



# City of Jonesboro

Municipal Center  
300 S. Church Street  
Jonesboro, AR 72401

## Meeting Agenda Finance & Administration Council Committee

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Tuesday, March 8, 2022

4:00 PM

Municipal Center, 300 S. Church

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### 1. Call To Order

### 2. Roll Call by City Clerk April Leggett

### 3. Approval of minutes

MIN-22:016 Minutes for the Finance Committee meeting on February 22, 2022

Attachments: [Finance Minutes 02222022\\_PB revised](#)

### 4. New Business

#### *ORDINANCES TO BE INTRODUCED*

ORD-22:015 AN ORDINANCE TO AUTHORIZE THE ISSUANCE OF INDUSTRIAL DEVELOPMENT REVENUE BONDS UNDER THE MUNICIPALITIES AND COUNTIES INDUSTRIAL DEVELOPMENT REVENUE BOND LAW FOR THE PURPOSE OF SECURING AND DEVELOPING INDUSTRY; TO AUTHORIZE THE SALE OF THE BONDS AND THE APPROVAL OF BOND PURCHASE AGREEMENTS, A PAYMENT IN LIEU OF TAXES AGREEMENT AND RELATED AGREEMENTS; TO AUTHORIZE THE EXECUTION AND DELIVERY OF TRUST INDENTURES SECURING THE BONDS; TO AUTHORIZE AND PRESCRIBE CERTAIN MATTERS PERTAINING TO THE PROJECT, THE ACQUISITION, CONSTRUCTION, AND EQUIPPING THEREOF, AND THE FINANCING THEREOF; TO AUTHORIZE THE EXECUTION AND DELIVERY OF A LEASE AGREEMENT RELATING TO THE PROJECT; AND FOR OTHER PURPOSES.

- Attachments:** [Bond Ordinance - Colson Series 2022A, B & C \(2\)](#)  
[Redline Page - Colson Ordinance](#)  
[Bond Ordinance - Colson Series 2022A, B & C](#)  
[PILOT Agreement - Colson Series 2022C](#)  
[Letter of Offer and Representations - Colson Series 2022B](#)  
[Bond Purchase Agreement - Colson Series 2022A](#)  
[Bond Purchase Agreement - Colson Series 2022C](#)  
[Intercreditor Agreement - Colson Series 2022B and Guaranties](#)  
[Lease Agreement - Colson Series 2022A, B & C](#)  
[Preliminary Official Statement - Jonesboro-Colson Series 2022A v2](#)  
[Trust Indenture - Colson Series 2022A & B](#)  
[Trust Indenture - Colson Series 2022C](#)  
[Memo to Jonesboro re Colson Caster](#)  
[RES-20-205 Colson Bonds\\_Redacted](#)

*RESOLUTIONS TO BE INTRODUCED*

- RES-22:052** RESOLUTION BY THE CITY COUNCIL OF THE CITY OF JONESBORO, ARKANSAS TO AMEND THE CONTRACT WITH BRACKETT KRENNERICH FOR ARCHITECTURAL SERVICE RELATED TO THE RENOVATION OF THE JONESBORO RECREATIONAL CENTER
- Sponsors:** Parks & Recreation and Engineering
- Attachments:** [Amendment 2 - Jonesboro Recreational Center](#)

**5. Pending Items**

**6. Other Business**

**7. Public Comments**

**8. Adjournment**



# City of Jonesboro

300 S. Church Street  
Jonesboro, AR 72401

## Text File

File Number: MIN-22:016

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**Agenda Date:**

**Version:** 1

**Status:** To Be Introduced

**In Control:** Finance & Administration Council Committee

**File Type:** Minutes

Minutes for the Finance Committee meeting on February 22, 2022



# City of Jonesboro

Municipal Center  
300 S. Church Street  
Jonesboro, AR 72401

## Meeting Minutes Finance & Administration Council Committee

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Tuesday, February 22, 2022

4:00 PM

Municipal Center, 300 S. Church

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### 1. Call To Order

### 2. Roll Call by City Clerk April Leggett

**Present** 7 - Charles Coleman; Ann Williams; John Street; David McClain; LJ Bryant; Joe Hafner and Brian Emison

### 3. Approval of minutes

[MIN-22:012](#)

Minutes for the Finance Committee meeting on February 8, 2022.

**Attachments:** [MINUTES](#)

**A motion was made by Councilperson John Street, seconded by Councilperson Charles Coleman, that this matter be Passed . The motion PASSED with the following vote.**

**Aye:** 6 - Charles Coleman; Ann Williams; John Street; David McClain; LJ Bryant and Brian Emison

### 4. New Business

#### *RESOLUTIONS TO BE INTRODUCED*

[RES-22:036](#)

A RESOLUTION OF THE CITY OF JONESBORO, ARKANSAS TO CONTRACT WITH FIRST COMMUNITY BANK FOR SPONSORSHIP OF ONE FIELD AT THE JONESBORO SHOOTING SPORTS COMPLEX

**Attachments:** [First Community Bank\\_SSC2022](#)

**A motion was made by Councilperson John Street, seconded by Councilperson Charles Coleman, that this matter be Recommended to Council . The motion PASSED with the following vote.**

**Aye:** 6 - Charles Coleman; Ann Williams; John Street; David McClain; Joe Hafner and Brian Emison

[RES-22:041](#)

RESOLUTION BY THE CITY COUNCIL OF THE CITY OF JONESBORO, ARKANSAS TO PROVIDE FOR THE EXECUTION AND MAINTENANCE OF A LETTER OF CREDIT TO BE ISSUED TO THE ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT, DIVISION OF ENVIRONMENTAL QUALITY (DEQ)

**A motion was made by Councilperson John Street, seconded by Councilperson Brian Emison, that this matter be Recommended to Council . The motion PASSED with the following vote.**

**Aye:** 6 - Charles Coleman;Ann Williams;John Street;David McClain;LJ Bryant and Brian Emison

[RES-22:042](#)

A RESOLUTION AUTHORIZING THE CITY OF JONESBORO, ARKANSAS TO ENTER INTO AGREEMENT WITH THE DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE ASSISTANCE (BJA), AND ACCEPT THE FY 2021 BULLETPROOF VEST PARTNERSHIP GRANT

**A motion was made by Councilperson John Street, seconded by Councilperson Ann Williams, that this matter be Recommended to Council . The motion PASSED with the following vote.**

**Aye:** 6 - Charles Coleman;Ann Williams;John Street;David McClain;LJ Bryant and Brian Emison

[RES-22:043](#)

RESOLUTION BY THE CITY COUNCIL OF THE CITY OF JONESBORO, ARKANSAS AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT TO ESTABLISH JAIL FEES BETWEEN THE CITY OF JONESBORO AND CRAIGHEAD COUNTY

**Attachments:** [INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF JONESB](#)

**A motion was made by Councilperson John Street, seconded by Councilperson Ann Williams, that this matter be Recommended to Council . The motion PASSED with the following vote.**

**Aye:** 6 - Charles Coleman;Ann Williams;John Street;David McClain;LJ Bryant and Brian Emison

[RES-22:044](#)

A RESOLUTION TO PARTNER WITH JONESBORO UNLIMITED FOR THE DEVELOPMENT OF A NATURAL SURFACE MOUNTAIN BIKE TRAIL PLAN FOR THE CITY OF JONESBORO

**Attachments:** [studioDRIFT\\_JonesboroMBTrails\\_FINAL](#)  
[Finance Comm Mtg\\_2-22-22.pptx](#)

*Councilmember David McClain stated that he would like more clarification regarding this plan. I had asked before if this plan was in conjunction with the plan from a few years ago, if so how will it tie into that plan? Chairman Joe Hafner stated that he thought it was around 2018 there was a master hard surface bike-ped plan.*

*Chief Operations Officer Tony Thomas explained that mountain bike plans are basically soft surface, they do work in conjunction with one another. You can easily go from a hard surface to a soft surface. This particular plan is to primarily ensure that we are utilizing the current soft surface trails that are already in place at Craighead Forest Park. This is also an opportunity to look for some off shoots in other areas that would be easy to develop. Initially it is less costly to develop soft surface trails but, later on it could be easily tied into a hard surface trail. Councilmember McClain said okay. But, I would still like to see a hard copy of the updated bike-ped plan with maybe some bullet points showing where we are, and this is what our future plans are.*

*Lindsey Wingo, Project Manager for Studio DRIFT stated that this is an overlay to our existing plan with the idea to develop lower infrastructure cost connections so that the public can utilize and test what we need. All development will stay even if a multi-use*

trail is added in the coming years. Our intent will be to go directly into the construction of a soft surface trail once the plan is complete. Again, it is an overlay of the existing plan that we had with ONE-Jonesboro. Councilmember McClain stated again that he would like to see a hard copy of where we are at this point. Chairman Hafner stated that I think what Mr. McClain is referring to is that there is always talk of the Martin Luther King trail, the trail between ASU and University Heights, and those are hard surface trails. Mr. Thomas stated that we do have that schematic plan, we have what is programmed for this particular point in time, and then we have what is slated for future programs and we will get that to you all. Chairman Hafner also stated that once this is put together it may be a good idea for Martin or Lindsey to come and give a presentation to the whole council if this moves forward out of the Finance Committee.

Councilmember Ann Williams stated that she would like to see the plan as far as how the entrance or access will be connected into Craighead Forest. Chairman Hafner stated right now there is a back access to the trail that connects to the back of Craighead Forest Park off of Craighead Forest Road. Mr. Thomas stated that he thought this plan would include those items that Ms. Williams commented on. Councilmember LJ Bryant stated that he hoped that bike lanes would be included in this plan as well. We have talked about that some internally and I know you all have been working on that and I hope that doesn't just fall to the wayside. Much like the soft-surface trails, a lot of it could be done in-house. Councilmember John Street stated that MPO and our Engineering has already gotten a lot of data on just that very thing.

**A motion was made by Councilperson John Street, seconded by Councilperson Ann Williams, that this matter be Recommended to Council . The motion PASSED with the following vote.**

**Aye:** 6 - Charles Coleman;Ann Williams;John Street;David McClain;LJ Bryant and Brian Emison

## **5. Pending Items**

### [ORD-22:009](#)

AN ORDINANCE TO WAIVE COMPETITIVE BIDDING AND AUTHORIZE A CONTRACT WITH STUDIO DRIFT TO PROVIDE A NATURAL SURFACE MOUNTAIN BIKE TRAIL RESEARCH, CONCEPT, DESIGN AND IMPLEMENTATION PLAN FOR THE CITY OF JONESBORO.

**Attachments:** [studioDRIFT\\_JonesboroMBTrails\\_121021](#)

Councilmember John Street motioned to forward to full council. Chief Operations Officer Tony Thomas said, before you all do that, I would ask, we requested that this be tabled at the last meeting. There has been an effort to move this forward because of the funding that was provided by Jonesboro Unlimited. But, we did, after that meeting, it was determined that the ordinance to waive competitive bidding was not necessary because this was not a professional service that we were acquiring, but that we were partnering with someone else. Thus, the language that you saw in the previous resolution. Therefore, we are asking that you table this indefinitely because we do not think this process is necessary to move forward. Councilmember Street said, he would withdraw his motion and move that we postpone indefinitely.

Councilmember Dr. Charles Coleman motioned, seconded by Councilmember David McClain, to postpone ORD-22:009 indefinitely. All voted aye.

**A motion was made by Councilperson Charles Coleman, seconded by**

**Councilperson David McClain, that this matter be Postponed Indefinitely . The motion PASSED with the following vote.**

**Aye:** 6 - Charles Coleman;Ann Williams;John Street;David McClain;LJ Bryant and Brian Emison

**6. Other Business**

**7. Public Comments**

**8. Adjournment**

**A motion was made by Councilperson David McClain, seconded by Councilperson Brian Emison, that this meeting be Adjourned . The motion PASSED with the following vote.**

**Aye:** 6 - Charles Coleman;Ann Williams;John Street;David McClain;LJ Bryant and Brian Emison



# City of Jonesboro

300 S. Church Street  
Jonesboro, AR 72401

## Text File

File Number: ORD-22:015

**Agenda Date:**

**Version:** 1

**Status:** To Be Introduced

**In Control:** Finance & Administration Council Committee

**File Type:** Ordinance

**AN ORDINANCE TO AUTHORIZE THE ISSUANCE OF INDUSTRIAL DEVELOPMENT REVENUE BONDS UNDER THE MUNICIPALITIES AND COUNTIES INDUSTRIAL DEVELOPMENT REVENUE BOND LAW FOR THE PURPOSE OF SECURING AND DEVELOPING INDUSTRY; TO AUTHORIZE THE SALE OF THE BONDS AND THE APPROVAL OF BOND PURCHASE AGREEMENTS, A PAYMENT IN LIEU OF TAXES AGREEMENT AND RELATED AGREEMENTS; TO AUTHORIZE THE EXECUTION AND DELIVERY OF TRUST INDENTURES SECURING THE BONDS; TO AUTHORIZE AND PRESCRIBE CERTAIN MATTERS PERTAINING TO THE PROJECT, THE ACQUISITION, CONSTRUCTION, AND EQUIPPING THEREOF, AND THE FINANCING THEREOF; TO AUTHORIZE THE EXECUTION AND DELIVERY OF A LEASE AGREEMENT RELATING TO THE PROJECT; AND FOR OTHER PURPOSES.**

**WHEREAS**, the City of Jonesboro, Arkansas (the “City”) is authorized under the provisions of Amendment 65 to the Arkansas Constitution and the Municipalities and Counties Industrial Development Revenue Bond Law, Ark. Code Ann. §§ 14-164-201 *et seq.* and Ark. Code Ann. §§ 14-164-701 *et seq.*, each as amended from time to time (collectively, the “Act”), to own, acquire, construct, equip, and lease facilities to secure and develop industry and to assist in the financing thereof by the issuance of bonds payable from the revenues derived from such facilities; and

**WHEREAS**, Colson Caster LLC or its affiliate (the “Company”) has evidenced its interest in acquiring, constructing, and equipping an industrial facility in the City if permanent financing can be provided through the issuance of revenue bonds under the authority of the Act; and

**WHEREAS**, the City has agreed to cooperate with the Company in the acquisition, construction, and equipping of an industrial facility in the City and to finance the acquisition and construction of manufacturing facilities, infrastructure and improvements and the acquisition and installation of facilities and equipment for the development, manufacture, warehousing and distribution of casters and wheels to be located at 2121 Barnhill Road, Jonesboro, Arkansas (the “Project”) relating to the operations of the Company; and

**WHEREAS**, to provide permanent financing of the Project costs, necessary costs and expenditures incidental thereto, and the cost of the issuance of bonds, the City will issue its taxable economic development revenue bonds under the provisions of the Act in one or more series, in the aggregate principal amount of not to exceed \$24,000,000.00, to be comprised of (i) not to exceed \$11,000,000.00 taxable economic development revenue bonds issued pursuant to the Act and

guaranteed (the “Guaranties”) by the Arkansas Development Finance Authority (“ADFA”) and the Arkansas Economic Development Commission (“AEDC”) and designated as the “City of Jonesboro, Arkansas Taxable Economic Development Revenue Bonds (ADFA/AEDC Guaranty Programs) (Colson Caster Project), Series 2022A (the “Series A Bonds”), (ii) not to exceed \$4,000,000.00 taxable economic development revenue bonds issued pursuant to the Act and designated as the “City of Jonesboro, Arkansas Taxable Economic Development Revenue Bonds (Colson Caster Project), Series 2022B (the “Series B Bonds”), and (iii) not to exceed \$9,000,000.00 taxable economic development revenue bonds issued pursuant to the Act and designated as the “City of Jonesboro, Arkansas Taxable Economic Development Revenue Bonds (Colson Caster Project), Series 2022C (the “Series C Bonds” and together with the Series A Bonds and the Series C Bonds, the “Bonds”); and

**WHEREAS**, the Series A Bonds and Series B Bonds will be issued pursuant to the provisions of a Trust Indenture (the “Series A and B Indenture”) and the Series C Bonds will be issued pursuant to the provisions of a Trust Indenture (the “Series C Indenture” and with the Series A & B Indenture, the “Indentures”) to be entered into between the City and a trustee (the “Trustee”) to be selected upon the mutual agreement of the City and the Company; and

**WHEREAS**, the City and the Company intend to enter into a Lease Agreement (the “Lease Agreement”) relating to the real and personal property constituting the Project, which contemplates that the Project will be leased to the Company, with an option to purchase for a nominal price, and the rental payments therefor together with other moneys available shall be sufficient to pay debt service on the Bonds and all related costs; and

**WHEREAS**, the Series A Bonds will be sold to Crews & Associates, Inc. (the “Underwriter”) pursuant to a Bond Purchase Agreement (the “Series A Purchase Agreement”) between the City, the Company and the Underwriter; and

**WHEREAS**, in order to market the Series A Bonds and determine the total principal amount of the Series A Bonds, the Underwriter requires an Official Statement (and a Preliminary Official Statement) (collectively, the “Official Statement”) in a form deemed final pursuant to Rule 15c2-12 of the Securities and Exchange Commission, as described in the Series A Purchase Agreement; and

**WHEREAS**, the Series A Bonds will be special obligations of the City payable solely from moneys derived from payments by the Company to the City pursuant to the Lease Agreement on a parity basis with the Series B Bonds and any payments made by ADFA and AEDC under the Guaranties; and

**WHEREAS**, the Series B Bonds will be placed with “accredited investors” and/or “qualified institutional buyers” (as such terms are defined in the Securities Act of 1933 and related regulations) (the “Series B Purchaser”) by Crews & Associates, Inc. (the “Placement Agent”) pursuant to the terms of a Letter of Offer and Representations (the “Letter of Offer and Representations”) between the City and the Purchaser; and

**WHEREAS**, the Series B Bonds will be special obligations of the City payable solely from moneys derived from payments by the Company to the City pursuant to the Lease Agreement on a parity basis with the Series A Bonds and a valid first priority mortgage on the Project pursuant to a Mortgage, Security Agreement and Fixture Filing (the “Mortgage”), a valid first priority leasehold mortgage on the Company’s leasehold interest in the Project, a valid first priority security interest in all machinery, equipment, furnishings, and personal property included within the Project pursuant to a Security Agreement (the “Security Agreement”) and an assignment of any and all rents and leases on the Project pursuant to an Assignment of Rents and Leases (the “Assignment of Rents and Leases”

and together with the Mortgage and Security Agreement, the “Security Documents”), granted by the Company in favor of the Collateral Agent (defined below). The Series B Bonds and the Guaranties are secured by the Security Documents on a parity basis; and

**WHEREAS**, ADFA, AEDC, the City, the Trustee, the Company and the Series B Purchaser will enter into an intercreditor agreement (the “Intercreditor Agreement”) pursuant to which ADFA, AEDC and the Series B Purchaser will share on a ratable basis the Security Documents as pledged on a parity basis for the Series B Bonds and the Guaranties and a collateral agent (the “Collateral Agent”) will be appointed upon mutual agreement of the parties thereto to act on behalf of ADFA, AEDC and the Series B Purchaser; and

**WHEREAS**, the City proposes to sell the Series C Bonds to an affiliate of the Company (the “Series C Purchaser”) pursuant to Bond Purchase Agreement (the “Series C Purchase Agreement”) by and between the City and the Series C Purchaser; and

**WHEREAS**, the Series C Bonds will be special obligations of the City payable solely from moneys derived from payments by the Company to the City pursuant to the Lease Agreement on a subordinate basis with the Series A Bonds and the Series B Bonds; and

**WHEREAS**, to induce the City to proceed with the issuance of the Bonds for the purpose indicated, which will inure to the benefit of the Company, the City and the Company will enter into a Payment in Lieu of Taxes Agreement ( the “PILOT Agreement”); and

**WHEREAS**, the City caused a form of a notice of public hearing to be published on November 20, 2020, and the City hereby ratifies the form of notice published; and

**WHEREAS**, an open public hearing on the question of the issuance of the Bonds was held before the City Council on December 1, 2020 following publication of notice of the hearing and that having heard all persons desiring to be heard in the matter, the City has taken under advisement the comments and statements of such persons, and declared the public hearing duly closed; and

**WHEREAS**, the completion of the Project will furnish additional employment and other benefits to and be in the best interest of the City and its residents.

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

**Section 1.** There be, and there is hereby, authorized and directed the following:

(a)(i) The Series A Bonds shall be issued in an aggregate principal amount not to exceed Eleven Million and 00/100 Dollars (\$11,000,000.00), and the Series A Bonds shall be issued in the forms and denominations, shall be dated, shall be numbered, and shall be subject to redemption prior to maturity all upon the terms and conditions set forth in the Series A and B Indenture. The Series A Bonds shall mature not later than December 31, 2037, and bear interest at a rate or rates not to exceed six and three-quarters percent (6.75%) per annum.

(ii) The Series B Bonds shall be issued in an aggregate principal amounts not to exceed Four Million and 00/100 Dollars (\$4,000,000.00), and the Series B Bonds shall be sold to the Series B Purchaser for a price of par plus the costs of issuance upon the terms and conditions set forth in the Letter of Offer and Representations. The Series B Bonds shall mature not later than December 31, 2037, and bear interest at a rate or rates not to exceed six and three-quarters percent (6.75%) per annum.

(iii) The Series C Bonds shall be issued in an aggregate principal amount not to exceed Nine Million and 00/100 Dollars (\$9,000,000.00), and the Series C Bonds shall be sold to the Series C Purchaser for a price of par plus the costs of issuance upon the terms and conditions set forth in the Series C Purchase Agreement. The Series C Bonds shall mature not later than December 31, 2042,

and bear interest at a rate or rates not to exceed six and three-quarters percent (6.75%) per annum.

(b) The Bonds shall bear interest at the rate or rates per annum as set forth in the Indentures, so long as no rate exceeds the maximum permitted by law. The Bonds shall mature (or be subject to mandatory sinking fund redemption) on the date or dates and in the principal amount or amounts as set forth in the Indentures, so long as the final maturity of the Bonds is not greater than 20 years from their date of issuance. The Bonds shall be issued in the forms and denominations, shall be dated, shall be numbered, and shall be subject to redemption prior to maturity all upon the terms and conditions set forth in the Indentures.

(c) The acquisition, construction, and equipping of the Project, and, in connection therewith, the execution of any necessary architectural, engineering, or construction contracts or the acceptance of an assignment of any such contracts previously executed by the Company for the construction and equipping of the Project on behalf of the City is hereby authorized and directed.

**Section 2.** (a) The Series A Bonds shall be sold to the Underwriter for a purchase price negotiated with the Company, plus original issue premium or minus original issue discount, if any, plus accrued interest, if any, from the date of the Series A Bonds to the date of delivery, and upon the terms and conditions set forth in the Series A Purchase Agreement. There be, and there is hereby, authorized and directed the execution and delivery of the Series A Purchase Agreement, and the Mayor and City Clerk are hereby authorized to execute, acknowledge, and deliver the Series A Purchase Agreement for and on behalf of the City. The Series A Purchase Agreement is hereby approved in substantially the form submitted to this meeting (and a copy of such Series A Purchase Agreement is on file with the City Clerk and available for inspection by any interested person), and the Mayor is hereby authorized to confer with the Company and the Underwriter in order to complete the Series A Purchase Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by the Mayor, his execution to constitute conclusive evidence of such approval.

There is hereby authorized the preparation and distribution to various prospective and actual purchasers of the Series A Bonds of the Official Statement describing the Series A Bonds and their security and setting forth such other information as may be determined to be necessary or desirable. The Mayor is hereby authorized to execute such Official Statement on behalf of the City in substantially the form submitted to this meeting (and a copy of such Official Statement is on file with the City Clerk and available for inspection by any interested person), with such changes as shall be approved by the Mayor, his execution to constitute conclusive evidence of such approval.

(b) The Series B Bonds will be privately placed with the Series B Purchaser for the purchase price of par plus costs of issuance pursuant to the terms of the Letter of Offer and Representations. There be, and there is hereby, authorized and directed the execution and delivery of the Letter of Offer and Representations, and the Mayor and City Clerk are hereby authorized to execute, acknowledge, and deliver the Letter of Offer and Representations for and on behalf of the City. The Letter of Offer and Representations is hereby approved in substantially the form submitted to this meeting (and a copy of such Letter of Offer and Representations is on file with the City Clerk and available for inspection by any interested person), and the Mayor is hereby authorized to confer with the Company and the Series B Purchaser in order to complete the Letter of Offer and Representations in substantially the form submitted to this meeting, with such changes as shall be approved by the Mayor, his execution to constitute conclusive evidence of such approval.

(c) The Series C Bonds shall be sold to the Series C Purchaser for a price of par plus the costs of issuance upon the terms and conditions set forth in the Series C Purchase Agreement.

There be, and there is hereby, authorized and directed the execution and delivery of the Series C Purchase Agreement, and the Mayor and City Clerk are hereby authorized to execute, acknowledge, and deliver the Series C Purchase Agreement for and on behalf of the City. The Series C Purchase Agreement is hereby approved in substantially the form submitted to this meeting (and a copy of such Series C Purchase Agreement is on file with the City Clerk and available for inspection by any interested person), and the Mayor is hereby authorized to confer with the Company and the Series C Purchaser in order to complete the Series C Purchase Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by the Mayor, his execution to constitute conclusive evidence of such approval.

(d) That to further prescribe the terms and conditions upon which the Bonds are to be executed, authenticated, issued, accepted, held and secured, the Mayor is hereby authorized and directed (when requested to do so by the Company) to execute and acknowledge the Indentures, and the City Clerk is hereby authorized and directed to execute and acknowledge the Indentures and to affix the seal of the City thereto, and the Mayor and City Clerk are hereby authorized and directed to cause the Indentures to be accepted, executed and acknowledged by the Trustee. The Indentures are hereby approved in substantially the forms submitted to this meeting (and a copy of such Indentures are on file with the City Clerk and available for inspection by any interested person), and the Mayor is hereby authorized to confer with the Trustee and the Company in order to complete the Indentures in substantially the forms submitted to this meeting with such changes as shall be approved by the Mayor, his execution to constitute conclusive evidence of such approval.

**Section 3.** There be, and there is hereby, authorized and directed the execution and delivery of the Lease Agreement, and the Mayor and City Clerk are hereby authorized to execute, acknowledge, and deliver the Lease Agreement for and on behalf of the City. The Lease Agreement is hereby approved in substantially the form submitted to this meeting (and a copy of such Lease Agreement is on file with the City Clerk and available for inspection by any interested person), and the Mayor is hereby authorized to confer with the Company, in order to complete the Lease Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by the Mayor, his execution to constitute conclusive evidence of such approval.

**Section 4.** There be, and there is hereby, authorized and directed the execution and delivery of the Intercreditor Agreement; and the Mayor and City Clerk are hereby authorized to execute, acknowledge, and deliver the Intercreditor Agreement for and on behalf of the City. The Intercreditor Agreement is hereby approved in substantially the form submitted to this meeting (and a copy of such Intercreditor Agreement is on file with the City Clerk and available for inspection by any interested person), and the Mayor is hereby authorized to confer with the Company, in order to complete the Intercreditor Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by the Mayor, his execution to constitute conclusive evidence of such approval.

**Section 5.** In connection with the issuance of the Bonds, there be, and there is hereby, authorized and directed the execution and delivery of the PILOT Agreement, and the Mayor and City Clerk are hereby authorized to execute, acknowledge, and deliver the PILOT Agreement for and on behalf of the City. The PILOT Agreement is hereby approved in substantially the form submitted to this meeting (and a copy of such PILOT Agreement is on file with the City Clerk and available for inspection by any interested person), and the Mayor is hereby authorized to confer with the Company, in order to complete the PILOT Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by the Mayor, his execution to constitute conclusive evidence of

such approval.

**Section 6.** The Mayor and City Clerk, for and on behalf of the City, are hereby authorized and directed to do any and all things necessary to effect (i) the execution of the Lease Agreement, (ii) the performance of the City's obligations under the Lease Agreement, (iii) the execution and delivery of the Indentures, (iv) the performance of all obligations of the City under and pursuant to the Indentures, (v) the execution and delivery of the Bonds, (vi) the execution and delivery of the Official Statement, (vii) the execution and delivery of the Intercreditor Agreement, (viii) the performance of the City's obligations under the Intercreditor Agreement, (ix) the execution and delivery of the PILOT Agreement, (x) the performance of the City's obligations under the PILOT Agreement, (xi) the execution and delivery of the Series A Purchase Agreement, (xii) the performance of the City's obligations under the Series A Purchase Agreement, (xiii) the execution and delivery of the Letter of Offer and Representations, (xiv) the performance of the City's obligations under the Letter of Offer and Representations, (xv) the execution and delivery of the Series C Purchase Agreement, (xvi) the performance of the City's obligations under the Series C Purchase Agreement, and (xvii) the performance of all other acts of whatever nature necessary to effect and carry out the authority conferred by this Ordinance. The Mayor and the City Clerk are further authorized and directed, for and on behalf of the City, in connection with the issuance of the Bonds and in connection with on-going rights and obligations that arise after issuance and prior to maturity of the Bonds, to execute all papers, documents, certificates, and other instruments that may be required for the carrying out of such authority or to evidence the exercise thereof, including, but not limited to, the execution of a Home Office Payment Agreement, a Memorandum of Lease, Delivery Instructions and other closing certificates.

**Section 7.** The Project involves the acquisition, constructing, and equipping of a complex industrial project, requiring highly specialized work and specialized types of machinery and equipment. In compliance with Ark. Code. Ann. § 14-164-204, it has been and is hereby determined by the City Council that competitive bidding be, and the same is hereby, waived as to this particular industrial project. This action is taken by the City Council pursuant to applicable laws of the State of Arkansas, including particularly the Act.

**Section 8.** All actions heretofore taken by the City, the Company, the Underwriter, the Placement Agent, the Series B Purchaser and the Series C Purchaser in connection with the issuance, offer and sale of the Bonds and the development and completion of the Project are hereby in all respects ratified and approved.

**Section 9.** *Severability.* In the event any title, section, paragraph, item, sentence, clause, phrase, or word of this ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of this ordinance, which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this ordinance.

**Section 10.** *Repealer.* All ordinances or resolutions of the City in conflict herewith are hereby repealed to the extent of such conflict.

**ORDINANCE NO. 22: \_\_\_\_\_**

**AN ORDINANCE TO AUTHORIZE THE ISSUANCE OF INDUSTRIAL DEVELOPMENT REVENUE BONDS UNDER THE MUNICIPALITIES AND COUNTIES INDUSTRIAL DEVELOPMENT REVENUE BOND LAW FOR THE PURPOSE OF SECURING AND DEVELOPING INDUSTRY; TO AUTHORIZE THE SALE OF THE BONDS AND THE APPROVAL OF BOND PURCHASE AGREEMENTS, A PAYMENT IN LIEU OF TAXES AGREEMENT AND RELATED AGREEMENTS; TO AUTHORIZE THE EXECUTION AND DELIVERY OF TRUST INDENTURES SECURING THE BONDS; TO AUTHORIZE AND PRESCRIBE CERTAIN MATTERS PERTAINING TO THE PROJECT, THE ACQUISITION, CONSTRUCTION, AND EQUIPPING THEREOF, AND THE FINANCING THEREOF; TO AUTHORIZE THE EXECUTION AND DELIVERY OF A LEASE AGREEMENT RELATING TO THE PROJECT; AND FOR OTHER PURPOSES.**

**WHEREAS**, the City of Jonesboro, Arkansas (the “City”) is authorized under the provisions of Amendment 65 to the Arkansas Constitution and the Municipalities and Counties Industrial Development Revenue Bond Law, Ark. Code Ann. §§ 14-164-201 *et seq.* and Ark. Code Ann. §§ 14-164-701 *et seq.*, each as amended from time to time (collectively, the “Act”), to own, acquire, construct, equip, and lease facilities to secure and develop industry and to assist in the financing thereof by the issuance of bonds payable from the revenues derived from such facilities; and

**WHEREAS**, Colson Caster LLC or its affiliate (the “Company”) has evidenced its interest in acquiring, constructing, and equipping an industrial facility in the City if permanent financing can be provided through the issuance of revenue bonds under the authority of the Act; and

**WHEREAS**, the City has agreed to cooperate with the Company in the acquisition, construction, and equipping of an industrial facility in the City and to finance the acquisition and construction of manufacturing facilities, infrastructure and improvements and the acquisition and installation of facilities and equipment for the development, manufacture, warehousing and distribution of casters and wheels to be located at 2121 Barnhill Road, Jonesboro, Arkansas (the “Project”) relating to the operations of the Company; and

**WHEREAS**, to provide permanent financing of the Project costs, necessary costs and expenditures incidental thereto, and the cost of the issuance of bonds, the City will issue its taxable economic development revenue bonds under the provisions of the Act in one or more series, in the aggregate principal amount of not to exceed \$24,000,000.00, to be comprised of (i) not to exceed \$11,000,000.00 taxable economic development revenue bonds issued pursuant to the Act and guaranteed (the “Guaranties”) by the Arkansas Development Finance Authority (“ADFA”) and the Arkansas Economic Development Commission (“AEDC”) and designated as the “City of Jonesboro, Arkansas Taxable Economic Development Revenue Bonds (ADFA/AEDC Guaranty Programs) (Colson Caster Project), Series 2022A (the “Series A Bonds”), (ii) not to exceed \$4,000,000.00 taxable economic development revenue bonds issued pursuant to the Act and designated as the “City of Jonesboro, Arkansas Taxable Economic Development Revenue Bonds (Colson Caster Project), Series 2022B (the “Series B Bonds”), and (iii) not to exceed \$9,000,000.00 taxable economic development revenue bonds issued pursuant

to the Act and designated as the “City of Jonesboro, Arkansas Taxable Economic Development Revenue Bonds (Colson Caster Project), Series 2022C (the “Series C Bonds” and together with the Series A Bonds and the Series C Bonds, the “Bonds”); and

**WHEREAS**, the Series A Bonds and Series B Bonds will be issued pursuant to the provisions of a Trust Indenture (the “Series A and B Indenture”) and the Series C Bonds will be issued pursuant to the provisions of a Trust Indenture (the “Series C Indenture” and with the Series A & B Indenture, the “Indentures”) to be entered into between the City and a trustee (the “Trustee”) to be selected upon the mutual agreement of the City and the Company; and

**WHEREAS**, the City and the Company intend to enter into a Lease Agreement (the “Lease Agreement”) relating to the real and personal property constituting the Project, which contemplates that the Project will be leased to the Company, with an option to purchase for a nominal price, and the rental payments therefor together with other moneys available shall be sufficient to pay debt service on the Bonds and all related costs; and

**WHEREAS**, the Series A Bonds will be sold to Crews & Associates, Inc. (the “Underwriter”) pursuant to a Bond Purchase Agreement (the “Series A Purchase Agreement”) between the City, the Company and the Underwriter; and

**WHEREAS**, in order to market the Series A Bonds and determine the total principal amount of the Series A Bonds, the Underwriter requires an Official Statement (and a Preliminary Official Statement) (collectively, the “Official Statement”) in a form deemed final pursuant to Rule 15c2-12 of the Securities and Exchange Commission, as described in the Series A Purchase Agreement; and

**WHEREAS**, the Series A Bonds will be special obligations of the City payable solely from moneys derived from payments by the Company to the City pursuant to the Lease

Agreement on a parity basis with the Series B Bonds and any payments made by ADFA and AEDC under the Guaranties; and

**WHEREAS**, the Series B Bonds will be placed with “accredited investors” and/or “qualified institutional buyers” (as such terms are defined in the Securities Act of 1933 and related regulations) (the “Series B Purchaser”) by Crews & Associates, Inc. (the “Placement Agent”) pursuant to the terms of a Letter of Offer and Representations (the “Letter of Offer and Representations”) between the City and the Purchaser; and

**WHEREAS**, the Series B Bonds will be special obligations of the City payable solely from moneys derived from payments by the Company to the City pursuant to the Lease Agreement on a parity basis with the Series A Bonds and a valid first priority mortgage on the Project pursuant to a Mortgage, Security Agreement and Fixture Filing (the “Mortgage”), a valid first priority leasehold mortgage on the Company’s leasehold interest in the Project, a valid first priority security interest in all machinery, equipment, furnishings, and personal property included within the Project pursuant to a Security Agreement (the “Security Agreement”) and an assignment of any and all rents and leases on the Project pursuant to an Assignment of Rents and Leases (the “Assignment of Rents and Leases” and together with the Mortgage and Security Agreement, the “Security Documents”), granted by the Company in favor of the Collateral Agent (defined below). The Series B Bonds and the Guaranties are secured by the Security Documents on a parity basis; and

**WHEREAS**, ADFA, AEDC, the City, the Trustee, the Company and the Series B Purchaser will enter into an intercreditor agreement (the “Intercreditor Agreement”) pursuant to which ADFA, AEDC and the Series B Purchaser will share on a ratable basis the Security Documents as pledged on a parity basis for the Series B Bonds and the Guaranties and a

collateral agent (the “Collateral Agent”) will be appointed upon mutual agreement of the parties thereto to act on behalf of ADFA, AEDC and the Series B Purchaser; and

**WHEREAS**, the City proposes to sell the Series C Bonds to an affiliate of the Company (the “Series C Purchaser”) pursuant to Bond Purchase Agreement (the “Series C Purchase Agreement”) by and between the City and the Series C Purchaser; and

**WHEREAS**, the Series C Bonds will be special obligations of the City payable solely from moneys derived from payments by the Company to the City pursuant to the Lease Agreement on a subordinate basis with the Series A Bonds and the Series B Bonds; and

**WHEREAS**, to induce the City to proceed with the issuance of the Bonds for the purpose indicated, which will inure to the benefit of the Company, the City and the Company will enter into a Payment in Lieu of Taxes Agreement ( the “PILOT Agreement”); and

**WHEREAS**, the City caused a form of a notice of public hearing to be published on November 20, 2020, and the City hereby ratifies the form of notice published; and

**WHEREAS**, an open public hearing on the question of the issuance of the Bonds was held before the City Council on December 1, 2020 following publication of notice of the hearing and that having heard all persons desiring to be heard in the matter, the City has taken under advisement the comments and statements of such persons, and declared the public hearing duly closed; and

**WHEREAS**, the completion of the Project will furnish additional employment and other benefits to and be in the best interest of the City and its residents.

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

**Section 1.** There be, and there is hereby, authorized and directed the following:

(a)(i) The Series A Bonds shall be issued in an aggregate principal amount not to exceed Eleven Million and 00/100 Dollars (\$11,000,000.00), and the Series A Bonds shall be issued in the forms and denominations, shall be dated, shall be numbered, and shall be subject to redemption prior to maturity all upon the terms and conditions set forth in the Series A and B Indenture. The Series A Bonds shall mature not later than December 31, 2037, and bear interest at a rate or rates not to exceed six and three-quarters percent (6.75%) per annum.

(ii) The Series B Bonds shall be issued in an aggregate principal amounts not to exceed Four Million and 00/100 Dollars (\$4,000,000.00), and the Series B Bonds shall be sold to the Series B Purchaser for a price of par plus the costs of issuance upon the terms and conditions set forth in the Letter of Offer and Representations. The Series B Bonds shall mature not later than December 31, 2037, and bear interest at a rate or rates not to exceed six and three-quarters percent (6.75%) per annum.

(iii) The Series C Bonds shall be issued in an aggregate principal amount not to exceed Nine Million and 00/100 Dollars (\$9,000,000.00), and the Series C Bonds shall be sold to the Series C Purchaser for a price of par plus the costs of issuance upon the terms and conditions set forth in the Series C Purchase Agreement. The Series C Bonds shall mature not later than December 31, 2042, and bear interest at a rate or rates not to exceed six and three-quarters percent (6.75%) per annum.

(b) The Bonds shall bear interest at the rate or rates per annum as set forth in the Indentures, so long as no rate exceeds the maximum permitted by law. The Bonds shall mature (or be subject to mandatory sinking fund redemption) on the date or dates and in the principal amount or amounts as set forth in the Indentures, so long as the final maturity of the Bonds is not greater than 20 years from their date of issuance. The Bonds shall be issued in the forms and

denominations, shall be dated, shall be numbered, and shall be subject to redemption prior to maturity all upon the terms and conditions set forth in the Indentures.

(c) The acquisition, construction, and equipping of the Project, and, in connection therewith, the execution of any necessary architectural, engineering, or construction contracts or the acceptance of an assignment of any such contracts previously executed by the Company for the construction and equipping of the Project on behalf of the City is hereby authorized and directed.

**Section 2.** (a) The Series A Bonds shall be sold to the Underwriter for a purchase price negotiated with the Company, plus original issue premium or minus original issue discount, if any, plus accrued interest, if any, from the date of the Series A Bonds to the date of delivery, and upon the terms and conditions set forth in the Series A Purchase Agreement. There be, and there is hereby, authorized and directed the execution and delivery of the Series A Purchase Agreement, and the Mayor and City Clerk are hereby authorized to execute, acknowledge, and deliver the Series A Purchase Agreement for and on behalf of the City. The Series A Purchase Agreement is hereby approved in substantially the form submitted to this meeting (and a copy of such Series A Purchase Agreement is on file with the City Clerk and available for inspection by any interested person), and the Mayor is hereby authorized to confer with the Company and the Underwriter in order to complete the Series A Purchase Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by the Mayor, his execution to constitute conclusive evidence of such approval.

There is hereby authorized the preparation and distribution to various prospective and actual purchasers of the Series A Bonds of the Official Statement describing the Series A Bonds and their security and setting forth such other information as may be determined to be necessary

or desirable. The Mayor is hereby authorized to execute such Official Statement on behalf of the City in substantially the form submitted to this meeting (and a copy of such Official Statement is on file with the City Clerk and available for inspection by any interested person), with such changes as shall be approved by the Mayor, his execution to constitute conclusive evidence of such approval.

(b) The Series B Bonds will be privately placed with the Series B Purchaser for the purchase price of par plus costs of issuance pursuant to the terms of the Letter of Offer and Representations. There be, and there is hereby, authorized and directed the execution and delivery of the Letter of Offer and Representations, and the Mayor and City Clerk are hereby authorized to execute, acknowledge, and deliver the Letter of Offer and Representations for and on behalf of the City. The Letter of Offer and Representations is hereby approved in substantially the form submitted to this meeting (and a copy of such Letter of Offer and Representations is on file with the City Clerk and available for inspection by any interested person), and the Mayor is hereby authorized to confer with the Company and the Series B Purchaser in order to complete the Letter of Offer and Representations in substantially the form submitted to this meeting, with such changes as shall be approved by the Mayor, his execution to constitute conclusive evidence of such approval.

(c) The Series C Bonds shall be sold to the Series C Purchaser for a price of par plus the costs of issuance upon the terms and conditions set forth in the Series C Purchase Agreement. There be, and there is hereby, authorized and directed the execution and delivery of the Series C Purchase Agreement, and the Mayor and City Clerk are hereby authorized to execute, acknowledge, and deliver the Series C Purchase Agreement for and on behalf of the City. The Series C Purchase Agreement is hereby approved in substantially the form submitted to this

meeting (and a copy of such Series C Purchase Agreement is on file with the City Clerk and available for inspection by any interested person), and the Mayor is hereby authorized to confer with the Company and the Series C Purchaser in order to complete the Series C Purchase Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by the Mayor, his execution to constitute conclusive evidence of such approval.

(d) That to further prescribe the terms and conditions upon which the Bonds are to be executed, authenticated, issued, accepted, held and secured, the Mayor is hereby authorized and directed (when requested to do so by the Company) to execute and acknowledge the Indentures, and the City Clerk is hereby authorized and directed to execute and acknowledge the Indentures and to affix the seal of the City thereto, and the Mayor and City Clerk are hereby authorized and directed to cause the Indentures to be accepted, executed and acknowledged by the Trustee. The Indentures are hereby approved in substantially the forms submitted to this meeting (and a copy of such Indentures are on file with the City Clerk and available for inspection by any interested person), and the Mayor is hereby authorized to confer with the Trustee and the Company in order to complete the Indentures in substantially the forms submitted to this meeting with such changes as shall be approved by the Mayor, his execution to constitute conclusive evidence of such approval.

**Section 3.** There be, and there is hereby, authorized and directed the execution and delivery of the Lease Agreement, and the Mayor and City Clerk are hereby authorized to execute, acknowledge, and deliver the Lease Agreement for and on behalf of the City. The Lease Agreement is hereby approved in substantially the form submitted to this meeting (and a copy of such Lease Agreement is on file with the City Clerk and available for inspection by any interested person), and the Mayor is hereby authorized to confer with the Company, in order to

complete the Lease Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by the Mayor, his execution to constitute conclusive evidence of such approval.

**Section 4.** There be, and there is hereby, authorized and directed the execution and delivery of the Intercreditor Agreement; and the Mayor and City Clerk are hereby authorized to execute, acknowledge, and deliver the Intercreditor Agreement for and on behalf of the City. The Intercreditor Agreement is hereby approved in substantially the form submitted to this meeting (and a copy of such Intercreditor Agreement is on file with the City Clerk and available for inspection by any interested person), and the Mayor is hereby authorized to confer with the Company, in order to complete the Intercreditor Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by the Mayor, his execution to constitute conclusive evidence of such approval.

**Section 5.** In connection with the issuance of the Bonds, there be, and there is hereby, authorized and directed the execution and delivery of the PILOT Agreement, and the Mayor and City Clerk are hereby authorized to execute, acknowledge, and deliver the PILOT Agreement for and on behalf of the City. The PILOT Agreement is hereby approved in substantially the form submitted to this meeting (and a copy of such PILOT Agreement is on file with the City Clerk and available for inspection by any interested person), and the Mayor is hereby authorized to confer with the Company, in order to complete the PILOT Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by the Mayor, his execution to constitute conclusive evidence of such approval.

**Section 6.** The Mayor and City Clerk, for and on behalf of the City, are hereby authorized and directed to do any and all things necessary to effect (i) the execution of the Lease

Agreement, (ii) the performance of the City's obligations under the Lease Agreement, (iii) the execution and delivery of the Indentures, (iv) the performance of all obligations of the City under and pursuant to the Indentures, (v) the execution and delivery of the Bonds, (vi) the execution and delivery of the Official Statement, (vii) the execution and delivery of the Intercreditor Agreement, (viii) the performance of the City's obligations under the Intercreditor Agreement, (ix) the execution and delivery of the PILOT Agreement, (x) the performance of the City's obligations under the PILOT Agreement, (xi) the execution and delivery of the Series A Purchase Agreement, (xii) the performance of the City's obligations under the Series A Purchase Agreement, (xiii) the execution and delivery of the Letter of Offer and Representations, (xiv) the performance of the City's obligations under the Letter of Offer and Representations, (xv) the execution and delivery of the Series C Purchase Agreement, (xvi) the performance of the City's obligations under the Series C Purchase Agreement, and (xvii) the performance of all other acts of whatever nature necessary to effect and carry out the authority conferred by this Ordinance. The Mayor and the City Clerk are further authorized and directed, for and on behalf of the City, in connection with the issuance of the Bonds and in connection with on-going rights and obligations that arise after issuance and prior to maturity of the Bonds, to execute all papers, documents, certificates, and other instruments that may be required for the carrying out of such authority or to evidence the exercise thereof, including, but not limited to, the execution of a Home Office Payment Agreement, a Memorandum of Lease, Delivery Instructions and other closing certificates.

**Section 7.** The Project involves the acquisition, constructing, and equipping of a complex industrial project, requiring highly specialized work and specialized types of machinery and equipment. In compliance with Ark. Code. Ann. § 14-164-204, it has been and is hereby

determined by the City Council that competitive bidding be, and the same is hereby, waived as to this particular industrial project. This action is taken by the City Council pursuant to applicable laws of the State of Arkansas, including particularly the Act.

**Section 8.** All actions heretofore taken by the City, the Company, the Underwriter, the Placement Agent, the Series B Purchaser and the Series C Purchaser in connection with the issuance, offer and sale of the Bonds and the development and completion of the Project are hereby in all respects ratified and approved.

**Section 9. *Severability.*** In the event any title, section, paragraph, item, sentence, clause, phrase, or word of this ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of this ordinance, which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this ordinance.

**Section 10. *Repealer.*** All ordinances or resolutions of the City in conflict herewith are hereby repealed to the extent of such conflict.

**PASSED:** \_\_\_\_\_, 2022

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
**April Leggett, City Clerk**

\_\_\_\_\_  
**Harold Copenhaver, Mayor**

**ORDINANCE NO. 22: \_\_\_\_\_**

**AN ORDINANCE TO AUTHORIZE THE ISSUANCE OF INDUSTRIAL DEVELOPMENT REVENUE BONDS UNDER THE MUNICIPALITIES AND COUNTIES INDUSTRIAL DEVELOPMENT REVENUE BOND LAW FOR THE PURPOSE OF SECURING AND DEVELOPING INDUSTRY; TO AUTHORIZE THE SALE OF THE BONDS AND THE APPROVAL OF BOND PURCHASE AGREEMENTS, A PAYMENT IN LIEU OF TAXES AGREEMENT AND RELATED AGREEMENTS; TO AUTHORIZE THE EXECUTION AND DELIVERY OF TRUST INDENTURES SECURING THE BONDS; TO AUTHORIZE AND PRESCRIBE CERTAIN MATTERS PERTAINING TO THE PROJECT, THE ACQUISITION, CONSTRUCTION, AND EQUIPPING THEREOF, AND THE FINANCING THEREOF; TO AUTHORIZE THE EXECUTION AND DELIVERY OF A LEASE AGREEMENT RELATING TO THE PROJECT; AND FOR OTHER PURPOSES.**

WHEREAS, the City of Jonesboro, Arkansas (the “City”) is authorized under the provisions of Amendment 65 to the Arkansas Constitution and the Municipalities and Counties Industrial Development Revenue Bond Law, Ark. Code Ann. §§ 14-164-201 *et seq.* and Ark. Code Ann. §§ 14-164-701 *et seq.*, each as amended from time to time (collectively, the “Act”), to own, acquire, construct, equip, and lease facilities to secure and develop industry and to assist

which ADFA, AEDC and the Series B Purchaser will share on a ratable basis the Security Documents as pledged on a parity basis for the Series B Bonds and the Guaranties and a collateral agent (the “Collateral Agent”) will be appointed upon mutual agreement of the parties thereto to act on behalf of ADFA, AEDC and the Series B Purchaser; and

**WHEREAS**, the City proposes to sell the Series C Bonds to an affiliate of the Company (the “Series C Purchaser”) pursuant to Bond Purchase Agreement (the “Series C Purchase Agreement”) by and between the City and the Series C Purchaser; and

**WHEREAS**, the Series C Bonds will be special obligations of the City payable solely from moneys derived from payments by the Company to the City pursuant to the Lease Agreement on a subordinate basis with the Series A Bonds and the Series B Bonds; and

**WHEREAS**, to induce the City to proceed with the issuance of the ~~Series C~~ Bonds for the purpose indicated, which will inure to the benefit of the Company, the City and the Company will enter into a Payment in Lieu of Taxes Agreement ( the “PILOT Agreement”); and

**WHEREAS**, the City caused a form of a notice of public hearing to be published on November 20, 2020, and the City hereby ratifies the form of notice published; and

**WHEREAS**, an open public hearing on the question of the issuance of the Bonds was held before the City Council on December 1, 2020 following publication of notice of the hearing and that having heard all persons desiring to be heard in the matter, the City has taken under advisement the comments and statements of such persons, and declared the public hearing duly closed; and

**WHEREAS**, the completion of the Project will furnish additional employment and other benefits to and be in the best interest of the City and its residents.

**ORDINANCE NO. 22: \_\_\_\_\_**

**AN ORDINANCE TO AUTHORIZE THE ISSUANCE OF INDUSTRIAL DEVELOPMENT REVENUE BONDS UNDER THE MUNICIPALITIES AND COUNTIES INDUSTRIAL DEVELOPMENT REVENUE BOND LAW FOR THE PURPOSE OF SECURING AND DEVELOPING INDUSTRY; TO AUTHORIZE THE SALE OF THE BONDS AND THE APPROVAL OF BOND PURCHASE AGREEMENTS, A PAYMENT IN LIEU OF TAXES AGREEMENT AND RELATED AGREEMENTS; TO AUTHORIZE THE EXECUTION AND DELIVERY OF TRUST INDENTURES SECURING THE BONDS; TO AUTHORIZE AND PRESCRIBE CERTAIN MATTERS PERTAINING TO THE PROJECT, THE ACQUISITION, CONSTRUCTION, AND EQUIPPING THEREOF, AND THE FINANCING THEREOF; TO AUTHORIZE THE EXECUTION AND DELIVERY OF A LEASE AGREEMENT RELATING TO THE PROJECT; AND FOR OTHER PURPOSES.**

**WHEREAS**, the City of Jonesboro, Arkansas (the “City”) is authorized under the provisions of Amendment 65 to the Arkansas Constitution and the Municipalities and Counties Industrial Development Revenue Bond Law, Ark. Code Ann. §§ 14-164-201 *et seq.* and Ark. Code Ann. §§ 14-164-701 *et seq.*, each as amended from time to time (collectively, the “Act”), to own, acquire, construct, equip, and lease facilities to secure and develop industry and to assist in the financing thereof by the issuance of bonds payable from the revenues derived from such facilities; and

**WHEREAS**, Colson Caster LLC or its affiliate (the “Company”) has evidenced its interest in acquiring, constructing, and equipping an industrial facility in the City if permanent financing can be provided through the issuance of revenue bonds under the authority of the Act; and

**WHEREAS**, the City has agreed to cooperate with the Company in the acquisition, construction, and equipping of an industrial facility in the City and to finance the acquisition and construction of manufacturing facilities, infrastructure and improvements and the acquisition and installation of facilities and equipment for the development, manufacture, warehousing and distribution of casters and wheels to be located at 2121 Barnhill Road, Jonesboro, Arkansas (the “Project”) relating to the operations of the Company; and

**WHEREAS**, to provide permanent financing of the Project costs, necessary costs and expenditures incidental thereto, and the cost of the issuance of bonds, the City will issue its taxable economic development revenue bonds under the provisions of the Act in one or more series, in the aggregate principal amount of not to exceed \$24,000,000.00, to be comprised of (i) not to exceed \$11,000,000.00 taxable economic development revenue bonds issued pursuant to the Act and guaranteed (the “Guaranties”) by the Arkansas Development Finance Authority (“ADFA”) and the Arkansas Economic Development Commission (“AEDC”) and designated as the “City of Jonesboro, Arkansas Taxable Economic Development Revenue Bonds (ADFA/AEDC Guaranty Programs) (Colson Caster Project), Series 2022A (the “Series A Bonds”), (ii) not to exceed \$4,000,000.00 taxable economic development revenue bonds issued pursuant to the Act and designated as the “City of Jonesboro, Arkansas Taxable Economic Development Revenue Bonds (Colson Caster Project), Series 2022B (the “Series B Bonds”), and (iii) not to exceed \$9,000,000.00 taxable economic development revenue bonds issued pursuant

to the Act and designated as the “City of Jonesboro, Arkansas Taxable Economic Development Revenue Bonds (Colson Caster Project), Series 2022C (the “Series C Bonds” and together with the Series A Bonds and the Series C Bonds, the “Bonds”); and

**WHEREAS**, the Series A Bonds and Series B Bonds will be issued pursuant to the provisions of a Trust Indenture (the “Series A and B Indenture”) and the Series C Bonds will be issued pursuant to the provisions of a Trust Indenture (the “Series C Indenture” and with the Series A & B Indenture, the “Indentures”) to be entered into between the City and a trustee (the “Trustee”) to be selected upon the mutual agreement of the City and the Company; and

**WHEREAS**, the City and the Company intend to enter into a Lease Agreement (the “Lease Agreement”) relating to the real and personal property constituting the Project, which contemplates that the Project will be leased to the Company, with an option to purchase for a nominal price, and the rental payments therefor together with other moneys available shall be sufficient to pay debt service on the Bonds and all related costs; and

**WHEREAS**, the Series A Bonds will be sold to Crews & Associates, Inc. (the “Underwriter”) pursuant to a Bond Purchase Agreement (the “Series A Purchase Agreement”) between the City, the Company and the Underwriter; and

**WHEREAS**, in order to market the Series A Bonds and determine the total principal amount of the Series A Bonds, the Underwriter requires an Official Statement (and a Preliminary Official Statement) (collectively, the “Official Statement”) in a form deemed final pursuant to Rule 15c2-12 of the Securities and Exchange Commission, as described in the Series A Purchase Agreement; and

**WHEREAS**, the Series A Bonds will be special obligations of the City payable solely from moneys derived from payments by the Company to the City pursuant to the Lease

Agreement on a parity basis with the Series B Bonds and any payments made by ADFA and AEDC under the Guaranties; and

**WHEREAS**, the Series B Bonds will be placed with “accredited investors” and/or “qualified institutional buyers” (as such terms are defined in the Securities Act of 1933 and related regulations) (the “Series B Purchaser”) by Crews & Associates, Inc. (the “Placement Agent”) pursuant to the terms of a Letter of Offer and Representations (the “Letter of Offer and Representations”) between the City and the Purchaser; and

**WHEREAS**, the Series B Bonds will be special obligations of the City payable solely from moneys derived from payments by the Company to the City pursuant to the Lease Agreement on a parity basis with the Series A Bonds and a valid first priority mortgage on the Project pursuant to a Mortgage, Security Agreement and Fixture Filing (the “Mortgage”), a valid first priority leasehold mortgage on the Company’s leasehold interest in the Project, a valid first priority security interest in all machinery, equipment, furnishings, and personal property included within the Project pursuant to a Security Agreement (the “Security Agreement”) and an assignment of any and all rents and leases on the Project pursuant to an Assignment of Rents and Leases (the “Assignment of Rents and Leases” and together with the Mortgage and Security Agreement, the “Security Documents”), granted by the Company in favor of the Collateral Agent (defined below). The Series B Bonds and the Guaranties are secured by the Security Documents on a parity basis; and

**WHEREAS**, ADFA, AEDC, the City, the Trustee, the Company and the Series B Purchaser will enter into an intercreditor agreement (the “Intercreditor Agreement”) pursuant to which ADFA, AEDC and the Series B Purchaser will share on a ratable basis the Security Documents as pledged on a parity basis for the Series B Bonds and the Guaranties and a

collateral agent (the “Collateral Agent”) will be appointed upon mutual agreement of the parties thereto to act on behalf of ADFA, AEDC and the Series B Purchaser; and

**WHEREAS**, the City proposes to sell the Series C Bonds to an affiliate of the Company (the “Series C Purchaser”) pursuant to Bond Purchase Agreement (the “Series C Purchase Agreement”) by and between the City and the Series C Purchaser; and

**WHEREAS**, the Series C Bonds will be special obligations of the City payable solely from moneys derived from payments by the Company to the City pursuant to the Lease Agreement on a subordinate basis with the Series A Bonds and the Series B Bonds; and

**WHEREAS**, to induce the City to proceed with the issuance of the Series C Bonds for the purpose indicated, which will inure to the benefit of the Company, the City and the Company will enter into a Payment in Lieu of Taxes Agreement ( the “PILOT Agreement”); and

**WHEREAS**, the City caused a form of a notice of public hearing to be published on November 20, 2020, and the City hereby ratifies the form of notice published; and

**WHEREAS**, an open public hearing on the question of the issuance of the Bonds was held before the City Council on December 1, 2020 following publication of notice of the hearing and that having heard all persons desiring to be heard in the matter, the City has taken under advisement the comments and statements of such persons, and declared the public hearing duly closed; and

**WHEREAS**, the completion of the Project will furnish additional employment and other benefits to and be in the best interest of the City and its residents.

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

**Section 1.** There be, and there is hereby, authorized and directed the following:

(a)(i) The Series A Bonds shall be issued in an aggregate principal amount not to exceed Eleven Million and 00/100 Dollars (\$11,000,000.00), and the Series A Bonds shall be issued in the forms and denominations, shall be dated, shall be numbered, and shall be subject to redemption prior to maturity all upon the terms and conditions set forth in the Series A and B Indenture. The Series A Bonds shall mature not later than December 31, 2037, and bear interest at a rate or rates not to exceed six and three-quarters percent (6.75%) per annum.

(ii) The Series B Bonds shall be issued in an aggregate principal amounts not to exceed Four Million and 00/100 Dollars (\$4,000,000.00), and the Series B Bonds shall be sold to the Series B Purchaser for a price of par plus the costs of issuance upon the terms and conditions set forth in the Letter of Offer and Representations. The Series B Bonds shall mature not later than December 31, 2037, and bear interest at a rate or rates not to exceed six and three-quarters percent (6.75%) per annum.

(iii) The Series C Bonds shall be issued in an aggregate principal amount not to exceed Nine Million and 00/100 Dollars (\$9,000,000.00), and the Series C Bonds shall be sold to the Series C Purchaser for a price of par plus the costs of issuance upon the terms and conditions set forth in the Series C Purchase Agreement. The Series C Bonds shall mature not later than December 31, 2042, and bear interest at a rate or rates not to exceed six and three-quarters percent (6.75%) per annum.

(b) The Bonds shall bear interest at the rate or rates per annum as set forth in the Indentures, so long as no rate exceeds the maximum permitted by law. The Bonds shall mature (or be subject to mandatory sinking fund redemption) on the date or dates and in the principal amount or amounts as set forth in the Indentures, so long as the final maturity of the Bonds is not greater than 20 years from their date of issuance. The Bonds shall be issued in the forms and

denominations, shall be dated, shall be numbered, and shall be subject to redemption prior to maturity all upon the terms and conditions set forth in the Indentures.

(c) The acquisition, construction, and equipping of the Project, and, in connection therewith, the execution of any necessary architectural, engineering, or construction contracts or the acceptance of an assignment of any such contracts previously executed by the Company for the construction and equipping of the Project on behalf of the City is hereby authorized and directed.

**Section 2.** (a) The Series A Bonds shall be sold to the Underwriter for a purchase price negotiated with the Company, plus original issue premium or minus original issue discount, if any, plus accrued interest, if any, from the date of the Series A Bonds to the date of delivery, and upon the terms and conditions set forth in the Series A Purchase Agreement. There be, and there is hereby, authorized and directed the execution and delivery of the Series A Purchase Agreement, and the Mayor and City Clerk are hereby authorized to execute, acknowledge, and deliver the Series A Purchase Agreement for and on behalf of the City. The Series A Purchase Agreement is hereby approved in substantially the form submitted to this meeting (and a copy of such Series A Purchase Agreement is on file with the City Clerk and available for inspection by any interested person), and the Mayor is hereby authorized to confer with the Company and the Underwriter in order to complete the Series A Purchase Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by the Mayor, his execution to constitute conclusive evidence of such approval.

There is hereby authorized the preparation and distribution to various prospective and actual purchasers of the Series A Bonds of the Official Statement describing the Series A Bonds and their security and setting forth such other information as may be determined to be necessary

or desirable. The Mayor is hereby authorized to execute such Official Statement on behalf of the City in substantially the form submitted to this meeting (and a copy of such Official Statement is on file with the City Clerk and available for inspection by any interested person), with such changes as shall be approved by the Mayor, his execution to constitute conclusive evidence of such approval.

(b) The Series B Bonds will be privately placed with the Series B Purchaser for the purchase price of par plus costs of issuance pursuant to the terms of the Letter of Offer and Representations. There be, and there is hereby, authorized and directed the execution and delivery of the Letter of Offer and Representations, and the Mayor and City Clerk are hereby authorized to execute, acknowledge, and deliver the Letter of Offer and Representations for and on behalf of the City. The Letter of Offer and Representations is hereby approved in substantially the form submitted to this meeting (and a copy of such Letter of Offer and Representations is on file with the City Clerk and available for inspection by any interested person), and the Mayor is hereby authorized to confer with the Company and the Series B Purchaser in order to complete the Letter of Offer and Representations in substantially the form submitted to this meeting, with such changes as shall be approved by the Mayor, his execution to constitute conclusive evidence of such approval.

(c) The Series C Bonds shall be sold to the Series C Purchaser for a price of par plus the costs of issuance upon the terms and conditions set forth in the Series C Purchase Agreement. There be, and there is hereby, authorized and directed the execution and delivery of the Series C Purchase Agreement, and the Mayor and City Clerk are hereby authorized to execute, acknowledge, and deliver the Series C Purchase Agreement for and on behalf of the City. The Series C Purchase Agreement is hereby approved in substantially the form submitted to this

meeting (and a copy of such Series C Purchase Agreement is on file with the City Clerk and available for inspection by any interested person), and the Mayor is hereby authorized to confer with the Company and the Series C Purchaser in order to complete the Series C Purchase Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by the Mayor, his execution to constitute conclusive evidence of such approval.

(d) That to further prescribe the terms and conditions upon which the Bonds are to be executed, authenticated, issued, accepted, held and secured, the Mayor is hereby authorized and directed (when requested to do so by the Company) to execute and acknowledge the Indentures, and the City Clerk is hereby authorized and directed to execute and acknowledge the Indentures and to affix the seal of the City thereto, and the Mayor and City Clerk are hereby authorized and directed to cause the Indentures to be accepted, executed and acknowledged by the Trustee. The Indentures are hereby approved in substantially the forms submitted to this meeting (and a copy of such Indentures are on file with the City Clerk and available for inspection by any interested person), and the Mayor is hereby authorized to confer with the Trustee and the Company in order to complete the Indentures in substantially the forms submitted to this meeting with such changes as shall be approved by the Mayor, his execution to constitute conclusive evidence of such approval.

**Section 3.** There be, and there is hereby, authorized and directed the execution and delivery of the Lease Agreement, and the Mayor and City Clerk are hereby authorized to execute, acknowledge, and deliver the Lease Agreement for and on behalf of the City. The Lease Agreement is hereby approved in substantially the form submitted to this meeting (and a copy of such Lease Agreement is on file with the City Clerk and available for inspection by any interested person), and the Mayor is hereby authorized to confer with the Company, in order to

complete the Lease Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by the Mayor, his execution to constitute conclusive evidence of such approval.

**Section 4.** There be, and there is hereby, authorized and directed the execution and delivery of the Intercreditor Agreement; and the Mayor and City Clerk are hereby authorized to execute, acknowledge, and deliver the Intercreditor Agreement for and on behalf of the City. The Intercreditor Agreement is hereby approved in substantially the form submitted to this meeting (and a copy of such Intercreditor Agreement is on file with the City Clerk and available for inspection by any interested person), and the Mayor is hereby authorized to confer with the Company, in order to complete the Intercreditor Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by the Mayor, his execution to constitute conclusive evidence of such approval.

**Section 5.** In connection with the issuance of the Bonds, there be, and there is hereby, authorized and directed the execution and delivery of the PILOT Agreement, and the Mayor and City Clerk are hereby authorized to execute, acknowledge, and deliver the PILOT Agreement for and on behalf of the City. The PILOT Agreement is hereby approved in substantially the form submitted to this meeting (and a copy of such PILOT Agreement is on file with the City Clerk and available for inspection by any interested person), and the Mayor is hereby authorized to confer with the Company, in order to complete the PILOT Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by the Mayor, his execution to constitute conclusive evidence of such approval.

**Section 6.** The Mayor and City Clerk, for and on behalf of the City, are hereby authorized and directed to do any and all things necessary to effect (i) the execution of the Lease

Agreement, (ii) the performance of the City's obligations under the Lease Agreement, (iii) the execution and delivery of the Indentures, (iv) the performance of all obligations of the City under and pursuant to the Indentures, (v) the execution and delivery of the Bonds, (vi) the execution and delivery of the Official Statement, (vii) the execution and delivery of the Intercreditor Agreement, (viii) the performance of the City's obligations under the Intercreditor Agreement, (ix) the execution and delivery of the PILOT Agreement, (x) the performance of the City's obligations under the PILOT Agreement, (xi) the execution and delivery of the Series A Purchase Agreement, (xii) the performance of the City's obligations under the Series A Purchase Agreement, (xiii) the execution and delivery of the Letter of Offer and Representations, (xiv) the performance of the City's obligations under the Letter of Offer and Representations, (xv) the execution and delivery of the Series C Purchase Agreement, (xvi) the performance of the City's obligations under the Series C Purchase Agreement, and (xvii) the performance of all other acts of whatever nature necessary to effect and carry out the authority conferred by this Ordinance. The Mayor and the City Clerk are further authorized and directed, for and on behalf of the City, in connection with the issuance of the Bonds and in connection with on-going rights and obligations that arise after issuance and prior to maturity of the Bonds, to execute all papers, documents, certificates, and other instruments that may be required for the carrying out of such authority or to evidence the exercise thereof, including, but not limited to, the execution of a Home Office Payment Agreement, a Memorandum of Lease, Delivery Instructions and other closing certificates.

**Section 7.** The Project involves the acquisition, constructing, and equipping of a complex industrial project, requiring highly specialized work and specialized types of machinery and equipment. In compliance with Ark. Code. Ann. § 14-164-204, it has been and is hereby

determined by the City Council that competitive bidding be, and the same is hereby, waived as to this particular industrial project. This action is taken by the City Council pursuant to applicable laws of the State of Arkansas, including particularly the Act.

**Section 8.** All actions heretofore taken by the City, the Company, the Underwriter, the Placement Agent, the Series B Purchaser and the Series C Purchaser in connection with the issuance, offer and sale of the Bonds and the development and completion of the Project are hereby in all respects ratified and approved.

**Section 9. *Severability.*** In the event any title, section, paragraph, item, sentence, clause, phrase, or word of this ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of this ordinance, which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this ordinance.

**Section 10. *Repealer.*** All ordinances or resolutions of the City in conflict herewith are hereby repealed to the extent of such conflict.

**PASSED:** \_\_\_\_\_, 2022

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
**April Leggett, City Clerk**

\_\_\_\_\_  
**Harold Copenhaver, Mayor**

**PAYMENT IN LIEU OF TAXES AGREEMENT**

City of Jonesboro, Arkansas  
300 South Church Street  
Jonesboro, Arkansas 72401  
Attention: Mayor

Dated: \_\_\_\_\_, 20\_\_

**Re: Not to exceed \$11,000,000 City of Jonesboro, Arkansas Taxable Economic Development Revenue Bonds (ADFA/AEDC Guaranty Programs) (Colson Caster Project), Series 2022A, not to exceed \$4,000,000 City of Jonesboro, Arkansas Taxable Economic Development Revenue Bonds (Colson Caster Project), Series 2022B and not to exceed \$9,000,000 City of Jonesboro, Arkansas Taxable Economic Development Revenue Bonds (Colson Caster Project), Series 2022C (collectively, the “Bonds”)**

Ladies and Gentlemen:

The City of Jonesboro, Arkansas (the “City”) proposes to issue the Bonds identified above in one or more series under the provisions of the Municipalities and Counties Industrial Development Revenue Bond Law, Ark. Code Ann. §§ 14-164-201 *et seq.* and Ark. Code Ann. §§ 14-164-701 *et seq.* (collectively, the “Act”) for the purpose of financing a substantial industrial project consisting of the acquisition, construction, and equipping of certain industrial facilities, infrastructure and improvements, for the development, manufacture, warehousing and distribution of casters and wheels to be located at 2121 Barnhill Road, Jonesboro, Arkansas (the “Project”) relating to the operations of Colson Caster, LLC or its affiliate (the “Company”). The Project will be leased by the City to the Company pursuant to a Lease Agreement (the “Lease Agreement”) for a period of 20 years for rentals sufficient to pay debt service on the Bonds. The Company will use the Project as facilities for the development, manufacture, warehousing and distribution of caster and wheels. The Project, as defined herein, is the “Leased Premises” as defined in the Lease Agreement.

Article IV of the Lease Agreement provides that the Company is obligated to pay all taxes and assessments levied and assessed on the Project during the term of the Lease Agreement. The Company is informed and understands that, notwithstanding the provision of Article IV of the Lease Agreement, under Article 16, Section 5 of the Constitution of the State of Arkansas, as interpreted by the Arkansas Supreme Court in *Wayland v. Snapp*, 232 Ark. 57, 334 S.W. 2d 633 (1960), and *Pulaski County v. Jacuzzi Bros. Div.*, 332 Ark. 91, 964 S.W.2d 788 (1998), and Ark. Code Ann. §§ 14-164-701 *et seq.*, the Project will be exempt from ad valorem taxes because it is owned by the City and used for a public purpose within the meaning of the applicable Constitutional and statutory provisions affording the exemption.

Thus, the Company understands that it, as Lessee of the Project owned by the City, will, in fact, pay no ad valorem taxes on the Project under the provisions of Article IV of the Lease

Agreement. The taxing authorities (defined below) have indicated a reluctance to lose all tax revenues which would otherwise be received by it if the property involved was privately owned.

Therefore, to induce the City to proceed with the issuance of the Bonds for the purpose indicated, which will inure to the benefit of the Company, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Company agrees with the City pursuant to this Payment in Lieu of Taxes Agreement (the "Agreement") as follows:

1. In lieu of ad valorem property taxes, the Company will pay to the City an annual sum equal to 35% of the amount which would be payable as ad valorem taxes that would have to be paid on the Project to the City, the State of Arkansas, Craighead County, the Nettleton School District, and/or other political subdivisions of the State of Arkansas (the "taxing authorities") if the Project were not exempt from ad valorem taxes under the provisions of Article 16, Section 5 of the Constitution of the State of Arkansas, as interpreted by the Supreme Court of the State of Arkansas in *Wayland v. Snapp, supra*, and *Pulaski County v. Jacuzzi Bros. Div., supra*, and Ark. Code Ann. §§ 14-164-701 *et seq.* Payments are due not later than October 15 each year commencing after completion of construction. Payments not paid when due shall bear interest at 10% per annum until paid.

The payment is based on the land, buildings, improvements and equipment comprising the Leased Premises, excluding licensed vehicles. Any expansion or improvement of the Project will become subject to this Agreement using the same formula for the term of the Bonds.

2. The payments to be made pursuant to paragraph 1 are intended to be in lieu of all ad valorem taxes that would have to be paid on the Project to the taxing authorities if the Project were not exempt from ad valorem taxes under the provisions of Article 16, Section 5 of the Constitution of the State of Arkansas, as interpreted by the Supreme Court of the State of Arkansas in *Wayland v. Snapp, supra*, and *Pulaski County v. Jacuzzi Bros. Div., supra*, and Ark. Code Ann. §§ 14-164-701 *et seq.*, but are not intended to be in lieu of (i) any licenses, occupation or privilege tax, or fee imposed upon the Company for or with respect to its right to carry on its business in the State of Arkansas, (ii) any special benefit or local improvement tax or assessment, or (iii) fees or charges for utility services rendered, such as for water or sewer services.

3. The City agrees to distribute each payment under paragraph 1 among the taxing authorities in the proportion that the millage collected bears to the total millage collected by all during the year of distribution, unless all such taxing authorities, including without limitation the school district, shall otherwise agree and document the alternate basis upon which the payments shall be distributed.

4. The City and the Company agree to cooperate in sustaining the enforceability of this Agreement. However, if by reason of a change in the Constitution of the State of Arkansas, a change by the Supreme Court of the State of Arkansas in its interpretation of the Constitution, a change by the General Assembly of the State of Arkansas, or otherwise, the Company is required to pay any tax for which the payments specified in paragraph 1 are intended to be in lieu, the Company may deduct the aggregate of any such payments made by it from any amount herein

agreed to be paid under paragraph 1. Furthermore, inasmuch as the payments in paragraph 1 herein agreed to be made are intended to be in lieu of taxes, it is agreed that said payments shall not as to any year be in an amount greater than would otherwise be payable for such year in ad valorem taxes, in the aggregate, on account of its ownership of the Project.

5. Representatives of the Company will confer at least annually with the Craighead County Assessor and determine the assessed valuation of the real and personal properties comprising the Project. The determination shall be made by mutual agreement if possible, and if not, shall be made by the Craighead County Assessor as though the Project were privately owned. Because the valuation of such property is a key factor in calculating payments due, the City agrees to cooperate with the Company in any reasonable challenge to the valuation assigned to such property by the Craighead County Assessor to the fullest extent permitted by Arkansas law.

It is recognized by the City and the Company that the payments described in paragraph 1 hereof are to be calculated on the basis of annual amounts that would otherwise be payable as ad valorem taxes under Arkansas law on the Leased Premises if such property were on the tax rolls. The amount to be paid each year shall be determined by applying the millage that would be applicable to the Project for that year if the Project were privately owned. The Company shall be entitled to any refund occasioned by overpayment or a reduction in millage which requires a refund by the taxing authorities.

6. This Agreement shall terminate and be of no further force and effect from and after the date that the Lease Agreement shall terminate for any purpose other than a default on the part of the Company, including, but not limited to, the transfer of ownership of the Leased Premises to the Company. If such termination shall be at a point constituting a portion of a year, the Company shall pay for the year in which termination occurred that portion of the specified annual payment that the number of days in such year that the Project was exempt prior to the termination bears to 365 days (366 days in a leap year).

7. This Agreement shall be binding upon the successors and assigns of the Company, but no assignment shall be effective to relieve the Company of any of its obligations hereunder unless expressly authorized and approved in writing by the City.

8. This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original.

9. This Agreement shall be governed by, and interpreted in accordance with, the laws of the state of Arkansas.

[Signature Page Follows]

When executed, this Agreement shall constitute a valid and binding contract between the Company and the City.

Very truly yours,

**COLSON CASTER, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ACCEPTED:

**CITY OF JONESBORO, ARKANSAS**

By: \_\_\_\_\_  
**Harold Copenhaver, Mayor**

ATTEST:

\_\_\_\_\_  
**April Leggett, City Clerk**

**LETTER OF OFFER AND REPRESENTATIONS**

City of Jonesboro, Arkansas  
300 Church Street  
Jonesboro, Arkansas 72401  
Attention: Mayor

Colson Caster, LLC  
2121 Barnhill Road  
Jonesboro, Arkansas 72401  
Attention: \_\_\_\_\_

Crews & Associates, Inc.  
521 President Clinton Ave., Suite 900  
Little Rock, Arkansas 72201  
Attention: Public Finance

Colson Group Holdings, LLC  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

**Re: City of Jonesboro, Arkansas Taxable Industrial Development Revenue Bonds  
(Colson Caster Project), Series 2022B**

Ladies and Gentlemen:

The undersigned (the “**Purchaser**”) offers to purchase the Taxable Industrial Development Revenue Bonds (Colson Caster Project), Series 2022B in the total principal amount of \$\_\_\_\_\_ (the “**Bonds**”) from the City of Jonesboro, Arkansas (the “**Issuer**”) at a price of 100% on the dollar. The Bonds shall be dated the date of their delivery. Interest on the Bonds shall be payable on first day of each month of each year, commencing \_\_\_\_\_, 2022. The Bonds shall be authorized in the aggregate principal amount of \$\_\_\_\_\_ bearing interest at the rates per annum and principal on the Bonds will be payable quarterly, beginning on \_\_\_\_\_, 20\_\_ and thereafter on each of the dates and in the amounts as set forth in the schedule attached hereto, Exhibit A. \_\_\_\_\_, \_\_\_\_\_, Arkansas shall be trustee and paying agent for the Purchasers (the “**Trustee**”).

The Bonds shall be as described in, and this offer is subject to the terms of, a Trust Indenture to be dated as of the dated date of the Bonds (the “**Indenture**”) by and between the Issuer and the Trustee. The Bonds shall be general obligations of the Issuer, secured by a first lien on and security interest in the Trust Estate (as defined in the Indenture).

The Bonds are being issued to: (i) finance or refinance a portion of the costs of acquiring and installing equipment for the manufacture of casters and wheels (the “**Project**”) in connection with industrial facilities located in Jonesboro, Arkansas to be owned by the Issuer and leased to Colson Caster, LLC (the “**Lessee**”) pursuant to a Lease Agreement (the “**Lease Agreement**”), to be owned by the Issuer and leased to the Lessee pursuant to the terms of the Lease Agreement, (ii) establish a reserve fund with respect to the Bonds, and (iii) pay a portion of the expenses incurred in connection with the issuance of the Bonds. Under the Lease Agreement, the Lessee has agreed to provide ongoing disclosures to the Trustee and the Purchaser.

The Bonds shall be subject to redemption, from such funds, at such time, in such amounts and at such redemption prices as set forth in the Indenture.

Interest on the Bonds shall **not** be excluded from gross income of the Purchaser for federal income tax purposes. At the closing we will receive the approving bond counsel opinion of Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C. (“**Bond Counsel**”), in customary form and substance.

The closing shall occur on or before \_\_\_\_\_, 2022, or at the request of the Issuer, at such earlier or later date agreed to by the undersigned. At the closing, the undersigned shall deliver the purchase price for the Bonds to the Trustee, for the credit of the Issuer, in immediately available funds, and the undersigned shall accept delivery of the Bonds. The proceeds of the purchase price for the Bonds shall be applied and disbursed pursuant to the terms of the Indenture, the Delivery Instructions and the Closing Memorandum with respect to the Bonds. This offer shall expire if not accepted by \_\_\_\_\_, 2022.

The undersigned represents and warrants to you as follows:

1. We have sufficient knowledge and experience in business and financial matters to enable us to evaluate the Bonds, the credit of the Issuer and the Lessee and the Bond terms and we will make our own independent credit analysis and decision to purchase the Bonds based upon an independent examination and evaluation of the transaction and the information deemed appropriate, without reliance on others, including placement agent or its affiliates, its directors, officers, employees, attorneys or agents.

2. We acknowledge that no underlying credit rating has been sought or obtained with respect to the Bonds.

3. We acknowledge that no official statement has been prepared for the Bonds, and the Bonds will not be rated, and neither the Issuer nor the Lessee will enter into a continuing disclosure agreement to provide ongoing disclosure with respect to the Bonds pursuant to SEC Rule 5c2-12. We have been offered copies of or full access to all documents relating to the Bonds and all records, reports, financial statements and other information concerning the Issuer and pertinent to the source of payment for the Bonds as deemed material by us, which we have requested and to which we would attach significance in making the decision to purchase the Bonds without reliance upon others.

4. We confirm that we have regularly bought and sold obligations similar to the Bonds for our own account and have the knowledge and experience in financial and business matters sufficient to enable us to evaluate the merits and risks of purchasing the Bonds.

