

ORDINANCE NO. 16-2007

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT PROVIDING FOR THE SALE OF INDUSTRIAL DEVELOPMENT REVENUE BONDS TO BE ISSUED UNDER ARKANSAS CODE ANNOTATED SECTIONS 14-164-201, *ET SEQ.* (1998 REPL., SUPP. 2005) FOR THE PURPOSE OF SECURING AND DEVELOPING INDUSTRY (THE PARTICULAR INDUSTRIAL PROJECT IS DESCRIBED IN THE ORDINANCE); AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUST INDENTURE SECURING THE BONDS; AUTHORIZING AND PRESCRIBING CERTAIN MATTERS PERTAINING TO THE INDUSTRIAL PROJECT, THE EQUIPPING THEREOF, AND THE FINANCING THEREOF; AUTHORIZING THE EXECUTION AND DELIVERY OF THE LEASE AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF A PLACEMENT MEMORANDUM; PRESCRIBING MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Jonesboro, Arkansas (the "City"), is authorized by Arkansas Code Annotated Sections 14-164-201, *et seq.* (1998 Repl., Supp. 2005) (the "Act") to finance the acquisition of lands, the construction and equipping of industrial buildings, improvements, and facilities, and to incur costs and expenses and to make expenditures incidental to and for the implementation and accomplishment of the conduct of industrial operations; and

WHEREAS, the City is authorized by the Act to issue industrial development revenue bonds payable from revenues derived from the industrial project so acquired and constructed and secured by a lien thereon and security interest therein; and

WHEREAS, the City, pursuant to a resolution of its City Council, adopted February 6, 2007, has entered into an Agreement to Issue Bonds with Alberto-Culver USA, Inc. (the "Company"), to issue such bonds under the Act to the extent of not to exceed \$91,000,000 for the purposes hereinafter described for the benefit of the

Company, such bonds to be issued in one or more series as the Company may request;
and

WHEREAS, the necessary arrangements have been made with the Company for a substantial industrial project consisting of the acquisition and equipping of industrial facilities (the "Project") to be utilized in the Company's business of manufacturing hair care and skin care consumer products and the distribution of such products; and

WHEREAS, the necessary arrangements have been made for the financing of the Project and the leasing of the Project to the Company pursuant to the terms of a Lease Agreement (as hereinafter defined); and

WHEREAS, it is anticipated that permanent financing of the costs of the Project, necessary costs and expenditures incidental thereto, and the cost of the issuance of bonds will be furnished by the City issuing industrial development revenue bonds under the provisions of the Act in the principal amount not to exceed \$91,000,000 (the "Bonds"); and

WHEREAS, the City proposes to enter into a Bond Purchase Agreement with New Alberto-Culver LLC, a Delaware limited liability company, or a company to be named at a later date ("the "Purchaser") for the sale of the Bonds;

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

Section 1. That the City Council makes the following findings and determinations:

(a) The financing of the Project will provide additional employment and other benefits.

(b) The Company is an industry which is engaged in the manufacturing of hair care and skin care consumer products and the distribution of such products.

(c) The Company's presence in the City will be an important factor in the economic well-being and employment base for the City and its inhabitants.

Section 2. That there be, and there is hereby authorized and directed the following:

(a) The sale of the Bonds to the Purchaser; and to provide the terms and conditions upon which the Bonds are to be sold to the Purchaser, the Mayor is hereby authorized and directed to execute at the request of the Company a Bond Purchase Agreement on behalf of the City, to be dated as of its date of execution (the "Bond Purchase Agreement"), by and between the City and the Purchaser; and the Bond Purchase Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Company and the Purchaser in order to complete the Bond Purchase Agreement in substantially the form submitted to this meeting with such changes as shall be approved by such persons executing the document, their execution to constitute conclusive evidence of such approval;

(b) The acquisition, construction, and equipping of the Project, and, in connection therewith, the execution of any necessary contracts or the acceptance of an assignment of any contracts previously executed by the Company for the acquisition, construction, and equipping of the Project; and

(c) The performance of all obligations of the City under the Lease Agreement pertaining to the acquisition, construction, and equipping of the Project and the performance of all obligations of the City under the Bond Purchase Agreement.

