars (\$91,000,000.00), for the cost of acquiring, constructing and equipping certain industrial facilities consisting of improvements, machinery, equipment and facilities in the City (the "Project");

WHEREAS, the City authorized Alberto-Culver's request and provided the initial permanent financing through the issuance of revenue bonds under the Act (the "Series 2007 Bonds"), and the City leased the Project to Alberto-Culver pursuant to a Lease Agreement dated June 8, 2007 (the "Original Lease"); and

WHEREAS, Unilever Manufacturing (US), Inc. (the "Company") is the successor of Alberto-Culver by virtue of an acquisition dated in or around 2010; and

WHEREAS, Alberto-Culver assigned its rights and obligations in the Original Lease to the Company pursuant to an Assignment and Assumption of Lease dated March 27, 2012;

WHEREAS, the Payment in Lieu of Tax Agreement dated March 12, 2007, by and among Alberto-Culver, Craighead County and the City is binding on successors and assigns of Alberto-Culver;

WHEREAS, it is proposed that the City now provide further permanent financing, through the issuance of revenue bonds under the Act, for the cost of acquiring, constructing and equipping certain industrial facilities consisting of improvements, machinery, equipment and facilities (the "Series 2013 Bonds"), and that the City lease the Project to the Company, as part of the further ongoing construction and equipping of an industrial facility to be operated by the Company (or its successors or assigns) in the City, pursuant to a First Supplemental Lease Agreement, dated as of June 1, 2013 (the "First Supplemental Lease") (together with the Original Lease, hereinafter referred to as the "Lease"); and

WHEREAS, the Series 2013 Bonds will be secured by payments made pursuant to the Lease and by a mortgage and lien upon the Project, and no revenue of the City shall be pledged to repayment of the Series 2013 Bonds; and

WHEREAS, the payments pursuant to the Lease will be sufficient to pay all debt service and other fees and expenses related to the Series 2013 Bonds; and

WHEREAS, pursuant to and in accordance with the provisions of the Act, the City is now prepared to proceed with the further financing of the Project and to issue and sell up to \$41,000,000 in principal amount of its Taxable Industrial Development Revenue Bonds (Unilever Inc. Project), Series 2013, to provide such financing;

WHEREAS, the City previously issued its Taxable Industrial Development Revenue Bonds (Alberto-Culver USA, Inc. Project), Series 2007, which were issued, dated, bear interest, mature and are subject to redemption as set forth in the indenture dated as of June 8, 2007 (the "Trust Indenture"), by and between the City and Regions Bank, as trustee (the "Trustee"), and as authorized by Ordinance No. 16-2007; and

WHEREAS, the Series 2013 Bonds will be issued, dated, bear interest, mature and be subject to redemption as hereinafter set forth in the form of a First Supplemental Trust Indenture dated June 1, 2013 (the "First Supplemental Trust Indenture"), by and between the City and the Trustee, and as authorized by this Ordinance (the Trust Indenture and the First Supplemental Trust Indenture are hereinafter referred to as the "Trust Indenture"); and

WHEREAS, copies of the proposed forms of the Trust Indenture and Lease have been presented to and are before this meeting; and

WHEREAS, the Series 2013 Bonds will be privately placed pursuant to a Private Placement Agreement; and

WHEREAS, for the issuance of the Series 2013 Bonds to finance the Project, the City intends to authorize the preparation, delivery and execution of the following documents (and such other documents related thereto as may be necessary or desirable):

1. The First Supplemental Lease, as defined herein;
2. The First Supplemental Trust Indenture, as defined herein;
3. Private Placement Agreement by and among the City and Alberto-Culver with respect to the Series 2013 Bonds (the "Private Placement Agreement"); and
4. Private Placement Memorandum with respect to the Series 2013 Bonds (the "Private Placement Memorandum").

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF JONESBORO, ARKANSAS:

Section 1. Approval of Assignment and Assumption of Lease. The Assignment and Assumption of Lease and Agreement dated as of March 27, 2012 by and between Alberto-Culver, USA, Inc. and Unilever Manufacturing (US), Inc. is approved by the City.

Section 2. Approval of Unilever Manufacturing (US), Inc. as Party to Payment in Lieu of Tax Agreement. The City hereby approves the substitution of Unilever Manufacturing (US), Inc. for Alberto-Culver USA, Inc. as a party to the Payment in Lieu of Tax Agreement dated March 12, 2007.

Section 3. Authorization of Issuance of Bonds. There is hereby approved and authorized the issuance by the City of an aggregate principal amount not to exceed **\$41,000,000** of Series 2013 Bonds, subject to the terms and conditions set forth in the Trust Indenture.