5. We are purchasing the Bonds for our own account or for our loan portfolio and are not purchasing the Bonds for resale or other disposition and not with a present view to the sale, redistribution or other disposition thereof in the ordinary course of business in a transaction not amounting to a public offering as contemplated by Section 4(2) of the Securities Act of 1933, as amended (the “**1933 Act**”). Although our present intention is to hold

the Bonds to maturity or early redemption, we reserve the right, subject to paragraph 6 below, to sell participation interests in or otherwise dispose of the Bonds in the future as we choose. In reaching the conclusion that we desire to acquire the Bonds, we have carefully evaluated all risks associated with this purchase and acknowledge that we are able to bear the economic risk of this purchase. We are (i) an “accredited investor” within the meaning of Section 501(a)(1)-(8) of Regulation D under the 1933 Act or (ii) a “Qualified Institutional Buyer” within the meaning of Rule 144A under the 1933 Act with respect to the Bonds to be purchased by us.

6. We acknowledge that (1) the Bonds will not be registered under the 1933 Act or any applicable state securities law and (2) the Bonds may not be offered, sold, pledged or otherwise transferred except to a person who the holder reasonably believes is a qualified institutional buyer within the meaning of Rule 144A under the 1933 Act in a transaction meeting the requirements of Rule 144A or to an accredited investor as defined in Rule 501(a) of Regulation D under the 1933 Act or to an entity all of the owners of which are such accredited investors in a transaction relying on Section 4(a)(2) of the 1933 Act or pursuant to another exemption from registration under the 1933 Act, and in accordance with any applicable securities laws of any state of the united states or any other jurisdiction. The Bonds may not be offered, sold, pledged or otherwise transferred except to a qualified institutional buyer or an accredited investor and no such transfer may be made in the absence of an effective registration statement for the Bonds or pursuant to an exemption from registration under all applicable federal and state securities laws.

7. The Bonds will be purchased by us under the following conditions: (i) the Bonds will not be assigned a separate rating by any securities rating agency, (ii) the Bonds are not being registered or otherwise qualified for sale under the “Blue Sky” laws; (iii) we are purchasing the Bonds in evidence of a privately negotiated loan, (iv) the Bonds will not be assigned a CUSIP number by Standard & Poor’s CUSIP Service, (v) no official statement or other similar offering document will be required or delivered in connection with the private placement of the Bonds, (vi) the Bonds will not be registered with the Depository Trust Company or any other securities depository, and (vii) the obligations represented by the Bonds will be classified as a privately placed loan.

8. We acknowledge that the Bonds are special obligations of the Issuer and represent a pledge of certain revenues and contract rights of the Issuer under the Lease Agreement as more specifically set forth in the Indenture. The security for payment of the Bonds is more particularly described in the Bonds and the Indenture of the Issuer authorizing the issuance of the Bonds.

9. We understand that the Issuer and placement agent, and their respective counsel and Bond Counsel will rely upon the accuracy and truthfulness of the representations and warranties contained herein and hereby consent to such reliance.

10. The engagement of Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C., as bond counsel, and Crews & Associates, Inc., as placement agent, did not include services related to the compilation, verification or furnishing to us of information regarding the merits and risks of issuing the Bonds by the Issuer and the making the loan to the Lessee evidenced

by the Lease Agreement. We have regularly made loans evidenced by debt instruments similar to the Bonds and have knowledge and experience in financial and business matters sufficient to enable us to evaluate such merits and risks.

11. The Issuer represents and warrants to the Purchaser that neither it nor any of its principals, shareholders, members, partners, or affiliates, as applicable, is a person named as a Specially Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly, for or on behalf of any such person. The Issuer further represents and warrants to the Purchaser that the Issuer and its principals, shareholders, members, partners, or affiliates, as applicable, are not directly or indirectly, engaged in, nor facilitating, the transactions contemplated by this transaction on behalf of any person named as a Specially Designated National and Blocked Person.

12. The signatory of this Letter of Offer and Representation is a duly authorized officer of the Purchaser with the authority to sign this Letter on behalf of Purchaser, and this Letter has been duly authorized, executed and delivered.

[Signature Page to Follow]

Dated: \_\_\_\_\_, 2022.

Sincerely,

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
(Title)

ACCEPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**City of Jonesboro, Arkansas**

By: \_\_\_\_\_  
Mayor

**Colson Caster, LLC**

**Colson Group Holdings, LLC**

By: \_\_\_\_\_  
[Name], [Title]

By: \_\_\_\_\_  
[Name], [Title]

**EXHIBIT A**

**Maturities, Principal Amounts, and Interest Rates**

<b><u>Maturity Date</u></b> <b><u>( ____ 1)</u></b>	<b><u>Principal</u></b> <b><u>Amount</u></b>	<b><u>Interest Rate</u></b>
20	\$ .00	%
20	.00	
20	.00	
20	.00	

**BOND PURCHASE AGREEMENT**

\$11,000,000  
City of Jonesboro, Arkansas  
Taxable Industrial Development Revenue Bonds  
(ADFA/AEDC Guaranty Programs)  
(Colson Caster Project)  
Series 2022A

\_\_\_\_\_, 2022

City of Jonesboro, Arkansas  
300 South Church Street  
Jonesboro, Arkansas 72401

Colson Caster, LLC  
2121 Barnhill Road  
Jonesboro, Arkansas 72401

Ladies and Gentlemen:

The undersigned (the “Underwriter”) offers to enter into the following agreement with the City of Jonesboro, Arkansas (the “Issuer”), Colson Caster, LLC, a Delaware limited liability company (“Colson”), and Colson Group Holdings, LLC, a \_\_\_ limited liability company (“Holdings” and together with Colson, the “Lessee”), which, upon the Issuer’s and Lessee’s acceptance of this offer, will be binding upon the Issuer and the Lessee and upon the Underwriter. This offer is made subject to the Issuer’s and the Lessee’s acceptance of this Bond Purchase Agreement on or before midnight, Jonesboro, Arkansas time, on the date first written above, and if not so accepted, will be subject to withdrawal by the Underwriter upon written notice delivered to the Issuer and the Lessee at any time prior to the acceptance hereof by the Issuer and the Lessee. Terms not defined herein shall have the meaning assigned to them in the Official Statement (as hereinafter defined).

1. Upon the terms and conditions and in reliance upon the respective representations, warranties and covenants herein, the Underwriter hereby agrees to purchase from the Issuer, and the Issuer hereby agrees to sell to the Underwriter, all (but not less than all) of its \$ \_\_\_\_\_ Taxable Economic Development Revenue Bonds (ADFA/AEDC Guaranty Programs) (Colson Caster Project), Series 2022A (the “Bonds”) at the purchase price (the “Purchase Price”) of \$ \_\_\_\_\_ (equal to the par amount less Underwriter’s discount of \$ \_\_\_\_\_ less a net reoffering discount of \$ \_\_\_\_\_). The Bonds shall have the maturities and interest rates as set forth in **Exhibit A** hereto. The Bonds shall be subject to redemption as set forth in the Indenture and the Official Statement.

Payment for and delivery of the Bonds and the other actions contemplated hereby shall occur at the time and place described in Paragraph 11 hereof (the “Closing”). The proceeds from the sale of the Bonds are to be utilized to: (i) finance or refinance the costs of acquiring,

constructing and equipping an industrial facility for the manufacture of casters and wheels and related warehousing and distribution and equipment to be located at 2121 Barnhill Road, Jonesboro, Arkansas 72401 (the “Project”), to be owned by the Issuer and leased to the Lessee, (ii) pay bond guaranty fees associated with the ADFA Guaranty (defined below) and the AEDC Guaranty (defined below), (iii) establish a reserve fund with respect to the Bonds, and (iv) pay a portion of the expenses incurred in connection with the issuance of the Bonds.

2. The Bonds shall be as described in, and shall be issued and secured under and pursuant to, that certain Trust Indenture dated as of \_\_\_\_\_, 2022 (the “Indenture”), by and between the Issuer and \_\_\_\_\_, \_\_\_\_\_, Arkansas, as trustee (the “Trustee”), and that certain Lease Agreement dated as of \_\_\_\_\_, 2022 (the “Lease Agreement”), by and between the Issuer and the Lessee, pursuant to which Issuer will loan (the “Loan”) the proceeds of the Bonds to the Lessee, each substantially in the form heretofore delivered to the Underwriter, with only such changes therein as shall be mutually agreed upon among the Issuer, the Lessee and the Underwriter. Payment of principal of and interest on the Bonds shall be guaranteed in an aggregate principal amount of \$6,000,000 by ADFA pursuant to its Revenue Bond Guaranty Program (the “ADFA Guaranty”) established under the ADFA Guaranty Act (as defined in the Indenture) and in an aggregate principal amount of \$5,000,000 by AEDC pursuant to its Revenue Bond Guaranty Program (the “AEDC Guaranty”) established under the AEDC Guaranty Act (as defined in the Indenture). The Project will be leased by the Lessee from the Issuer pursuant to the Lease Agreement providing for rental payments by the Lessee to the Issuer sufficient in amount to pay debt service on the Bonds.

The Bonds are special, limited obligations of the Issuer payable solely from amounts realized by the Issuer under the Lease Agreement (except to the extent paid out of moneys attributable to Bond proceeds, investment income or, under certain circumstances, proceeds of insurance or condemnation awards or payments) and payments made under the ADFA Guaranty and the AEDC Guaranty. The Bonds shall be obligations only of the Lessee and in no event shall the bonds constitute an indebtedness of the Issuer or the State of Arkansas or an indebtedness for which the faith and credit of the Issuer or the State of Arkansas or any of its revenues are pledged or an indebtedness secured by lien on or a security interest in any property of the Issuer or the State. No bondholder will ever have the right to compel any exercise of taxing power by the Issuer or the State of Arkansas or any political subdivision or agency thereof to pay Bonds.

3. The Issuer and the Lessee have previously provided the Underwriter with copies of a Preliminary Official Statement, including the cover page and appendices attached thereto, dated \_\_\_\_\_, 2022, relating to the Bonds (the “Preliminary Official Statement”). The Preliminary Official Statement, as amended to conform to the terms of this Bond Purchase Agreement, including Exhibit A hereto, and with such other changes and amendments as are mutually agreed to by the Issuer, the Lessee and the Underwriter, is herein referred to as the “Official Statement.”

The Underwriter acknowledges that the Issuer has not participated in the preparation of the Preliminary Official Statement or the Official Statement and has made no independent investigation and has furnished no information contained in the Preliminary Official Statement or the Official Statement except the information contained under the headings “THE ISSUER” and

“LITIGATION” (to the extent related to litigation of the Issuer). The Issuer assumes no responsibility with respect to the sufficiency, accuracy or completeness of any of the information contained in the Preliminary Official Statement or the Official Statement or in any other document used in connection with the offer and sale of the Bonds.

The Underwriter agrees to make a bona fide public offering of the Bonds, solely pursuant to the Official Statement, at the initial offering prices or yields set forth in the Official Statement, reserving, however, the right to change such initial offering prices or yields as the Underwriter shall deem necessary in connection with the marketing of the Bonds.

The Underwriter shall give notice to the Issuer and any additional “issuer” on the date after which no participating underwriter, as such term is defined in the Rule, remains obligated to deliver final Official Statements pursuant to paragraph (b)(4) of the Rule.

ADFA and AEDC will undertake, pursuant to a Continuing Disclosure Agreement to be dated as of the date of the deliver of the Bonds (the “Continuing Disclosure Agreement”), to provide certain annual financial and operating information and notices of the occurrence of certain events, if material, with respect to the Revenue Bond Guaranty Program of ADFA and AEDC only. The Lessee, ADFA and AEDC acknowledge that the Issuer has undertaken no responsibility with respect to any reports, notices or disclosures provided or required under the Continuing Disclosure Agreement and has no liability to any person, including any Beneficial Owner, with respect to any such reports, notices or disclosures.

4. (a) It shall be a condition to the Issuer’s obligations to sell and deliver the Bonds to the Underwriter and to the obligations of the Underwriter to purchase, accept delivery of, and pay for the Bonds, that the entire \$\_\_\_\_\_ aggregate principal amount of the Bonds authorized to be issued by the Issuer shall be sold and delivered by the Issuer and purchased, accepted and paid for by the Underwriter at the Closing.

(b) The Issuer acknowledges and agrees that (i) the purchase and sale of the Bonds pursuant to this Bond Purchase Agreement is an arm’s-length commercial transaction between the Issuer, the Lessee and the Underwriter, (ii) in connection with such transaction, including the process leading thereto, the Underwriter is acting solely as a principal and not as an agent or a fiduciary of the Issuer; (iii) the Underwriter has neither assumed an advisory or fiduciary responsibility in favor of the Issuer with respect to the offering of the Bonds or the process leading thereto (whether or not the Underwriter, or any affiliate of the Underwriter, has advised or is currently advising the Issuer on other matters) nor has it assumed any other obligation to the Issuer except the obligations expressly set forth in this Bond Purchase Agreement, (iv) the Underwriter has financial and other interests that differ from those of the Issuer; and (v) the Issuer has consulted with its own legal and financial advisors to the extent it deems appropriate in connection with the offering of the Bonds.

5. Should the Issuer fail to deliver the Bonds at the Closing, or should the Issuer and/or the Lessee be unable to satisfy the conditions of the obligations of the Underwriter to accept delivery of and to pay for the Bonds, as set forth in this Bond Purchase Agreement (unless waived by the Underwriter), or should any obligation of the Underwriter hereunder be terminated for any reason permitted by this Bond Purchase Agreement, except as set forth in Paragraphs 13

and 16 hereof, neither party hereto shall have any further rights against the other hereunder. The Underwriter and the Issuer understand that in any of such events the Issuer's and the Underwriter's actual expenses, costs or damages may be unequal, and any such amounts incurred by either party may be greater or may be less than those amounts incurred by the other. Accordingly, and subject to Paragraphs 13 and 16 hereof, the Underwriter hereby waives any right to claim that the Underwriter's actual expenses, costs or damages are or will be greater than the actual expenses, costs or damages incurred or suffered by the Issuer, and the Issuer hereby waives any right to claim that the Issuer's actual expenses, costs or damages are or will be greater than any actual expenses, costs or damages incurred or suffered by the Underwriter, and neither party shall be entitled to claim any damages from the other.

6. The Issuer and the Lessee shall supply to the Underwriter a final Official Statement, in form satisfactory to the Underwriter, within seven (7) business days of the date hereof and in time to accompany any confirmation that requests payment from any customer, and in a sufficient quantity to comply with SEC Rule 15c2-12(b)(4) (the "Rule") and the rules of the Municipal Securities Rulemaking Board. Such Official Statement shall be signed on behalf of the Issuer by its Mayor and City Clerk. The Issuer and the Lessee hereby authorize the use of copies of the Indenture, the Lease Agreement, the ADFA Guaranty, the AEDC Guaranty and the Official Statement and the information therein contained by the Underwriter in connection with the public offering and the sale of the Bonds. The Issuer and the Lessee ratify and confirm the use of the Preliminary Official Statement by the Underwriter prior to the date hereof in connection with the public offering of the Bonds. With respect to information therein concerning the Issuer, the Preliminary Official Statement is, as of its date, hereby "deemed final" by the Issuer for purposes of subparagraph (b)(1) of the Rule. With respect to information therein concerning the Lessee, the Preliminary Official Statement is, as of its date, hereby "deemed final" by the Lessee for purposes of subparagraph (b)(1) of the Rule.

7. The Issuer represents and warrants that:

(a) The Issuer is a duly organized and existing political subdivision and city of the first class under the Constitution and laws of the State of Arkansas (the "State"), and has, and at the Closing Date will have, full legal right, power and authority under the Constitution and laws of the State of Arkansas, particularly Title 14, Chapter 164, Subchapter 2 of the Arkansas Code of 1987 Annotated, as amended (the "Act") (i) to enter into this Bond Purchase Agreement, (ii) to adopted its ordinance authorizing the transactions contemplated hereby and the execution and delivery of the Indenture, this Bond Purchase Agreement, the Lease Agreement and all other bond documents (the "Ordinance"), (iii) to enter into the Indenture, (iv) to issue, sell and deliver the Bonds to the Underwriter as provided herein, and (v) to carry out and consummate the transactions contemplated by this Bond Purchase Agreement, the Ordinance, the Indenture, the Lease Agreement and the Official Statement;

(b) The Bonds will be issued pursuant to and in full compliance with the Constitution and laws of the State, including particularly the Act;

(c) The Ordinance was adopted by the Issuer's City Council on \_\_\_\_\_, 2022, and pursuant to the Ordinance, the Issuer has duly authorized and approved the Official

Statement, has duly authorized and approved the execution and delivery of, and performance by the Issuer of the obligations contained in the Bonds, has duly ratified the execution and delivery of and the performance by the Issuer of the obligations contained in this Bond Purchase Agreement, the Indenture and the Lease Agreement and has duly authorized and/or ratified the consummation by it of all other transactions contemplated by the Official Statement;

(d) This Bond Purchase Agreement, the Indenture and the Lease Agreement, when executed and delivered by the Issuer, will constitute legal, valid and binding obligations of the Issuer and will be enforceable against the Issuer in accordance with their respective terms, except as enforceability thereof may be limited by bankruptcy, insolvency or other laws affecting creditors' rights generally;

(e) When delivered to and paid for by the Underwriter at the Closing in accordance with the provisions of this Bond Purchase Agreement, the Bonds will have been duly authorized, executed, authenticated, issued and delivered and will constitute valid and binding special obligations of the Issuer, in conformity with the Act and the Ordinance, and entitled to the benefit and security of the Indenture;

(f) Neither the adoption of the Ordinance, the execution and delivery of this Bond Purchase Agreement, the Bonds, the Indenture and the Lease Agreement nor the consummation of the transactions contemplated herein or therein or the compliance with the provisions hereof or thereof will conflict with, or constitute on the part of the Issuer a violation of, or a breach of or default under any agreement or other instrument to which the Issuer is a party, or any existing law, administrative regulation, court order or consent decree to which the Issuer is subject;

(g) The Issuer will furnish or cause to be furnished to the Underwriter, at the expense of the Lessee, within seven (7) business days of the date hereof, copies of the Official Statement as provided in Paragraph 6 hereof, and as soon as available, copies of all amendments and supplements thereto, in such quantities as the Underwriter may reasonably request;

(h) At the time of the Issuer's acceptance hereof and at all times subsequent thereto, to and including the time of the Closing, the Official Statement does not and will not contain any untrue statement of a material fact with respect to the Issuer or omit to state a material fact with respect to the Issuer required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, that it is understood that no such representation or agreement of the Issuer shall apply to statements or information in or omissions from the Official Statement with respect to which the Underwriter and the Issuer are indemnified by the Lessee pursuant to the Letter of Representation of even date herewith, substantially in the form attached hereto as Exhibit B (the "Letter of Representation");

(i) There is no action, suit, proceeding or investigation involving the Issuer before or by any court, public board or body pending or, to the knowledge of the Issuer, threatened, wherein an unfavorable decision, ruling or finding would: (i) affect the

existence or powers of the Issuer or the titles of its officers to their respective offices, (ii) enjoin or restrain the issuance, sale and delivery of the Bonds or the collection of any moneys or property pledged or to be pledged under the Indenture or the pledge thereof, (iii) in any way question or affect any of the rights, powers, duties or obligations of the Issuer with respect to the moneys and assets pledged or to be pledged to pay the principal of or interest on the Bonds, (iv) in any way question or affect any authority for the issue of the Bonds or the validity or enforceability of the Bonds, the Indenture, the Lease Agreement or the Ordinance, or (v) in any way question or affect this Bond Purchase Agreement or the transactions contemplated by this Bond Purchase Agreement, the Official Statement, the documents referred to in the Official Statement, or any other agreement or instrument to which the Issuer is a party and relating to the issuance of the Bonds;

(j) The Issuer has never been in default at any time as to the payment of principal of or interest on any obligation which it has issued, including those which it has issued as a conduit for another entity, except as specifically disclosed in the Official Statement; and other than the Indenture and the Lease Agreement, the Issuer has not entered into any contract or arrangement of any kind which might give rise to any lien or encumbrance on the Loan, or the revenues derived therefrom;

(k) Any certificate signed by any authorized official of the Issuer and delivered to the Underwriter shall be deemed a representation and warranty by the Issuer to the Underwriter as to the truth of the statements therein contained; and

(m) The Issuer will furnish such information, execute such instruments and take such other action in cooperation with the Underwriter, as the Underwriter may reasonably request, to qualify the Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions of the United States of America as the Underwriter may designate and will assist, if necessary, in the continuance of such qualifications in effect so long as required for the distribution of the Bonds; provided, however, that the Issuer will not waive its sovereign immunity as a political subdivision of the State of Arkansas and shall not be required to qualify as a foreign corporation or to file any general consents to service of process under the laws of any state.

8. The Lessee represents and warrants that:

(a) The statements and information contained in the Official Statement with respect to the Lessee and their respective business, affiliates, financial condition, properties and officers, and operations in the State of Arkansas generally, including but not limited to the statements and information under the Official Statement headings “INTRODUCTORY STATEMENT”, “THE PROJECT”, “SOURCES AND USES OF FUNDS,” “SECONDARY MARKET DISCLOSURE,” and “LEGAL MATTERS” and in Appendix B to the Official Statement, do not omit any statement or information which is necessary to make the statements and information therein, in light of the circumstances under which they are made, not misleading in any material respect;

(b) The Lessee has no knowledge of any untrue statement of a material fact or omission of a material fact required to be stated in the Official Statement or necessary to make the statements in the Official Statement, in light of the circumstances under which they were made, not misleading in any material respect;

(c) Colson is on the date hereof and will be on the Closing Date a duly formed limited liability company, validly existing and in good standing under the laws of the State of Delaware, with full power to own its properties and conduct its business and is in good standing in the State of Arkansas and the State of Delaware. Holdings is on the date hereof and will be on the Closing Date a duly formed limited liability company, validly existing and in good standing under the laws of the State of \_\_\_\_\_, with full power to own its properties and conduct its business and is in good standing in the State of \_\_\_\_\_. The Lessee will be in compliance in all material respects with the laws of the State of Arkansas and with applicable provisions of the federal securities laws on the Closing Date;

(d) The Lessee has the full legal power and authority and has been duly authorized to execute and deliver (i) this Bond Purchase Agreement, the Lease Agreement and the Letter of Representation (collectively, the “Lessee Documents”), and to take any and all such action as may be required on the Lessee’s part to carry out, give effect to and consummate the transactions contemplated thereby and hereby and has taken all necessary corporate action with respect thereto;

(f) This Bond Purchase Agreement and the Letter of Representation are as of the date hereof and the other Lessee Documents will be as of the Closing Date duly executed and delivered by the Lessee, and, assuming their due authorization, execution and delivery by the other parties thereto, constitute legal, valid and binding obligations of the Lessee, enforceable in accordance with their respective terms, except that enforceability may be limited by laws relating to bankruptcy, reorganization, insolvency, moratorium or other similar laws affecting the rights of creditors, by the exercise of judicial discretion in accordance with general principles of equity, and by matters of public policy;

(g) The execution and delivery of the Lessee Documents, the consummation of the transactions contemplated therein and compliance with the provisions hereof and thereof, under the circumstances contemplated herein and therein, do not, on the date hereof, and as of the Closing Date, will not, in any material respect, conflict with or constitute on the part of the Lessee a violation of or breach of or default under its Articles of Organization or Operating Agreement, or any agreement or other instrument to which the Lessee is a party, or by which its property may be bound, or any existing law, administrative regulation, court order or consent decree to which the Lessee or any of its properties are subject, which would materially adversely affect the transactions contemplated hereby or so affect the business, operations or financial condition of the Lessee;

(h) The Lessee has the power and authority to approve the Official Statement and has taken all necessary corporate action with respect thereto;

(i) All of the warranties and representations of the Lessee in the Lessee Documents are true and correct as of this date, as if made on this date and will be true and

correct as of the Closing Date, and any certificate signed by any authorized official of the Lessee and delivered to the Underwriter shall be deemed a representation and warranty by the Lessee to the Underwriter as to the truth of the statements therein contained;

(j) The Lessee covenants and warrants that it knows of no event or circumstance which presently appears likely to occur which would cause it not to have the economic ability to meet all the obligations imposed under the Lessee Documents;

(k) The Lessee is not in default in the payment of principal of or premium, if any, or interest on any obligation issued by it;

(l) All authorizations, approvals, licenses, permits, consents and orders of any governmental authority, legislative body, board, agency or commission having jurisdiction of the matter which are required for the due authorization of, which would constitute a condition precedent to, or the absence of which would materially adversely affect the due performance by the Lessee of its obligations under the Lessee Documents, the Bonds and with respect to the Project have been duly obtained, except for such approvals, consents and orders as may be required under the Blue Sky or securities laws of any jurisdiction in connection with the offering and sale of the Bonds;

(m) There is no litigation, action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, pending or threatened against the Lessee, affecting the existence of the Lessee or the titles of its officers to their respective offices, or affecting or seeking to prohibit, restrain or enjoin the sale, issuance or delivery of the Bonds, or the construction or operation of the Project pursuant to the Lessee Documents or in any way contesting or affecting the validity or enforceability of the Bonds, the Lessee Documents, or contesting the exclusion from gross income of interest on the Bonds for federal income tax purposes or state income tax purposes, or contesting in any way the completeness or accuracy of the Preliminary Official Statement and the Official Statement or any supplement or amendment thereto, or contesting the powers of the Lessee or any authority for the issuance of the Bonds, or the execution and delivery of the Lessee Documents, nor is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the validity or enforceability of the Bonds or the Lessee Documents;

(n) No event has occurred and no condition exists which, upon issuance of the Bonds, would constitute (or with the giving of notice or lapse of time, or both, would, constitute) an Event of Default under the Lessee Documents or any other agreement, mortgage, document or instrument relating to any existing indebtedness of the Lessee to which the Lessee is a party;

(o) The Lessee has received, and there are currently in full force and effect, all permits, licenses, franchises, accreditations and certifications necessary (i) to conduct its businesses as those businesses are being conducted currently, as described in the Official Statement and (ii) to acquire, construct and equip the Project;

(p) Prior to the Closing, the Lessee will not incur any material liabilities, direct or contingent, payable from or secured by any of the Basic Rent or Additional Rent payments (as defined in the Lease Agreement) or assets which will secure the Bonds without the prior approval of the Underwriter;

(q) The Authorized Lessee Representative (as defined in the Indenture) has reviewed and approved the information in the Preliminary Official Statement and the Official Statement and hereby authorizes the Preliminary Official Statement and the Official Statement to be used by the Underwriter in connection with the public offering and sale of the Bonds. The Lessee hereby approves the forms of, and consents to and ratifies the Underwriter's use of, the Preliminary Official Statement and the Official Statement, in connection with the offering and sale of the Bonds and in connection with any "Blue Sky" qualifications. The Lessee hereby confirms that it does not object to the distribution of the Preliminary Official Statement and the Official Statement in electronic form.

9. Reserved.

10. The Issuer covenants and agrees with the Underwriter that:

(a) It will advise the Underwriter promptly of any proposal to amend or supplement the Official Statement or any part thereof. If between the date of this Bond Purchase Agreement and twenty five (25) days after the Closing an event occurs which is materially adverse to the purpose for which the Official Statement is to be used and is not disclosed in the Official Statement, or if there shall exist any event which in the reasonable judgment of the Underwriter makes untrue or incorrect in any material respect any statement or information contained in the Official Statement, or is not reflected in the Official Statement but should be reflected therein in order to make the statements and information contained therein not misleading in any material respect, the Issuer will supplement or amend the Official Statement in a form and in a manner approved by the Underwriter and Bond Counsel, the expense of which shall be paid from the proceeds of the sale of the Bonds or by the Lessee;

(b) At or prior to the time of the Closing, the Issuer shall have entered into the Lease Agreement with the Lessee upon the terms and conditions set forth and described in the Official Statement;

(c) At or prior to the time of the Closing, the Issuer shall have entered into the Indenture with the Trustee upon the terms and conditions set forth and described in the Official Statement; and

(d) So long as any of the Bonds are outstanding, the Issuer will deliver to the Underwriter copies of all reports required to be filed by the Issuer pursuant to the Indenture and the Lease Agreement, if any, in each case within five (5) business days after such filing.

11. At 10:00 a.m., Little Rock time, on \_\_\_\_\_, \_\_\_\_\_, 2022 (the "Closing Date"), or on such later date as the parties may agree, the Issuer will deliver the Bonds, or cause the

Bonds to be delivered through the facilities of The Depository Trust Company, to the Underwriter, in definitive form, duly executed and authenticated, and the Underwriter will accept such delivery and pay the purchase price of the Bonds as set forth in Paragraph 1 hereof by a bank wire of Federal Funds payable to the order of the Trustee for the account of the Issuer (the “Closing”).

Delivery of the other documents herein mentioned, subject to the terms and conditions hereof, shall be made at the offices of Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C., Bond Counsel (“Bond Counsel”), 100 East Huntington, Suite C, Jonesboro, Arkansas 72401, or such other place as shall have been mutually agreed upon by the Issuer, the Lessee and the Underwriter.

12. The Underwriter has entered into this Bond Purchase Agreement in reliance upon the representations, warranties and agreements of the Issuer and the Lessee contained herein and to be contained in the documents and instruments to be delivered at the Closing and upon the performance by the Issuer and the Lessee of their respective obligations hereunder, both as of the date hereof and as of the date of the Closing. Accordingly, the Underwriter’s obligations under this Bond Purchase Agreement to purchase, accept delivery of, and pay for the Bonds shall be subject to the performance by the Issuer and the Lessee of their obligations to be performed hereunder and under such documents and instruments at or prior to the Closing, and shall also be subject to the following conditions (any or all of which may be waived by the Underwriter in its discretion):

(a) The representations and warranties of the Issuer and the Lessee contained herein shall be true, complete and correct on the date hereof and on and as of the date of the Closing, as if made on the date of the Closing;

(b) At the time of the Closing, the Ordinance, the Indenture and the Lease Agreement shall be in full force and effect, and shall not have been amended, modified, supplemented or revoked, and the Official Statement shall not have been amended, modified or supplemented, except in either case as may have been agreed to by the Underwriter, and the Issuer shall have duly adopted and there shall be in full force and effect such other ordinances and resolutions as, in the opinion of Bond Counsel shall deem necessary in connection with the transactions contemplated hereby;

(c) The Underwriter shall have the right to cancel its obligations under this Bond Purchase Agreement to purchase, accept delivery of, and pay for the Bonds by notifying the Issuer and the Lessee of its election to do so if, prior to the Closing: (i) the marketability of the Bonds or the market price thereof, in the opinion of the Underwriter, has been materially adversely affected by any decision of a court of the United States of America (including the United States Tax Court) or of the State of Arkansas, any ruling or regulation (final, temporary or proposed) issued by or on behalf of the Treasury Department of the United States of America, or other governmental agency of the United States of America or any governmental agency of the State of Arkansas, or legislation enacted by or favorably reported to either the House of Representatives or the Senate of the United States (or a tentative decision with respect to any legislation has been reached by any committee thereof) or either house of the General Assembly of the State of

Arkansas or formally proposed to Congress by the President of the United States or to the General Assembly of the State of Arkansas by the Governor of the State of Arkansas in an executive communication, affecting the tax status of the Issuer or the Lessee, their respective property or income, their bonds or other indebtedness (including the Bonds) or the interest thereon, or any tax exemption granted or authorized by the Act; (ii) the United States of America shall have become engaged in hostilities which have resulted in a declaration of war or a national emergency; (iii) there shall have occurred a general suspension of trading on the New York Stock Exchange or the declaration of a general banking moratorium by the United States of America, New York State or Arkansas State authorities; (iv) a stop order, ruling, regulation or official statement by, or on behalf of, the Securities and Exchange Commission or any other governmental agency having jurisdiction of the subject matter shall be issued or made to the effect that the issuance, offering or sale of the Bonds, including all the underlying obligations, as contemplated hereby or by the Official Statement, is in violation or would be in violation of any provision of the federal securities laws, the Securities Act of 1933, as amended and as then in effect, or the Securities Exchange Act of 1934, as amended and as then in effect, or the qualification provisions of the Trust Indenture Act of 1939, as amended and as then in effect, or legislation shall be enacted by the Congress of the United States, or a decision by a court of the United States of America shall be rendered, to the effect that obligations of the general character of the Bonds, or the Bonds, including all the underlying obligations, are not exempt from registration under, or other requirements of, the Securities Act of 1933, as amended and as then in effect, or the Securities Exchange Act of 1934, as amended and as then in effect, or that the Indenture is not exempt from qualification under, or other requirements of, the Trust Indenture Act of 1939, as amended and as then in effect or (v) an event described in Paragraph 10(a) hereof occurs which in the opinion of the Underwriter requires a supplement or amendment to the Official Statement; and

(e) At or prior to the Closing, the Underwriter or Bond Counsel, as appropriate, shall have received the following documents:

(1) The Official Statement executed on behalf of the Issuer by its Mayor and City Clerk;

(2) The Ordinance, the Indenture and the Lease Agreement certified by the Issuer as having been duly adopted, executed and delivered by the authorized representatives of the Issuer and in full force and effect, with only such amendments, modifications or supplements thereto as may have been agreed to by the Underwriter;

(3) The Continuing Disclosure Agreement executed by ADFA and AEDC and the dissemination agent;

(4) The ADFA Guaranty and the AEDC Guaranty executed and delivered by ADFA and AEDC, respectively, to the Trustee;

(5) The Lease Agreement executed by the Lessee and delivered to the Trustee;

(6) An unqualified approving opinion, dated the date of the Closing, of Bond Counsel, in customary form and content satisfactory to the Underwriter, to the effect that (i) this Bond Purchase Agreement has been duly authorized, executed and delivered by the Issuer and the Lessee, and, assuming due execution by the Underwriter, subject to the extent that the enforceability of the rights and remedies set forth herein may be limited by bankruptcy, insolvency or other laws affecting creditors' rights generally, constitutes a valid and binding agreement of the Issuer and the Lessee in accordance with its terms; (ii) the Issuer has ratified the distribution of the Official Statement; (iii) the Lessee Documents conform as to form and tenor with the terms and provisions thereof as summarized and set out in the Official Statement; (iv) the execution and delivery of the Indenture, the Lease Agreement, this Bond Purchase Agreement and the Bonds, and compliance with the provisions thereof, under the circumstances contemplated thereby, do not and will not in any material respect conflict with or constitute on the part of the Issuer a breach of or default under any indenture, deed of trust or other instrument of which such counsel has knowledge, to which the Issuer is a party, or conflict with, violate or result in a breach of any statute or, to the best of such counsel's knowledge, any court decree or any administrative regulation to which the Issuer is subject; and (v) to the best of such counsel's knowledge, there is no action, suit, proceeding or investigation at law or in equity before or by any court or public board or body, pending or threatened, against or affecting the Issuer, challenging the validity of the transactions contemplated by the Official Statement, or the validity of the Bonds, the Indenture, the Lease Agreement or this Bond Purchase Agreement;

(10) A certificate dated the Closing Date and signed by the Mayor and the City Clerk of the Issuer to the effect that (i) the representations and warranties of the Issuer contained herein are true and correct in all material respects on and as of the date of the Closing as if made on the date of the Closing; (ii) the Issuer has duly authorized, by all action necessary under the Act and the laws and Constitution of the State, the Indenture and the Lease Agreement and the execution and delivery of the Bonds, the provisions of the Indenture and the Lease Agreement and this Bond Purchase Agreement; (iii) there is no action, suit, proceeding or investigation involving the Issuer before or by any court or public board or body pending or, to the knowledge of the Issuer, threatened wherein an unfavorable decision, ruling or finding would: (A) affect the creation, organization, existence or powers of the Issuer or the titles of its officers or members to their respective offices, (B) enjoin or restrain the issuance, sale and delivery of the Bonds or the collection of any moneys or property pledged or to be pledged under the Indenture or the pledge thereof, (C) in any way question or affect any of the rights, powers, duties or obligations of the Issuer with respect to the moneys and assets pledged or to be pledged to pay the principal of, premium, if any, or interest on the Bonds, (D) in any way question or affect any authority for the issuance of the Bonds or the validity or enforceability of the Bonds, the

Ordinance, the Indenture or the Lease Agreement, or (E) in any way question or affect this Bond Purchase Agreement or the transactions contemplated hereby, or by the Official Statement, the documents referred to in the Official Statement, or any other agreement or instrument to which the Issuer is a party and relating to the Bonds; (iv) the Issuer has complied with all agreements and covenants and satisfied all conditions on its part to be complied with or satisfied at or prior to the Closing; (v) to the best of their knowledge, neither the Official Statement nor any amendment or supplement thereto, as of their issue dates, contains any untrue statement of a material fact regarding the Issuer or omits to state any material fact regarding the Issuer necessary in order to make the statements contained therein, in the light of the circumstances under which they were made, not misleading; and (vi) to the best of their knowledge, no event affecting the Issuer or the Lessee has occurred since the date of the Official Statement which should be disclosed in the Official Statement for the purposes for which it is used or which is necessary to disclose therein in order to make the statements and information therein not misleading in any material respect;

(11) An opinion of Mitchell, Williams, Selig, Gates, and Woodyard, P.L.L.C., counsel to the Lessee, dated the Closing Date and addressed to the Issuer, the Underwriter and Bond Counsel, to the effect that (i) Colson is a duly formed limited liability company, validly existing and in good standing under the laws of the State of Arkansas and the State of Delaware, with full power to own its properties and conduct its business as it is currently being conducted in the State of Arkansas and with all power necessary to conduct the business described in the Official Statement; (ii) Holdings is a duly incorporated limited liability company, validly existing and in good standing under the laws of the State of \_\_\_\_\_, with full power to own its properties and conduct its business; (iii) the Lessee has duly approved the Official Statement; (iv) the Lessee Documents have been duly authorized, approved, executed and delivered by the Lessee and, subject to the extent that the enforceability of the rights and remedies set forth therein may be limited by bankruptcy, insolvency or other laws affecting creditors, rights generally, constitute valid and binding agreements of the Lessee enforceable in accordance with their respective terms; (v) the information in the Official Statement under the captions “THE PROJECT” and Appendix A to the Official Statement is fair, accurate and complete (except for the financial statements and other financial and operating data included in the Official Statement, as to which no view need be expressed) and does not omit any matter which, in such counsel’s opinion, for the purposes for which the Official Statement is to be used, should be included or referred to therein; (vi) there is no action, suit or proceeding at law or in equity before or by any court, public board or body, pending against or affecting the Lessee, challenging the validity of the transactions contemplated by the Official Statement or the validity of the Lessee Documents or the Letter of Representation and, to the best of such counsel’s knowledge, there is no threatened action, suit or proceeding involving any of the matters hereinabove mentioned in this clause (vi); (vii) the execution and delivery of the Lessee Documents and the Letter of Representation, and the approval of the Official Statement, and compliance with the provisions hereof and thereof, under the

circumstances contemplated hereby and thereby, do not and will not in any material respect conflict with or constitute on the part of the Lessee a breach of or default under any agreement or other instrument to which the Lessee is a party or any existing law, regulation, court order or consent decree to which the Lessee is subject; and (viii) based upon the examinations which such counsel has made as counsel to the Lessee, which shall be specified, nothing has come to such counsel's attention which would lead such counsel to believe that the Official Statement (except for the financial statements and other financial data, if any included in the Official Statement, as to which no view need be expressed) contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(12) A certificate, dated the Closing Date, executed by the \_\_\_\_\_ of the Lessee, to the effect that (i) since \_\_\_\_\_, 20\_\_, no material adverse change has occurred in the financial position of the Lessee or results of operations of the Lessee other than as set forth in or contemplated by the Official Statement; (ii) the Lessee has not, since \_\_\_\_\_, 20\_\_, incurred any material liabilities other than as set forth in or contemplated by the Official Statement; (iii) no litigation is pending or, to the member's knowledge, threatened (A) to restrain or enjoin the issuance or delivery of any of the Bonds or the collection and application of revenues pledged under the Lessee Documents, as applicable, (B) in any way contesting or affecting any authority for the issuance of the Bonds or the validity of any of the Lessee Documents, or (C) in any way contesting the corporate existence or powers of the Lessee; (iv) to the best of such officer's knowledge, no event affecting the Lessee has occurred since the date of the Official Statement which should be disclosed therein in order to make the statements and information therein not misleading in any material respect; and (v) the representations and warranties of the Lessee in the Letter of Representation are true and correct in all material respects as of the Closing Date;

(13) A certified copy of the resolution of Colson authorizing and approving the transactions surrounding the issuance of the Bonds on behalf of the Lessee;

(14) A copy of the Articles of Organization of the Lessee, as amended and then in force, certified by the Secretary of State of Arkansas to a date reasonably close to the Closing Date; a copy of the Operating Agreement of the Lessee, as amended and then in force, certified by an officer of the Lessee; and a certificate of good standing for the Lessee issued by the Secretary of State of Arkansas and by the Secretary of State of Delaware and dated as of a date acceptable to the Underwriter;

(15) Reserved;

(16) Reserved;

(17) A certified copy of the resolution of Holdings authorizing and approving the transactions surrounding the issuance of the Bonds on behalf of the Lessee;

(18) A copy of the Articles of Organization of Holdings, as amended and then in force, certified by the Secretary of State of \_\_\_\_\_ to a date reasonably close to the Closing Date, a copy of the Operating Agreement of Holdings, as amended and then in force, certified by its Secretary; and a certificate of good standing for Holdings issued by the Secretary of State of \_\_\_\_\_ and dated as of a date acceptable to the Underwriter;

(19) Reserved;

(20) Reserved;

(21) Evidence satisfactory to the Underwriter to the effect that the insurance coverage of the Lessee complies with all applicable requirements in the Lease Agreement;

(22) Receipts or other evidence that financing statements have been filed for record with the Secretary of State of Arkansas with respect to the assignments made and security interests granted in or pursuant to the Indenture and the Lease Agreement;

(23) Reserved;

(24) Copies of all permits, licenses and other approvals necessary to operate the Lessee's business;

(25) Reserved;

(26) Reserved;

(27) An original transcript of all proceedings relating to the authorization and issuance of the Bonds; and

(28) Such additional legal opinions, certificates, proceedings, instruments and other documents as the Underwriter or Bond Counsel may reasonably request to evidence compliance by the Issuer and the Lessee with legal requirements, the truth and accuracy, as of the time of closing, of the representations of the Issuer and the Lessee herein contained, and the due performance or satisfaction by the Issuer and the Lessee at or prior to such time of all agreements then to be performed and all conditions then to be satisfied by the Issuer and the Lessee; in each case only with such changes after the date of execution of this Bond Purchase Agreement as the Underwriter and Bond Counsel shall approve.

All of the opinions, letters, certificates, instruments and other documents mentioned above or elsewhere in this Bond Purchase Agreement shall be deemed to be in compliance with the provisions hereof if, but only if, they are in form and substance satisfactory to the Underwriter and Bond Counsel. The performance of any and all obligations of the Issuer and the Lessee under this Bond Purchase Agreement and the performance of any and all conditions contained herein for the benefit of the Underwriter may be waived by the Underwriter in its sole discretion.

If the Issuer or the Lessee shall be unable to satisfy the conditions to the obligations of the Underwriter to purchase, to accept delivery of, and to pay for the Bonds contained in this Bond Purchase Agreement, or if the obligations of the Underwriter to purchase, to accept delivery of, and to pay for the Bonds shall be terminated for any reason permitted by this Bond Purchase Agreement, this Bond Purchase Agreement shall terminate and neither the Underwriter nor the Issuer or the Lessee shall be under further obligation hereunder, except that the obligations of the Issuer and the Underwriter set forth in Paragraphs 13 and 16 hereof shall continue in full force and effect.

13. (a) The Underwriter shall be under no obligation to pay, and the Issuer shall pay (but only from the proceeds of sale of the Bonds or from contributions by the Lessee), any expenses incident to the performance of the Issuer's obligations hereunder, including, but not limited to: (i) the fees and disbursements of Bond Counsel; (ii) the fees and disbursements of the Issuer's or the Lessee's counsel or accountants, and of any other experts or consultants retained by the Issuer or the Lessee; (iii) fees, if any, for bond insurance and ratings; (iv) charges for obtaining CUSIP numbers on the Bonds; (v) the Trustee's fees and expenses and the fees and expenses of any counsel retained by the Trustee; (vi) legal publication costs; (vii) the Underwriter's fees payable to The Depository Trust Company relating to the underwriting of the Bonds; (viii) the Underwriter's day loan expenses, and (ix) the cost of preparation and printing of the Bonds, the Preliminary Official Statement and the Official Statement.

(b) The Underwriter shall pay: (i) the cost of preparation and printing of Blue Sky and Legal Investment Surveys, if any; (ii) all advertising expenses in connection with the public offering of the Bonds; and (iii) other expenses associated with their public offering and distribution of the Bonds, including the fees and disbursements of any counsel retained by them.

14. Reserved.

15. Any notice or other communication to be given to the Issuer or the Lessee under this Bond Purchase Agreement may be given by delivering the same in writing at the Issuer's, or the Lessee's address set forth above, and any notice or other communication to be given to the Underwriter hereunder may be given by delivering the same in writing to Crews & Associates, Inc., 521 President Clinton Avenue, Suite 800, Little Rock, Arkansas 72201, Attention: Edmond Hurst.

16. This Bond Purchase Agreement is made solely for the benefit of the Issuer, the Lessee and the Underwriter (including the successors or assigns of any Underwriter) and no other person shall acquire or have any right hereunder or by virtue hereof. All of the Issuer's and the Lessee's representations, warranties and agreements contained herein shall remain operative

and in full force and effect, regardless of: (i) any investigations made by or on behalf of the Underwriter; (ii) delivery of and payment for the Bonds pursuant hereto; and (iii) any cancellation or termination hereof.

17. This Bond Purchase Agreement shall become effective upon the execution of the acceptance hereof by the Mayor and City Clerk of the Issuer, \_\_\_\_\_ of Colson, and the \_\_\_\_\_ of Holdings, and shall be valid and enforceable as of the time of such acceptance and approval.

[Signature Page Follows]

Very truly yours,

**CREWS & ASSOCIATES, INC.**

By: \_\_\_\_\_  
Authorized Representative

Accepted this \_\_\_\_\_, 2022

**CITY OF JONESBORO, ARKANSAS**

By: \_\_\_\_\_  
Mayor

Accepted this \_\_\_\_\_, 2022

**COLSON CASTER, LLC**  
a Delaware limited liability company

By: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

Accepted this \_\_\_\_\_, 2022

**COLSON GROUP HOLDINGS, LLC**  
a(n) \_\_\_\_\_ limited liability company

By: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

[SIGNATURE PAGE TO BOND PURCHASE AGREEMENT]

EXHIBIT A

MATURITY SCHEDULE

\$ \_\_\_\_\_<sup>†</sup>  
**CITY OF JONESBORO, ARKANSAS**  
**TAXABLE ECONOMIC DEVELOPMENT REVENUE BONDS**  
**(ADFA/AEDC GUARANTY PROGRAMS)**  
**(COLSON CASTER PROJECT)**  
**SERIES 2022A**

<u>Maturity</u> <u>( )</u>	<u>Principal Amount (\$)</u>	<u>Interest Rate (%)</u>	<u>Yield (%)</u>
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<sup>†</sup> Preliminary, subject to change.

## EXHIBIT B

### LETTER OF REPRESENTATION

\_\_\_\_\_, 2022

City of Jonesboro, Arkansas  
500 South Church Street  
Jonesboro, Arkansas 72401

Crews & Associates, Inc.  
521 President Clinton Avenue, Suite 800  
Little Rock, Arkansas 72201

Ladies and Gentlemen:

Pursuant to a Bond Purchase Agreement dated \_\_\_\_\_, 2022 (the “Bond Purchase Agreement”), between Crews & Associates, Inc. and the City of Jonesboro, Arkansas (the “Issuer”), Colson Caster, LLC, a Delaware limited liability company (“Colson”), and Colson Group Holdings, LLC, a(n) \_\_\_\_\_ limited liability company (“Holdings” and together with Colson, the “Lessee”), and a Trust Indenture dated as of \_\_\_\_\_, 2022 (the “Indenture”), by and between the Issuer and \_\_\_\_\_, as trustee (the “Trustee”), the Issuer proposes to issue \$11,000,000 aggregate principal amount of its Taxable Economic Development Revenue Bonds (ADFA/AEDC Guaranty Programs) (Colson Caster Project), Series 2022A (the “Bonds”) at the purchase price (the “Purchase Price”) of \$\_\_\_\_ (equal to the par amount less Underwriter’s discount of \$\_\_\_\_ less a net reoffering discount of \$\_\_\_\_). The pledge of payments under the Indenture and under the Lease Agreement dated as of \_\_\_\_\_, 2022 (the “Lease Agreement”), between the Issuer and the Lessee, will secure the payment of the Bonds and the interest thereon. The Arkansas Development Finance Authority (“ADFA”) is guaranteeing the repayment of principal of and interest on the Bonds in the aggregate principal amount of \$6,000,000 pursuant to a Guaranty Agreement between ADFA and the Trustee under the authority of Act No. 505 of the Acts of Arkansas of 1985, as amended (the “ADFA Guaranty”) and the Arkansas Economic Development Commission (“AEDC”) is guaranteeing the repayment of the Bonds in the aggregate principal amount of \$5,000,000 pursuant to a Guaranty Agreement between AEDC and the Trustee under the authority of \_\_\_\_\_, as amended (the “AEDC Guaranty”). All terms not defined herein shall have the meanings ascribed to them in the Bond Purchase Agreement.

In order to induce you to enter into the Bond Purchase Agreement and to make the offering and sale of the Bonds therein contemplated, the Lessee hereby represents to, and warrants and agrees with, both of you as follows:

(a) The statements and information concerning the Lessee, the use of the Bond proceeds, and the description of all documents and agreements to which the Lessee is a party contained in the Preliminary Official Statement dated \_\_\_\_\_, 2022 (the “Preliminary Official Statement”), are, as of the date thereof, true, correct and complete in all material respects. We hereby consent to the use of such statements and information in the Preliminary Official Statement and in the Official Statement. With respect to the Lessee, the use of Bond proceeds,

Exhibit A-1

and the description of all documents and agreements to which the Lessee is a party, the Official Statement does not and will not omit any statement or information which should be contained therein for the purpose for which the Official Statement is to be used or which is necessary to make the statements and information therein not misleading in any material respect.

(b) Since \_\_\_\_\_, 20\_\_, there has been no material adverse change in the financial position or results of operations of the Lessee, nor has the Lessee incurred any material liabilities, other than in the ordinary course of business or as set forth in or contemplated by the Official Statement.

(c) When executed and delivered, the Lease Agreement and this Letter of Representation will be valid and binding agreements of the Lessee. The execution and delivery of the Lease Agreement and this Letter of Representation, and compliance with the provisions thereof and hereof, will not conflict with or constitute a default under or a material breach of the articles of organization or operating agreement of the Lessee, or any law, administrative regulation, court order, consent decree or any agreement or other instrument to which the Lessee is subject.

(d) The Lessee consents to the distribution of the Preliminary Official Statement, the Official Statement, the Lease Agreement, the Indenture and the Bond Purchase Agreement in connection with the sale of the Bonds.

(e) The Lessee agrees to indemnify and hold harmless both of you and each person, if any, who controls (as such term is defined in Section 15 of the Securities Act of 1933, as amended) either of you against any and all losses, claims, damages and liabilities of any kind, including the expenses of defense thereof: (i) arising out of any statement or information contained in the Official Statement relating to the Lessee, the use of Bond proceeds, and the description of all documents and agreements to which the Lessee is a party that is untrue or incorrect in any material respect or the omission from the Official Statement of any statement or information relating to the Lessee, the use of Bond proceeds, and the description of all documents and agreements to which the Lessee is a party which is necessary to make the statements therein not misleading in any material respect, and (ii) to the extent of the aggregate amount paid in settlement of any litigation commenced or threatened arising from a claim based upon any such untrue statement or omission if such settlement is effected with the written consent of the Lessee (which consent shall not be unreasonably withheld). In case any claim shall be made or action brought against either of you or any controlling person (as aforesaid) based upon the Official Statement, in respect of which indemnity may be sought against the Lessee, you shall promptly notify the Lessee in writing, setting forth the particulars of such claim or action, and the Lessee shall assume the defense thereof, including the retaining of counsel and the payment of all expenses. You or any such controlling person shall have the right to retain separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at your expense or the expense of such controlling person, unless the retaining of such counsel has been specifically authorized by the Lessee.

(f) If, for any reason, the Bonds are not issued and sold, the Lessee shall reimburse the Issuer for all expenses reasonably incurred by it in connection with the proposed issuance and sale of the Bonds.

The representations, warranties, agreements and indemnities contained herein shall survive the Closing under the Bond Purchase Agreement and any investigation made by or on behalf of either of you or any person who controls either of you (as aforesaid) of any matters described in or related to the transactions contemplated hereby and by the Bond Purchase Agreement, the Official Statement, the Lease Agreement and the Indenture.

This Letter of Representation shall be binding upon and inure solely to the benefit of both of you and the Lessee and, to the extent set forth herein, persons controlling any of you, and their personal representatives, successors, and assigns, and no other person or firm or entity shall acquire or have any right under or by virtue of this Letter of Representation.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

If the foregoing is in accordance with your understanding of the agreement between us, kindly sign and return to the Lessee the enclosed duplicate of this Letter of Representation whereupon this will constitute a binding agreement between us in accordance with the terms hereof.

Very truly yours,

**COLSON CASTER, LLC**  
a Delaware limited liability company

By: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

**COLSON GROUP HOLDINGS, LLC**  
a(n) \_\_\_\_\_ limited liability company

By: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

Accepted and confirmed as of  
the date first above written:

**CITY OF JONESBORO, ARKANSAS**

By: \_\_\_\_\_  
Mayor

**CREWS & ASSOCIATES, INC.**

By: \_\_\_\_\_  
Authorized Representative

**CITY OF JONESBORO, ARKANSAS**

Issuer

and

**[Affiliate of Company]**

Purchaser

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**BOND PURCHASE AGREEMENT**

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Dated \_\_\_\_\_, 2022

Not to Exceed

\$9,000,000

City of Jonesboro, Arkansas

Taxable Industrial Development Revenue Bonds

(Colson Caster Project)

Series 2022C



MITCHELL, WILLIAMS, SELIG, GATES & WOODYARD, P.L.L.C.

100 EAST HUNTINGTON, SUITE C

JONESBORO, ARKANSAS 72401

# BOND PURCHASE AGREEMENT

Not to Exceed  
\$9,000,000  
City of Jonesboro, Arkansas  
Taxable Industrial Development Revenue Bonds  
(Colson Caster Project)  
Series 2022C

\_\_\_\_\_, 2022

[Affiliate of Colson Caster]  
2121 Barnhill Road  
Jonesboro, Arkansas 72401

Ladies and Gentlemen:

The City of Jonesboro, Arkansas (the “**Issuer**”), a political subdivision organized and existing under the laws of the State of Arkansas, hereby agrees with you as follows:

## SECTION 1. PURCHASE AND SALE OF BONDS

**1.1. Issuance of Bonds.** The Issuer has authorized the issuance of its Taxable Economic Development Revenue Bonds (Colson Caster Project), Series 2022C in a principal amount not to exceed Nine Million and No/100 Dollars (\$9,000,000.00) (the “**Bonds**”), pursuant to and in accordance with Amendment 65 to the Constitution of the State of Arkansas (“**Amendment 65**”), Act No. 9 of the First Extraordinary Session of the Sixty-Second General Assembly of the State of Arkansas for the year 1960, codified as Ark. Code Ann. Sections 14-164-201 *et seq.* as amended (“**Act 9**”), and Ordinance \_\_\_\_\_ of the Issuer (the “**Ordinance**”), duly adopted by its City Council on \_\_\_\_\_, 2022, such Bonds to be dated, to bear interest and to be payable as set forth in, and to be issued pursuant to the terms of a Trust Indenture (the “**Indenture**”) dated as of \_\_\_\_\_, 2022, by and between the Issuer and [To be determined], as trustee (the “**Trustee**”). The Bonds shall be issued as a single typewritten drawdown bond with a stated maximum principal of \$9,000,000; provided, however, that the principal amount due thereon shall be only such amount as has been drawn by Colson Caster, LLC (the “**Company**”) as reflected on the Schedule of Draws and Redemptions attached to the Bonds. The Bonds shall bear interest on the principal amount drawn by the Company, at the rate of \_\_\_\_\_% per annum, payable annually on \_\_\_\_\_, commencing on \_\_\_\_\_, 2022. The Bonds will mature on \_\_\_\_\_, 20\_\_\_. The proceeds from the sale of the Bonds shall be applied to acquire, construct and equip certain industrial facilities (the “**Project**”) within the corporate boundaries of the Issuer (or to reimburse the Company for said costs). The Issuer shall lease the Project to the Company, pursuant to the terms of a Lease Agreement dated as of \_\_\_\_\_, 2022 (the “**Lease Agreement**”). The Bonds will be secured by (i) the assignment by the Issuer to the Trustee for the benefit of the owner(s) of the bonds of the rights of the Issuer under the Lease Agreement on a subordinate basis to the Issuer’s \$11,000,000

Taxable Economic Development Revenue Bonds (ADFA/AEDC Guaranty Programs) (Colson Caster Project), Series 2022A and \$4,000,000 Taxable Economic Development Revenue Bonds (Colson Caster Project), Series 2022B, and (ii) such other funds and accounts as are described in the Indenture.

**1.2. Closing.** The Issuer hereby agrees to sell the Bonds to [Affiliate of Colson Caster] (the “**Purchaser**”) and, subject to the terms and conditions herein set forth, you hereby agree to purchase from the Issuer, from time to time, all or any portion of the Bonds at 100% of the principal amount drawn by the Company pursuant to a Draw Certificate as provided in the Indenture. The closing of the purchase of the Bonds shall be at 10:00 A.M. local time, on \_\_\_\_\_, 2022 (the “**Closing Date**”), at the offices of Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C., 100 East Huntington, Suite C, Jonesboro, Arkansas 72401, or at such other time and place as shall be subsequently agreed upon by the parties. At the closing and upon each subsequent draw, the Company will deliver a duly executed Draw Certificate to the Trustee, on behalf of the Issuer; you will deliver to the Trustee, in immediately available funds, the principal amount specified in the Draw Certificate, and the Trustee will deliver to the Company, or its order, in immediately available funds, the principal amount specified in the Draw Certificate.

Notwithstanding any provision of this Bond Purchase Agreement (this “**Agreement**”) to the contrary, the Issuer, the Purchaser, the Company, and the Trustee may enter into or accept the terms of a home office payment agreement for the making of all payments due under this Agreement and other documents contemplated by this Agreement upon such conditions as shall be satisfactory to the parties thereto contemporaneous with the issuance of the Bonds (the “**Home Office Payment Agreement**”).

## **SECTION 2. WARRANTIES, REPRESENTATIONS AND AGREEMENTS OF THE ISSUER**

The Issuer warrants, represents and agrees to and for your benefit and the benefit of the Company that:

**2.1. Organization and Authority.** The Issuer is a duly organized and validly existing political subdivision of the State of Arkansas and has all requisite power and authority under Amendment 65 and Act 9 to issue, sell and deliver the Bonds as provided herein and to consummate all other transactions involving the Issuer contemplated by this Agreement, the Lease Agreement, the Indenture, the Home Office Payment Agreement, or an Agreement for Payment in Lieu of Taxes to be dated as of the date of its delivery by and between the Issuer and the Company (the “**PILOT Agreement**”).

**2.2. Pending Litigation.** There is no action, suit, proceeding or investigation pending or threatened against or affecting the Issuer, or, to the best knowledge of the Issuer, any basis therefor, wherein an unfavorable decision or finding would adversely affect the transactions contemplated by this Agreement, or which in any way would adversely affect the validity or enforceability of the Bonds, this Agreement, the Lease Agreement, the Indenture or the PILOT Agreement.

**2.3. Sale and Other Transactions are Legal and Authorized.** The sale of the Bonds, the execution, delivery and due performance of this Agreement, the Lease Agreement, the Indenture, the Home Office Payment Agreement, and the PILOT Agreement, and all transactions contemplated by this Agreement and those agreements are within the purposes, powers and authority of the Issuer, and have been done in full compliance with the provisions of the Ordinance, Amendment 65 and Act 9, as applicable, and all other applicable laws of the State of Arkansas. When delivered to you in accordance with this Agreement, the Bonds being purchased by you hereunder will be duly authorized, executed, issued and delivered and will constitute the legal, valid and binding obligation of the Issuer payable solely from the revenues and other funds pledged in the Indenture therefor, and the owner of the Bonds and their assigns will be entitled to the benefits of this Agreement, the Lease Agreement, the Home Office Payment Agreement, and the Indenture.

**2.4. Governmental Consents.** All consents, approvals, authorizations and orders of, or filings, registrations or qualifications with, any governmental or regulatory authorities which are required to be obtained by the Issuer for the consummation of the transactions contemplated by this Agreement have been duly and validly obtained or performed and are in full force and effect.

**2.5. Use of Proceeds for Public Purposes.** The Issuer has determined that the Project and the use of the proceeds from the sale of the Bonds therefor will accomplish the public purposes set forth in Act 9 and that under Article 16, Section 5 of the Constitution of the State of Arkansas (as currently interpreted by the Arkansas Supreme Court), the Project will be exempt from ad valorem taxes because it is owned by the Issuer.

### **SECTION 3. CONDITIONS OF CLOSING**

Your obligation to purchase and pay for the Bonds to be delivered to you on the Closing Date and on the dates of any subsequent draws thereunder shall be subject to the following conditions precedent:

**3.1. Opinion of Counsel.** Your receipt from Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C., bond counsel, of an approving opinion satisfactory to you.

**3.2. Warranties and Representations True as of the Closing Date.** You shall not have received notice from the Issuer that any of the warranties and representations of the Issuer contained in Section 2 hereof shall be untrue in any material respect as of the Closing Date or as of the date of any subsequent draw; there shall exist no “event of default” (as defined in the Lease Agreement and the Indenture) on such date; and you shall have received a certificate of the Company to such effect.

**3.3. Execution and Delivery of Documents.** The Lease Agreement, the Indenture, the Home Office Payment Agreement, and the PILOT Agreement shall each have been duly executed and delivered by the respective parties thereto, and each shall be in full force and effect on the Closing Date and on the date of each subsequent draw under the Bonds.

**3.4. Filings.** All recordations and filings appropriate or required by law in order fully to perfect, preserve and protect the assignment of the Lease Agreement and the lien of the Indenture and the security interests created by the Lease Agreement and the Indenture and the rights of the Trustee thereunder shall have been performed.

**3.5. Proceedings Satisfactory.** All corporate and other proceedings taken or to be taken in connection with the transactions relating hereto and all documents incident thereto shall be satisfactory in substance and form to you and your counsel, and you and your counsel shall have received such counterpart originals or certified or other copies of such documents as you or they may reasonably request.

**3.6. No Litigation.** No litigation or proceeding shall be threatened or pending in any court or other official body (i) to restrain or enjoin the issuance or delivery of the Bonds, (ii) which in any way questions or affects the validity of the Bonds, any provisions thereof, any provisions of the Ordinance, this Agreement, the Lease Agreement, the Indenture, the PILOT Agreement, the Home Office Payment Agreement or any proceedings taken with respect to the foregoing, or (iii) which questions the Issuer's creation, organization or existence or the titles to office of any of its officers, or its powers to acquire, finance and lease the Project.

#### **SECTION 4. SPECIAL COVENANTS**

**4.1. Delivery Expenses.** Payment of all costs of issuance in connection with the preparation, execution, printing and delivery of the Bonds to the place of closing and all fees and expenses of Bond Counsel, Issuer's counsel and your counsel shall be paid, or caused to be paid, from the proceeds of the Bonds or otherwise at the election of the Company.

**4.2. Special Obligations.** Notwithstanding anything herein to the contrary, all covenants and agreements contained in this Agreement on behalf of the Issuer shall be subject to the provisions of this Section 4.2. The Bonds shall be special limited obligations of the Issuer as provided in Act 9, the principal of and interest on which are payable solely from revenues or other receipts, funds, monies and property pledged or mortgaged therefor under the Indenture, and any amounts payable by the Issuer under this Agreement, the Lease Agreement or the Indenture are payable solely therefrom. Neither the State of Arkansas nor any political subdivision thereof shall in any event be liable for the payment of the principal of or interest on the Bonds.

#### **SECTION 5. MISCELLANEOUS**

**5.1. Expenses.** The Company shall pay and indemnify the Issuer for the amount of all expenses reasonably incurred in connection with the issuance of the Bonds and not otherwise paid from Bond proceeds.

**5.2. Notices.** All communications provided for hereunder shall be sent by fax or by first class or certified mail and, if to you, addressed to you in the manner in which this letter is addressed; if to the Issuer, at 300 South Church Street, Jonesboro, Arkansas 72401, Attention: Mayor; with a copy to Carol Duncan, City Attorney, 401 W. Washington Ave., Jonesboro,

Arkansas 72401; and if to the Company, to 2121 Barnhill Road, Jonesboro, Arkansas 72401, Attention: \_\_\_\_\_, with a copy to Colson Group Holdings, LLC, \_\_\_\_\_, \_\_\_\_\_, Attention: \_\_\_\_\_ or to such other address with respect to any party as such party shall notify the others in writing.

**5.3. Survival of Representations and Warranties.** All representations and warranties contained herein or made in writing by the Issuer in connection herewith shall survive the execution and delivery of this Agreement and the Bonds.

**5.4. Successors and Assigns.** All covenants and agreements in this Agreement contained by or on behalf of any of the parties hereto shall bind and inure to the benefit of the respective successors and assigns of the parties hereto whether so expressed or not. The provisions of this Agreement are intended to be for the benefit of all owner from time to time of the Bonds, and shall be enforceable by any such owner, whether or not an express assignment to such owner of rights under this Agreement has been made by you or your successors or assigns. You may not assign any portion of your rights and obligations hereunder without the written consent of the Issuer and the Company, which consent shall not be unreasonably withheld or delayed.

**5.5. Responsibility of Individuals.** All covenants, stipulations, promises, agreements and obligations of the Issuer contained in this Agreement shall be deemed to be covenants, stipulations, promises, agreements and obligations of the Issuer and not of any director, officer, employee or agent of the Issuer in his or her individual capacity.

**5.6. Satisfaction Requirement.** If any agreement, certificate or other writing, or any action taken or to be taken, is by the terms of this Agreement required to be satisfactory to you, the determination of such satisfaction shall be made by you in your sole and exclusive judgment exercised in good faith.

**5.7. Representation of Purchaser.** You specifically understand and agree that, prior to the sale of the Bonds to you, you will be required to execute and deliver a letter in substantially the form attached hereto as **Exhibit A**. You further understand and acknowledge that your obligation under Section 1.2 hereof to purchase from time to time an amount of the Bonds up to the entire authorized principal amount will survive and be unaffected by any transfer or purported transfer by you of any interest in the Bonds.

**5.8. Governing Law.** This Agreement is being delivered and is intended to be performed in the State of Arkansas, and shall be construed and enforced in accordance with the laws of such State.

**5.9. Modifications.** This Agreement may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

**5.10. Descriptive Headings.** The descriptive headings of the several Sections of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

**5.11. Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

*[Signature Pages Follow]*

If you are in agreement with the foregoing, please sign the form of acceptance on the enclosed counterpart of this document and return the same to the undersigned, whereupon this shall become a binding agreement between you and the undersigned.

Very truly yours,

**CITY OF JONESBORO, ARKANSAS**

By: \_\_\_\_\_  
**Harold Copenhaver, Mayor**

ATTEST:

By: \_\_\_\_\_  
**April Leggett, City Clerk**

ACCEPTED:

**[Affiliate of Colson Caster]**

a [state][entity]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED:

**COLSON CASTER, LLC**

a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**

**FORM OF INVESTOR LETTER**

[Prepared on Letterhead of Bond Purchaser]

\_\_\_\_\_, 2022

Mitchell, Williams, Selig,  
Gates & Woodyard, P.L.L.C.  
100 East Huntington, Suite C  
Jonesboro, Arkansas 72401

[Trustee]

City of Jonesboro, Arkansas  
Attention: Mayor  
300 South Church Street  
Jonesboro, Arkansas 72401

Colson Caster, LLC  
Attention: \_\_\_\_\_  
2121 Barnhill Road  
Jonesboro, Arkansas 72401

Colson Group Holdings, LLC

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

Not to Exceed  
\$9,000,000  
City of Jonesboro, Arkansas  
Taxable Industrial Development Revenue Bonds  
(Colson Caster Project)  
Series 2022

Ladies and Gentlemen:

In connection with the purchase by us of the above-described bonds (the “**Bonds**”), we hereby certify as follows:

1. We understand that we will not receive from the City of Jonesboro, Arkansas (the “**Issuer**”), Colson Caster, LLC (the “**Company**”), \_\_\_\_\_ (the “**Trustee**”), their governing bodies, their members or any of their officers, employees or agents or Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C. (“**Bond Counsel**”) any information with respect to the use of the proceeds of the Bonds and the Project, as defined in the Trust Indenture dated as of \_\_\_\_\_, 2022 (the “**Indenture**”), the Bonds themselves, the provisions for payment thereof, the security therefor or the sufficiency of such provisions for payment thereof and security therefor, except (a) in the documentation executed in connection with the issuance of the Bonds, copies of which have been provided to us and reviewed by us prior to our purchase of the Bonds (the

“**Bond Documents**”), and (b) as has been specifically requested by us from the Company and which has been provided to us and reviewed by us prior to our purchase of the Bonds (the “**Additional Information**”).

2. Neither the Issuer, the Company, the Trustee, their governing bodies, their members nor any of their officers, employees or agents nor Bond Counsel will have any responsibility to us for the accuracy or completeness of information obtained by us from any source regarding the Project, the Issuer, the Company or its assets, business, circumstances, financial condition and properties, or regarding the Bonds, the provisions for payment thereof, or the sufficiency of any security therefor, including, without limitation, any information specifically provided by any of such parties contained in the Bond Documents. We acknowledge that, as between us and all of such parties: (a) we have assumed responsibility for obtaining such information and making such review as we have deemed necessary or desirable in connection with our decision to purchase the Bonds, and (b) the Bond Documents and the Additional Information constitute all the information and, with the investigation made by us (including specifically our investigation of the Company and the Project) prior to our purchase of the Bonds, review that we have deemed necessary or desirable in connection with our decision to purchase the Bonds.

3. We have been offered copies of or full access to all documents relating to the issuance of the Bonds and all records, reports, financial statements and other information concerning the Issuer, the Company and the Project and pertinent to the source of payment for the Bonds which we, as a reasonable investor, have requested and to which we, as a reasonable investor, would attach significance in making investment decisions. We have been afforded the opportunity to ask such questions of representatives of the Company as we have deemed necessary in making our investment decisions; and we have based our decision to invest in the Bonds solely on our own investigation, including, without limitation, our review of such documents, records, reports, financial statements and other information concerning the Company and the Project and discussions with representatives of the Company.

4. We have knowledge and experience in business and financial matters, so as to be capable of evaluating the merits and risks of an investment in the Bonds on the basis of the information and review described in the paragraphs above. We are duly and validly organized as a [limited liability company/corporation] under the laws of the State of [\_\_\_\_\_] and can bear the economic risk of the purchase of the Bonds.

5. The Bonds have been purchased for our own account for investment and not with a view to the distribution, transfer or resale thereof, provided that the disposition of the Bonds shall at all times be within our sole control.

6. We are duly and legally authorized to purchase or invest in obligations such as the Bonds.

7. Except as otherwise set forth in the representations and warranties of the Issuer contained in the Bond Purchase Agreement relating to the Bonds, we have not and

will not rely on any action taken by the Issuer of the Bonds, including, but not limited to, issuance of the Bonds, as evidence that the Bonds or the Project financed with the proceeds of the Bonds comply with the provisions of any legislation.

8. We have satisfied ourselves that the Bonds are a lawful investment for this organization under all applicable laws.

9. We have carefully read the Bond Documents and the Additional Information in their entirety and understand the risks described therein and understand and acknowledge that there may exist other risks with respect to the Bonds that are not described therein.

10. We acknowledged that no credit rating has been sought or obtained with respect to the Bonds, and we acknowledged that the Bonds are a speculative investment and that there is a high degree of risk in such investment.

11. We acknowledge that we have read the form of approving opinion of Bond Counsel regarding the Bonds.

**[Affiliate of Colson Caster]**  
**A [state][entity]**  
Bond Purchaser

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## INTERCREDITOR AND PARITY AGREEMENT

This Intercreditor and Parity Agreement (this “Agreement”) is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and among the **ARKANSAS ECONOMIC DEVELOPMENT COMMISSION** (“AEDC”) whose address for notice is 1 Commerce Way, Suite 601, Little Rock, Arkansas 72202, the **ARKANSAS DEVELOPMENT FINANCE AUTHORITY** (“ADFA” and together with AEDC, the “Guarantors”) whose address for notice is 1 Commerce Way, Suite 602, Little Rock, Arkansas 72202, \_\_\_\_\_ (“Series B Owner” and together with the Guarantors, collectively the “Creditors” and individually a “Creditor”) whose address for notice is \_\_\_\_\_, the **CITY OF JONESBORO, ARKANSAS** (“City”) whose address for notice is 300 Church Street, Jonesboro, Arkansas 72401 and \_\_\_\_\_ (“Trustee”) whose address for notice is \_\_\_\_\_, **COLSON CASTER, LLC** (“Colson”) whose address for notice is 2121 Barnhill Road, Jonesboro, Arkansas 72401, **COLSON GROUP HOLDINGS, LLC** (“Holdings” and together with Colson, the “Lessee”) whose address for notice is \_\_\_\_\_ and \_\_\_\_\_ (“Collateral Agent”) whose address for notice is \_\_\_\_\_.

### WITNESSETH:

WHEREAS, the City has agreed to issue its (i) \$11,000,000 Taxable Economic Development Revenue Bonds (ADFA/AEDC Guaranty Programs) (Colson Caster Project), Series 2022A (the “Series A Bonds”) the proceeds of which will be loaned to or expended on behalf of the Lessee to finance or refinance the costs of acquiring, constructing and equipping an industrial facility for the manufacture of casters and wheels and related warehousing and distribution and equipment to be located at 2121 Barnhill Road, Jonesboro, Arkansas 72401, together with other expenses in connection therewith and the costs of issuance of the Series A Bonds (the “Series A Project”) and (ii) \$4,000,000 Taxable Economic Development Revenue Bonds (Colson Caster Project), Series 2022B (the “Series B Bonds” and together with the Series A Bonds, the “Bonds”) the proceeds of which will be loaned to or expended on behalf of the Lessee for the acquisition and installation of equipment being financed with the proceeds of the Series B Bonds, together with other expenses in connection therewith and the costs of the issuance of the Series B Bonds (the “Series B Project” and together with the Series A Project, the “Project”); and

WHEREAS, the Bonds will be issued pursuant to a Trust Indenture of even date herewith between the City and the Trustee (the “Indenture”); and

WHEREAS, the Project will be owned by the City and leased to the Lessee pursuant to the terms of the Lease Agreement of even date herewith (the “Lease Agreement”) and rental payments made by the Lessee thereunder will be sufficient to pay when due the principal of and premium, if any and interest on the Bonds; and

WHEREAS, pursuant to the Indenture, the right, title and interest of the City in and to the Lease Agreement and the Rental Payments have been pledged by the City on a pari passu basis for the benefit of the holders of the Series A Bonds and the Series B Bonds; and

WHEREAS, the payment of principal of and interest on the Series A Bonds in the amount of \$6,000,000 is guaranteed by ADFA under a Guaranty for Payment of Economic Development

Bonds of even date herewith (“ADFA Guaranty”) and in the amount of \$5,000,000 is guaranteed by AEDC under a Guaranty for Payment of Economic Development Bonds of even date herewith (“AEDC Guaranty” and together with the ADFA Guaranty, the “Guaranties”); and

WHEREAS, the Lessee has entered into a Guaranty Agreement for Reimbursement of Advanced Funds of even date herewith (the “Reimbursement Agreement” and together with the Indenture and the Lease Agreement, the “Credit Documents”) pursuant to which the Lessee has covenanted and agreed to reimburse ADFA and AEDC for payments made pursuant to the Guaranties (the “Reimbursement Obligation” and together with the Series B Bonds, the “Indebtedness”); and

WHEREAS, the Indebtedness is secured on a pari passu basis by the following which are collectively referred to herein as the “Collateral”: (i) a valid shared first priority mortgage on various parcels of land and improvements thereon that constitute the Project (the “Mortgaged Property”) pursuant to a Mortgage, Security Agreement and Fixture Filing of even date herewith (the “Mortgage”), (ii) a valid shared first priority leasehold mortgage on Lessee’s leasehold interest in the Mortgaged Property pursuant to a Leasehold Mortgage, Security Agreement and Fixture Filing of even date herewith (the “Leasehold Mortgage”), (iii) a valid shared first priority security interest in all machinery, equipment, furnishings and personal property included within the Project and that are refinanced or financed with the proceeds of the Bonds and any other existing machinery, equipment, furnishings and personal property specifically pledged as collateral for the Indebtedness (collectively, the “Equipment”) pursuant to a Security Agreement of even date herewith (the “Security Agreement”), (iv) a shared assignment of any and all rents and leases on the property associated with the Project pursuant to an Absolute Assignment of Rents and Leases of even date herewith (the “Assignment”), and (v) an unlimited payment and performance guaranty of Lessee’s obligations under the Lease Agreement by Holdings pursuant to a Unlimited Guaranty Agreement of even date herewith (the “Corporate Guaranty” and together with the Mortgage, Leasehold Mortgage, Security Agreement, and Assignment, the “Security Documents”); and

WHEREAS, the Parties desire to agree to the relative priorities of their respective liens and security interests on the Collateral and certain other rights, priorities and interests in and to the Collateral and to appoint Collateral Agent as the collateral agent with respect to the Collateral and for all purposes specifically provided for herein.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties (collectively, the “Parties” and individually, a “Party”) understand and agree as follows:

**Section 1. Recitals; Defined Terms.** The foregoing recitals are incorporated herein by reference and specifically made a part of this Agreement. Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to them in the Credit Documents.

**Section 2. Appointment of Collateral Agent.**

(a) *Appointment.* Subject in all respect to the terms and provisions of this Agreement, each Creditor hereby appoints \_\_\_\_\_ as Collateral Agent to act as agent

for the benefit of the Creditors with respect to the liens upon and security interests in the Collateral and the rights and remedies granted under and pursuant to the Credit Documents and the Security Documents and with respect to the other obligations expressly provided for herein, and Collateral Agent hereby accepts such appointment and agrees to act as Collateral Agent in accordance with this Agreement and the Security Documents (and the Credit Documents to extent provided therein). Each of the Creditors hereby authorizes and directs the Collateral Agent to enter into the Credit Document (to which it is a party) and the Security Documents.

(b) *Conflicts.* The Parties acknowledge that the Collateral Agent is the Series B Owner and is agreeing to act as Collateral Agent for and on behalf of itself as the Series B Owner and ADFA and AEDC. Subject to the terms of this subparagraph, the person or entity acting as the Collateral Agent hereunder and its affiliates may accept deposits from, lend money to, and generally engage in any kind of business with the Lessee or the City as if it were not the Collateral Agent hereunder. **Except as provided above, the Collateral Agent expressly agrees that so long as it is serving as Collateral Agent, it may only be or become a lender or a custodial lender if such role or position will not in any way compromise, jeopardize or influence in any way its representation of and obligations to the Creditors under this Agreement, the Credit Documents and the Security Documents. To the extent Collateral Agent's additional roles or positions as lender or a custodial lender do or could in any way compromise, jeopardize or influence its representation of and obligations to the Creditors under this Agreement, the Credit Documents and the Security Documents, Collateral Agent shall resign as Collateral Agent in accordance with the terms of this Agreement.**

**Section 3. Intent of the Parties.** It is the intent of the Parties that with respect to the Collateral, the indebtedness and security evidenced by the Credit Documents and Security Documents with respect to the Series B Bonds and the indebtedness and security evidenced by the Credit Documents and the Security Documents with respect to the Reimbursement Obligation shall be on parity, one with the other as joint secured liens and security interests, as appropriate, and that neither the of the Creditors shall have security prior or superior to that of the other Creditor, but that all said security shall be considered by each of them to be on parity with, that is equal to, that of the other as set forth herein. The Parties agree that so long as amounts are owed to both (a) Series B Owner in connection with the Series B Bonds under the Indenture and the Lease Agreement and (b) the Guarantors in connection with the Reimbursement Obligation under the Reimbursement Agreement, the Creditors shall share in the Collateral and the Proceeds (as such term is defined below), *pro rata* as set forth below. Each of the Creditors shall have all the rights, interest and obligations availed by virtue of the Security Documents and all proceeds arising from the enforcement of such Security Documents and all other sums otherwise received pursuant to the Credit Documents and such Security Documents shall be applied by the Collateral Agent to the Creditors, *pro rata* based on the Outstanding Balances (as such term is defined below).

**Section 4. Priority of Security Interests.** As among the Creditors, the liens and security interests in, to and on the Collateral, it is agreed that:

(a) the liens and security interests in, to and on the Collateral granted to the Guarantors pursuant to the Security Documents or the Credit Documents shall be *pari passu*

to the respective security interests in, to or on any of the Collateral granted to the Series B Bonds pursuant to the Security Documents and the Credit Documents; and

(b) such equal liens and security interests shall be applicable irrespective of the order of creation, attachment or perfection of any such liens or security interests or any other priority that might otherwise exist under any applicable law or in equity and notwithstanding any representation or warranty of the City or the Lessee to the contrary.

#### **Section 5. Enforcement of Security Interests.**

(a) (i) Each Creditor agrees that it will have recourse to the Collateral only through the Collateral Agent to the extent it is secured thereby, that it shall have no independent recourse thereto and that it shall refrain from exercising any rights or remedies under the Credit Documents which have or may have arisen or which may arise as a result of an Event of Default (as defined herein) or an acceleration of the Indebtedness, except that any Creditor may setoff against any of the Collateral any amount of any Outstanding Balances held by it for the account of the Lessee or any other property held or owing by it to or for the credit or for the account of the Lessee to the extent permitted under the Credit Documents; provided that the amount setoff is delivered to the Collateral Agent for application pursuant to Section 8 hereof. For the purpose of perfecting any setoff rights which may be available under applicable law, any Outstanding Balances (to the extent of any of the Collateral) held by the Collateral Agent or any Creditor for the account of the Lessee or any other property held or owing by the Collateral Agent or any Creditor to or for the credit or account of the Lessee shall be deemed to be held as agent for all Creditors.