Section 3. That the Bonds shall bear interest at the rates of interest and shall mature as specified in the Bond Purchase Agreement, and shall be in the original aggregate principal amount of not to exceed \$91,000,000. To provide the terms and conditions upon which the Bonds are to be secured, executed, authenticated, issued, accepted, and held, the Mayor is hereby authorized and directed to execute and acknowledge a Trust Indenture (the "Indenture"), by and between the City and a financial institution to be named trustee by the Company at a later date (the "Trustee"), and the City Clerk is hereby authorized and directed to execute and acknowledge the Indenture and to affix the seal of the City thereto, and the Mayor and City Clerk are hereby authorized and directed to cause the Indenture to be accepted, executed, and acknowledged by the Trustee. The Indenture is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Trustee, the Company, and the Purchaser in order to complete the Indenture in substantially the form submitted to this meeting with such changes as shall be approved by such persons executing the document, their execution to constitute conclusive evidence of such approval.

Pursuant to the Act, a copy of the Indenture in substantially the form authorized to be executed is on file with the City Clerk of the City of Jonesboro and is available for inspection by any interested person.

Section 4. That there be, and there is hereby authorized and directed the execution and delivery of a Lease Agreement by and between the City and the Company (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 the Mayor is hereby authorized to confer with the Company, the Trustee, and the Purchaser in order to complete the Lease Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the document, their execution to constitute conclusive evidence of such approval.

Pursuant to the Act, a copy of the Lease Agreement in substantially the form authorized to be executed is on file with the City Clerk of the City of Jonesboro, and is available for inspection by any interested person.

Section 5. That there be, and there is hereby, authorized and approved a Preliminary Placement Memorandum, including the cover page and appendices attached thereto, of the City. The Preliminary Placement Memorandum, as amended to conform to the terms of the Bond Purchase Agreement, and with such other changes and amendments as are mutually agreed to by the City, the Company, and the Purchaser, is herein referred to as the "Placement Memorandum," and the Mayor is hereby authorized to execute the Placement Memorandum for and on behalf of the City. The Placement Memorandum is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Company, the Trustee, and the Purchaser in order to complete the Placement Memorandum in

substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the document, their execution to constitute conclusive evidence of such approval.

Section 6. That the Mayor and City Clerk, for and on behalf of the City, be, and they are hereby, authorized and directed to do any and all things necessary to effect the execution of the Lease Agreement, the performance of the City's obligations under the Lease Agreement, the execution and delivery of the Indenture, its execution and acceptance by the Trustee, the performance of all obligations of the City under and pursuant to the Indenture, the execution and delivery of the Bond Purchase Agreement, the execution and delivery of the Payment in Lieu of Tax Agreement by and among the City, the Company, and Craighead County, and 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, 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.

Section 7. That Williams & Anderson PLC, of Little Rock, Arkansas, is hereby appointed as Bond Counsel with respect to the issuance of the Bonds, and Morgan Keegan & Co. is hereby appointed Financial Advisor with respect to the Bonds, the fees and expenses of which firms shall be costs of the Project.

Section 8. That the provisions of this Ordinance are hereby declared to be severable, and if any section, phrase, or provision shall for any reason be declared to

be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases, or provisions.

Section 9. That all ordinances, resolutions, and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 10. That there is hereby found and declared to be an immediate need for the securing and developing of substantial industrial operations in order to provide additional employment, alleviate unemployment, and otherwise benefit the public health, safety, and welfare of the City and the inhabitants thereof, and the sale of the Bonds authorized hereby and the taking of the other action authorized herein are immediately necessary in connection with the securing and developing of substantial industrial operations and deriving the public benefits referred to above. It is, therefore, declared that an emergency exists and this Ordinance, being necessary for the immediate preservation of the public health, safety, and welfare, shall be in force and take effect immediately upon and after its passage.

PASSED: February 20, 2007.