Section 4. Sale of Bonds. The sale of the Series 2013 Bonds described in Section 1 hereof is hereby approved and authorized; provided, however, the sale of such Series 2013 Bonds shall be upon terms substantially as set forth in the Private

Placement Agreement, hereinafter authorized and subject to the further conditions that all such Series 2013 Bonds mature not later than June 1, 2033, bear interest at a rate not greater than 3% per annum, may be issued as fixed rate bonds or as variable rate bonds and may be subject to remarketing at a future date or dates.

Section 5. Approval and Authorization of Documents. The First Supplemental Lease, the First Supplemental Trust Indenture, the Private Placement Memorandum, and the Private Placement Agreement, be and the same are in all respects hereby adopted, as applicable, approved, authorized, ratified and/or confirmed, and the Mayor and City Clerk are each separately and individually hereby authorized and directed to execute, seal and/or deliver, for and on behalf of the City, the First Supplemental Lease, the First Supplemental Trust Indenture, the Private Placement Memorandum and the Private Placement Agreement, in substantially the form and content presented to the City on this date, or, if not so presented, in form approved by the Mayor, consistent with such conditions as are described herein; provided, however, that the final approval of the 2013 Bonds set forth in this Ordinance is expressly conditioned upon receipt of and approval by the Mayor of the aforementioned documents. The First Supplemental Lease, the First Supplemental Trust Indenture, the Private Placement Memorandum and the Private Placement Agreement may contain such changes, modifications, additions and deletions therein as shall to the Mayor be necessary, desirable or appropriate, their respective execution thereof to constitute conclusive evidence of their approval of any and all changes, modifications, additions and deletions.

Section 6. Authority To Execute and Deliver Additional Documents. The Mayor and the City Clerk are hereby authorized to direct Bond Counsel to prepare any and all additional certificates, documents and other papers and to perform all other acts as they may deem necessary or appropriate to implement and carry out the purposes and intent of this Ordinance, including the preamble thereto. The Mayor and the City Clerk are hereby each authorized to execute and deliver for and on behalf of the County any and all additional certificates, documents and other papers and to perform all other acts as they may deem necessary or appropriate to implement and carry out the purposes and intent of this Ordinance, including the preamble hereto, including, without limitation, upon entry into the Private Placement Agreement and the Private Placement Memorandum describing the 2013 Bonds authorized in Section 1 hereof.

Section 7. Public Hearing. The action of the Mayor and other officers of the City in giving notice of a public hearing with respect to the issuance of the Series 2013 Bonds and conducting such public hearing of the issuance of the Series 2013 Bonds is hereby approved and authorized and, with respect to such actions already taken, ratified and confirmed.

Section 8. Approval of Professionals. That Williams & Anderson PLC, of Little Rock, Arkansas, is hereby appointed as Bond Counsel with respect to the issuance of the 2013 Bonds, the fees and expenses of which firm shall be costs of the Project.

Section 9. Waiver of Competitive Bidding. That the City is hereby involved with the acquiring, constructing and equipping of industrial facilities, and pursuant to

applicable laws of the State of Arkansas, including the Act, competitive bidding is waived.

Section 10. Documents Available for Inspection. That the City Clerk is hereby authorized and directed to file in the office of the City Clerk, as part of this Ordinance, for inspection by any interested person, a copy of the First Supplemental Trust Indenture and First Supplemental Lease, and such documents shall be on file for inspection by any interested person.

Section 11. Payment of Costs of Issuance. That the Mayor is hereby authorized to pay (if not otherwise paid) the necessary expenses incidental to the issuance of the Series 2013 Bonds including, but not limited to, fees and costs of Bond Counsel, printing and publication costs, and filing fees, but solely from proceeds of the Series 2013 Bonds available for payment of such costs of issuance.

Section 12. Supplemental Orders. The City may, subject to the terms and conditions of the Ordinance and the Trust Indenture, pass and execute orders supplemental to this Ordinance which shall not be inconsistent with the terms and provisions hereof.

Section 13. Severability. If any provision of this Ordinance shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative or unenforceable to any extent whatsoever.

Section 14. Appeal. The time for taking any action to appeal this Ordinance is hereby fixed as thirty (30) days following the date of publication of this Order, at which time this Ordinance shall be final.

Section 15. Captions. The captions or headings in this Ordinance are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Ordinance.

PASSED: _____, 2013.

Mayor

ATTEST:

City Clerk

(S E A L)