(ii) Nothing contained in this Agreement shall (i) prevent any Creditor from imposing a default rate of interest in accordance with any Credit Document, as applicable, or prevent a Creditor from raising any defenses in any action in which it has been made a party defendant or has been joined as a third party, except that the Collateral Agent may direct and control any defense directly relating to the Collateral or any one or more of the Security Documents (or the Credit Documents to the extent expressly provided for therein) as directed by the Creditors, which shall be governed by the provisions of this Agreement, or (ii) affect or impair the right any Creditor may have under the terms and conditions governing the Indebtedness to accelerate and demand repayment of such Indebtedness. Subject only to the express limitations set forth in this Agreement, the Security Documents and the Credit Documents, each Creditor retains the right to freely exercise its rights and remedies as a general creditor of the Lessee in accordance with applicable law and agreements with the Lessee, including without limitation the right to file a lawsuit and obtain a judgment therein against the Lessee and to enforce such judgment against any assets of the Lessee other than the Collateral. For the sake of clarity, no action shall be brought on the Collateral, except through the Collateral Agent in accordance with the terms hereof.

(b) The Parties agree that any proceeds received from the sale of or realization on the Collateral (the “**Proceeds**”) shall be applied towards repayment of all amounts owing in connection with the Indebtedness determined on the following basis:

(i) The *pro rata* share of each Creditor shall be a fraction, the numerator of which shall be the portion of the Outstanding Balances (as such term is defined below) owed by the Lessee to that Creditor, and the denominator of which shall be the aggregate principal amount of all Outstanding Balances owed to both Creditors.

(ii) “**Outstanding Balances**” means, (A) with respect to the Series B Bonds, an amount equal to the sum of all obligations, indebtedness and liabilities owed by the Lessee with respect to the Series B Bonds under the Lease Agreement, whether said obligations, indebtedness and liabilities are due or to become due, direct or indirect, absolute or contingent, joint or several, howsoever created, arising or evidenced, which amount shall exclude accrued and unpaid interest and any additional interest or premium due because of an Event of Default and (B) with respect to the Reimbursement Obligation, an amount equal to the sum of all obligations, indebtedness and liabilities owed by the Lessee to the Guarantors with respect to the Reimbursement Agreement, whether said obligations, indebtedness and liabilities are due or to become due, direct or indirect, absolute or contingent, joint or several, howsoever created, arising or evidenced, which amount shall exclude accrued and unpaid interest and any additional interest or premium due because of an Event of Default.

(c) Whenever this manner of sharing has caused any one of the Creditors to be paid the full amount of principal and interest due or that may in the future become due to it, the *pro rata* share of the remaining Indebtedness to the other Creditor(s) shall be adjusted appropriately.

(d) Each Creditor agrees that it shall not seek to restrain or enjoin the exercise by the other Creditor of any such rights, remedies, powers or privileges granted under the Credit Documents and the Security Documents, as long as each Creditor complies with the provisions of this Agreement.

(e) If either Creditor receives any Proceeds (whether in cash, securities or other property) from any disposition of all or any of the Collateral at any time prior to the payment in full in cash of the Indebtedness, such Proceeds shall be immediately transferred and paid over the Collateral Agent to be held in trust by the Collateral Agent in accordance with this Agreement for the benefit of Creditors.

(f) All insurance required by Creditors shall be written with Creditors as co-additional insureds and loss-payees, that in the event of damage to or destruction of all or any portion of the Project by fire, wind or other casualty, any proceeds of any insurance fund or settlement sum that are required by the Credit Documents or the Security Documents to be paid to and applied to the Indebtedness owed to the Creditor that is the secured party under such document shall be applied in accordance with the terms and provisions of this Agreement. To the extent the Creditors have discretion thereunder to permit or deny the application of insurance proceeds to the repair or restoration of the damaged or destroyed portion of the Project, the Creditors shall jointly exercise such right. In addition, the Parties

acknowledge and agree that any condemnation award is hereby assigned to Creditors *pro rata*, based on, and to the extent of, the Outstanding Balances.

## **Section 6. Duties of Collateral Agent.**

(a) Subject to the Collateral Agent having been directed to take such action in accordance with the terms of this Agreement, each Creditor hereby irrevocably authorizes the Collateral Agent to take such action on its behalf under the provisions of the Security Documents (and the Credit Documents to the extent provided therein) and any other instruments, documents and agreements referred to therein and to exercise such powers thereunder as are specifically delegated to the Collateral Agent by the terms thereof and such other powers as are reasonably incidental thereto. The Collateral Agent is hereby irrevocably authorized to take all actions on behalf of the Creditors to enforce the rights and remedies of the Collateral Agent and the Creditors provided for in the Security Documents (and the Credit Documents to the extent provided therein) or by applicable law with respect to the liens upon and security interests in the Collateral granted to secure the Indebtedness (including but not limited to, the right to execute and deliver all such documents and instruments and do all such other acts and things as may be necessary or reasonably required to enable the Collateral Agent to exercise and enforce its rights and the rights of the Creditors under the Security Documents (and the Credit Documents to the extent provided therein) and to realize thereon, and record and file and re-record and re-file all such documents and instruments, at such time or times, in such manner and at such place or places, all as may be necessary or reasonably required by the Collateral Agent to validate, preserve and protect the position of the Collateral Agent and the Creditors under the Security Documents and the Credit Documents); provided, however, that, notwithstanding any provision to the contrary in any Security Document, (i) except as otherwise expressly provided herein, the Collateral Agent shall act solely at and in accordance with the written direction of the Creditors subject to the immediately following clauses (ii), (iii) and (iv), (ii) the Collateral Agent shall not, without the written consent of all of the Creditors, amend, supplement or modify any Security Document, or request or agree to any consent or waiver under, or effect or permit the cancellation, acceleration or termination of any of the Security Documents or the Credit Documents, (iii) the Collateral Agent shall not, without the written consent of the Creditors release or terminate by affirmative action or consent to any lien upon or security interest in any Collateral granted under any Security Documents or the Credit Documents, and (iv) the Collateral Agent shall not accept any Indebtedness in whole or partial consideration for the disposition of any Collateral without the written consent of the Creditors. The Collateral Agent agrees to make such demands and give such notices under the Security Documents and the Credit Documents as may be directed by, and to take such action to enforce the Security Documents (and the Credit Documents to the extent provided therein) and to foreclose upon, collect and dispose of the Collateral or any portion thereof as may be directed by, the Creditors; provided, however, that the Collateral Agent shall not be required to take any action that is contrary to law or the terms of the Security Documents, the Credit Documents or this Agreement. Once a direction to take any action has been given to the Collateral Agent in accordance with the terms of this Agreement, and subject to any other directions which may be given from time to time in accordance with this Agreement, decisions regarding the manner in which any such action is to be implemented and conducted (with the exception of any decision to settle, compromise or

dismiss any legal proceeding, with or without prejudice) shall be made by the Collateral Agent, with the assistance and upon the advice of its counsel. The Collateral Agent shall be entitled to assume that no Event of Default exists until either notice has been given to the Collateral Agent of an Event of Default by a Party hereto or the Collateral Agent shall have actual knowledge that an Event of Default has occurred. For the purposes herein, “Event of Default” means collectively, any event or condition which, with notice, the passage of time or any combination of the foregoing, would constitute an event of default and as the context requires, an “Event of Default” as defined in the Credit Documents and/or the Security Documents.

(b) *Emergency Actions.* If the Collateral Agent has asked the Creditors for instructions following the receipt of any notice of an Event of Default and if the Creditors have not responded to such request or have not agreed as to the action to be taken within ten (10) days, the Collateral Agent shall be authorized, but shall have no duty, to take such actions with regard to such Event of Default which the Collateral Agent, in good faith, believes to be reasonably required to protect the Collateral from loss; provided, however, that (i) prior to the expiration of such ten (10) day period the Collateral Agent shall be authorized, but shall have no duty, to take such actions with regard to such Event of Default which the Collateral Agent, in good faith, believes to be reasonably required to prevent irreparable loss to the Collateral which might result from a delay, and (ii) once instructions have been received from the Creditors, the actions of the Collateral Agent shall be governed thereby and the Collateral Agent shall not take any further action which would be contrary thereto. Notwithstanding the foregoing, in such circumstance the Collateral Agent may refrain from taking any actions in the absence of instructions from the Creditors and shall have no liability for doing so.

(c) *Limited Agency.* The Collateral Agent and the Creditors agree that it is the intent of the Creditors to limit the scope of the powers of the Collateral Agent to the specific powers delegated hereunder and under the Credit Documents and the Security Documents, together with such powers as are reasonably incidental thereto, and the Collateral Agent does not and shall not have any right or authority to bind any Creditor in any other manner or thing whatsoever.

## **Section 7. Collateral Agent Actions.**

(a) The Collateral Agent shall have the rights, but not the obligation, at the direction of any Creditors to take such actions hereunder and under the Security Documents (and the Credit Documents to the extent provided therein), not inconsistent with the instructions of the Creditors or the terms of the Security Documents, the Credit Documents and this Agreement, as the Collateral Agent deems necessary or appropriate to perfect or continue the perfection of the liens on any of the Collateral for the benefit of the Creditors.

(b) The Creditors hereby agree that no Creditor shall have the right to direct the Collateral Agent to take any action required to be taken in accordance with the terms of this Agreement without the written consent of all the Creditors. Subject to this subsection, the Collateral Agent may at any time request direction from the Creditors as to any course of action or other matter relating to the performance of its duties under this Agreement, the

Credit Documents and the Security Documents and the Creditors shall undertake to respond to such request in a reasonably prompt manner.

(c) The Collateral Agent may perform any of its duties under this Agreement and the Security Documents by or through attorneys (which attorneys may be the same attorneys who represent any Creditor), agents or other persons reasonably deemed appropriate by the Collateral Agent. The Collateral Agent shall not be liable to the Creditors for the misconduct of any such attorneys, agents or other persons selected by the Collateral Agent with reasonable care. In addition, the Collateral Agent may act in good faith reliance upon the opinion or advice of attorneys selected by the Collateral Agent. In all cases the Collateral Agent may pay customary and reasonable compensation to all such attorneys, agents or other persons as may be employed in connection with the performance of its duties under this Agreement and the Security Documents and the same shall be reimbursed expenses of Collateral Agent by the Lessee as provided in the Lease Agreement for the payment of costs and expenses of the City, the Trustee, ADFA, AEDC and the Series B Owner.

**Section 8. Disbursement of Proceeds by Collateral Agent.** Any and all Proceeds held or received by the Collateral Agent, including without limitation, any amount of any balances held by the Collateral Agent or any Creditor for the account of the Lessee or any other property (to the extent of Collateral) held or owing by it or for the credit or for the account of the Lessee to the extent setoff against Collateral or appropriated by it shall be delivered to Collateral Agent and distributed as follows:

(i) First, to the Collateral Agent in the amount of any unpaid obligation of the Lessee and the Creditors to pay, reimburse or indemnify the Collateral Agent for all reasonable costs and expenses incurred by the Collateral Agent in connection with the performance of its duties under this Agreement;

(ii) Next, to the extent proceeds remain, to the Creditors in the amount of any unreimbursed amounts paid by the Creditors, the City or the Trustee pursuant to the Credit Documents or any other document in connection herewith, pro rata in proportion to the respective unreimbursed amounts thereof paid by each such Party as determined and directed by such Parties;

(iii) Next, to the extent that proceeds remain, to each Creditor in the amount of such Creditors pro rata share of any unpaid Outstanding Balances owed to such Creditor;

(iv) Next, to the extent that proceeds remain, to each Creditor in the amount of such Creditor's pro rata share of any unpaid obligations of the Lessee to pay the Creditors amounts owed by the Lessee under this Agreement, the Credit Documents or the Security Documents owed to such Creditor; and

(v) Next, to the extent proceeds remain, to the Creditors in the amount of any other unpaid indebtedness owed by the Lessee to such Creditors, pro rata in proportion to the respective amounts thereof owed to each Creditor.

After all the Obligation Balances and other obligations identified above have been finally paid in full in cash, the balance of proceeds of the Collateral, if any, shall be paid to the Lessee, or as otherwise required by law.

(b) The distribution provisions of this Section 8 are for the purpose of determining the relative amounts of payments to be distributed to the Creditors and not for the purpose of creating an agreement among the parties as to the manner in which any proceeds or other payments distributed to them are actually to be applied to pay the Outstanding Balances. Each Creditor shall be free, each in its own discretion, to apply the proceeds or other payments distributed to it hereunder to pay the Indebtedness held by it in such order as it may determine. The Lessee by its consent hereto, agrees that in the event any payment is made with respect to the Indebtedness, as between the Lessee and such Creditor, the Indebtedness shall be discharged in the order that the Creditor applies the portion of such payment distributed to it under this Section 8 as provided in the preceding sentence.

**Section 9. Certain Notices.** Each of the Parties agrees to use its reasonable efforts to give to the other Parties (a) notice of the occurrence or existence of an Event of Default known to such Party and (b) copies of any notice of the occurrence or existence of an Event of Default sent to the Lessee, simultaneously with the sending of such notice to the Lessee, but the failure to give any of the foregoing notices shall not affect the validity of such notice of an Event of Default given to the Lessee or create a cause of action against or cause a forfeiture of any rights of the Party failing to give such notice or create any claim or right on behalf of any third party.

**Section 10. Other Provisions Related to the Collateral Agent.**

(a) *Indemnification of Collateral Agent.* The Lessee, by its consent hereto, hereby agrees to indemnify and hold the Collateral Agent, its officers, directors, employees and agents (including, but not limited to, any attorneys acting at the direction or on behalf of the Collateral Agent) (collectively, the “Collateral Agent Indemnitees”) harmless against any and all costs, claims, damages, penalties, liabilities, losses and expenses (including, but not limited to, court costs and reasonable attorneys’ fees and disbursements) which may be incurred by or asserted against the Collateral Agent Indemnitees by reason of its status as agent hereunder or which pertain, whether directly or indirectly, to this Agreement, to the Security Documents, or to any action or failure to act by the Collateral Agent as agent hereunder, except to the extent any such action or failure to act by the Collateral Agent constitutes gross negligence or willful misconduct. The obligations of the Lessee under this subsection shall survive the payment in full of the Indebtedness and the termination of this Agreement.

(b) *Liability of Collateral Agent.* In absence of gross negligence, willful misconduct or a breach of this Agreement (excluding any breach with respect to which the Collateral Agent has acted in good faith or has reasonably disagreed as to its obligations hereunder), the Collateral Agent will not be liable to any Creditor for any action or failure to act or any error of judgment, negligence, mistake or oversight on its part or on the part of any of its officers, directors, employees or agents under this Agreement. To the extent not paid by the Lessee, each Creditor hereby severally, and not jointly, agrees to indemnify and hold each Collateral Agent Indemnitee harmless from and against any and all liabilities,

costs, claims, damages, penalties, losses and actions of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for any Collateral Agent Indemnitee) incurred by or asserted against any Collateral Agent Indemnitee arising out of or in relation to this Agreement, the Security Documents, or its status as agent hereunder or any action taken or omitted to be taken by any Collateral Agent Indemnitee pursuant to and in accordance with any of the Security Documents and this Agreement, except to the extent arising from the gross negligence or willful misconduct of such Collateral Agent Indemnitee, with each Creditor being liable only for its pro rata share of any such indemnification liability. The obligations of the Creditors under this subsection shall survive the payment in full of the Indebtedness and the termination of this Agreement.

No provision of this Agreement or any other document related hereto shall require the Collateral Agent to risk or advance its own funds or otherwise incur any financial liability in the performance of its duties or the exercise of its rights hereunder.

Before taking any action under this Agreement, the Collateral Agent may require indemnity satisfactory to the Collateral Agent be furnished from any expenses and to protect it against any liability it may incur hereunder.

The immunities extended to the Collateral Agent also extend to its directors, officers, employees and agents.

The Collateral Agent shall not be liable for any action taken or not taken by it in accordance with the direction as provided under this Agreement relating to the exercise of any right, power or remedy available to the Collateral Agent.

(c) *Resignation and Removal of Collateral Agent.* (i) The Collateral Agent (A) may resign at any time upon notice to the Creditor, and (B) may be removed for cause upon the written request of any Creditor.

(ii) If the Collateral Agent shall resign or be removed, the Creditors shall have the right to select a replacement Collateral Agent.

(iii) Upon any replacement of the Collateral Agent, the Collateral Agent shall assign all of the liens upon and security interests in all Collateral under the Security Documents, and all right, title and interest of the Collateral Agent under all the Security Documents, to the replacement Collateral Agent, without recourse to the Collateral Agent or any Creditor and at the expense of the Lessee.

(iv) No resignation or removal of the Collateral Agent shall become effective until a replacement Collateral Agent shall have been selected as provided herein and shall have assumed in writing the obligations of the Collateral Agent hereunder and under the Security Documents. In the event that a replacement Collateral Agent shall not have been selected as provided herein or shall not have assumed such obligations within sixty (60) days after the resignation or removal of the Collateral Agent, then, with the prior written consent of the Creditors, the Collateral Agent may appoint a Creditor or any commercial bank, or an affiliate of

a commercial bank, having an office in the United States of America and having a combined capital and surplus of at least \$25,000,000 as the replacement Collateral Agent.

(v) Any replacement Collateral Agent shall be a bank, trust company, or insurance company having combined capital and surplus of at least \$25,000,000.

(vi) Upon the acceptance of its appointment as the Collateral Agent hereunder, such successor Collateral Agent shall thereupon succeed to and become vested with all the rights and duties of the retiring Collateral Agent under this Agreement, and the retiring Collateral Agent shall be discharged from its duties and obligations thereunder. After any retiring Collateral Agent's resignation hereunder as Collateral Agent, the provisions of this Agreement and all protective provisions of the Security Documents shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Collateral Agent, but no successor Collateral Agent shall in any event be liable or responsible for any actions of its predecessor. If the Collateral Agent resigns and no successor is appointed, the rights and obligations of such Collateral Agent shall be automatically assumed by the Creditor as a whole and the Lessee shall be directed to make all requests under the related Security Document directly to each Creditor and to provide all notices and other matters involving the Collateral Agent under the related Security Document directly to each such Creditor, provided that consent of the Creditor shall still be the basis of voting on such matters.

**Section 11. Notices.** All notices, requests, demands, directions and other communications under the provisions of this Agreement shall be in writing (including facsimile communication), unless otherwise expressly permitted hereunder, and shall be sent by first-class mail or overnight delivery and shall be deemed received as follows: (i) if by first class mail, five (5) days after mailing; (ii) if by overnight delivery, on the next business day; (iii) if by telephone, when given to a person who confirms such receipt; and (iv) if by facsimile, when confirmation of receipt is obtained. All notices shall be sent to the applicable Party at the address set out in the preamble hereof or in accordance with the last unrevoked written direction from such party to the other parties hereto.

The Collateral Agent and the Creditors may rely on any notice (including telephone communication) purportedly made by or on behalf of the Lessee, and shall have no duty to verify the identity or authority of the person giving such notice, unless such actions or omissions would amount to gross negligence or intentional misconduct.

**Section 12. Amendment.** This Agreement and the provisions hereof may be amended, modified or waived only by a writing signed by all of the Parties hereto.

**Section 13. Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of each of the Parties hereof, provided that none of the Collateral Agent nor any Creditor shall assign or transfer any interest in any Indebtedness or permit such person to become such a party to the Credit Documents and the Security Documents unless such transfer or assignment is made subject to this Agreement and such transferee, assignee or person either is bound by the terms of this Agreement pursuant to the terms

of the Credit Documents and the Security Documents or executes and delivers to the Collateral Agent and the remaining Creditors an assumption agreement in the form as may be approved by the Collateral Agent and the remaining Creditors.

**Section 14. Termination.** This Agreement shall remain in full force and effect until all of the obligations of the Lessee to the Creditors, the Creditors and the Collateral Agent have been fully paid and satisfied. Upon payment in full of the Indebtedness and all other obligations of the Lessee to pay to the Creditors amounts owed by the Lessee under this Agreement, Credit Documents and the Security Documents, each Creditor shall execute such documents as are reasonably requested by the Creditors, the Collateral Agent or the Lessee in connection with any termination of such Creditor's rights hereunder and under the Security Documents.

**Section 15. Counterparts.** This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same instrument.

**Section 16. Governing Law.** THIS AGREEMENT AND ALL ISSUES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF ARKANSAS, WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES, AND THE LAWS OF THE UNITED STATES, AS APPLICABLE.

**Section 17. Consent to Jurisdiction.** IN THE EVENT THAT A DISPUTE BECOMES THE SUBJECT OF A JUDICIAL ACTION, EACH PARTY HERETO CONSENTS TO AND SUBMITS TO IN PERSONAM JURISDICTION AND VENUE IN THE STATE OF ARKANSAS AND IN THE FEDERAL DISTRICT COURTS WHICH ARE LOCATED IN THE STATE OF ARKANSAS. EACH PARTY ASSERTS THAT IT HAS PURPOSEFULLY AVAILED ITSELF OF THE BENEFITS OF THE LAWS OF THE STATE OF ARKANSAS AND WAIVES ANY OBJECTION TO IN PERSONAM JURISDICTION ON THE GROUNDS OF MINIMUM CONTACTS, WAIVES ANY OBJECTION TO VENUE, AND WAIVES ANY PLEA OF FORUM NON CONVENIENS. THIS CONSENT TO AND SUBMISSION TO JURISDICTION IS WITH REGARD TO ANY ACTION RELATED TO THIS AGREEMENT. REGARDLESS OF WHETHER THE PARTY'S ACTIONS TOOK PLACE IN THE STATE OF ARKANSAS OR ELSEWHERE IN THE UNITED STATES, THIS SUBMISSION TO JURISDICTION IS NONEXCLUSIVE, AND DOES NOT PRECLUDE EITHER PARTY FROM OBTAINING JURISDICTION OVER THE OTHER IN ANY COURT OTHERWISE HAVING JURISDICTION.

[Signature pages follow.]

[Remainder of page intentionally left blank.]







CITY OF JONESBORO, ARKANSAS

By: \_\_\_\_\_  
Harold Copenhaver, Mayor

**ACKNOWLEDGMENT**

STATE OF ARKANSAS            )  
  ) ss:  
COUNTY OF CRAIGHEAD        )

BE IT REMEMBERED that on this day came before me, the undersigned Notary Public, within and for the County and State aforesaid, duly commissioned, qualified and acting, Harold Copenhaver, who stated and acknowledged that he is the Mayor for the City of Jonesboro, Arkansas, a party to the foregoing instrument and that he has so signed, executed and delivered said foregoing instrument for and on behalf of the City of Jonesboro, Arkansas for the consideration, uses and purposes therein mentioned and set forth.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_





[TRUSTEE]

By: \_\_\_\_\_

Name & Title: \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF ARKANSAS                    )  
  ) ss:  
COUNTY OF \_\_\_\_\_ )

BE IT REMEMBERED that on this day came before me, the undersigned Notary Public, within and for the County and State aforesaid, duly commissioned, qualified and acting, \_\_\_\_\_, who stated and acknowledged that he is the \_\_\_\_\_ for the [TRUSTEE], a party to the foregoing instrument and that he has so signed, executed and delivered said foregoing instrument for and on behalf of [TRUSTEE] for the consideration, uses and purposes therein mentioned and set forth.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_



**LEASE AND AGREEMENT**

**BY AND AMONG**

**CITY OF JONESBORO, ARKANSAS,  
LESSOR**

**AND**

**COLSON CASTER, LLC AND COLSON GROUP HOLDINGS, LLC,  
LESSEE**

**Dated as of \_\_\_\_\_, 2022**



MITCHELL, WILLIAMS, SELIG, GATES & WOODYARD, P.L.L.C.  
425 WEST CAPITOL AVENUE, SUITE 1800  
LITTLE ROCK, AR 72201

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## LEASE AGREEMENT

This **LEASE AND AGREEMENT** (the “Lease Agreement”) is entered into and effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between the **CITY OF JONESBORO, ARKANSAS** (“Lessor” or “Issuer”) and **COLSON CASTER, LLC**, a limited liability corporation organized under and existing by virtue of the laws of the State of Delaware[ and **COLSON GROUP HOLDINGS, LLC**, a limited liability company organized under and existing by virtue of the laws of the State of \_\_\_\_\_]([collectively, ]the “Lessee”);

### WITNESSETH:

WHEREAS, Lessor is a duly organized and existing city of the first class and a political subdivision, under the laws of the State of Arkansas with full and lawful power and authority to enter into this Lease Agreement, acting by and through its City Council, in the public interest and for a public purpose in securing and developing industry, all pursuant to the provisions of Amendment 65 to the Arkansas Constitution and the Municipalities and Counties Industrial Development Revenue Bond Law, Ark. Code Ann. §§ 14-164-201 *et seq.* and Ark. Code Ann. §§ 14-164-701 *et seq.*, as amended from time to time (collectively, the “Act”) and as interpreted by the Arkansas Supreme Court in *Wayland v. Snapp*, 232 Ark. 57, 334 S.W. 2d 633 (1960), and *Pulaski County v. Jacuzzi Bros. Div.*, 332 Ark. 91, 964 S.W.2d 788 (1998); and

WHEREAS, the Issuer is authorized by the Act to issue the bonds for the purpose of financing the costs of acquiring, constructing and equipping lands, buildings or facilities for industrial enterprises as defined in the Act pursuant to two Trust Indentures dated as of \_\_\_\_\_, 2022 (the “Indentures”) by and between the Issuer and [To be determined], as Trustee; and

WHEREAS, permanent financing of the Project Costs (as defined herein), necessary costs and expenditures incidental thereto and the cost of the issuance of bonds, is being furnished by the Issuer through the issuance of its Taxable Economic Development Revenue Bonds, (ADFA/AEDC Guaranty Programs) (Colson Caster Project), Series 2022A (the “Series A Bonds”), guaranteed by the Arkansas Economic Development Commission and by the Arkansas Development Finance Authority and its Taxable Economic Development Revenue Bonds, (Colson Caster Project), Series 2022B (The “Series B Bonds”) and its Taxable Economic Development Revenue Bonds, (Colson Caster Project), Series 2022C (the “Series C Bonds” and together with the Series A Bonds and the Series B Bonds, the “Bonds”).

WHEREAS, the Arkansas Economic Development Commission (“AEDC”) proposes to guarantee payment of \$5,000,000 of the principal of and interest on the Series A Bonds (the “AEDC Guaranteed Bonds”) pursuant to Act No. 173 of the Acts of Arkansas of 1967, as amended, and Act No. 397 of the Acts of Arkansas of 1969, as amended (collectively, the “AEDC Guaranty Acts”) by issuing its AEDC Guaranty; and

WHEREAS, Arkansas Development Finance Authority (“ADFA”) proposes to guarantee payment of \$6,000,000 of the principal amount of and interest on the Series A Bonds (the “ADFA Guaranteed Bonds”) pursuant to Act No. 505 of 1985, as amended, the (“ADFA Guaranty Act”) by issuing its ADFA Guaranty; and

WHEREAS, the Lessor and the Lessee desire to enter into this Lease Agreement in connection with the issuance of the Bonds under the Indentures; and

WHEREAS, Lessee is authorized under its Certificate of Formation and Operating Agreement and under the laws of the State of its organization to enter into this Lease Agreement and to perform all covenants and obligations on its part to be performed under and pursuant to this Lease Agreement; and

WHEREAS, Lessor is authorized by the Act and under the laws of the State to enter into this Lease Agreement and to perform all covenants and obligations on its part to be performed under and pursuant to this Lease Agreement; and

WHEREAS, Lessee is not prohibited under the terms of any outstanding trust indentures, deeds of trust, mortgages, loan agreements or other instruments or evidences of indebtedness of whatever nature from entering into this Lease Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Lease Agreement (or if so, a proper waiver or consent has been obtained) and affirmatively so represents to Lessor; and;

WHEREAS, the industrial undertaking will consist of the acquisition, construction and equipping of an industrial facility within the corporate boundaries of the Lessor, including, but not limited to, the acquisition and construction of facilities and equipment for the development, manufacture, warehousing and distribution of casters and wheels and related improvements all as financed with the proceeds of the Bonds (the “Project”); and

WHEREAS, Lessor and Lessee hereby acknowledge that Lessor has undertaken to furnish permanent financing of the Project and related costs and expenses of authorizing and issuing the Bonds by the issuance of the Bonds.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Lessor and Lessee, and in consideration of the mutual benefits and covenants herein contained, Lessor and Lessee agree as follows:

## **ARTICLE I DEFINITIONS**

**Section 1.01. Definitions.** In addition to the words and terms otherwise defined in this Lease Agreement, the following words and terms as used in this Lease Agreement shall have the following meanings unless the context clearly indicates a different meaning or intent:

“Act” - Amendment 65 to the Arkansas Constitution and the Municipalities and Counties Industrial Development Revenue Bond Law, Ark. Code Ann. §§ 14-164-201 *et seq.* and Ark. Code Ann. §§ 14-164-701 *et seq.*, as amended from time to time

“ADFA” – The Arkansas Development Finance Authority or any successor agency.

“ADFA Guaranty” - ADFA’s Guaranty Agreement for Payment of Economic Development Revenue Bonds, dated the date hereof, pursuant to which ADFA agrees to

guarantee repayment of \$6,000,000 of principal and interest on the Series A Bonds which is issued pursuant to the ADFA Guaranty Act.

“ADFA Guaranty Act” – Act No. 505 of 1985, as amended.

“AEDC” - The Arkansas Economic Development Commission or any successor agency.

“AEDC Guaranty Acts” - Act No. 173 of the Acts of Arkansas of 1967, as amended, and Act No. 397 of the Acts of Arkansas of 1969, as amended.

“AEDC Guaranty” - The AEDC’s Guaranty Agreement for Payment of Economic Development Revenue Bonds, dated the date hereof, pursuant to which AEDC agrees to guarantee repayment of \$5,000,000 of principal and interest on the Series A Bonds which is issued pursuant to the AEDC Guaranty Acts.

“Authorized Lessee Representative” - The person or persons at the time designated to act in behalf of the Lessee by written certificate furnished to the Lessor containing the specimen signatures of any such person and signed on behalf of the Lessee. Such certificate may designate an alternate or alternates.

“Authorized Lessor Representative” - The person at the time designated to act in behalf of the Lessor by written certificate furnished to the Lessee containing the specimen signature of such person and signed on behalf of the Lessor. Such certificate may designate an alternate or alternates.

“Bond Fund” - The fund created by Article V of the Indentures and the accounts therein into which moneys are to be deposited and out of which disbursements are to be made for paying the principal of, premium, if any, and interest on the respective Bonds in the manner and for the purposes specified in the Indentures.

“Bonds” – Collectively, the Series A Bonds, the Series B Bonds, and the Series C Bonds.

“Completion Date” – The date of completion of the acquisition, construction and equipping of the Project as that date shall be determined by the Lessee and certified in writing to the Trustee.

“Equipment” means the machinery, equipment, furnishings and personal property comprising the Projects, including specifically, without limitation, the machinery, equipment, furnishings and personal property financed and/or refinanced with the proceeds of the Bonds and any other existing machinery, equipment, furnishings and personal property pledged as security for the Series B Bonds and the Guaranties, as more particularly described in the Security Documents.

“Guaranties” – Collectively, the ADFA Guaranty and the AEDC Guaranty.

“Home Office Payment Agreement” – The Home Office Payment Agreement between the Lessor, the Lessee, the Trustee and the Purchaser evidencing the intent of the parties with

respect to payment obligations under the Series C Indenture, the Series C Purchase Agreement between Lessor and the Purchaser relating to the Series C Bonds and this Lease Agreement.

“Indentures” - Collectively, the Series A and B Indenture and the Series C Indenture.

“Lease Agreement” - This Lease Agreement between the Lessor and the Lessee

“Lease Term” or “Term” - The term of the Lease Agreement set forth in Section 3.02.

“Leased Premises” - The personal property, land, facilities and related improvements covered by this Lease Agreement and defined in Section 3.01 hereof.

“Lessee” – Collectively, Colson Caster, LLC, a Delaware limited liability company, [and Colson Group Holdings, LLC, a \_\_\_\_\_ limited liability company ]and any assignee that assumes the obligations of the Lessee pursuant to the provisions of this Lease Agreement.

“Lessor” - City of Jonesboro, Arkansas.

“Loan” – The loan from the Lessor to the Lessee evidenced by this Lease Agreement which permits the Lessee to use Bond proceeds to finance Project Costs.

“Loan Fund” - The fund created by the Indentures and the accounts therein into which the portion of the proceeds of the sale of the respective Bonds specified in Articles V and VI of Indentures is to be deposited and out of which disbursements are to be made for Project Costs in the manner and for the purposes specified in Articles V and VI of the Indentures and Section 2.01 hereof.

“Option Agreement” – The Option Agreement attached hereto as Exhibit D.

“Parent Guaranty” - The unlimited payment and performance guaranty of Colson Holding Group, LLC as set forth in Article XXVI of this Lease Agreement, guaranteeing the Lessee’s obligations related to the Series B Bonds and the ADFA Guaranty and the AEDC Guaranty.

“Permitted Encumbrances” - At any particular time (i) this Lease Agreement and the Indentures, (ii) the encumbrances which affect the Leased Premises as set forth in a title commitment, (iii) utility, access and other easements and rights of way, restrictions, reversions and exceptions that the Lessee certifies will not interfere with or impair the operations being conducted in the Project, and (iv) such minor defects, irregularities, encumbrances, easements, rights of way, and clouds on title as normally exist with respect to properties similar in character to the Project, and as do not materially impair the property affected thereby for the purpose for which it was acquired or held by the Lessor.

“Project” - The facilities and related improvements more particularly identified in the Recitals hereto and financed out of proceeds of the Bonds and leased under this Lease Agreement.

“Project Costs” – The costs of acquiring, developing, constructing and equipping the Project described in Section 2.02 of this Lease Agreement.

“Reimbursement Agreement” - The Lessee’s Guaranty Agreement for Reimbursement of Advanced Funds pursuant to which Lessee agrees to reimburse ADFA and AEDC for any payments made under the Guaranties.

“Rent” or “Rents” - The Basic Rent (provided for in Section 3.03A (1) hereof) and the Additional Rent (provided for in Section 3.03B hereof), unless the context clearly indicates both are not intended.

“Series A and B Indenture” – The Trust Indenture to be executed between the Issuer and the Trustee securing the Series A Bonds and the Series B Bonds.

“Series A Bonds” - The \$11,000,000 City of Jonesboro, Arkansas Taxable Economic Development Revenue Bonds, (ADFA/AEDC Guaranty Programs) (Colson Caster Project), Series 2022A.

“Series B Bonds” - The \$4,000,000 City of Jonesboro, Arkansas Taxable Economic Development Revenue Bonds, (Colson Caster Project), Series 2022B.

“Series B Purchaser” – the original purchaser of the Series B Bonds.

“Series C Bonds” - The \$9,000,000 City of Jonesboro, Taxable Economic Development Revenue Bonds, (Colson Caster Project), Series 2022C.

“Series C Indenture” – The Trust Indenture to be executed between the Issuer and the Trustee securing the Series C Bonds. “Series C Purchaser” - The original purchaser of the Series C Bonds.

“Series C Purchaser” - The original purchaser of the Series C Bonds.

“State” - The State of Arkansas.

“Trustee” - The Trustee for the time being, whether original or successor, with the original Trustee being \_\_\_\_\_, an \_\_\_\_ organized and operating under the laws of \_\_\_\_\_ and authorized to exercise corporate trust powers in the State of Arkansas, and being duly qualified to accept and administer the trusts created by the Indentures.

**Section 1.02. Rules of Construction.** Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Lease Agreement:

A. Capitalized terms used but not defined in this Lease Agreement shall have the meaning ascribed to them in the Indentures.

B. Words importing the singular number shall include the plural number and vice versa.

C. The table of contents, captions and headings herein are solely for convenience of reference only and shall not constitute a part of this Lease Agreement nor shall they affect its meaning, construction or effect.

D. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders, and words of the neuter gender shall be deemed and construed to include correlative words of the masculine and feminine genders.

## **ARTICLE II COMPLETION OF THE PROJECT**

**Section 2.01. Acquiring of Project.** The Lessee has undertaken and will complete the acquisition, development, construction and equipping of the Project and has executed, or will execute all necessary contracts therefor. The Lessee shall be reimbursed out of the applicable Loan Fund or accounts therein for all qualifying expenditures made by it in connection with acquiring, developing, constructing and equipping the Project in the manner set forth in Articles V and VI of the Indentures. Title to the machinery, equipment, furnishings, personal property and facilities paid for with the proceeds of the Loan shall be transferred to the Lessor and become part of the Leased Premises described in Section 3.01. The same shall be subject to such liens or encumbrances as may be placed thereon by Lessee prior to such transfer.

Lessee, with the cooperation of Lessor when necessary, shall obtain all necessary approvals from any and all governmental agencies requisite to the acquisition, development, construction and equipping of the Project, and the Project shall be acquired, developed and constructed in compliance with all State and local laws, ordinances and regulations applicable thereto. All requests, approvals and agreements required on the part of Lessor and on the part of Lessee shall be in writing, signed by the Authorized Lessor Representative or the Authorized Lessee Representative, as applicable, granting such approval, or entering into such agreement. The Lessor and Lessee shall, concurrently with the delivery of this Lease Agreement, notify each other of the Authorized Lessor Representative and the Authorized Lessee Representative, respectively. It is agreed that each party may have more than one representative and may change the representative or representatives from time to time, with each such change to be in writing forwarded to the other party. The representative of each party so designated shall be authorized to enter into and execute any contracts or agreements or to grant any approvals or to take any action for and on behalf of the party hereto represented by such person and the other party to this Lease Agreement shall be entitled to rely upon the representative as having full authority to bind the party hereto represented by such person.

**Section 2.02. Itemization of Project Costs.** Costs incurred by Lessor and Lessee under Section 2.01 hereof and in other sections of this Article II shall be referred to as "Project Costs" and it is agreed that if Project Costs exceed the available proceeds received from the sale of the Bonds, the Lessee shall pay the entire amount of any such excess. Project Costs, as that term is used in this Lease Agreement, include the costs incurred by Lessor, Lessee or others in acquiring, developing, constructing and equipping the Project and the costs of making the Loan and the issuance of the Bonds.

It is covenanted and agreed by Lessee that the proceeds of the Loan will be used for Project Costs.

Proceeds derived from the sale of the Bonds shall be deposited in the applicable funds and accounts, handled, invested and disbursed in accordance with the provisions of the Indentures. It is agreed that the Indentures will be delivered and become effective after the delivery and effectiveness of this Lease Agreement and it is covenanted and agreed that so long as the Lessee is not in default under this Lease Agreement beyond any applicable notice and cure period, the Indentures shall not be amended or supplemented without the approval of the Lessee of the amendment or supplement being made.

**Section 2.03. Certificate of Completion Date.** Promptly after the Completion Date, the Lessee shall submit to the Issuer and the Trustee a certificate, executed by an Authorized Lessee Representative, which shall specify the Completion Date and shall state that acquisition, construction and equipping of the Project has been completed and the Project Costs have been paid or set aside for payment, except for any Project Costs which have been incurred but are not then due and payable, or the liability for the payment of which is being contested or disputed by the Lessee. Notwithstanding the foregoing, such certificate may state that it is given without prejudice to any rights against third parties which exist at the date thereof or which may subsequently come into being.

### **ARTICLE III DEMISING CLAUSES, DURATION OF LEASE TERM AND RENTAL PROVISIONS**

**Section 3.01. Demise of Leased Premises.** Lessor, for and in consideration of the rents, covenants and agreements herein reserved, mentioned and contained, on the part of Lessee to be paid, kept and performed, agrees to and does hereby lease to Lessee, and Lessee agrees to, and does hereby lease, take and hire from Lessor, subject to the terms, conditions and provisions of this Lease Agreement expressed, the following:

The lands and/or the improvements described in **Exhibit B**, or elsewhere, and the improvements, machinery, equipment, furnishings and other personal property described in **Exhibit A**, or elsewhere, including, without limitation, all replacements and substitutions which become the property of the Lessor, pursuant to the provisions of this Lease Agreement. If requested by Lessor, all such machinery, equipment, furnishings and other personal property shall be described in a ledger maintained by Lessee on the Leased Premises and shall be marked by an appropriate tag or other device as being the property of the Lessor; provided, however, the failure to so tag or mark shall not prevent any item of Project machinery and equipment from becoming part of the Project machinery and equipment if such machinery and equipment and other personal property is listed on the above described ledger in a manner sufficient to distinguish such machinery and equipment from Lessee's other property. Lessee shall not alter or remove such tags, nor shall Lessee permit or suffer any person to alter or remove such tags during the term of this Lease.

The properties described in this Section 3.01 are herein collectively referred to as the “Leased Premises.” Lessor and Lessee acknowledge and agree that Exhibits A and B will be supplemented and amended, during the term of this Lease Agreement, to identify additional fee and leasehold interests in land, improvements, machinery, equipment, furnishings, other personal property and fixtures that are acquired with the proceeds of the Bonds after the commencement date of this Lease Agreement.

TO HAVE AND TO HOLD the Leased Premises unto the Lessee for the term of this Lease Agreement as hereinafter set forth.

**Section 3.02. Term of Lease Agreement.** The term of this Lease Agreement shall commence as of \_\_\_\_\_, 2022, and shall continue until \_\_\_\_\_, 20\_\_ and as long thereafter as the Lessee has failed to make all required payments of Basic Rent and Additional Rent. At any time following or contemporaneously with the redemption of the Bonds in full or the expiration of the term of this Lease Agreement, if the purchase option set forth in Article \_\_\_\_ has not been exercised, Lessee shall have the unconditional right and obligation to purchase the Leased Premises for the Purchase Price (as defined and described in the Option Agreement), and this Lease Agreement will be terminated contemporaneous with the full exercise of the purchase option set forth in Article \_\_\_\_.

**Section 3.03. Basic Rent; Additional Rent; Absolute and Unconditional Obligation to pay Basic Rent and Additional Rent.**

A. Basic Rent.

(1) Lessee covenants to pay to Lessor, in the manner hereinafter provided in Section 3.04, Basic Rent monthly in the amounts necessary to pay interest, premium, if any, and principal of all outstanding Bonds as the same become due, either at maturity or upon option redemption, under the provisions of the Indentures. Basic Rent shall be payable monthly commencing \_\_\_\_\_, 2022 and shall continue on the same day of each month thereafter or through \_\_\_\_\_, 20\_\_, or until the principal of, premium, if any, and interest on the Bonds shall have been fully paid, or the required provision made for the payment thereof in accordance with the provisions of the Indentures. In the event a Basic Rent payment date falls on a non-business day, the Basic Rent payment involved shall not be due and payable until the time of opening of business on the next succeeding day thereafter that is a business day.

(2) If, during any year while any of the Bonds shall be outstanding, the Basic Rent shall be insufficient to pay the principal of, premium, if any, and interest on the Bonds as the same become due, the amount of the insufficiency shall be paid by the Lessee as additional Basic Rent. If at any time the amount in the applicable Bond Fund or accounts therein, hereinabove referred to and hereafter described in Section 3.04, is sufficient to pay in full the principal of, premium, if any, interest on, and, if redemption is involved, redemption expenses in connection with, all of the outstanding Bonds, then no further Basic Rent shall be payable hereunder. If any moneys remain in the applicable Bond Fund or

accounts therein after payment or the making of provision for payment in accordance with the provisions of Article V of the Indentures, of the principal of, premium, if any, interest on, and, if redemption is involved, redemption expenses in connection with, all outstanding Bonds, such remaining moneys shall be refunded to Lessee as excess Basic Rent.

B. Additional Rent.

(1) During the term hereof, Lessee shall pay as Additional Rent payable to the Lessor, any expenses which are required to be incurred by Lessor pursuant to the provisions of this Lease Agreement or the Indentures the payment of which is not otherwise provided for by applicable provisions of this Lease Agreement or the Indentures, and all impositions (as defined in Section 4.01), expenses, liabilities, obligations and other payments of whatever nature which Lessee has agreed to pay or assume under the provisions of this Lease Agreement; provided that, Lessor acknowledges that no such expenses are contemplated to be incurred on the date hereof and that Lessor will provide Lessee with notice of such expenses prior to being incurred by the Lessor, or, if incurred without Lessor's direct involvement or knowledge, within a reasonable time thereafter, or as soon thereafter as Lessor becomes, or reasonably should have become, aware of such expenses. If at any time any amounts paid by Lessee as Additional Rent hereunder are or become in excess of the amounts required for the purposes for which they were paid, such excess amounts shall be refunded to the Lessee.

(2) The Lessee shall pay as Additional Rent, on December 31 of each year while the Series A Bonds are Outstanding commencing December 31, 2022 an annual administrative fee: (i) to ADFA equal to one eighth of one percent (0.125%) of the principal amount of the ADFA Guaranteed Bonds Outstanding and (ii) to AEDC equal to one eighth of one percent (0.125%) of the principal amount of the AEDC Guaranteed Bonds Outstanding. The first calculation of such administrative fee should be calculated pro-rata based on number of months outstanding (April – December or 9 months). Under the terms of the Series A & B Indenture, the Trustee is required to calculate the amount of the annual administrative fees annually and give notice to AEDC, ADFA and Lessee of the amounts due to be paid on or before January 31 of each year and the amount of the final administrative fees and give notice to AEDC, ADFA and Lessee of the amounts due to be paid on or before maturity of the Series A Bonds. The Trustee is also responsible for collecting the annual administrative fees and remitting them to ADFA and AEDC, respectively. A final administrative fee shall be payable upon final maturity of the Series A Bonds to (i) ADFA in an amount equal to one-eighth of one percent (0.125%) of the principal amount of the ADFA Guaranteed Bonds and (ii) AEDC in an amount equal to one-eighth of one percent (0.125%) of the principal amount of the AEDC Guaranteed Bonds Outstanding on the last day of the month preceding the final maturity date, multiplied by a fraction the numerator of which shall be the number of months elapsed since the preceding payment (rounded up to the next whole number), and the denominator of which shall be 12.

C. Payment. Until the principal of, premium, if any, and interest on the Bonds shall have been paid or provision for such payment shall have been made in accordance with the provisions of Article V of the Indentures, Lessee's obligation to pay Basic Rent and Additional Rent shall be absolute and unconditional and the Basic Rent and the Additional Rent shall be payable on the dates or at the times specified, and without abatement or set-off, and regardless of any contingencies whatsoever, and notwithstanding any circumstances or occurrences that may now exist or that may hereafter arise or take place, including, but without limiting the generality of the foregoing:

- (1) The unavailability of the Leased Premises, or any part thereof, for use by the Lessee at any time by reason of the failure to complete the Project by any particular time or at all or by reason of any other contingency, occurrence or circumstances whatsoever;
- (2) Damage to or destruction of the Leased Premises, or any part thereof;
- (3) Legal curtailment of Lessee's use of the Leased Premises, or any part thereof;
- (4) Change in Lessor's legal organization or status;
- (5) The taking of title to or the temporary use of the whole or any part of the Leased Premises by condemnation;
- (6) Any assignment under the provisions of Article XVI including, without limitation, an assignment as part of a transaction involving merger, consolidation or sale of all or substantially all of Lessee's assets, as provided in Section 16.01; subject, however, to the provisions of Section 16.01 that performance by an assignee or sublessee shall be considered as performance pro tanto by Lessee;
- (7) Any termination of this Lease Agreement for any reason whatsoever, including, without limitation, termination under Article XIX;
- (8) Failure of consideration or commercial frustration of purposes;
- (9) Any change in the tax or other laws of the United States of America or of the State; or
- (10) Any default of the Lessor under this Lease Agreement, or any other fault or failure of the Lessor whatsoever.

Lessee covenants that it will not enter into any contract, indenture or agreement of any nature whatsoever which shall in any way limit, restrict or prevent Lessee from performing any of its obligations under this Lease Agreement.

**Section 3.04. Method of Payment of Basic Rent and Additional Rent.** Payments of Basic Rent shall be made to Lessor by Lessee remitting the same directly to the Trustee, for the account of Lessor, and shall be deposited by the Trustee in the applicable Bond Fund or accounts therein provided for in the Indentures, to be used by the Trustee as provided in the Indentures. Additional Rent specified in Section 3.03B shall be paid by Lessee remitting the same directly to the Lessor, in the case of the Lessor's expenses and charges, and either making direct payment in the case of impositions and other costs, expenses, liabilities and payments assumed and agreed to be paid by Lessee under this Lease Agreement, or reimbursing Lessor, if, pursuant to the provisions of this Lease Agreement, Trustee shall make payment thereof.

**Section 3.05. Home Office Payment Agreement.** Notwithstanding any provision of this Lease Agreement to the contrary, the Lessor, the Lessee, the Series C Purchaser, the Trustee and any of their successors or assigns may enter into or accept the terms of a home office payment agreement providing for the making of all payments due with respect to the Series C Bonds under this Lease Agreement at a place and in a manner other than as provided in this Lease Agreement upon such conditions as shall be satisfactory to the parties thereto, including, but not limited to, compliance with standards and recommendations promulgated by the Financial Accounting Standards Board. Contemporaneous with the delivery of the Series C Bonds and this Lease Agreement, the appropriate parties will enter into the Home Office Payment Agreement.

**Section 3.06. Day for Payment.** Whenever any payment to be made hereunder shall be stated to be due on a Saturday, Sunday or a day banks are closed under the laws of the State or the United States of America, such payment shall be made on the next business day.

#### **ARTICLE IV TAXES AND ASSESSMENTS (IMPOSITIONS)**

**Section 4.01. Taxes and Assessments.** Subject to the provisions of Section 4.02, Lessee shall pay all taxes and assessments, general and specific, if any, levied and assessed on the Leased Premises during the term, and all water and sewer charges, assessments, and other governmental charges and impositions whatsoever, foreseen and unforeseen, which if not paid when due, would impair the lien of the Indentures on the Leased Premises or the security of the Bonds, encumber Lessor's title, or impair the right of the Lessor to receive the rent hereunder or in any manner whatsoever diminish the amounts thereof, all of which are herein called "impositions;" provided, however, that any impositions relating to a fiscal period of the taxing authority, part of which extends beyond the term, shall be apportioned as of the expiration of the term. Lessor shall promptly forward to Lessee any notice, bill or other statement received by Lessor concerning any impositions. Lessee may pay any imposition in installments if so payable by law, whether or not interest accrues on the unpaid balance. Lessee may contest any imposition or the consent thereby by proper legal proceedings diligently conducted. It is anticipated that the only ad valorem taxes and assessments that may be paid by the Lessee relating to the Leased Premises will be controlled by the Payment in Lieu of Taxes Agreement dated \_\_\_\_\_, 2022 (the "PILOT Agreement").

**Section 4.02. Leased Premises Exempt From Ad Valorem Taxes; Contest of Attempted Levy Authorized.** The Lessor covenants that it will not part with title to the Leased

Premises or any part thereof during the term or take any other affirmative action which may reasonably be construed as tending to cause or induce the levy or assessment of ad valorem taxes on the Leased Premises; provided, however, that Lessor shall not contest the exercise of the Purchase Option provided in Article \_\_\_\_ pursuant to the terms hereof.

Lessor has represented to Lessee and the Lessor and the Lessee acknowledge that under their and other interpretations of present law, no part of the Leased Premises will be subject to ad valorem taxation by the State or by any political or taxing subdivision thereof, and these factors, among others, materially induced the Lessee to enter into this Lease Agreement. However, the Lessee will pay all impositions, if any, in connection with the Leased Premises, which may be lawfully levied or assessed upon the Leased Premises, when the same shall become due; provided, however, that Lessee may contest any such impositions and need not pay during the pendency of such contest, except that the Lessee shall in all events pay to prevent the Leased Premises from becoming subject to loss or forfeiture. The Lessor hereby agrees that it will cooperate with the Lessee in resisting any such impositions if and to whatever extent the Lessee may request. Lessee's compliance with the PILOT Agreement will constitute compliance with the terms of this Section 4.02 with regard to any ad valorem taxation affecting the Leased Premises.

## **ARTICLE V INSURANCE**

### **Section 5.01. Insurance Required.**

A. Lessee shall, at Lessee's sole cost and expense, keep the Leased Premises insured in a commercially reasonable manner and in commercially reasonable amounts satisfactory to ADFA and AEDC.

B. At all times during the term, Lessee shall, at no cost or expense to Lessor, maintain or cause to be maintained:

- (i) Commercial General Liability insurance against claims for bodily injury or death occurring upon, in or about the Leased Premises, with such insurance to afford protection to the limits of not less than \$500,000 in respect of bodily injury or death to any one person and to the limit of not less than \$1,000,000 in respect of any one accident; and
- (ii) Property damage insurance against claims for damage to property occurring upon, in or about the Leased Premises with such insurance to afford protection to the limit of not less than \$100,000 in respect of damages to the property of any one owner.

C. Copies or certificates of the insurance provided for by this Article or elsewhere in this Lease Agreement shall be delivered by Lessee to the Lessor, ADFA, AEDC and the Series B Purchaser at least annually. In the case of expiring policies throughout the term of this Lease Agreement, copies or certificates of any new or renewal

policies shall be delivered by Lessee to Lessor, ADFA, AEDC and the Series B Purchaser promptly upon issuance or renewal thereof.

D. Policies of insurance provided for in Section 5.01A shall name the Lessor and the Lessee as insureds as their respective interests may appear, and all casualty and builders' risk insurance shall name ADFA, AEDC and Series B Purchaser as mortgagee and lender loss payee and public liability policies shall name ADFA, AEDC and Series B Purchaser as additional insured.

E. All insurance required by this Section 5.01 shall be effected with insurance companies qualified to do business in the State selected by the Lessee and satisfactory to the Lessor, ADFA, AEDC and the Series B Purchaser. Lessee shall cause appropriate provisions to be inserted in each insurance policy requiring at least thirty (30) days prior written notice to the Series B Purchaser, ADFA, AEDC and Lessor prior to any cancellation, termination or material amendment thereof. Also, it is agreed that no claim shall be made and no suit or action at law or in equity shall be brought by the Lessor or by anyone claiming by, through or under Lessor, against Lessee for any damage to the Leased Premises covered by the insurance provided for by this Article V, however caused, but nothing in this subsection E shall diminish Lessee's obligation to repair or rebuild as provided in Article XIV. The Lessee shall have the sole right and responsibility to adjust any loss with the insurer involved and to conduct any negotiations in connection therewith.

## **ARTICLE VI REPAIRS AND MAINTENANCE OF LEASED PREMISES AND ALTERATIONS**

**Section 6.01. Lessee Obligated to Maintain Buildings and Improvements.** Lessee shall throughout the term of this Lease Agreement, at no cost and expense to Lessor, maintain, or cause to be maintained, and at the expiration of the term hereof subject to the provisions of Article XX hereof, surrender or cause to be surrendered, in good and tenantable repair, order and condition, reasonable wear and tear excepted and damage by fire or other casualty excepted, the improvements now or at any time erected on the lands included in the Leased Premises and promptly at no cost and expense to Lessor make or cause to be made all necessary repairs, interior and exterior, structural and non-structural, foreseen as well as unforeseen to such improvements.

**Section 6.02. Lessee Has Right to Make Additions, Alterations and Changes.** So long as there is no reduction in the reasonable value and functional utility of the Project, as originally designed and completed and as originally approved by Lessor, ADFA, AEDC and the Series B Purchaser, Lessee shall have the right from time to time to make additions, alterations and changes in or to the improvements constituting part of the Leased Premises and shall have the right to construct new improvements. All such additions, alterations and changes shall become part of the Leased Premises subject to the lien and security granted thereon in connection with the issuance of the Bonds. Lessee shall maintain detailed records of the nature and cost of such additions, alterations and changes, which shall be available for inspection by representatives and agents of Lessor, ADFA, AEDC and the Series B Purchaser on reasonable

notice. As to any addition, alteration or change or related series of additions, alterations or changes with an aggregate cost in excess of \$500,000, Lessee shall provide ADFFA, AEDC and the Series B Purchaser with a written description thereof and a summary of the projected costs thereof prior to commencement of construction; but no approval shall be required, so long as the conditions set forth in the first sentence of this Section 6.02 are satisfied. It is understood and agreed that in the event the Lessee makes any additions, alterations and changes in or to the improvements constituting part of the Leased Premises as authorized by this Section 6.02, the Lessee shall be under no obligation at the expiration of the term to restore the Leased Premises to their original condition prior to such additions, alterations or changes.

**Section 6.03. Structural Improvements and Alterations Become Property of Lessor; Machinery, Equipment and Other Property Installed at Lessee's Expense Remain Its Property With Right of Removal.** All structural improvements and alterations made on the Leased Premises by or on behalf of Lessee shall immediately upon completion thereof be and become the property of the Lessor without payment therefor by Lessor but subject to this Lease Agreement and the lien and security granted thereon in connection with the issuance of the Bonds. Any machinery and equipment, trade fixtures, movable partitions, furniture and furnishings and other property installed at the expense of Lessee, without reimbursement from Bond proceeds, shall remain the property of the Lessee with the right of removal, whether or not affixed and/or attached to the real estate, and the Lessee shall, so long as it is not in default hereunder, be entitled but shall not be obligated to remove the same, or any part thereof, during the term, or within a reasonable time thereafter, but Lessee shall at its own cost and expense repair any and all damages to the Leased Premises resulting from or caused by their removal therefrom.

**Section 6.04. Property on Leased Premises at Sole Risk of Lessee.** All property of any kind which may be on the Leased Premises (whether belonging to the Lessor, Lessee or to any third person) shall be at the sole risk of Lessee and those claiming by, through or under Lessee and Lessor shall not be liable to Lessee or to those claiming by, through or under Lessee or to said third persons for any injury, loss or damage to any person or property on the Leased Premises.

**Section 6.05. Permitted Encumbrances.** Lessor acknowledges that the Leased Premises will be subject to prior liens at the time title is transferred to the Lessor. Regardless of whether or not Lessor is permitted by State law to place a lien on the Leased Premises, the Lessor agrees that it is contractually prohibited from placing any lien or attempting to place any lien on the Leased Premises without the express written consent of Lessee which consent may be withheld in the sole discretion of Lessee, and any attempt by Lessor to impose a lien that is not consistent with this Section 6.05 or State law is void.

Lessor acknowledges that Lessee, at its sole option and discretion, may sublease tracts within the Leased Premises pursuant to Section 16.01 of this Lease Agreement (each, a "Future Sublease"). Lessor agrees for the benefit of each sublessee under Future Subleases that if this Lease Agreement is terminated, or Lessor comes into possession of the Leased Premises without termination, then in either such event Lessor shall recognize the Future Subleases and the rights of the lessees and sublessees thereunder provided that such lessees and sublessees attorn to Lessor. Notwithstanding the foregoing, Lessor will not be (i) liable for any act or omission of

Lessee, (ii) subject to any offsets or counterclaims that any such lessee or sublessee may have against Lessee, (iii) bound by any notices given to Lessee of which Lessor did not also receive notice, or (iv) obligated to commence or complete any construction or installation of any improvements or to make any contribution towards any construction or installation of any improvements relating to any Future Sublease. The liability of Lessor under any Future Sublease will continue only so long as Lessor is the owner of the property subject to any Future Sublease and such liability will not continue or survive with respect to claims accruing after further transfer of such interest.

## **ARTICLE VII USE OF LEASED PREMISES - COMPLIANCE WITH ORDERS, ETC.**

**Section 7.01. Permitted Use of Leased Premises and Compliance with Laws, Etc.** Subject to the following provisions of this Section 7.01, Lessor and Lessee agree that Lessee shall use the Leased Premises as a manufacturing facility and for any activities and purposes incidental thereto or in furtherance thereof or for any lawful purpose approved by Lessor, ADFA, AEDC and the Series B Purchaser. Lessee agrees and confirms that Lessee's intended use of the Leased Premises for the development, manufacture, warehousing and distribution of casters and wheels and for any activities and purposes incidental thereto or in furtherance thereof is a permitted use. Lessee shall during the term promptly comply with all valid statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, local and other governments or government authorities, now or hereafter applicable to the Leased Premises. Lessee shall, however, have the right to contest any of the foregoing, and if compliance therewith may legally be held in abeyance during such contest without incidence of any liens on the Leased Premises, Lessee may postpone compliance until final determination of such contest, provided such contest shall be prosecuted with due diligence; and even though a lien against the Leased Premises may be incurred by reason of such non-compliance, Lessee may nevertheless delay compliance therewith during contests thereof, provided Lessee, if required, furnishes Lessor reasonably satisfactory security against any loss by reason of such lien and effectively prevents foreclosure thereof. Lessee shall during the term comply with the mandatory requirement, rules and regulations of all insurers under the policies required to be carried under the provisions of this Lease Agreement.

**Section 7.02. Lessor's Covenant Not to Impose Burdensome Laws, Etc.** Lessor covenants that, to the full extent permitted by law, it will not attempt to impose upon the use or occupancy of the Leased Premises by the Lessee any laws, ordinances, rules or regulations more burdensome or restrictive than those in effect upon the date of execution of this Lease Agreement.

**Section 7.03. Lessor's Covenant Not to Condemn.** The Lessor covenants that during the term of this Lease Agreement it will not take or condemn any part of the Leased Premises or attempt to do so.

**Section 7.04. Lessor to Grant Easements.** The Lessor agrees, that when requested by the Lessee, it will take necessary steps to grant utility, road and other easements and rights of way over, along, across and under the Leased Premises. Instruments granting such easements and rights of way may be executed by the Mayor and City Clerk of the Lessor, who shall be entitled to rely upon and act in accordance with the written request of the Lessee signed by an

Authorized Lessee Representative. Lessor shall not grant any utility, road or other easements and rights of way over, along, across and under the Leased Premises without the written consent of the Lessee.

## **ARTICLE VIII WORK PERFORMED BY LESSEE**

**Section 8.01. Acquisition, Construction and Equipping the Project.** Prior to disbursement of any of the proceeds of the Bonds for payment or reimbursement of Project Costs from the applicable funds and accounts as provided in the Indentures, the Lessee shall submit to the Trustee, ADFA, AEDC and the Series B Purchaser at least five (5) business days before the requested draw, for the Series A Bonds and the Series B Bonds, a draw request in the form attached hereto as **Exhibit C-1**, and for the Series C Bonds, a draw certification in the form attached hereto as **Exhibit C-2**, signed by an Authorized Lessee Representative to be accompanied by such certificates and additional documentation as the Trustee, ADFA, AEDC and the Series B Purchaser may reasonably require.

**Section 8.02. Obligations of Parties Concerning Work on Leased Premises and Obtaining Necessary Permits.** Lessee shall not do or permit others under its control to do any work on the Leased Premises related to any repair, rebuilding, alteration of or addition to the improvements constituting part of the Leased Premises unless Lessee shall have first procured and paid for all requisite municipal and other governmental permits and authorizations. Lessor shall join in the application for any such permit or authorization whenever required, but Lessee shall indemnify and hold Lessor harmless against and from all costs and expenses which may be thereby incurred by Lessor. All such work shall be done in a good and workmanlike manner and in compliance with all applicable building, zoning and other laws, ordinances, governmental regulations and requirements and in accordance with the reasonable requirements, rules and regulations of all insurers under the policies required to be carried by the provisions of this Lease Agreement.

## **ARTICLE IX MECHANICS' LIENS**

**Section 9.01. Lessee to Keep Leased Premises Free of Construction Liens.** If any lien shall be filed against the interest of Lessor or Lessee in the Leased Premises or asserted against any rents payable hereunder, by reason of work, labor, services or materials supplied or claimed to have been supplied on or to the Leased Premises at the request or with the permission of Lessee, or anyone claiming under Lessee, Lessee shall, within thirty (30) days after receipt of notice of the filing thereof or the assertion thereof against such rents, cause the same to be discharged of record, or effectively prevent the enforcement or foreclosure thereof against the Leased Premises or such rents, by contest, payment, deposit, bond, insurance, order of Court or otherwise, the actual method being within Lessee's discretion. Nothing contained in this Lease Agreement shall be construed as constituting the express or implied consent to or permission of Lessor for the performance of any labor or services or the furnishing of any materials that would give rise to any such lien against Lessor's interest in the Leased Premises.

**ARTICLE X  
INDEMNIFICATION BY LESSEE**

**Section 10.01. Indemnification By Lessee.** Commencing with the completion of the Project or when the Lessee takes possession if prior to the completion, Lessee shall and agrees to indemnify and save Lessor, ADFA, AEDC, the Trustee and the Series B Purchaser and to hold them harmless against and from all claims by or on behalf of any person, firm or corporation arising from the conduct or management of, or from any work or thing done on, the Leased Premises during the term, and against and from all claims arising during the term from (a) any condition of the Leased Premises, (b) any breach or default on the part of Lessee in the performance of any of its obligations under this Lease Agreement, (c) any act or negligence of Lessee or of any of its agents, contractors, servants, employees or licensees, or (d) any act or negligence of any assignee or sublessee of Lessee, or of any agents, contractors, servants, employees or licensees of any assignee or sublessee of Lessee. Upon Lessor and/or Trustee tendering the defense of such claim to Lessee, Lessee shall indemnify and save Lessor, ADFA, AEDC, the Trustee and the Series B Purchaser harmless from and against all costs and expenses incurred in or in connection with any such claim arising as aforesaid, or in connection with any action or proceeding brought thereon, and upon notice from any of them, Lessee shall defend them or either of them in any such action or proceeding. Notwithstanding the foregoing, neither the Lessor nor the Trustee shall be entitled to indemnification for any claim arising out of its own gross negligence or willful misconduct.

**ARTICLE XI  
LESSOR MAY PERFORM LESSEE'S OBLIGATIONS**

**Section 11.01. Lessor May Perform Lessee's Obligations; Lessee to Reimburse Lessor for Costs and Expenses Incurred.** If Lessee shall fail to keep or perform any of its obligations as provided in this Lease Agreement in respect of (a) maintenance of insurance; (b) payment of impositions; (c) repairs and maintenance of the Leased Premises; (d) compliance with legal or insurance requirements; (e) keeping the Leased Premises lien free; (f) completion of construction and equipping of the Leased Premises; or (g) making of any other payment or performance of any other obligations, then Lessor, ADFA, AEDC and the Series B Purchaser may (but shall not be obligated to do so), upon the continuance of such failure on Lessee's part for thirty (30) days after written notice to Lessee, and without waiving or releasing Lessee from any obligation, and as an additional but not exclusive remedy, make any such payment or perform any such obligation (not under circumstances where such payment or performance would defeat any rights, herein specifically given to Lessee, to withhold such performance or to contest such obligation to the extent herein provided), and all sums so paid by Lessor, ADFA, AEDC or the Series B Purchaser and all necessary incidental costs and expenses incurred by any of them in making such payment or performing such obligation shall be deemed Additional Rent and shall be paid to Lessor, ADFA, AEDC and the Series B Purchaser on demand, or at Lessor's option may be added to any installment of Basic Rent thereafter falling due, and if not so paid by Lessee, Lessor, ADFA, AEDC and the Series B Purchaser shall have the same rights and remedies as in the case of default by Lessee in the payment of the Basic Rent.

**ARTICLE XII  
PUBLIC UTILITIES AND CHARGES**

**Section 12.01. Lessee to Pay Public Utility Charges.** Lessee agrees to pay or cause to be paid all charges for water, gas, sewer, electricity, light, heat or power, telephone or other service used, rendered or supplied to or for the Lessee upon or in connection with the Leased Premises throughout the term of this Lease Agreement, and to indemnify Lessor and save it harmless against any liability or damage on such account.

**ARTICLE XIII  
INSPECTION OF LEASED PREMISES**

**Section 13.01. Right of Inspection and Right to Perform Work Subject to Certain Restrictions.** Lessee shall permit Lessor, ADFA, AEDC and the Series B Purchaser, each by its respective authorized representative, to enter the Leased Premises at all reasonable times and on reasonable prior written notice during usual business hours for the purpose of inspection to determine Lessee's compliance with the terms hereof, and for the performance of any work therein made necessary by reason of Lessee's default under any of the provisions of this Lease Agreement. Lessor may, during the progress of any such work, keep and store on the Leased Premises all necessary materials, supplies and equipment and shall not be liable for reasonable inconvenience, annoyance, disturbance, loss of business or other damage to Lessee suffered by reason of the performance of any such work or the storage of materials, supplies and equipment. Nothing contained herein shall be construed to entitle the Lessor, ADFA, AEDC or the Series B Purchaser to any information or inspection involving the confidential know-how or other proprietary information of the Lessee.

**ARTICLE XIV  
DAMAGE AND DESTRUCTION**

**Section 14.01. Restoration in Event of Damage or Destruction; Application of Insurance Moneys.**

A. Lessee covenants and agrees that in the event of damage to or destruction of a substantial portion of the Leased Premises by fire or other casualty, the Lessee shall promptly notify the Lessor, ADFA, AEDC and the Series B Purchaser and shall promptly proceed, at no cost and expense to Lessor, ADFA, AEDC or the Series B Purchaser, to restore, repair, rebuild or replace the Leased Premises as nearly as possible to the condition they were in immediately prior to such damage or destruction, subject to such alterations as Lessee may elect to make in conformity with the provisions of Article VI hereof. Any item of machinery and equipment acquired as a replacement hereunder, or any item acquired, in whole or in part, out of insurance proceeds under this Article XIV, whether or not a replacement of or substitute for any item of damaged or destroyed machinery and equipment, if the insurance proceeds with which such item of machinery and equipment was purchased, in whole or in part, were derived from insurance on property which was part of the Project machinery and equipment, owned by Lessor, shall be and become the property of Lessor and shall be part of the Project machinery and

equipment and subject to this Lease Agreement. Such restoration, repairs, replacements or rebuilding shall be commenced promptly and prosecuted with reasonable diligence.

B. All insurance money paid on account of such damage to or destruction of the property of Lessee shall be paid to the Trustee and applied as hereinafter set forth to the payment of the cost of the aforesaid restoration, repairs, replacements or rebuilding, including expenditures made for temporary repairs or for the protection of property pending the completion of permanent restoration, repairs, replacements, or rebuilding or to prevent interference with the business operated thereon (sometimes referred to as the “restoration”). The insurance proceeds shall be disbursed by the Trustee to or as directed by Lessee, with the approval of ADFA, AEDC and the Series B Purchaser, in the manner of construction financing upon receipt by Trustee of:

A certificate signed by an Authorized Lessee Representative:

- (i) requesting payment of a specified amount of such insurance proceeds;
- (ii) detailing the progress of the restoration and repair work in accordance with a restoration schedule and budget provided by Lessee to Lessor, ADFA, AEDC and the Series B Purchaser;
- (iii) stating that such specified amount does not exceed the estimated cost of the work and materials in connection with the restoration, including as part thereof the estimated fees of any architect or engineer, if any; and
- (iv) stating that no part of such cost has previously been made the basis of any request for the withdrawal of insurance proceeds under this Article.

The Lessor shall have no responsibility as to the application by the Lessee of the insurance proceeds. All insurance proceeds delivered to the Trustee pursuant to the terms of this Lease Agreement shall be held by the Trustee in a separate account in trust for the Lessee in accordance with the terms of the Indentures.

If the insurance money shall be insufficient to pay all costs of the restoration, the Lessee shall pay the deficiency and shall nevertheless proceed to complete the restoration and pay the cost thereof. Any balance of the insurance proceeds remaining over and above the cost of the restoration shall be paid by the Trustee into the applicable Bond Fund or accounts therein upon receipt by the Lessor, ADFA, AEDC and the Series B Purchaser of certificates as required by this Article to the effect that the restoration has been completed.

The total amount collected under any and all policies of insurance covering such damage or destruction shall be placed in a special fund and the same may be invested in any investments in which moneys in the applicable Loan Fund or accounts therein may be invested under the Indentures. Such investments shall be made by the Trustee as directed and designated by an Authorized Lessee Representative.

**Section 14.02. No Diminution in Lessee's Obligation to Pay Basic Rent and Perform Other Covenants.** Lessee's obligation to make payment of the Basic Rent and all other covenants on the part of Lessee to be performed shall not be affected by any such destruction or damage, and Lessee hereby waives the provisions of any statute or law now or hereafter in effect contrary to such obligation of Lessee as herein set forth, or which releases Lessee therefrom.

**Section 14.03. Lessee Not Obligated to Restore if Purchase Option Exercised or All Outstanding Bonds Paid.** Notwithstanding the provisions of the foregoing sections of this Article XIV, Lessee shall not be required to repair, restore, replace or rebuild the Leased Premises, or any part thereof, (a) if Lessee, pursuant to the provisions of Article XX, shall elect to purchase the Leased Premises and shall proceed to pay the specified purchase price or (b) if the full amount necessary under the provisions of the Indentures to pay or redeem all outstanding Bonds shall have been paid and Lessee has not elected to purchase the Leased Premises or (c) if the value of the Project without restoration is at least equal to the outstanding principal amount of the Bonds. If Lessee shall so elect to purchase, the proceeds of all insurance may be used as part of the purchase price and upon the request of Lessee shall be so applied. If there be any excess insurance proceeds over and above the amount necessary to pay the purchase price, such excess shall be paid to and shall belong to the Lessee. If Lessee shall have paid the full amount necessary to pay or redeem all outstanding Bonds, any insurance proceeds shall be paid to and shall belong to Lessee.

## **ARTICLE XV CONDEMNATION**

**Section 15.01. Rights of Parties in Event of Condemnation; Bonds Protected in Any Event.**

A. If during the term of this Lease Agreement title to all or substantially all of the Leased Premises shall be taken or condemned by a competent authority for any public use or purpose, the net amount awarded as damages or paid as a result of such taking (being the gross award less attorneys' fees and other expenses and costs incurred in the condemnation proceedings, hereinafter referred to as the "net award") shall be used on the next redemption date to pay in accordance with the provisions of the Indentures, the entire principal, premium, if any, and interest on all Bonds outstanding under the Indentures. If the net award together with the amount then in the applicable Bond Fund or accounts therein, shall be insufficient to pay in full, on the next redemption date, the amount necessary to pay all principal, premium, if any, interest, and all other costs of redemption, on all Bonds outstanding under the Indentures (all of which, for purposes of this Section, shall be called "total bond redemption expense"), Lessee agrees to pay, promptly upon payment of the net award, as Additional Rent hereunder, the amount by which the total bond redemption expense shall exceed the net award plus the amount then on deposit in the applicable Bond Fund or accounts therein and available for payment and redemption of the Bonds outstanding under the Indentures. For purposes of this Article and of Article XX, "title to all or substantially all of the Leased Premises shall be taken or condemned" shall be deemed to mean a taking of all of the Leased Premises or a taking of such substantial portion of the Leased Premises that the Lessee, as determined by the

Lessee in its sole discretion, cannot reasonably operate the remainder in substantially the same manner as before. In the event the net award, together with any available amount in the applicable Bond Fund or accounts therein, shall be in excess of the amount necessary to pay the total bond redemption expense, such excess shall belong to and be paid to the Lessee.

B. If less than substantially all of the Leased Premises shall be taken or condemned by a competent authority for any public use or purpose, neither the term nor any of the obligations of either party under this Lease Agreement shall be affected or reduced in any way, and

- (i) Lessee shall proceed to repair, rebuild and replace the remaining part of the Leased Premises as nearly as possible to the condition existing prior to such taking, to the extent that the same may be feasible, subject to the right on the part of the Lessee to make alterations which, in the reasonable judgment of Lessee (and in accordance with Article VI hereof), will improve the efficiency of the Leased Premises for the purposes of their intended use under this Lease Agreement; and
- (ii) The net award shall be paid to the Lessor and by it to the Lessee, and the Lessor hereby assigns the same to the Lessee for the use of the Lessee in repairing, rebuilding and replacing as provided in (i) above. The net award shall be transferred to the Lessee in the same manner as is provided in Section 14.01 with respect to insurance proceeds, provided that the words “insurance proceeds” there referred to shall for purposes of this subparagraph (ii) refer to “net award.” If the net award is in excess of the amount necessary to repair, rebuild and replace as specified in (i) above, such excess shall be deposited in the applicable Bond Fund or accounts therein or if there are no Bonds outstanding under the Indentures the excess shall belong to and shall be paid to the Lessee. If the net award is less than the amount necessary for the Lessee to repair, rebuild and replace as set forth in (i) above, the Lessee shall nevertheless complete the repair, rebuilding and replacement work and pay the cost thereof to the extent not covered by the net award.

C. In the event of a taking under either A or B above, the Lessee shall have the right to participate in and to submit proof in the condemnation proceedings and to receive any award (by way of negotiation, settlement or judgment) which may be made for damages sustained by Lessee by reason of the condemnation; provided, however, nothing in this subsection C shall be construed to diminish or impair in any way Lessee’s obligation under subsection A of this Section 15.01 to pay as Additional Rent the amount of any insufficiency of the net award and the funds in the applicable Bond Fund or accounts therein to pay the total bond redemption expense as therein defined.

D. If the temporary use of the whole or any part of the Leased Premises shall be taken by right of eminent domain, this Lease Agreement shall not be thereby terminated and the parties shall continue to be obligated under all of its terms and provisions and Lessee shall be entitled to receive the entire amount of the award made for such taking, whether by way of damages, rent or otherwise.

**Section 15.02. Lessee Obligated to Continue Basic and Additional Rental Payments Until Condemnation Award Available.** In the event of a taking of all or substantially all of the Leased Premises as provided in Section 15.01A, the Lessee agrees to continue to make payment of the Basic Rent and the Additional Rent until the condemnation award shall be actually received by the Lessor.

**Section 15.03. Lessee's Right to Exercise Purchase Option Continues in Force Notwithstanding Condemnation Proceedings.** Notwithstanding the fact that all or any part of the Leased Premises shall be taken by right of eminent domain, Lessee shall have the right to exercise the Purchase Option granted to it by the provisions of Article XX hereof and the foregoing provisions of this Article shall be construed in the light of the effect of the Purchase Option so exercised by Lessee. In the event of the exercise of the Purchase Option under Article XX and payment of the required purchase price, whether before or after such taking, the net award shall belong to Lessee.

**Section 15.04. Right of Lessee to Participate in Condemnation Proceedings.** Lessee shall have the sole right, proceeding in the name of the Lessor, to handle the defense of any condemnation proceeding pertaining to or affecting the Leased Premises or to handle the prosecution of any proceeding in connection with a condemnation, pertaining to or affecting the Leased Premises, and shall have the sole right, proceeding in the name of the Lessor, to negotiate any settlement or compensation for a taking pertaining to or affecting the Leased Premises and the Lessor agrees that it will cooperate with the Lessee in such manner as the Lessee requests with the end in view of obtaining the maximum possible amount justifiable as damages for the taking. The Lessee shall have the right, proceeding in its own name, to participate in the condemnation proceedings and to receive any award (by way of negotiation, settlement or judgment) which may be made for damages sustained by Lessee by reason of the condemnation.

## **ARTICLE XVI ASSIGNMENT**

**Section 16.01. Assignment and Subletting Permitted But Lessee Not Relieved of Obligations; Assignment to Collateral Agent Permitted.**

A. With the written consent of ADFA, AEDC and the Series B Purchaser, Lessee may assign this Lease Agreement or sublet the Leased Premises or parts thereof provided that no such assignment or subletting and no dealings or transactions between the Lessor and any sublessee or assignee shall relieve the Lessee of any of its obligations under this Lease Agreement and Lessee shall remain as fully bound as though no assignment or subletting had been made, and performance by any assignee or sublessee shall be considered as performance pro tanto by Lessee; provided, however, that Lessee may assign this Lease Agreement, and be thereby relieved of further obligation

hereunder, in connection with a transaction involving merger, consolidation or sale as permitted under Section 23.07 provided the requirements thereof are met. Except for such subleases approved by Lessor prior to the execution of this Lease Agreement, the Lessee shall give sixty (60) days prior notice of such assignment or subletting to ADFa, AEDC and the Series B Purchaser and the Lessor. Lessee may sell or assign its interest in this Lease Agreement and be relieved of its obligations under this Lease in situations other than those described in Section 23.07, but only with the written consent of ADFa, AEDC and the Series B Purchaser.

B. The Lessor shall not assign, encumber, sell or dispose of all or any part of its rights, title and interest in and to the Leased Premises and this Lease Agreement, except to the Lessee or a creditor of Lessee to which Lessee has granted a security interest in either the Leased Premises or this Lease Agreement in accordance with the provisions of this Lease Agreement, but subject to the provisions of Article XVII hereof, without the prior written consent of the Lessee. The Lessor may assign its interests in this Lease Agreement to the Trustee or the Collateral Agent (as defined in the Indentures).

## **ARTICLE XVII PRIORITY OF LEASE**

**Section 17.01. Lease Agreement Superior and Prior.** This Lease Agreement (and any amendment or supplement hereto executed in accordance with and pursuant to the provisions of this Lease Agreement) and the estate of Lessee hereunder are and shall continue to be superior and prior to the Indentures (and all supplements thereto).

## **ARTICLE XVIII REMEDIES ARE CUMULATIVE - NO IMPLIED WAIVER**

**Section 18.01. Specific Relief; Remedies are Cumulative, No Implied Waiver.** Lessor and Lessee shall each be entitled to specific performance, and injunctive or other appropriate equitable relief for any breach or threatened breach of any of the provisions of this Lease Agreement, notwithstanding the availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity. The specific remedies provided for in this Lease Agreement are cumulative and are not exclusive of any other remedy. The failure of either party to insist in any one or more cases upon strict performance shall not be construed as a waiver or relinquishment for the future. No acceptance of rents with knowledge of any default shall be deemed a waiver of such default.

## **ARTICLE XIX DEFAULT PROVISIONS**

**Section 19.01. Events of Default.** (a) The following shall be “events of default” under this Lease Agreement and the terms “event of default” or “default” shall mean, whenever they are used in this Lease Agreement, any one or more of the following events:

A. Failure by the Lessee to pay the rents or any part thereof when due so as to prevent timely payment on the Bonds.

B. Failure by the Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in subsection A of this Section, (i) for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, given to the Lessee by the Lessor unless the Lessor shall agree in writing to an extension of such time prior to its expiration or (ii) for such longer period as may be reasonably necessary to remedy such default provided that the Lessee is proceeding with reasonable diligence, to remedy the same.

C. The dissolution or liquidation of the Lessee or the filing by the Lessee of a voluntary petition in bankruptcy, or failure by the Lessee promptly to lift any execution, garnishment or attachment of such consequence as will impair its ability to carry on its operations at the Leased Premises, or the commission by the Lessee of any act of bankruptcy, or adjudication of the Lessee as a bankrupt, or assignment by the Lessee for the benefit of its creditors, or the entry by the Lessee into an agreement of composition with its creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Lessee in any proceeding for its reorganization instituted under the provisions of the general bankruptcy act, as amended, or under similar act which may hereafter be enacted. The term "dissolution or liquidation of the Lessee," as used in this subsection, shall not be construed to include the cessation of the corporate or limited liability company existence of the Lessee resulting either from a merger or consolidation of the Lessee into or with another corporation or other entity or a dissolution or liquidation of the Lessee following a transfer of all or substantially all of its assets as an entirety, under the conditions permitting such actions contained in this Lease Agreement.

D. With respect to the Series A Bonds, receipt by the Lessor and the Trustee of notices from ADFA or AEDC of a failure by Lessee to comply with the terms and conditions set forth in the Guaranty Commitment or the Reimbursement Agreement.

E. With respect to the Series B Bonds, receipt by the Lessor and the Trustee of notices from the Series B Purchaser or the Collateral Agent of a failure by Lessee to comply with the terms and conditions set forth in the Security Documents.

**Section 19.02. Remedies.** Whenever any event of default shall happen and then be continuing, the Lessor may take any of the following remedial steps:

A. The Lessor, with the prior written consent of ADFA, AEDC and the Series B Purchaser may, at its option, declare all installments of rent payable for the remainder of the term to be immediately due and payable, whereupon the same shall become immediately due.

B. The Lessor, with the prior written consent of ADFA, AEDC and the Series B Purchaser may re-enter and take possession of the Leased Premises without terminating this Lease Agreement, and sublease the Leased Premises on commercially reasonable terms for the account of the Lessee, holding the Lessee liable for the difference in the rent and other amounts payable by the Lessee hereunder.

C. The Lessor, with the prior written consent of ADFA, AEDC and the Series B Purchaser may terminate the term, exclude the Lessee from possession of the Leased Premises and use its best efforts to lease the Leased Premises to another for the account of the Lessee, holding the Lessee liable for all rent and other payments due up to the effective date of any such leasing.

D. The Lessor, ADFA, AEDC and the Series B Purchaser shall have access to inspect, examine and make copies of the books and records relating to the Leased Premises.

E. The Lessor, with the prior consent of ADFA, AEDC and the Series B Purchaser may take whatever action at law or in equity may appear necessary or desirable to collect the rent and any other amounts payable by Lessee hereunder, then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Lessee under this Lease Agreement.

Any amounts collected pursuant to action taken under this Section shall be applied in accordance with the provisions of the Indentures.

Notwithstanding the above, before exercising any remedy granted therein, Lessor shall by written notice, grant Lessee the option to cure any default for a period of thirty (30) days, and Lessor agrees that it shall contemporaneously provide a copy of any such notice and the opportunity to cure a default to the ADFA, AEDC and the Series B Purchaser and the Trustee.

**Section 19.03. Remedies Not Exclusive.** No remedy herein conferred upon or reserved to the Lessor is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof but any such right or power may be exercised from time to time as often as may be deemed expedient.

**Section 19.04. Rental, Damages and Reletting Handled as Provided in Lease and Agreement and Indentures.** The foregoing provisions of this Article relating to the receipt of moneys by Lessor as the result of an acceleration, upon a reletting or otherwise are each to be construed as providing that all such payments by Lessee or others shall be handled as provided in this Lease Agreement and in the Indentures.

## ARTICLE XX LESSEE'S OPTIONS

**Section 20.01. Purchase Option.** The Lessee shall have the right and option to purchase all or any part of the Leased Premises at any time after \_\_\_\_\_ (the "Purchase Option"). Contemporaneous with the execution of this Lease Agreement, Lessee and Lessor shall execute the Option Agreement attached hereto and incorporated herein as Exhibit D. Lessee and Lessor agree and acknowledge that the consideration for the Purchase Option includes, not only the stated consideration within the Option Agreement, but also the mutual benefits and covenants of this Lease Agreement, the issuance, purchase and repayment of the

Bonds, and the accomplishment of the Project, including, but not limited to, the Project's construction and operation by the Lessee.

**Section 20.02. Additional Facilities and Sale of Land.** The progress of Lessee's business may justify an expansion of the Project or the construction of additional industrial facilities (herein referred to as additional facilities) beyond those that can be financed out of the proceeds of the Bonds. Therefore, it is agreed, subject to all of the provisions of this Article, if Lessee desires to construct additional facilities and wishes to finance these by the issuance of economic development revenue bonds, it shall notify the Lessor, ADFA, AEDC and the Series B Purchaser, and Lessor agrees to proceed to issue additional bonds, otherwise than under the Indenture, subject to the requirements of law to finance such additional facilities. In that event, the Lessor and the Lessee agree to execute a separate loan agreement or Lease Agreement covering the financing of such additional facilities upon similar terms and conditions as set forth in this Lease Agreement, subject to any changes or additions that may then be agreed upon by the Lessor and the Lessee, but there must be included provision for note payments in the amount necessary to provide for the payment of the principal of and interest on any such additional bonds, and the land involved in such expansion program shall automatically be withdrawn from this Lease Agreement upon becoming subject to a separate Loan or Lease Agreement between the Lessor and the Lessee.

**Section 20.03. Reserved.**

**Section 20.04. No Diminution in Lessee's Obligation.** The fact that the land involved in such expansion program shall cease to be subject to this Lease Agreement by virtue of becoming subject to a separate loan agreement or lease agreement shall not relieve, and shall not result in the relieving of the Lessee of its obligations to pay Basic Rent, Additional Rent and such other payments or any of the other covenants and obligations on the part of the Lessee to be performed under this Lease Agreement, or result in any diminution thereof.

**Section 20.05. Lands That May be Included in Expansion.** The Lessee's expansion program and the land subject to said separate mortgage pursuant to the provisions of Section 20.03 may include only such portion of the land originally included in the Project as shall not at such time be improved with a building or buildings or other structure or structures or be necessary for adequate ingress and egress to and from said buildings and structures plus such additional land adjacent to said buildings and structures, as may be reasonably necessary for the proper and efficient use of such buildings and structures.

## ARTICLE XXI NOTICES

**Section 21.01. Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, return receipt requested, postage prepaid addressed as set forth herein. The parties may, by notice given hereunder, designate any further or different address to which subsequent notices, certificates or other communications shall be sent.

If intended for Lessee:

Colson Caster, LLC

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

With a copy to:

\_\_\_\_\_  
Colson Group Holdings, LLC  
\_\_\_\_\_  
Attention: \_\_\_\_\_

If intended for ADFA:

Arkansas Development Finance Authority  
1 Commerce Way, Suite 602  
Little Rock, Arkansas 72202  
Attention: President

If intended for AEDC:

Arkansas Economic Development Commission  
1 Commerce Way, Suite 601  
Little Rock, Arkansas 72202  
Attn: President

If intended for Lessor:

City of Jonesboro, Arkansas  
515 West Washington Avenue  
Jonesboro, Arkansas 72401  
Attn: Mayor

Any party may change the address and the name of addressee to which subsequent notices are to be sent by notice to the other parties given as aforesaid.

**ARTICLE XXII  
RECORDING**

**Section 22.01. Recording.** A Memorandum of this Lease Agreement and every assignment and modification thereof shall be recorded in the office of the Circuit Clerk and Ex-Officio Recorder of Craighead County, Arkansas at the closing of the Bonds.

**ARTICLE XXIII  
GENERAL**

**Section 23.01. Arkansas Law Applicable.** This Lease Agreement shall be construed and enforced in accordance with the laws of the State. Wherever in this Lease Agreement it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation. All factual representations set forth in the whereas clauses of this Lease Agreement shall be construed as express representations and covenants on the part of the party to which each such recital is applicable to the same extent as though set forth as an express representation and covenant by that party.

**Section 23.02. Severability.** If any provision of this Lease Agreement or the application thereof to any person or circumstance shall, to any extent, be determined to be invalid or unenforceable, the remainder of this Lease Agreement and the application of its provisions to persons or circumstances other than those as to which it has been determined to be invalid or unenforceable, shall not be affected thereby, and each provision of this Lease Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

**Section 23.03. Captions for Reference Only.** The Article captions in this Lease Agreement are for convenience and reference only and shall in no way define, limit or describe the scope or intent of this Lease Agreement or any part thereof, or in any wise affect this Lease Agreement and shall not be considered in any construction thereof.

**Section 23.04. Provisions Binding on Successors.** The provisions of this Lease Agreement shall bind and inure to the benefit of the parties hereto and their respective successors, assigns and sub-lessees (it being understood that assignments and subleasing are governed by the provisions of Article XVI hereof).

**Section 23.05. Consent for Required for Modification.** It is agreed that the Lessor and the Lessee shall not alter, modify or amend any of the terms of this Lease Agreement without the prior written consent of ADFA and AEDC, which consent will not be unreasonably withheld and the consent of the Trustee as required by the Indentures.

**Section 23.06. Lessee Furnish Lessor Annual Reports.** Lessee shall furnish to Lessor, ADFA, and AEDC and the Series B Purchaser within 150 days after the end of the preceding fiscal year of the Lessee, annual audited financial statements of the Lessee, as at the end of such fiscal year and the related statements of income, retained earnings and changes in financial position for such fiscal year, all in reasonable detail prepared by an independent certified public accountant of recognized standing, who may be the accountant regularly employed by the Lessee, and all subject to reasonable assurances of confidentiality. In addition, the Lessee shall furnish to ADFA, AEDC and the Series B Purchaser, within forty-five (45) days after the end of each semi-annual period, an unaudited balance sheet and related statements of income and retained earnings of Lessee for such six-month period in reasonable detail and which may be prepared by the Lessee. The Lessee shall likewise furnish upon request by ADFA, AEDC or the Series B Purchaser any additional unaudited financial information for time periods not otherwise noted above subject to reasonable assurances of confidentiality.

**Section 23.07. Consolidation, Merger or Sale Permitted In Certain Circumstances.** Notwithstanding any other provision of this Lease Agreement to the contrary, the Lessee will maintain its existence as a limited liability company and will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another corporation or other entity or permit one or more other corporations or other entities to consolidate with, convert into or merge into it; provided, however, the Lessee may, with the consent of ADFA, AEDC and the Series B Purchaser, consolidate with, convert or merge into another domestic corporation or other entity (that is a corporation or other entity organized and existing under the laws of one of the states of the United States of America), or permit one or more other corporations or other entities to consolidate with or merge into it, or sell or otherwise transfer to another domestic corporation or other entity all or substantially all of its assets as an

entirety and thereafter dissolve on the condition that such surviving, resulting or transferee corporation or other entity shall expressly assume in writing all of the obligations of the Lessee contained in this Lease Agreement and that the net tangible assets of the other corporation or other entity after the consolidation, merger or sale be at least equal to the net tangible assets of Lessee immediately prior to such consolidation, conversion, merger or sale and qualifies to do business in the State. In the event of such consolidation, conversion, merger or sale, as permitted by this Section, and the assumption by the surviving, resulting or transferee corporation or other entity of the obligations hereof, the Lessee shall be relieved of all further obligations hereunder. As used herein, "net tangible assets" means all assets of the corporation or other entity (except there shall not be included goodwill) less all liabilities. Thirty (30) days prior to any such consolidation, merger or sale, the Lessee shall give notice thereof to the Lessor, ADFA and AEDC and the Series B Purchaser.

#### **ARTICLE XXIV REMOVAL AND DISPOSAL OF PROPERTY**

**Section 24.01. Lessee's Rights and Obligations Concerning Removal and Disposal of Building Service Equipment.** The Lessee may, provided Lessee is not in default in the payment of Basic Rent or Additional Rent as required by the provisions of this Lease Agreement and has not received notice of any other default on its part hereunder, remove, free of any right or claim of Lessor, any building service equipment or other improvements (hereinafter defined), subject however, in all cases to the following:

- A. Except as provided in Section 24.02, building service equipment or other improvements may be so removed upon the substitution thereof, then or theretofore, by Lessee of other building service equipment or other improvements of a utility or value at least equal to that, at the time of removal, of the building service equipment removed;
- B. Worn out or obsolete building service equipment or improvements may be so removed and building service equipment added by Lessee after the full completion of a building (and not by way of repair, replacement or the like) may be removed, provided the original efficiency, utility and value of the building is not impaired;
- C. Lessee shall pay all the costs and expenses of any such removal and shall immediately repair at its expense all damages caused thereby.

The term "building service equipment" is intended to refer to such things as are affixed to or incorporated in a building for its operation, such as boilers, pumps, tanks, sprinklers, lighting equipment and wiring, heating, plumbing and ventilating equipment, elevators, escalators, refrigerating, air conditioning and air cooling equipment, and items similar in general to any of the foregoing.

**Section 24.02. Lessee's Rights and Obligations Concerning Removal and Disposal of Project Machinery and Equipment.** The Lessor and the Lessee recognize that after the Project machinery and equipment is installed portions thereof may become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary in the operation of the Leased Premises. The Lessor shall not be under any obligation to renew, repair or replace any such inadequate,

obsolete, worn out, unsuitable, undesirable or unnecessary items of Project machinery and equipment. In any instance where the Lessee in its sound discretion determines that any items of Project machinery and equipment have become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary in the operation of the Leased Premises,

A. The Lessee may remove such items of Project machinery and equipment from the Leased Premises, and (on behalf of the Lessor) sell, trade-in, exchange or otherwise dispose of them without any responsibility or accountability to the Lessor therefor, provided that the Lessee substitute (either by direct payment of the cost thereof or by advance to the Lessor of the funds necessary there for, as hereinafter provided) and install anywhere in the Leased Premises other machinery or equipment having equal or greater utility (but not necessarily the same function) in the operation of the Leased Premises and provided further that such removal and substitution shall not impair the operating unit of the Leased Premises, and all such substituted machinery or equipment shall be the sole property of the Lessor, shall be and become a part of the Project machinery and equipment subject to this Lease Agreement and shall be held by the Lessee on the same terms and conditions as items originally comprising Project machinery and equipment; or

B. The Lessee may remove such items of Project machinery and equipment from the Leased Premises and sell, trade-in or exchange them on behalf of the Lessor, either to itself or to another, or scrap them (in whole or in part), without being required to substitute and install in the Leased Premises other items of machinery or equipment in lieu thereof, provided (i) that in the case of the sale of any such machinery or equipment to anyone other than itself or in case of the scrapping thereof, the Lessee pays into the applicable Bond Fund or accounts therein the proceeds from such sale or the scrap value thereof, as the case may be, (ii) that in the case of the trade in of such machinery or equipment for other machinery or equipment, the Lessee pays into the applicable Bond Fund or accounts therein, the amount of the credit received by it on such trade in, and (iii) that in the case of the sale of any such machinery or equipment to the Lessee, the Lessee pays into the applicable Bond Fund or accounts therein an amount equal to the original cost thereof less depreciation at rates calculated in accordance with generally accepted accounting principles.

In any case where the Lessee purchases, installs and substitutes in the Project any item of machinery or equipment, the Lessee may, in lieu of purchasing and installing said items of machinery and equipment itself, advance to the Lessor the funds necessary therefor, whereupon the Lessor will purchase and install such machinery or equipment in the Project.

The Lessee will promptly report such removals, substitutions, sales and other dispositions of items of Project machinery and equipment to the Lessor, ADFA, AEDC and the Series B Purchaser, will pay to the Lessor or the Trustee such amounts as are required by the provisions of the preceding subsection B to be paid into the applicable Bond Fund or accounts therein promptly after the sale, trade-in or scrapping requiring such payment, and will execute and deliver to the Lessor or Collateral Agent such documents as may from time to time be requested to confirm the title of the Lessor or Collateral Agent (subject to this Lease Agreement) to any items of machinery and equipment that under the provisions of this Section are to become a part

of Project machinery and equipment. The Lessee will pay any costs (including counsel fees) incurred in subjecting to the lien of the Indentures and the Security Documents any items of machinery or equipment that under the provisions of this Section are to become a part of Project machinery and equipment. The Lessee will not remove or permit the removal of any of Project machinery and equipment from the Leased Premises except in accordance with the provisions of this Section.

**Section 24.03. Lessee to Report Upon Request Dispositions or Removals Under Section 24.01 and 24.02.** If requested by Lessor, ADFA, AEDC or the Series B Purchaser, Lessee shall furnish to the requesting party, within sixty (60) days after the end of each calendar year, Lessee’s certificate setting forth a summary description of all removals made pursuant to Sections 24.01 and 24.02.

**ARTICLE XXV  
PARENT GUARANTOR**

**Section 25.01. Name of Parent Guarantor.** The following entity shall act as an unconditional guarantor of the obligations of the Lessee (“Parent Guarantor”) under the terms of this Lease Agreement and the Indentures, which guaranty however is limited as set forth in the Guaranty Agreement for Reimbursement of Advance Funds as executed by the Parent Guarantor:

NAME	ADDRESS	RELATIONSHIP TO COMPANY
Colson Group Holdings, LLC		Parent Company

**ARTICLE XXVI  
REPRESENTATIONS AND WARRANTIES**

**Section 26.01. Representations and Warranties of the Lessor.** The Lessor represents and warrants as follows:

- A. The Lessor is a body corporate and politic, and is authorized pursuant to the provisions of the Act to enter into the transactions contemplated by this Lease Agreement.
- B. The Lessor has full power and authority to enter into the transactions contemplated by this Lease Agreement and the Indentures and to carry out its obligations hereunder and thereunder.
- C. The Lessor is not in default under any provisions of the laws of the State material to the performance of its obligations under this Lease Agreement.
- D. The Lessor is authorized by the Act to execute and deliver this Lease Agreement and the Indentures and by proper action has duly authorized the execution and delivery hereof and thereof and as to the Lessor, this Lease Agreement and the Indenture are valid and legally binding and enforceable in accordance with their terms, except to the extent that the enforceability thereof may be limited by (i) bankruptcy, insolvency,

reorganization, moratorium or other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable, (ii) general principles of equity, and (iii) the exercise of judicial discretion in appropriate cases.

E. The loan of the proceeds of the Bonds for the financing or refinancing of the acquisition, construction, and equipping of the Project by the Lessee, as provided by this Lease Agreement, will further the purposes of the Act.

**Section 26.02. General Representations and Warranties of the Lessee.** The Lessee represents and warrants as follows:

A. The Lessee is duly organized and existing under the laws of the State of Delaware and has full power to enter into this Lease Agreement.

B. The making and performance of this Lease Agreement has been duly authorized by all necessary actions and does not contravene any law, regulation or decree or any contractual restriction binding on the Lessee.

C. Except for any Future Leases permitted by Section 6.05, the Lessee is or will be the only Lessee of the Project. Except for Permitted Encumbrances, the Project is free and clear of all mortgages, liens, charges and encumbrances, which constitute a lien or charge against its property, real or personal, tangible or intangible except for such liens, if any, as will be waived or discharged at the time of the execution of this Lease Agreement).

D. The making and performance of this Lease Agreement, and each and every other document required to be delivered, has received or will receive in due course all necessary governmental approvals, and does not contravene any law, regulation or decree or any contractual restriction (other than those which shall be waived or discharged at the time of the execution of this Lease Agreement) binding on or affecting the Lessee.

E. This Lease Agreement, any other security documents and each and every other document required to be delivered under Article II hereof, when duly executed and delivered for value, will be legal and binding obligations of the Lessee, enforceable in accordance with their respective terms.

F. Except as disclosed in the opinion of Lessee's counsel, there are no pending or threatened actions or proceedings before any court or administrative agency which may materially adversely affect the financial condition or operations of the Lessee.

G. The financial statements of the Lessee correctly and accurately set forth the financial condition of the Lessee as of such date to the best of our knowledge, and since such date there have been no material adverse changes in such condition.

H. The Lessee is not in default under any material provision of any lease or rental agreement.

I. The Lessee is not in default under the terms of any material instrument or undertaking with respect to its obligations to repay any borrowed money.

J. The Lessee is not aware of any claim, or purported claim, of any laborer, materialman, contractor or other person who might assert a lien against the Property by reason of the construction or other improvement.

K. Estimated project costs have been determined in accordance with sound engineering and accounting principles, and the Lessee estimates that all of the proceeds of the Bonds (exclusive of accrued interest, if any, paid by the original purchasers thereof) will be expended to pay or reimburse such Project costs.

L. All financial information, data, representations, exhibits, terms and conditions required or submitted in connection with the Lessee's application for the AEDC Guaranty and the ADFA Guaranty are true, accurate and complete in all material respects on the date of delivery by the Lessee.

All of the above representations and warranties shall survive the execution of this Lease Agreement.

## **ARTICLE XXVII SPECIAL COVENANTS**

**Section 27.01. Subordinate Debt.** All payments of any type due owners, members, shareholders or affiliates of the Lessee will be subordinated to the payments of the Bonds and required under the Reimbursement Agreement. No payments of any type will be allowed if the Lessee has been delinquent on any monthly payment of the Bonds or required under the Reimbursement Agreement in the preceding twelve (12) month period.

**Section 27.02. Payments to Shareholders.** The Lessee shall not make distributions of any kind to owners, members, shareholders and/or any affiliates of Lessee without the prior written consent of ADFA, AEDC and the Series B Purchaser and unless (i) Lessee will be in compliance on a pro-forma basis after any such distribution with all financial covenants to ADFA, AEDC, the Series B Purchaser and all other creditors, (ii) no default by the Lessee has occurred with any creditor or under any material agreement, and (iii) the Lessee's Net Worth to Assets Ratio is maintained at or greater than 30.00%.

**Section 27.03. Additional Debt.** The Lessee shall obtain prior approval from ADFA, AEDC and the Series B Purchaser, which approval shall not be unreasonably withheld, before it may undertake any additional debt in excess of \$5,000,000, provided that the following debt may be incurred: (a) debt to replace or upgrade existing equipment; (b) an increase in trade account payables due to higher inventory requirements attributable to an increase in sales or seasonal inventory, and (c) any increase in any line of credit due to higher accounts receivable due to an increase in sales.

*[The remainder of this page intentionally left blank.]*



**LESSEE:**

**COLSON CASTER, LLC**

By: \_\_\_\_\_  
[Name], [Title]

STATE OF ARKANSAS    )  
                                  ) ss:  
COUNTY OF \_\_\_\_\_)

**ACKNOWLEDGMENT**

On this day, before me, the undersigned, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named [NAME], to me personally well known, who stated that he was the [Title] of COLSON CASTER, LLC, a Delaware limited liability company, and was duly authorized in that capacity to execute the foregoing instruments for and in the name and behalf of said company, and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_  
(S E A L)

**LESSEE:**

**[COLSON HOLDING GROUP, LLC**

By: \_\_\_\_\_  
[Name], [Title]]

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

**ACKNOWLEDGMENT**

On this day, before me, the undersigned, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named [NAME], to me personally well known, who stated that he was the [Title] of **COLSON HOLDINGS GROUP, LLC**, a Delaware limited liability company, and was duly authorized in that capacity to execute the foregoing instruments for and in the name and behalf of said company, and further stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_  
(S E A L)

## **EXHIBIT A**

All machinery, equipment and furnishings located on the Leased Premises and financed with the proceeds of the Bonds.

**EXHIBIT B**

**Legal Description**

The Leased Premises is located in Craighead County, Arkansas and described as follows:

**EXHIBIT C-1**

**SERIES 2022A BONDS AND SERIES 2022B BONDS  
DRAW REQUEST FORM**

**TO:** [To be determined], as Trustee

**FROM:** Colson Caster, LLC (the “Lessee”)

**DATE:** \_\_\_\_\_

This Draw Request is submitted pursuant to Section 5.06 of the Trust Indenture relating to the [\$11,000,000 City of Jonesboro, Arkansas Taxable Economic Development Revenue Bonds (ADFA/AEDC Guaranty Programs) (Colson Caster Project) Series 2022A] [\$4,000,000 City of Jonesboro, Arkansas Taxable Economic Development Revenue Bonds (Colson Caster Project) Series 2022B]. All terms not defined herein shall have the meaning given to them in the Trust Indenture.

The Issuer requests that the following payment or payments be made from the applicable Loan Fund or accounts therein:

1. Name and address of person, firm or corporation to whom payment is due:

\_\_\_\_\_

2. Amount to be paid:

\_\_\_\_\_

3. Purpose for which the Cost was incurred (attach invoices):

\_\_\_\_\_

The Issuer makes the following representations:

1. The obligation stated in this Draw Request has been incurred in or for the acquisition and completion of the Colson Caster Project and each item is a proper charge against the applicable Loan Fund or accounts therein and the obligation has not been the basis for a prior Draw Request which has been paid or for which payment is pending.

2. No written notice of any lien, right to lien, or attachment upon, or claim affecting the right to receive payment of any of the moneys payable under this Draw Request to any of the persons, firms or corporations named herein has been received, or if any notice of any such lien, attachment or claim has been received, such lien, attachment or claim has been released or discharged or will be released or discharged upon payment of the Draw Request.

3. This Draw Request contains no items representing payment on account of any percentage entitled to be retained at the date of this Draw Request.

4. No default by the Issuer under the Trust Indenture has occurred and is continuing.

5. The amount remaining in the applicable Loan Fund or accounts therein, plus reasonably expected investment income to be credited thereto, will, after payment of the amount requested in this Draw Request, be sufficient to pay the costs of the Colson Caster Project to become due and payable thereafter.

Please make payment from the applicable Loan Fund or accounts therein in accordance with this Draw Request.

**COLSON CASTER, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT C-2**  
**SERIES 2022C BONDS**  
**DRAW CERTIFICATION AND NOTICE OF FUNDING FORM**

[Date]

Not to Exceed  
\$9,000,000  
City of Jonesboro, Arkansas  
Taxable Economic Development Revenue Bonds  
(Colson Caster Project)  
Series 2022C

\_\_\_\_\_  
Attn: Corporate Trust  
\_\_\_\_\_  
\_\_\_\_\_

[Bondholder]

\_\_\_\_\_  
Jonesboro, Arkansas

Ladies and Gentlemen:

The undersigned, an Authorized Lessee Representative, as defined in the Lease Agreement dated as of \_\_\_\_\_, 2022 (the "Lease"), between the City of Jonesboro, Arkansas (the "Issuer") and the Lessee, pursuant to the Trust Indenture dated \_\_\_\_\_, 2022 between the Issuer and \_\_\_\_\_ (the "Trustee"), providing for the issuance of the above captioned bonds (the "Bonds"), hereby certifies to and represents to the Trustee and [Bondholder] (the "Bondholder") as follows:

1. Pursuant to this Certificate and in compliance with Article VI of the Indenture, the Lessee requests a draw under the Bonds on the date hereof in the amount of \$ \_\_\_\_\_ (the "Draw").
2. The Draw will be used to reimburse the Lessee for Project Costs pursuant to Article II of the Lease Agreement.
3. The requested amount of this Draw, when added to the amount of all prior Draws under the Indenture, does not exceed \$9,000,000. Further, the requested Project Costs have not been previously reimbursed.
4. The undersigned has examined the provisions of the Indenture and the Lease Agreement and certifies that the Lessee has complied with the conditions thereof. This disbursement is for a proper expense of or pertaining to the Project.
5. A summary of the Project Costs to be reimbursed is attached hereto as **Exhibit "A"**. For those Project Costs identified in **Exhibit "A"** that are in excess of \$100,000, at the

direction of the Lessee, an invoice, purchase order or other appropriate documentation may be attached as support for the expense. The assets identified in **Exhibit "A"** and its supporting documentation have been purchased with Bond proceeds, are contemporaneously transferred to the Issuer, and leased to the Lessee pursuant to the Lease Agreement. For purposes of clarification, **Exhibit "B"** identifies equipment that is fully assembled and operations; however, the component parts of such equipment may have been identified on **Exhibit "A"** to prior Draw Notices. To the extent that any of the assets listed in **Exhibit "B"** are "personal property," these assets are intended to be and are part of the Personal Property described in Exhibit B to the Bill of Sale and Blanket Assignment delivered by the undersigned to the Issuer on \_\_\_\_\_, 2022 and are part of the Leased Premises referenced in Section 3.01 of the Lease Agreement and more specifically described on Exhibit A to such Lease Agreement. Issuer and Lessee acknowledge and agree that the referenced Exhibit B to the Bill of Sale and Blanket Assignment and Exhibit A to the Lease Agreement are hereby modified and amended to include the assets described on **Exhibit "B"** hereto. The assets described in **Exhibit "A"** and **Exhibit "B"** are subject to prior encumbrances specific to each asset.

6. The Bondholder is requested to make appropriate accounting entries to reflect the additional funding of the Bonds.

7. The Trustee is requested to make appropriate notation on the Draw of Schedule A of the Bonds.

**COLSON CASTER, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

The foregoing is acknowledged by the Trustee as of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT "A"  
TO SERIES 2022C BONDS  
DRAW CERTIFICATE AND NOTICE OF FUNDING

PROJECT COSTS

[To be inserted at the time of the draw.]

EXHIBIT "B"  
TO SERIES 2022C BONDS  
DRAW CERTIFICATE AND NOTICE OF FUNDING

ADDITIONS TO LEASED PREMISES

[To be inserted at the time of the draw.]

EXHIBIT D

**OPTION AGREEMENT**

This OPTION AGREEMENT (the “Option Agreement”) is entered into and effective on the \_\_\_ day of \_\_\_\_\_, 2022 by and between the **CITY OF JONESBORO, ARKANSAS** (“Grantor”) and **COLSON CASTER, LLC**, a Delaware limited liability company (“Grantee”).

WHEREAS, Grantor, as Lessor, and Grantee, as Lessee, have entered into a Lease Agreement (the “**Lease Agreement**”) dated as of \_\_\_\_\_, 2022 relating to the Leased Premises (as defined in the Lease Agreement), and

WHEREAS, pursuant to the Lease Agreement, Grantor has given Grantee the right and option to purchase all or part of the Leased Premises at any time.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Grantor and Grantee, and in consideration of the mutual benefits and covenants herein contained, Grantor and Grantee agree as follows:

**1. Definitions.** In addition to the words and terms otherwise defined in this Option Agreement, capitalized words and terms shall have the definition given to them in the Lease Agreement.

**2. Grantee Option.** (a) The Grantee shall have the right and option to purchase all or part of the Leased Premises at any time if:

- (i) The Leased Premises shall sustain major damage or destruction; or
- (ii) Title to all or substantially all of the Leased Premises shall be condemned, by any competent authority other than the Grantor, as provided in Article XV of the Lease Agreement; or
- (iii) As a result of changes in the Constitution of the United States or of the State, or of legislative action, or by the final decree, judgment or order of any court or administrative body entered after Grantee’s contest thereof in good faith, or change in Grantor’s legal organization or status, the Lease Agreement becomes void or unenforceable or impossible of performance in accordance with the intent and purposes of the parties as expressed in the Lease Agreement, or unreasonable burdens or excessive liabilities are imposed upon either party to it; or
- (iv) There is legal curtailment of Grantee’s use and occupancy of all or substantially all of the Leased Premises for any reason other than condemnation referred to in subsection (ii); or
- (v) Grantee determines to do so in its sole and absolute discretion.

If the Lease Agreement is terminated as a result of a default pursuant to Article XIX therein or otherwise, Grantee shall have the right and option to purchase the Leased Premises at any time during the period ending ninety (90) days after the effective date of such termination, in which event the Purchase Price payable shall include all expenses and reasonable attorney's fees of Grantor, ADFA, AEDC and the Series B Purchaser in connection with such termination, in addition to the amounts described Section 4.

The term "major damage or destruction" as used in subsection (i) is defined to mean any damage or injury to or destruction of the Leased Premises or any part thereof (whether or not resulting from an insured peril) such that the Leased Premises cannot reasonably be restored to its condition immediately preceding such damage, injury or destruction within a period of six (6) months, or which would prevent Grantee from carrying on its operations therein for a period of at least six (6) months or the restoration cost of which would exceed the total amount of insurance carried on the Leased Premises in accordance with the provisions of Article V of the Lease Agreement, or such that it would not be economically feasible for the Grantee to repair the Leased Premises, as determined by the Grantee in its sole discretion.

(b) **Exercise of Purchase Option.** The Purchase Option may be exercised by Grantee with respect to all of the Leased Premises by giving written notice to Escrow Agent (hereinafter defined), with a copy to Grantor, ADFA, AEDC and the Series B Purchaser, of the exercise thereof specifying the time and place of closing. At the closing, Escrow Agent shall deliver the Conveyance Documents (hereinafter defined) to or upon the direction of Grantee or any leasehold mortgagee succeeding to the rights of Grantee. Grantor and Grantee agree and acknowledge that the Conveyance Documents shall transfer title to the Leased Premises free and clear of all liens and encumbrances except those identified as Permitted Encumbrances under the Lease Agreement or resulting from any failure of Grantee to perform any of its obligations under the Lease Agreement; provided, however, that if the Purchase Option is exercised under the provisions of Section 2(a)(ii) above, such title may be subject to the rights, titles and interests of any party having taken or who is attempting to take title to or use of all or substantially all or part of the Leased Premises by eminent domain.

**3. Obligation to Purchase.** At any time following or contemporaneous with the redemption in full of the Bonds, if the purchase option under the provisions of Section 2 has not been exercised, Grantee shall have the further unconditional right and obligation to purchase the Leased Premises for the Purchase Price (defined below).

**4. Purchase Price.** If the Grantee exercises Grantee's option to purchase the Leased Premises under the provisions of the Option Agreement:

- (i) if no Bonds shall be outstanding under the Indentures at the time of purchase, the purchase price of the Leased Premises (the "Purchase Price") shall be One Hundred Dollars (\$100.00) or such portion thereof as is allocated to the portion of the Leased Premises that is being purchased; and
- (ii) if Bonds are outstanding under the Indentures at the time of the purchase, the purchase price of the Leased Premises shall be One Hundred Dollars (\$100.00) or

such portion thereof as is allocated to the portion of the Leased Premises that is being purchased, and in addition, if the entirety of the Leased Premises is being purchased, either (x) contemporaneous with or prior to the date determined in Section 2(b), the full amount necessary under the provisions of the Indentures to pay or redeem (on the first date thereafter on which all outstanding Bonds may be paid and redeemed after giving the necessary notice) all Bonds outstanding under the Indentures (including, without limitation, principal, interest, and expenses of redemption), but after deduction of any amount then in the applicable Bond Fund or accounts therein and available for such payment and redemption shall have been paid or otherwise satisfied pursuant to the terms of the Indenture or (y) the Grantee shall assume all obligations with respect to repayment of the Bonds.

**5. Prepayment of Purchase Price; Consideration.** Contemporaneous with the execution of this Option Agreement, Grantee has paid One Hundred Dollars (\$100) to Grantor, and Grantor acknowledges receipt of such amount contemporaneous with the execution of the Option Agreement. Grantee and Grantor agree and acknowledge that the consideration for the Purchase Option and the Purchase Price for the Leased Premises includes the mutual benefits and covenants of the Lease Agreement, the issuance, purchase and repayment of the Bonds, and the accomplishment of the Project, including, but not limited to, the Project's construction and operation by the Grantee.

**6. Expiration of Lease Agreement.** Upon the expiration of the Lease Agreement pursuant to its terms, Grantee shall have been deemed to have exercised its Purchase Option, and Escrow Agent shall deliver the Conveyance Documents to the Grantee.

**7. Escrow of Transfer Documents.** Contemporaneous with the execution of this Option Agreement, Grantor shall deliver into escrow a quitclaim deed, bills of sale and other appropriate conveyance instruments transferring title to the Leased Premises in a form consistent with Section 2(b) (collectively, the "**Conveyance Documents**"). The "**Escrow Agent**" shall be the Trustee for the Bonds or any successor trustee appointed pursuant to the Indentures. The Escrow Agent shall hold the Conveyance Documents in escrow until (i) the Purchase Option for the entirety of the Leased Premises is exercised by the Grantee and notice of the same is provided pursuant to Section 2(b), (ii) the Bonds are fully redeemed, or (iii) receipt of written notice from the Grantee that the term of the Lease Agreement has expired pursuant to its terms. Upon receipt of the notice specified in Section 2(b), redemption in full of the Bonds, or expiration of the term of the Lease Agreement, the Escrow Agent is authorized to release the Conveyance Documents to or upon the direction of Grantee or any leasehold mortgagee succeeding to the rights of Grantee. Notwithstanding the escrow of the Conveyance Documents for all or part of the Leased Premises, upon exercise of the Purchase Option, Grantor shall execute and deliver new Conveyance Documents to Grantee at Grantee's request. It is agreed by Grantee and Grantor that the Escrow Agent shall be liable as a depository only and shall be and is hereby discharged from any and all liability for any act or omission done in good faith. The Escrow Agent may rely upon any paper, document or other writing reasonably believed to be authentic. The Escrow Agent shall not be required to construe this Option Agreement or any other instrument deposited herewith.

**8. Notices.** All notices, requests, demands or other communications required or permitted to be given or made hereunder shall be in writing and delivered personally or sent by prepaid, first-class, certified or express mail, return receipt requested, postage prepaid, to the addresses specified in the Lease Agreement or the Indentures, as applicable.

**9. No Recordation.** This Option Agreement shall not be recorded. Grantor and Grantee shall sign and record a Memorandum of Lease, Option and PILOT Agreement as well as every assignment and modification of either the Lease Agreement or the Option Agreement in the office of the Circuit Clerk and Ex-Officio Recorder of Craighead County, Arkansas.

**10. General.** Time is of the essence with respect to this Option Agreement. This option to purchase shall be governed by and construed under State law and shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Option Agreement to be signed in several counterparts, each of which may be considered an original without the presentation of the others, by their duly authorized officials and officers as of the day and year first hereinabove written.

**CITY OF JONESBORO, ARKANSAS, Lessor**

By: \_\_\_\_\_  
**Harold Copenhaver, Mayor**

ATTEST:

By: \_\_\_\_\_  
**April Leggett, City Clerk**

(S E A L)

**COLSON CASTER, LLC, Lessee**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**[COLSON GROUP HOLDINGS, LLC**  
a \_\_\_\_\_ limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_ ]

Acknowledged by Escrow Agent:

\_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_, Corporate Trust Officer

STATE OF ARKANSAS            )  
  ) ss:                    **ACKNOWLEDGMENT**  
COUNTY OF CRAIGHEAD    )

On this day, before me, a Notary Public, duly commissioned, qualified and acting, with and for said County and State, appeared in person the within named **HAROLD COPENHAVER** and **APRIL LEGGETT**, being the persons authorized by said municipality to execute such instrument stating their respective capacities in that behalf, to me well known, who stated that they are the Mayor and City Clerk, respectively, of **CITY OF JONESBORO, ARKANSAS**, an Arkansas municipality, and were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and on behalf of said municipality, and further stated and acknowledged they had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

( S E A L )

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

**ACKNOWLEDGMENT**

On this day, before me, the undersigned, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named \_\_\_\_\_, to me personally well known, who stated that s/he was the \_\_\_\_\_ of **COLSON CASTER, LLC**, a Delaware limited liability company, and was duly authorized in that capacity to execute the foregoing instruments for and in the name and behalf of said corporation, and further stated and acknowledged that s/he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

( S E A L )

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

**ACKNOWLEDGMENT**

On this day, before me, the undersigned, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named \_\_\_\_\_, to me personally well known, who stated that s/he was the \_\_\_\_\_ of **COLSON GROUP HOLDINGS, LLC**, a \_\_\_\_\_ limited liability company, and was duly authorized in that capacity to execute the foregoing instruments for and in the name and behalf of said corporation, and further stated and acknowledged that s/he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

( S E A L )

**PRELIMINARY OFFICIAL STATEMENT**  
**\_\_\_\_\_, 2022**

**NEW ISSUE**

**Rating (Standard & Poor’s): “A+” (Stable)**  
**(See “RATINGS” herein.)**

*In the opinion of Bond Counsel, the interest on the Series A Bonds is included in gross income under existing law. The interest on the Series A Bonds is exempt from all present State, county and municipal taxation in the State of Arkansas. See “TAXATION” herein.*

**\$11,000,000\***  
**CITY OF JONESBORO, ARKANSAS**  
**TAXABLE ECONOMIC DEVELOPMENT REVENUE BONDS**  
**(ADFA/AEDC GUARANTY PROGRAMS)**  
**(COLSON CASTER PROJECT)**  
**SERIES 2022A**

**Dated: Date of Delivery**

**Due: \_\_\_ 1, as shown on the inside cover**

The Bonds will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York (“DTC”). DTC will act as securities depository of the Series A Bonds. Purchases will be made in book-entry form through DTC Participants and no physical delivery of the Series A Bonds will be made to purchasers of the Series A Bonds, except as described herein. Payment of principal and interest will be made to purchasers by DTC through its participants.

The Bonds are issued by and are special obligations of the City of Jonesboro, Arkansas (the “Issuer”), secured by the Issuer’s pledge of all amounts realized by the Issuer under the Lease Agreement relating to the Project financed or refinanced with the proceeds of the Series A Bonds. See “THE BONDS – Security” herein. The Bonds are payable (except to the extent paid out of money attributable to Bond proceeds, insurance proceeds or otherwise as described herein) from amounts realized by the Issuer under the Lease Agreement relating to the Project financed or refinanced with the proceeds of the Series A Bonds. The payment of the principal of and interest on the \$6,000,000 aggregate principal amount of the Series A Bonds (the “ADFA Guaranteed Bonds”) is guaranteed (to the extent set forth herein) by the Arkansas Development Finance Authority (the “Authority”) pursuant to the ADFA Guaranty, as described herein. The payment of the principal and interest on the \$5,000,000 aggregate principal amount of the Series A Bonds (the “AEDC Guaranteed Bonds”) is guaranteed (to the extent set forth herein) by the Arkansas Economic Development Commission (the “Commission”) pursuant to the AEDC Guaranty, as described herein. THE BONDS DO NOT CONSTITUTE A DEBT OR PLEDGE OF THE FAITH AND CREDIT OF THE STATE OF ARKANSAS OR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF. THE AUTHORITY HAS NO TAXING POWER. NO BONDHOLDER WILL EVER HAVE THE RIGHT TO COMPEL ANY EXERCISE OF TAXING POWER BY THE ISSUER TO PAY THE SERIES A BONDS.

The Bonds are issuable in book-entry form only in the denomination of \$5,000 or any integral multiple thereof, interchangeable as more fully described herein. Semiannual interest (payable \_\_\_ 1, 20\_\_\_, and each \_\_\_ 1 and \_\_\_ 1 thereafter) on the Series A Bonds shall be paid by check or draft by \_\_\_\_\_ Bank (the “Trustee”), to the registered owners of the Series A Bonds as of the record date for such payment as shown on the bond registration books of the Issuer maintained by the Trustee. Principal of the Series A Bonds is payable at the principal corporate trust office of the Trustee. The Bonds will be subject to redemption prior to maturity as set forth herein. The Bonds will mature on \_\_\_ 1 of the years set forth in the maturity schedules on the inside front cover of this Preliminary Official Statement.

The Bonds are offered when, as and if issued and received by the Underwriter and subject to the approval of legality by Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C., Bond Counsel, Little Rock, Arkansas, and certain other conditions. It is expected that the Series A Bonds in definitive form will be available for delivery through the facilities of DTC on or about \_\_\_\_\_, 2022, in New York, New York.



\* Preliminary, subject to change.

This Preliminary Official Statement and information contained herein are subject to change, completion or amendment without notice. The Bonds may not be sold nor may offers to buy be accepted prior to the time the Official Statement is delivered in final form. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or a solicitation of an offer to buy, nor shall there be any sale of the Bonds in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

**MATURITY SCHEDULES**

**\$11,000,000\***  
**CITY OF JONESBORO, ARKANSAS**  
**TAXABLE ECONOMIC DEVELOPMENT REVENUE BONDS**  
**(ADFA/AEDC GUARANTY PROGRAMS)**  
**(COLSON CASTER PROJECT)**  
**SERIES 2022A**

**SERIAL BONDS**

<b>MATURITY (____ 1)</b>	<b>PRINCIPAL AMOUNT</b>	<b>INTEREST RATE</b>	<b>YIELD</b>	<b>CUSIP<sup>□</sup></b>
20__	\$	%	%	
20__		%	%	
20__		%	%	
20__		%	%	
20__		%	%	
20__		%	%	
20__		%	%	
20__		%	%	
20__		%	%	
20__		%	%	

**TERM BONDS**

\$ \_\_\_\_\_ % Term Bonds Due \_\_\_\_ 1, 20\_\_, priced to yield \_\_\_\_ %<sup>†</sup> - CUSIP \_\_\_\_\_  
 \$ \_\_\_\_\_ % Term Bonds Due \_\_\_\_ 1, 20\_\_, priced to yield \_\_\_\_ %<sup>†</sup> - CUSIP \_\_\_\_\_

† Priced to the first optional call date

\* Preliminary, subject to change.

± CUSIP® is a registered trademark of the American Bankers Association. CUSIP data herein is provided by the CUSIP Service Bureau, operated by Standard & Poor's, a division of The McGraw-Hill Companies, Inc. This data is not intended to create a database and does not serve in any way as a substitute for the CUSIP Services Bureau. CUSIP numbers have been assigned by an independent company not affiliated with the Board and are included solely for the convenience of the registered owners of the Series A Bonds. The Board and the Underwriters are not responsible for the selection or uses of these CUSIP numbers, and no representation is made as to their correctness by the Board on the Series A Bonds and by the Underwriters on the Series A Bonds or as included herein. The CUSIP number for a specific maturity is subject to being changed after the issuance of the Series A Bonds as a result of various subsequent actions including, but not limited to, a refunding in whole or in part or as a result of the procurement of secondary market portfolio insurance or other similar enhancement by investors that is applicable to all or a portion of certain maturities of the Series A Bonds.

**THE UNDERWRITERS HAVE PROVIDED THE FOLLOWING SENTENCE FOR INCLUSION IN THIS OFFICIAL STATEMENT. THE UNDERWRITERS HAVE REVIEWED THE INFORMATION IN THIS OFFICIAL STATEMENT IN ACCORDANCE WITH, AND AS PART OF, ITS RESPECTIVE RESPONSIBILITIES TO INVESTORS UNDER THE FEDERAL SECURITIES LAWS AS APPLIED TO THE FACTS AND CIRCUMSTANCES OF THIS TRANSACTION, BUT THE UNDERWRITERS DO NOT GUARANTEE THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION.**

**IN CONNECTION WITH THE OFFERING OF THE BONDS, THE UNDERWRITERS MAY OVERALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.**

**NO DEALER, BROKER, SALESMAN OR OTHER PERSON HAS BEEN AUTHORIZED BY THE BOARD TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATION WITH RESPECT TO THE BONDS OTHER THAN THOSE CONTAINED IN THIS OFFICIAL STATEMENT AND, IF GIVEN OR MADE, SUCH OTHER INFORMATION OR REPRESENTATION MUST NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED.**

**NEITHER THE DELIVERY OF THIS OFFICIAL STATEMENT, NOR ANY SALES HEREUNDER, SHALL UNDER ANY CIRCUMSTANCES CREATE ANY IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE AFFAIRS OF THE BOARD SINCE THE DATE HEREOF.**

**CERTAIN OF THE INFORMATION CONTAINED HEREIN HAS BEEN OBTAINED FROM SOURCES WHICH ARE BELIEVED TO BE RELIABLE, BUT IT IS NOT GUARANTEED AS TO ACCURACY OR COMPLETENESS. THE INFORMATION AND EXPRESSIONS OF OPINION HEREIN ARE SUBJECT TO CHANGE WITHOUT NOTICE.**

**THIS OFFICIAL STATEMENT DOES NOT CONSTITUTE AN OFFER TO SELL OR THE SOLICITATION OF AN OFFER TO BUY NOR SHALL THERE BE ANY SALE OF THE BONDS BY ANY PERSON IN ANY STATE IN WHICH IT IS UNLAWFUL FOR SUCH PERSON TO MAKE SUCH OFFER, SOLICITATION OR SALE.**

**THE BONDS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 NOR HAS THE TRUST INDENTURE BEEN QUALIFIED UNDER THE TRUST INDENTURE ACT OF 1939. THESE BONDS ARE OFFERED PURSUANT TO AN EXEMPTION FROM REGISTRATION WITH THE SECURITIES AND EXCHANGE COMMISSION.**

**IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE PERSON OR ENTITY CREATING THE SECURITIES AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY, OR DETERMINED THE ADEQUACY, OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.**

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No registration statement relating to the Series A Bonds has been filed with the Securities and Exchange Commission. The Bonds have not been approved or disapproved by the Securities and Exchange Commission nor has the Securities and Exchange Commission passed upon the accuracy or adequacy of this Preliminary Official Statement.

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**PRELIMINARY OFFICIAL STATEMENT**

**\$11,000,000\***  
**CITY OF JONESBORO, ARKANSAS**  
**TAXABLE ECONOMIC DEVELOPMENT REVENUE BONDS**  
**(ADFA/AEDC GUARANTY PROGRAMS)**  
**(COLSON CASTER PROJECT)**  
**SERIES 2022A**

**INTRODUCTORY STATEMENT**

The purpose of this Preliminary Official Statement is to furnish certain information in connection with the sale by the City of Jonesboro, Arkansas (the “Issuer”) of its \$11,000,000\* Taxable Economic Development Revenue Bonds, (ADFA/AEDC Guaranty Programs), (Colson Caster Project), Series 2022A (the “Series A Bonds”). The Series A Bonds will be issued pursuant to a Trust Indenture (the “Series A Indenture” or “Indenture”), dated \_\_\_\_\_, 2022, between the Issuer and \_\_\_\_\_ Bank, an Arkansas state bank (together with any successors and assigns and any surviving, resulting or transferee entity, the “Trustee”).

The Bonds are being issued by the Issuer to finance or refinance the costs of acquiring, constructing and equipping an industrial facility for the manufacture of casters and wheels and related warehousing and distribution to be located in the Issuer’s jurisdiction and related equipment (the “Project”). The Issuer will enter into a Lease Agreement dated as of \_\_\_\_\_, 2022 (the “Lease Agreement”) with Colson Caster, LLC, a Delaware limited liability company (the “Lessee”), pursuant to which the Project will be leased to the Lessee by the Issuer.

The Bonds are special obligations of the Issuer payable solely from payments under the Lease Agreement (except to the extent paid out of moneys attributable to Bond proceeds, investment income, or the ADFA Guaranty or AEDC Guaranty (both as defined and described herein)), do not constitute a debt or pledge of the faith and credit, within the meaning of any constitutional or statutory limitation, of the Issuer, the State of Arkansas or any political subdivision or agency thereof, and no bondholder will ever have the right to compel any exercise of taxing power by the Issuer to pay the Series A Bonds.

The Bonds are issued pursuant to and in full compliance with the Constitution and laws of the State of Arkansas, particularly Title 14, Chapter 164, Subchapter 2 of the Arkansas Code of 1987 Annotated, as amended (the “Act”), and pursuant to an ordinance of the City Council of the Issuer approving and authorizing the issuance of the Series A Bonds and the execution and delivery of the Lease Agreement and the Indenture (the “Authorizing Ordinance”).

The proceeds to be received by the Issuer from the sale of the Series A Bonds will be loaned to or expended on behalf of the Lessee to: (i) finance or refinance the costs of acquiring, constructing and equipping an industrial facility for the manufacture of casters and wheels and related warehousing and distribution and equipment to be located at 2121 Barnhill Road, Jonesboro, Arkansas 72401 (the “Series A Project”), to be owned by the Issuer and leased to the Lessee, (ii) pay bond guaranty fees associated with the ADFA Guaranty and the AEDC Guaranty, (iii) establish a reserve fund with respect to the Series A Bonds, and (iv) pay a portion of the expenses incurred in connection with the issuance of the Series A Bonds.

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\* Preliminary, subject to change.

## **The Series B Bonds**

Simultaneously with the issuance of the Series A Bonds, the Issuer will also issue its Taxable Economic Development Revenue Bonds (Colson Caster Project) Series 2022B (the “Series B Bonds”). The Series B Bonds will be issued under the Indenture and will be secured by and payable from the amounts realized by the Issuer under the Lease Agreement, on a parity basis with respect to the Series A Bonds. It is anticipated that the Series B Bonds will be issued in the approximate principal amount of \$4,000,000 and the proceeds of the Series B Bonds will be loaned by the Issuer to the Lessee to: (i) finance or refinance a portion of the costs of acquiring and installing equipment for the manufacture of casters and wheels in connection with the Series A Project (the “Series B Project,” and together with the Series A Project, the “Project”), to be owned by the Issuer and leased to the Lessee pursuant to the terms of the Lease Agreement, (ii) establish a reserve fund with respect to the Series B Bonds, and (iii) pay a portion of the expenses incurred in connection with the issuance of the Series B Bonds. The Series B Bonds will be offered and sold only to “Qualified Institutional Buyers” and that term is defined in Rule 144A of the Securities and Exchange Commission, or to “Accredited Investors” as that term is defined in Rule 501(a) of Regulation D of the Securities and Exchange Commission, each as promulgated under the Securities Act.

## **The Series C Bonds**

Simultaneously with the issuance of the Series A Bonds and the Series B Bonds, the Issuer will also issue its Taxable Economic Development Revenue Bonds (Colson Caster Project) Series 2022C (the “Series C Bonds”). The Series C Bonds will be issued under a separate indenture from the Indenture and will be secured by and payable solely from the amounts realized by the Issuer under the Lease Agreement, on a subordinate basis with respect to the Series A Bonds and the Series B Bonds. It is anticipated that the Series C Bonds will be issued in the approximate principal amount of \$9,000,000 and the proceeds of the Series C Bonds will be loaned by the Issuer to the Lessee for application by the Lessee toward costs of the Project. The Series C Bonds will be privately placed with an affiliate of the Lessee. In connection with the Series C Bonds, the Lessee will enter into a Payment in Lieu of Taxes Agreement (the “PILOT Agreement”) with the Issuer and will make payments in lieu of taxes equal to no less than 35% of the property taxes that would have been owed on the Series A Project.

## **Lease Agreement**

Pursuant to a Lease Agreement between the Issuer and the Lessee (the “Lease Agreement”), the Issuer will lease the Project to the Lessee and the Lessee will agree to make rent payments sufficient to pay when due the principal of and premium, if any, and interest on the Series A Bonds, the Series B Bonds and the Series C Bonds. The Series A Bonds and Series B Bonds are secured and payable from the amounts realized by the Issuer under the Lease Agreement on a parity basis. The Series C Bonds are secured and payable solely from the amounts realized by the Issuer under the Lease Agreement on a subordinate basis with respect to the Series A Bonds and the Series B Bonds.

## **The Series A Bonds and the ADFA Guaranty and the AEDC Guaranty**

The Series B Bonds and the Series C Bonds are **NOT** guaranteed in any way by the ADFA Guaranty or the AEDC Guaranty, and are payable solely from the amounts realized by the Issuer under the Lease Agreement. The ADFA Guaranty and the AEDC Guaranty apply only to the Series A Bonds.

Payment of debt service (principal and interest only) sufficient to amortize the indebtedness of a portion of the Series A Bonds, in an aggregate principal amount of \$6,000,000 (the “ADFA Guaranteed Bonds”), will be guaranteed (to the extent described herein and as further described under the heading “THE GUARANTIES - The ADFA Guaranty”) by the Arkansas Development Finance Authority (the

“Authority”) pursuant to Act No. 505 of the Acts of Arkansas of 1985, as amended (“Act 505”), pursuant to a guaranty agreement from the Authority to the Trustee (the “ADFA Guaranty”). The obligations of the Authority as guarantor are limited to available moneys in the Revenue Bond Guaranty Reserve Account (the “ADFA Guaranty Reserve Account”) created and being maintained pursuant to the authority conferred in Act 505.

As of December 31, 2021, there were funds on deposit in the ADFA Guaranty Reserve Account totaling \$19,475,628. Upon the issuance of the ADFA Guaranteed Bonds, the Authority will have approximately \$58,300,487 in outstanding bond and loan guarantees (principal amount). The Authority is required to issue its own bonds in sufficient amounts to ensure that there will be available at all times in the ADFA Guaranty Reserve Account the necessary funds as required by Act 505. Bonds issued by the Authority to fund its guaranty obligations are secured by earnings derived by the State Board of Finance from investments of the State of Arkansas (the “State”) daily Treasury balance. For additional information concerning the limited obligations of the Authority with respect to the ADFA Guaranty and security for guaranty bonds, see “THE GUARANTIES - The ADFA Guaranty” herein.

Payment of debt service (principal and interest only) sufficient to amortize the indebtedness of a portion of the Series A Bonds in an aggregate principal amount of \$5,000,000 (the “AEDC Guaranteed Bonds”), will be guaranteed (to the extent described under “THE GUARANTIES - The AEDC Guaranty” herein) by the Arkansas Economic Development Commission (the “Commission”) pursuant to Act No. 173 of the Acts of Arkansas of 1967, as amended (the “Act 173”), pursuant to a guaranty agreement from the Arkansas Economic Development Commission (the “Commission”) to the Trustee (the “AEDC Guaranty”). The obligations of the Commission as guarantor are limited to available moneys in the Revenue Bond Guaranty Reserve Account (the “AEDC Guaranty Reserve Account”) created and being maintained pursuant to the authority conferred in Act 173.

As of December 31, 2021, there were funds on deposit in the AEDC Guaranty Reserve Account totaling \$11,300,131. Upon the issuance of the AEDC Guaranteed Bonds, the Commission will have approximately \$12,412,481 in outstanding bond guarantees (principal amount). The Commission is required to issue its own bonds in sufficient amounts to ensure that there will be available at all times in the AEDC Guaranty Reserve Account the necessary funds as required by Act 173. Bonds issued by the Commission to fund its guaranty obligations are secured by earnings derived by the State Board of Finance from investments of the State daily Treasury balance. For additional information concerning the limited obligations of the Commission with respect to the AEDC Guaranty and security for guaranty bonds, see “THE AEDC GUARANTY” herein.

The Guaranties are secured by (i) a valid first priority mortgage on various parcels of land and improvements thereon that constitute the Project (the “Mortgaged Property”), (ii) a valid first priority leasehold mortgage on Lessee’s leasehold interest in the Mortgaged Property, (iii) a valid first priority security interest in all machinery, equipment, furnishings and personal property included within the Project and that are refinanced or financed with the proceeds of the Series A Bonds and the Series B Bonds and any other existing machinery, equipment, furnishings and personal property specifically pledged as collateral for the Guaranties (collectively, the “Equipment”), and (iv) an assignment of any and all rents and leases on the property associated with the Series A Project (collectively, the “Guaranties Collateral”). The Guaranties and the Series B Bonds are guaranteed by the Lessee’s parent company, Colson Group Holdings, LLC (the “Parent Guaranty”). The Guaranties and the Series B Bonds are secured by the Guaranties Collateral on a parity basis, and the Authority, the Commission, the trustee for the Series B Bonds and the owner of the Series B Bonds will enter into an intercreditor agreement pursuant to which the Authority, the Commission and the owner of the Series B Bonds will share on a ratable basis the Guaranties Collateral as pledged on a parity basis for the Guaranties and the Series B Bonds and a collateral agent will

be appointed to act on behalf of the Authority, the Commission, the trustee for the Series B Bonds and the owner of the Series B Bonds.

The Authority has guaranteed and there remain outstanding the following Economic Development Revenue Bonds, bond anticipation notes and State Agencies Facilities Bonds (the “Previous Issues”) to finance industrial development and governmental activities in the State:

Name	Dated Date	Issued	Outstanding As of 12/31/2021
1. 2003 – Venture Capital Program <sup>†</sup>	12/31/2003	\$10,000,000	\$10,000,000
2. 2008 City of Little Rock (Sage V) – Series A	11/07/2008	4,455,000	500,000
3. 2008 Series A & C	12/17/2008	5,260,000	265,000
4. 2010 Series A & B	04/28/2010	6,737,500	305,000
5. 2010 Q Little Scholars of Arkansas Foundation	12/15/2010	5,500,000	5,500,000
6. 2012 Horner Holding (guaranteed loan)	08/24/2012	460,000	35,138
7. 2012 A Jacksonville Lighthouse Charter School	10/30/2012	4,500,000	3,555,000
8. 2012 Series A - Taxable	11/28/2012	7,555,000	642,500
9. 2013 Series A – Taxable	09/26/2013	9,750,000	3,045,000
10. 2013 Series C Refunding	10/22/2013	2,390,000	770,000
11. 2013 A City of Little Rock (Sage V)	11/05/2013	1,675,000	875,000
12. 2013 Series D	12/18/2013	4,165,000	890,000
13. 2014 Interim Loan – Southwind	06/11/2014	345,625	131,267
14. 2015 Academics Plus Refunding (MF)	03/17/2015	6,135,000	4,995,000
15. Series 2015	10/21/2015	8,700,000	4,973,637
16. 2016 Alvar Resins Inc.	11/15/2016	2,715,000	1,355,000
17. 2018 Am Vegetable & Soybean (guaranteed loan)	01/29/2018	770,000	309,366
18. 2018 Sage V Foods Little Rock (guaranteed loan)	04/05/2019	1,600,000	1,085,982
19. 2018 HIA Holdings (guaranteed loan)	07/10/2018	1,650,000	1,258,810
20. Aristotle Unified Communication	06/18/2019	3,750,000	3,750,000
21. Series 2019 Guaranteed Bonds - Taxable	06/27/2019	6,645,000	6,045,000
22. 2019 Series A & B Methodist Refunding	10/31/2019	<u>3,435,100</u>	<u>3,150,000</u>
<b>Total</b>		\$98,193,225	\$53,436,700

<sup>†</sup>Maximum amount authorized to be guaranteed under the Venture Capital Program.

The Previous Issues and other Economic Development Revenue Bonds that are no longer outstanding were used to finance 185 industrial projects located in Arkansas for 148 separate borrowers. In addition, after the date of issuance of the Series A Bonds, the Authority expects to issue additional bonds for additional facilities under its ADFA Guaranty Program, which is the program under which the ADFA Guaranteed Bonds are guaranteed by the Authority. The bonds of previously issued bonds are, and any additional bonds will be, separately secured, and the pledges of mortgaged property, if any, securing such bonds do not and will not secure the Series A Bonds. However, the bonds previously issued under the ADFA Guaranty Program are guaranteed by the Authority from moneys in the ADFA Guaranty Reserve Account, and the Authority anticipates that additional bonds, if any, will also be guaranteed pari passu by the Authority from the ADFA Guaranty Reserve Account.

The Authority, the Commission, the Lessee and the Lessee’s parent company, Colson Group Holdings, LLC, have entered into a Guaranty Agreement for Reimbursement of Advanced Funds (the “Guaranty Agreement”). The Guaranty Agreement contains certain financial and other representations,

warranties, and covenants, the breach of which may, at the option of either the Authority or the Commission, result in the occurrence of an “Event of Default” under the Lease Agreement (see “THE LEASE AGREEMENT – Events of Default and Remedies”).

### THE ISSUER

The Issuer is a duly created and existing political subdivision of the State of Arkansas (a city of the first class) under the Constitution and laws of the State of Arkansas. The Issuer is authorized and empowered under the provisions of the Act to issue revenue bonds for the financing of lands, buildings or facilities which can be used in securing or developing industry.

### THE BONDS

**General.** The Bonds will be dated the date of delivery, and bear interest from such date, payable semiannually on \_\_\_\_ 1 and \_\_\_\_ 1 of each year, commencing \_\_\_\_\_ 1, 20\_\_\_\_, at the rates set forth on the inside front cover page hereof. The Bonds mature on \_\_\_\_\_ 1 in the years and in the principal amounts set forth on the inside front cover page hereof. Each Bond shall be dated as of the date on which it is authenticated or if it is authenticated prior to a date on which interest is paid, it shall be dated \_\_\_\_\_ 1, 20\_\_\_\_.

The Bonds will be registered with DTC (as defined below) in the denomination of \$5,000 each or any integral multiple thereof interchangeable in accordance with the provisions of the Indenture. In the event any Bond is mutilated, lost or destroyed, the Issuer may execute and the Trustee may authenticate a new Bond in accordance with the provisions therefor in the Indenture.

In any case where the date of maturity of interest on or principal of the Series A Bonds or the date fixed for redemption of any Bonds shall be a Saturday or Sunday or shall be in the State a legal holiday or a day on which banking institutions are authorized by law to close, then payment of interest or principal (and premium, if any) need not be made on such date but may be made on the next succeeding business day not a Saturday or Sunday or a legal holiday or a day which banking institutions are authorized by law to close with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after the date of maturity or date fixed for redemption.

**Book-Entry Only System.** The Depository Trust Company (“DTC”), New York, New York, will act as securities depository for the Series 2022 Bonds. The ownership of one fully registered Bond for each maturity, each in the aggregate principal amount of such maturity, will be registered in the name of Cede & Co., as nominee for DTC. DTC is a limited-purpose trust company organized under the laws of the State of New York, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934, as amended. DTC was created to hold securities of its participants (the “DTC Participants”) and to facilitate the clearance and settlement of securities transactions among DTC Participants through electronic book-entry changes in accounts of the DTC Participants, thereby eliminating the need for physical movement of securities certificates. DTC Participants include securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations, some of whom (and/or their representative) own DTC. Access to the DTC system is also available to other such as banks, brokers, dealers and trust companies that clear through or maintain a custodial relationship with a DTC Participant, either directly or indirectly (the “Indirect Participant”).

Purchases of Series A Bonds under the book-entry system may be made through brokers and dealers who are, or act through, DTC Participants. The DTC Participants shall receive a credit balance in the

records of DTC. The ownership interest of the actual purchaser of each Bond (the “Beneficial Owner”) is to be recorded on the records of the DTC Participant. Beneficial Owners are to receive a written confirmation of their purchase with details of the Series A Bonds acquired. Transfers of ownership interests in Bonds are to be accomplished by book entries made by DTC and by the DTC Participants who act on behalf of the Beneficial Owners. Beneficial Owners will not receive Bonds representing their ownership interest therein, except as specially provided in the applicable Indenture. Interest and principal is to be paid to DTC, or its nominee, when due, and then is to be paid by DTC to the DTC Participants and thereafter is to be paid by the DTC Participants to the Beneficial Owners.

NEITHER THE ISSUER NOR THE TRUSTEE WILL HAVE ANY RESPONSIBILITY OR OBLIGATIONS TO SUCH DTC PARTICIPANTS OR THE PERSON FOR WHOM THEY ACT AS NOMINEES WITH RESPECT TO THE PAYMENTS TO OR THE PROVIDING OF NOTICE FOR THE DTC PARTICIPANTS, THE INDIRECT PARTICIPANTS, OR THE BENEFICIAL OWNERS.

Beneficial Owners of the Series A Bonds or those possessing interest in the Series A Bonds will not receive or have the right to receive physical delivery of such Bonds, and will not be or be considered to be owners thereof under the Indenture. So long as Cede & Co. is the Owner of the Series A Bonds, as nominee of DTC, references herein to Owners of the Series A Bonds shall mean Cede & Co. and shall not mean the Beneficial Owners thereof.

For every transfer and exchange of the Series A Bonds, the Beneficial Owner may be charged a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in relation thereto.

DTC may discontinue services with respect to the Series A Bonds or any Series of Bonds at any time by giving notice to the Issuer and discharging its responsibilities with respect thereto under applicable law. Under such circumstances, the Trustee may make arrangements with a successor securities depository that operates upon reasonable and customary terms. If no such arrangements are made, Bonds are required to be delivered as described in the Indenture. The Beneficial Owner, upon registration of the bonds held in the Beneficial Owner’s name, shall become the Owner thereof under the Indenture.

The Issuer may determine to discontinue the system of book-entry transfers through DTC (or a successor securities depository). In such event, the Series A Bonds are to be delivered as described in the Indenture. The Trustee is entitled to rely on information provided by DTC and the DTC Participants as to the names and principal amounts in which the Series A Bonds are to be registered.

When referring to any action which is required or permitted to be taken by the Beneficial Owners, such reference shall only relate to the action by such Beneficial Owner or those permitted to act (by statute, regulation or otherwise) on behalf of such Beneficial Owners for such purposes. When notices are given, they shall be sent by the Trustee to DTC only.

Principal and interest payments on the Series A Bonds are to be made to DTC or its nominee, Cede & Co., as Registered Owner of the Series A Bonds. Upon receipt of moneys, DTC’s current practice is to immediately credit the accounts of the DTC Participants according to their respective holdings shown on the records of DTC. Payments by DTC Participants and Indirect Participants to Beneficial Owners are to be governed by standing instructions and customary practices, as is now the case with municipal securities held for the accounts of customers in bearer form or registered in “street name,” subject to any statutory and regulatory requirements as may be in effect from time to time, and would be the responsibility of such DTC Participant or Indirect Participant and not of DTC, the Trustee or the Issuer.

The Trustee and the Issuer, so long as a book-entry system is used for a series of Bonds, are to send any notice of redemption or other notices required to be sent to Owners of such Series, only to DTC. Any

failure by DTC to advise any DTC Participant, or by any DTC Participant to notify the Beneficial Owner, of any such notice and its content or effect shall not affect the validity of the redemption of the Series A Bonds of the series called for redemption or of any other action premised on such notice.

The Issuer and the Trustee have no responsibility or obligation to Direct Participants, Indirect Participants, or Beneficial Owners with respect to: (a) the payment by DTC, Direct Participants or Indirect Participants of the principal of or interest on the Series A Bonds; (b) the providing of notice to Direct Participants, Indirect Participants, or Beneficial Owners; or (c) the accuracy of any records maintained by DTC, Direct Participants, or Indirect Participants.

**Security.** The Series A Bonds are special obligations of the Issuer payable solely, except as otherwise set forth in this Official Statement, from moneys derived from payments by the Lessee to the Issuer pursuant to the Lease Agreement and any payments made under the Guaranties. The Series A Bonds and interest thereon are obligations only of the Issuer and in no event shall the Series A Bonds or interest thereon constitute an indebtedness of the State or an indebtedness for which the faith and credit of the State or any of its revenues are pledged or an indebtedness secured by a lien on or a security interest in any property of the State. No bondholder will ever have the right to compel any exercise of taxing power by the Issuer to pay the Series A Bonds

As security for the Series A Bonds, the Issuer will assign and pledge to the Trustee in the Indenture all of its rights (other than certain rights and interests relating primarily to indemnification and payment of fees and expenses) to receive revenues under and pursuant to the Lease Agreement. The Lease Agreement provides that the Lessee shall be obligated to make payments sufficient in the aggregate to pay when due the principal of and premium, if any, and interest on the Series A Bonds, the Series B Bonds and the Series C Bonds.

Debt Service Reserve Fund. There is created with the Trustee special fund to be designated “City of Jonesboro, Arkansas Economic Development Debt Service Reserve Fund (2022 Series A)” or “Series A Debt Service Reserve Fund,” which shall be used and applied as specified below.

There shall be deposited into the Series A Debt Service Reserve Fund an amount equal to the Required Reserve pursuant to the delivery instructions received by the Trustee at the bond closing. The Required Reserve with respect to the Series A Bonds is an amount equal to two months’ maximum debt service on the Series A Bonds (the “Series A Required Reserve”). The funds held in the Series A Debt Service Reserve Funds may be invested as provided in the Indenture, and any earnings from the investment of such funds shall be deposited into the Series A Account of the Bond Fund. Each month as long as any of the Series A Bonds are outstanding, the Trustee shall transfer from the Series A Debt Service Reserve Fund to the Series A Account of the Bond Fund any amounts in that fund that are in excess of the Required Reserve.

One day prior to each Interest Payment Date or any date on which Series A Bonds are due as a result of a call for redemption or maturity or as a result of the occurrence of an Event of Default, the Trustee shall determine if sufficient funds will be available in the Series A Account of the Bond Fund to pay in full the principal, if any, and interest on the Series A Bonds due on the next day. If sufficient funds will not be available in the Series A Account of the Bond Fund, the Trustee shall immediately transfer an amount equal to the amount of such deficiency from the Series A Debt Service Reserve Fund to the Bond Fund. Any funds remaining in the Series A Debt Service Reserve Fund immediately prior to the payment of all the Series A Bonds then outstanding (whether at stated maturity or upon optional or mandatory redemption or as a result of acceleration), shall be transferred into the Series A Account of the Bond Fund.

### The Guaranties.

The payment of principal of and interest on the ADFA Guaranteed Bonds is guaranteed by the Authority under the ADFA Guaranty, all as described herein. See “THE GUARANTIES – The ADFA Guaranty.”

The payment of principal of and interest on the AEDC Guaranteed Bonds is guaranteed by the Commission under the AEDC Guaranty, all as described herein. See “THE GUARANTIES – The AEDC Guaranty.”

The Series B Bonds and the Series C Bonds are NOT secured by the ADFA Guaranty or the AEDC Guaranty.

**Redemption.** The Bonds are subject to redemption prior to maturity as follows:

### **Special Redemption.**

Damage, Destruction or Legal Curtailment. On any interest payment date, the Series A Bonds shall be redeemed in whole or in part, at the option of the Issuer at the direction of the Lessee, from the proceeds of insurance in the event of major damage or destruction of the Project pursuant to the provisions of the Lease Agreement, or from legal curtailment of the use and occupancy of all or substantially all of such Project for any reason other than condemnation. If called for redemption upon the occurrence of any of the events described in the preceding sentence, the Bond shall be redeemed in whole, in the manner provided in the Bond and the Indenture, at one hundred percent (100%) of the principal amount thereof, plus accrued interest to the date of redemption. (See “THE LEASE AGREEMENT – Optional Prepayment” herein).

Event of Default under the Lease Agreement. At any time, the Series A Bonds shall be redeemed in whole or in part, at the option of the Issuer, if the Issuer notifies the Trustee in writing that an Event of Default has occurred under the Lease Agreement and that it requests a redemption of such Bonds at a redemption price equal to one hundred percent (100%) of the principal amount of such Bonds being redeemed plus accrued interest to the redemption date.

Condemnation. On any interest payment date, the Bond shall be redeemed in whole or in part from the proceeds of condemnation of all or substantially all of the Project at a redemption price equal to one hundred percent (100%) of the principal amount of such Bonds being redeemed plus accrued interest to the redemption date.

Unspent Proceeds. At any time, the Series A Bonds shall be redeemed in whole or in part, at the option of the Issuer, from Bond proceeds not needed for construction or completion of the Project, upon notice to the Trustee at a redemption price equal to one hundred percent (100%) of the principal amount of such Bonds being redeemed plus accrued interest to the redemption date.

**Optional Redemption.** The Bonds maturing \_\_\_\_\_ 1, 20\_\_ and thereafter (or any portion thereof in \$5,000 multiples) will be subject to redemption prior to maturity, at the option of the Issuer upon the direction of such Lessee, in whole or in part, on any date on or after \_\_\_\_\_ 1, 20\_\_ (and by lot within a maturity in such manner as the Trustee may determine) at a redemption price equal to the principal amount being redeemed plus accrued interest to the date of redemption.

In the case any outstanding Bond is in a denomination greater than \$5,000, each \$5,000 of face value of such Bond shall be treated as a separate Bond of the denomination of \$5,000.

**Mandatory Sinking Fund Redemption.** The Series A Bonds maturing \_\_\_\_\_ 1 in the years 20\_\_ and 20\_\_ are subject to mandatory sinking fund redemption prior to maturity in part, with the Series A Bonds to be redeemed being selected by lot by Trustee in such manner as Trustee may determine, at the redemption price of one hundred percent (100%) of the principal amount thereof, plus accrued interest to the date fixed for redemption, without premium, in the amounts, and on the dates as follows:

<b>SERIES A BONDS</b>	
\$ _____	<b>Term Bonds Maturing _____ 1, 20__</b>
Year	
( _____ 1)	Principal Amount
	\$
	*

\*Final Maturity

\$ _____	<b>Term Bonds Maturing _____ 1, 20__</b>
Year	
( _____ 1)	Principal Amount
	\$
	*

\*Final Maturity

**Notice of Redemption.** Notice of the call for any redemption, identifying the Series A Bonds or portions thereof (which shall be \$5,000 or a multiple thereof) being called and the date on which they shall be presented for payment, shall be mailed by the Trustee by first class mail or by other acceptable standard, including facsimile, to the registered owner of each such Bond to be redeemed addressed to such registered owner at his registered address and placed in the mail not less than thirty (30) nor more than sixty (60) days prior to the date fixed for redemption; provided, however, that failure to give such notice by mailing, or any defect therein, shall not affect the validity of any proceeding for the redemption of any Bond with respect to which no such failure or defect has occurred.

Any notice as provided above shall be conclusively presumed to have been duly given, whether or not the registered owner receives the notice.

While the Series A Bonds are being held by DTC under the book-entry system, notice of redemption will be sent only to DTC. See “THE BONDS – Book-Entry Only System” herein.

**Selection of Bonds to be Redeemed.** For the purposes of selecting Bonds or portions thereof of like maturity for redemption, if the Series A Bonds are not held by DTC under the book-entry system, the Trustee shall select such Bonds by lot in such manner as the Trustee deems fair. Bonds (or portions thereof) may be redeemed only in a principal amount equal to \$5,000 or any integral multiple thereof, with each \$5,000 of principal amount to be redeemed considered as one Bond; provided, however, that the portion of a Bond remaining outstanding shall not be less than an Authorized Denomination.

If the Series A Bonds are being held by DTC under the book-entry system and less than all of such Bonds within a maturity are being redeemed, DTC’s current practice is to determine by lot the amount of the interest of each DTC Participant (as hereinafter defined) in such maturity to be called for redemption,

and each DTC Participant is to then select by lot the ownership interest in such maturity to be redeemed. See “THE BONDS--Book-Entry Only System” herein.

## THE GUARANTIES

**NOTE:** The Series B Bonds and the Series C Bonds are **NOT** guaranteed in any way by the ADFA Guaranty or the AEDC Guaranty, and are payable solely from the amounts realized by the Issuer under the Lease Agreement. The ADFA Guaranty and the AEDC Guaranty apply only to the Series A Bonds.

### The ADFA Guaranty.

**General.** The payment of the principal of and interest on a portion of the Series A Bonds (the “ADFA Guaranteed Bonds,” having an aggregate principal amount of \$6,000,000), is guaranteed by the Authority pursuant to the authority conferred by, and subject to the conditions specified in, Act 505 (the “ADFA Guaranty Act”), also known as “The Arkansas Development Finance Authority Bond Guaranty Act” (the “ADFA Guaranty”).

**Limited Obligations.** The obligations of the Authority as guarantor are limited to available moneys in the ADFA Guaranty Reserve Account created and being maintained pursuant to the authority conferred in the ADFA Guaranty Act. The moneys in that account stand behind all guaranties of the Authority, including the ADFA Guaranty with respect to the ADFA Guaranteed Bonds. The Authority is authorized to guarantee any of its bonds issued under the Act, including bonds for industrial enterprises, governmental capital improvements, educational facilities, health care facilities and housing developments. A ten-year history of bonds guaranteed by the Authority and balances in the ADFA Guaranty Reserve Account is as follows:

As of December 31	Cumulative Outstanding Principal Balance of ADFA Guaranteed Bonds	Balance in ADFA Guaranty Reserve Account
2012	98,830,828	19,030,939
2013	105,147,635	19,118,401
2014	86,067,814	17,219,306
2015	81,948,078	17,670,907
2016	68,899,502	18,627,593
2017	60,050,265	17,288,098
2018	62,587,142	17,398,083
2019	65,160,873	17,741,819
2020	57,305,480	16,125,485
2021	52,065,700	19,475,628

As of December 31, 2021, the debt service on three (3) loans guaranteed by the Authority in the total outstanding principal amount of \$3,438,767 was in default under the related repayment agreements, and the Authority is pursuing work-out arrangements, proceeding with foreclosure or liquidating collateral on these issues. Scheduled debt service and accelerated principal payment on those loans for the past year was \$316,560 in principal and interest, which has been paid by the Authority. The amount paid was funded in part from recoveries from sales of related collateral, work-out agreements, and other remedial action, in the amount of \$184,637. In cases of default on an underlying repayment agreement, the Authority may pay debt service on the related guaranteed bonds as the same becomes due, or may cause the maturity of such

bonds to be accelerated or cause such bonds to be redeemed. There can be no assurance as to how the Authority may proceed with respect to any future default.

The Authority is required under its outstanding guaranties and by the ADFA Guaranty Act to keep on deposit in the ADFA Guaranty Reserve Account sufficient funds to enable it to make when due all debt service payments guaranteed by it. If necessary to discharge its obligations under such covenant, the Authority is required to issue its own bonds (the “Authority Bonds”) from time to time under Act 505 in sufficient amounts to insure that there will be available at all times in the ADFA Guaranty Reserve Account the necessary funds.

Any Authority Bonds issued to fund such guaranty obligations as aforesaid are payable from earnings derived by the State Board of Finance from investments of the State of Arkansas’s daily treasury balances (“Treasury Earnings”). See “THE GUARANTIES – Treasury Earnings” for a discussion of the amount of Treasury Earnings, other pledges of Treasury Earnings, portions of Treasury Earnings that are unavailable to be pledged to secure any Authority Bonds, and related matters.

In the event the Authority issues any Authority Bonds, it is required by law to notify the State Board of Finance as to the amount that will be needed each month to provide for the payment of the principal of and interest on such Authority Bonds, and the State Board of Finance is required to set aside the required amount from Treasury Earnings and to pay that amount to the Authority for deposit in a special account of the Authority in a bank or trust company, to be used solely for paying debt service on the Authority Bonds. Such amounts so set aside are expressly declared to be cash funds and are not to be deposited in the State Treasury; therefore, no appropriation is required for their payment. The Authority has not to date issued any Authority Bonds.

There can be no assurance that under then prevailing market conditions future Authority Bonds can be sold and issued at such times required to provide the necessary funds to satisfy the Authority’s guaranty obligations.

**Aggregate Guaranty Limit.** Under Act 505, the total principal amount of all outstanding bonds, which may be guaranteed by the Authority, is the lesser of (1) \$150,000,000, or (2) an amount equal to ten times the amount currently on deposit in the ADFA Guaranty Reserve Account. Upon the issuance of the ADFA Guaranteed Bonds, the Authority will have approximately \$58,300,487 in outstanding bond guarantees.

**Authority Approvals.** The Authority has issued its bond guaranty approval pursuant to which the ADFA Guaranty will be issued, which approval has been agreed to and acknowledged by the Lessee (the “ADFA Approval”). The ADFA Approval contains certain financial and other representations, warranties and covenants from the Lessee. All of such representations, warranties and covenants are for the benefit of the Authority only and can be waived, amended or modified by the Lessee and the Authority.

### **The AEDC Guaranty.**

**General.** The payment of the principal of and interest on \$5,000,000 aggregate principal amount of the Series A Bonds (the “AEDC Guaranteed Bonds”) is guaranteed by the Commission pursuant to the authority conferred by, and subject to the conditions specified in, Act 173 (the “AEDC Guaranty Act”), also known as “The Industrial Revenue Bond Guaranty Law” (the “AEDC Guaranty”)

**Limited Obligations.** The obligations of the Commission as guarantor are limited to available moneys in the AEDC Guaranty Reserve Account created and being maintained pursuant to the authority conferred in the AEDC Guaranty Act. The moneys in that account stand behind all guaranties of the

Commission, including the AEDC Guaranty with respect to the AEDC Guaranteed Bonds. Although the Commission has thus far limited the use of its guaranty to projects to finance industrial facilities, the Commission is authorized to guarantee any Act 9 bonds (local industrial development bonds) and any bonds issued under the Act, including bonds for governmental capital improvements, educational facilities, health care facilities and housing developments. A ten-year history of bonds guaranteed by the Commission and balances in the AEDC Guaranty Reserve Account is as follows:

<b>AS OF DECEMBER 31</b>	<b>CUMULATIVE OUTSTANDING PRINCIPAL BALANCE OF AEDC GUARANTEED BONDS</b>	<b>BALANCE IN AEDC GUARANTY RESERVE ACCOUNT</b>
2012	57,664,806	17,217,374
2013	60,169,713	15,354,766
2014	46,231,397	15,697,365
2015	43,460,381	15,490,454
2016	32,113,709	15,519,531
2017	24,889,031	15,777,080
2018	20,749,920	14,014,800
2019	20,716,073	14,140,504
2020	11,832,043	11,410,059
2021	7,851,723	11,300,131

As of December 31, 2021, there were outstanding guaranties on nine (9) bond issues and interim loans aggregating approximately \$7,857,723 in outstanding principal amount. As of December 31, 2021, two (2) loans underlying these issues were in default. The aggregate principal amount outstanding under such agreements on such date was \$741,629. During the calendar year 2021, the AEDC did not disburse any funds from the AEDC Guaranty Reserve Account to pay debt service on AEDC-guaranteed bonds relating to any of these defaulted agreements. In cases of default on an underlying loan, it historically has been the AEDC’s general practice to pay debt service on the related guaranteed bonds as the same becomes due. The AEDC has on occasion caused the maturity of such bonds to be accelerated and may do so again in the future with respect to any bonds it has guaranteed, including the AEDC Guaranteed Bonds.

The Commission is required under its outstanding guaranties and by the AEDC Guaranty Act to keep on deposit in the AEDC Guaranty Reserve Account sufficient funds to enable it to make when due all debt service payments guaranteed by it. If necessary to discharge its obligations under such covenant, the Commission is required to issue its own bonds (the “AEDC Bonds”) from time to time under Act 397, also known as the Industrial Development Guaranty Bond Act, in sufficient amounts to insure that there will be available at all times in the AEDC Guaranty Reserve Account the necessary funds. Any AEDC Bonds issued to fund such guaranty obligations as aforesaid are payable from Treasury Earnings. See “THE GUARANTIES – Treasury Earnings” for a discussion of the amount of Treasury Earnings, other pledges of Treasury Earnings, portions of Treasury Earnings that are unavailable to be pledged to secure any Authority or AEDC Bonds, and related matters.

In the event the Commission issues any AEDC Bonds, it is required by law to notify the State Board of Finance as to the amount that will be needed each month to provide for the payment of the principal of and interest on such AEDC Bonds, and the State Board of Finance is required to set aside the required amount from Treasury Earnings and to pay that amount to the Commission for deposit in a special account of the Commission in a bank or trust company, to be used solely for paying debt service on the AEDC Bonds. Such amounts so set aside are expressly declared to be cash funds and are not to be deposited in the State Treasury; therefore, no appropriation is required for their payment. In April 1990, the Commission

issued \$5,300,000 of AEDC Bonds with a term of ten years for the purpose of replenishing the AEDC Guaranty Reserve Account. Such AEDC Bonds have now been fully paid.

There can be no assurance that under then prevailing market conditions future AEDC Bonds can be sold and issued at such times required to provide the necessary funds to satisfy the Commission's guaranty obligations.

**Aggregate Guaranty Limit.** Under the AEDC Guaranty Acts, the total principal amount of all outstanding bonds, which may be guaranteed by the AEDC, is \$100,000,000. Upon the issuance of the AEDC Guaranteed Bonds, the AEDC will have approximately \$12,412,481 in outstanding bond guaranties.

**Commission Approval.** The Commission has issued its bond guaranty approval pursuant to which the AEDC Guaranty will be issued, which approval has been agreed to and acknowledged by the Lessee (the "AEDC Approval"). The AEDC Approval contains certain financial and other representations, warranties and covenants from the Lessee. All of such representations, warranties and covenants are for the benefit of the Commission only and can be waived, amended or modified by the Lessee and the Commission.

### Treasury Earnings.

**Amounts.** Treasury Earnings for the periods specified are as follows:

7/1/07 – 6/30/08	\$115,650,293
7/1/08 – 6/30/09	\$ 72,616,343
7/1/09 – 6/30/10	\$ 36,059,429
7/1/10 – 6/30/11	\$ 27,285,478
7/1/11 – 6/30/12	\$ 23,446,124
7/1/12 – 6/30/13	\$ 18,184,730
7/1/13 – 6/30/14	\$ 20,390,739
7/1/14 – 6/30/15	\$ 22,331,183
7/1/15 – 6/30/16	\$ 48,984,128
7/1/16 – 6/30/17	\$ 57,549,048
7/1/17 – 6/30/18	\$ 77,229,189
7/1/18 – 6/30/19	\$116,946,167
7/1/19 – 6/30/20	\$ 80,729,275
7/1/21 – 6/30/21	\$ 35,438,898

Source: Chief Financial Officer, Arkansas State Treasury

**Amounts Unavailable.** Certain portions of the Treasury Earnings set forth above are related to specific trust funds of the State of Arkansas and are unavailable to be pledged to secure any Authority Bonds or AEDC Bonds. For the fiscal years ending June 30, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020 and 2021 such trust fund earnings amounts were \$6,954,417, \$1,259,727, \$931,934, \$922,579, \$817,834, \$1,405,864, \$1,913,276, \$2,098,556, \$3,082,131, \$2,273,658 and \$1,496,275 respectively. See the caption "Other Pledges; Priority" below for a discussion of other amounts of Treasury Earnings which may be unavailable to be pledged to secure any Authority Bonds or AEDC Bonds.

**Other Pledges; Priority.** There is no legislation specifically covering the priority of pledges of Treasury Earnings in favor of bonds issued by the Authority and the Commission, and the matter has not

been litigated. The priority of pledges could be ranked and determined on the basis of outstanding principal amount and chronological order of issuance of such bonds or on some other basis, or such pledges could be deemed to be on a parity of priority.

**Special Revenue Uses of Treasury Earnings.** Act No. 438 of 1979, as amended, and Act No. 327 of 1983, as amended, classified interest income earned on the gasoline tax of the Arkansas Highway and Transportation Department and on the license fees of the Arkansas Game and Fish Commission as special revenues. These special revenues are direct deductions from the Treasury Earnings and are, therefore, not available for pledge to secure any Authority Bonds or AEDC Bonds. The interest income associated with these special revenues for the last ten fiscal years is as follows:

2012	\$5,106,702	2017	\$17,088,064
2013	\$4,807,877	2018	\$21,124,739
2014	\$5,807,875	2019	\$32,069,850
2015	\$6,801,087	2020	\$22,455,330
2016	\$13,876,417	2021	\$ 7,738,140

Source: Chief Financial Officer, Arkansas State Treasury

Act No. 202 of 1989, as amended, established the Arkansas Child Care Facilities Loan Guarantee Trust Fund (the “Child Care Fund”) which is being funded from the first available Treasury Earnings in each fiscal year after the payment to the Correctional Facility Fund. The yearly payment to the Child Care Fund is \$100,000 until the Fund reaches a balance of \$350,000. In the event that the Child Care Fund balance subsequently falls below \$100,000, the annual deposits of Treasury Earnings will be resumed until the Child Care Fund reaches \$350,000.

**There can be no assurance that the Arkansas General Assembly will not in the future approve additional special uses for Treasury Earnings which may further reduce the amount of Treasury Earnings available to amortize any Authority Bonds or AEDC Bonds and thus affect the ability of the Authority and the Commission to issue Authority Bonds or AEDC Bonds to meet their obligations under the ADFA Guaranty and the AEDC Guaranty.**

#### **Security for the Guaranties.**

The Guaranties are secured by (i) a valid first priority mortgage on various parcels of land and improvements thereon that constitute the Project (the “Mortgaged Property”), (ii) a valid first priority leasehold mortgage on Lessee’s leasehold interest in the Mortgaged Property, (iii) a valid first priority security interest in all machinery, equipment, furnishings and personal property included within the Project and that are refinanced or financed with the proceeds of the Series A Bonds and the Series B Bonds and any other existing machinery, equipment, furnishings and personal property specifically pledged as collateral for the Guaranties (collectively, the “Equipment”), and (iv) an assignment of any and all rents and leases on the property associated with the Series A Project (collectively, the “Guaranties Collateral”). The Guaranties and the Series B Bonds are guaranteed by the Lessee’s parent company, Colson Group Holdings, LLC (the “Parent Guaranty”). The Guaranties and the Series B Bonds are secured by the Guaranties Collateral on a parity basis, and the Authority, the Commission, the trustee for the Series B Bonds and the owner of the Series B Bonds will enter into an intercreditor agreement pursuant to which the Authority, the Commission and the owner of the Series B Bonds will share on a ratable basis the Guaranties Collateral as pledged on a parity basis for the Guaranties and the Series B Bonds and a collateral agent will be appointed to act on behalf of the Authority, the Commission, the trustee for the Series B Bonds and the owner of the Series B Bonds.

**The Series B Bonds and the Series C Bonds are NOT guaranteed in any way by the ADFA Guaranty or the AEDC Guaranty, and are payable solely from the amounts realized by the Issuer under the Lease Agreement and with respect to the Series B Bonds only, the Guaranties Collateral and the Parent Guaranty. The ADFA Guaranty and the AEDC Guaranty apply only to the Series A Bonds.**

### **SOURCES AND USES OF FUNDS**

The proceeds of the Series A Bonds, exclusive of costs of issuance, will be deposited into the Funds established under the Indenture.

An amount equal to the Required Reserve will be deposited in the Series A Debt Service Reserve Fund. The Required Reserve with respect to the Series A Bonds is an amount equal to two months' maximum debt service on the Series A Bonds (the "Required Reserve").

The remainder of such proceeds of the Series A Bonds will be deposited in the Loan Fund. The sources and uses of funds are expected to be supplied and applied approximately as follows:

**Sources of Funds:**

Par Amount of Bonds	\$
Total Sources:	\$

**Uses of Funds**

Deposit to Series A Account of the Loan Fund	\$
Deposit to Series A Account of the Costs of Issuance Fund	
Deposit to Series A Account of the Debt Service Reserve Fund	
Total Uses:	\$

### **THE PROJECT**

The proceeds to be received by the Issuer from the sale of the Series A Bonds will be loaned to or expended on behalf of Colson Caster, LLC (the "Lessee") to: (i) finance or refinance a portion of the costs of acquiring, constructing and equipping an industrial facility for the manufacture of casters and wheels and related warehousing and distribution to be located at 2121 Barnhill Road, Jonesboro, Arkansas 72401 (the "Series A Project"), to be owned by the Issuer and leased to the Lessee, (ii) pay bond guaranty fees associated with the ADFA Guaranty and the AEDC Guaranty, (iii) establish a reserve fund with respect to the Series A Bonds, and (iv) pay a portion of the expenses incurred in connection with the issuance of the Series A Bonds.

**Project Overview**

The Lessee is the largest manufacturer and distributor of caster and wheel products for geographic regions across the globe and its US operations are headquartered in Illinois. The proceeds from the Series A Bonds will be loaned by the Issuer to the Lessee to be used by the Lessee to construct a manufacturing facility in Jonesboro, Arkansas on 24 acres which will replace the Lessee's manufacturing facility located at 3700 Airport Road, Jonesboro, Arkansas. The facility will contain approximately 146,640 square feet and will feature the latest in manufacturing technology, including new stamping presses, new robotic welding machinery, a new zinc plating line and many other enhancements that will drive efficiencies in the

Lessee's US operations and expand its global capabilities. A majority of the equipment located in Lessee's existing facility in Jonesboro will be transferred to the new facility. The Project includes the acquisition and installation of additional equipment in the new facility.

Additional information regarding the Lessee and its parent company, Colson Group Holdings, LLC, is included in APPENDIX A, hereto.

### **The Authority's Development Finance Loan Policy**

The Project is eligible to be financed as an "industrial facility" pursuant to the Act. In addition, the loan to the Lessee to be financed with proceeds of the Series A Bonds meets or exceeds the Authority's Development Finance Loan Policy, adopted by the Authority's Board of Directors in August 2003 and summarized as follows:

Standard credit policies include requirements that each applicant comply with state and federal law; demonstrate and document that the project to be financed will have a positive impact on employment or actively assist in the economic development of the State; and demonstrate reasonable assurance that the loan will be repaid. For existing businesses, loan may not exceed 90% of the appraised market value or cost, whichever is less, of the facilities financed. For new businesses, 70% is the maximum loan-to-value-or-cost ratio. Financial projections, completed according to specified rules, must demonstrate cash flow at least equal to outstanding and projected debt. Appraisals are required where proceeds are to be used to acquire (or where collateral includes) existing real estate or used equipment. All collateral must be appropriately insured and pledged to the Authority on a first mortgage or first security interest basis, as applicable. The Authority requires personal guaranties from each owner of 10% or more of the borrower and may require guaranties from affiliated companies. The term of a loan may not exceed the expected useful economic life of the assets being financed. The Authority may require key person life insurance. Phase one environmental assessments are required where real estate is included in collateral. The Authority requires annual audited financial statements from borrowers whose debt to the Authority exceeds \$1,000,000 and financial statements reviewed by an independent certified public accountant from other borrowers.

The Authority's Development Finance Loan Policy contains procedures for initial and periodic loan review, initial and periodic credit quality ratings, and initial and annual site inspections. Quality ratings are: Class I (Highest Quality); Class II (Good Quality); Class III (Satisfactory Quality); Class IV (Below Average Quality); Class V (Poor Quality); and Class VI (Poorest Quality). All loans are reviewed at least semi-annually; loans rated below Class III are reviewed monthly.

The foregoing does not purport to summarize all the provisions of the Authority's Development Finance Loan Policy. Interested persons may obtain copies of the Policy by contacting the Authority.

The Authority is subject to annual examination by the Arkansas State Bank Department with respect to its development finance loans and certain other loans.

### **TAXATION**

**Federal Income Taxes.** In the opinion of Bond Counsel, the interest on the Series A Bonds is included in gross income for federal income tax purposes under existing law.

**State Taxation.** In the opinion of Bond Counsel, under existing statutes, the Series A Bonds and any income derived therefrom, including any sale, exchange, or transfer of the Series A Bonds, are exempt from Arkansas state income taxation under laws now in force on Bonds owned by residents of the State.

**Changes in Federal and State Tax Law.** From time to time, there are legislative proposals in the Congress and in the states that, if enacted, could alter or amend the federal and state tax matters referred to above or adversely affect the market value of the Series A Bonds. It cannot be predicted whether or in what form any such proposal might be enacted or whether if enacted it would apply to bonds issued prior to enactment. In addition, regulatory actions are from time to time announced or proposed and litigation is threatened or commenced which, if implemented or concluded in a particular manner, could adversely affect the market value of the Series A Bonds.

## **RATING**

Standard & Poor's Corporation has assigned a rating of \_\_\_\_ to the Series A Bonds on the basis of the ADFA Guaranty and the AEDC Guaranty. Any rating issued reflects only the view of the rating agency. Any explanation of the significance of such rating may only be obtained from the rating agency. There is no assurance that any such rating will be retained for any given period of time or that the same will not be revised downward or withdrawn entirely by such rating agency if, in its judgment, circumstances so warrant. Neither the Issuer, the Authority, the Commission nor the Underwriter undertake any responsibility either to bring to the attention of the owners of the Series A Bonds downward revision or withdrawal of any rating obtained or to oppose any such revision or withdrawal. Any such downward revision or withdrawal of any rating obtained may have an adverse effect on the market price of the Series A Bonds.

## **UNDERWRITER**

Crews & Associates, Inc. (the "Underwriter") has agreed to purchase, and the Issuer has agreed to sell to it, the Series A Bonds at an aggregate purchase price of \$\_\_\_\_\_ (aggregate purchase price less/plus original issue discount/premium of \$\_\_\_\_\_), pursuant to a Bond Purchase Agreement between the Underwriter and the Issuer (the "Bond Purchase Agreement").

The Bonds are being purchased by the Underwriter for reoffering in the normal course of the Underwriter's business activities. The Underwriter may offer to sell the Series A Bonds to certain dealers and others at prices lower than the initial offering prices. The offering prices may be changed from time to time by the Underwriter. The Underwriter makes no representations or warranties as to the accuracy of the information set forth in this Official Statement.

## **SECONDARY MARKET DISCLOSURE**

There will be a Continuing Disclosure Agreement dated as of \_\_\_\_\_, 2022 between the Issuer, the Trustee, the Authority and the Commission (the "Continuing Disclosure Agreement"). The parties have covenanted for the benefit of Beneficial Owners of the Series A Bonds to provide certain financial information, if and when available, and operating data relating to the Authority's Bond Guaranty Program, certain financial information, if and when available, and operating data relating to the Commission's Bond Guaranty Program by not later than 240 days after the end of its fiscal years, commencing with the fiscal year ended June 30, 2022 (the "Annual Disclosure Statement"), and to provide notices of the occurrence of certain enumerated events, if material. The Annual Disclosure Statement will be filed with the Municipal Securities Rulemaking Board's EMMA system. The notices of material events will be filed by the Trustee or Authority with the Municipal Securities Rulemaking Board. The parties may satisfy its obligations to file any notice, document or information with the Municipal Securities Rulemaking Board by filing the

same with any dissemination agent or conduit, including any “central post office” or similar entity, assuming or charged with responsibility for accepting notices, documents or information for transmission to the Municipal Securities Rulemaking Board, to the extent permitted by the SEC or SEC staff or required by the SEC. These covenants have been made to assist the Underwriter in complying with Securities and Exchange Commission Rule 15c2-12(b)(5) (the “Rule”). The Continuing Disclosure Agreement is attached hereto as Appendix D.

The Rule requires that an issuer disclose in its official statement any instances in the previous five years in which such issuer failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of the Rule. In connection with the Authority’s previous bond issues, the Authority entered into individual continuing disclosure undertakings (“Undertakings”) in written agreements specified in paragraph (b)(5)(i) of the Rule. In May of 2014, the Authority initiated a comprehensive review of each of its Undertakings and implemented policies and procedures to facilitate on-going compliance. The Authority has identified nine (9) categories of bonds or programs for which it acts as an issuer and/or has entered into Undertakings. The Authority (i) is the exclusive issuer of revenue bonds for public facilities acquired or constructed for the benefit of all state agencies which do not have bonding authority (the “State Facilities Program”); (ii) issues bonds to benefit for profit and not for profit businesses for a variety of purposes specifically authorized by Arkansas law (the “Conduit Issuer Program”); (iii) issues single family mortgage revenue bonds (the “Single Family Program”); (iv) issues multi-family mortgage revenue bonds (the “Multifamily Program”); (v) issues bonds to facilitate economic development which the Authority and/or the Arkansas Economic Development Commission (“AEDC”) guarantee through their individual bond guaranty programs (the “State Bond Guaranty Program”); (vi) guarantees bonds issued by other governmental entities that facilitate economic development (the “Local Bond Guaranty Program”); (vii) issues bonds to support the Arkansas Natural Resources Commission’s Wastewater Revolving Loan Fund (the “Wastewater Program”); (viii) issues bonds authorized by specific legislation to support other state programs (the “Miscellaneous State Bonds Program”); and (ix) issues on behalf of the State of Arkansas certain general obligation bonds (the “GO Program”). While the Authority has not made any determination as to materiality, the following paragraphs summarize the results of the Authority’s review.

With respect to all programs, event notices, including, but not limited to, certain bond rating changes relating to third-party credit enhancement providers, underlying rating changes, bond calls, and the appointment of successor trustees were not filed.

With respect to the State Facilities Program, the Conduit Issuer Program, the Wastewater Program and Miscellaneous State Bonds Program, the Authority has had instances of late filings of certain financial information and operating data of the Authority and other obligated parties as required in the Undertakings. The nature of these filings typically include (i) supplemental filings to provide information or data identified in the Undertakings, but not included in the initial filing that was made timely and (ii) the filing of financial statements specific to the obligated person, if available, or alternatively, the State’s CAFR and/or certain financial information and operating data. With respect to financial information, the delay in filing in most instances was a few days to a few months late, but in some unusual situations, the delay was up to five (5) years late. With respect to information or data that was not included with the initial filing, most of these omissions were discovered in connection with the Authority’s May 2014 comprehensive review of its obligations with respect to its Undertakings. Supplemental filings for the necessary years were made by the Authority and are continuing to be made by other obligated parties. As noted below, the Authority implemented a form of annual report to prevent omissions of portions of information in the future and to confirm the status of required financial statements. In connection with annual reports for the June 30, 2014 and June 30, 2015 fiscal years, most of the information required by the Undertakings was filed timely, but not in the annual report format. Actuarial information relating to pension obligations and the per capita general obligation debt calculation were filed late in June 2016. Substantially all filings in the annual report

format for the June 30, 2014 and June 30, 2015 fiscal years were filed by July 2016. In connection with some Undertakings for the State Facilities Program, the audited financial statements for certain state agencies for the fiscal year ending June 30, 2018 are not yet available. In some instances, the Failure to File Notices have not been filed or were filed late. With respect to state agencies that rely on the State's Legislative Joint Auditing Committee to provide the agency's "financial audit" as defined by state law, delivery of the financial audits generally are not delivered until after the end of the following fiscal year. Generally, financial audits performed by the State's Legislative Joint Auditing Committee are received within 18 months after the fiscal year end, but longer delays have occurred. Protocols have been implemented to file financial audits within thirty (30) days of receipt thereof from the State's Legislative Joint Auditing Committee.

With respect to the Multifamily Program, most of the bond issues are exempt from the Rule, and the Authority does not have any Undertakings with respect to this program. With respect to the Single Family Program and the GO Program, there have been no late filings within the past five years.

With respect to the State Bond Guaranty Program and the Local Bond Guaranty Program, most of the Undertakings relating to bonds issued prior to 2010 included a requirement to provide specific information related to borrowers that were in default. The Undertakings permit the Authority to waive requirements not specifically required by the Rule, and the Authority waived the requirement to provide this information, but did not take formal action to do so nor did it file a disclosure identifying the waiver. With respect to bonds guaranteed by AEDC, the Undertakings relating to bonds issued prior to 2014 required the filing, when available, of AEDC's audited financial statements. AEDC does not receive separately audited financial statements, but rather is one of the component units of the State included in the State CAFR. Prior to 2013, no filings were made because AEDC does not have audited financial statements. Beginning in 2013, the Authority, in consultation with AEDC, began filing the State CAFR to satisfy this term of the Undertakings and continues to file the State CAFR for the purpose of satisfying the referenced provision of the applicable Undertakings. With respect to some Undertakings, there were a few instances in which the required disclosure information was not associated with all of the CUSIPs for a bond issue at the time the financial information and operating data were initially filed. These occurrences, though infrequent, were most common in connection with the Local Bond Guaranty Program, and necessary filings have been made for previously skipped CUSIPs.

In connection with the Undertaking executed in connection with the Arkansas Development Finance Authority Tobacco Settlement Revenue Bonds, Series 2006 (Arkansas Cancer Research Center Project) (the "Tobacco Bonds"), the Board of Trustees of the University of Arkansas (the "Board") is an obligated person. Pursuant to the Tobacco Bonds Undertaking, the Board is required to make annual filings of audited financial statements of the University of Arkansas for Medical Sciences ("UAMS") and the Board, along with certain financial information and operating data with respect to UAMS in the same format and content as that contained in the official statement for the Tobacco Bonds. In certain fiscal years, including the fiscal years ended June 30, 2014 through 2018, the Board prepared reports containing certain financial information and operating data for UAMS and the Board and provided such reports to the Authority, as dissemination agent. The Authority timely filed such reports, but such filings did not contain all statistical information referenced by the Tobacco Bonds Undertaking, or in some cases, such information was not in the same format as that contained in the official statement for the Tobacco Bonds. On July 8, 2019, a supplemental filing containing all missing information and reflecting all information in the correct format was uploaded to the EMMA system. The Authority, in its role as dissemination agent, did not review the information presented by the Board for filing and did not file any notices of non-compliance with the Tobacco Bonds Undertaking.

The Authority monitors all of its written continuing disclosure agreements and will propose additional amendments and/or policies where necessary to reflect procedures that will aid in the Authority's

on-going compliance with such Undertakings. The Authority noted that the majority of the instances where it did not comply with its Undertakings resulted when the Authority was required to obtain information from a third party. As a result, procedural changes have been implemented to prevent these instances in the future and include, but are not limited to, (i) requiring any obligated party in the Undertakings to specifically designate a representative with whom the Authority may communicate regarding information required by the Undertakings; (ii) incorporating a form of annual report as an exhibit to all subsequent Undertakings and amending in due course existing Undertakings to ensure that both the Authority and other obligated parties provide all required information; and (iii) periodically checking EMMA to ensure such reports and notices have been properly filed and indexed.

The Rule also requires that an obligated party disclose in an official statement related to its debt obligations any instances in the previous five years in which such obligated party failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of the Rule. The Issuer is not an obligated party under the Rule and does not have any prior undertakings.

### **LEGAL MATTERS**

The validity of the Series A Bonds will be passed upon by Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C., Little Rock, Arkansas, Bond Counsel, and the Underwriter's obligation to purchase the Series A Bonds is subject to the issuance of Bond Counsel's opinion with respect thereto.

### **LITIGATION**

The Issuer has represented that, except as disclosed in this Official Statement, there is no litigation pending or, to the best of its knowledge, threatened, which, among other things, questions the powers of the Issuer to issue the Series A Bonds and enter into and perform its agreements relating to the Series A Bonds or the validity of the Issuer's proceedings in connection with the Series A Bonds, or wherein an unfavorable decision could materially adversely affect the transactions or documents relating to the Series A Bonds, or which could adversely affect the validity or enforceability of certain documents relating to the Series A Bonds.

### **ENFORCEABILITY OF REMEDIES**

Enforcement of the remedies available under the Lease Agreement, the Series A Bonds, the ADFA Guaranty, the AEDC Guaranty, the Indenture and the ordinance authorizing the Series A Bonds may depend on judicial action and may be subject to the application of federal bankruptcy laws or other debtor relief or moratorium laws in general. Therefore, enforcement of those remedies may be delayed or limited, or the remedies may be modified or unavailable. Bond Counsel expresses no opinion as to any effect upon any right, title, interest or relationship created by or arising under the Lease Agreement, the Series A Bonds, the Indenture, the ADFA Guaranty, the AEDC Guaranty, or the ordinance authorizing the Series A Bonds resulting from the application of state or federal bankruptcy, insolvency, reorganization, moratorium or similar debtor relief laws affecting creditors' rights which are presently or may from time to time be in effect.

### **MISCELLANEOUS**

The foregoing summaries do not purport to be complete and are expressly made subject to the provisions of the complete documents. For details of all terms and conditions, prospective purchasers are referred to the Lease Agreement, the ADFA Guaranty, the AEDC Guaranty, and the Indenture. Copies of

those documents and additional information may be obtained from the Issuer, the City of Jonesboro, Arkansas (telephone number 870-932-1052).

This Official Statement has been duly authorized by the Issuer.

**CITY OF JONESBORO, ARKANSAS**

By:           /s/ Harold Copenhaver            
Harold Copenhaver, Mayor

## APPENDIX A

### DESCRIPTION OF THE LESSEE

The Colson Group of companies (“Colson”), including the Lessee, Colson Castor, LLC and its parent company, Colson Group Holdings, LLC, (the “Colson Holdings”) has over 350+ combined years of developing, manufacturing and distributing caster and wheel products worldwide. In March, 2021 Colson Group was acquired by Blue Wolf Capital Partners LLC, a New York-based private equity firm from its prior owner Sentinel Capital Partners. Sentinel Capital Partners acquiring Colson Group in 2012. Prior to Sentinel Capital Partners, the company was held by Robert Pritzker who acquired the Colson caster brand in 1953 and built it into the worldwide caster leader that is now Colson Group.

The Lessee was incorporated as a corporation in Delaware on October 23, 1979 and was converted to a limited liability company on December 31, 2013. Colson Holding’s corporate office is located at 1815 Meyers Road, Suite 750, Oakbrook Terrace, Illinois 60181. Presently Colson Group has over 1,600 employees across 30 global facilities including \_\_\_ employees at its Illinois headquarters and 87 employees at the existing Jonesboro production facility. The company expects to employ approximately 22 additional employees in Jonesboro and approximately 79 additional employees overall in connection with the Project.

Colson Group provides the most complete caster and wheel production offering in the world including light duty to heavy duty single wheel caster to injection molded medical casters. The Colson Group brands provide over 350 years of market-proven experience and expertise for every industry and application. Growth and acquisitions have enabled Colson Group to create a proprietary value chain that services nearly every industry with innovative product solutions, leading technical support and trusted service capabilities. Its innovations have led to some of the most trusted, highest quality and advanced mobility solutions today with dynamic load capabilities ranging from 40 pounds (18 kilograms) to 100,000 pounds (45,000 kilograms). Loyal customers, long-standing original equipment manufacturer (OEM) relationships and strong new business development initiatives help maintain growth and relevancy. Colson Group ships over 192,000 products per day globally, and has approximately a 30% share of the US market.

Colson Group’s maintains relationships with suppliers of various materials used in the production of its casters and wheels including steel, polyurethane and resin. These major suppliers include but are not limited to Magic Steel with manufacturing locations in Michigan and Alabama, Gallagher located in Illinois and Enpol Engineering Resins with its headquarters in Georgia. Major customers of Colson Group include but are not limited to McMaster-Carr, Amazon Robotics and Snap-On Tools.

[INSERT ADDITIONAL INFORMATION]

## APPENDIX B

### DEFINITIONS

“Act” means Title 14, Chapter 164, Subchapter 2 of the Arkansas Codes of 1987 Annotated, as amended, which authorizes the issuance of bonds by the Issuer for the purposes provided in the Indenture.

“ADFA” or “Authority” means the Arkansas Development Finance Authority.

“ADFA Guaranty” means the Guaranty Agreement for Payment of Economic Development Revenue Bonds dated \_\_\_\_\_, 2022, executed by ADFA in favor of the Trustee, pursuant to which ADFA guarantees payment of the principal and interest on the ADFA Guaranteed Bonds.

“ADFA Guaranteed Bonds” means the aggregate principal amount of \$6,000,000 of the Series A Bonds the payment of which are guaranteed by ADFA pursuant to the ADFA Guaranty.

“ADFA Guaranteed Bonds” means the aggregate principal amount of \$5,000,000 of the Series A Bonds the payment of which are guaranteed by AEDC pursuant to the AEDC Guaranty.

“AEDC” or “Commission” means the Arkansas Economic Development Commission.

“AEDC Guaranty” means the Guaranty Agreement for Payment of Economic Development Revenue Bonds, dated \_\_\_\_\_, 2022, executed by the AEDC in favor of the Trustee, pursuant to which the AEDC guarantees payment of the principal and interest on the AEDC Guaranteed Bonds.

“Authorized Denomination” means minimum aggregate principal amounts of \$5,000 and integral multiples of \$5,000 in excess thereof.

“Authorized Lessee Representative” means a person at the time designated to act on behalf of the Lessee by written certificate furnished to Trustee and Issuer containing the specimen signature of such person and signed on behalf of the Lessee by one of its authorized signatories, which certificate may designate an alternate or alternates, and may designate different Authorized Lessee Representatives to act for the Lessee with respect to different sections of the Lease Agreement and the Indenture. Any action or instrument required to be taken or executed by the Lessee must be authorized or executed by an Authorized Lessee Representative.

“Bond Counsel” means with respect to the Bonds, Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C., Little Rock, Arkansas, or any other nationally recognized bond counsel selected by the Issuer or the Trustee, as applicable.

“Bond Fund” means the fund and accounts therein of the Issuer created by Section 5.01 of the Indenture into which the funds specified in Article V are to be deposited and out of which disbursements are to be made as expressly authorized and directed by the Indenture.

“Bonds” or “bonds” mean collectively, the City of Jonesboro, Arkansas Taxable Economic Development Revenue Bonds (ADFA/AEDC Guaranty Programs) (Colson Caster Project), Series 2022A issued under and secured by the Indenture, in the principal amount of \$11,000,000 and the City of Jonesboro, Arkansas Taxable Economic Development Revenue Bonds (Colson Caster Project), Series 2022B issued under and secured by the Indenture, in the principal amount of \$4,000,000.

“Book Entry Bonds” means Bonds for which a securities depository or its nominee is the Bondholder.

“City Clerk” means the person holding the office and performing the duties of City Clerk of the Issuer.

“Code” means the Internal Revenue Code of 1986, as amended, of the United States of America.

“Date of Delivery” means \_\_\_\_\_, 2022.

“Delivery Instructions” means the written request and authorization given by the Issuer in accordance with Section 5.01(b) of the Indenture on the date of the bond closing directing the use and deposit of the proceeds of the Bonds.

“Guaranties” mean collectively the ADFA Guaranty and the AEDC Guaranty.

“Guaranty Payments” means all amounts payable under the Guaranties.

“Indenture” means the Trust Indenture with all indentures supplemental hereto.

“Issuer” means the City of Jonesboro, Arkansas, a city of the first class and a political subdivision of the State of Arkansas.

“Lease Agreement” means the Lease Agreement between the Issuer and the Lessee, providing for a loan to the Lessee for payment of the Project costs.

“Lessee” means Colson Caster, LLC, a Delaware limited liability company.

“Loan” means the loan from the Issuer to the Lessee evidenced and governed by the Lease Agreement.

“Loan Fund” means the fund and accounts therein created by Section 5.01 of the Indenture into which the portion of the proceeds of the sale of the Series A Bonds specified in Section 5.06 is to be deposited and out of which disbursements are to be made in the manner and for the purposes specified in Article V of the Indenture.

“Mayor” means the Mayor of the Issuer.

“Outstanding” means all Bonds which have been duly authenticated and delivered by the Trustee under the Indenture, except:

(a) Bonds theretofore canceled by Trustee or delivered to Trustee for cancellation;

(b) Bonds for the payment or redemption of which cash funds (or Federal Securities, to the extent permitted in Section 12.01 of the Indenture) have been deposited with the Trustee; *provided, that*, if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given or arrangements satisfactory to Trustee shall have been made therefor, or waiver of such notice satisfactory in form to Trustee shall have been filed with Trustee, and provided further that prior to such redemption or payment, the Bonds to be paid or redeemed shall be deemed to be Outstanding for the purpose of replacement under Section 2.07 of the Indenture and transfer and exchange under Section 2.08 of the Indenture;

(c) Bonds issued under the Indenture, to the extent that such Bonds are no longer deemed to be Outstanding under the provisions of the Indenture; and

(d) Bonds in lieu of which others have been authenticated under Section 2.08 of the Indenture.

“Owner” or “Bondowner” or “owner of the bonds” or “Bondholder” means the Person who owns a Bond, provided that, pursuant to Section 2.09 of the Indenture, the Person in whose name a Bond is registered in the bond register shall be regarded for all purposes as such owner.

“Paying Agent” means the bank or trust company named by the Issuer as the place at which the principal of and interest on the Bonds is payable. The original Paying Agent is the Trustee. References to Paying Agent include any alternate Paying Agent.

“Person” includes natural persons, firms, associations, corporations and public bodies.

“Pledged Property” means the properties, interests and rights set forth in the granting clauses of the Indenture.

“Project” means collectively, the Series A Project and the Series B Project.

“Purchasers” means the original purchasers of the Bonds.

“Record Date” means the fifteenth calendar day of the month preceding the month in which the interest payment date occurs.

“Registrar” means the registrar, initially the Trustee, appointed by Issuer at the direction of the Lessee, and any successor registrar appointed under the Indenture.

“Reimbursement Agreement” means the Guaranty Agreement for Reimbursement of Advanced Funds between AEDC, ADFA and the Lessee under which the Lessee agrees to reimburse ADFA and/or AEDC for payments made pursuant to the Guaranties.

“Required Reserves” means collectively, the Series A Required Reserve and the Series B Required Reserve.

“Revenues” means the income, including penalties and interest, derived by the Issuer under the Lease Agreement.

“Securities Depository” means a person that is registered as a clearing agency under Section 17A of the Securities Exchange Act of 1934 or whose business is confined to the performance of the functions of a clearing agency with respect to exempted securities, as defined in Section 3(a)(12) of the Securities Exchange Act of 1934 for the purposes of Section 17A thereof.

“Series A Bonds” means the City of Jonesboro, Arkansas Taxable Industrial Development Revenue Bonds (ADFA/AEDC Guaranty Programs) (Colson Caster Project) Series 2022A.

“Series A Project” means the land, improvements and facilities being financed out of the proceeds of the Series A Bonds, together with other expenses in connection therewith, including architectural and engineering fees, ADFA’s and AEDC’s Guaranty Fees, and the costs of the issuance of the Series A Bonds.

“Series A Required Reserve” means an amount equal to two months’ maximum debt service on the Series A Bonds.

“Series B Bonds” means the City of Jonesboro, Arkansas Taxable Industrial Development Revenue Bonds (Colson Caster Project) Series 2022B.

“Series B Project” means the acquisition and installation of equipment being financed out of the proceeds of the Series B Bonds, together with other expenses in connection therewith, including architectural and engineering fees, if any, and the costs of the issuance of the Series B Bonds.

“Series B Required Reserve” means an amount equal to two months’ maximum debt service on the Series B Bonds.

“State” means the State of Arkansas.

“Temporary Bonds” means bonds issued pursuant to Section 2.13 of the Indenture if definitive bonds are not available upon the initial delivery of the Bonds to the Purchasers.

“Trust Estate” means the Trust Estate set forth and defined in the granting clauses of the Indenture, including all the “Pledged Property.”

“Trustee” means the Trustee for the time being, whether original or successor, with the original Trustee being \_\_\_\_\_ Bank, an Arkansas banking corporation organized and operating under the laws of Arkansas and authorized to exercise corporate trust powers in the State of Arkansas, and being duly qualified to accept and administer the trusts created by the Indenture, and having a corporate trust office located in Little Rock, Arkansas. The Trustee is also a Paying Agent and Registrar.

## APPENDIX C

### SUMMARY OF PRINCIPAL DOCUMENTS

#### THE LEASE AGREEMENT

The following is a summary of certain provisions of the Lease Agreement and does not purport to be comprehensive or complete. Reference is made to the Lease Agreement for its complete provisions.

##### **Lease of Project and Term of Lease Agreement.**

The Issuer (as lessor under the Lease Agreement) agrees under the terms of the Lease Agreement to lease to the Lessee (as lessee under the Lease Agreement) the lands and/or the improvements described in the Lease Agreement (the Project), which includes the real property and equipment encompassed by the Project with respect to the Series A Bonds, the Series B Bonds and the Series C Bonds (referred to in this Appendix C as the “Series 2022 Bonds”).

The term of the Lease Agreement begins as of \_\_\_\_\_, 2022, and continues until \_\_\_\_\_, 20\_\_ and as long thereafter as any of the Series 2022 Bonds remain outstanding under the Indenture and the Trust Indenture between the Issuer and a trustee for the Series C Bonds (collectively referred to in this Appendix C as, the “Indentures”).

##### **Rent Payment Requirements.**

###### Basic Rent.

(a) The Lessee is required to pay to the Issuer Basic Rent monthly in the amounts necessary to pay interest, premium, if any, and principal of all outstanding Series 2022 Bonds as the same become due under the provisions of the Indentures. Basic Rent is payable monthly commencing \_\_\_\_\_, 20\_\_ (which payments shall include interest as well from \_\_\_\_\_, 20\_\_) through \_\_\_\_\_, 20\_\_, and shall continue on the same day of each month thereafter until the principal of, premium, if any, and interest on the Series 2022 Bonds shall have been fully paid, or the required provision made for the payment thereof in accordance with the provisions of the Indentures. In the event Lessee is late on any payment, Lessee shall be allowed an additional five (5) day grace period from the due date thereon to make such payment, before such event shall constitute an Event of Default hereunder.

(b) If, during any year while any of the Series 2022 Bonds are outstanding, the Basic Rent is insufficient to pay the principal of, premium, if any, and interest on the Series 2022 Bonds as the same become due, the amount of the insufficiency shall be paid by the Lessee as additional Basic Rent. If at any time the amount in the Bond Funds under the respective Indentures are sufficient to pay in full the principal of, premium, if any, interest on, and, if redemption is involved, redemption expenses in connection with, all of the outstanding Series 2022 Bonds, then no further Basic Rent shall be payable. If any moneys remain in the Bond Funds of the respective Indentures after payment or the making or provision for payment in accordance with the provisions of Article V of the Indentures, of the principal of, premium, if any, interest on, and, if redemption is involved, redemption expenses in connection with, all outstanding Series 2022 Bonds, such remaining moneys shall be refunded to the Lessee as excess Basic Rent.

Additional Rent. During the term of the Lease Agreement, the Lessee shall pay as Additional Rent payable to the Issuer, any expenses which are required to be incurred by the Issuer pursuant to the provisions of the Lease Agreement or the Indentures the payment of which is not otherwise provided for by applicable

provisions of the Lease Agreement or the Indentures, and all impositions (such as taxes and assessments), expenses, liabilities, obligations and other payments of whatever nature which the Lessee has agreed to pay or assume under the provisions of the Lease Agreement. If at any time any amounts paid by the Lessee as Additional Rent are or become in excess of the amounts required for the purposes for which they were paid, such excess amounts shall be refunded to the Lessee.

The Lessee shall be required to pay to ADFA an annual administrative fee equal to \_\_\_\_ percent (.\_\_%) of the principal amount of its applicable portion of Series A Bonds Outstanding on December 31 of each year while the Series A Bonds are Outstanding commencing December 31, 2022. The first calculation of the administrative fee should be calculated pro-rata based on number of months outstanding (July – December or 6 months). Under the terms of the Indenture for the Series A Bonds, the Trustee is required to calculate the amount of the annual administrative fee annually and give notice to the ADFA and Lessee of the amounts due to be paid on or before January 31 of each year and the amount of the final administrative fee and give notice to ADFA and Lessee of the amounts due to be paid on or before maturity of the Series A Bonds. The Trustee is also responsible for collecting the annual administrative fee and remitting it to ADFA. A final administrative fee to ADFA shall be payable upon final maturity of the Series A Bonds in an amount equal to \_\_% (0.\_\_%) of the principal amount of the Bonds Outstanding on the last day of the month preceding the final maturity date, multiplied by a fraction the numerator of which shall be the number of months elapsed since the preceding payment (rounded up to the next whole number), and the denominator of which shall be 12.

The Lessee shall be required to pay to AEDC an annual administrative fee equal to \_\_\_\_ percent (.\_\_%) of the principal amount of its applicable portion of Series A Bonds Outstanding on December 31 of each year while the Series A Bonds are Outstanding commencing December 31, 2022. The first calculation of the administrative fee should be calculated pro-rata based on number of months outstanding (July – December or 6 months). Under the terms of the Indenture for the Series A Bonds, the Trustee is required to calculate the amount of the annual administrative fee annually and give notice to the AEDC and Lessee of the amounts due to be paid on or before January 31 of each year and the amount of the final administrative fee and give notice to AEDC and Lessee of the amounts due to be paid on or before maturity of the Series A Bonds. The Trustee is also responsible for collecting the annual administrative fee and remitting it to AEDC. A final administrative fee to AEDC shall be payable upon final maturity of the Series A Bonds in an amount equal to \_\_% (0.\_\_%) of the principal amount of the Bonds Outstanding on the last day of the month preceding the final maturity date, multiplied by a fraction the numerator of which shall be the number of months elapsed since the preceding payment (rounded up to the next whole number), and the denominator of which shall be 12.

Payment. Until the principal of, premium, if any, and interest on the Series 2022 Bonds shall have been paid or provision for such payment shall have been made in accordance with the provisions of the Indenture, the Lessee's obligation to pay Basic Rent and Additional Rent shall be absolute and unconditional and the Basic Rent and the Additional Rent shall be payable on the dates or at the times specified, and without abatement or set-off, and regardless of any contingencies whatsoever, and notwithstanding any circumstances or occurrences that may now exist or that may hereafter arise or take place.

The Lessee covenants that it will not enter into any contract, indenture or agreement of any nature whatsoever which shall in any way limit, restrict or prevent the Lessee from performing any of its obligations under the Lease Agreement.

Method of Payment of Basic Rent and Additional Rent. Payments of Basic Rent shall be made to the Issuer by the Lessee remitting the same directly to the Trustee, for the account of the Issuer, and shall be deposited by the Trustee in the respective Bond Fund provided for in the Indentures, to be used by the

Trustee as provided in the Indentures. Additional Rent shall be paid by the Lessee remitting the same directly to the Issuer, in the case of the Issuer's expenses and charges, and either making direct payment in the case of impositions and other costs, expenses, liabilities and payments assumed and agreed to be paid by the Lessee under the Lease Agreement, or reimbursing the Issuer, if, pursuant to the provisions of the Lease Agreement, Trustee shall make payment thereof.

## **Insurance**

The Lessee shall, at Lessee's sole cost and expense, keep the Leased Premises insured:

(a) Against the perils of fire and the hazards ordinarily included under broad form extended coverage endorsements in amounts necessary to prevent the application of the coinsurance provisions of the applicable policies but not less than \_\_\_% of the full insurable value thereof within the terms of applicable policies; and

(b) If there are boiler or pressure vessels, from boiler or pressure vessel explosion in an amount customarily carried in the case of similar industrial operations.

The term "full insurable value" means such value as shall be determined from time to time at the request of the Lessee or the Issuer (but not more frequently than once in every forty-eight (48) months) by one of the insurers selected by the Lessee.

At all times during the term of the Lease Agreement, the Lessee shall, at no cost or expense to the Issuer, maintain or cause to be maintained:

(a) General Public Liability insurance against claims for bodily injury or death occurring upon, in or about the Leased Premises, with such insurance to afford protection to the limits of not less than \$\_\_\_\_\_ in respect of bodily injury or death to any one person and to the limit of not less than \$\_\_\_\_\_ in respect of any one accident; and

(b) Property damage insurance against claims for damage to property occurring upon, in or about the Leased Premises with such insurance to afford protection to the limit of not less than \$\_\_\_\_\_ in respect of damages to the property of any one owner.

## **Events of Default and Remedies**

Events of Default. Any one of the following is an "Event of Default" under the Lease Agreement:

(a) Failure by the Lessee to pay the rents or any part thereof when due so as to prevent timely payment on the Bonds.

(b) Failure by the Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in subsection (a) of this section, (i) for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, given to the Lessee by the Issuer unless the Issuer shall agree in writing to an extension of such time prior to its expiration or (ii) for such longer period as may be reasonably necessary to remedy such default provided that the Lessee is proceeding with reasonable diligence, to remedy the same.

(c) The dissolution or liquidation of the Lessee or the filing by the Lessee of a voluntary petition in bankruptcy, or failure by the Lessee promptly to lift any execution, garnishment or attachment of such consequence as will impair its ability to carry on its operations at the Leased Premises, or the

commission by the Lessee of any act of bankruptcy, or adjudication of the Lessee as a bankrupt, or assignment by the Lessee for the benefit of its creditors, or the entry by the Lessee into an agreement of composition with its creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Lessee in any proceeding for its reorganization instituted under the provisions of the general bankruptcy act, as amended, or under similar act which may hereafter be enacted.

(d) With respect to the Series A Bonds, receipt by the Issuer and the Trustee of notices from ADFA or AEDC of a failure by the Lessee to comply with the terms and conditions set forth in the Guaranty Commitment or the Reimbursement Agreement.

Remedies. Whenever any Event of Default shall happen and then be continuing for a period of not less than thirty (30) days, the Issuer may take any of the following remedial steps:

(a) The Issuer, with the prior written consent of ADFA and AEDC may, at its option, declare all installments of rent payable for the remainder of the term to be immediately due and payable, whereupon the same shall become immediately due.

(b) The Issuer, with the prior written consent of ADFA and AEDC may re-enter and take possession of the Leased Premises without terminating the Lease Agreement, and sublease the Leased Premises for the account of the Lessee, holding the Lessee liable for the difference in the rent and other amounts payable by the Lessee under the Lease Agreement.

(c) The Issuer, with the prior written consent of ADFA and AEDC may terminate the term, exclude the Lessee from possession of the Leased Premises and use its best efforts to lease the Leased Premises to another for the account of the Lessee, holding the Lessee liable for all rent and other payments due up to the effective date of any such leasing.

(d) Upon reasonable notice to Lessee, the Issuer, ADFA and AEDC shall have access to inspect, examine and make copies of the books and records relating to the Leased Premises.

(e) The Issuer, with the prior written consent of ADFA and AEDC may take whatever action at law or in equity may appear necessary or desirable to collect the rent and any other amounts payable by the Lessee hereunder, then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Lessee under the Lease Agreement.

Any amounts collected pursuant to action taken under this Section shall be applied in accordance with the provisions of the Indentures.

Notwithstanding (a), (b) or (c), above, before exercising any remedy granted therein, the Issuer shall by written notice, grant the Lessee the option to cure any default for a period of thirty (30) days.

### **Lessee's Purchase Options**

The Lessee shall have the right and option to purchase the Leased Premises at any time if:

- (a) The Leased Premises sustain major damage or destruction; or
- (b) Title to all or substantially all of the Leased Premises is condemned; or
- (c) As a result of changes in the Constitution of the United States or of the State, or of legislative action, or by the final decree, judgment or order of any court or administrative body entered after

the Lessee's contest thereof in good faith, or change in the Issuer's legal organization or status, the Lease Agreement becomes void or unenforceable or impossible of performance in accordance with the intent and purposes of the parties as expressed in the Lease Agreement, or unreasonable burdens or excessive liabilities are imposed upon either party to it; or

(d) There is legal curtailment of the Lessee's use and occupancy of all or substantially all of the Leased Premises for any reason other than condemnation.

The term "major damage or destruction" means any damage or injury to or destruction of the Leased Premises or any part thereof (whether or not resulting from an insured peril) such that the Leased Premises cannot reasonably be restored to its condition immediately preceding such damage, injury or destruction within a period of at least six (6) months, or which would prevent the Lessee from carrying on its manufacturing operations therein for a period of at least six (6) months or the restoration cost of which would exceed the total amount of insurance carried on the Leased Premises, or such that it would not be economically feasible for the Lessee to repair the Leased Premises, as determined by the Lessee in its discretion.

At any time after \_\_\_\_\_, 20\_\_\_\_, and at any time following redemption of the Series A Bonds, if the purchase options described above have not been exercised, the Lessee shall have the further unconditional right and option to purchase the Leased Premises.

The purchase price payable if the Lessee exercises its option to purchase the Leased Premises shall be the full amount necessary under the provisions of the Indentures to pay or redeem (on the first date thereafter on which all outstanding Series 2022 Bonds may be paid and redeemed after giving the necessary notice) all Series 2022 Bonds outstanding under the Indentures (including, without limitation, principal, interest, redemption premium, if any, and expenses of redemption), but after deduction of any amount then in the respective Bond Fund and available for such payment and redemption. In any case, if no Series 2022 Bonds shall be outstanding under the Indentures at the time of purchase, the purchase price of the Leased Premises shall be One Hundred Dollars (\$100.00).

In addition, if the Lease Agreement is terminated as a result of a default, the Lessee shall have the right and option to purchase the Leased Premises at any time during the period ending six months after the effective date of such termination, in which event the Purchase Price payable shall include all expenses and reasonable attorney's fees of the Issuer, ADFA and AEDC in connection with such termination.

#### **Additional Facilities and Sale of Land**

The progress of the Lessee's business may justify an expansion of the Project or the construction, acquisition and installation of additional industrial facilities and equipment (herein referred to as additional facilities) beyond those that can be financed out of the proceeds of the Series A Bonds and the Series B Bonds. Therefore, under the terms of the Lease Agreement:

(a) If the Lessee desires to construct additional facilities and wishes to finance these by the issuance of economic development revenue bonds, it shall notify the Issuer, ADFA and AEDC and the Issuer agrees to proceed to issue additional bonds, otherwise than under the Indenture, subject to the requirements of law to finance such additional facilities. In that event, the Issuer and the Lessee agree to execute a separate loan agreement or lease agreement covering the financing of such additional facilities upon similar terms and conditions as set forth in the Lease Agreement, subject to any changes or additions that may then be agreed upon by the Issuer and the Lessee, but there must be included provision for note payments in the amount necessary to provide for the payment of the principal of and interest on any such additional bonds, and the land involved in such expansion program shall automatically be withdrawn from

the Lease Agreement upon becoming subject to a separate loan or lease agreement between the Issuer and the Lessee.

(b) If for any reason the additional facilities cannot be financed under Arkansas bond statutes, or any then existing similar law, as provided in subparagraph (a) above, or if for any reasons the Lessee does not desire to so proceed, the Lessee shall have the right, upon notice to the Issuer, the Authority and the Commission, to require the Issuer, the Authority and the Commission to the extent described under the heading “Lands that May be Included in Expansion,” below, to release the land to be involved in said expansion program from the Lease Agreement free and clear of all encumbrances except those to which title was subject when encumbered by the Issuer.

#### **No Diminution in Lessee’s Obligation.**

The fact that the land involved in such expansion program shall cease to be subject to the Lease Agreement by virtue of becoming subject to a separate loan agreement shall not relieve, and shall not result in the relieving of the Lessee of its obligations to pay Lease payments or any of the other covenants and obligations on the part of the Lessee to be performed under the Lease Agreement, or result in any diminution thereof.

#### **Lands That May be Included in Expansion.**

The Lessee’s expansion program and the land subject to a separate mortgage may include only such portion of the land originally included in the Project as shall not at such time be improved with a building or buildings or other structure or structures or be necessary for adequate ingress and egress to and from said buildings and structures plus such additional land adjacent to said buildings and structures, as may be reasonably necessary for the proper and efficient use of such buildings and structures.

### **THE INDENTURE**

The following, in addition to information contained above under the headings INTRODUCTION and THE BONDS, is a summary of certain provisions of the Indenture for the Series A Bonds and the Series B Bonds. Reference is made to the Indenture for their complete provisions. This summary does not contain a summary of certain provisions of the trust indenture for the Series C Bonds.

**Creation of Funds; Deposit of Bond Proceeds.** (a) There is created and established as trust funds and accounts to be held by the Trustee the following:

- (i) Cost of Issuance Fund, and therein a Series A Account and a Series B Account therein;
- (ii) Bond Fund, and therein a Series A Account and a Series B Account;
- (iii) Debt Service Reserve Fund, and therein a Series A Account and a Series B Account; and
- (iv) Loan Fund, and therein a Series A Account and a Series B Account.

Trustee may also create such other Funds or Accounts as it deems necessary or desirable in the administration of the Indenture.

(b) The proceeds of the Series A Bonds shall be deposited into the Series A Account of the Costs of Issuance Fund, the Series A Account in the Bond Fund and the Series A Account in the Debt Service Reserve Fund and the balance of such proceeds shall be deposited in the Series A Account in the

Loan Fund all as set out in the Delivery Instructions. The proceeds of the Series B Bonds shall be deposited into the Series B Account of the Costs of Issuance Fund, the Series B Account in the Bond Fund and the Series B Account in the Debt Service Reserve Fund and the balance of such proceeds shall be deposited in the Series B Account in the Loan Fund all as set out in the Delivery Instructions.

(c) The Bonds and all payments by the Issuer under the Indenture are not and shall never become general obligations of the Issuer, but are special and limited obligations payable solely from the Trust Estate and other payments made by the Lessee under the Lease Agreement. Payments made pursuant to the Lease Agreement by the Lessee are to be made directly to the Trustee for the account of the Issuer and shall be deposited pursuant to the provisions of Section 3.03 of the Lease Agreement.

**Cost of Issuance Fund.** Trustee shall deposit into the Costs of Issuance Fund that portion of the Bonds required to be deposited therein pursuant to the Indenture. Moneys deposited into the Costs of Issuance Fund shall be expended to pay the Issuance Costs of said Bonds: (i) upon receipt by Trustee of requisitions signed by an Authorized Lessee Representative for any Issuance Costs not set forth in the Delivery Instructions or (ii) in accordance with the directions contained in the Delivery Instructions. Any funds remaining in the accounts in the Costs of Issuance Fund two (2) months after having been deposited therein shall be transferred to the respective account in the Bond Fund.

The Trustee shall use moneys in the accounts in the Cost of Issuance Fund to pay costs associated with the issuance of the respective Bonds or to reimburse the Issuer to the extent of payments made for such expenses previously paid. Before any payment shall be made for such expenses, there shall be filed with the Trustee a written request of the Issuer, stating:

- (i) The name of the person, firm or corporation to whom the payment is due;
- (ii) The amount to be paid;
- (iii) The purpose for which the expense was incurred; and
- (iv) That such person, firm or corporation has not previously been paid for such expense.

The Delivery Instructions executed contemporaneously with the Indenture shall constitute a “written request” of the Issuer in compliance with this section.

**Bond Fund.** There shall be deposited into the Series A Account of the Bond Fund as and when received:

- (a) The proceeds of the sale of the Series A Bonds less amounts set forth in Article V of the Indenture with respect to the Series A Bonds;
- (b) The payments and other moneys paid by the Lessee, pursuant to the Lease Agreement with respect to the Series A Bonds;
- (c) All amounts paid under the ADFA Guaranty or AEDC Guaranty;
- (d) All amounts paid under a Reimbursement Agreement which are not amounts paid to the Issuer as reimbursement for amounts paid under the ADFA Guaranty or AEDC Guaranty;
- (e) Amounts transferred to the Series A Account of the Bond Fund for redemption of the Bonds; and
- (g) All other moneys received by the Trustee under and pursuant to any of the provisions of the Indenture which are not directed to be paid in a fund other than the Series A Account of the Bond Fund.

There shall be deposited into the Series B Bond Account of the Bond Fund as and when received:

- (i) The proceeds of the sale of the Series B Bonds less amounts set forth in Article V of the Indenture with respect to the Series B Bonds;
- (ii) The payments and other moneys paid by the Lessee, pursuant to the Lease Agreement with respect to the Series B Bonds;
- (iii) Amounts transferred to the Series B Account of the Bond Fund pursuant to the provisions of Article V with respect to the Series B Bonds; and
- (iv) All other moneys received by the Trustee under and pursuant to any of the provisions of the Indenture which are not directed to be paid in a fund other than the Series B Account in the Bond Fund.

Moneys in the respective accounts of the Bond Fund will be used solely for the payment of the principal of and premium, if any, and interest on the Series A Bonds and Series B Bonds, respectively either at maturity or at redemption prior to maturity.

**Debt Service Reserve Funds.** There shall be deposited into the Series A Account in the Debt Service Reserve Fund by the Trustee an amount equal to the Series A Required Reserve pursuant to the Delivery Instructions received by the Trustee at the bond closing. There shall be deposited into the Series B Account of the Debt Service Reserve Fund by the Trustee an amount equal to the Series B Required Reserve pursuant to the Delivery Instructions received by the Trustee at the bond closing. The funds held in the accounts in the Debt Service Reserve Fund may be invested as provided in Section 7.01(b) of the Indenture, and any earnings from the investment of such accounts shall be deposited into the respective accounts in the Bond Fund. Each month as long as any of the Bonds are outstanding, the Trustee shall transfer from the respective accounts in the Debt Service Reserve Fund to the respective accounts in the Bond Fund any amounts that are in excess of the Required Reserves.

**Withdrawals from Debt Service Reserve Fund.** One day prior to each Interest Payment Date or any date on which Series A Bonds are due as a result of a call for redemption or maturity or as a result of the occurrence of an Event of Default, the Trustee shall determine if sufficient funds will be available in the Series A Bond Account in the Bond Fund to pay in full the principal, if any, and interest on the Series A Bonds due on the next day. One day prior to each Interest Payment Date or any date on which Series B Bonds are due as a result of a call for redemption or maturity or as a result of the occurrence of an Event of Default, the Trustee shall determine if sufficient funds will be available in the Series B Bond Account in the Bond Fund to pay in full the principal, if any, and interest on the Series B Bonds due on the next day. If sufficient funds will not be available in the respective accounts in the Bond Fund, the Trustee shall immediately transfer an amount equal to the amount of such deficiency from the respective accounts of the Debt Service Reserve Fund to the respective accounts in the Bond Fund. Any funds remaining in the accounts in the Debt Service Reserve Fund immediately prior to the payment of all the Bonds then Outstanding (whether at stated maturity or upon optional or mandatory redemption or as a result of acceleration), shall be transferred into the respective account in the Bond Fund and used as herein provided.

**Loan Fund.** Moneys in the Series A Account in the Loan Fund shall be disbursed to the Lessee or paid directly to vendors to pay Series A Project costs related to the Series A Bonds which shall include costs of acquisition, costs of construction, architect's and engineer's fees, payment of interim indebtedness of the Lessee incurred for Series A Project costs, and all other necessary expenses incidental to the completion of the Series A Project if approved by the Issuer. Moneys in the Series B Account of the Loan

Fund shall be disbursed to the Lessee or paid directly to vendors to pay Series B Project costs related to the Series B Bonds which shall include costs of acquisition and installation of equipment, engineer's fees, payment of interim indebtedness of the Lessee incurred for Series B Project costs, and all other necessary expenses incidental to the acquisition and installation of equipment for the Series B Project if approved by the Issuer. Such expenditures shall be paid in accordance with and pursuant to written draw requests which shall be signed by the Authorized Lessee Representative and approved by the Issuer. In addition to the requirements of **Section 8.01** of the Lease Agreement, draw requests shall be in substantially the form attached to the Lease Agreement as Exhibit C. Upon receipt of each draw request the Trustee shall issue its check upon the appropriate account in the Loan Fund payable to the person, firm or corporation designated in the draw request.

**Transfer to Bond Fund.** Whenever the Issuer shall notify the Trustee in writing that any balance remaining in the Series A Account of the Loan Fund will not be needed for completion of the Series A Project, the remaining balance (if the balance is at least \$5,000) shall be deposited into the Series A Account in the Bond Fund and used to redeem Series A Bonds on the first Interest Payment Date following notification. If the balance is less than \$5,000, it shall be transferred to the Series A Account in the Bond Fund and applied as a credit against a subsequent payment. Whenever the Issuer shall notify the Trustee in writing that any balance remaining in the Series B Account in the Loan Fund will not be needed for completion of the Series B Project, the remaining balance (if the balance is at least \$5,000) shall be deposited into the Series B Account in the Bond Fund and used to redeem Series B Bonds on the first Interest Payment Date following notification. If the balance is less than \$5,000, it shall be transferred to the Series B Account in the Bond Fund and applied as a credit against a subsequent payment.

**Fees Payable to ADFA and AEDC.** Pursuant to the terms of the Lease Agreement, the Lessee is required to pay to ADFA and AEDC its annual administrative fee for the ADFA Guaranty and the AEDC Guaranty, respectively. The Trustee shall calculate the amount of such administrative fee annually and give notice to ADFA, AEDC and the Lessee of the amounts due to be paid on or before January 31 of each year. The Trustee shall be responsible for collecting the annual administrative fee and remitting it to ADFA and AEDC, respectively. The Lessee is required to pay to ADFA and AEDC a final administrative fee upon final maturity of the Bonds. The Trustee shall calculate the amount of such final administration fee and give notice to ADFA, AEDC and the Lessee or amounts to be paid on or before the maturity of the Bonds. The amount of ADFA's annual administrative fee is equal to \_\_\_\_\_ percent (\_\_\_\_%) of the principal amount of the ADFA Guaranteed Bonds Outstanding each year and the amount of ADFA's final administrative fee is equal to \_\_\_\_ percent (\_\_\_\_%) of the principal amount of the ADFA Guaranteed Bonds Outstanding on the last day of the month preceding the final maturity date, multiplied by a fraction the numerator of which shall be the number of months elapsed since the preceding payment (rounded up to the next whole number), and the denominator of which shall be 12. The amount of AEDC's annual administrative fee is equal to \_\_\_\_\_ percent (\_\_\_\_%) of the principal amount of the AEDC Guaranteed Bonds Outstanding each year and the amount of AEDC's final administrative fee is equal to \_\_\_\_\_ percent (\_\_\_\_%) of the principal amount of the AEDC Guaranteed Bonds Outstanding on the last day of the month preceding the final maturity date, multiplied by a fraction the numerator of which shall be the number of months elapsed since the preceding payment (rounded up to the next whole number), and the denominator of which shall be 12.

**Investment of Moneys in Funds.** Subject to the restrictions of Section 4.11 of the Indenture, moneys on deposit with the Trustee shall be invested at the direction of the Issuer as follows:

- (a) The following obligations to be used as Permitted Investments for all purposes, including defeasance investments in refunding escrow accounts:

- (1) Cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in paragraph (2) below, or
- (2) Direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America (“Government Securities”).

(b) The following shall be “Permitted Investments” for all purposes other than defeasance investments in refunding escrow accounts:

- (1) obligations of any of the following federal agencies which obligations represent the full faith and credit of the United States of America, including:
  - Farm Credit System
  - Small Business Administration
  - Government National Mortgage Association (GNMA)
  - U.S. Department of Housing & Urban Development (PHA’s)
  - Federal Housing Administration;
- (2) direct obligations of any of the following federal agencies which obligations are not fully guaranteed by the full faith and credit of the United States of America:
  - Senior debt obligations rated “Aaa” by Moody’s and “AA+” by S&P issued by the Federal National Mortgage Association (FNMA) or Federal Home Loan Mortgage Corporation (FHLMC)
  - Obligations of the Resolution Funding Corporation (REFCORP)
  - Senior debt obligations of the Federal Home Loan Bank System;
- (3) U.S. dollar denominated deposit accounts, federal funds and banker’s acceptances with domestic commercial banks which have a rating on their short term certificates of deposit on the date of purchase of “A-1” or “A-1+” by S&P and “P-1” by Moody’s and maturing no more than 360 days after the date of purchase. (Ratings on holding companies are not considered as the rating of the bank);
- (4) commercial paper which is rated at the time of purchase in the single highest classification, “A-1+” by S&P and “P-1” by Moody’s and which matures not more than 360 days after the date of purchase;
- (5) investments in a money market fund rated “AAAm” or “AAAm-G” or better by S&P and/or rated in the highest rating category for this type of investment by Moody’s at the time of purchase;
- (6) pre-refunded Municipal Obligations defined as follows: Any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable on table or convertible at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and

- (A) which are rated, based on an irrevocable escrow account or fund (the “escrow”), in the highest rating category of S&P and Moody’s or any successors thereto; or
- (B) (i) which are fully secured as to principal and interest and redemption premium, if any, by an escrow consisting only of cash or Government Securities, which escrow may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and (ii) which escrow is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this paragraph on the maturity date or dates specified in the irrevocable instructions referred to above, as appropriate; Pre-refunded Municipal Obligations meeting the requirements of the subsection 6(B) may not be used as Permitted Investments for annual appropriation lease transaction without the prior written approval of S&P.
- (7) general obligations of states with a rating of at least “A2/A” or higher by both Moody’s and S&P.
- (c) The value of the above investment shall be determined as follows:

“Value,” which shall be determined as the end of each month, means that the value of any investments shall be calculated as follows:

- (1) the value of securities is computed on the basis of the closing bid price quoted by Interactive Data Systems or any other commercially reasonable provider commonly used in the industry; or
- (2) the valuation of the securities is performed by a nationally recognized and accepted pricing service whose valuation method consists of the composite average of various bid price quotes on the valuation date; or
- (3) the valuation of the collateral is based on the lower of two dealer binds on the valuation date. The dealers or their parent holding companies must be rated at least investment grade by S&P and Moody’s. In addition, the dealers must be market makers in the securities being value.
- (4) as to certificates of deposit and bankers acceptances: the face amount thereof, plus accrued interest; and
- (5) as to any investment not specified above: the value thereof established by prior agreement between the Issuer and the Trustee.

**Events of Default and Remedies.** Any of the following events is defined as and declared to be an “Event of Default” under the Indenture:

- (a) Default in the due and punctual payment of any interest on any Series A Bond or Series B Bond;

(b) Default in the due and punctual payment of the principal of, and premium, if any, on any Series A Bond or Series B Bond, whether at the stated maturity thereof, or upon proceedings for redemption thereof, or upon the maturity thereof by declaration;

(c) Default in the performance or observance of covenants, agreements or conditions on the Issuer's part to be performed in the Indenture, or in the Series A Bonds or Series B Bonds, and the continuance thereof for a period of fifteen (15) days after written notice to the Issuer by the Trustee or by the owners of not less than ten percent (10%) in aggregate principal amount of the Bonds outstanding.

(d) The occurrence of an "event of default" under the Lease Agreement.

(e) With respect to the Series A Bonds, failure at any time by ADFA or AEDC to honor any request for payment made in compliance with the provisions of the ADFA Guaranty or the AEDC Guaranty.

Upon the occurrence of an Event of Default, the Trustee may and upon the written request of the owners of twenty-five percent (25%) in aggregate principal amount of Bonds outstanding, shall, by notice in writing delivered to the Issuer, the Lessee (and with respect to the Series A Bonds, ADFA and AEDC), declare the principal of all Bonds then outstanding and the interest accrued thereon immediately due and payable and such principal and interest shall thereupon become and be immediately due and payable.

With respect to the Series A Bonds, upon the occurrence of an Event of Default described in clause (a), (b), (c), or (d) above, the Trustee shall, upon the written request of ADFA and AEDC, by notice in writing delivered to the Issuer and the Lessee, declare the principal of all Series A Bonds then outstanding and the interest accrued thereon immediately due and payable, and such principal and interest shall thereupon become and be immediately due and payable from payments made under the ADFA Guaranty and the AEDC Guaranty.

The Trustee may in its discretion waive any Event of Default and its consequences and rescind any declaration of maturity of principal, and shall do so upon the written request of the owners of (i) 50% in aggregate principal amount of all the Bonds outstanding in respect of which default in the payment of principal and/or interest exists, or (ii) 50% in principal amount of all the Bonds outstanding in the case of any other default, provided, however, that there shall not be waived (a) any Event of Default in the payment of the principal of any Bonds issued and outstanding at the date of maturity specified therein or (b) any default in the payment of the interest or of Bond Funds moneys, unless prior to such waiver or rescission all arrears of interest, with interest at the rate borne by the Bonds in respect of which such default shall have occurred on overdue installments of interest or all arrears of Bond Funds payments, as the case may be, and all expenses of the Trustee and Paying Agent, shall have been paid or provided for, and in case of any such waiver or rescission or in case any proceeding taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely, then and in every such case the Issuer, Trustee and the bondowners shall be restored to their former positions and rights thereunder respectively; but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon.

**Discharge of Lien.** If the Issuer shall pay or cause to be paid to the owners of the Bonds the principal and interest to become due thereon at the times and in the manner stipulated therein, and if the Issuer shall keep, perform and observe all and singular the covenants and promises in the Bonds and in the Indenture expressed as to be kept, performed and observed by it on its part, then these presents and the estate and rights hereby granted shall cease, determine and be void, and thereupon the Trustee shall cancel and discharge the lien of the Indenture, and execute and deliver to the Issuer such instruments in writing as shall be requisite to satisfy the lien thereof, and reconvey to the Issuer the estate conveyed by the Indenture,

and assign and deliver to the Issuer the estate conveyed by the Indenture, and assign and deliver to the Issuer and property at the time subject to the lien of the Indenture which may then be in its possession, including trust funds, except funds held by it for the payment of the principal of and interest on the Bonds.

Any Bond shall be deemed to be paid when payment of the principal of and premium, if any, and interest on such Bond (whether at maturity or upon redemption or otherwise), either shall have been made or caused to be made in accordance with the terms of the Indenture, or (ii) shall have been provided for by irrevocably depositing with the Trustee, in trust and irrevocably setting aside exclusively for such payment, (1) moneys sufficient to make such payment or (2) Government Securities, maturing as to principal and interest in such amount and at such times as will provide sufficient moneys to make such payments, and all necessary and proper fees, compensation and expenses of the Trustee and any paying agent pertaining to the Bonds with respect to which such deposit is made and all other liabilities of the Lessee under the Agreement shall have been paid or the payment thereof provided for to the satisfaction of the Trustee.

The Issuer may at any time surrender to the Trustee for cancellation by it any bonds previously authenticated and delivered hereunder, which the Issuer may have acquired in any manner whatsoever, and such Bonds upon such surrender and cancellation, shall be deemed to be paid and retired.

**Supplemental Indenture.** The Trustee may enter into a supplemental indenture without the approval of the holders of the Bonds as follows:

- (a) to cure any ambiguity, inconsistency or formal defect or omission in the Indenture;
- (b) to grant to or confer to impose upon the Trustee for the benefit of the Bondowners any additional rights, remedies, powers, authority, security, liabilities or duties which may lawfully be granted, conferred or imposed;
- (c) to add to the covenants and agreements of, and limitations and restrictions upon, the Issuer in the Indenture other covenants, agreements, limitations and restrictions to be observed by the Issuer which are not contrary to or inconsistent with the Indenture;
- (d) to confirm, as further assurance, any pledge under, and the subjection to any claim, lien or pledge created or to be created by the Indenture, of the revenues of the Issuer from the Lease Agreement or of any other moneys, securities or funds;
- (e) to comply with the requirements of the Trust Indenture Act of 1939, as from time to time amended; or
- (f) to authorize the issuance and sale of one or more series of Additional Bonds; or
- (g) to modify, alter, amend or supplement the Indenture in any other respect which, in the opinion of Bond Counsel, is not materially adverse to the Bondowners which in the judgment of the Trustee in reliance on an opinion of Bond Counsel, is not to the prejudice of the Trustee, and which does not involve a change described in clause (a), (b), (c), (d) or (e) of Section 11.02 of the Indenture.

Subject to the terms and provisions contained in this Section, and not otherwise, the owners of not less than two-thirds (2/3) in aggregate principal amount of the Bonds then Outstanding shall have the right, from time to time, anything contained in the Indenture to the contrary notwithstanding, to consent to and approve the execution by the Issuer and the Trustee of such indenture or indentures supplemental to the Indenture as shall be deemed necessary and desirable by the Issuer for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in the

Indenture or in any supplemental indenture; provided, however, that without the consent of all of the holders of all of the Bonds then Outstanding under the Indenture, nothing in the Indenture contained shall permit or be construed as permitting (a) an extension of the maturity of the principal of or the interest on any Bond issued under the Indenture, or (b) a reduction in the principal amount of any Bond or redemption premium or the rate of interest thereon, or (c) the creation of any lien ranking prior to or on a parity with the lien of the Indenture on the Trust Estate, except as expressly permitted in the Indenture, or (d) a privilege or priority of any Bond or Bonds over any other Bond or Bonds or (e) a reduction in the aggregate principal amount of the Bonds required for consent to such supplemental indenture. Nothing contained in the Indenture, however, shall be construed as making necessary the approval of Bondowners of the execution of any supplemental indenture as provided in Section 11.01 of the Indenture.

**Amendments to Lease Agreement.** The Indenture provides that the Trustee may consent to any amendment, change or modification of Lease Agreement to cure any ambiguity or formal defect or omission or to make any other change, which in the reasonable judgment of the Trustee, in reliance on an opinion of Bond Counsel, is not to the prejudice of the Trustee or the bondholders. The Trustee shall not consent to any other amendment, change or modification of the Lease Agreement without the approval or consent of the Issuer and holders of not less than two-thirds in the aggregate principal amount of the Bonds at the time Outstanding under such Indenture.

**APPENDIX D**  
**FORM OF CONTINUING DISCLOSURE AGREEMENT**

[TO BE INSERTED]

**TRUST INDENTURE**

**between**

**CITY OF JONESBORO, ARKANSAS  
as Issuer**

**and**

**\_\_\_\_\_ BANK  
as Trustee**

**for**

**\$11,000,000  
CITY OF JONESBORO, ARKANSAS  
Taxable Economic Development Revenue Bonds  
(ADFA/AEDC Guaranty Programs)  
(Colson Caster Project)  
Series 2022A**

**\$4,000,000  
CITY OF JONESBORO, ARKANSAS  
Taxable Economic Development Revenue Bonds  
(Colson Caster Project)  
Series 2022B**

**Dated: \_\_\_\_\_, 2022**



**MITCHELL, WILLIAMS, SELIG, GATES & WOODYARD, P.L.L.C.  
100 EAST HUNTINGTON AVENUE, SUITE C  
JONESBORO, AR 72401**

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## TRUST INDENTURE

THIS INDENTURE executed as of the \_\_\_\_ day of \_\_\_\_\_, 2022, by and between **CITY OF JONESBORO, ARKANSAS**, a city of the first class and political subdivision of the State of Arkansas (the “Issuer”), duly existing under the laws of the State of Arkansas, as party of the first part, and \_\_\_\_\_ **BANK** (the “Trustee”), as party of the second part;

### WITNESSETH:

WHEREAS, the City is authorized by Title 14, Chapter 164, Subchapter 2 of the Arkansas Code Annotated (the “Act”) to issue the bonds herein authorized for the purpose of financing the costs of acquiring, constructing and equipping lands, buildings or facilities for industrial enterprises as defined in the Act; and

WHEREAS, pursuant to and in accordance with the Act, the Issuer proposes to issue its economic development revenue bonds under the Act and to loan the proceeds thereof to Colson Caster, LLC, a Delaware limited liability company (the “Lessee”), for the purposes of financing the costs of acquiring, constructing, and equipping certain industrial facilities located in the Jonesboro, Arkansas, such loans to be upon the terms and conditions set forth in the Lease Agreement dated as of \_\_\_\_\_, 2022, by and between the Issuer and the Lessee (the “Agreement”); and

WHEREAS, permanent financing of the Project costs, necessary costs and expenditures incidental thereto and the cost of the issuance of bonds, is being furnished by the Issuer issuing its Taxable Economic Development Revenue Bonds (ADFA/AEDC Guaranty Programs) (Colson Caster Project) Series 2022A under the provisions of the Act in the principal amount of Eleven Million and No/100 Dollars (\$11,000,000) (the “Series A Bonds”); and

WHEREAS, the Arkansas Economic Development Commission (“AEDC”) proposes to guarantee payment of \$5,000,000 in principal amount of and interest on the Series A Bonds (the “AEDC Guaranty”) pursuant to Act No. 173 of 1967, as amended (the “AEDC Guaranty Act”), under its AEDC Guaranty program by issuing the AEDC Guaranty, as more fully described below (the “AEDC Guaranteed Bonds”); and

WHEREAS, the Arkansas Development Finance Authority (“ADFA”) proposes to guarantee payment of \$6,000,000 in principal amount of and interest on the Bonds (the “ADFA Guaranty” and with the AEDC Guaranty, the “Guaranties”) pursuant to Act No. 505 of the Acts of Arkansas of 1985, as amended (the “ADFA Guaranty Act”), under its ADFA Guaranty program by issuing the ADFA Guaranty, as more fully described below (the “ADFA Guaranteed Bonds”); and

WHEREAS, the Series A Bonds are to be sold and issued in the principal amount, dated, bearing interest, maturing and subject to redemption as hereinafter in this Indenture set forth in detail; and

WHEREAS, permanent financing for the acquisition and installation of certain Equipment related to the Series A Project and the cost of the issuance of bonds, is being furnished by the Issuer issuing its Taxable Economic Development Revenue Bonds (Colson Caster Project) Series 2022B

under the provisions of the Act in the principal amount of Four Million and No/100 Dollars (\$4,000,000) (the “Series B Bonds” and together with the Series A Bonds, the “Bonds”); and

WHEREAS, the Series B Bonds are not guaranteed in any way by the Guaranties but are issued on a parity of security with the Series A Bonds, as more particularly described herein; and

WHEREAS, the execution and delivery of this Trust Indenture (the “Trust Indenture” or the “Indenture”) and the issuance of the Bonds have been in all respects duly and validly authorized by ordinance of the City Council of the Issuer, adopted and approved on the \_\_\_\_ day of \_\_\_\_, 2022 (the “Authorizing Ordinance”); and

WHEREAS, all requirements of law have been fully complied with, and all other acts and things necessary to make the Bonds, when executed by the Issuer and authenticated and delivered by Trustee, duly issued, valid and binding special limited obligations of the Issuer, and all other acts and things necessary to constitute this Indenture a valid, binding and legal instrument for the security of the Bonds have been done and performed.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

#### **GRANTING CLAUSE FOR SERIES A BONDS**

That the Issuer, in consideration of the premises and the acceptance by the Trustee of the Trusts hereby created, of the purchase and acceptance of the Series A Bonds by the Owners thereof, and of other good and valuable consideration, the receipt of which is hereby acknowledged for the purpose of securing the payment of the principal of, premium, if any, and interest on the Series A Bonds at any time Outstanding under this Indenture according to their tenor and effect and to declare the terms and conditions upon and subject to which the Series A Bonds are issued, authenticated, delivered, secured and held, and in order to secure the faithful performance and observance by the Issuer of all the covenants and conditions set forth herein and in the Series A Bonds, does adopt, and will execute and deliver this Indenture and does hereby grant, bargain, sell, convey, assign, pledge unto and set over and confirm and grant a security interest in the following to the Trustee, and to its successors and their assigns forever, all and singular, the following described properties (which are sometimes herein referred as the “Series A Trust Estate”), *to wit*:

A. All rights of the Issuer under the terms of the Lease Agreement between the Issuer and the Lessee, including without limitation, all the rights and interest of the Issuer in and to the Lease Agreement (except the rights of the Issuer to indemnification and the payment of certain fees) and all Revenues (as herein defined) and the proceeds thereof; provided, however, that the rights and interest of the Issuer, in and to the Lease Agreement have been pledged by the Issuer on a *pari passu* basis for the benefit of the holders of the Series B Bonds and on a subordinate basis for the benefit of the holders of the Issuer’s Taxable Economic Development Revenue Bonds (Colson Caster Project). Series 2022C (the “Series C Bonds”);

B. All revenues and all moneys and securities from time to time held by Trustee under the terms of this Indenture and any and all other property of every type and nature from time to time hereafter by delivery or by writing of any kind conveyed, pledged, assigned or transferred, as and for additional security hereunder by Issuer, or by anyone in its behalf or with its written consent

to Trustee which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof;

C. All Guaranty Payments paid under the ADFA Guaranty or the AEDC Guaranty; and

D. Any other property hereinafter pledged to or coming into the possession of the Trustee.

TO HAVE AND TO HOLD all and singular, the Series A Trust Estate and the rights and privileges hereby pledged, conveyed and assigned by the Issuer, or intended so to be, unto Trustee and its successors and assigns forever, in trust, nevertheless, for the equal and pro rata benefit and security of each and every Owner of the Series A Bonds, issued and to be issued hereunder, without preference, priority or distinction as to participation in the lien, benefit and protection hereof of one Series A Bond over or from the others for any reason whatsoever, except as herein otherwise expressly provided, so that each and all of such Series A Bonds shall have the same right, lien and privilege under this Indenture and shall be equally secured hereby with the same effect as if the same had all been issued simultaneously with the delivery hereof and were expressed to be mature on one and the same date.

#### **GRANTING CLAUSE FOR SERIES B BONDS**

That the Issuer, in consideration of the premises and the acceptance by the Trustee of the Trusts hereby created, of the purchase and acceptance of the Series B Bonds by the Owners thereof, and of other good and valuable consideration, the receipt of which is hereby acknowledged for the purpose of securing the payment of the principal of, premium, if any, and interest on the Series B Bonds at any time Outstanding under this Indenture according to their tenor and effect and to declare the terms and conditions upon and subject to which the Series B Bonds are issued, authenticated, delivered, secured and held, and in order to secure the faithful performance and observance by the Issuer of all the covenants and conditions set forth herein and in the Series B Bonds, does adopt, and will execute and deliver this Indenture and does hereby grant, bargain, sell, convey, assign, pledge unto and set over and confirm and grant a security interest in the following to the Trustee, and to its successors and their assigns forever, all and singular, the following described properties (which are sometimes herein referred as the "Series B Trust Estate"), *to wit*:

A. All rights of the Issuer under the terms of the Lease Agreement between the Issuer and the Lessee, including without limitation, all the rights and interest of the Issuer in and to the Lease Agreement (except the rights of the Issuer to indemnification and the payment of certain fees) and all Revenues (as hereinafter defined) and the proceeds thereof; provided, however, that the rights and interest of the Issuer, in and to the Lease Agreement have been pledged by the Issuer on a *pari passu* basis for the benefit of the holders of the Series A Bonds and on a subordinate basis for the benefit of the holders of the Series C Bonds;

B. All revenues and all moneys and securities from time to time held by Trustee under the terms of this Indenture and any and all other property of every type and nature from time to time hereafter by delivery or by writing of any kind conveyed, pledged, assigned or transferred, as and for additional security hereunder by Issuer, or by anyone in its behalf or with its written consent

to Trustee which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof;

- C. The Mortgaged Property (as hereinafter defined);
- D. All of Lessee's right, title and interest in and to the leasehold interest in the Mortgaged Property;
- E. All of Lessee's right, title and interest in and to the Equipment (as hereinafter defined); and
- F. [The Parent Guaranty (as hereinafter defined);]
- G. Any other property hereinafter pledged to or coming into the possession of the Trustee.

TO HAVE AND TO HOLD all and singular, the Series B Trust Estate and the rights and privileges hereby pledged, conveyed and assigned by the Issuer, or intended so to be, unto Trustee and its successors and assigns forever, in trust, nevertheless, for the equal and pro rata benefit and security of each and every Owner of the Series B Bonds, issued and to be issued hereunder, without preference, priority or distinction as to participation in the lien, benefit and protection hereof of one Series B Bond over or from the others for any reason whatsoever, except as herein otherwise expressly provided, so that each and all of such Series B Bonds shall have the same right, lien and privilege under this Indenture and shall be equally secured hereby with the same effect as if the same had all been issued simultaneously with the delivery hereof and were expressed to be mature on one and the same date.

ALL SUBJECT, NEVERTHELESS, to Permitted Encumbrances, as defined in the Lease Agreement.

PROVIDED, HOWEVER, that if Issuer, its successors or assigns, shall well and truly cause the Bonds and the interest due or to become due thereon, and premium, if any, to be paid solely and only from the source mentioned in the Bonds, respectively, according to the true intent and meaning thereof, and shall well and truly keep, perform and observe all of the covenants and conditions pursuant to the terms of this Indenture to be kept, performed and observed by it, and shall comply with all conditions precedent to the satisfaction and discharge of this Indenture, and shall cause to be paid to Trustee and any paying agents all sums of money due or to become due to them in accordance with the terms and provisions hereof, then this Indenture and the rights hereby granted shall cease, determine and be void, and Trustee in such case, on demand of the Lessee, upon payment by the Lessee to Trustee of its reasonable fees, costs and expenses, shall execute and deliver to Issuer and the Lessee in accordance with the terms hereof such discharges or satisfactions as shall be requested and convey to the Lessee all interests held by Trustee pursuant to the terms hereof, otherwise, this Indenture to be and remain in full force and effect.

THIS INDENTURE FURTHER WITNESSETH, and it is expressly declared, that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and all property hereby assigned and pledged and the income, revenues and receipts and other sums of money payable or

receivable under the Lease Agreement, hereby assigned and pledged are to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreement, trusts, uses and purposes as hereinafter expressed, and the Issuer does hereby agree and covenant, with the Trustee and the respective holders from time to time of the Bonds, as follows:

## **ARTICLE I. DEFINITIONS**

**Section 1.01. Definitions.** In addition to the words and terms elsewhere defined in this Indenture, the following words and terms as used in this Indenture shall have the following meanings:

“Act” means Title 14, Chapter 164, Subchapter 2 of the Arkansas Codes of 1987 Annotated, as amended, which authorizes the issuance of bonds by the Issuer for the purposes provided in this Indenture.

“ADFA” means the Arkansas Development Finance Authority.

“ADFA Guaranty” means the Guaranty Agreement for Payment of Economic Development Revenue Bonds dated \_\_\_\_\_, 2022, executed by ADFA in favor of the Trustee, pursuant to which ADFA guarantees payment of the principal and interest on the ADFA Guaranteed Bonds.

“ADFA Guaranteed Bonds” means the aggregate principal amount of \$6,000,000 of the Series A Bonds the payment of which are guaranteed by ADFA pursuant to the ADFA Guaranty.

“ADFA Guaranteed Bonds” means the aggregate principal amount of \$5,000,000 of the Series A Bonds the payment of which are guaranteed by AEDC pursuant to the AEDC Guaranty.

“AEDC” means the Arkansas Economic Development Commission.

“AEDC Guaranty” means the Guaranty Agreement for Payment of Economic Development Revenue Bonds, dated \_\_\_\_\_, 2022, executed by the AEDC in favor of the Trustee, pursuant to which the AEDC guarantees payment of the principal and interest on the AEDC Guaranteed Bonds.

“Assignment of Rents and Leases” means that certain Absolute Assignment of Rents and Leases, dated the date hereof, executed by the Issuer in favor of the Collateral Agent securing the Series B Bonds and the Guaranties on a parity basis and granting a first priority lien on any and all rents on property associated with the Project.

“Authorized Denomination” means minimum aggregate principal amounts of \$5,000 and integral multiples of \$5,000 in excess thereof.

“Authorized Lessee Representative” means a person at the time designated to act on behalf of the Lessee by written certificate furnished to Trustee and Issuer containing the specimen signature of such person and signed on behalf of the Lessee by one of its authorized signatories, which certificate may designate an alternate or alternates, and may designate different Authorized Lessee Representatives to act for the Lessee with respect to different sections of the Lease Agreement and this Indenture. Any action or instrument required to be taken or executed by the Lessee must be

authorized or executed by an Authorized Lessee Representative.

“Bond Counsel” means with respect to the Bonds, Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C., Jonesboro, Arkansas, or any other nationally recognized bond counsel selected by the Issuer or the Trustee, as applicable.

“Bond Fund” means the fund and accounts therein of the Issuer created by Section 5.01 of this Indenture into which the funds specified in Article V are to be deposited and out of which disbursements are to be made as expressly authorized and directed by this Indenture.

“Bonds” or “bonds” mean collectively, the City of Jonesboro, Arkansas Taxable Economic Development Revenue Bonds (ADFA/AEDC Guaranty Programs) (Colson Caster Project), Series 2022A issued under and secured by this Indenture, in the principal amount of \$11,000,000 and the City of Jonesboro, Arkansas Taxable Economic Development Revenue Bonds (Colson Caster Project), Series 2022B issued under and secured by this Indenture, in the principal amount of \$4,000,000.

“Book Entry Bonds” means Bonds for which a securities depository or its nominee is the Bondholder.

“City Clerk” means the person holding the office and performing the duties of City Clerk of the Issuer.

“Code” means the Internal Revenue Code of 1986, as amended, of the United States of America.

“Collateral Agent” means the collateral agent appointed pursuant to the Intercreditor Agreement. The initial Collateral Agent is First Security Bank.

“Date of Delivery” means \_\_\_\_\_, 2022.

“Delivery Instructions” means the written request and authorization given by the Issuer in accordance with Section 5.01(b) of this Indenture on the date of the bond closing directing the use and deposit of the proceeds of the Bonds.

“Equipment” means the machinery, equipment, furnishings and personal property comprising the Projects, including specifically, without limitation, the machinery, equipment, furnishings and personal property financed and/or refinanced with the proceeds of the Bonds and any other existing machinery, equipment, furnishings and personal property pledged as security for the Series B Bonds and the Guaranties, as more particularly described in the Security Agreement.

“Guaranties” mean collectively the ADFA Guaranty and the AEDC Guaranty.

“Guaranty Payments” means all amounts payable under the Guaranties.

“Indenture” means this Trust Indenture with all indentures supplemental hereto.

“Intercreditor Agreement” means that certain Intercreditor Agreement, dated the date hereof, between the Trustee, the Issuer, ADFA, AEDC and the Owner of the Series B Bonds pursuant to which ADFA, AEDC and the Owner of the Series B Bonds will share lien and security created by the Security Documents on a ratable parity basis for the Series B Bonds and the Guaranties.

“Issuer” means the City of Jonesboro, Arkansas, a city of the first class and a political subdivision of the State of Arkansas.

“Lease Agreement” means the Lease Agreement between the Issuer and the Lessee, providing for a loan to the Lessee for payment of the Project costs.

“Leasehold Mortgage” means that certain Leasehold Mortgage, Security Agreement and Fixture Filing, dated the date hereof, in favor of the Collateral Agent, securing the Series B Bonds and the Guaranties on a parity of security basis, comprising a first priority mortgage on the Lessee’s leasehold interest in the Mortgaged Property.

“Lessee” means Colson Caster, LLC, a Delaware limited liability company.

“Loan” means the loan from the Issuer to the Lessee evidenced and governed by the Lease Agreement.

“Loan Fund” means the fund and accounts therein created by Section 5.01 of this Indenture into which the portion of the proceeds of the sale of the Series A Bonds specified in Section 5.06 hereof is to be deposited and out of which disbursements are to be made in the manner and for the purposes specified in Article V of this Indenture.

“Mayor” means the Mayor of the Issuer.

“Mortgage” means that certain Mortgage, Security Agreement and Fixture Filing, dated the date hereof, in favor of the Collateral, securing the Series B Bonds and the Guaranties on a parity of security basis, comprising a first priority mortgage on the Mortgaged Property.

“Mortgaged Property” means the real property described in the Mortgage and the Leasehold Mortgage, as it may be amended from time to time, with all improvements, buildings and fixtures located thereon.

“Outstanding” means all Bonds which have been duly authenticated and delivered by the Trustee hereunder, except:

(a) Bonds theretofore canceled by Trustee or delivered to Trustee for cancellation;

(b) Bonds for the payment or redemption of which cash funds (or Federal Securities, to the extent permitted in Section 12.01 hereof) have been deposited with the Trustee; *provided, that*, if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given or arrangements satisfactory to Trustee shall have been made therefor, or waiver of such notice satisfactory in form to Trustee shall have been filed with Trustee, and provided further that prior to such redemption or payment, the Bonds

to be paid or redeemed shall be deemed to be Outstanding for the purpose of replacement under Section 2.07 hereof and transfer and exchange under Section 2.08 hereof;

(c) Bonds issued hereunder, to the extent that such Bonds are no longer deemed to be Outstanding under the provisions of this Indenture; and

(d) Bonds in lieu of which others have been authenticated under Section 2.08.

“Owner” or “Bondowner” or “owner of the bonds” or “Bondholder” means the Person who owns a Bond, provided that, pursuant to Section 2.09 hereof, the Person in whose name a Bond is registered in the bond register shall be regarded for all purposes as such owner.

[“Parent Guaranty” means the Unlimited Guaranty Agreement of even date herewith executed by Colson Group Holdings, LLC (“Holdings”) as parent entity of the Lessee evidencing Holdings unlimited payment and performance guarantee of the obligations of the Lessee under the Lease Agreement.]

“Paying Agent” means the bank or trust company named by the Issuer as the place at which the principal of and interest on the Bonds is payable. The original Paying Agent is the Trustee. References to Paying Agent include any alternate Paying Agent.

“Person” includes natural persons, firms, associations, corporations and public bodies.

“Project” means collectively, the Series A Project and the Series B Project.

“Purchasers” means the original purchasers of the Bonds.

“Record Date” means the fifteenth calendar day of the month preceding the month in which the interest payment date occurs.

“Registrar” means the registrar, initially the Trustee, appointed by Issuer at the direction of the Lessee, and any successor registrar appointed under this Indenture.

“Reimbursement Agreement” means the Guaranty Agreement for Reimbursement of Advanced Funds between AEDC, ADFA and the Lessee under which the Lessee agrees to reimburse ADFA and/or AEDC for payments made pursuant to the Guaranties.

“Required Reserves” means collectively, the Series A Required Reserve and the Series B Required Reserve.

“Revenues” means the income, including penalties and interest, derived by the Issuer under the Lease Agreement.

“Securities Depository” means a person that is registered as a clearing agency under Section 17A of the Securities Exchange Act of 1934 or whose business is confined to the performance of the functions of a clearing agency with respect to exempted securities, as defined in Section 3(a)(12) of the Securities Exchange Act of 1934 for the purposes of Section 17A thereof.

“Security Agreement” means that certain Security Agreement, dated the date hereof, by and between the Issuer and the Collateral Agent, securing the Series B Bonds and the Guaranties on a parity basis and comprising a continuing first priority security interest in and to all of Lessee’s right, title and interest in and to the Equipment comprising the Project and.

“Security Documents” means collectively, the Mortgage, the Leasehold Mortgage, the Security Agreement, the Assignment of Rents and Leases, the Parent Guaranty and any UCC-1 financing statements, if any.

“Series A Bonds” means the City of Jonesboro, Arkansas Taxable Industrial Development Revenue Bonds (ADFA/AEDC Guaranty Programs) (Colson Caster Project) Series 2022A.

“Series A Project” means the land, improvements and facilities being financed out of the proceeds of the Series A Bonds, together with other expenses in connection therewith, including architectural and engineering fees, ADFA’s and AEDC’s Guaranty Fees, and the costs of the issuance of the Series A Bonds.

“Series A Required Reserve” means an amount equal to two months’ maximum debt service on the Series A Bonds.

“Series A Trust Estate” means trust estate set forth and defined in the granting clauses for the Series A Bonds hereof.

“Series B Bonds” means the City of Jonesboro, Arkansas Taxable Industrial Development Revenue Bonds (Colson Caster Project) Series 2022B.

“Series B Project” means the acquisition and installation of equipment being financed out of the proceeds of the Series B Bonds, together with other expenses in connection therewith, including architectural and engineering fees, if any, and the costs of the issuance of the Series B Bonds.

“Series B Required Reserve” means an amount equal to two months’ maximum debt service on the Series B Bonds.

“Series B Trust Estate” means trust estate set forth and defined in the granting clauses for the Series B Bonds hereof.

“State” means the State of Arkansas.

“Temporary Bonds” means bonds issued pursuant to Section 2.13 hereof if definitive bonds are not available upon the initial delivery of the Bonds to the Purchasers.

“Trust Estates” means collectively, the Series A Trust Estate and the Series B Trust Estate.

“Trustee” means the Trustee for the time being, whether original or successor, with the original Trustee being \_\_\_\_\_, an Arkansas banking corporation organized and operating under the laws of Arkansas and authorized to exercise corporate trust powers in the State of Arkansas, and being duly qualified to accept and administer the trusts hereby created, and having a corporate trust office located in \_\_\_\_\_, Arkansas. The Trustee is also a Paying Agent and Registrar.

**Section 1.02. Use of Words.** Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the word “bond,” “owner,” “holder,” and “person” shall include the plural, as well as the singular, number.

## **ARTICLE II. THE BONDS**

**Section 2.01. Authorization.** In accordance with and subject to the terms, conditions and limitations established in this Indenture, the Series A Bonds are hereby authorized in the aggregate principal amount of \$11,000,000, and the Series B Bonds are hereby authorized in the aggregate principal amount of \$4,000,000. No Bonds may be issued under the provisions of this Indenture except in accordance with this Article.

**Section 2.02. Details of Bonds.** The Series A Bonds shall be designated “City of Jonesboro, Arkansas Taxable Economic Development Revenue Bonds” (ADFA/AEDC Guaranty Programs) (Colson Caster Project) Series 2022A (the “Series A Bonds”), and shall be in the principal amount stated of Eleven Million and No/100 Dollars (\$11,000,000). The Series B Bonds shall be designated “City of Jonesboro, Arkansas Taxable Economic Development Revenue Bonds” (Colson Caster Project) Series 2022B (the “Series B Bonds” and together with the Series A Bonds, the “Bonds”), and shall be in the principal amount stated of Four Million and No/100 Dollars (\$4,000,000). The Bonds will be dated \_\_\_\_\_, 2022, and interest thereon shall be payable as set forth in the form Bond heretofore set forth in this Indenture. The Bonds shall be registered bonds, without coupons, in denominations of \$5,000 or integral multiples thereof and the principal amount shall be payable, unless sooner redeemed in the manner provided in this Indenture, as set forth in the form of Bond heretofore set forth in this Indenture.

**Section 2.03. Maturity.** The Bonds shall mature on \_\_\_\_\_ 1 of each of the following years, and shall mature in the respective principal amounts and bear interest payable semiannually on the first day of each \_\_\_ 1, and \_\_\_\_\_ 1, commencing \_\_\_\_\_ 1, 20 \_\_\_, at the respective rates per annum, set forth opposite each such year in the following table:

### **Series A Bonds**

<b>MATURITY</b> <b>( _____ 1)</b>	<b>PRINCIPAL AMOUNT</b>	<b>INTEREST RATE</b>
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**Series B Bonds**

<b>MATURITY</b> <b>( _____ 1)</b>	<b>PRINCIPAL AMOUNT</b>	<b>INTEREST RATE</b>
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**Section 2.04. Execution of Bonds.** The Bonds shall be executed on behalf of the Issuer by the Mayor (by his or her original or facsimile signature) and the City Clerk (by his or her original or facsimile signature) thereof and shall have impressed thereon the seal of the Issuer. The Mayor and the City Clerk shall file the certificates required by the Uniform Facsimile Signature Public Officials Act (Arkansas Code of 1987 Annotated, Title 21, Chapter 10) and otherwise comply with the provisions of that Act, and the Mayor and the City Clerk's facsimile signatures shall have the same force and effect as if they had personally signed. The Bonds, together with interest thereon, shall be payable from the Bond Fund, as hereinafter set forth, and shall be a valid claim of the Owners thereof only against such fund and the Revenues pledged to such fund, which Revenues are hereby pledged and mortgaged for the payment of the Bonds and shall be used for no other purpose than to pay the principal of and interest on the Bonds, and the Trustee's, the Paying Agent's and Registrar's fees, except as may be otherwise expressly authorized in this Indenture. The Series A Bonds are further payable from the Guaranty Payments made by ADFA and AEDC under the Guaranties. The Bonds and interest thereon shall constitute special obligations of the Issuer; provided, however, the Bonds are not general obligations of and shall not constitute an indebtedness for which the faith and credit of the State, or any of its revenues are pledged and shall not be secured by a mortgage or lien on any lands or buildings belonging to the State or the Issuer. In case any officer whose signature or facsimile of whose signature shall appear on the Bonds shall cease to be such officer before the delivery of such Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until delivery.

**Section 2.05. Authentication.** Only such Bonds as shall have endorsed thereon a Certificate of Authentication substantially in the form set forth in Exhibit A-1 and Exhibit A-2, duly executed by the Trustee shall be entitled to any right or benefit under this Indenture. No Bond shall be valid and obligatory for any purpose unless and until such Certificate of Authentication shall have been duly executed by the Trustee, and such Certificate of the Trustee upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Indenture. The Trustee's Certificate of Authentication on any Bond shall be deemed to have been executed if signed by an authorized officer of the Trustee, but it shall not be necessary that the same officer sign the Certificate of Authentication on all of the Bonds which may be issued hereunder.

Upon receipt of the following instruments, Trustee shall authenticate the Bonds by executing the certificate of authentication appearing on each Bond:

- (a) A duly certified copy of the Authorizing Ordinance of the Issuer authorizing the issuance of the Bonds;
- (b) An original, duly executed counterpart or a duly certified copy of this Indenture, the Lease Agreement and the Continuing Disclosure Agreement;
- (c) Delivery Instructions from the Issuer to the Trustee stating the initial purchase price of the Bonds and requesting and authorizing Trustee: (i) to authenticate the Bonds; (ii) to deliver the Bonds to the initial purchasers thereof upon receipt of the purchase price therefor; and (iii) to deposit the proceeds from the sale of the Bonds as provided in Article IV of this Indenture;
- (d) The Guaranties;

(e) Certifications of the Lessee signed by an Authorized Lessee Representative;  
and

(f) Such other documents and opinions of counsel as Issuer, Underwriter, Trustee or Bond Counsel may reasonably request.

**Section 2.06. Form of Bond.** The Bonds issued under this Indenture shall be substantially in the form set forth on Exhibit A-1 and Exhibit A-2 with such appropriate variations, omissions and insertions as are permitted or required by this Indenture.

**Section 2.07. Delivery of Bonds.** Upon the execution and delivery of this Indenture, the Issuer shall execute and deliver to the Trustee and the Trustee shall authenticate the Bonds and deliver them to the Purchasers upon payment of the purchase price plus accrued interest from the date of the Bonds to the Date of Delivery, and the Trustee shall be entitled to rely upon any certificate, ordinance or resolution as to the purchase price and the Purchasers.

**Section 2.08. Mutilated, Destroyed or Lost Bonds.** In the event any Bond issued hereunder shall become mutilated or be destroyed or lost, the Issuer shall, if not then prohibited by law, cause to be executed and the Trustee may authenticate and deliver a new Bond of like date, number, maturity and tenor in exchange and substitution for any such mutilated, destroyed or lost Bond, upon the owners paying the reasonable expenses and charges of the Issuer and the Trustee in connection therewith, and, in case of a Bond destroyed or lost, his, her or its filing with the Trustee of evidence satisfactory to it that such Bond was destroyed or lost, and of his, her or its ownership thereof and furnishing the Issuer and the Trustee with indemnity satisfactory to them. The Trustee is hereby authorized to authenticate any such new Bond. In the event any such Bonds shall have matured, instead of issuing a new Bond, the Issuer may pay the same without the surrender thereof.

If, after the delivery of such duplicate Bond, a bona fide purchaser of the original Bond in lieu of which such duplicate Bond was issued presents for payment or registration such original Bond, Trustee shall be entitled to recover such duplicate Bond from the person to whom it was delivered or any person taking therefrom, except a bona fide purchaser, and shall be entitled to recover upon the security or indemnity provided therefor to the extent of any loss, damage, cost or expense incurred by Trustee or Issuer in connection therewith.

All duplicate Bonds issued and authenticated pursuant to this Section 2.08 shall constitute original, special limited obligations of Issuer (whether or not lost, stolen or destroyed Bonds are at any time found by anyone) and shall be entitled to equal and proportionate rights and benefits hereunder as all other Outstanding Bonds issued hereunder.

**Section 2.09. Registration of Bonds.** The Issuer shall cause books for the registration and for the transfer of the Bonds as provided in this Indenture to be kept by the Trustee as Registrar. Any Bond may be transferred only upon an assignment duly executed by the registered owner or his, her or its attorney or legal representative in such form as shall be satisfactory to the Registrar, such transfer to be made on such books and endorsed on the Bond by the Registrar. The principal of any Bond shall be payable only to or upon the order of the registered owner or his, her or its legal representative. Interest shall be paid by check or draft by said Registrar at the times provided therein to the registered owner by mail to the address shown on the registration books.

The person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes and payment of or on account of the principal of any such Bond shall be made only to or upon the order of the registered owner thereof, or his, her or its legal representative, and neither the Issuer, the Trustee, nor the Registrar shall be affected by any such notice to the contrary, but such registration may be changed as herein provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

**Section 2.10. Payment on Saturday, Sunday or Holiday.** In any case where the date of maturity of interest on or principal of the Bonds or the date fixed for redemption of any Bonds shall be a Saturday or Sunday or shall be in the State a legal holiday or a day on which banking institutions are authorized by law to close, then payment of interest or principal (and premium, if any) need not be made on such date but may be made on the next succeeding business day not a Saturday or Sunday or a legal holiday or a day upon which banking institutions are authorized by law to close with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after the date of maturity or date fixed for redemption.

**Section 2.11. Interest Commencement Date.** The interest commencement date for Bonds issued on a date before any interest has been paid shall be the Date of Delivery. Otherwise, each Bond, upon subsequent transfer, shall be dated as of the interest payment date to which interest has been paid. Payment of each installment of interest shall be made to the person in whose name the Bond is registered on the registration books of the Trustee as Registrar at the close of business on the fifteenth calendar day of the month (whether or not a business day) next preceding each interest payment date, irrespective of any transfer or change of any such Bond subsequent to such date.

**Section 2.12. Cancellation.** All Bonds which are paid, either at maturity or redemption prior to maturity, shall be canceled and, at the option of the Trustee, either (i) cremated, shredded or otherwise disposed of or (ii) returned to the Issuer. In the case of cremating, shredding or other disposition pursuant to (i) above, the Trustee shall execute and forward to the Issuer an appropriate certificate describing the Bonds involved and the manner of disposition.

**Section 2.13. Temporary Bonds.** The Issuer shall have the right to execute and deliver Temporary Bonds reflecting the indebtedness secured hereby, which Temporary Bonds, if issued and delivered, shall be entitled to the same security, rights and protection provided under this Indenture for Bonds in definitive form. Temporary Bonds of the Issuer, if executed, authenticated and delivered shall be replaced by Bonds in definitive form by the Trustee when the Temporary Bonds are returned to the Trustee for exchange. All Temporary Bonds, when returned to the Trustee and when exchanged for Bonds in definitive form shall then be canceled at the option of the Trustee, either (i) cremated, shredded or otherwise disposed of and/or (ii) returned to the Issuer. In the case of cremating, shredding or other disposition pursuant to (i) above, the Trustee shall execute and forward to the Issuer an appropriate certificate reflecting the Temporary Bonds involved and the manner of disposition.

**Section 2.14. Additional Bonds.** No Additional Bonds shall be issued under this Indenture.

**Section 2.15. Book Entry Bonds and Agent Therefor.** (a) The Bonds shall be issued only as fully registered bonds and, except as hereinafter provided, in printed or typewritten form, registered initially in the name of Cede & Co., as nominee of The Depository Trust Company (“DTC”), which shall be considered to be the Owner of the Bonds for all purposes under the Indenture, including, without limitation, payment by the Issuer of principal of, redemption price, premium, if any, and interest on the Bonds, and receipt of notices and exercise of rights of Owners. There shall be one Bond for each stated maturity date of the Bonds which shall be immobilized in the custody of DTC with the beneficial owners having no right to receive the Bonds in the form of physical securities or certificates. DTC and its participants shall be responsible for maintenance of records of the ownership interests of beneficial interests in the Book Entry Bonds on the system maintained and operated by DTC and its participants, and transfers of ownership of beneficial interests shall be made only by DTC and its participants, by book entry, the Issuer having no responsibility therefor. DTC is expected to maintain records of the positions of participants in the Bonds, and the participants and persons acting through participants are expected to maintain records of the purchasers of beneficial interests in the Book Entry Bonds. The Book Entry Bonds as such shall not be transferable or exchangeable, except for transfer to another Securities Depository or to another nominee of a Securities Depository, without further action by the Issuer.

(b) If any Securities Depository determines not to continue to act as Securities Depository for the Bonds for use in a book entry system, the Issuer may establish a Securities Depository/book entry system relationship with another Securities Depository. If the Issuer does not or is unable to do so, or upon request of the beneficial owners of all Outstanding Bonds, the Issuer and the Registrar, after the Registrar has made provision for notification of the beneficial owners by the then Securities Depository, shall permit withdrawal of the Bonds from the Securities Depository, and authenticate and deliver Bond certificates in fully registered form (in denominations of \$5,000 or integral multiples thereof) to the assigns of the Securities Depository or its nominee, all at the cost and expense (including costs of printing definitive Bonds) of the Lessee or of the beneficial owners of the Bonds.

(c) Prior to registration of any Bonds with DTC, the Issuer shall have executed and delivered to DTC a written agreement (the “Representation Letter”) setting forth (or incorporating therein by reference) certain undertakings and responsibilities of the Issuer with respect to the Bonds so long as the Bonds or a portion thereof are registered in the name of Cede & Co. (or a substitute nominee) and held by DTC. Notwithstanding such execution and delivery of the Representation Letter, the terms thereof shall not in any way limit the provisions of this Section 2.15 or in any other way impose upon the Issuer any obligation whatsoever with respect to persons having interests in the Bonds other than the Owners, as shown on the registration books kept by the Registrar. The Registrar shall take all action necessary for all representations of the Issuer in the Representation Letter with respect to the paying agents and the Registrar, respectively, to at all times be complied with.

**Section 2.16. Issuer to Facilitate Use of Securities Depository.** The authorized officers of the Trustee and the Issuer shall do or perform such acts and execute all such certificates, documents and other instruments as they or any of them deem necessary or advisable to facilitate the efficient use of a Securities Depository for all or any portion of the Bonds; provided that neither the Trustee

nor the Issuer may assume any obligations to such Securities Depository or beneficial owners of Bonds that are inconsistent with their obligation to any Owner under this Indenture.

### **ARTICLE III. REDEMPTION OF BONDS BEFORE MATURITY**

**Section 3.01. Redemption.** The Bonds shall be callable for redemption prior to maturity in accordance with the provisions pertaining thereto appearing in the form of Bond heretofore set forth in this Indenture.

**Section 3.02. Notice of Redemption.** Notice of the call for redemption shall be by first class mail or by other acceptable standard, including facsimile, to the owner or owners of the Bonds not less than thirty (30) days nor more than sixty (60) days prior to the date fixed for redemption, and published notice of the call for redemption need not be given. Each notice shall specify the numbers and the maturities of the Bonds being called, and the date on which they shall be presented for payment. For so long as the Bonds are Book Entry Bonds, notice of redemption may be made by facsimile transmission to the Securities Depository.

Failure to give notice by mailing to the Owner of any Bond designated for redemption or to any depository of information service shall not affect the validity of the proceedings for the redemption of any other Bond.

If, at the time of sending a notice for the optional redemption of the Bonds, there shall not have been deposited moneys in the Bond Fund available for payment sufficient to redeem all the Bonds called for redemption, such notice shall state that such redemption is conditional in that it is subject to the deposit of moneys in the appropriate fund available for payment of the redemption price of such Bonds not later than the redemption date and such notice shall be of no effect unless such moneys are so deposited (each a “Conditional Notice”). If the conditions stated in the Conditional Notice are not met, the Bonds shall not be redeemed, but shall remain Outstanding and continue to bear interest at the interest rate in effect prior to the proposed redemption date.

**Section 3.03. Redemption Payments.** Prior to the date fixed for redemption, funds shall be deposited with the Trustee to pay, and the Trustee is hereby authorized and directed to apply such funds to the payment of, the Bonds called, together with accrued interest thereon to the redemption date and any required premium. Upon the giving of notice and the deposit of funds for redemption, interest on the Bonds thus called shall cease to accrue after the date fixed for redemption until such Bond shall have been delivered for payment or cancellation or the Trustee shall have received the items required by Section 2.08 hereof with respect to any mutilated, lost, stolen or destroyed Bond.

**Section 3.04. Cancellation.** All Bonds which have been redeemed shall be canceled by the Trustee pursuant to Section 2.12.

**Section 3.05. Special Redemption of Bonds.** The Bonds are subject to special redemption (which redemption shall be mandatory in the circumstances provided in subsection (d) below) as a whole or in part upon the occurrence of any of the following events with respect to any of the Project, at a redemption price equal to the principal amount of the Bonds then Outstanding to be so

redeemed, plus accrued interest to the date fixed for such redemption (which date shall be the earliest practicable date in accordance with Section 3.04 hereof) and without premium:

(a) Damage, Destruction or Legal Curtailment. The Bonds shall be redeemed in whole or in part, at the option of the Issuer at the direction of such Lessee, from the proceeds of insurance in the event of major damage or destruction of the Project financed pursuant to the provisions of the Lease Agreement, or from the legal curtailment of the use and occupancy of all or substantially all of the Project for any reason other than condemnation, on any interest payment date, at a redemption price equal to the principal amount of such Bonds plus accrued interest to the redemption date.

(b) Event of Default under the Lease Agreement. The Bonds shall be redeemed in whole or in part at any time at the option of the Issuer, if the Issuer notifies the Trustee in writing that an event of default has occurred under the Lease Agreement and that it requests a redemption of such Bonds, at a redemption price equal to the principal amount being redeemed plus accrued interest to the redemption date.

(c) Condemnation. The Bonds shall be redeemed in whole or in part from the proceeds of condemnation of all or substantially all of the Project on any interest payment date at a redemption price equal to the principal amount of such Bonds plus accrued interest to the redemption date.

In the event that less than all of the Bonds are redeemed by operation of the foregoing, the portion of the Bonds to be redeemed shall be selected by Trustee pro rata among the then outstanding maturities (and by lot or in such manner as Trustee shall deem fair and appropriate within each maturity) thereof according to the relationship borne by the outstanding principal amount of each such maturity to the total amount to be applied to redemption of the Bonds. In the event of partial redemption of the Series A Bonds that are subject to mandatory sinking fund redemption pursuant to Section 3.11 hereof, the principal amount of each sinking fund installment shall similarly be reduced pro rata.

**Section 3.06. Optional Redemption of Bonds.** The Bonds maturing on or after \_\_\_\_ 1, 20\_\_ are subject to redemption at the option of Issuer (which option shall be exercised as directed by the Lessee) from purchase option under the Lease Agreement made by the Lessee pursuant to Section 20.02 of the Lease Agreement or from the proceeds of refunding bonds or other moneys provided by or on behalf of one or both of the Lessee in whole or in part at any time on or after \_\_\_\_ 1, 20\_\_ at par plus accrued interest.

In case of any such optional redemption, the Lessee shall, at least sixty (60) calendar days prior to the redemption date (unless a shorter notice shall be satisfactory to Trustee), deliver a written request to Issuer and Trustee notifying Issuer and Trustee of such redemption date and of the principal amount of Bonds to be redeemed.

**Section 3.07. Mandatory Sinking Fund Redemption of Bonds.** The Series A Bonds maturing \_\_\_\_ 1 in the years 20\_\_ and 20\_\_ and the Series B Bonds maturing \_\_\_\_ 1 in the years 20\_\_ and 20\_\_ are subject to mandatory redemption prior to maturity in part, with the Bonds to be redeemed being selected by lot by Trustee in such manner as Trustee may determine, at the redemption price of one hundred percent (100%) of the principal amount thereof, plus accrued

interest to the date fixed for redemption, without premium, in the amounts sufficient to redeem on -  
 \_\_\_\_\_ 1 of each year specified below respective principal amounts of such Bonds indicated for  
 each year, all in the manner provided in this Indenture:

**SERIES A BONDS**

\$ \_\_\_\_\_ Term Bonds Maturing \_\_\_\_\_ 1, 20\_\_\_\_  
 Year  
 ( \_\_\_\_ 1) Principal Amount

\$

\*

\*Final Maturity

**SERIES A BONDS**

\$ \_\_\_\_\_ Term Bonds Maturing \_\_\_\_\_ 1, 20\_\_\_\_  
 Year  
 ( \_\_\_\_ 1) Principal Amount

\$

\*

\*Final Maturity

**SERIES B BONDS**

\$ \_\_\_\_\_ Term Bonds Maturing \_\_\_\_\_ 1, 20\_\_\_\_  
 Year  
 ( \_\_\_\_ 1) Principal Amount

\$

\*

\*Final Maturity

At its option, to be exercised on or before the forty-fifth (45th) day next preceding any mandatory sinking fund redemption date, the Lessee (provided that no Event of Default shall have occurred and be continuing), on behalf of Issuer, may (i) deliver to Trustee for cancellation, Bonds of the applicable maturity or portions thereof (in Authorized Denominations) in any aggregate principal amount desired and (ii) receive a credit in respect of its mandatory sinking fund redemption obligation for any Bonds of the same maturity (in Authorized Denominations) which prior to said date have been purchased or redeemed (otherwise than through mandatory sinking fund redemption pursuant to this Section) and cancelled by Trustee and not theretofore applied as a credit against any mandatory sinking fund redemption obligation for the same maturity. Each such Bond or portion thereof so delivered or previously purchased or redeemed and cancelled by Trustee shall be credited by Trustee at one hundred percent (100%) of the principal amount thereof against the obligation to redeem Bonds of the same maturity on such mandatory sinking fund redemption date, and any excess over such amount shall be credited against future mandatory sinking fund redemption obligations for the same maturity in chronological order, and the principal amount of Bonds of said

maturity so to be redeemed shall be accordingly reduced.

The Lessee will, on or before the forty-fifth (45th) day next preceding each such mandatory sinking fund redemption date, furnish Trustee with its certificate indicating whether and to what extent the provisions of (i) and (ii) of the preceding paragraph are to be availed of with respect to such mandatory sinking fund redemption payment.

#### **ARTICLE IV. GENERAL COVENANTS**

**Section 4.01. Payment of Principal and Interest.** The Issuer covenants that it will cause Trustee promptly to pay the principal of, premiums, if any, and interest on every Bond issued under this Indenture at the place, on the dates and in the manner provided herein and in the Bonds according to the true intent and meaning thereof. The principal, premiums and interest (except interest, if any, paid from accrued interest) are payable solely from the Revenues, and with respect to the Series A Bonds, the Guaranty Payments made pursuant to the Guaranties, which Revenues and Guaranty Payments are hereby specifically pledged to the payment thereof in the manner and to the extent herein specified, and nothing in the Bonds or in this Indenture should be considered as pledging any other funds or assets of the Issuer (except the securing of the indebtedness evidenced by the Bonds by the provisions of the Lease Agreement). Anything in this Indenture to the contrary notwithstanding, it is understood that whenever the Issuer makes any covenants involving financial commitments, including, without limitation, those in the various sections of this Article IV, it pledges no funds or revenues other than the Revenues and the right, title and interest of the Issuer in the Lease Agreement (except for the obligations of the Lessee to pay Issuer's expenses and to indemnify the Issuer) and with respect to the Series A Bonds, the Guaranty Payments made under Guaranties, and the revenues derived from the avails of the Trust Estates, but nothing herein shall be construed as prohibiting the Issuer from using any other funds and revenues.

**Section 4.02. Performance of Covenants.** The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, the Security Documents, the Lease, the Intercreditor Agreement, in any and every Bond executed, authenticated and delivered hereunder and in all ordinances pertaining thereto. The Issuer covenants that it is duly authorized under the Constitution and laws of the State, including particularly and without limitation the Act, to issue the Bonds authorized hereby and to execute this Indenture and to make the pledge and covenants in the manner and to the extent herein set forth; that all action on its part for the issuance of the Bonds and the execution and delivery of this Indenture, the Security Documents, the Lease and the Intercreditor Agreement have been duly and effectively taken; and that the Bonds in the hands of the owners thereof are and will be valid and enforceable obligations of the Issuer according to the import thereof.

**Section 4.03. Instruments of Further Assurance.** The Issuer covenants that it will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such Indenture or Indentures supplemental hereto and such further acts, instruments and transfers as the Trustee may reasonably require for the better assuring, transferring, mortgaging, pledging, assigning and confirming to the Trustee the Trust Estates.

**Section 4.04. Payment of Taxes, Charges, etc.** The Issuer covenants that it will promptly cause to be paid all lawful taxes, charges, assessments, imposts and governmental charges at any time levied or assessed upon or against the Trust Estates, or any part thereof, which might impair or prejudice the lien and priority of this Indenture; provided, however, that nothing contained in this Section shall require the Issuer to cause to be paid any such taxes, assessments, imposts or charges so long as the validity thereof is being contested in good faith and by appropriate legal proceedings.

**Section 4.05. Obligation to Maintain and Repair.** The Issuer covenants that it will at all times cause the Project, the Equipment and the Mortgaged Property to be maintained, preserved and kept in good condition, repair and working order, and that it will from time to time cause to be made all needed repairs so that the operation and business pertaining to the Project, the Equipment and the Mortgaged Property shall at all times be conducted properly and so that the Project, the Equipment and the Mortgaged Property shall be fully maintained, to the extent permitted by available funds. It is understood that the Issuer has made provisions in the Lease Agreement for such maintenance, pursuant to the terms of which the Lessee are obligated to maintain the Project, the Equipment and the Mortgaged Property as set forth in the Lease Agreement, and so long as the Lease Agreement is in force and effect the Issuer shall be deemed to be in compliance with its obligations under this Section 4.05.

**Section 4.06. Recordation of Trust Indenture.** The Issuer covenants that it will cause this Indenture, and all instruments supplemental thereto, to be kept, recorded and filed in such manner and in such places (if any) as may be required by law in order fully to preserve and protect the security of the bondowners and the rights of the Trustee hereunder.

**Section 4.07. Books of Record and Account; Inspection.** Within 240 days after June 30 of each year (the first such report to be filed with respect to the year ending June 30, 2022) ADFa and AEDC shall file with the Trustee a copy of its annual report for each year, prepared by an independent certified public accountant, or firm of independent certified public accountants, and bearing an accountant's certificate. The Trustee will hold such audit reports solely for the purpose of making them available, upon reasonable written request, for examination by the bondholders. Copies of such reports shall be mailed by the Trustee to any bondowners who shall have filed a written request theretofore with the Issuer.

**Section 4.08. List of Bondowners.** At reasonable times and under reasonable regulations established by the Trustee the list of the names and addresses of the registered owners of the Bonds may be inspected and copied by Owners (or a designated representative thereof) of ten percent (10%) or more in principal amount of Bonds outstanding hereunder, such ownership and the authority of any such designated representative to be evidenced to the satisfaction of the Trustee.

**Section 4.09. Lien of Trust Indenture; Enforcement of Obligations and Rights.** The Issuer covenants that so long as any Bonds authorized by and issued under this Indenture are outstanding, it will not convey or otherwise dispose of its interest in the Trust Estates, and that it will not encumber the same, or any part thereof, or its interest therein, or create or permit to be created any charge or lien on the Revenues derived therefrom, except as provided in this Indenture. Nothing contained herein shall prohibit the Issuer from issuing Bonds the payment for which specified revenues of a particular project or Project is pledged as provided in the Act, it being the purpose of

this covenant to limit only a subsequent pledge of the Trust Estates and Revenues as defined in this Indenture. Notwithstanding the paragraph above, the Issuer is pledging the Revenue only for the benefit of the holders of the Series B Bonds on a pari passu basis.

**Section 4.10. Obligation to Insure.** The Issuer covenants that at all times while any Bonds are outstanding, it will keep or cause to be kept the Project, the Equipment and the Mortgaged Property insured against the perils and to the extent set forth in the Lease Agreement. It is understood that the Issuer has made provisions in the Lease Agreement for such insurance, pursuant to the terms of which the Lessee is obligated to keep the property insured as set forth in the Lease Agreement, and so long as the Lease Agreement is in force and effect, the Issuer shall be deemed to be in compliance with its obligations under this Section 4.10.

## **ARTICLE V. REVENUE AND FUNDS**

**Section 5.01. Creation of Funds; Deposit of Bond Proceeds.** (a) There are hereby created and established as trust funds and trust accounts to be held by the Trustee the following:

- (i) Cost of Issuance Fund, and therein a Series A Account and a Series B Account therein;
- (ii) Bond Fund, and therein a Series A Account and a Series B Account;
- (iii) Debt Service Reserve Fund, and therein a Series A Account and a Series B Account; and
- (iv) Loan Fund, and therein a Series A Account and a Series B Account.

Trustee may also create such other Funds or Accounts as it deems necessary or desirable in the administration of this Indenture.

(b) The proceeds of the Series A Bonds shall be deposited into the Series A Account of the Costs of Issuance Fund, the Series A Account in the Bond Fund and the Series A Account in the Debt Service Reserve Fund and the balance of such proceeds shall be deposited in the Series A Account in the Loan Fund all as set out in the Delivery Instructions. The proceeds of the Series B Bonds shall be deposited into the Series B Account of the Costs of Issuance Fund, the Series B Account in the Bond Fund and the Series B Account in the Debt Service Reserve Fund and the balance of such proceeds shall be deposited in the Series B Account in the Loan Fund all as set out in the Delivery Instructions.

(c) The Bonds and all payments by the Issuer hereunder are not and shall never become general obligations of the Issuer, but are special and limited obligations payable solely from the Trust Estates of the respective Bonds and other payments made by the Lessee under the Lease Agreement. Payments made pursuant to the Lease Agreement by the Lessee are to be made directly to the Trustee for the account of the Issuer and shall be deposited pursuant to the provisions of Section 3.03 of the Lease Agreement.

**Section 5.02. Cost of Issuance Fund.** Trustee shall deposit into the Costs of Issuance Fund that portion of the Bonds required to be deposited therein pursuant to this Indenture. Moneys deposited into the Costs of Issuance Fund pursuant to this Indenture shall be expended to pay the Issuance Costs of said Bonds: (i) upon receipt by Trustee of requisitions signed by an Authorized Lessee Representative for any Issuance Costs not set forth in the Delivery Instructions or (ii) in accordance with the directions contained in the Delivery Instructions. Any funds remaining in the accounts in the Costs of Issuance Fund two (2) months after having been deposited therein shall be transferred to the respective account in the Bond Fund.

The Trustee shall use moneys in the accounts in the Cost of Issuance Fund to pay costs associated with the issuance of the respective Bonds or to reimburse the Issuer to the extent of payments made for such expenses previously paid. Before any payment shall be made for such expenses, there shall be filed with the Trustee a written request of the Issuer, stating:

- (i) The name of the person, firm or corporation to whom the payment is due;
- (ii) The amount to be paid;
- (iii) The purpose for which the expense was incurred; and
- (iv) That such person, firm or corporation has not previously been paid for such expense.

The Delivery Instructions executed contemporaneously with this Indenture shall constitute a “written request” of the Issuer in compliance with this section.

**Section 5.03. Bond Fund.** (a) There shall be deposited into the Series A Account in the Bond Fund as and when received:

- (i) The proceeds of the sale of the Series A Bonds less amounts set forth in this Article V with respect to the Series A Bonds;
- (ii) The payments and other moneys paid by the Lessee, pursuant to the Lease Agreement with respect to the Series A Bonds;
- (iii) All amounts paid under the Guaranties;
- (iv) All amounts paid under the Reimbursement Agreement which are not amounts paid to the Issuer as reimbursement for amounts paid under the Guaranties;
- (v) Amounts transferred to the Series A Account in the Bond Fund pursuant to the provisions of this Article V with respect to the Series A Bonds; and
- (vi) All other moneys received by the Trustee under and pursuant to any of the provisions of this Indenture which are not directed to be paid in a fund other than the Series A Account in the Bond Fund.

(b) There shall be deposited into the Series B Bond Account of the Bond Fund as and when received:

(i) The proceeds of the sale of the Series B Bonds less amounts set forth in this Article V with respect to the Series B Bonds;

(ii) The payments and other moneys paid by the Lessee, pursuant to the Lease Agreement with respect to the Series B Bonds;

(iii) Amounts transferred to the Series B Account of the Bond Fund pursuant to the provisions of this Article V with respect to the Series B Bonds; and

(iv) All other moneys received by the Trustee under and pursuant to any of the provisions of this Indenture which are not directed to be paid in a fund other than the Series B Account in the Bond Fund.

(c) Money in the Bond Fund shall be kept separate and apart from other funds or accounts and shall be pledged, appropriated, used and transferred to other funds for the purposes specified in this Article. Furthermore, the Issuer covenants and agrees that so long as any of the Bonds secured by this Indenture are outstanding, it will at all times deposit, or cause to be deposited, in the Bond Fund sufficient moneys from (i) payments and other moneys paid by the Lessee pursuant to the Lease Agreement, and (ii) with respect to the Series A Bonds moneys due under the Guaranties, to promptly meet and pay the principal of and interest on the Bonds as the same become due and payable. Nothing herein shall be construed as requiring the Issuer to use any funds or revenues from any source other than funds and revenues derived from the Lease Agreement and with respect to the Series A Bonds payments made pursuant to the Guaranties, for the payment of the principal of and interest on the Bonds and discharging other obligations of the Issuer under this Trust Indenture, but nothing herein shall be construed as prohibiting the Issuer from doing so.

The Bond Fund shall be in the name of the Issuer, and the Issuer hereby irrevocably authorizes and directs the Trustee to withdraw from the respective accounts in the Bond Fund sufficient funds to pay the principal of, premium, if any, and interest on the respective Bonds at maturity and redemption or prepayment prior to maturity, and the Trustee's and Paying Agent's fees in connection therewith, and to remit the funds to the Paying Agent for the purpose of paying the principal and interest in accordance with the provisions hereof pertaining to payment, which authorization and direction the Trustee hereby accepts. The Trustee agrees to make demand under the Guaranties, as appropriate, for the purpose of paying when due the principal of and interest on the Series A Bonds if moneys in the Series A Account in the Bond Fund are not sufficient for such purpose.

If a surplus shall exist in the any account in the Bond Fund over and above the amount necessary (together with reasonably projected revenue receipts in the event no default has occurred) to ensure the prompt payment of the principal of, and premium if any, in connection with the Bonds as the same become due, such surplus shall be applied to investments as permitted under Article IX herein.

The Trustee shall cause to be transferred from the respective account in the Bond Fund an amount sufficient to pay the interest on the respective Bonds as the same become due at least one (1) day prior to the interest payment date for such Bonds. It shall be the duty of the Trustee to see to the withdrawal from the accounts of the Bond Fund at least one (1) day before the maturity or redemption date of any Bond issued hereunder and then outstanding and see to the deposit with the Paying Agent, whether or not a different institution, of an amount equal to the amount due for such Bonds for the sole purpose of paying the same.

**Section 5.04. Debt Service Reserve Funds.** There shall be deposited into the Series A Account in the Debt Service Reserve Fund by the Trustee an amount equal to the Series A Required Reserve pursuant to the Delivery Instructions received by the Trustee at the bond closing. There shall be deposited into the Series B Account of the Debt Service Reserve Fund by the Trustee an amount equal to the Series B Required Reserve pursuant to the Delivery Instructions received by the Trustee at the bond closing. The funds held in the accounts in the Debt Service Reserve Fund may be invested as provided in Section 7.01(b) of this Indenture, and any earnings from the investment of such accounts shall be deposited into the respective accounts in the Bond Fund. Each month as long as any of the Bonds are outstanding, the Trustee shall transfer from the respective accounts in the Debt Service Reserve Fund to the respective accounts in the Bond Fund any amounts that are in excess of the Required Reserves.

**Section 5.05. Withdrawals from Debt Service Reserve Fund.** One day prior to each Interest Payment Date or any date on which Series A Bonds are due as a result of a call for redemption or maturity or as a result of the occurrence of an Event of Default, the Trustee shall determine if sufficient funds will be available in the Series A Bond Account in the Bond Fund to pay in full the principal, if any, and interest on the Series A Bonds due on the next day. One day prior to each Interest Payment Date or any date on which Series B Bonds are due as a result of a call for redemption or maturity or as a result of the occurrence of an Event of Default, the Trustee shall determine if sufficient funds will be available in the Series B Bond Account in the Bond Fund to pay in full the principal, if any, and interest on the Series B Bonds due on the next day. If sufficient funds will not be available in the respective accounts in the Bond Fund, the Trustee shall immediately transfer an amount equal to the amount of such deficiency from the respective accounts of the Debt Service Reserve Fund to the respective accounts in the Bond Fund. Any funds remaining in the accounts in the Debt Service Reserve Fund immediately prior to the payment of all the Bonds then Outstanding (whether at stated maturity or upon optional or mandatory redemption or as a result of acceleration), shall be transferred into the respective account in the Bond Fund and used as herein provided.

**Section 5.06. Loan Fund.** Moneys in the Series A Account in the Loan Fund shall be disbursed to the Lessee or paid directly to vendors to pay Series A Project costs related to the Series A Bonds which shall include costs of acquisition, costs of construction, architect's and engineer's fees, payment of interim indebtedness of the Lessee incurred for Series A Project costs, and all other necessary expenses incidental to the completion of the Series A Project if approved by the Issuer. Moneys in the Series B Account of the Loan Fund shall be disbursed to the Lessee or paid directly to vendors to pay Series B Project costs related to the Series B Bonds which shall include costs of acquisition and installation of equipment, engineer's fees, payment of interim indebtedness of the Lessee incurred for Series B Project costs, and all other necessary expenses incidental to the

acquisition and installation of equipment for the Series B Project if approved by the Issuer. Such expenditures shall be paid in accordance with and pursuant to written draw requests which shall be signed by the Authorized Lessee Representative and approved by the Issuer. In addition to the requirements of Section 8.01 of the Lease Agreement, draw requests shall be in substantially the form attached to the Lease Agreement as Exhibit C. Upon receipt of each draw request the Trustee shall issue its check upon the appropriate account in the Loan Fund payable to the person, firm or corporation designated in the draw request.

**Section 5.07. Transfer to Bond Fund.** Whenever the Issuer shall notify the Trustee in writing that any balance remaining in the Series A Account of the Loan Fund will not be needed for completion of the Series A Project, the remaining balance (if the balance is at least \$5,000) shall be deposited into the Series A Account in the Bond Fund and used to redeem Series A Bonds on the first Interest Payment Date following notification. If the balance is less than \$5,000, it shall be transferred to the Series A Account in the Bond Fund and applied as a credit against a subsequent payment. Whenever the Issuer shall notify the Trustee in writing that any balance remaining in the Series B Account in the Loan Fund will not be needed for completion of the Series B Project, the remaining balance (if the balance is at least \$5,000) shall be deposited into the Series B Account in the Bond Fund and used to redeem Series B Bonds on the first Interest Payment Date following notification. If the balance is less than \$5,000, it shall be transferred to the Series B Account in the Bond Fund and applied as a credit against a subsequent payment.

**Section 5.08. Fees Payable to ADFA and AEDC.** Pursuant to the terms of the Lease Agreement, the Lessee is required to pay to ADFA and AEDC its annual administrative fee for the ADFA Guaranty and the AEDC Guaranty, respectively. The Trustee shall calculate the amount of such administrative fee annually and give notice to ADFA, AEDC and the Lessee of the amounts due to be paid on or before January 31 of each year. The Trustee shall be responsible for collecting the annual administrative fee and remitting it to ADFA and AEDC, respectively. The Lessee is required to pay to ADFA and AEDC a final administrative fee upon final maturity of the Bonds. The Trustee shall calculate the amount of such final administration fee and give notice to ADFA, AEDC and the Lessee or amounts to be paid on or before the maturity of the Bonds. The amount of ADFA's annual administrative fee is equal to \_\_\_\_\_ percent (\_\_\_%) of the principal amount of the ADFA Guaranteed Bonds Outstanding each year and the amount of ADFA's final administrative fee is equal to \_\_\_ percent (\_\_\_%) of the principal amount of the ADFA Guaranteed Bonds Outstanding on the last day of the month preceding the final maturity date, multiplied by a fraction the numerator of which shall be the number of months elapsed since the preceding payment (rounded up to the next whole number), and the denominator of which shall be 12. The amount of AEDC's annual administrative fee is equal to \_\_\_\_\_ percent (\_\_\_%) of the principal amount of the AEDC Guaranteed Bonds Outstanding each year and the amount of AEDC's final administrative fee is equal to \_\_\_\_\_ percent (\_\_\_%) of the principal amount of the AEDC Guaranteed Bonds Outstanding on the last day of the month preceding the final maturity date, multiplied by a fraction the numerator of which shall be the number of months elapsed since the preceding payment (rounded up to the next whole number), and the denominator of which shall be 12.

**Section 5.09. Refunds to Lessee.** Anything herein to the contrary notwithstanding, so long as an event of default has not occurred and is continuing under this Indenture or under the Lease Agreement, the Trustee is authorized to refund to the Lessee within two weeks after the principal

payment date annually all excess amounts remaining in the accounts in the Bond Fund after payment of all amounts due in the previous twelve months including the Trustee's and Issuer's fees and the administrative fees of ADFA and AEDC. Such refund may be made as a credit on a lease payment. The foregoing notwithstanding, moneys in the Bond Funds being held pending redemption of Bonds shall not be refunded to the Lessee.

**Section 5.10. Non-presentment of Bonds.** In the event any Bonds shall not be presented for payment when the principal thereof becomes due, either at maturity or otherwise, or at the date fixed for redemption thereof, if there shall have been deposited with the Paying Agent for that purpose, or left in trust if previously so deposited, funds sufficient to pay the principal thereof, together with all interest unpaid and due thereon, to the date of maturity thereof, for the benefit of the owner, all liability of the Issuer to the owner thereof for the payment of the principal thereof and interest thereon shall forthwith cease, terminate and be completely discharged, and thereon it shall be the duty of the Paying Agent to hold such fund or funds, without liability for interest thereon, for the benefit of the Owner of such Bond who shall thereafter be restricted exclusively to such fund or funds, for any claim of whatever nature on his part under this Indenture or on, or with respect to, the Bond.

**Section 5.11. Any Fees, Charges and Expenses of Trustee and Paying Agent.** It is understood and agreed that pursuant to the provisions of the Lease Agreement, the Lessee agrees to pay the reasonable fees, expenses and charges of the Trustee and Paying Agent as authorized and provided by this Indenture. The Lessee is to make payments on statements rendered by the Trustee. All such additional payments under the Lease Agreement which are received by the Trustee shall be paid into the respective accounts of the Bond Fund to make payment therefrom for said purposes.

**Section 5.12. Moneys to be Held in Trust.** All moneys required to be deposited with or paid to the Trustee under any provision of this Indenture shall be held by the Trustee in trust, and except for moneys deposited with or paid to the Trustee for the redemption of Bonds, notice of which redemption has been duly given, shall, while held by the Trustee, constitute part of the Trust Estates of the respective Bonds thereof, and be subject to the lien hereof moneys received by or paid to the Trustee pursuant to any provisions of any agreement calling for the Trustee to hold, administer and disburse the same in accordance with the specific provisions of the agreement shall be held, administered and disbursed pursuant to the provisions, and where required by the provisions of the agreement, the Trustee shall set the same aside in a separate account. If the Issuer shall receive any moneys pursuant to applicable provisions of the Lease Agreement, it will forthwith upon receipt thereof pay the same over to the Trustee to be held, administered and disbursed by the Trustee in accordance with the provisions of the Lease Agreement, pursuant to which the Issuer may have received the same. Furthermore, if for any reason the Lease Agreement ceases to be in force and effect while any Bonds are outstanding, and if the Issuer shall receive any moneys derived from the Trust Estates, it will forthwith upon receipt thereof pay the same over the Trustee to be held, administered and disbursed by the Trustee in accordance with provisions of the applicable Lease Agreement that would be applicable if the Lease Agreement were then in force and effect, and if there be no such provisions which would be so applicable, then the Trustee shall hold, administer and disburse such moneys solely for the discharge of the Issuer's obligations under this Indenture.

**ARTICLE VI.  
RESERVED**

**ARTICLE VII.  
INVESTMENTS**

**Section 7.01. Investment of Moneys in Funds.** Moneys on deposit with the Trustee shall be invested at the direction of the Issuer as follows:

(a) The following shall be “Permitted Investments” for all purposes, including defeasance investments in refunding escrow accounts:

- (1) Cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in paragraph (2) below, or
- (2) Direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America (“Government Securities”).

(b) The following shall be “Permitted Investments” for all purposes other than defeasance investments in refunding escrow accounts:

- (1) obligations of any of the following federal agencies which obligations represent the full faith and credit of the United States of America, including:
  - Farm Credit System
  - Small Business Administration
  - Government National Mortgage Association (GNMA)
  - U.S. Department of Housing & Urban Development (PHA’s)
  - Federal Housing Administration;
- (2) direct obligations of any of the following federal agencies which obligations are not fully guaranteed by the full faith and credit of the United States of America:
  - Senior debt obligations rated “Aaa” by Moody’s and “AA+” by S&P issued by the Federal National Mortgage Association (FNMA) or Federal Home Loan Mortgage Corporation (FHLMC)
  - Obligations of the Resolution Funding Corporation (REFCORP)
  - Senior debt obligations of the Federal Home Loan Bank System;
- (3) U.S. dollar denominated deposit accounts, federal funds and banker’s acceptances with domestic commercial banks which have a rating on their short term certificates of deposit on the date of purchase of “A-1” or “A-1+” by S&P and “P-1” by Moody’s and maturing no more than 360 days after the

date of purchase. (Ratings on holding companies are not considered as the rating of the bank);

- (4) commercial paper which is rated at the time of purchase in the single highest classification, “A-1+” by S&P and “P-1” by Moody’s and which matures not more than 360 days after the date of purchase;
  - (5) investments in a money market fund rated “AAAm” or “AAAm-G” or better by S&P and/or rated in the highest rating category for this type of investment by Moody’s at the time of purchase;
  - (6) pre-refunded Municipal Obligations defined as follows: Any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable on table or convertible at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and
    - (A) which are rated, based on an irrevocable escrow account or fund (the “escrow”), in the highest rating category of S&P and Moody’s or any successors thereto; or
    - (B) (i) which are fully secured as to principal and interest and redemption premium, if any, by an escrow consisting only of cash or Government Securities, which escrow may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and (ii) which escrow is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this paragraph on the maturity date or dates specified in the irrevocable instructions referred to above, as appropriate; Pre-refunded Municipal Obligations meeting the requirements of subsection 6(B) hereof may not be used as Permitted Investments for annual appropriation lease transaction without the prior written approval of S&P.
  - (7) general obligations of states with a rating of at least “A2/A” or higher by both Moody’s and S&P.
- (c) The value of the above investment shall be determined as follows:

“Value,” which shall be determined as the end of each month, means that the value of any investments shall be calculated as follows:

- (1) the value of securities is computed on the basis of the closing bid price quoted by Interactive Data Systems or any other commercially reasonable provider commonly used in the industry; or
- (2) the valuation of the securities is performed by a nationally recognized and accepted pricing service whose valuation method consists of the composite average of various bid price quotes on the valuation date; or
- (3) the valuation of the collateral is based on the lower of two dealer binds on the valuation date. The dealers or their parent holding companies must be rated at least investment grade by S&P and Moody's. In addition, the dealers must be market makers in the securities being value.
- (4) as to certificates of deposit and bankers acceptances: the face amount thereof, plus accrued interest; and
- (5) as to any investment not specified above: the value thereof established by prior agreement between the Issuer and the Trustee.

#### **ARTICLE VIII. DISCHARGE OF LIEN**

**Section 8.01. Discharge of Lien.** If the Issuer shall pay or cause to be paid to the Owners of the Bonds the principal and interest to become due thereon at the times and in the manner stipulated therein, and if the Issuer shall keep, perform and observe all and singular the covenants and promises in the Bonds and in this Indenture expressed as to be kept, performed and observed by it on its part, then these presents and the estate and rights hereby granted shall cease, determine and be void, and thereupon the Trustee shall cancel and discharge the lien of this Indenture, and execute and deliver to the Issuer such instruments in writing as shall be requisite to satisfy the lien thereof, and reconvey to the Issuer the estate hereby conveyed, and assign and deliver to the Issuer the estate hereby conveyed, and assign and deliver to the Issuer and property at the time subject to the lien of this Indenture which may then be in its possession, including trust funds, except funds held by it for the payment of the principal of and interest on the Bonds.

Any Bond shall be deemed to be paid when payment of the principal of and premium, if any, and interest on such Bond (whether at maturity or upon redemption or otherwise), either (i) shall have been made or caused to be made in accordance with the terms of the Indenture, or (ii) shall have been provided for by irrevocably depositing with the Trustee, in trust and irrevocably setting aside exclusively for such payment, (1) moneys sufficient to make such payment or (2) Government Securities, maturing as to principal and interest in such amount and at such times as will provide sufficient moneys to make such payments, and all necessary and proper fees, compensation and expenses of the Trustee and any paying agent pertaining to the Bonds with respect to which such deposit is made and all other liabilities of the Lessee under the Lease Agreement shall have been paid or the payment thereof provided for to the satisfaction of the Trustee.

The Issuer may at any time surrender to the Trustee for cancellation by it any bonds previously authenticated and delivered hereunder, which the Issuer may have acquired in any

manner whatsoever, and such Bonds upon such surrender and cancellation, shall be deemed to be paid and retired.

**ARTICLE IX.**  
**DEFAULT PROVISIONS AND REMEDIES OF**  
**TRUSTEE AND BONDOWNERS**

**Section 9.01. Events of Default.** If any of the following events occur, subject to the provisions of Section 9.12 hereof, it is hereby defined as and declared to be and to constitute an “event of default”;

(a) Default in the due and punctual payment of any interest on any Bond hereby secured and Outstanding;

(b) Default in the due and punctual payment of the principal of, and premium, if any, on any Bond hereof secured and Outstanding, whether at the stated maturity thereof, or upon proceedings for redemption thereof, or upon the maturity thereof by declaration;

(c) Default in the performance or observance of covenants, agreement or conditions on the Issuer’s part to be performed in this Indenture, and with respect to the Series B Bonds only, the Security Documents, or in the Bonds contained, and the continuance thereof for a period of fifteen (15) days after written notice to the Issuer by the Trustee or by the owners of not less than ten percent (10%) in aggregate principal amount of Bonds outstanding hereunder;

(d) The occurrence of an “event of default” under the Lease Agreement or with respect to the Series A Bonds only, under the Guaranties.

(e) With respect to the Series A Bonds only, failure at any time by ADFA or AEDC to honor any request for payment made in compliance with the provisions of the ADFA Guaranty or the AEDC Guaranty, respectively.

The term “default” shall mean default by the Issuer in the performance or observance of any of the covenants, agreement or conditions on its part contained in this Indenture, and with respect to the Series B Bonds only, the Security Documents, or in the Bonds Outstanding hereunder, exclusive of any period of grace required to constitute a default an “event of default” as hereinabove provided.

**Section 9.02. Acceleration.**

(a) Upon the occurrence of an event of default, the Trustee may, and upon the written request of the owners of twenty-five percent (25%) in aggregate principal amount of Bonds outstanding hereunder, shall, by notice in writing delivered to the Issuer and the Lessee and with respect to a default of the Series A Bonds, to ADFA and AEDC, declare the principal of all Bonds hereby secured then outstanding and the interest accrued thereon immediately due and payable and such principal and interest shall thereupon become and be immediately due and payable.

(b) Upon the occurrence of an Event of Default described in clause (a), (b), (c), or (d) of the first paragraph of Section 9.01 hereof with respect to the Series A Bonds, the Trustee shall, upon

the written request of ADFA and AEDC, by notice in writing delivered to the Issuer and the Lessee, declare the principal of all Series A Bonds hereby secured then outstanding and the interest accrued thereon immediately due and payable, and such principal and interest shall thereupon become and be immediately due and payable from payments made under the ADFA Guaranty and the AEDC Guaranty.

(c) Upon the occurrence of an Event of Default in the payment of the principal of and interest on the Series A Bonds, the Trustee shall promptly take all steps to notify ADFA and AEDC and to demand payment, in accordance with the terms of the ADFA Guaranty from ADFA under the ADFA Guaranty and from AEDC under the AEDC Guaranty.

**Section 9.03. Trustee's Right to Enter and Take Possession.** Upon the occurrence of an event of default, the Issuer, upon demand of the Trustee, shall forthwith surrender to it the actual possession of, and it shall be lawful for the Trustee, by such officer or agent as it may appoint, to take possession of, all or any part of the Trust Estates for the respective Bonds thereof, with the books, papers and accounts of the Issuer pertaining thereto and to hold, operate and manage the same, and from time to time to make all needful repairs and improvements as the Trustee shall deem wise; and the Trustee, with or without such permission, may collect, receive and sequester the rents, revenues, issues, earnings, income, products and profits therefrom (exclusive of any of the foregoing which may have been pledged to secure other obligations of the Issuer) and out of the same and any moneys received from any receiver of any part thereof pay, and/or set up proper reserves for the payment of, all proper costs and expenses of so taking, holding and managing the same, including reasonable compensation to the Trustee, its agents and counsel, and any charges of the Trustee hereunder and any taxes, assessments and other charges prior to the lien of this Indenture which the Trustee may deem it wise to pay, and all expenses of such repairs and improvements, and apply the remainder of the moneys so received by the Trustee in accordance with the provisions of Section 9.08 hereof. Whenever all that is due upon such Bonds and installments of interest under the terms of this Indenture shall have been paid and all defaults made good, the Trustee shall surrender possession to the Issuer, its successors or assigns; the same right of entry, however, to exist upon any subsequent event of default.

While in possession of such property the Trustee shall render annually to the Owners of the Bonds, at their addresses as set forth on the bond registration book maintained by the Trustee, a summarized statement of income and expenditures in connection therewith.

**Section 9.04. Other Remedies; Rights and Obligations with Reference to Remedies.** Upon the occurrence of an event of default, the Trustee may, as an alternative, proceed either after entry or without entry, to pursue any available remedy by suit at law or in equity to enforce the payment of the principal of and interest on the Bonds then Outstanding hereunder, including without limitation, foreclosure and mandamus.

Upon the occurrence of an event of default, the Trustee shall, if so requested in writing by sixty-six and two-thirds percent (66 2/3%) in value of the registered Owners of the Bonds, assign to the registered Owners of the Bonds all its right, title and interest in the Lease Agreement in exchange for the Bonds, which assignment shall be full and complete satisfaction and discharge of all liabilities and obligations of the Issuer on the Bonds and of the Trustee under this Indenture.

If an event of default shall have occurred, and if it shall have been requested in writing so to do by the owners of twenty-five percent (25%) in aggregate principal amount of Bonds Outstanding hereunder and shall have been indemnified as provided in Section 10.01 hereof, the Trustee shall be obligated to exercise such one or more of the rights and power conferred upon it by this Section and by Section 9.03 as the Trustee, being advised by counsel, shall deem most expedient in the interests of the Owners of the Bonds.

No remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or to the bondowners) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

No delay or omission to exercise any right or power accruing upon any default or event of default shall impair any such right or power or shall be construed to be a waiver of any such default or event of default or acquiescence therein; and every such right and power may be exercised from time to time and as often as may be deemed expedient.

No waiver of any default or event of default hereunder, whether by the Trustee or by the Bondowners, shall extend to or shall affect any subsequent default or event of default or shall impair any rights or remedies consequent thereon.

**Section 9.05. Right of Majority of Bondowners to Take Charge.** Anything in this Indenture to the contrary notwithstanding, the Owners of a majority in aggregate principal amount of Bonds Outstanding hereunder shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceeding hereunder; provided that such direction shall not be otherwise than in accordance with the provision of law and of this Indenture.

**Section 9.06. Appointment of Receiver.** Upon the occurrence of an event of default, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and of the Bondowners under this Indenture, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the Trust Estates and of the rents, revenues, issues, earnings, income, products and profits thereof, pending such proceedings with such powers as the court making such appointment shall confer.

**Section 9.07. Waiver by Issuer of Benefit of Laws and Rights of Appraisal and Redemption.** In case of an event of default on its part, as aforesaid to the extent that such rights may then lawfully be waived, neither the Issuer nor anyone claiming through it or under it shall or will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption as now or hereafter in force, in order to prevent or hinder the enforcement of this Indenture, but the Issuer, for itself and all who may claim through or under it, hereby waives, to the extent that it lawfully may do so, the benefit of all such laws and all right of appraisal and redemption to which it may be entitled under the laws of the State.

**Section 9.08. Application of Available Moneys.** Available moneys shall be applied by the Trustee as follows:

(a) To the payment of costs and expenses of suit, if any, and the reasonable compensation of the Trustee, its agents, attorneys and counsel, and of all proper expenses, liabilities and advances incurred or made hereunder by the Trustee or by any bondowner.

(b) Unless the principal of all the Bonds all have become or shall have been declared due and payable, all such moneys shall be applied:

FIRST: To the payment to the persons entitled thereto of all installments of interest then due, in the order of the maturity of the installments of such interest, and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or privilege;

SECOND: To the payment to persons entitled thereto of the unpaid principal of any of the Bonds which shall have become due (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), in the order of their due dates, with interest on such Bonds from the respective dates upon which they become due, and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then to the payment ratably, according to the amount of principal due on such date, to the persons entitled thereto without any discrimination or privilege; and

THIRD: To the payment of the interest on and the principal of the Bonds, and to the redemption of Bonds, all in accordance with the provisions of Article V of this Indenture.

(c) If the principal of all the Bonds shall have become due or shall have been declared due and payable, all such moneys shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds, without preference or priority of principal over interest or of interest over principal, or of any bond over any other Bond, ratably, according to the amounts due respectively for principal and or privilege.

(d) If the principal of all the Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of this Article then, subject to the provisions of paragraph (c) of this Section, in the event that the principal of all the Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of paragraph (b) of this Section.

Whenever moneys are to be applied by the Trustee pursuant to the provisions of this Section, such moneys shall be applied by it at such times, and from time to time, as it shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be an interest payment date unless it shall deem another date more suitable) upon which such date interest on the amounts of principal to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the

deposit with it of any such moneys and of the fixing of any such date and shall not be required to make payment to the owner of any unpaid Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

**Section 9.09. Remedies Vested in Trustee.** All rights of action (including the right to file proof of claim) under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceeding relating thereto and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee, without the necessity of joining as plaintiffs or defendants any Owners of the Bond hereby secured, and any recovery of judgment shall be for the equal benefit for the Owners of the Outstanding Bonds in the order herein provided.

**Section 9.10. Rights and Remedies of Bondowners.** No Owner of any Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust hereof or for the appointment of a receiver or any other remedy hereunder, unless a default has occurred of which the Trustee has been notified as provided in subsection (g) of Section 10.01, or of which by the subsection it is deemed to have notice, nor unless such default shall have become an event of default and the Owners of twenty-five percent (25%) in aggregate principal amount of Bonds Outstanding hereunder shall have made written request to the Trustee and shall have offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, nor unless also they have offered to the Trustee indemnity as provided in Section 10.01; nor unless the Trustee shall thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name; and such notification request and offer of indemnity are hereby declared in every such case at the option of the Trustee to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture or for the appointment of a receiver for any other remedy hereunder; it being understood and intended that not one or more owners of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture by his or their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided for the equal benefit of the owners of all Bonds outstanding hereunder. Nothing in this Indenture contained shall, however, affect or impair the right of any Bondowners to enforce the payment of the principal of and interest on any Bond at and after the maturity thereof, or to the obligation of the Issuer to pay the principal of and interest on each of the Bonds issued hereunder to the respective Owners thereof at the time and place in the Bonds expressed.

**Section 9.11. Termination of Proceedings.** In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver, by entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then and in every such case the Issuer and the Trustee shall be restored to their former positions and rights hereunder with respect to the property herein conveyed, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken, except to the extent the Trustee is legally bound by such adverse determination.

**Section 9.12. Waivers of Events of Default.** The Trustee may in its discretion waive any event of default hereunder and its consequences and rescind any declaration of maturity of principal, and shall do so upon the written request of the owners of (i) 50% in aggregate principal amount of all the Bonds Outstanding hereunder in respect of which default in the payment of principal and/or interest exists, or (ii) 50% in principal amount of all the Bonds Outstanding hereunder in the case of any other default, provided, however, that there shall not be waived (a) any event of default in the payment of the principal of any Bonds issued hereunder and outstanding at the date of maturity specified therein or (b) any default in the payment of the interest or of Bond Fund moneys, unless prior to such waiver or rescission all arrears of interest, with interest at the rate borne by the Bonds in respect of which such default shall have occurred on overdue installments of interest or all arrears of Bond Fund payments, as the case may be, and all expenses of the Trustee and Paying Agent, shall have been paid or provided for, and in case of any such waiver or rescission or in case any proceeding taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely, then and in every such case the Issuer, Trustee and the bondowners shall be restored to their former positions and rights thereunder respectively; but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon.

## **ARTICLE X. THE TRUSTEE**

**Section 10.01. Acceptance of Trusts.** The Trustee hereby accepts the trusts imposed upon it by this Indenture, and agrees to perform the trust as an ordinarily prudent trustee under a corporate mortgage, but only upon and subject to the following expressed terms and conditions:

(a) The Trustee may execute any of the trusts or powers hereof and perform any duties required of it by or through attorneys, agents, receivers or employees, and shall be entitled to advice of counsel concerning all matters of trusts hereof and its duties hereunder, and may in all cases pay reasonable compensation to all such attorneys, agents, receivers and employees as may reasonably be employed in connection with the trusts hereof. The Trustee may act upon the opinion or advice of any attorney, surveyor, engineer or accountant selected by it in the exercise of reasonable care, or, if selected or retained by the Issuer prior to the occurrence of a default of which the Trustee has been notified as provided in subsection (g) of this Section, or of which by the subsection the Trustee is deemed to have notice, approved by the Trustee in the exercise of such care. The Trustee shall not be responsible for any loss or damage resulting from an action or non-action in accordance with any such opinion or advice.

(b) The Trustee shall not be responsible for any recital herein, or in the Bonds (except in respect to the certificate of the Trustee endorsed on such Bonds), or for the recording or re-recording, filing or re-filing of this Indenture, or for insuring the property herein conveyed or collecting any insurance moneys, or for the validity of the execution by the Issuer of this Indenture or of any supplemental indentures or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured herein, or for the value of the title of the property here conveyed or otherwise as to the maintenance of the security hereof; except that in the event the Trustee enters into possession of a part or all of the property herein conveyed pursuant to any provision of this Indenture, it shall use due diligence in preserving such property;

and the Trustee shall not be bound to ascertain or inquire as to the performance or observance of any covenants, conditions or agreement on the Issuer, except as hereinafter set forth; but the Trustee may require of the Issuer full information and advice as to the performance of the covenants, conditions and agreement aforesaid as to the condition of the property herein conveyed.

(c) The Trustee shall not be accountable for the use of any Bonds authenticated or delivered hereunder. The Trustee may become the owner of Bonds with the same rights which it would have if not Trustee. No merger of title shall occur if at any time the Trustee owns all of the Bonds.

(d) The Trustee shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed by it, in the exercise of reasonable care, to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of the owner of any Bond secured hereby, shall be conclusive and binding upon all future owners of the same Bond and upon Bonds issued in exchange therefor or in place thereof.

(e) As to the existence or non-existence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a certificate of the Issuer signed by its Chair and attested by its Secretary as sufficient evidence of the facts therein contained and prior to the occurrence of a default of which it has been notified as provided in subsection (g) of this Section, or of which by said subsection it is deemed to have notice, and shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion, at the reasonable expense of the Issuer, in every case secure such further evidence as it may think necessary or advisable, but shall in no case be bound to secure the same. The Trustee may accept a certificate of the Secretary of the Issuer under its seal to the effect that a resolution or ordinance in the form therein set forth has been adopted by the Issuer as conclusive evidence that such resolution or ordinance has been duly adopted, and is in full force and effect.

(f) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty of the Trustee, and the Trustee shall be answerable only for its own gross negligence or willful default.

(g) The Trustee shall not be required to take notice or be deemed to have notice of any default hereunder except failure by the Issuer to make or cause to be made any of the payments to the Trustee required to be made by Article V unless the Trustee shall be specifically notified in writing of such default by the Issuer or by the owners of at least ten percent (10%) in aggregate principal amount of Bonds Outstanding hereunder and all notices or other instruments required by this Indenture to be delivered to the Trustee must, in order to be effective, be delivered to the office of the Trustee, and in the absence of such notice so delivered, the Trustee may conclusively assume there is no default except as aforesaid.

(h) The Trustee shall not be personally liable for any debts contracted or for damages to persons or to personal property injured or damaged, or for salaries or nonfulfillment of contracts during any period in which it may be in the possession of or managing the real and tangible personal property as in this Indenture provided.

(i) At any and all reasonable times the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right fully to inspect all of the property herein conveyed, including all books, papers and records of the Issuer pertaining to the Project, the Equipment, the Mortgaged Property and the Bonds, and to take such memoranda from and in regard thereto as may be desired.

(j) The Trustee shall not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises.

(k) Notwithstanding anything elsewhere in this Indenture contained, the Trustee shall have the right, but shall not be required, to demand, in respect of the authentication of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Indenture, any showings, certificate, opinions, appraisals, or the information, or corporate action or evidence thereof, in addition to that by the terms hereof required as a condition of such action by the Trustee, deemed desirable for the purpose of establishing the right of the Issuer to the authentication of any Bonds, the withdrawal of any cash, the release of any property, or the taking of any other action by the Trustee.

(l) Before taking such action hereunder, the Trustee may require that it be furnished an indemnity bond satisfactory to it for the reimbursement to it of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from the gross negligence or willful default of the Trustee, by reason of any action so taken by the Trustee.

**Section 10.02. Fees, Charges and Expenses of Trustee.** The Trustee shall be entitled to payment and/or reimbursement for its reasonable fees for services rendered hereunder and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by the Trustee in and about the execution of the trusts created by this Indenture and in and about the exercise and performance by the Trustee of the powers and duties of the Trustee hereunder, and for all reasonable and necessary costs and expenses incurred in defending any liability in the premises of any character whatsoever (unless such liability is adjudicated to have resulted from the gross negligence or willful default of the Trustee). In this regard, it is understood that the Issuer pledges no funds or revenues other than those provided for in the Lease Agreement and the Revenues, and any other revenues derived from the avails of the Trust Estates and with respect to the Series A Bonds the Guaranty Payments under the Guaranties, to the payment of any obligation of the Issuer set forth in this Indenture, including the obligations set forth in this Section, but nothing herein shall be construed as prohibiting the Issuer from using any other funds and revenues for the payment of any of its obligations under this Indenture. Upon default by the Issuer but only upon default, pursuant to the provisions of this Indenture pertaining to default, the Trustee shall have a first lien with right of payment prior to payment on account of principal or interest of a Bond issued hereunder upon the Trust Estates for the respective Bonds thereof for the reasonable and necessary advances, fees, costs and expenses incurred by the Trustee.

**Section 10.03. Notice to Bondowners of Default.** If a default occurs of which the Trustee is by Section 10.01(g) hereof deemed to have notice, or is notified by the Issuer or by the Owners of at least 10% in aggregate principal amount of Bonds then Outstanding, then the Trustee shall give written notice by mail to each Owner of Bonds then Outstanding or so long as the Bonds are Book

Entry Bonds, the Trustee shall file the notice with the Electronic Municipal Market Access system, or its successor or replacement system, maintained by the Municipal Securities Rulemaking Board.

**Section 10.04. Intervention by Trustee.** In any judicial proceeding to which the Issuer is a party and which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of owners of Bonds issued hereunder, the Trustee may intervene on behalf of the Bondowners and shall do so if requested in writing by the owners of at least ten percent (10%) of the aggregate principal amount of Bonds Outstanding hereunder. The rights and obligations of the Trustee under this Section are subject to the approval of the court having jurisdiction in the premises.

**Section 10.05. Successor Trustee.** Any bank or trust company into which the Trustee may be merged, or with which it may be consolidated or any bank or trust company resulting from any such merger or consolidation, ipso facto, shall be and become successor trustee hereunder and vested with all of the title to the whole property or trust estate and all the trusts, powers, discretions, immunities, privileges, and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding; provided, however, that such successor trustee shall have capital and surplus of at least \$75,000,000, and provided that the Issuer approves the successor trustee.

**Section 10.06. Resignation by Trustee.** The Trustee and any successor trustee may at any time resign from the trusts hereby created by giving thirty (30) days written notice to the Issuer and the registered owners of the Bonds, and such resignation shall take effect at the end of such thirty (30) days, or upon the earlier appointment of a successor trustee by the Bondowners or by the Issuer. Such notice may be served personally or sent by registered mail to the Issuer and so long as the Bonds are Book Entry Bonds, the Trustee shall file the notice with the Electronic Municipal Market Access system, or its successor or replacement system, maintained by the Municipal Securities Rulemaking Board.

**Section 10.07. Removal of Trustee; Sale of Trust Business.** The Trustee may be removed at any time by an instrument or concurrent instruments in writing delivered to the Trustee and to the Issuer and signed by the owners of a majority in aggregate principal amount of Bonds Outstanding hereunder. The Trustee may be removed by the Issuer at any time if a successor trustee has been appointed.

In the case of the sale of all or substantially all of the Trustee's trust business to another bank or trust company, the Issuer shall have the absolute right, at its sole discretion, to appoint a successor trustee pursuant to Section 10.08 hereof.

**Section 10.08. Appointment of Successor Trustee.** In case the Trustee hereunder shall resign or be removed, or be dissolved, or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by the court, a successor may be appointed by the Issuer by an instrument executed and signed by its Chair and attested by its Secretary under its seal. Every such successor trustee shall be a trust company or bank in good standing, having capital and surplus of not less than \$75,000,000.

**Section 10.09. Successor Trustee.** Every successor trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Issuer an instrument in writing accepting such appointment hereunder, and thereupon such successor trustee, without any further act or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall nevertheless, on the written request of the Issuer or of its successor trustee, execute and deliver an instrument transferring to such successor all the estate, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor trustee shall deliver all securities, moneys and any other property held by it as trustee hereunder to its successor. Should any instrument in writing from the Issuer be required by a successor trustee for more fully and certainly vesting in such successor the estates, rights, powers and duties hereby vested or intended to be vested in the predecessor trustee, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer. The resignation of any trustee and the instrument or instruments removing any trustee and appointing a successor hereunder, together with all other instruments provided for in this Article shall, at the expense of the Issuer, be forthwith filed and/or recorded by the successor trustee in each recording office where this Indenture shall have been filed and/or recorded.

**Section 10.10. Right of Trustee to Pay Taxes and Other Charges.** In case the Issuer shall fail reasonably to pay or to cause to be paid any tax, assessment or governmental or other charge upon any part of the property herein conveyed, to the extent, if any, that the Issuer may be liable for same, the Trustee may pay such tax, assessment or governmental charge, without prejudice, however, to any rights of the Trustee or the bondowners hereunder arising in consequence of such failure; and any amount at any time so paid under this Section, with interest thereon from the date of payment at the rate of ten percent (10%) per annum, shall be repaid by the Issuer upon demand, and shall become so much additional indebtedness secured by this Indenture, and the same shall be given a preference in payment over any of the Bonds and shall be paid out of the proceeds of revenues collected from the property herein conveyed, if not otherwise caused to be paid by the Issuer, but the Trustee shall not be under obligations to make any such payment unless it shall have been requested to do so by the owners of at least ten percent (10%) of the aggregate principal amount of the Bonds Outstanding hereunder and shall have been provided with adequate funds for the purpose of such payment.

**Section 10.11. Trustee Protected in Relying Upon Resolutions, etc.** The resolutions, opinions, certificates and other instruments provided for in this Indenture may be accepted and relied upon by the Trustee as conclusive evidence of the facts and conclusions stated therein and shall be full warrant, protection and authority to the Trustee for the payment and withdrawal of cash hereunder.

**Section 10.12. Trustee Which Has Resigned or Been Removed Ceases to be Paying Agent.** In the event of a change in the office of Trustee, if the Trustee is the Paying Agent, the former Trustee which has resigned or been removed shall cease to be Paying Agent.

**Section 10.13. Paying Agent's Fees and Charges.** There shall be paid reasonable Paying Agent's fees and charges of the Paying Agent for handling the payment of the principal of, premium (if any) and interest on the Bonds, and funds sufficient to pay the same shall be deposited with the Paying Agent prior to the dates on which payments are required to be made on principal and interest.

**Section 10.14. Appointment of Co-Trustee or Separate Trustee.** The Issuer and the Trustee shall have power to appoint and upon the request of the Trustee the Issuer shall for such purpose join with the Trustee in the execution of all instruments necessary or proper to appoint another corporation or one or more persons approved by the Trustee, either to act as co-trustee or co-trustees jointly with the Trustee of all or any of the property subject to the lien hereof, or to act as separate trustee or trustees of all or any such property, with such powers as may be provided in the instrument of appointment and to vest in such corporation or person or persons as such separate trustee or co-trustee any property, title, right or power deemed necessary or desirable. In the event that the Issuer shall not have joined in such appointment within fifteen days after the receipt by it of a request so to do the Trustee alone shall have the power to make such appointment. Should any deed, conveyance or instrument in writing from the Issuer be required by the separate trustee or co-trustee so appointed for more fully and certainly vesting in and confirming to him or to it such properties, rights powers, trusts, duties and obligations, any and all such deeds, conveyances and instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer. Every such co-trustee and separate trustee shall, to the extent permitted by law, be appointed subject to the following provisions and conditions, namely:

(1) The Bonds shall be authenticated and delivered, and all powers, duties, obligations and rights conferred upon the Trustee in respect of the custody of all money and securities pledged or deposited hereunder, shall be exercised solely by the Trustee; and

(2) The Trustee, at any time by an instrument in writing, may remove any such separate trustee or co-trustee.

Every instrument, other than this Indenture, appointing any such co-trustee or separate trustee, shall refer to this Indenture and the conditions of this Article X expressed, and upon the acceptance in writing by such separate trustee or co-trustee, it shall be vested with the estate or property specified in such instrument, jointly with the Trustee (except insofar as local law makes it necessary for any separate trustee to act alone), subject to all the trusts, conditions and provisions of this Indenture. Any such separate trustee or co-trustee may at any time, by an instrument in writing, constitute the Trustee as its agent or attorney, to the extent authorized by law, to do all acts and things and exercise all discretion authorized or permitted by it, for and on behalf of it and its name. In case any separate trustee or co-trustee shall die, become incapable of acting, resign or be removed, all the estates properties, rights, powers, trusts, duties and obligations of the separate trustee or co-trustee shall vest in and be exercised by the Trustee until the appointment of a new trustee or a successor to such separate trustee or co-trustee.

## **ARTICLE XI. SUPPLEMENTAL INDENTURES AND AMENDMENTS TO THE LEASE AGREEMENT**

**Section 11.01. Supplemental Indentures Not Requiring Consent of Bondowners.** The Issuer and the Trustee may, from time to time, without the consent of or notice to the Bondowners, enter into such indentures supplemental hereto as shall not be inconsistent with the terms and provisions hereof (which supplemental indenture shall hereafter form a part hereof) (a) to cure any ambiguity, inconsistency or formal defect or omission in this Indenture or in any supplemental

indenture; or (b) to grant to or confer or impose upon the Trustee for the benefit of the Bondowners any additional rights, remedies, powers, authority, security, liabilities or duties which may lawfully be granted, conferred, or imposed and which are not contrary to or inconsistent with this Indenture as theretofore in effect; provided that, no such additional liabilities or duties shall be imposed on the Trustee without its consent; (c) to add to the covenants and agreements of, and limitations and restrictions upon, the Issuer in this Indenture other covenants, agreements, limitations and restrictions to be observed by the Issuer which are not contrary to or inconsistent with this Indenture as theretofore in effect; (d) to confirm, as further assurance, any pledge under, and the subjection to any claim, lien or pledge created or to be created by, this Indenture, of the Revenues of the Issuer from the Lease Agreement or of any other moneys, securities or funds; (e) to comply with the requirements of the Trust Indenture Act of 1939, as from time to time amended; or (f) to modify, alter, amend or supplement this Indenture in any other respect which, in the opinion of Bond Counsel, is not materially adverse to the Bondowners which in the judgment of the Trustee in reliance on an opinion of Bond Counsel, is not to the prejudice of the Trustee, and which does not involve a change described in clause (a), (b), (c), (d) or (e) of Section 11.02 hereof.

**Section 11.02. Supplemental Indentures Requiring Consent of Bondowners.** Subject to the terms and provisions contained in this Section, and not otherwise, the owners of not less than two-thirds (2/3) in aggregate principal amount of the Bonds then Outstanding shall have the right, from time to time, anything contained in this Indenture to the contrary notwithstanding, to consent to and approve the execution by the Issuer and the Trustee of such indenture or indentures supplemental hereto as shall be deemed necessary and desirable by the Issuer for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any supplemental indenture; provided, however, that without the consent of all of the holders of all of the Bonds then Outstanding under this Indenture, nothing herein contained shall permit or be construed as permitting (a) an extension of the maturity of the principal of or the interest on any Bond issued hereunder, or (b) a reduction in the principal amount of any Bond or redemption premium or the rate of interest thereon, or (c) the creation of any lien ranking prior to or on a parity with the lien of this Indenture on the Trust Estates, except as expressly permitted herein, or (d) a privilege or priority of any Bond or Bonds over any other Bond or Bonds or (e) a reduction in the aggregate principal amount of the Bonds required for consent to such supplemental indenture. Nothing herein contained, however, shall be construed as making necessary the approval of Bondowners of the execution of any supplemental indenture as provided in Section 11.01 of this Article.

If at any time the Issuer shall request the Trustee to enter into any supplemental indenture for any of the purposes of this Section, the Trustee shall, at the expense of the Issuer cause notice of the proposed execution of such supplemental indenture to be mailed by first class mail to each owner at his, her or its address on the Bond registration book maintained by the Trustee or so long as the Bonds are Book Entry Bonds, the Trustee shall file the notice with the Electronic Municipal Market Access system or its successor or replacement system, maintained by the Municipal Securities Rulemaking Board. Such notice shall briefly set forth the nature of the proposed supplemental indenture and shall state that copies thereof are on file at the principal office of the Trustee for inspection by Bondowners. The Trustee shall not, however, be subject to any liability to any Bondowner by reason of its failure to publish or mail such notice, and any such failure shall not affect the validity of such supplemental indenture consented to and approved as provided in this

Section. If the owners of not less than two-thirds (2/3) in aggregate principal amount of the Bonds Outstanding at the time of the execution of any such supplemental indenture shall have consented to and approved the execution thereof as herein provided, no owner of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or to enjoin or restrain the Trustee or the Issuer from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such supplemental indenture, this Indenture shall be and be deemed to be modified and amended in accordance therewith.

**Section 11.03. Amendments to the Lease Agreement.** The Trustee may from time to time, and at any time, consent to any amendment, change or modification of the Lease Agreement for the purpose of curing any ambiguity or formal defect or omission or making any other change therein, which in the reasonable judgment of the Trustee, in reliance on an opinion of Bond Counsel, is not to the prejudice of the Trustee or the holders of the Bonds. The Trustee shall not consent to any other amendment, change or modification of the Lease Agreement without the approval or consent of the holders of not less than two-thirds (2/3) in aggregate principal amount of the Bonds at the time Outstanding.

**Section 11.04. Procedure for Amendments.** If at any time the Issuer or the Lessee shall request the Trustee's consent to a proposed amendment, change or modification requiring Bondowner approval under Section 11.03 hereof, the Trustee, shall, at the expense of the requesting party, cause notice of such proposed amendment, change or modification to be given in the same manner as provided by Section 11.02 hereof with respect to supplemental indentures. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file in the principal office of the Trustee for inspection by any interested Bondowner. The Trustee shall not, however, be subject to any liability to any Bondowner by reason of its failure to mail such notice, and any such failure shall not affect the validity of such amendment, change or modification when consented to by the Trustee in the manner hereinabove provided.

## **ARTICLE XII. MISCELLANEOUS**

**Section 12.01. Consents, etc., of Bondowners.** Any request, direction, objection or other instrument required by this Indenture to be signed and executed by the bondowners may be in any number of concurrent writings of similar tenor and may be signed or executed by such bondowners in person or by agent appointed in writing. Proof of the execution of any such request, direction, objection or other instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Indenture and shall be conclusive if in favor of the Trustee with regard to any action taken by it under such request or other instrument, namely:

The fact and date of the execution by any person of any such writing may be proved by the certificate of any officer in any jurisdiction that the person signing such writing acknowledged before him or her the execution thereof, or by any affidavit of any witness to such execution.

**Section 12.02. Limitation of Rights.** With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture, or the Bonds

issued hereunder, is intended or shall be construed to give to any person other than the parties hereto, and the owners of the Bonds secured by this Indenture, any legal or equitable rights, remedy or claim under or in respect to this Indenture or any covenants, conditions and provisions hereof being intended to be and being for the sole exclusive benefit of the parties hereto and the owners of the Bonds secured as herein provided.

**Section 12.03. Severability.** If any provisions of this Indenture shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions or in all cases because it conflicts with any provisions or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or paragraphs in this Indenture contained shall not affect the remaining portions of this Indenture or any part thereof.

**Section 12.04. Notice.** Notices as required in this Indenture shall be considered delivered when posted in United States mail, postage prepaid and addressed as set forth below (or at such other address as may have been provided by the party to all other parties hereto by proper notice):

If intended for the Issuer:                      City of Jonesboro, Arkansas  
515 West Washington Avenue  
Jonesboro, Arkansas 72401  
Attn: Mayor

If intended for the Trustee:                      \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, Arkansas \_\_\_\_\_  
Attn: Corporate Trust Department

**Section 12.05. Arkansas Substantive Law Governs.** This Indenture shall be considered to have been executed in the State and it is the intention of the parties that the substantive law of the State govern as to all questions of interpretation, validity and effect.

**Section 12.06. Uniform Commercial Code.** This Indenture is also a security agreement under the Uniform Commercial Code of the State. The Issuer shall execute one or more financing statements and renewals thereof with respect to the security interest granted by this Indenture and file such statements or renewals thereof in any appropriate public office.

**Section 12.07. Counterparts.** This Indenture may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 12.08. Limitation on Liability.** Notwithstanding any other provision of this Indenture to the contrary:

(a) the obligations of the Issuer with respect to the Bonds are not general obligations of the Issuer but are special, limited obligations of the Issuer payable by the Issuer solely from the security for the Bonds;

(b) nothing contained in the Bonds or in this Indenture shall be considered as assigning or pledging any funds or assets of the Issuer other than the Trust Estates;

(c) the Bonds shall not be a debt of the State, the Issuer or of any other political subdivision of the State, and neither the State, the Issuer nor any other political subdivision of the State shall be liable for the payment of the Bonds;

(d) neither the faith and credit of the Issuer, the State nor of any other political subdivision of the State are pledged to the payment of the principal or of interest on the Bonds;

(e) no failure of the Issuer to comply with any term, condition, covenant or agreement in this Indenture or in any document executed by the Issuer in connection with the Trust Estates, or the issuance, sale and delivery of the Bonds shall subject the Issuer to liability for any claim for damages, costs or other charge except to the extent that the same can be paid or recovered from the Trust Estates; and

(f) the Issuer shall not be required to advance any moneys derived from any source other than the Trust Estates for any of the purposes of this Indenture, any of the other bond documents or any of the loan documents, whether for the payment of the principal or redemption price of, or interest on, the Bonds, the payment of any fees or administrative expenses or otherwise.

**Section 12.09. No Personal Liability; No Recourse.** No recourse under or upon any obligation, covenant, warranty or agreement contained in this Indenture or in any Bond, or under any judgment obtained against the Issuer, or the enforcement of any assessment, or any legal or equitable proceedings by virtue of any constitution or statute or otherwise, or under any circumstances under or independent of this Indenture, shall be had against the members of the Issuer's board of directors or any of the members, officers, agents or employees of the Issuer, as such, past, present or future of the Issuer, either directly or through the Issuer or otherwise, for the payment for or to the Issuer or any receiver of the Issuer, or for or to the owner of any Bond, or otherwise, of any sum that may be due and unpaid by the Issuer upon any such Bond. Any and all personal liability of every nature whether at common law or in equity or by statute or by constitution or otherwise of the members of the Issuer's board of directors or of any such member, officer, agent or employee, as such, by reason of any act of omission on his or her part or otherwise, for the payment for or to the owner of any Bond or otherwise of any sum that may remain due and unpaid upon the Bonds secured by this Indenture of any of them is, by the acceptance of such Bond, expressly waived and released as a condition of and in consideration for the execution of this Indenture and the issuance of the Bonds. Anything in this Indenture to the contrary notwithstanding, it is expressly understood by the parties to this Indenture that (a) the Issuer may rely exclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Issuer by the Trustee or any Bondholder as to the existence of any fact or state of affairs, (b) the Issuer shall not be under any obligation under this Indenture to perform any record keeping or to provide any legal services, it being understood that such services shall be performed or caused to be performed by the Trustee (with respect to record keeping only, and not with respect to any legal services) or by the Bondholders and (c) none of the

provisions of this Indenture shall require the Issuer to expend or risk its own funds or otherwise to incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers under this Indenture, unless it shall first have been adequately indemnified to its satisfaction against any costs, expenses and liability which it may incur as a result of taking such action. No recourse for the payment of any part of the principal of, premium, if any, or interest on the Bonds or for the satisfaction of any liability arising from, founded upon or existing by reason of the issuance, purchase or ownership of the Bonds shall be had against the members of the Issuer's board of directors or any officer, member, agent or employee of the Issuer, as such, all such liability being expressly released and waived as a condition of and as a part of the consideration for the execution of this Indenture and the issuance of the Bonds. No covenant, stipulation, obligation or agreement of the Issuer contained in this Indenture shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member, officer, agent or employee of the Issuer or the members of the Issuer's board of directors in other than that person's official capacity. No member, officer, agent or employee of the Issuer shall be individually or personally liable for the payment of the principal or redemption price of or interest on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

*[The remainder of this page intentionally left blank.]*  
*[Signature pages follow.]*

IN WITNESS WHEREOF, the Issuer has caused these presents to be signed in its name and behalf by its Mayor, and, to further evidence its acceptance of the trust hereby created, \_\_\_ Bank has caused these presents to be signed in its name and behalf by one its trust officers, each effective as of the dated date hereof.

**CITY OF JONESBORO, ARKANSAS**

By: \_\_\_\_\_  
**Harold Copenhaver, Mayor**

STATE OF ARKANSAS        )  
  ) ss.  
COUNTY OF CRAIGHEAD    )

**ACKNOWLEDGMENT**

On this day before me, a Notary Public, duly commissioned, qualified and acting, within and for the State and County aforesaid, appeared in person the within named **HAROLD COPENHAVER**, Mayor of Jonesboro, Arkansas, a city of the first class and a political subdivision, under the laws of the State of Arkansas, to me personally known, who stated that he was duly authorized in that capacity to execute the foregoing instrument for and in the name of the Issuer and further stated and acknowledged that he had signed, executed and delivered the foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_  
( S E A L )

\_\_\_\_\_ **BANK**

By: \_\_\_\_\_  
\_\_\_\_\_, Senior Vice President,  
Corporate and Trust Operations Manager

STATE OF ARKANSAS    )  
  ) ss.  
COUNTY OF PULASKI    )

**ACKNOWLEDGMENT**

On this day before me, a Notary Public, duly commissioned, qualified and acting, within and for the State and County aforesaid, appeared in person the within named \_\_\_\_\_, of \_\_\_\_\_ Bank, a banking corporation organized under the laws of the State of Arkansas, to me personally known, who stated that s/he was duly authorized in her capacity to execute the foregoing instrument for and in the name of the Bank and further stated and acknowledged that s/he had signed, executed and delivered the foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_

( S E A L )

EXHIBIT A-1

FORM OF SERIES A BOND

R- \_\_\_\_\_

\$ \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF ARKANSAS  
\$11,000,000  
CITY OF JONESBORO, ARKANSAS  
TAXABLE ECONOMIC DEVELOPMENT REVENUE BONDS  
(ADFA/AEDC GUARANTY PROGRAMS)  
(COLSON CASTER PROJECT)  
SERIES 2022A

INTEREST RATE	MATURITY DATE:	ISSUE DATE	CUSIP NO.
	_____, 1,	_____, 2022	480260
REGISTERED OWNER:	CEDE & CO.		
PRINCIPAL AMOUNT:	_____ DOLLARS		

KNOW ALL PERSONS BY THESE PRESENTS:

That the City of Jonesboro, Arkansas, a city of the first class and a political subdivision under the laws of the State of Arkansas (the "Issuer") for value received, promises to pay to the Registered Owner stated above, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, the Principal Amount (stated above) on the Maturity Date (stated above), and to pay in like coin or currency, interest on said Principal Amount from the Interest Commencement Date (stated above) until paid as follows:

Interest on the unpaid Principal Amount shall be payable semiannually on \_\_\_\_\_ 1 and \_\_\_\_\_ 1 of each year, beginning on \_\_\_\_\_ 1, 20\_\_, and shall accrue from the Interest Commencement Date (stated above) at the Interest Rate (stated above) until the Issuer's obligation with respect to payment of such Principal Amount shall be discharged. Payment of interest shall be by check or draft of \_\_\_\_\_ Bank, as Trustee and Paying Agent (the "Trustee"), to the Registered Owner as shown on the bond registration book of the Issuer maintained by the Trustee on the fifteenth calendar day of the month preceding the month in which the interest payment date occurs. Payment of principal shall be made at the principal office of the Trustee in \_\_\_\_\_, Arkansas, upon due surrender of this Bond on the Maturity Date (stated above) if not sooner called for redemption.

This Bond is one of an authorized issue of bonds of the Issuer in the Principal Amount of \$11,000,000 (the "Bonds") which are issued for the purpose of providing funds for the making of loans to the qualified applicant identified in the Trust Indenture (defined below) (the "Lessee") to

finance certain industrial enterprises within the State of Arkansas (the “Project”). The Bonds are all issued under and are all equally and ratably secured and entitled to the protection given by a Trust Indenture (the “Indenture”), dated as of \_\_\_\_\_, 2022, duly executed and delivered by the Issuer to the Trustee. Reference is hereby made to the Indenture and all indentures supplemental thereto for the provisions, among others, with respect to the nature and extent of the security, the issuance of additional series on a parity of security with the Bonds, the rights, duties and obligations of the Issuer, the Trustee and the Registered Owners of the Bonds, and the terms upon which the Bonds are issued and secured. The Bonds are secured by payments to be made by the Lessee pursuant to a Lease Agreement between the Lessee and the Issuer (the “Lease Agreement”).

The payment of the principal of and interest on this Bond as it becomes due is secured by (i) a Guaranty Agreement for Payment of Economic Development Revenue Bonds (the “ADFA Guaranty”), executed by the Issuer in favor of the Trustee under Act No. 505 of 1985, as amended, which ADFA Guaranty is a limited obligation of the Issuer as described therein or (ii) a Guaranty Agreement for Payment of Economic Development Revenue Bonds (the “AEDC Guaranty” and with the ADFA Guaranty, the “Guaranties”), executed by Arkansas Economic Development Commission (“AEDC”) in favor of the Trustee under Act No. 173 of 1967, as amended, which AEDC Guaranty is a limited obligation of AEDC as described therein.

This Bond is issued with the intent that the laws of the State of Arkansas will govern its construction.

**THESE BONDS ARE ISSUED UNDER THE PROVISIONS OF TITLE 14, CHAPTER 164, SUBCHAPTER 2 OF THE ARKANSAS CODE ANNOTATED, AS AMENDED (THE “ACT”), AND CONSTITUTE SPECIAL OBLIGATIONS OF THE ISSUER ONLY. IN NO EVENT SHALL THEY CONSTITUTE AN INDEBTEDNESS OF THE STATE OF ARKANSAS, OR AN INDEBTEDNESS FOR WHICH THE FAITH AND CREDIT OF THE STATE OF ARKANSAS OR ANY OF ITS REVENUES ARE PLEDGED OR AN INDEBTEDNESS SECURED BY A LIEN OR SECURITY INTEREST IN ANY PROPERTY OF THE STATE OF ARKANSAS. THE BONDS ARE NOT SECURED BY A PLEDGE OF THE FULL FAITH AND CREDIT OF THE ISSUER, NOR THE PLEDGE OF ANY OF ITS REVENUES EXCEPT AS SPECIFICALLY SET FORTH IN THE INDENTURE (HEREINAFTER IDENTIFIED) AND THE ADFA GUARANTY AND AEDC GUARANTY.**

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Indenture until the Certificate of Authentication hereon shall have been signed by the Trustee.

The Issuer hereby covenants that it has been duly organized in accordance with law; and that all acts, conditions and things required to be done precedent to and in the issuance of this Bond have existed, have happened, and have been performed as required by law.

The Bonds are not general obligations of the Issuer, but are special obligations payable solely from revenues derived from the Lease Agreement and payments under the Guaranties. The Project consists of certain land, buildings, improvements, equipment and facilities which have been leased by the Issuer to the Lessee under the terms of a Lease Agreement which provides for the loan and repayment of moneys in such amounts as shall be sufficient to pay the principal of and interest on the Bonds as the same become due. Provision has been made in the Lease Agreement for the rental payments to be made directly to the Trustee and deposited in special accounts of the Issuer

designated “City of Jonesboro, Arkansas Economic Development Revenue Bond Fund Series A” (the “Series A Bond Fund”). Certain revenues (including particularly rental payments under the Lease Agreement) derived from the Lease Agreement and the payments made pursuant to the Guaranties (the “Trust Estate”) have been duly pledged by the Indenture to the payment of the principal of and interest on the Bonds. The Bonds do not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory limitation.

The Bonds are secured on a pari passu basis with the Issuer’s \$4,000,000 Taxable Economic Development Revenue Bonds, (Colson Caster Project) Series 2022B as to revenue received by the Issuer under the Lease Agreement.

The owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Indenture, or to institute, appear in and defend any suit or other proceeding with respect thereto, except as provided in the Indenture. In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Bonds issued under the Indenture and then outstanding may be declared and may become due and payable before the stated maturity thereof, together with accrued interest thereon.

Modifications or alterations of the Indenture, or of any indenture supplemental thereto, may be made only to the extent and in the circumstances permitted by the Indenture.

The Bonds shall be subject to redemption prior to maturity as follows:

(1) On any interest payment date, the Bonds shall be redeemed in whole or in part, at the option of the Issuer at the direction of the Lessee, from the proceeds of insurance or other funds in the event of major damage or destruction of the Project pursuant to the provisions of the Lease Agreement, or from legal curtailment of the use and occupancy of all or substantially all of such Project for any reason other than condemnation pursuant to the provisions of the Lease Agreement. If called for redemption upon the occurrence of any of the events described in the preceding sentence, this Bond shall be redeemed in whole, in the manner provided in this Bond and the Indenture, at one hundred percent (100%) of the principal amount thereof, plus accrued interest to the date of redemption.

(2) On any interest payment date, the Bond will be redeemed in whole or in part from the proceeds of condemnation of all or substantially all of the Project at a redemption price equal to one hundred percent (100%) of the principal amount being redeemed plus accrued interest to the redemption date.

(3) At any time, the Bonds shall be redeemed in whole or in part, at the option of the Issuer, from Bond proceeds not needed for construction, acquisition and installation of the Project, upon notice to the Trustee at a redemption price equal to one hundred percent (100%) of the principal amount being redeemed plus accrued interest to the redemption date.

(4) At any time, the Bonds shall be redeemed in whole or in part, at the option of the Issuer, if the Issuer notifies the Trustee in writing that an event of default has occurred under the Lease Agreement and that it requests a redemption of such Bonds at a redemption price equal to one

hundred percent (100%) of the principal amount being redeemed plus accrued interest to the redemption date.

(5) On or after \_\_\_\_\_, 20\_\_\_\_, the Bonds (or any portion thereof in \$5,000 multiples) will be subject to redemption prior to maturity, at the option of the Issuer upon the direction of such Lessee, in whole or in part, on any date (and by lot within a maturity in such manner as the Trustee may determine), at a redemption price equal to the principal amount being redeemed plus accrued interest to the date of redemption.

(6) The Bonds due on \_\_\_\_\_, 20\_\_, 20\_\_ and 20\_\_ are subject to mandatory sinking fund redemption on the following dates and in the following amounts:

<b>Bonds Maturing _____ 1, 20__</b>	
<b>Year</b>	
<b>( ____ 1)</b>	<b>Principal Amount</b>
	\$
	\$
	\$*

\* Final Maturity

<b>Bonds Maturing _____ 1, 20__</b>	
<b>Year</b>	
<b>( ____ 1)</b>	<b>Principal Amount</b>
	\$
	\$
	\$*

\* Final Maturity

<b>Bonds Maturing _____ 1, 20__</b>	
<b>Year</b>	
<b>( ____ 1)</b>	<b>Principal Amount</b>
	\$
	\$
	\$*

\* Final Maturity

Notice of redemption shall be mailed by first class mail or by other acceptable standard, including facsimile, to the registered owner of the Bonds addressed to such registered owner at his, her or its registered address and placed in the mails not less than thirty (30) days nor more than sixty (60) days prior to the date fixed for redemption. Each notice shall specify the numbers and the maturities of the Bonds being called and the date on which they shall be presented for payment. After the date specified in such call, the Bond or Bonds so called will cease to bear interest provided

funds for their payment have been deposited with the Trustee, and, except for the purpose of payment, shall no longer be protected by the Indenture and shall not be deemed to be outstanding under the provisions of the Indenture.

In the event of a partial redemption of this Bond, the Owner hereof is authorized to effect a reduction in the face amount of this Bond by making a notation on the payment grid attached hereto in lieu of surrendering this Bond to the Trustee for cancellation and the issuance of a new Bond or Bonds in the amount of the unredeemed portion hereof. **Accordingly, the outstanding principal of this Bond may be less than the stated face amount hereof and the records of the Trustee shall be conclusive as to the outstanding principal amount hereof. Any purchaser or transferee of this Bond should contact the Trustee to ascertain the outstanding face amount hereof.**<sup>1</sup>

---

<sup>1</sup> To be included in Bonds registered in the name of a securities depository or a nominee thereof and deleted from other Bonds.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed in its name by its Mayor and City Clerk, thereunto duly authorized, with the manual or facsimile signature of the Mayor and the manual or facsimile signature of the City Clerk, and the corporate seal to be impressed or imprinted, all as of the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**CITY OF JONESBORO, ARKANSAS**

By: \_\_\_\_\_  
Mayor

ATTEST:

By: \_\_\_\_\_  
City Clerk

**CERTIFICATE OF AUTHENTICATION**

This Bond is one of the Bonds issued under the provisions of the within mentioned Indenture.

\_\_\_\_\_, as Trustee

By: \_\_\_\_\_  
Authorized Signatory

Dated: \_\_\_\_\_

**ASSIGNMENT**

**FOR VALUE RECEIVED** the undersigned hereby sells, assigns and transfers unto

---

(Social Security or Federal Taxpayer Identification Number)

---

(Please print or typewrite Name and Address, including Zip Code, of Assignee)

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints the Registrar under the Indenture as Attorney to register the transfer of the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature guaranteed by:

---

**NOTICE:**

**SIGNATURE GUARANTEE SHOULD BE MADE BY A GUARANTOR INSTITUTION PARTICIPATING IN THE SECURITIES TRANSFER AGENTS MEDALLION PROGRAM OR IN SUCH OTHER GUARANTEE PROGRAM ACCEPTABLE TO THE TRUSTEE.**

---

**NOTICE:**

**THE SIGNATURE OF THE REGISTERED OWNER TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS IT APPEARS ON THE FACE OF THE WITHIN BOND IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER.**



EXHIBIT A-2

FORM OF SERIES B BOND

R- \_\_\_\_\_

\$ \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF ARKANSAS  
\$4,000,000  
CITY OF JONESBORO, ARKANSAS  
TAXABLE ECONOMIC DEVELOPMENT REVENUE BONDS  
(COLSON CASTER PROJECT)  
SERIES 2022B

INTEREST RATE	MATURITY DATE:	ISSUE DATE	CUSIP NO.
	_____ 1,	_____, 2022	480260
REGISTERED OWNER:	CEDE & CO.		
PRINCIPAL AMOUNT:	_____ DOLLARS		

KNOW ALL PERSONS BY THESE PRESENTS:

That the City of Jonesboro, Arkansas, a city of the first class and a political subdivision under the laws of the State of Arkansas (the "Issuer") for value received, promises to pay to the Registered Owner stated above, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, the Principal Amount (stated above) on the Maturity Date (stated above), and to pay in like coin or currency, interest on said Principal Amount from the Interest Commencement Date (stated above) until paid as follows:

Interest on the unpaid Principal Amount shall be payable semiannually on \_\_\_\_\_ 1 and \_\_\_\_\_ 1 of each year, beginning on \_\_\_\_\_ 1, 20\_\_, and shall accrue from the Interest Commencement Date (stated above) at the Interest Rate (stated above) until the Issuer's obligation with respect to payment of such Principal Amount shall be discharged. Payment of interest shall be by check or draft of \_\_\_\_\_ Bank, as Trustee and Paying Agent (the "Trustee"), to the Registered Owner as shown on the bond registration book of the Issuer maintained by the Trustee on the fifteenth calendar day of the month preceding the month in which the interest payment date occurs. Payment of principal shall be made at the principal office of the Trustee in \_\_\_\_\_, Arkansas, upon due surrender of this Bond on the Maturity Date (stated above) if not sooner called for redemption.

This Bond is one of an authorized issue of bonds of the Issuer in the Principal Amount of \$4,000,000 (the "Bonds") which are issued for the purpose of providing funds for the making of loans to the qualified applicant identified in the Trust Indenture (defined below) (the "Lessee") to finance certain industrial enterprises within the State of Arkansas (the "Project"). The Bonds are all

issued under and are all equally and ratably secured and entitled to the protection given by a Trust Indenture (the “Indenture”), dated as of \_\_\_\_\_, 2022, duly executed and delivered by the Issuer to the Trustee. Reference is hereby made to the Indenture and all indentures supplemental thereto for the provisions, among others, with respect to the nature and extent of the security, the issuance of additional series on a parity of security with the Bonds, the rights, duties and obligations of the Issuer, the Trustee and the Registered Owners of the Bonds, and the terms upon which the Bonds are issued and secured. The Bonds are secured by payments to be made by the Lessee pursuant to a Lease Agreement between the Lessee and the Issuer (the “Lease Agreement”).

This Bond is issued with the intent that the laws of the State of Arkansas will govern its construction.

**THESE BONDS ARE ISSUED UNDER THE PROVISIONS OF TITLE 14, CHAPTER 164, SUBCHAPTER 2 OF THE ARKANSAS CODE ANNOTATED, AS AMENDED (THE “ACT”), AND CONSTITUTE SPECIAL OBLIGATIONS OF THE ISSUER ONLY. IN NO EVENT SHALL THEY CONSTITUTE AN INDEBTEDNESS OF THE STATE OF ARKANSAS, OR AN INDEBTEDNESS FOR WHICH THE FAITH AND CREDIT OF THE STATE OF ARKANSAS OR ANY OF ITS REVENUES ARE PLEDGED OR AN INDEBTEDNESS SECURED BY A LIEN OR SECURITY INTEREST IN ANY PROPERTY OF THE STATE OF ARKANSAS. THE BONDS ARE NOT SECURED BY A PLEDGE OF THE FULL FAITH AND CREDIT OF THE ISSUER, NOR THE PLEDGE OF ANY OF ITS REVENUES EXCEPT AS SPECIFICALLY SET FORTH IN THE INDENTURE (HEREINAFTER IDENTIFIED) AND THE ADF A AND AEDC GUARANTIES.**

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Indenture until the Certificate of Authentication hereon shall have been signed by the Trustee.

The Issuer hereby covenants that it has been duly organized in accordance with law; and that all acts, conditions and things required to be done precedent to and in the issuance of this Bond have existed, have happened, and have been performed as required by law.

The Bonds are not general obligations of the Issuer, but are special obligations payable solely from revenues derived from the Lease Agreement and the equipment, machinery, furnishings and personal and real property comprising the Project. The Project consists of certain equipment which have been leased by the Issuer to the Lessee under the terms of a Lease Agreement which provides for the loan and repayment of moneys in such amounts as shall be sufficient to pay the principal of and interest on the Bonds as the same become due. Provision has been made in the Lease Agreement for the rental payments to be made directly to the Trustee and deposited in special accounts of the Issuer designated “City of Jonesboro, Arkansas Economic Development Revenue Bond Fund Series B” (the “Series B Bond Fund”). The machinery, equipment, furnishings and personal and real property of the Project and certain revenues (including particularly rental payments under the Lease Agreement) derived from the Lease Agreement have been duly pledged by the Indenture and a mortgage and security agreement to the payment of the principal of and interest on the Bonds. The Bonds are further secured by an unlimited payment and performance guarantee of Colson Group Holdings, LLC, the parent company of the Lessee. The Bonds do not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory limitation.

The Bonds are secured on a pari passu basis with the Issuer's \$11,000,000 Taxable Economic Development Revenue Bonds, (ADFA/AEDC Guaranty Programs) (Colson Caster Project) Series 2022A as to revenue received by the Issuer under the Lease Agreement.

The owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Indenture, or to institute, appear in and defend any suit or other proceeding with respect thereto, except as provided in the Indenture. In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Bonds issued under the Indenture and then outstanding may be declared and may become due and payable before the stated maturity thereof, together with accrued interest thereon.

Modifications or alterations of the Indenture, or of any indenture supplemental thereto, may be made only to the extent and in the circumstances permitted by the Indenture.

The Bonds shall be subject to redemption prior to maturity as follows:

(1) On any interest payment date, the Bonds shall be redeemed in whole or in part, at the option of the Issuer at the direction of the Lessee, from the proceeds of insurance or other funds in the event of major damage or destruction of the Project pursuant to the provisions of the Lease Agreement, or from legal curtailment of the use and occupancy of all or substantially all of such Project for any reason other than condemnation pursuant to the provisions of the Lease Agreement. If called for redemption upon the occurrence of any of the events described in the preceding sentence, this Bond shall be redeemed in whole, in the manner provided in this Bond and the Indenture, at one hundred percent (100%) of the principal amount thereof, plus accrued interest to the date of redemption.

(2) On any interest payment date, the Bond will be redeemed in whole or in part from the proceeds of condemnation of all or substantially all of the Project at a redemption price equal to one hundred percent (100%) of the principal amount being redeemed plus accrued interest to the redemption date.

(3) At any time, the Bonds shall be redeemed in whole or in part, at the option of the Issuer, from Bond proceeds not needed for construction, acquisition and installation of the Project, upon notice to the Trustee at a redemption price equal to one hundred percent (100%) of the principal amount being redeemed plus accrued interest to the redemption date.

(4) At any time, the Bonds shall be redeemed in whole or in part, at the option of the Issuer, if the Issuer notifies the Trustee in writing that an event of default has occurred under the Lease Agreement and that it requests a redemption of such Bonds at a redemption price equal to one hundred percent (100%) of the principal amount being redeemed plus accrued interest to the redemption date.

(5) On or after \_\_\_\_\_, 20\_\_\_\_, the Bonds (or any portion thereof in \$5,000 multiples) will be subject to redemption prior to maturity, at the option of the Issuer upon the direction of such Lessee, in whole or in part, on any date (and by lot within a maturity in such manner as the Trustee

may determine), at a redemption price equal to the principal amount being redeemed plus accrued interest to the date of redemption.

(6) The Bonds due on \_\_\_\_\_, 20\_\_, 20\_\_ and 20\_\_ are subject to mandatory sinking fund redemption on the following dates and in the following amounts:

<b>Bonds Maturing _____ 1, 20__</b>	
<b>Year</b>	
<b>( ____ 1)</b>	<b>Principal Amount</b>
	\$
	\$
	\$*

\* Final Maturity

<b>Bonds Maturing _____ 1, 20__</b>	
<b>Year</b>	
<b>( ____ 1)</b>	<b>Principal Amount</b>
	\$
	\$
	\$*

\* Final Maturity

<b>Bonds Maturing _____ 1, 20__</b>	
<b>Year</b>	
<b>( ____ 1)</b>	<b>Principal Amount</b>
	\$
	\$
	\$*

\* Final Maturity

Notice of redemption shall be mailed by first class mail or by other acceptable standard, including facsimile, to the registered owner of the Bonds addressed to such registered owner at his, her or its registered address and placed in the mails not less than thirty (30) days nor more than sixty (60) days prior to the date fixed for redemption. Each notice shall specify the numbers and the maturities of the Bonds being called and the date on which they shall be presented for payment. After the date specified in such call, the Bond or Bonds so called will cease to bear interest provided funds for their payment have been deposited with the Trustee, and, except for the purpose of payment, shall no longer be protected by the Indenture and shall not be deemed to be outstanding under the provisions of the Indenture.

In the event of a partial redemption of this Bond, the Owner hereof is authorized to effect a reduction in the face amount of this Bond by making a notation on the payment grid attached hereto

in lieu of surrendering this Bond to the Trustee for cancellation and the issuance of a new Bond or Bonds in the amount of the unredeemed portion hereof. **Accordingly, the outstanding principal of this Bond may be less than the stated face amount hereof and the records of the Trustee shall be conclusive as to the outstanding principal amount hereof. Any purchaser or transferee of this Bond should contact the Trustee to ascertain the outstanding face amount hereof.**<sup>2</sup>

---

<sup>2</sup> To be included in Bonds registered in the name of a securities depository or a nominee thereof and deleted from other Bonds.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed in its name by its Mayor and City Clerk, thereunto duly authorized, with the manual or facsimile signature of the Mayor and the manual or facsimile signature of the City Clerk, and the corporate seal to be impressed or imprinted, all as of the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**CITY OF JONESBORO, ARKANSAS**

By: \_\_\_\_\_  
Mayor

ATTEST:

By: \_\_\_\_\_  
City Clerk

**CERTIFICATE OF AUTHENTICATION**

This Bond is one of the Bonds issued under the provisions of the within mentioned Indenture.

\_\_\_\_\_, as Trustee

By: \_\_\_\_\_  
Authorized Signatory

Dated: \_\_\_\_\_

**ASSIGNMENT**

**FOR VALUE RECEIVED** the undersigned hereby sells, assigns and transfers unto

---

(Social Security or Federal Taxpayer Identification Number)

---

(Please print or typewrite Name and Address, including Zip Code, of Assignee)

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints the Registrar under the Indenture as Attorney to register the transfer of the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature guaranteed by:

---

**NOTICE:**

**SIGNATURE GUARANTEE SHOULD BE MADE BY A GUARANTOR INSTITUTION PARTICIPATING IN THE SECURITIES TRANSFER AGENTS MEDALLION PROGRAM OR IN SUCH OTHER GUARANTEE PROGRAM ACCEPTABLE TO THE TRUSTEE.**

---

**NOTICE:**

**THE SIGNATURE OF THE REGISTERED OWNER TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS IT APPEARS ON THE FACE OF THE WITHIN BOND IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER.**



**TRUST INDENTURE**

**between**

**CITY OF JONESBORO, ARKANSAS**

**as Issuer**

**and**

---

**as Trustee**

**for**

**\$9,000,000**

**City of Jonesboro, Arkansas**

**Taxable Economic Development Revenue Bonds**

**(Colson Caster Project)**

**Series 2022C**

**Dated: \_\_\_\_\_, 2022**

**MITCHELL | WILLIAMS**

MITCHELL, WILLIAMS, SELIG, GATES & WOODYARD, P.L.L.C.  
100 EAST HUNTINGTON, SUITE C  
JONESBORO, ARKANSAS 72401

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## TRUST INDENTURE

THIS TRUST INDENTURE (this “**Indenture**”) executed as of the \_\_\_ day of \_\_\_\_\_, 2022, by and between the **CITY OF JONESBORO, ARKANSAS**, a city of the first class and a political subdivision of the State of Arkansas (the “**Issuer**”), duly existing under the laws of the State of Arkansas, as party of the first part, and \_\_\_\_\_, an \_\_\_\_\_ with a corporate trust office in \_\_\_\_\_, Arkansas (the “**Trustee**”), as party of the second part;

### RECITALS:

A. The Issuer is authorized by the provisions of Amendment 65 to the Arkansas Constitution and Title 14, Chapter 164, Subchapter 2 of the Arkansas Code Annotated specifically Ark. Code Ann. §§ 14-164-201 *et seq.* and Ark. Code Ann. §§ 14-164-701 *et seq.*, each as amended from time to time (collectively, the “**Act**”) to issue the bonds herein authorized for the purpose of financing the costs of acquiring, constructing and equipping lands, buildings or facilities for industrial enterprises as defined in the Act; and

B. Pursuant to and in accordance with the Act, the Issuer proposes to issue its industrial development revenue bonds and to loan the proceeds thereof to Colson Caster, LLC, a Delaware limited liability company (the “**Company**” or the “**Borrower**”), for the purposes of financing or refinancing the costs of acquiring, constructing, and equipping certain industrial facilities located within the corporate boundaries of the City of Jonesboro, Arkansas, such loan to be upon the terms and conditions set forth in the Lease Agreement dated as of \_\_\_\_\_, 2022, by and between the Issuer and the Company (the “**Lease Agreement**”); and

C. A portion of the permanent financing of the Project costs, necessary costs and expenditures incidental thereto and the cost of the issuance of bonds, is being furnished by the Issuer issuing its Taxable Economic Development Revenue Bonds (Colson Caster Project), Series 2022C under the provisions of the Act in a principal amount not to exceed Nine Million and No/100 Dollars (\$9,000,000.00) (the “**Bonds**”); and

D. The Bonds are to be sold and issued in the principal amount, dated, bearing interest, maturing and subject to redemption as hereinafter in this Indenture set forth in detail; and

E. The execution and delivery of this Indenture and the issuance of the Bonds have been in all respects duly and validly authorized by Ordinance \_\_\_\_\_ of the City Council of the Issuer, adopted and approved on the \_\_\_\_\_ day \_\_\_\_\_, 2022; and

F. All things necessary to make the Bonds, when authenticated by the Trustee and issued as in this Indenture provided, the valid, binding and legal obligations of the Issuer according to the import thereof, and to constitute this Indenture a valid pledge of revenues to the payment of the principal of and interest on the Bonds, in accordance with the creation, execution and delivery of this Indenture and the creation, execution and issuance of the Bonds, subject to the terms hereof, have in all respects been duly authorized; and

G. Simultaneously with the issuance of the Bonds, the Issuer is issuing its Taxable Economic Development Revenue Bonds (ADFA/AEDC Guaranty Programs) (Colson Caster

Project), Series 2022A in the aggregate principal amount of \$11,000,000 and its Taxable Economic Development Revenue Bonds (Colson Caster Project), Series 2022B in the aggregate principal amount of \$4,000,000 (collectively, the “**Senior Bonds**”).

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS, THIS INDENTURE

**WITNESSETH:**

That the Issuer in consideration of the premises and the acceptance by the Trustee of the Trusts hereby created and of the purchase and acceptance of the Bonds by the owners thereof, and the sum of One Dollar (\$1.00), lawful money of the United States of America, to it duly paid by the Trustee, at or before the execution and delivery of these presents, and for other good and valuable considerations, the receipt of which is hereby acknowledged, and in order to secure the payment of the principal of and interest on the Bonds according to their tenor and effect and the performance and observance by the Issuer of all the covenants expressed or implied herein and in the Bonds, subject to all of the provisions hereof, does hereby grant, bargain, sell, convey, mortgage, assign and pledge unto the Trustee, and unto its successor or successors in trust, and to them and their assigns forever, for the securing of the performance of the obligations of the Issuer hereinafter set forth:

I.

Subject to the superior rights of the holders of the Senior Bonds, all rights of the Issuer under the terms of the Lease Agreement between the Issuer and the Borrower (except the rights of the Issuer to indemnification and the payment of certain fees) and all Revenues (as herein defined) and the proceeds thereof;

II.

All the rights and interest of the Issuer in and to the Bond Fund and the Loan Fund (as hereinafter defined) and all moneys and investments therein, but subject to the provisions of this Indenture pertaining thereto, including the making of disbursements therefrom.

III.

Any other property hereinafter pledged to or coming into the possession of the Trustee.

TO HAVE AND TO HOLD all the same with all privileges and appurtenances hereby conveyed and assigned, or agreed or intended so to be, to the Trustee and its successors in said trusts and to them and their assigns forever;

IN TRUST NEVERTHELESS, upon the terms and conditions herein set forth for the equal and proportionate benefit, security and protection of all owners of the Bonds issued under and secured by this Indenture with the privileges, priority or distinction as to lien of the Bonds as provided in the Bond form for the Bonds; provided, however, that if the Issuer, its successors or assigns, shall well and truly pay, or cause to be paid, the principal of the Bonds and the interest due thereon, at the times and in the manner provided in the Bonds, according to the true intent and

meaning thereof, and shall make the payments into the Bond Fund as required under Article V or shall provide, as permitted hereby, for the payment thereof by depositing or causing to be deposited with the Trustee the entire amount due or to become due thereon, and shall well and truly keep, perform and observe all the covenants and conditions pursuant to the terms of this Indenture to be kept, performed and observed by it, and shall pay to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon such final payments this Indenture and the rights hereby granted shall cease, determine and be void; otherwise, this Indenture to be and remain in full force and effect.

THIS INDENTURE FURTHER WITNESSETH, and it is expressly declared, that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and all property hereby assigned and pledged and the income, revenues and receipts and other sums of money payable or receivable under the Lease Agreement, hereby assigned and pledged are to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreement, trusts, uses and purposes as hereinafter expressed, and the Issuer does hereby agree and covenant, with the Trustee and the respective holders from time to time of the Bonds, as follows:

## **ARTICLE I. DEFINITIONS**

**Section 1.01. Definitions.** In addition to the words and terms elsewhere defined in this Indenture, the following words and terms as used in this Indenture shall have the following meanings:

**“Act”** – Collectively, the provisions of Amendment 65 to the Arkansas Constitution and the Municipalities and Counties Industrial Development Revenue Bond Law, Title 14, Chapter 164, Subchapter 2 of the Arkansas Code of 1987 Annotated, specifically Ark. Code Ann. §§ 14-164-201 *et seq.* and Ark. Code Ann. §§ 14-164-701 *et seq.*, as amended from time to time.

**“Advance”** – The advancement from time to time of the proceeds of the Bonds to the Borrower pursuant to requisitions submitted in accordance with Section 6.03 hereof.

**“Agreement”** or **“Lease Agreement”** – The Lease Agreement dated as of \_\_\_\_\_, 2022, between the Issuer and the Company providing for a loan to the Company for payment of a portion of the Project costs.

**“Bond Fund”** – The fund of the Issuer created by Section 5.01 of this Indenture into which the funds specified in Article V are to be deposited and out of which disbursements are to be made as expressly authorized and directed by this Indenture.

**“Bonds”** or **“bonds”** – City of Jonesboro, Arkansas Taxable Economic Development Revenue Bonds (Colson Caster Project), Series 2022C issued under and secured by the Indenture, in the principal amount of not to exceed \$9,000,000.

**“Borrower”** or **“Company”** – Colson Caster, LLC, a Delaware limited liability company.

**“Borrower Representative”** – The person or persons at the time designated to act on behalf of the Borrower as evidenced by written certificate furnished to the Trustee containing the specimen signature of such person signed on behalf of the Borrower by its appropriate officer or officers.

**“City Clerk”** – The person holding the office and performing the duties of City Clerk of the Issuer.

**“Closing Date”** – The date on which the Bonds are issued and delivered to Purchaser.

**“Code”** – The Internal Revenue Code of 1986, as amended, of the United States of America.

**“Completion Date”** – The date of completion of the acquisition, construction and equipping of the Project as that date shall be determined by the Borrower and certified in writing to the Trustee.

**“Costs of Issuance Fund”** – The Costs of Issuance Fund created pursuant to Section 5.01 of this Indenture.

**“Delivery Instructions”** – The written request and authorization given by the Issuer on the Closing Date directing the use and deposit of the proceeds of the Bonds or other funds deposited with the Trustee by the Borrower.

**“Government Securities”** – Direct or fully guaranteed obligations of the United States of America (including any such securities issued or held in book-entry form on the books of the Department of the Treasury of the United States of America).

**“Home Office Payment Agreement”** – The Home Office Payment Agreement among the Issuer, the Borrower, the Trustee, the Purchaser and any Bondholder evidencing the intent of the parties with respect to payment obligations under this Indenture, the Bond Purchase Agreement, and the Lease Agreement.

**“Indenture”** – This Trust Indenture with all indentures supplemental hereto.

**“Issuance Costs”** – All costs and expenses of issuance of the Bonds, including, but not limited to: (i) counsel fees, including bond counsel and Issuer’s counsel, as well as any other specialized counsel fees; (ii) trustee fees and trustee counsel fees; (iii) paying agent and certifying and authenticating agent fees related to issuance of the Bonds; (vi) accountant fees; (vii) printing costs of the Bonds; (viii) publication costs associated with the financing proceedings; and (ix) recording fees.

**“Issuer”** – City of Jonesboro, Arkansas, a city of the first class and a political subdivision of the State of Arkansas.

**“Loan”** – The loan from the Issuer to the Company evidenced and governed by the Lease Agreement.

**“Loan Fund”** – The fund created by Section 5.06 into which the portion of the proceeds of the sale of the Bonds specified in Section 6.02 is to be deposited and out of which disbursements are to be made in the manner and for the purposes specified in Article VI of the Indenture.

**“Mayor”** – The Mayor of the Issuer.

**“Outstanding hereunder”** – **“Bonds outstanding hereunder”** - All Bonds which have been authenticated and delivered under the Indenture, except:

(a) Bonds canceled because of payment or redemption prior to maturity;

(b) Bonds, for the payment or redemption of which, cash or investment securities in the amount required by Section 8.01 of the Indenture shall have been theretofore deposited with the Trustee (whether upon or prior to the maturity or redemption date of any such Bonds) provided that if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given or satisfactory provision shall have been made therefor, or a waiver of such notice satisfactory in form to the Trustee shall have been filed with the Trustee; and

(c) Bonds in lieu of which others have been authenticated under Section 2.08.

**“Owner”** or **“Bondowner”** or **“owner of the bonds”** or **“Bondholder”** – The registered owner of any bond.

**“Paying Agent”** – The bank or trust company named by the Issuer as the place at which the principal of and interest on the Bonds is payable. The original Paying Agent is the Trustee. References to Paying Agent include any alternate Paying Agent.

**“Person”** – Includes natural persons, firms, associations, corporations, other legal entities and public bodies.

**“Pledged Property”** – The properties, interests and rights set forth in the granting clauses of this Indenture.

**“Project”** – The improvements, infrastructure, equipment and facilities being financed out of the proceeds of the Bonds, together with other expenses in connection therewith, including architectural and engineering fees, and the costs of the issuance of the Bonds.

**“Purchaser”** or **“Bondholder”** – [Affiliate of Borrower], a [state][entity]. The Purchaser is the original purchaser of the Bonds.

**“Record Date”** – The fifteenth calendar day of the month preceding the month in which the interest payment date occurs.

**“Revenues”** – The income, including penalties and interest, derived by the Issuer under the Lease Agreement.

“**Senior Bonds**” – Collectively, the Issuer’s Taxable Economic Development Revenue Bonds (ADFA/AEDC Guaranty Programs) (Colson Caster Project), Series 2022A in the principal amount of \$11,000,000 and its Taxable Economic Development Revenue Bonds (Colson Caster Project), Series 2022B in the principal amount of \$4,000,000 issued pursuant to a Trust Indenture of even date herewith between the Issuer and the Trustee.

“**State**” – The State of Arkansas.

“**Temporary Bonds**” – Bonds issued pursuant to Section 2.13 of the Indenture if definitive bonds are not available upon the initial delivery of the Bonds to the Purchaser.

“**Trust Estate**” – Property herein conveyed, also called the Pledged Property.

“**Trustee**” – The Trustee for the time being, whether original or successor, with the original Trustee being \_\_\_\_\_, an \_\_\_\_\_ authorized to exercise corporate trust powers in the State of Arkansas, and being duly qualified to accept and administer the trusts hereby created,. The Trustee is also a Paying Agent and Registrar.

“**Written Request**” – With reference to Issuer, a request in writing signed by the Mayor and City Clerk, and, with reference to the Borrower, a request in writing signed by a Borrower Representative.

**Section 1.02. Use of Words.** Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the word “bond,” “owner,” “holder,” and “person” shall include the plural, as well as the singular, number.

## **ARTICLE II. THE BONDS**

**Section 2.01. Authorization.** In accordance with and subject to the terms, conditions and limitations established in this Indenture, an issue of economic development revenue bonds is hereby authorized in the aggregate principal amount of \$9,000,000. No Bonds may be issued under the provisions of this Indenture except in accordance with this Article.

**Section 2.02. Details of Bonds.** The Bonds shall be designated “City of Jonesboro, Arkansas Taxable Economic Development Revenue Bonds (Colson Caster Project), Series 2022C,” in the principal amount of not to exceed \$9,000,000. The Bonds will be dated \_\_\_\_\_, 2022, and interest thereon shall be payable as set forth in the forms of Bond attached hereto as Exhibit A and Exhibit B. The Bonds shall be registered bonds, without coupons, in denominations of \$100,000 each or any integral multiple of \$5,000 in excess of \$100,000 and the principal amount shall be payable, unless sooner redeemed in the manner provided in this Indenture, as set forth in the form of Bond heretofore set forth in this Indenture.

The Bonds shall be initially issued in the form of one fully registered bond in the principal amount of not to exceed \$9,000,000, and may not be submitted in exchange for more than one fully registered bond until the Completion Date, at which time the Bond initially issued may, but shall not

be required to, be submitted to the Trustee pursuant to the provisions of Section 2.09 hereof in exchange for more than one fully registered bond. The proceeds of the Bonds shall be advanced from time to time upon the submission of draw requests or requisitions by the Borrower, to the Trustee pursuant to the provisions of Section 6.03 hereof and Article II and Section 8.01 of the Lease Agreement. Upon receipt of a Draw Certificate and Notice of Funding, substantially in the form of Exhibit C-2 attached to the Lease Agreement, the Bondholder shall pay to the Trustee the principal amount requisitioned by the Borrower, and the Trustee shall make a notation of such principal amount purchased on the Record of Advances and Principal Payments attached to the Bond. The amount shown on the Record of Advances and Principal Payments attached to the Bond shall be deemed to be conclusive evidence of the principal amount of the Bonds purchased by the Bondholder, absent manifest error. The principal amount of the Bonds so purchased shall be submitted by the Purchaser to the Trustee, and such amount shall be deposited by the Trustee into the Loan Fund. Any portion of the Bonds not sold to the Bondholder and any portion of the corresponding proceeds not delivered to the Borrower by the Completion Date shall not be issued or delivered thereafter. Notwithstanding anything herein to the contrary, until the Completion Date, upon the request of the Bondholder, the Trustee may maintain custody of the Bond as agent of the Bondholder.

The Bond initially issued shall bear interest from its date; provided, that the date of each Advance under such Bond shall be the interest commencement date from which the principal amount of such Advance bears interest. Bonds issued on the Completion Date and prior to the next Interest Payment Date shall bear interest from the Completion Date, and the Bonds issued thereafter shall bear interest from the Interest Payment Date next preceding the date of authentication and delivery thereof by the Trustee, unless such date of authentication and delivery shall be an Interest Payment Date, in which case they shall bear interest from such date of authentication and delivery or unless such date of authentication and delivery shall be during the period from the Record Date to the next Interest Payment Date, in which case they shall bear interest from such Interest Payment Date; provided, however, that if, as shown by the records of the Trustee, interest on any Bonds surrendered for transfer or exchange shall be in default, the Bonds issued in exchange for Bonds surrendered for transfer or exchange shall bear interest from the date to which interest has been paid in full on the Bonds surrendered. Interest shall be computed on the basis of a year of three hundred sixty-five (365) or three hundred sixty-six (366) days, as applicable.

**Section 2.03. Maturity; Interest Payment Dates.** The Bonds shall mature on \_\_\_\_\_, 20\_\_ and bear interest payable annually on each \_\_\_\_\_ (each an “**Interest Payment Date**”), commencing \_\_\_\_\_, 2022 and continuing through \_\_\_\_\_, 20\_\_ with the final principal payment due on maturity, \_\_\_\_\_, 20\_\_, at the rate per annum of \_\_\_\_\_ percent (\_\_\_\_%).

**Section 2.04. Execution of Bonds.** The Bonds shall be executed on behalf of the Issuer by the Mayor (by his original or facsimile signature) and the City Clerk (by her original or facsimile signature) thereof and shall have impressed thereon the seal of the Issuer. The Mayor and the City Clerk shall file the certificates required by the Uniform Facsimile Signature Public Officials Act (Arkansas Code of 1987 Annotated, Title 21, Chapter 10) and otherwise comply with the provisions of that Act, and the Mayor and the City Clerk's facsimile signatures shall have the same force and effect as if they had personally signed. The Bonds, together with interest thereon, shall be payable from the Bond Fund, as hereinafter set forth, and shall be a valid claim of the owners thereof only against such fund and the revenues pledged to such fund, which revenues are hereby pledged and mortgaged for the payment of the Bonds and shall be used for no other purpose than to pay the principal of and interest on the Bonds, and the Trustee's, the Paying Agent's and Bond Registrar's fees, except as may be otherwise expressly authorized in this Indenture. In case any officer whose signature or facsimile of whose signature shall appear on the Bonds shall cease to be such officer before the delivery of such Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until delivery.

**Section 2.05. Authentication.** Only such Bonds as shall have endorsed thereon a Certificate of Authentication substantially in the form included in the bond forms attached hereto as Exhibit A and Exhibit B duly executed by the Trustee shall be entitled to any right or benefit under this Indenture. No Bond shall be valid and obligatory for any purpose unless and until such Certificate of Authentication shall have been duly executed by the Trustee, and such Certificate of the Trustee upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Indenture. The Trustee's Certificate of Authentication on any Bond shall be deemed to have been executed if signed by an authorized officer of the Trustee, but it shall not be necessary that the same officer sign the Certificate of Authentication on all of the Bonds issued hereunder.

**Section 2.06. Form of Bond.** The Bond originally issued and delivered shall be substantially in the form set forth in Exhibit A attached hereto, with appropriate variations, omissions and insertions as permitted or required by this Indenture. The Bonds exchanged for the originally issued Bonds and delivered on and after the Completion Date shall be substantially in the form set forth in Exhibit B attached hereto, with such appropriate variations, omissions and insertions as are permitted or required by the Indenture.

**Section 2.07. Delivery of Bonds.** Upon the execution and delivery of this Indenture, the Issuer shall execute and deliver to the Trustee and the Trustee shall authenticate the Bonds and, with the direction of the Purchaser, either deliver them to the Purchaser or maintain custody of the Bond as agent of the Purchaser upon payment of the initial Advance, and the Trustee shall be entitled to rely upon any certificate, ordinance or resolution as to the purchase price and the Purchaser. Prior to the Trustee's delivery of the Bonds to the Purchaser, the Trustee shall make appropriate notation on Schedule A attached to the Bond certificate of the amount and date of the initial draw thereunder and such amount shall be deemed to be conclusive evidence of the principal amount purchased by the Purchaser, absent manifest error.

**Section 2.08. Mutilated, Destroyed or Lost Bonds.** In case any Bond issued hereunder shall become mutilated or be destroyed or lost, the Issuer shall, if not then prohibited by law, cause

to be executed and the Trustee may authenticate and deliver a new Bond of like date, number, maturity and tenor in exchange and substitution for any such mutilated, destroyed or lost Bond, upon the owners paying the reasonable expenses and charges of the Issuer and the Trustee in connection therewith, and, in case of a Bond destroyed or lost, his filing with the Trustee of evidence satisfactory to it that such Bond was destroyed or lost, and of his ownership thereof and furnishing the Issuer and the Trustee with indemnity satisfactory to them. The Trustee is hereby authorized to authenticate any such new Bond. In the event any such Bonds shall have matured, instead of issuing a new Bond, the Issuer may pay the same without the surrender thereof.

**Section 2.09. Registration and Transfer of Bonds.** The Issuer shall cause books for the registration and for the transfer of the Bonds as provided in this Indenture to be kept by the Trustee as Bond Registrar. Any Bond may be transferred only upon an assignment duly executed by the registered owner or his, her or its attorney or legal representative in such form as shall be satisfactory to the Bond Registrar, such transfer to be made on such books and endorsed on the Bond by the Bond Registrar. The principal of any Bond shall be payable only to or upon the order of the registered owner or his legal representative. Interest shall be paid by check or draft by said Bond Registrar at the times provided therein to the registered owner by mail to the address shown on the registration books.

The person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes and payment of or on account of the principal of any such Bond shall be made only to or upon the order of the registered owner thereof, or his, her or its legal representative, and neither the Issuer, the Trustee, nor the Bond Registrar shall be affected by any such notice to the contrary, but such registration may be changed as herein provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

On and after the Completion Date, Bonds may be exchanged, and upon receipt of notice of the Completion Date as provided in Section 2.03 of the Lease Agreement, will be exchanged, at the principal corporate trust office of the Trustee for an equal aggregate principal amount of Bonds of any other authorized denomination or denominations. The Issuer shall execute and the Trustee shall authenticate and deliver Bonds which the bondholder making the exchange is entitled to receive, bearing numbers not contemporaneously then outstanding. The execution by the Issuer of any Bond of any denomination shall constitute full and due authorization of such denomination and the Trustee shall thereby be authorized to authenticate and deliver such Bond.

**Section 2.10. Payment on Saturday, Sunday or Holiday.** In any case where the date of maturity of interest on or principal of the Bonds or the date fixed for redemption of any Bonds shall be a Saturday or Sunday or shall be in the State of Arkansas a legal holiday or a day on which banking institutions are authorized by law to close, then payment of interest or principal (and premium, if any) need not be made on such date but may be made on the next succeeding business day not a Saturday or Sunday or a legal holiday or a day upon which banking institutions are authorized by law to close with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period from and after the date of maturity or date fixed for redemption.

**Section 2.11. Interest Commencement Date.** The Bond initially issued shall bear interest from its date; provided, that the date of each Advance under such Bond shall be the interest commencement date from which the principal amount of such Advance bears interest. Otherwise, each Bond, upon subsequent transfer, shall be dated as of the Interest Payment Date to which interest has been paid. Payment of each installment of interest shall be made to the person in whose name the Bond is registered on the registration books of the Trustee as Bond Registrar at the close of business on the fifteenth calendar day of the month (whether or not a business day) next preceding each Interest Payment Date, irrespective of any transfer or change of any such Bond subsequent to such date. On or before each Interest Payment Date, the Borrower or the Bondholder shall provide written notice to the Trustee, substantially in the form of Exhibit D attached hereto and incorporated herein, evidencing the amount of principal outstanding and the interest that has accrued and is payable as of such Interest Payment Date (the “Interest Notice”). Upon delivery of the Interest Notice, Borrower shall remit the amount of interest payable to the Trustee for deposit in the Bond Fund, and the Trustee shall transmit interest due and payable to the Bondholder. Provided, however, that so long as a Home Office Payment Agreement (as defined in Section 2.16 hereof) is in effect, Trustee may presume that interest payments have been made directly to the Bondholder by the Borrower, and no further action shall be required of the Trustee after delivery of the Interest Notice.

**Section 2.12. Cancellation.** To the extent held by the Trustee, all Bonds which are paid, either at maturity or by redemption prior to maturity, shall be canceled and, at the option of the Trustee, either (i) cremated, shredded or otherwise disposed of or (ii) returned to the Issuer. In the case of cremating, shredding or other disposition pursuant to (i) above, the Trustee shall execute and forward to the Issuer, upon request, an appropriate certificate describing the Bonds involved and the manner of disposition.

**Section 2.13. Temporary Bonds.** The Issuer shall have the right to execute and deliver Temporary Bonds reflecting the indebtedness secured hereby, which Temporary Bonds, if issued and delivered, shall be entitled to the same security, rights and protection provided under this Indenture for Bonds in definitive form. Temporary Bonds of the Issuer, if executed, authenticated and delivered shall be replaced by Bonds in definitive form by the Trustee when the Temporary Bonds are returned to the Trustee for exchange. To the extent held by the Trustee, all Temporary Bonds, when returned to the Trustee and when exchanged for Bonds in definitive form shall then be canceled and at the option of the Trustee, either (i) cremated, shredded or otherwise disposed of and/or (ii) returned to the Issuer. In the case of cremating, shredding or other disposition pursuant to (i) above, the Trustee shall execute and forward to the Issuer, upon request, an appropriate certificate reflecting the Temporary Bonds involved and the manner of disposition.

**Section 2.14. Additional Bonds.** No additional bonds shall be issued under this Indenture.

**Section 2.15. Conversion of Bonds upon Completion Date.** Upon receipt of notice of the Completion Date as provided in Section 2.03 of the Lease Agreement, the Trustee shall give notice thereof to the registered owner of the Bonds. Such notice shall be given by mail or by other acceptable method, including facsimile or e-mail, and shall state that such registered owner must deliver his, her or its Bond to the Trustee for conversion. The Trustee shall cancel the Bond so delivered and issue a form of Bond in lieu thereof pursuant to the provisions hereof.

**Section 2.16. Home Office Payment Agreement.** Notwithstanding any provision of this Indenture or of any Bond to the contrary, the Trustee may enter into or accept the terms of a home office payment agreement with the Issuer, the Borrower and the owner of any Bond providing for the making to such owner of all payments of principal (whether at maturity or redemption) and interest on such Bond or any part thereof at a place and in a manner other than as provided in this Indenture and in the Bonds without presentation or surrender of such Bonds, upon such conditions as shall be satisfactory to the Trustee. The Trustee agrees to make payments of principal, and interest on the Bonds in accordance with the provisions thereof. Upon the transfer of any Bond being paid in accordance with the provisions of a home office payment agreement permitted by this Section, the Trustee, if the Trustee is the custodian of the Bond for the Bondholder, or the transferor, prior to the delivery of such Bond to the transferee, shall make a notation on such Bond of the date to which interest has been paid thereon and the amount of any prepayments or redemptions made on account of the principal thereof. Contemporaneous with the delivery of the Bonds and this Indenture, the appropriate parties will enter into the Home Office Payment Agreement. The Trustee may conclusively rely on the Issuer's, the Borrower's and the Bondholder's intent to comply with and make all payments pursuant to the Lease Agreement, this Trust Indenture and the Bonds in conformity and compliance with the Home Office Payment Agreement until notified in writing that the Home Office Payment Agreement has been terminated. The Borrower and Bondholder may terminate the Home Office Payment Agreement at any time in their sole and absolute discretion, and the Home Office Payment Agreement may not be terminated without the written consent of both Borrower and Bondholder.

### **ARTICLE III. REDEMPTION OF BONDS BEFORE MATURITY**

**Section 3.01. Redemption.** The Bonds shall be callable for redemption prior to maturity in accordance with the provisions pertaining thereto appearing in the form of Bond heretofore set forth in this Indenture.

**Section 3.02. Notice of Redemption.** Notice of the call for redemption shall be by first class mail or by other acceptable standard, including facsimile or e-mail, to the owner or owners of the Bonds not less than thirty (30) days prior to the date fixed for redemption, or such shorter period of time as is acceptable to the owner or owners of the Bonds and the Trustee. Published notice of the call for redemption need not be given. Each notice shall specify the numbers and the maturities of the Bonds being called, and the date on which they shall be presented for payment.

Failure to give notice to the Owner of any Bond designated for redemption shall not affect the validity of the proceedings for the redemption of any other Bond.

**Section 3.03. Redemption Payments.** Prior to the date fixed for redemption, funds shall be deposited with the Trustee to pay, and the Trustee is hereby authorized and directed to apply such funds to the payment of, the Bonds called, together with accrued interest thereon to the redemption date. Upon the giving of notice and the deposit of funds for redemption, interest on the Bonds thus called shall cease to accrue after the date fixed for redemption until such Bond shall have been delivered for payment or cancellation or the Trustee shall have received the items required by Section 2.08 hereof with respect to any mutilated, lost, stolen or destroyed Bond.

**Section 3.04. Cancellation.** All Bonds which have been redeemed shall be canceled by the Trustee pursuant to Section 2.12.

#### **ARTICLE IV. GENERAL COVENANTS**

**Section 4.01. Payment of Principal and Interest.** The Issuer covenants that it will promptly pay the principal of and interest on every Bond issued under this Indenture at the place, on the dates and in the manner provided herein and in the Bonds according to the true intent and meaning thereof. The principal and interest (except interest, if any, paid from accrued interest) are payable solely from the Revenues subject to the superior rights of the holders of the Senior Bonds therein, which Revenues are hereby specifically pledged to the payment thereof in the manner and to the extent herein specified, and nothing in the Bonds or in this Indenture should be considered as pledging any other funds or assets of the Issuer (except the securing of the indebtedness evidenced by the Bonds by the provisions of the Lease Agreement). Anything in this Indenture to the contrary notwithstanding, it is understood that whenever the Issuer makes any covenants involving financial commitments, including, without limitation, those in the various sections of this Article IV, it pledges no funds or revenues other than the Revenues and the right, title and interest of the Issuer in the Lease Agreement (except for the obligations of the Borrower to pay Issuer's expenses and to indemnify the Issuer) and the revenues derived from the avails of the Pledged Property, but nothing herein shall be construed as prohibiting the Issuer from using any other funds and revenues.

**Section 4.02. Performance of Covenants.** The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in any and every Bond executed, authenticated and delivered hereunder and in all ordinances pertaining thereto. The Issuer covenants that it is duly authorized under the Constitution and laws of the State, including particularly and without limitation the Act, to issue the Bonds authorized hereby and to execute this Indenture and to make the pledge and covenants in the manner and to the extent herein set forth; that all action on its part for the issuance of the Bonds and the execution and delivery of this Indenture has been duly and effectively taken; and that the Bonds in the hands of the owners thereof are and will be valid and enforceable obligations of the Issuer according to the import thereof.

**Section 4.03. Instruments of Further Assurance.** The Issuer covenants that it will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such Indenture or Indentures supplemental hereto and such further acts, instruments and transfers as the Trustee may reasonably require for the better assuring, transferring, mortgaging, pledging, assigning and confirming to the Trustee the Trust Estate.

**Section 4.04. Payment of Taxes, Charges, etc.** The Issuer covenants that it will promptly cause to be paid all lawful taxes, charges, assessments, imposts and governmental charges at any time levied or assessed upon or against the Trust Estate, or any part thereof, which might impair or prejudice the lien and priority of this Indenture; provided, however, that nothing contained in this Section shall require the Issuer to cause to be paid any such taxes, assessments, imposts or charges so long as the validity thereof is being contested in good faith and by appropriate legal proceedings. It is understood that the Issuer has made provisions in the Lease Agreement for such payment,

pursuant to the terms of which the Borrower is obligated to pay such taxes, charges, assessments, imposts and governmental charges as set forth in the Lease Agreement, and so long as the Lease Agreement is in force and effect the Issuer shall be deemed to be in compliance with its obligations under this Section 4.04.

**Section 4.05. Obligation to Maintain and Repair.** The Issuer covenants that it will at all times cause the Project to be maintained, preserved and kept in good condition, repair and working order, and that it will from time to time cause to be made all needed repairs so that the operation and business pertaining to the Project shall at all times be conducted properly and so that the Project shall be fully maintained, to the extent permitted by available funds. It is understood that the Issuer has made provisions in the Lease Agreement for such maintenance, pursuant to the terms of which the Borrower is obligated to maintain the Project as set forth in the Lease Agreement, and so long as the Lease Agreement is in force and effect the Issuer shall be deemed to be in compliance with its obligations under this Section 4.05.

**Section 4.06. Recordation of Trust Indenture.** The Issuer covenants that it will cause this Indenture, and all instruments supplemental thereto, to be kept, recorded and filed in such manner and in such places (if any) as may be required by law in order fully to preserve and protect the security of the bondowners and the rights of the Trustee hereunder. If any such filing is required to be made by the Issuer, the Issuer shall provide the Trustee with file-marked copies thereof.

**Section 4.07. Rights under Lease Agreement.** The Lease Agreement, duly executed counterparts of which have been filed with the Trustee, sets forth covenants and obligations of the Issuer and the Borrower. Issuer agrees that the Trustee in its name or in the name of the Issuer may enforce all rights of the Issuer and all obligations of the Borrower under and pursuant to the Lease Agreement, for and on behalf of the bondholder, whether or not the Issuer is in default hereunder.

**Section 4.08. List of Bondowners.** If the Trustee is directed in writing by the Issuer to so provide, the list of the names and addresses of the registered owners of the Bonds may be inspected and copied by owners (or a designated representative thereof) of ten percent (10%) or more in principal amount of Bonds outstanding hereunder, such ownership and the authority of any such designated representative to be evidenced to the satisfaction of the Trustee.

**Section 4.09. Lien of Trust Indenture; Enforcement of Obligations and Rights.** Other than in connection with the Senior Bonds, the Issuer covenants that so long as any Bonds authorized by and issued under this Indenture are outstanding, it will not convey or otherwise dispose of its interest in the Pledged Property, and that it will not encumber the same, or any part thereof, or its interest therein, or create or permit to be created any charge or lien on the Revenues derived therefrom, except as provided in this Indenture. Nothing contained herein shall prohibit the Issuer from issuing bonds the payment for which specified revenues of a particular project is pledged as provided in the Act, it being the purpose of this covenant to limit only a subsequent pledge of the Pledged Property and Revenues as defined in this Indenture.

**Section 4.10. Obligation to Insure.** The Issuer covenants that at all times while any Bonds are outstanding, it will keep or cause to be kept the Project insured against the perils and to the extent set forth in the Lease Agreement. It is understood that the Issuer has made provisions in the Lease Agreement for such insurance, pursuant to the terms of which the Borrower is obligated to

keep the property insured as set forth in the Lease Agreement, and so long as the Lease Agreement is in force and effect, the Issuer shall be deemed to be in compliance with its obligations under this Section 4.10.

## **ARTICLE V. REVENUE AND FUNDS**

**Section 5.01. Creation of Funds.** There are hereby created and established with the Trustee as trust funds and trust accounts the following:

- (a) Costs of Issuance Fund;
- (b) City of Jonesboro, Arkansas Taxable Economic Development Revenue Bonds (Colson Caster Project) Bond Fund, Series 2022C (the “**Bond Fund**”); and
- (c) City of Jonesboro, Arkansas Taxable Economic Development Revenue Bonds (Colson Caster Project) Loan Fund, Series 2022C (the “**Loan Fund**”).

Trustee may also create such other Funds or Accounts as it deems necessary or desirable in the administration of this Indenture.

### **Section 5.02. Deposit of Bond Proceeds.**

There shall be deposited into the Bond Fund as and when received:

- (a) That portion of the proceeds of the sale of the Bonds as set forth in the Delivery Instructions;
- (b) The payments and other moneys paid by the Borrower, pursuant to the Lease Agreement;
- (c) Amounts transferred to the Bond Fund pursuant to the provisions of Sections 3.03 and 6.04 hereof; and
- (d) All other moneys received by the Trustee under and pursuant to any of the provisions of this Indenture which are not directed to be paid in a fund other than the Bond Fund.

Money in the Bond Fund shall be kept separate and apart from other funds or accounts and shall be pledged, appropriated, used and transferred to other funds for the purposes specified in this Article. Furthermore, the Issuer covenants and agrees that so long as any of the Bonds secured by this Indenture are outstanding, it will at all times deposit, or cause to be deposited, in the Bond Fund sufficient moneys from payments and other moneys paid by the Borrower pursuant to the Lease Agreement to promptly meet and pay the principal of and interest on the Bonds as the same become due and payable. Nothing herein shall be construed as requiring the Issuer to use any funds or revenues from any source other than funds and revenues derived from the Lease Agreement for the payment of the principal of and interest on the Bonds and discharging other obligations of the Issuer under this Trust Indenture, but nothing herein shall be construed as prohibiting the Issuer from doing so.

Trustee may also hold such other documents or assets in the Bond Fund, including, but not limited to, documents held pursuant to the Option Agreement (as defined in the Lease Agreement).

### **Section 5.03. Use of Moneys in Bond Fund.**

The Bond Fund shall be in the name of the Issuer, and the Issuer hereby irrevocably authorizes and directs the Trustee to withdraw from the Bond Fund sufficient funds to pay the principal of, premium, if any, and interest on the Bonds at maturity and redemption or prepayment prior to maturity, and the Trustee's and Paying Agent's fees in connection therewith, and to remit the funds to the Paying Agent for the purpose of paying the principal and interest in accordance with the provisions hereof pertaining to payment, which authorization and direction the Trustee hereby accepts.

If a surplus shall exist in the Bond Fund over and above the amount necessary (together with reasonably projected revenue receipts in the event no default has occurred) to ensure the prompt payment of the principal of, and premium if any, in connection with the Bonds as the same become due, such surplus shall be applied to investments as permitted under Article VII herein.

Subject to the provisions of the Home Office Payment Agreement, the Trustee shall cause to be transferred from the Bond Fund an amount sufficient to pay the interest on the Bonds as the same become due at least one (1) day prior to the interest payment date for the Bonds and see to the deposit with the Paying Agent. It shall be the duty of the Trustee to see to the withdrawal from the Bond Fund at least one (1) day before the maturity or redemption date of any Bond issued hereunder and then outstanding and see to the deposit with the Paying Agent, whether or not a different institution, of an amount equal to the amount due for such Bonds for the sole purpose of paying the same.

**Section 5.04. Non-presentment of Bonds.** In the event any Bonds shall not be presented for payment when the principal thereof becomes due, either at maturity or otherwise, or at the date fixed for redemption thereof, if there shall have been deposited with the Paying Agent for that purpose, or left in trust if previously so deposited, funds sufficient to pay the principal thereof, together with all interest unpaid and due thereon, to the date of maturity thereof, for the benefit of the owner, all liability of the Issuer to the owner thereof for the payment of the principal thereof and interest thereon shall forthwith cease, terminate and be completely discharged, and thereon it shall be the duty of the Paying Agent to hold such fund or funds, without liability for interest thereon, for the benefit of the Owner of such Bond who shall thereafter be restricted exclusively to such fund or funds, for any claim of whatever nature on his part under this Indenture or on, or with respect to, the Bond.

### **Section 5.05. Costs of Issuance Fund.**

(a) Trustee shall deposit into the Costs of Issuance Fund (i) that portion of the proceeds of the Bonds required to be deposited therein pursuant to this Indenture or directed to be deposited therein pursuant to the Delivery Instructions or (ii) such moneys as are delivered to the Trustee by the Borrower. Moneys deposited into the Costs of Issuance Fund pursuant to this Indenture shall be expended to pay the Issuance Costs of said Bonds: (i) upon receipt by Trustee of requisitions signed by a Borrower Representative for any Issuance Costs not set forth in the Delivery

Instructions or (ii) in accordance with the directions contained in the Delivery Instructions. Any funds remaining in the Costs of Issuance Fund two (2) months after having been deposited therein shall be returned to the Borrower. At such time as there is a \$0 balance in the Costs of Issuance Fund, it may be closed.

(b) The Trustee shall use moneys in the Cost of Issuance Fund to pay Issuance Costs for the Bonds or to reimburse the Issuer to the extent of payments made for such Issuance Costs previously paid. Before any payment shall be made for Issuance Costs, there shall be filed with the Trustee a Written Request of the Issuer, stating:

- (i) The name of the person, firm or corporation to whom the payment is due;
- (ii) The amount to be paid;
- (iii) The purpose for which the Issuance Costs was incurred; and
- (iv) That such person, firm or corporation has not previously been paid for such Issuance Costs.

The Delivery Instructions executed contemporaneously with this Indenture shall constitute a “Written Request” of the Issuer in compliance with this section. The Trustee shall be fully protected in disbursing amounts in accordance with properly signed requisitions and the Delivery Instructions and has no duty or obligation to confirm that any such requested disbursements constitute Issuance Costs.

**Section 5.06. Loan Fund.** The Loan Fund shall be in the name of the Issuer, and the Issuer hereby irrevocably authorizes and directs the Trustee to issue and apply funds of the Loan Fund as specified in Sections 6.01 through 6.04. Issuer and Trustee agree that deposits to and withdrawals from the Loan Fund shall be evidenced in a manner consistent with the Home Office Payment Agreement. Issuer and Trustee shall be fully protected in relying upon certifications of the Borrower and/or the Bondholder that deposits to and withdrawals from the Loan Fund were evidenced on the books and records of the Borrower and Bondholder in a manner consistent with the Home Office Payment Agreement and have no duty or obligation to confirm such consistency and compliance.

**Section 5.07. Any Fees, Charges and Expenses of Trustee and Paying Agent.** It is understood and agreed that pursuant to the provisions of the Lease Agreement, the Borrower agrees to pay the reasonable fees, expenses and charges of the Trustee and Paying Agent as authorized and provided by this Indenture. The Borrower is to make payments on statements rendered by the Trustee. All such additional payments under the Lease Agreement which are received by the Trustee shall be paid into the Bond Fund to make payment therefrom for said purposes.

**Section 5.08. Moneys and Documents to be Held in Trust.** All moneys required to be deposited with or paid to the Trustee under any provision of this Indenture shall be held by the Trustee in trust, and except for moneys deposited with or paid to the Trustee for the redemption of Bonds, notice of which redemption has been duly given, shall, while held by the Trustee, constitute part of the trust estate and be subject to the lien hereof. Moneys received by or paid to the Trustee pursuant to any provisions of the Lease Agreement calling for the Trustee to hold, administer and

disburse the same in accordance with the specific provisions of the Lease Agreement shall be held, administered and disbursed pursuant to the provisions, and where required by the provisions of the Lease Agreement, the Trustee shall set the same aside in a separate account. If the Issuer shall receive any moneys pursuant to applicable provisions of the Lease Agreement, it will forthwith upon receipt thereof pay the same over to the Trustee to be held, administered and disbursed by the Trustee in accordance with the provisions of the Lease Agreement, pursuant to which the Issuer may have received the same. Furthermore, if for any reason the Lease Agreement ceases to be in force and effect while any Bonds are outstanding, and if the Issuer shall receive any moneys derived from the Pledged Property, it will forthwith upon receipt thereof pay the same over the Trustee to be held, administered and disbursed by the Trustee in accordance with provisions of the Lease Agreement that would be applicable if the Lease Agreement were then in force and effect, and if there be no such provisions which would be so applicable, then the Trustee shall hold, administer and disburse such moneys solely for the discharge of the Issuer's obligations under this Indenture. In addition, any documents or securities tendered to the Trustee to be held in trust or escrow shall be received by Trustee only upon receipt of written instructions from the Issuer or bondholder, as applicable, directing the Trustee as to the documents' or securities' custody and the mechanism for releasing any such documents and securities from escrow or Trustee's custody.

**Section 5.09. Refunds to Borrower.** Anything herein to the contrary notwithstanding, so long as an event of default has not occurred and is continuing under this Indenture or under the Lease Agreement, the Trustee is authorized to refund to the Borrower within two weeks after the principal payment date annually all excess amounts remaining in the Bond Fund after payment of all amounts due in the previous twelve months including the Trustee's and Issuer's fees. Such refund may be made as a credit on a loan payment. The foregoing notwithstanding, moneys in the Bond Fund being held pending redemption of the Bonds shall not be refunded to the Borrower.

## **ARTICLE VI. CUSTODY AND APPLICATION OF PROCEEDS OF BONDS**

**Section 6.01. Disbursement of Issuance Costs.** When the Bonds have been executed as provided in this Indenture, they shall be delivered to the Trustee which shall authenticate them and deliver them to the Purchaser as specified in the Delivery Instructions of the Issuer. On the Closing Date, the Trustee shall disburse the moneys received as proceeds of the Bonds in accordance with instructions as specified in the Delivery Instructions of the Issuer. Subsequent to the Closing Date and prior to the Completion Date, the Trustee shall disburse the moneys received as proceeds of the Bonds in accordance with Written Requests received by the Trustee in a manner consistent with Section 2.02 hereof.

**Section 6.02. Deposit in the Loan Fund.** After making the necessary use of funds as provided in Section 6.01 above, the Trustee shall then deposit the remainder of the proceeds in the Loan Fund. Issuer and Trustee agree that deposits to the Loan Fund shall be evidenced in a manner consistent with the Home Office Payment Agreement. Issuer and Trustee shall be fully protected in relying upon certifications of the Borrower and/or the Bondholder that deposits to and withdrawals from the Loan Fund were evidenced on the books and records of the Borrower and Bondholder in a manner consistent with the Home Office Payment Agreement and have no duty or obligation to confirm such consistency and compliance.

**Section 6.03. Disbursements from the Loan Fund.** Moneys in the Loan Fund shall be disbursed to the Borrower as a reimbursement of or paid directly to vendors to pay Project costs which shall include costs of acquisition, costs of construction, architect's and engineer's fees, payment of interim indebtedness of the Borrower incurred for Project costs, and all other necessary expenses incidental to the completion of the Project. Such expenditures shall be paid in accordance with and pursuant to written draw requests which shall be signed by the Authorized Lessee Representative and approved by the Issuer. In addition to the requirements of Section 8.01 of the Lease Agreement, draw requests shall be in substantially the form attached to the Lease Agreement as Exhibit C. Upon receipt of each draw request the Trustee shall issue its check upon the appropriate account in the Loan Fund payable to the person, firm or corporation designated in the draw request.

Upon receipt of each properly executed draw request and receipt of the Advance from the Purchaser, the Trustee shall issue its check upon the Loan Fund payable to the person, firm or corporation designated in the draw request. Issuer and Trustee agree that withdrawals from the Loan Fund shall be evidenced in a manner consistent with the Home Office Payment Agreement. Issuer and Trustee shall be fully protected in relying upon certifications of the Borrower and/or the Bondholder that deposits to and withdrawals from the Loan Fund were evidenced on the books and records of the Borrower and Bondholder in a manner consistent with the Home Office Payment Agreement and have no duty or obligation to confirm such consistency and compliance.

**Section 6.04. Transfer to Bond Fund.** Whenever the Issuer shall notify the Trustee in writing that any balance remaining in the Loan Fund will not be needed for completion of the Project, the remaining balance (if the balance is at least \$5,000) shall be deposited into the Bond Fund and used to redeem Bonds on the first Interest Payment Date following notification. If the balance is less than \$5,000, it shall be transferred to the Bond Fund, and applied as a credit against a subsequent payment.

## **ARTICLE VII. INVESTMENTS**

**Section 7.01. Investment of Moneys in Funds.** Moneys on deposit with the Trustee shall be invested at the direction of the Borrower.

## **ARTICLE VIII. DISCHARGE OF LIEN**

**Section 8.01. Discharge of Lien.** If the Issuer shall pay or cause to be paid to the owners of the Bonds the principal and interest to become due thereon at the times and in the manner stipulated therein, and if the Issuer shall keep, perform and observe all and singular the covenants and promises in the Bonds and in this Indenture expressed as to be kept, performed and observed by it on its part, then these presents and the estate and rights hereby granted shall cease, determine and be void, and thereupon the Trustee shall cancel and discharge the lien of this Indenture, and execute and deliver to the Issuer such instruments in writing as shall be requisite to satisfy the lien thereof, and reconvey to the Issuer the estate hereby conveyed, and assign and deliver to the Issuer the estate hereby conveyed, and assign and deliver to the Issuer and property at the time subject to the lien of this

Indenture which may then be in its possession, including trust funds, except funds held by it for the payment of the principal of and interest on the Bonds.

Any Bond shall be deemed to be paid when payment of the principal of and premium, if any, and interest on such Bond (whether at maturity or upon redemption or otherwise), either (i) shall have been made or caused to be made in accordance with the terms of the Indenture, or (ii) shall have been provided for by irrevocably depositing with the Trustee, in trust and irrevocably setting aside exclusively for such payment, (1) moneys sufficient to make such payment or (2) Government Securities, maturing as to principal and interest in such amount and at such times as will provide sufficient moneys to make such payments, and all necessary and proper fees, compensation and expenses of the Trustee and any paying agent pertaining to the Bonds with respect to which such deposit is made and all other liabilities of the Borrower under the Lease Agreement shall have been paid or the payment thereof provided for to the satisfaction of the Trustee.

The Issuer may at any time surrender to the Trustee for cancellation by it any Bonds previously authenticated and delivered hereunder, which the Issuer may have acquired in any manner whatsoever, and such Bonds upon such surrender and cancellation, shall be deemed to be paid and retired.

## **ARTICLE IX. DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND BONDOWNERS**

**Section 9.01. Events of Default.** If any of the following events occur, subject to the provisions of Section 9.12 hereof, it is hereby defined as and declared to be and to constitute an “event of default”;

(a) Default in the due and punctual payment of any interest on any Bond hereby secured and outstanding;

(b) Default in the due and punctual payment of the principal of, and premium, if any, on any Bond hereof secured and outstanding, whether at the stated maturity thereof, or upon proceedings for redemption thereof, or upon the maturity thereof by declaration;

(c) Default in the performance or observance of covenants, agreements or conditions on the Issuer’s part to be performed in this Indenture, or in the Bonds contained, and the continuance thereof for a period of thirty (30) days after written notice to the Issuer by the Trustee or by the owners of not less than ten percent (10%) in aggregate principal amount of Bonds outstanding hereunder; or

(d) The occurrence of an “Event of Default” under the Lease Agreement.

The term “default” shall mean default by the Issuer in the performance or observance of any of the covenants, agreement or conditions on its part contained in this Indenture, or in the Bonds outstanding hereunder, exclusive of any period of grace required to constitute a default an “event of default” as hereinabove provided.

**Section 9.02. Acceleration.** Upon the occurrence of an event of default, the Trustee may, and upon the written request of the owners of twenty-five percent (25%) in aggregate principal amount of Bonds outstanding hereunder, shall, by notice in writing delivered to the Issuer and the Borrower declare the principal of all Bonds hereby secured then outstanding and the interest accrued thereon immediately due and payable and such principal and interest shall thereupon become and be immediately due and payable.

**Section 9.03. Trustee's Right to Enter and Take Possession.** Upon the occurrence of an event of default, the Issuer, upon demand of the Trustee, shall forthwith surrender to it the actual possession of, and it shall be lawful for the Trustee, by such officer or agent as it may appoint, to take possession of, all or any part of the Pledged Property with the books, papers and accounts of the Issuer pertaining thereto and to hold, operate and manage the same, and from time to time to make all needful repairs and improvements as the Trustee shall deem wise; and the Trustee, with or without such permission, may collect, receive and sequester the rents, revenues, issues, earnings, income, products and profits therefrom (exclusive of any of the foregoing which may have been pledged to secure other obligations of the Issuer) and out of the same and any moneys received from any receiver of any part thereof pay, and/or set up proper reserves for the payment of, all proper costs and expenses of so taking, holding and managing the same, including reasonable compensation to the Trustee, its agents and counsel, and any charges of the Trustee hereunder and any taxes, assessments and other charges prior to the lien of this Indenture which the Trustee may deem it wise to pay, and all expenses of such repairs and improvements, and apply the remainder of the moneys so received by the Trustee in accordance with the provisions of Section 9.08 hereof. Whenever all that is due upon such Bonds and installments of interest under the terms of this Indenture shall have been paid and all defaults made good, the Trustee shall surrender possession to the Issuer, its successors or assigns; the same right of entry, however, to exist upon any subsequent event of default.

While in possession of such property the Trustee shall render annually to the owners of the Bonds, at their addresses as set forth on the bond registration book maintained by the Trustee, a summarized statement of income and expenditures in connection therewith.

**Section 9.04. Other Remedies; Rights and Obligations with Reference to Remedies.** Upon the occurrence of an event of default, the Trustee may, as an alternative, proceed either after entry or without entry, to pursue any available remedy by suit at law or in equity to enforce the payment of the principal of and interest on the Bonds then outstanding hereunder or to enforce compliance with any other covenant or obligation of the Issuer, including without limitation, foreclosure and mandamus.

Upon the occurrence of an event of default, the Trustee shall, if so requested in writing by sixty-six and two-thirds percent (66-2/3%) in value of the registered owners of the Bonds, assign to the registered owners of the Bonds all its right, title and interest in the Lease Agreement in exchange for the Bonds, which assignment shall be full and complete satisfaction and discharge of all liabilities and obligations of the Issuer on the Bonds and of the Trustee under this Indenture.

If an event of default shall have occurred, and if it shall have been requested in writing so to do by the owners of twenty-five percent (25%) in aggregate principal amount of Bonds outstanding hereunder and shall have been indemnified as provided in Section 10.01 hereof, the Trustee shall be

obligated to exercise such one or more of the rights and power conferred upon it by this Section and by Section 9.03 as the Trustee, being advised by counsel, shall deem most expedient in the interests of the bondowners.

No remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or to the bondowners) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

No delay or omission to exercise any right or power accruing upon any default or event of default shall impair any such right or power or shall be construed to be a waiver of any such default or event of default or acquiescence therein; and every such right and power may be exercised from time to time and as often as may be deemed expedient.

No waiver of any default or event of default hereunder, whether by the Trustee or by the bondowners, shall extend to or shall affect any subsequent default or event of default or shall impair any rights or remedies consequent thereon.

**Section 9.05. Right of Majority of Bondowners to Take Charge.** Anything in this Indenture to the contrary notwithstanding, the owners of a majority in aggregate principal amount of Bonds outstanding hereunder shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceeding hereunder; provided that such direction shall not be otherwise than in accordance with the provision of law and of this Trust Indenture. Anything in this Indenture to the contrary notwithstanding, so long as a single person or entity owns 100% of the outstanding Bonds, the Trustee shall not exercise any remedies except those that the Trustee is specifically directed to take in a writing by the sole Bondholder.

**Section 9.06. Appointment of Receiver.** Upon the occurrence of an event of default, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and of the bondowners under this Indenture, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the Pledged Property and of the rents, revenues, issues, earnings, income, products and profits thereof, pending such proceedings with such powers as the court making such appointment shall confer.

**Section 9.07. Waiver by Issuer of Benefit of Laws and Rights of Appraisalment and Redemption.** In case of an event of default on its part, as aforesaid to the extent that such rights may then lawfully be waived, neither the Issuer nor anyone claiming through it or under it shall or will set up, claim or seek to take advantage of any appraisalment, valuation, stay, extension or redemption as now or hereafter in force, in order to prevent or hinder the enforcement of this Indenture, but the Issuer, for itself and all who may claim through or under it, hereby waives, to the extent that it lawfully may do so, the benefit of all such laws and all right of appraisalment and redemption to which it may be entitled under the laws of the State of Arkansas.

**Section 9.08. Application of Available Moneys.** Issuer and Trustee agree and anticipate that amounts due and payable pursuant to this Indenture (other than the annual Trustee's fees, any

expenses of the Trustee, and other amounts due and payable to independent third parties) shall be evidenced in a manner consistent with the Home Office Payment Agreement. Moneys remaining, if any, after payment of the annual Trustee's fees, any expenses of the Trustee, and other amounts due and payable to independent third parties shall be applied by the Trustee as follows:

(a) To the payment of the fees of the Trustee and the costs and expenses of suit, if any, and the reasonable compensation of the Trustee, its agents, attorneys and counsel, and of all proper expenses, liabilities and advances incurred or made hereunder by the Trustee or by any bondowner and the creation of a reasonable reserve for anticipated fees, costs and expenses.

(b) Unless the principal of all the Bonds all have become or shall have been declared due and payable, all such moneys shall be applied:

FIRST: To the payment to the persons entitled thereto of all installments of interest then due, in the order of the maturity of the installments of such interest, and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or privilege;

SECOND: To the payment to persons entitled thereto of the unpaid principal of any of the Bonds which shall have become due (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), in the order of their due dates, with interest on such Bonds from the respective dates upon which they become due, and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then to the payment ratably, according to the amount of principal due on such date, to the persons entitled thereto without any discrimination or privilege; and

THIRD: To the payment of the interest on and the principal of the Bonds, and to the redemption of Bonds, all in accordance with the provisions of Article V of this Indenture.

(c) If the principal of all the Bonds shall have become due or shall have been declared due and payable, all such moneys shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds, without preference or priority of principal over interest or of interest over principal, or of any bond over any other Bond, ratably, according to the amounts due respectively for principal and or privilege.

(d) If the principal of all the Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of this Article then, subject to the provisions of paragraph (c) of this Section, in the event that the principal of all the Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of paragraph (b) of this Section.

Whenever moneys are to be applied by the Trustee pursuant to the provisions of this Section, such moneys shall be applied by it at such times, and from time to time, as it shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply

such funds, it shall fix the date (which shall be an interest payment date unless it shall deem another date more suitable) upon which such date interest on the amounts of principal to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date and shall not be required to make payment to the owner of any unpaid Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

**Section 9.09. Remedies Vested in Trustee.** All rights of action (including the right to file proof of claim) under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceeding relating thereto and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee, without the necessity of joining as plaintiffs or defendants any owners of the Bond hereby secured, and any recovery of judgment shall be for the equal benefit for the owners of the outstanding Bonds in the order herein provided.

**Section 9.10. Rights and Remedies of Bondowners.** No owner of any Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust hereof or for the appointment of a receiver or any other remedy hereunder, unless a default has occurred of which the Trustee has been notified as provided in subsection (g) of Section 10.01, or of which by the subsection it is deemed to have notice, nor unless such default shall have become an event of default and the owners of twenty-five percent (25%) in aggregate principal amount of Bonds outstanding hereunder shall have made written request to the Trustee and shall have offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, nor unless also they have offered to the Trustee indemnity as provided in Section 10.01; nor unless the Trustee shall thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name; and such notification request and offer of indemnity are hereby declared in every such case at the option of the Trustee to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture or for the appointment of a receiver for any other remedy hereunder; it being understood and intended that not one or more owners of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture by his or their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided for the equal benefit of the owners of all Bonds outstanding hereunder. Nothing in this Indenture contained shall, however, affect or impair the right of any bondowners to enforce the payment of the principal of and interest on any Bond at and after the maturity thereof, or to the obligation of the Issuer to pay the principal of and interest on each of the Bonds issued hereunder to the respective owners thereof at the time and place in the Bonds expressed.

**Section 9.11. Termination of Proceedings.** In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver, by entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then and in every such case the Issuer and the Trustee shall be restored to their former positions and rights hereunder with respect to the property herein conveyed,

and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken, except to the extent the Trustee is legally bound by such adverse determination.

**Section 9.12. Waivers of Events of Default.** The Trustee may in its discretion waive any event of default hereunder and its consequences and rescind any declaration of maturity of principal, and shall do so upon the written request of the owners of (i) 50% in aggregate principal amount of all the Bonds outstanding hereunder in respect of which default in the payment of principal and/or interest exists, or (ii) 50% in principal amount of all the Bonds outstanding hereunder in the case of any other default, provided, however, that there shall not be waived (a) any event of default in the payment of the principal of any Bonds issued hereunder and outstanding at the date of maturity specified therein or (b) any default in the payment of the interest or of Bond Fund moneys, unless prior to such waiver or rescission all arrears of interest, with interest at the rate borne by the Bonds in respect of which such default shall have occurred on overdue installments of interest or all arrears of Bond Fund payments, as the case may be, and all expenses of the Trustee and Paying Agent, shall have been paid or provided for, and in case of any such waiver or rescission or in case any proceeding taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely, then and in every such case the Issuer, Trustee and the bondowners shall be restored to their former positions and rights thereunder respectively; but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon.

## **ARTICLE X. THE TRUSTEE**

**Section 10.01. Acceptance of Trusts.** The Trustee hereby accepts the trusts imposed upon it by this Indenture, and agrees to perform the duties and obligations of the Trustee under this Indenture upon and subject to the following expressed terms and conditions:

(a) The Trustee may execute any of the trusts or powers hereof and perform any duties required of it by or through attorneys, agents, receivers or employees, and shall be entitled to advice of counsel concerning all matters of trusts hereof and its duties hereunder, and may in all cases pay reasonable compensation to all such attorneys, agents, receivers and employees as may reasonably be employed in connection with the trusts hereof. The Trustee may act upon the opinion or advice of any attorney, surveyor, engineer or accountant selected by it in the exercise of reasonable care, or, if selected or retained by the Issuer prior to the occurrence of a default of which the Trustee has been notified as provided in sub-section (g) of this Section, or of which by said sub-section the Trustee is deemed to have notice, approved by the Trustee in the exercise of such care. The Trustee shall not be responsible for any loss or damage resulting from an action or non-action in accordance with any such opinion or advice.

(b) The Trustee shall not be responsible for any recital herein, or in the Bonds (except in respect to the certificate of the Trustee endorsed on such Bonds), or for the recording or re-recording, filing or re-filing of this Indenture, or for insuring the property herein conveyed or collecting any insurance moneys, or for the validity of the execution by the Issuer of this Indenture or of any supplemental indentures or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured herein, or for the value of the title of the property here conveyed or otherwise as to the maintenance of the security hereof; except that

in the event the Trustee enters into possession of a part or all of the property herein conveyed pursuant to any provision of this Indenture, it shall use due diligence in preserving such property; and the Trustee shall not be bound to ascertain or inquire as to the performance or observance of any covenants, conditions or agreements on the Issuer, except as hereinafter set forth; but the Trustee may require of the Issuer full information and advice as to the performance of the covenants, conditions and agreement aforesaid as to the condition of the property herein conveyed.

(c) The Trustee shall not be accountable for the use of any Bonds authenticated or delivered hereunder. The Trustee may become the owner of Bonds with the same rights which it would have if not Trustee. No merger of title shall occur if at any time the Trustee owns all of the Bonds.

(d) The Trustee shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed by it, in the exercise of reasonable care, to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of the owner of any Bond secured hereby, shall be conclusive and binding upon all future owners of the same Bond and upon Bonds issued in exchange therefor or in place thereof.

(e) As to the existence or non-existence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a certificate of the Issuer signed by its Mayor and attested by its City Clerk as sufficient evidence of the facts therein contained and prior to the occurrence of a default of which it has been notified as provided in sub-section (g) of this Section, or of which by said subsection it is deemed to have notice, and shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion, at the reasonable expense of the Issuer, in every case secure such further evidence as it may think necessary or advisable, but shall in no case be bound to secure the same. The Trustee may accept a certificate of the City Clerk of the Issuer under its seal to the effect that a resolution or ordinance in the form therein set forth has been adopted by the Issuer as conclusive evidence that such resolution or ordinance has been duly adopted, and is in full force and effect.

(f) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty of the Trustee, and the Trustee shall be answerable only for its own gross negligence or willful misconduct.

(g) The Trustee shall not be required to take notice or be deemed to have notice of any default hereunder except failure by the Issuer to make or cause to be made any of the payments to the Trustee required to be made by Article IV unless the Trustee shall be specifically notified in writing of such default by the Issuer or by the owners of at least ten percent (10%) in aggregate principal amount of Bonds outstanding hereunder and all notices or other instruments required by this Indenture to be delivered to the Trustee must, in order to be effective, be delivered to the office of the Trustee, and in the absence of such notice so delivered, the Trustee may conclusively assume there is no default except as aforesaid; provided, however, if there is a Home Office Payment Agreement in effect the Trustee shall only be deemed to have notice of the failure by the Issuer to make or cause to be made any of the payments required to be made under Article IV hereof if the

Trustee is specifically notified in writing of such default by the Issuer or by the owners of at least ten percent (10%) in aggregate principal amount of Bonds outstanding hereunder.

(h) The Trustee shall not be personally liable for any debts contracted or for damages to persons or to personal property injured or damaged, or for salaries or nonfulfillment of contracts during any period in which it may be in the possession of or managing the real and tangible personal property as in this Indenture provided.

(i) At any and all reasonable times the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right (but no duty or obligation) fully to inspect all of the property herein conveyed, including all books, papers and records of the Issuer pertaining to the Project and the Bonds, and to take such memoranda from and in regard thereto as may be desired.

(j) The Trustee shall not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises.

(k) Notwithstanding anything elsewhere in this Indenture contained, the Trustee shall have the right, but shall not be required, to demand, in respect of the authentication of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Indenture, any showings, certificate, opinions, appraisals, or the information, or corporate action or evidence thereof, in addition to that by the terms hereof required as a condition of such action by the Trustee, deemed desirable for the purpose of establishing the right of the Issuer to the authentication of any Bonds, the withdrawal of any cash, the release of any property, or the taking of any other action by the Trustee.

(l) Before taking such action hereunder, the Trustee may require that it be furnished an indemnity bond satisfactory to it for the reimbursement to it of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from the gross negligence or willful misconduct of the Trustee, by reason of any action so taken by the Trustee.

(m) The Trustee shall have no duty to risk, advance or expend its own funds in the performance of the duties and obligations of the Trustee hereunder.

(n) The Trustee, before the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default has occurred (which has not been cured or waived) the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise as a reasonable and prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

**Section 10.02. Fees, Charges and Expenses of Trustee.** The Trustee shall be entitled to payment and/or reimbursement for its reasonable fees for services rendered hereunder and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by the Trustee in and about the execution of the trusts created by this Indenture and in and about the exercise and performance by the Trustee of the powers and duties of the Trustee hereunder, and for

all reasonable and necessary costs and expenses incurred in defending any liability in the premises of any character whatsoever (unless such liability is adjudicated to have resulted from the gross negligence or willful misconduct of the Trustee). In this regard, it is understood that the Issuer pledges no funds or revenues other than those provided for in the Lease Agreement and the Revenues derived from and the avails of the Pledged Property to the payment of any obligation of the Issuer set forth in this Indenture, including the obligations set forth in this Section, but nothing herein shall be construed as prohibiting the Issuer from using any other funds and revenues for the payment of any of its obligations under this Indenture. Upon default by the Issuer but only upon default, pursuant to the provisions of this Indenture pertaining to default, the Trustee shall have a first lien with right of payment prior to payment on account of principal or interest of a Bond issued hereunder upon the Trust Estate for the reasonable and necessary advances, fees, costs and expenses incurred by the Trustee.

**Section 10.03. Notice to Bondowners of Default.** If a default occurs of which the Trustee is by Section 10.01(g) deemed to have notice, is notified by the Issuer or by the owners of at least 10% in aggregate principal amount of Bonds then outstanding, then the Trustee shall give written notice by mail or by other acceptable standard, including facsimile, to each owner of Bonds then outstanding and to such other person or entity any owner directs the Trustee to notify.

**Section 10.04. Intervention by Trustee.** In any judicial proceeding to which the Issuer is a party and which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of owners of Bonds issued hereunder, the Trustee may intervene on behalf of the bondowners and shall do so if requested in writing by the owners of at least ten percent (10%) of the aggregate principal amount of Bonds outstanding hereunder, solely to the extent indemnified to the satisfaction of the Trustee from and against any losses, costs, claims, liabilities or expenses, including fees and expenses of its attorneys and agent incurred by the Trustee related to or arising from such action by the Trustee. The rights and obligations of the Trustee under this Section are subject to the approval of the court having jurisdiction in the premises.

**Section 10.05. Successor Trustee.** Any bank or trust company into which the Trustee may be merged, or with which it may be consolidated or any bank or trust company resulting from any such merger or consolidation, ipso facto, shall be and become successor trustee hereunder and vested with all of the title to the whole property or trust estate and all the trusts, powers, discretions, immunities, privileges, and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding; provided, however, that such successor trustee shall have capital and surplus of at least \$75,000,000, and provided that the Issuer approves the successor trustee.

**Section 10.06. Resignation by Trustee.** The Trustee and any successor trustee may at any time resign from the trusts hereby created by giving thirty (30) days written notice to the Issuer and the registered owners of the Bonds, and such resignation shall take effect at the end of such thirty (30) days, or upon the earlier appointment of a successor trustee by the bondowners or by the Issuer. Such notice may be served personally or sent by registered mail or other acceptable standard, including facsimile.

**Section 10.07. Removal of Trustee; Sale of Trust Business.** The Trustee may be removed at any time by an instrument or concurrent instruments in writing delivered to the Trustee and to the Issuer and signed by the owners of a majority in aggregate principal amount of Bonds outstanding hereunder. The Trustee may be removed by the Issuer at any time if a successor trustee has been appointed.

In the case of the sale of all or substantially all of the Trustee's trust business to another bank or trust company, the Issuer shall have the absolute right, at its sole discretion, to appoint a successor trustee pursuant to Section 10.08 hereof.

**Section 10.08. Appointment of Successor Trustee.** In case the Trustee hereunder shall resign or be removed, or be dissolved, or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by the court, a successor may be appointed by the Issuer by an instrument executed and signed by its Mayor and attested by its City Clerk under its seal. Every such successor trustee shall be a trust company or bank in good standing, having capital and surplus of not less than \$75,000,000.

**Section 10.09. Successor Trustee Qualifications.** Every successor appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Issuer an instrument in writing accepting such appointment hereunder, and thereupon such successor trustee, without any further act or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall nevertheless, on the written request of the Issuer or of its successor trustee, execute and deliver an instrument transferring to such successor all the estate, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor trustee shall deliver all securities, moneys and any other property held by it as trustee hereunder to its successor. Should any instrument in writing from the Issuer be required by a successor trustee for more fully and certainly vesting in such successor the estates, rights, powers and duties hereby vested or intended to be vested in the predecessor trustee, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer. The resignation of any trustee and the instrument or instruments removing any trustee and appointing a successor hereunder, together with all other instruments provided for in this Article shall, at the expense of the Issuer, be forthwith filed and/or recorded by the successor trustee in each recording office where the Indenture shall have been filed and/or recorded.

**Section 10.10. Right of Trustee to Pay Taxes and Other Charges.** In case the Issuer shall fail seasonably to pay or to cause to be paid any tax, assessment or governmental or other charge upon any part of the property herein conveyed, to the extent, if any, that the Issuer may be liable for same, the Trustee may pay such tax, assessment or governmental charge, without prejudice, however, to any rights of the Trustee or the bondowners hereunder arising in consequence of such failure; and any amount at any time so paid under this Section, with interest thereon from the date of payment at the rate of ten percent (10%) per annum, shall be repaid by the Issuer upon demand, and shall become so much additional indebtedness secured by this Indenture, and the same shall be given a preference in payment over any of the Bonds and shall be paid out of the proceeds of revenues collected from the property herein conveyed, if not otherwise caused to be paid by the Issuer, but the Trustee shall not be under obligations to make any such payment unless it shall have been requested to do so by the owners of at least ten percent (10%) of the aggregate principal amount of the Bonds outstanding hereunder and shall have been provided with adequate funds for the purpose of such payment.

**Section 10.11. Trustee Protected in Relying Upon Resolutions, etc.** The resolutions, opinions, certificates and other instruments provided for in this Indenture may be accepted and relied upon by the Trustee as conclusive evidence of the facts and conclusions stated therein and shall be full warrant, protection and authority to the Trustee for the payment and withdrawal of cash hereunder.

**Section 10.12. Trustee Which Has Resigned or Been Removed Ceases to be Paying Agent.** In the event of a change in the office of Trustee, if the Trustee is the Paying Agent, the former Trustee which has resigned or been removed shall cease to be Paying Agent.

**Section 10.13. Paying Agent's Fees and Charges.** There shall be paid reasonable Paying Agent's fees and charges of the Paying Agent for handling the payment of the principal of, premium (if any) and interest on the Bonds, and funds sufficient to pay the same shall be deposited with the Paying Agent prior to the dates on which payments are required to be made on principal and interest.

**Section 10.14. Appointment of Co-Trustee or Separate Trustee.** The Issuer and the Trustee shall have power to appoint and upon the request of the Trustee the Issuer shall for such purpose join with the Trustee in the execution of all instruments necessary or proper to appoint another corporation or one or more persons approved by the Trustee, either to act as co-trustee or co-trustees jointly with the Trustee of all or any of the property subject to the lien hereof, or to act as separate trustee or trustees of all or any such property, with such powers as may be provided in the instrument of appointment and to vest in such corporation or person or persons as such separate trustee or co-trustee any property, title, right or power deemed necessary or desirable. In the event that the Issuer shall not have joined in such appointment within fifteen days after the receipt by it of a request so to do the Trustee alone shall have the power to make such appointment. Should any deed, conveyance or instrument in writing from the Issuer be required by the separate trustee or co-trustee so appointed for more fully and certainly vesting in and confirming to him or to it such properties, rights powers, trusts, duties and obligations, any and all such deeds, conveyances and instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer. Every such co-trustee and separate trustee shall, to the extent permitted by law, be appointed subject to the following provisions and conditions, namely:

(1) The Bonds shall be authenticated and delivered, and all powers, duties, obligations and rights conferred upon the Trustee in respect of the custody of all money and securities pledged or deposited hereunder, shall be exercised solely by the Trustee; and

(2) The Trustee, at any time by an instrument in writing, may remove any such separate trustee or co-trustee.

Every instrument, other than this Indenture, appointing any such co-trustee or separate trustee, shall refer to this Indenture and the conditions of this Article X expressed, and upon the acceptance in writing by such separate trustee or co-trustee, it shall be vested with the estate or property specified in such instrument, jointly with the Trustee (except insofar as local law makes it necessary for any separate trustee to act alone), subject to all the trusts, conditions and provisions of this Indenture. Any such separate trustee or co-trustee may at any time, by an instrument in writing, constitute the Trustee as its agent or attorney, to the extent authorized by law, to do all acts and things and exercise all discretion authorized or permitted by it, for and on behalf of it and its name. In case any separate trustee or co-trustee shall die, become incapable of acting, resign or be removed, all the estates properties, rights, powers, trusts, duties and obligations of the separate trustee or co-trustee shall vest in and be exercised by the Trustee until the appointment of a new trustee or a successor to such separate trustee or co-trustee.

**Section 10.15. Borrower and Bondholder Rights.** Notwithstanding any provision hereof to the contrary, Borrower and Bondholder may hire a successor Trustee to replace any existing Trustee. Further, upon the written direction of the Borrower and the owners of one hundred percent (100%) of the principal amount of the Bonds at the time outstanding and evidence that written notice of such direction has been provided to the Issuer, the Trustee may conclusively rely on such written notice and may take such action as is thereby directed; provided, however, that such action is not in the reasonable judgment of the Trustee to the prejudice of the Trustee.

## **ARTICLE XI. SUPPLEMENTAL INDENTURES AND AMENDMENTS TO THE LEASE AGREEMENT**

**Section 11.01. Supplemental Indentures Not Requiring Consent of Bondowners.** The Issuer and the Trustee may, from time to time, without the consent of or notice to the bondholders, and upon the written direction of the Borrower, enter into such indentures supplemental hereto as shall not be inconsistent with the terms and provisions hereof (which supplemental indenture shall hereafter form a part hereof) (a) to cure any ambiguity or formal defect or omission in this Indenture or in any supplemental indenture; or (b) to grant to or confer or impose upon the Trustee for the benefit of the bondowners any additional rights, remedies, powers, authority, security, liabilities or duties which may lawfully be granted, conferred, or imposed; (c) to add to the covenants and agreements of, and limitations and restrictions upon, the Issuer in this Indenture other covenants, agreements, limitations and restrictions to be observed by the Issuer which are not contrary to or inconsistent with this Indenture as theretofore in effect; (d) to confirm, as further assurance, any pledge under, and the subjection to any claim, lien or pledge created or to be created by, this Indenture, of the Revenues of the Issuer from the Lease Agreement or of any other moneys, securities or funds; (e) to comply with the requirements of the Trust Indenture Act of 1939, as from time to time amended; or (f) to modify, alter, amend or supplement this Indenture in any other

respect which, in the opinion of bond counsel, is not materially adverse to the bondholders and which does not involve a change described in clause (a), (b), (c), (d) or (e) of Section 11.02 hereof.

**Section 11.02. Supplemental Indentures Requiring Consent of Bondowners.** Subject to the terms and provisions contained in this Section, and not otherwise, with the written consent of the Borrower, the owners of one hundred percent (100%) of the principal amount of the Bonds then outstanding shall have the right, from time to time, anything contained in this Indenture to the contrary notwithstanding, to consent to and approve the execution by the Issuer and the Trustee of such indenture or indentures supplemental hereto as shall be deemed necessary and desirable by the Bondholder for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any supplemental indenture; provided, however, that nothing herein contained shall permit or be construed as permitting (a) an extension of the maturity of the principal of or the interest on any Bond issued hereunder, or (b) a reduction in the principal amount of any Bond or redemption premium or the rate of interest thereon, or (c) the creation of any lien ranking prior to or on a parity with the lien of this Indenture on the Trust Estate, except as expressly permitted herein, or (d) a privilege or priority of any Bond or Bonds over any other Bond or Bonds or (e) a reduction in the aggregate principal amount of the Bonds required for consent to such supplemental indenture. Nothing herein contained, however, shall be construed as making necessary the approval of bondowners of the execution of any supplemental indenture as provided in Section 11.01 of this Article.

If at any time the Bondholder or the Borrower shall request the Trustee to enter into any supplemental indenture for any of the purposes of this Section, the Trustee shall, at the expense of the Borrower cause notice of the proposed execution of such supplemental indenture to be mailed by first class mail or sent by other acceptable standard, including facsimile or e-mail, to each owner at his, her or its address on the Bond registration book maintained by the Trustee. Such notice shall be prepared by the Issuer, Bondholder or Borrower and shall briefly set forth the nature of the proposed supplemental indenture and shall state that copies thereof are on file at the principal office of the Trustee for inspection by bondowners. The Trustee shall not, however, be subject to any liability to any bondowner by reason of its failure to disseminate such notice, and any such failure shall not affect the validity of such supplemental indenture consented to and approved as provided in this Section. Upon the execution of any such supplemental indenture, this Indenture shall be and be deemed to be modified and amended in accordance therewith.

**Section 11.03. Amendments to the Lease Agreement.** Upon the written request of the Borrower, with written notice to the Issuer in conformity with the Lease Agreement, the Trustee may from time to time, and at any time, consent to any amendment, change or modification of the Lease Agreement for the purpose of curing any ambiguity or formal defect or omission or making any other change therein, which in the reasonable judgment of the Trustee, in reliance on an opinion of bond counsel, is not to the prejudice of the Trustee or the holders of the Bonds. The Trustee shall not consent to any other amendment, change or modification of the Lease Agreement without the approval or consent of the owners of one hundred percent (100%) of the principal amount of the Bonds at the time outstanding.

**Section 11.04. Procedure for Amendments.** If at any time the Issuer or the Borrower shall request the Trustee's consent to a proposed amendment, change or modification requiring

bondholder approval under Section 11.03 hereof, the Trustee, shall, at the expense of the requesting party, cause notice of such proposed amendment, change or modification to be sent in the same manner as provided by Section 11.02 hereof with respect to supplemental indentures. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file in the principal office of the Trustee for inspection by any interested bondholder. The Trustee shall not, however, be subject to any liability to any bondholder by reason of its failure to mail such notice, and any such failure shall not affect the validity of such amendment, change or modification when consented to by the Trustee in the manner hereinabove provided.

## **ARTICLE XII. MISCELLANEOUS**

**Section 12.01. Consents, etc., of Bondowners.** Any request, direction, objection or other instrument required by this Indenture to be signed and executed by the bondowners may be in any number of concurrent writings of similar tenor and may be signed or executed by such bondowners in person or by agent appointed in writing. Proof of the execution of any such request, direction, objection or other instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Indenture and shall be conclusive if in favor of the Trustee with regard to any action taken by it under such request or other instrument, namely:

The fact and date of the execution by any person of any such writing may be proved by the certificate of any officer in any jurisdiction that the person signing such writing acknowledged before him the execution thereof, or by any affidavit of any witness to such execution.

**Section 12.02. Limitation of Rights.** With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture, or the Bonds issued hereunder, is intended or shall be construed to give to any person other than the parties hereto, and the owners of the Bonds secured by this Indenture, any legal or equitable rights, remedy or claim under or in respect to this Indenture or any covenants, conditions and provisions hereof being intended to be and being for the sole exclusive benefit of the parties hereto and the owners of the Bonds secured as herein provided.

**Section 12.03. Severability.** If any provisions of this Indenture shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions or in all cases because it conflicts with any provisions of any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or paragraphs in this Indenture contained shall not affect the remaining portions of this Indenture or any part thereof.

**Section 12.04. Notice.** Notices as required in this Indenture shall be considered delivered when posted in United States mail, postage prepaid and addressed as set forth below (or at such other address as may have been provided by the party to all other parties hereto by proper notice):

If intended for the Issuer: CITY OF JONESBORO, ARKANSAS  
300 South Church Street  
Jonesboro, Arkansas 72401  
Attention: Mayor

With a copy to: Carol Duncan  
City Attorney  
401 W. Washington Ave.  
Jonesboro, Arkansas 72401  
E-mail: cduncan@jonesboro.org

If intended for the Trustee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: Corporate Trust Department

If intended for Company: COLSON CASTER, LLC  
2121 Barnhill Road  
Jonesboro, Arkansas 72401  
Attention: \_\_\_\_\_

If intended for the Bondholder: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

With a copy to: Such other persons and entities as the  
Bondholder may identify in writing.

**Section 12.05. Arkansas Substantive Law Governs.** This Indenture shall be considered to have been executed in the State and it is the intention of the parties that the substantive law of the State governs as to all questions of interpretation, validity and effect.

**Section 12.06. Uniform Commercial Code.** This Indenture is also a security agreement under the Uniform Commercial Code of the State. The Issuer shall file one or more financing statements and renewals thereof with respect to the security interest granted by this Indenture and file such statements or renewals thereof in the appropriate public office.

**Section 12.07. Counterparts.** This Indenture may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 12.08. Limitation on Liability.** Notwithstanding any other provision of this Indenture to the contrary:

(a) the obligations of the Issuer with respect to the Bonds are not general obligations of the Issuer but are special, limited obligations of the Issuer payable by the Issuer solely from the security for the Bonds;

(b) nothing contained in the Bonds or in this Indenture shall be considered as assigning or pledging any funds or assets of the Issuer other than the Trust Estate;

(c) except with respect to their status as special, limited obligations of the Issuer, payable by the Issuer solely from the security for the Bonds, the Bonds shall not be a debt of the State or of any other political subdivision of the State, and neither the State nor any other political subdivision of the State shall be liable for the payment of the Bonds;

(d) neither the faith and credit of the Issuer, the State nor any other political subdivision of the State are pledged to the payment of the principal or of interest on the Bonds;

(e) neither the revenues nor the property of the Issuer, the State or any other political subdivision of the State are pledged to the payment of the principal or of interest on or as security for the Bonds except as specifically set forth in this Indenture;

(f) no failure of the Issuer to comply with any term, condition, covenant or agreement in this Indenture or in any document executed by the Issuer in connection with the Pledged Property, or the issuance, sale and delivery of the Bonds shall subject the Issuer to liability for any claim for damages, costs or other charge except to the extent that the same can be paid or recovered from the Trust Estate; and

(g) the Issuer shall not be required to advance any moneys derived from any source other than the Trust Estate for any of the purposes of this Indenture, any of the other bond documents or any of the loan documents, whether for the payment of the principal or redemption price of, or interest on, the Bonds, the payment of any fees or administrative expenses or otherwise.

**Section 12.09. No Personal Liability; No Recourse.** No recourse under or upon any obligation, covenant, warranty or agreement contained in this Indenture or in any Bond, or under any judgment obtained against the Issuer, or the enforcement of any assessment, or any legal or equitable proceedings by virtue of any constitution or statute or otherwise, or under any circumstances under or independent of this Indenture, shall be had against the members of the Issuer's City Council or any of the members, officers, agents or employees of the Issuer, as such, past, present or future of the Issuer, either directly or through the Issuer or otherwise, for the payment for or to the Issuer or any receiver of the Issuer, or for or to the owner of any Bond, or otherwise, of any sum that may be due and unpaid by the Issuer upon any such Bond. Any and all personal liability of every nature whether at common law or in equity or by statute or by constitution or otherwise of the members of the Issuer's City Council or of any such member, officer, agent or employee, as such, by reason of any act or omission on his or her part or otherwise, for the payment for or to the owner of any Bond or otherwise of any sum that may remain due and unpaid upon the Bonds secured by this Indenture of any of them is, by the acceptance of such Bond, expressly waived and released as a condition of

and in consideration for the execution of this Indenture and the issuance of the Bonds. Anything in this Indenture to the contrary notwithstanding, it is expressly understood by the parties to this Indenture that (a) the Issuer may rely exclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Issuer by the Trustee or any Bondholder as to the existence of any fact or state of affairs, (b) the Issuer shall not be under any obligation under this Indenture to perform any record keeping or to provide any legal services, it being understood that such services shall be performed or caused to be performed by the Trustee (with respect to record keeping only, and not with respect to any legal services) or by the Bondholders and (c) none of the provisions of this Indenture shall require the Issuer to expend or risk its own funds or otherwise to incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers under this Indenture, unless it shall first have been adequately indemnified to its satisfaction against any costs, expenses and liability which it may incur as a result of taking such action. No recourse for the payment of any part of the principal of, premium, if any, or interest on the Bonds or for the satisfaction of any liability arising from, founded upon or existing by reason of the issuance, purchase or ownership of the Bonds shall be had against the members of the Issuer's board of directors or any officer, member, agent or employee of the Issuer, as such, all such liability being expressly released and waived as a condition of and as a part of the consideration for the execution of this Indenture and the issuance of the Bonds. No covenant, stipulation, obligation or agreement of the Issuer contained in this Indenture shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member, officer, agent or employee of the Issuer or the members of the Issuer's board of directors in other than that person's official capacity. No member, officer, agent or employee of the Issuer shall be individually or personally liable for the payment of the principal or redemption price of or interest on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

*[The remainder of this page intentionally left blank.]*

IN WITNESS WHEREOF, the Issuer has caused these presents to be signed in its name and behalf by its Mayor, and, to further evidence its acceptance of the trust hereby created, Issuer has caused these presents to be signed in its name and behalf by its duly appointed officers all as of the day and year first above written.

**CITY OF JONESBORO, ARKANSAS**

By: \_\_\_\_\_  
**Harold Copenhaver, Mayor**

ATTEST:

By: \_\_\_\_\_  
**April Leggett, City Clerk**

(S E A L)

\_\_\_\_\_, as Trustee

By: \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

STATE OF ARKANSAS            )  
  ) ss.                   **ACKNOWLEDGMENT**  
COUNTY OF CRAIGHEAD    )

On this day, before me, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named **HAROLD COPENHAVER** and **APRIL LEGGETT**, being the persons authorized by said municipality to execute such instrument stating their respective capacities in that behalf, to me well known, who stated that they are the Mayor and City Clerk, respectively, of **CITY OF JONESBORO, ARKANSAS**, an Arkansas municipality, and were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and on behalf of said municipality, and further stated and acknowledged they had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

( S E A L )

STATE OF ARKANSAS     )  
  ) ss.  
COUNTY OF PULASKI    )

**ACKNOWLEDGMENT**

On this day before me, a Notary Public, duly commissioned, qualified and acting, within and for the State and County aforesaid, appeared in person the within named \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, a banking corporation, to me personally known, who stated that she was duly authorized in her capacity to execute the foregoing instrument for and in the name of \_\_\_\_\_ and further stated and acknowledged that she had signed, executed and delivered the foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_  
(S E A L)

**Exhibit A**

Form of Initial Bond

R-1

**\$9,000,000**

**UNITED STATES OF AMERICA  
STATE OF ARKANSAS  
\$9,000,000  
CITY OF JONESBORO, ARKANSAS  
TAXABLE ECONOMIC DEVELOPMENT REVENUE BONDS  
(COLSON CASTER PROJECT)  
SERIES 2022C**

**INTEREST RATE                      MATURITY DATE:                      ISSUE DATE**

\_\_\_\_\_ %                      \_\_\_\_\_, 20\_\_                      \_\_\_\_\_, 2022

**REGISTERED OWNER:**            [AFFILIATE OF COMPANY]

**PRINCIPAL AMOUNT:**            **NINE MILLION AND No/100 DOLLARS  
(OR THE TOTAL AMOUNT OUTSTANDING AS REFLECTED BY THE  
RECORD OF ADVANCES AND PRINCIPAL PAYMENTS ATTACHED  
HERETO)**

---

**KNOW ALL PERSONS BY THESE PRESENTS:**

That City of Jonesboro, Arkansas, a city of the first class and a political subdivision under the laws of the State of Arkansas (the “**Issuer**”) for value received, promises to pay to the Registered Owner stated above, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, the Principal Amount (stated above) on the Maturity Date (stated above), and to pay in like coin or currency, interest on said Principal Amount from the Issue Date (stated above) until paid as follows:

Interest on the unpaid Principal Amount (i) shall be payable annually on \_\_\_\_\_ of each year, beginning on \_\_\_\_\_, 2022 with the final principal and interest payment due on the maturity date, \_\_\_\_\_, 20\_\_, and (ii) shall accrue from the Issue Date (stated above) at the Interest Rate (stated above) until the Issuer’s obligation with respect to payment of such Principal Amount shall be discharged; provided that, the date of each Advance hereunder shall be the interest commencement date from which the principal amount of such Advance bears interest. Payment of interest shall be by check or draft of \_\_\_\_\_, as Trustee and Paying Agent (the “**Trustee**”), to the Registered Owner as shown on the bond registration book of the Issuer maintained by the Trustee on the fifteenth calendar day of the month preceding the month in which the interest payment date occurs. Payment of principal shall be made at the principal office of the Trustee in Little Rock, Arkansas, upon due surrender of this Bond on the Maturity Date (stated above) if not sooner called for redemption.

This Bond is one of an authorized issue of bonds of the Issuer in the Principal Amount of not to exceed Nine Million and No/100 Dollars (\$9,000,000.00) (the “**Bonds**”) which are issued for the

purpose of providing funds for the making of loans to Colson Caster, LLC (the “**Borrower**”) to finance certain industrial enterprise within the State of Arkansas (the “**Project**”). The Bonds are all issued under and are all equally and ratably secured and entitled to the protection given by a Trust Indenture (the “**Indenture**”), dated as of \_\_\_\_\_, 2022, duly executed and delivered by the Issuer to the Trustee. Reference is hereby made to the Indenture and all indentures supplemental thereto for the provisions, among others, with respect to the nature and extent of the security, the issuance of additional series on a parity of security with the Bonds, the rights, duties and obligations of the Issuer, the Trustee and the Registered Owners of the Bonds, and the terms upon which the Bonds are issued and secured. The Bonds are secured by payments to be made by the Borrower pursuant to a Lease Agreement between the Borrower and the Issuer.

This Bond is issued with the intent that the laws of the State of Arkansas will govern its construction.

**THESE BONDS ARE ISSUED UNDER THE PROVISIONS OF TITLE 14, CHAPTER 164, SUBCHAPTER 2 OF THE ARKANSAS CODE ANNOTATED, AS AMENDED (THE “ACT”), AND CONSTITUTE SPECIAL OBLIGATIONS OF THE ISSUER ONLY. IN NO EVENT SHALL THEY CONSTITUTE AN INDEBTEDNESS OF THE STATE OF ARKANSAS, OR AN INDEBTEDNESS FOR WHICH THE FAITH AND CREDIT OF THE STATE OF ARKANSAS OR ANY OF ITS REVENUES ARE PLEDGED OR AN INDEBTEDNESS SECURED BY A LIEN OR SECURITY INTEREST IN ANY PROPERTY OF THE STATE OF ARKANSAS. THE BONDS ARE NOT SECURED BY A PLEDGE OF THE FULL FAITH AND CREDIT OF THE ISSUER, NOR THE PLEDGE OF ANY OF ITS REVENUES EXCEPT AS SPECIFICALLY SET FORTH IN THE INDENTURE.**

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Indenture until the Certificate of Authentication hereon shall have been signed by the Trustee.

The Issuer hereby covenants that it has been duly organized in accordance with law; and that all acts, conditions and things required to be done precedent to and in the issuance of this Bond have existed, have happened, and have been performed as required by law.

The Bonds are not general obligations of the Issuer, but are special obligations payable solely from revenues derived from the Project. The Project consists of certain land, buildings, improvements, equipment and facilities which have been leased by the Issuer to the Borrower under the terms of a Lease Agreement which provides for the loan and repayment of moneys in such amounts as shall be sufficient to pay the principal of and interest on the Bonds as the same become due. Provision has been made in the Lease Agreement for the loan repayments or rental payments to be made directly to the Trustee and deposited in special accounts of the Issuer designated “City of Jonesboro, Arkansas Economic Development Revenue Bond Fund” (the “**Bond Fund**”). Certain Project revenues (including particularly repayments of the loans under the Lease Agreement) have been duly pledged by the Indenture to the payment of the principal of and interest on the Bonds. The Bonds do not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory limitation.

The owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Indenture, or to institute, appear in and defend any suit or other proceeding with

respect thereto, except as provided in the Indenture. In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Bonds issued under the Indenture and then outstanding may be declared and may become due and payable before the stated maturity thereof, together with accrued interest thereon.

Modifications or alterations of the Indenture, or of any indenture supplemental thereto, may be made only to the extent and in the circumstances permitted by the Indenture.

The Bonds shall be subject to redemption prior to maturity as follows:

(1) At any time, the Bonds may be redeemed in whole or in part, at the option of the Issuer at the direction of the Borrower, from the proceeds of insurance in the event of major damage or destruction of the Project pursuant to the provisions of the Lease Agreement, or from legal curtailment of the use and occupancy of all or substantially all of such Project for any reason other than condemnation. If called for redemption upon the occurrence of any of the events described in the preceding sentence, this Bond shall be redeemed in whole or in part, in the manner provided in this Bond and the Indenture, at one hundred percent (100%) of the principal amount thereof, plus accrued interest to the date of redemption.

(2) At any time, upon the written direction of the Borrower, the Bond will be redeemed in whole or in part from the proceeds of condemnation of all or substantially all of the Project at a redemption price equal to one hundred percent (100%) of the principal amount being redeemed plus accrued interest to the redemption date.

(3) At any time, the Bonds shall be redeemed in whole or in part, at the option of the Issuer with the written consent of the Borrower, from Bond proceeds not needed for construction of the Project, upon written notice to the Trustee at a redemption price equal to one hundred percent (100%) of the principal amount being redeemed plus accrued interest to the redemption date.

(4) At any time, the Bonds shall be redeemed in whole or in part, at the option of the Issuer, if the Issuer notifies the Trustee in writing that an event of default has occurred under the Lease Agreement and that it requests a redemption of such Bonds at a redemption price equal to one hundred percent (100%) of the principal amount being redeemed plus accrued interest to the redemption date.

(5) The Bonds (or any portion thereof in \$5,000 multiples) will be subject to redemption prior to maturity, at the option of the Borrower, in whole or in part, on any date, at a redemption price equal to the principal amount being redeemed plus accrued interest to the date of redemption.

Notice of redemption shall be mailed by first class mail or by other acceptable standard, including facsimile or e-mail, to the registered owner of the Bonds addressed to such registered owner at his, her or its registered address and placed in the mails or otherwise sent not less than thirty (30) days prior to the date fixed for redemption or such shorter period of time as is acceptable to the Trustee and the owner hereof. Each notice shall specify the numbers and the maturities of the Bonds being called and the date on which they shall be presented for payment. After the date specified in such call, the Bond or Bonds so called will cease to bear interest provided funds for their payment have been deposited with the Trustee, and, except for the purpose of payment, shall no

longer be protected by the Indenture and shall not be deemed to be outstanding under the provisions of the Indenture.

In the event of a partial redemption of this Bond, the Owner hereof, or the Trustee if the Bond is in the Trustee's possession, is authorized to effect a reduction in the face amount of this Bond by making a notation on the payment grid attached hereto in lieu of surrendering this Bond to the Trustee for cancellation and the issuance of a new Bond or Bonds in the amount of the unredeemed portion hereof.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed in its name by its Mayor and City Clerk, thereunto duly authorized, with the manual or facsimile signature of the Mayor and the manual or facsimile signature of the City Clerk, and the corporate seal to be impressed or imprinted, all as of the \_\_\_ day of \_\_\_\_\_, 2022.

**CITY OF JONESBORO, ARKANSAS**

By: \_\_\_\_\_  
Mayor

ATTEST:

By: \_\_\_\_\_  
City Clerk

**CERTIFICATE OF AUTHENTICATION**

This Bond is one of the Bonds issued under the provisions of the within mentioned Indenture.

\_\_\_\_\_, as Trustee

By: \_\_\_\_\_  
Authorized Signatory

Dated: \_\_\_\_\_, 2022

**ASSIGNMENT**

**FOR VALUE RECEIVED** the undersigned hereby sells, assigns and transfers unto

---

(Social Security or Federal Taxpayer Identification Number)

---

(Please print or typewrite Name and Address, including Zip Code, of Assignee)

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints the Registrar under the Indenture as Attorney to register the transfer of the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature guaranteed by:

---

**NOTICE:**

**SIGNATURE GUARANTEE SHOULD BE MADE BY A GUARANTOR INSTITUTION PARTICIPATING IN THE SECURITIES TRANSFER AGENTS MEDALLION PROGRAM OR IN SUCH OTHER GUARANTEE PROGRAM ACCEPTABLE TO THE TRUSTEE.**

---

**NOTICE:**

**THE SIGNATURE OF THE REGISTERED OWNER TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS IT APPEARS ON THE FACE OF THE WITHIN BOND IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER.**



**Exhibit B**

Form of Bond After Completion Date

R-\_\_

\$ \_\_\_\_\_

**UNITED STATES OF AMERICA  
STATE OF ARKANSAS  
CITY OF JONESBORO, ARKANSAS  
TAXABLE ECONOMIC DEVELOPMENT REVENUE BONDS  
(COLSON CASTER PROJECT)  
SERIES 2022C**

**INTEREST RATE                      MATURITY DATE:                      ISSUE DATE**

\_\_\_\_\_ %                      \_\_\_\_\_, 20\_\_                      \_\_\_\_\_, 20\_\_

**REGISTERED OWNER:**            [AFFILIATE OF COMPANY]

**PRINCIPAL AMOUNT:**            \_\_\_\_\_ AND 00/100 DOLLARS

---

**KNOW ALL PERSONS BY THESE PRESENTS:**

That City of Jonesboro, Arkansas, a city of the first class and a political subdivision under the laws of the State of Arkansas (the "Issuer") for value received, promises to pay to the Registered Owner stated above, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, the Principal Amount (stated above) on the Maturity Date (stated above), and to pay in like coin or currency, interest on said Principal Amount from the Issue Date (stated above) until paid as follows:

Interest on the unpaid Principal Amount (i) shall be payable annually on \_\_\_\_\_ of each year, beginning on \_\_\_\_\_, 2022 with the final principal and interest payment due on the maturity date, \_\_\_\_\_, 20\_\_, and (ii) shall accrue from the Issue Date (stated above) at the Interest Rate (stated above) until the Issuer's obligation with respect to payment of such Principal Amount shall be discharged. Payment of interest shall be by check or draft of \_\_\_\_\_, as Trustee and Paying Agent (the "Trustee"), to the Registered Owner as shown on the bond registration book of the Issuer maintained by the Trustee on the fifteenth calendar day of the month preceding the month in which the interest payment date occurs. Payment of principal shall be made at the principal office of the Trustee in Little Rock, Arkansas, upon due surrender of this Bond on the Maturity Date (stated above) if not sooner called for redemption.

This Bond is one of an authorized issue of bonds of the Issuer in the Principal Amount of \$ \_\_\_\_\_ (the "Bonds") which are issued for the purpose of providing funds for the making of loans to Colson Caster, LLC (the "Borrower") to finance certain industrial enterprise within the State of Arkansas (the "Project"). The Bonds are all issued under and are all equally and ratably secured and entitled to the protection given by a Trust Indenture (the "Indenture"), dated as of \_\_\_\_\_, 2022, duly executed and delivered by the Issuer to the Trustee. Reference is hereby made to the

Indenture and all indentures supplemental thereto for the provisions, among others, with respect to the nature and extent of the security, the issuance of additional series on a parity of security with the Bonds, the rights, duties and obligations of the Issuer, the Trustee and the Registered Owners of the Bonds, and the terms upon which the Bonds are issued and secured. The Bonds are secured by payments to be made by the Borrower pursuant to a Lease Agreement between the Borrower and the Issuer.

This Bond is issued with the intent that the laws of the State of Arkansas will govern its construction.

**THESE BONDS ARE ISSUED UNDER THE PROVISIONS OF TITLE 14, CHAPTER 164, SUBCHAPTER 2 OF THE ARKANSAS CODE ANNOTATED, AS AMENDED (THE “ACT”), AND CONSTITUTE SPECIAL OBLIGATIONS OF THE ISSUER ONLY. IN NO EVENT SHALL THEY CONSTITUTE AN INDEBTEDNESS OF THE STATE OF ARKANSAS, OR AN INDEBTEDNESS FOR WHICH THE FAITH AND CREDIT OF THE STATE OF ARKANSAS OR ANY OF ITS REVENUES ARE PLEDGED OR AN INDEBTEDNESS SECURED BY A LIEN OR SECURITY INTEREST IN ANY PROPERTY OF THE STATE OF ARKANSAS. THE BONDS ARE NOT SECURED BY A PLEDGE OF THE FULL FAITH AND CREDIT OF THE ISSUER, NOR THE PLEDGE OF ANY OF ITS REVENUES EXCEPT AS SPECIFICALLY SET FORTH IN THE INDENTURE.**

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Indenture until the Certificate of Authentication hereon shall have been signed by the Trustee.

The Issuer hereby covenants that it has been duly organized in accordance with law; and that all acts, conditions and things required to be done precedent to and in the issuance of this Bond have existed, have happened, and have been performed as required by law.

The Bonds are not general obligations of the Issuer, but are special obligations payable solely from revenues derived from the Project. The Project consists of certain land, buildings, improvements, equipment and facilities which have been leased by the Issuer to the Borrower under the terms of a Lease Agreement which provides for the loan and repayment of moneys in such amounts as shall be sufficient to pay the principal of and interest on the Bonds as the same become due. Provision has been made in the Lease Agreement for the loan repayments or rental payments to be made directly to the Trustee and deposited in special accounts of the Issuer designated “City of Jonesboro, Arkansas Economic Development Revenue Bond Fund” (the “Bond Fund”). Certain Project revenues (including particularly repayments of the loans under the Lease Agreement) have been duly pledged by the Indenture to the payment of the principal of and interest on the Bonds. The Bonds do not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory limitation.

The owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Indenture, or to institute, appear in and defend any suit or other proceeding with respect thereto, except as provided in the Indenture. In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Bonds issued under the Indenture and then outstanding may be declared and may become due and payable before the stated maturity thereof, together with accrued interest thereon.

Modifications or alterations of the Indenture, or of any indenture supplemental thereto, may be made only to the extent and in the circumstances permitted by the Indenture.

The Bonds shall be subject to redemption prior to maturity as follows:

(1) At any time, the Bonds may be redeemed in whole or in part, at the option of the Issuer at the direction of the Borrower, from the proceeds of insurance in the event of major damage or destruction of the Project pursuant to the provisions of the Lease Agreement, or from legal curtailment of the use and occupancy of all or substantially all of such Project for any reason other than condemnation. If called for redemption upon the occurrence of any of the events described in the preceding sentence, this Bond shall be redeemed in whole or in part, in the manner provided in this Bond and the Indenture, at one hundred percent (100%) of the principal amount thereof, plus accrued interest to the date of redemption.

(2) At any time, upon the written direction of the Borrower, the Bond will be redeemed in whole or in part from the proceeds of condemnation of all or substantially all of the Project at a redemption price equal to one hundred percent (100%) of the principal amount being redeemed plus accrued interest to the redemption date.

(3) At any time, the Bonds shall be redeemed in whole or in part, at the option of the Issuer with the written consent of the Borrower, from Bond proceeds not needed for construction of the Project, upon written notice to the Trustee at a redemption price equal to one hundred percent (100%) of the principal amount being redeemed plus accrued interest to the redemption date.

(4) At any time, the Bonds shall be redeemed in whole or in part, at the option of the Issuer, if the Issuer notifies the Trustee in writing that an event of default has occurred under the Lease Agreement and that it requests a redemption of such Bonds at a redemption price equal to one hundred percent (100%) of the principal amount being redeemed plus accrued interest to the redemption date.

(5) The Bonds (or any portion thereof in \$5,000 multiples) will be subject to redemption prior to maturity, at the option of the Borrower, in whole or in part, on any date, at a redemption price equal to the principal amount being redeemed plus accrued interest to the date of redemption.

Notice of redemption shall be mailed by first class mail or by other acceptable standard, including facsimile or e-mail, to the registered owner of the Bonds addressed to such registered owner at his, her or its registered address and placed in the mails or otherwise sent not less than thirty (30) days prior to the date fixed for redemption or such shorter period of time as is acceptable to the Trustee and the owner hereof. Each notice shall specify the numbers and the maturities of the Bonds being called and the date on which they shall be presented for payment. After the date specified in such call, the Bond or Bonds so called will cease to bear interest provided funds for their payment have been deposited with the Trustee, and, except for the purpose of payment, shall no longer be protected by the Indenture and shall not be deemed to be outstanding under the provisions of the Indenture.

In the event of a partial redemption of this Bond, the Owner hereof, or the Trustee if the Bond is in the Trustee's possession, is authorized to effect a reduction in the face amount of this

Bond by making a notation on the payment grid attached hereto in lieu of surrendering this Bond to the Trustee for cancellation and the issuance of a new Bond or Bonds in the amount of the unredeemed portion hereof.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed in its name by its Mayor and City Clerk, thereunto duly authorized, with the manual or facsimile signature of the Mayor and the manual or facsimile signature of the City Clerk, and the corporate seal to be impressed or imprinted, all as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CITY OF JONESBORO, ARKANSAS**

By: \_\_\_\_\_  
Mayor

ATTEST:

By: \_\_\_\_\_  
City Clerk

**CERTIFICATE OF AUTHENTICATION**

This Bond is one of the Bonds issued under the provisions of the within mentioned Indenture.

\_\_\_\_\_, as Trustee

By: \_\_\_\_\_  
Authorized Signatory

Dated: \_\_\_\_\_

**ASSIGNMENT**

**FOR VALUE RECEIVED** the undersigned hereby sells, assigns and transfers unto

---

(Social Security or Federal Taxpayer Identification Number)

---

(Please print or typewrite Name and Address, including Zip Code, of Assignee)

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints the Registrar under the Indenture as Attorney to register the transfer of the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature guaranteed by:

---

**NOTICE:**

**SIGNATURE GUARANTEE SHOULD BE MADE BY A GUARANTOR INSTITUTION PARTICIPATING IN THE SECURITIES TRANSFER AGENTS MEDALLION PROGRAM OR IN SUCH OTHER GUARANTEE PROGRAM ACCEPTABLE TO THE TRUSTEE.**

---

**NOTICE:**

**THE SIGNATURE OF THE REGISTERED OWNER TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS IT APPEARS ON THE FACE OF THE WITHIN BOND IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER.**



Exhibit D

ANNUAL PAYMENT CONFIRMATION

Not to Exceed  
\$9,000,000  
City of Jonesboro, Arkansas  
Taxable Economic Development Revenue Bonds  
(Colson Caster Project)  
Series 2022C

\_\_\_\_\_  
Attn: Corporate Trust  
\_\_\_\_\_  
\_\_\_\_\_

Pursuant to the Home Office Payment Agreement between the City of Jonesboro, Arkansas (“Issuer”), [Bondholder] (“Bondholder”) and Colson Caster, LLC (“Borrower”), Borrower confirms that the following payments were made and documented in accordance with the referenced documents on the books and records of the Borrower and Bondholder as of \_\_\_\_\_, 20\_\_\_\_:

<b><u>Applicable Document</u></b>	<b><u>Type of Payment</u></b>	<b><u>Amount</u></b>
Bond	Accrued Interest	\$ _____ <sup>1</sup>
Lease Agreement	Rent	\$ _____ <sup>2</sup>

Dated: \_\_\_\_\_

COLSON CASTER, LLC  
As Borrower

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

<sup>1</sup> Borrower may provide back-up documentation to the Trustee regarding the calculation of the Accrued Interest amount, but it is not required. Interest is calculated at the rate of \_\_\_\_\_% on the outstanding principal balance.

<sup>2</sup> Pursuant to the Lease Agreement, rental payments are equivalent to amounts due with respect to the Bond.

# MITCHELL || WILLIAMS

## MEMORANDUM

**TO:** City of Jonesboro, Arkansas  
**FROM:** Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.  
**DATE:** March 2, 2022  
**RE:** Colson Caster

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At its November 17, 2020 City Council meeting, the City adopted a resolution (Res-20:205) authorizing an Agreement to Issue Bonds in the amount of \$24,000,000 and expressing the City's intent to offer tax abatement to Colson Group Holdings, LLC for the purpose of incentivizing Colson to re-build in the City. The City Council hosted a public hearing at its December 1<sup>st</sup> meeting, and no adverse comments were received.

Originally, Colson and the City anticipated that the Bonds would be issued solely for the purpose of achieving tax abatement. Industrial Development Revenue Bonds issued solely for this purpose would not result in a financial obligation for either the City or Colson.

Subsequent to the initial communications with the City, Colson requested and received state support with guaranties from the Arkansas Development Finance Authority backing \$6,000,000 of bonds and from the Arkansas Economic Development Commission backing \$5,000,000 of bonds. Further, Colson received a lending commitment of \$4,000,000 from First Security Bank who is partnering with ADFA and AEDC so that its bonds and the guaranties will be on a parity of security. The bonds supported by the state will be the \$11,000,000 Series A bonds. First Security Bank will

purchase the \$4,000,000 Series B Bonds. An affiliate of Colson will purchase the \$9,000,000 Series C Bonds.

At its core, the ordinance presented to the City Council results in tax abatement for the entire \$24,000,000 investment by Colson – just like the majority of ordinances supporting industrial development projects in the City. In this instance, the City also is facilitating the state’s support of the Colson project and a local bank’s lending commitment – without the City’s incurrence of a financial obligation. The proposed Industrial Development Revenue Bonds are special, limited obligations of the City payable solely from rents paid by Colson.

In contrast to other tax abatement projects supported by the City, Colson will incur a financial obligation. It is utilizing the bond structure to implement advantageous financing options offered by First Security Bank and facilitated by ADFA and AEDC.

### **SUMMARY**

- \$24,000,000 of Industrial Development Revenue Bonds will be issued by the City of Jonesboro
  - The City’s sole obligation is to allow the Trustee to collect the rents paid by Colson. There is no financial obligation on behalf of the City.
- Colson is granted tax abatement of 65% for 20 years on its \$24,000,000 investment.
- Colson will incur a financial obligation with respect to the \$11,000,000 Series A Bonds and the \$4,000,000 Series B Bonds. Those financial obligations will be secured by Colson’s land, building and equipment.



# City of Jonesboro

300 S. Church Street  
Jonesboro, AR 72401

## Signature Copy

Resolution: R-EN-197-2020

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**File Number: RES-20:205**

**Enactment Number: R-EN-197-2020**

A RESOLUTION AUTHORIZING THE ENTRY INTO AN AGREEMENT TO ISSUE BONDS FOR THE PURPOSE OF ASSISTING IN THE FINANCING OF INDUSTRIAL FACILITIES WITHIN THE CITY OF JONESBORO, ARKANSAS, TO BE LEASED TO COLSON GROUP HOLDINGS, LLC OR ITS AFFILIATE, PURSUANT TO THE AUTHORITY OF THE LAWS OF THE STATE OF ARKANSAS, INCLUDING PARTICULARLY AMENDMENT 65 TO THE ARKANSAS CONSTITUTION AND THE MUNICIPALITIES AND COUNTIES INDUSTRIAL DEVELOPMENT REVENUE BOND LAW

WHEREAS, the City of Jonesboro, Arkansas, is authorized under the provisions of Amendment 65 to the Arkansas Constitution and the Municipalities and Counties Industrial Development Revenue Bond Law, Ark. Code Ann. §§ 14-164-201 et seq. (the "Act"), to own, acquire, construct, equip, and lease facilities to secure and develop industry and to assist in the financing thereof by the issuance of bonds payable from the revenues derived from such facilities; and,

WHEREAS, Colson Group Holdings, LLC (the "Company"), has evidenced its interest in acquiring, constructing, and equipping an industrial facility within the City if the permanent financing can be provided through the issuance of bonds (the "Bonds") under the authority of the Act; and,

WHEREAS, the City desires to assist the Company in order to secure and develop industry within the City, and to aid in the financing thereof under the provisions of the Act; and,

WHEREAS, it is desirable that the City enter into an Agreement to Issue Bonds for such purpose.

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

Section 1. The Mayor and the City Clerk of the City are hereby authorized to enter into an Agreement to Issue Bonds in substantially the form and substance attached as Exhibit A.

Section 2. Subject to compliance with the statutory notice requirements, a Payment in Lieu of Taxes Agreement (a "PILOT Agreement") shall be considered for approval at the meeting of the City Council at which the ordinance authorizing the issuance of the Bonds is considered for approval.

Section 3. The City shall hold a public hearing on the question of the issuance of the Bonds on December 1, 2020 at 5:25 p.m. The City Clerk and bond counsel shall coordinate the publication of the notice of public hearing.

Section 4. Severability. In the event any title, section, paragraph, item, sentence, clause, phrase, or word of this resolution is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of this resolution, which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional was not originally a part of this resolution.

Section 5. Repealer. All ordinances or resolutions of the City in conflict herewith are hereby repealed to the extent of such conflict.

PASSED AND APPROVED THIS 17TH DAY OF NOVEMBER, 2020.



# City of Jonesboro

300 S. Church Street  
Jonesboro, AR 72401

## Text File

File Number: RES-22:052

**Agenda Date:**

**Version:** 1

**Status:** To Be Introduced

**In Control:** Finance & Administration Council Committee

**File Type:** Resolution

RESOLUTION BY THE CITY COUNCIL OF THE CITY OF JONESBORO, ARKANSAS TO AMEND THE CONTRACT WITH BRACKETT KRENNERICH FOR ARCHITECTURAL SERVICE RELATED TO THE RENOVATION OF THE JONESBORO RECREATIONAL CENTER

WHEREAS, Brackett Krennerich prepared a feasibility study for the Jonesboro Recreational Center;

WHEREAS, upon completion of the study, the City of Jonesboro entered into an agreement with Brackett Krennerich for architectural services related to the Phase I renovations of the Jonesboro Recreational Center; and

WHEREAS, Brackett Krennerich successfully designed and provided administration for the construction of the Phase I renovations; and

WHEREAS, the City of Jonesboro desires to complete the remaining renovation of the Jonesboro Recreational Center in accordance with the feasibility study; and

WHEREAS, Brackett Krennerich has agreed to amend their Phase 1 contract to include this remaining work which is identified as Phases 2 and 3 in the feasibility study (see attached Amendment #2).

WHEREAS, cost of these architectural services will be paid for by American Rescue Plan Act (ARPA) funding received by the City of Jonesboro.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF JONESBORO THAT:

Section 1: The City of Jonesboro desires to amend their contract with Brackett Krennerich for the renovation of the Jonesboro Recreational Center to include the remaining work identified as Phases 2 and 3 in the Jonesboro Recreational Center Feasibility Study, in accordance with the attached amendment.

Section 2: The Mayor and the City Clerk are hereby authorized by the City Council for the City of Jonesboro to execute all documents necessary to effectuate this agreement.





## Amendment #2

*(to executed AIA Document B104 – 2007 Standard Form of Agreement Between Owner (City of Jonesboro) and Architect (Brackett Krennerich and Associates P.A.) for a Project of Limited Scope for the Alteration to: Jonesboro Recreational Center, Phase I, City of Jonesboro, Jonesboro, Arkansas.*

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Effective August 20, 2014 AIA Document B104 – 2007 Standard Form of Agreement Between Owner and Architect as executed between the City of Jonesboro and Brackett Krennerich and Associates P.A. has been amended as follows:

### **Article 4 Additional Services**

**§ 4.3** For the Architects Additional Services as indicated in Article 4.3, the Owner shall compensate the Architect as follows:

Seven and One Half Percent (7.5%) of cost of construction for revised scope of work

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**OWNER (Signature)**  
Mayor Harold Copenhaver  
City of Jonesboro  
*(Printed name and title)*



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**ARCHITECT (Signature)**  
Kyle Cook, President  
Brackett Krennerich and Associates P.A.  
*(Printed name and title)*